

TORTURE, POLITICAL PRISONERS AND THE UN-RULE OF LAW: CHALLENGES TO PEACE, SECURITY AND HUMAN RIGHTS IN BURMA

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Despite the fact that torture constitutes one of the most brutal attacks on human dignity, and notwithstanding the absolute prohibition of torture under any circumstances, almost no society is immune from torture. In many societies, it is practiced systematically. Burma is one such country. In addition, conditions of detention, in Burma, are appalling and arguably qualify as cruel, inhuman and degrading, amounting to torture. This paper explores the nature of torture in Burma's interrogation centers and prisons. Evidence suggests the practice of torture, in Burma, serves the purpose of extracting confessions and information; extracting money; as a punishment; and perhaps, most dangerously, of silencing dissent. The victims, in Burma, are often activists with different agendas, and include members of the political opposition, ethnic groups, labour activists and human rights defenders. The State Peace and Development Council (SPDC) continues to deny the existence of political prisoners, arguing that 'there are only criminals in Burma's prisons' and refutes claims of torture and ill-treatment. However, the deplorable conditions in these places of detention are well documented. The Assistance Association for Political Prisoners (AAPP) has systematically documented hundreds of cases of torture experienced by political prisoners, dating back to 1988 and as recent as 2010. Through interviews, former political prisoners recount the torture and ill-treatment, which they suffered, as well as that which they have witnessed.

The research reveals that torture is not limited to isolated cases but inflicted in a routine, if not, systematic manner. The same methods of torture have been practiced over the past twenty-two years on political prisoners. The prevalence of specific torture methods in prisons all over the country suggests that some form of 'torture training' has been provided. Under some circumstances, torture can amount to a war crime or a crime against humanity. This paper raises the question of whether the torture of Burma's political activists could constitute such a crime against humanity. It will explore whether the torture is widespread, systematic and premeditated. While, around the world, the past decade has seen a strengthening of legal measures to bring torturers to justice, in Burma, after nearly 50 years of successive military rule and the absence of the rule of law, impunity and a pervasive culture of fear prevail. The State security apparatus, rather than protecting the people, punishes them. The policies of the state and the actions of law enforcement officials are at complete odds with international human rights standards.

Internationally, there is an increasing interest in and a growing campaign for, a Commission of Inquiry into crimes against humanity in Burma. Such an inquiry raises the possibility of the potential prosecution of the instigators and perpetrators of torture.

The long-term goal of research and documentation on torture and ill-treatment, by AAPP, is to develop an accurate historical record that can be used in any transitional justice process, or independent investigation, in a future democratic Burma.

The degree of civilization in a society can be judged by entering its prisons.
- Fyodor Dostoyevsky, Russian novelist (1821-1881)

1. Introduction

Nothing is more revealing about the situation of human rights in a country than the existence of political prisoners. They embody the denial of the most basic freedoms essential to humankind such as freedom of expression, assembly and association. The State Peace and Development Council (SPDC) repeatedly denies the existence of political prisoners arguing that there are only criminals in Burma's prisons. In reality, there are more than 2,000 people behind bars, without access to the guarantees of due process, for exercising their basic civil and political rights. The judicial system, far from affording individuals basic standards of justice, is used by the regime as an instrument of repression to silence dissent. Not only is there an absence of the rule of law, but in Burma, the legal system is used against the people.

Not only do the SPDC deny the existence of political prisoners but it refutes claims of torture and ill-treatment in places of detention. There are 42 prisons in Burma, 109 labour camps and an unknown number of interrogation centres¹. The deplorable conditions in these places are well-documented: incommunicado detention, poor diet, and denial of adequate medical attention and torture. The conditions of detention, in Burma, are appalling and arguably qualify as cruel, inhumane and degrading, amounting to torture.

Despite the fact that torture constitutes one of the most brutal attacks on human dignity, and notwithstanding the absolute prohibition of torture under any circumstances, almost no society is immune from torture. The problem of torture resurfaced recently in the contexts of the war in Iraq and Afghanistan, concerning the situation of detainees in Abu Ghraib and Guantanamo Bay, and attempts to extradite persons considered to be 'threats to national security' to states where they may be at risk of torture.

The abuse of Iraqi prisoners in Abu Ghraib by US soldiers came to light in 2004 and placed torture firmly on the international agenda (Kelman, 2005, p. 24). Unfortunately, the abuse that took place in the interrogation centers of Abu Ghraib is nothing extraordinary. To the contrary, torture is widely practiced in many parts of the world. In many countries it is practiced systematically and torture is an ongoing threat to civilians, ensuring populations live in fear, thereby preventing any politically critical activities. Burma is one such country.

This paper explores the nature of torture in Burma's interrogation centres and prisons. Evidence suggests that in Burma the practice of torture, serves the purpose of extracting confessions and information; extracting money; as a punishment; and perhaps, most dangerously, of silencing dissent.

The victims are often activists from different backgrounds, and include members of the political opposition, ethnic groups, human rights defenders and aid workers. The Assistance Association for Political Prisoners (AAPP)² has documented hundreds of cases of torture experienced by political prisoners, dating back to 1988 and as recent as 2010.³

The research reveals that torture is not limited to isolated cases but inflicted in a routine, if not, systematic manner.

2. Definition of Key Concepts and Terms

It is important to explore exactly what the term “political prisoner” means. Anyone imprisoned for peacefully speaking out against their government, for practicing their religion, or for their culture, race or gender can be considered a political prisoner, a term often used interchangeably with prisoner of conscience, which is a designation used by Amnesty International and sometimes the United Nations. According to Amnesty International prisoners of conscience are imprisoned solely for the peaceful expression of their beliefs or because of their race, gender or other personal characteristics.⁴ It is a principle of Amnesty International to offer help only to political prisoners who have not used violence or force, regardless of their motivation, to protest. This is a contentious point as some believe that a political protester has a right to answer a violent government with violence. According to AAPP, a political prisoner is a person arrested because of his or her active involvement in political movements with peaceful or resistance means (AAPP, 2010a, p.35).

To understand what it means to be a political prisoner in Burma we need to understand what it means to be a political activist or a dissident. The term “political activist” or “dissident” lumps together a diverse range of people, as though they were a single, unified, political group. They are not. They do not share a single political ideology. Rather, the dissident community is made up of a variety of people, scattered across the entire country, and more across its borders, some of whom belong to large political parties like the recently disbanded National League for Democracy, some to smaller groups, like Generation Wave an underground youth culture network, and others who work alone. A dissident may be someone who writes an article critical of the government, a monk who overturns their alms bowl at the military’s economic mismanagement, or someone writing a poem about poverty or oppression. What ties these people together is that they engage in activities that the Burmese Junta considers contrary to its policies, and therefore ‘anti-government’, ‘a security threat’, or even ‘terrorism’. In Burma, it does not take much to be ‘political’ or considered a ‘security threat’. Owning a copy of the Universal Declaration of Human Rights can land you with a 5 year prison sentence, as can handing out leaflets for an independent student union. Some political prisoners were not directly involved in politics before their arrest. One former political prisoner reveals

the effects of his imprisonment: *"I never considered myself political before my arrest, but now the regime has made me political through my imprisonment."* (AAPP, interview, August 2005).

Mere association with members, rather than actual membership, of an outlawed group can land someone in considerable trouble. By 1990, there were 93 groups declared unlawful by the State Law and Order Council.

Since 1990, four more groups were added to the list: Karen National Union, Democratic Party for a New Society, All Burma Students Democratic Front and most recently the Burma Lawyers' Council. What defines association with an organisation is subjective and routinely used by the authorities in an arbitrary manner.

An editorialist for the New Light of Myanmar, the regime's newspaper, claimed that there are no political prisoners in Burma, because there are no political offences in the country's criminal code (The New Light of Myanmar, 2009). This is grossly inaccurate - in Burma there are a number of laws that criminalize peaceful dissent and suppress human rights. People who are detained or sentenced for the following offences can be considered political prisoners in Burma:

Law	Section	Offences	Maximum Term
Penal Code	121,122(1) 122(2)	Definition of high treason; punishment of high treason.	Death or life imprisonment
	124, 124(A) and 124(B)	Misprision of high treason; sedition; advocating overthrow of an organ of the Union or of its constituent units by force.	Seven years; life imprisonment; three years
	143 - 146	Unlawful assembly	Two years
	295, 295(A)	Insulting religion	Two years
	505(B)	Making a statement or rumour conducive to public mischief	Two years
Unlawful Association Act (1908)	17/1 & 17/2	Membership of an unlawful association; management or promotion (or assisting) of an unlawful association.	Three years; Five years
State Protection Law (1975)	10(a) & 10(B)	Detention of a citizen who is endangering State sovereignty of the Union or the restoration of law and order.	Seven years
Emergency Provisions Act (1950)	5(d), 5(e), 5(j)	Causing public alarm; spreading false news; undermining the security without charge or trial; house arrest.	Five years, renewable by an additional year
Electronic Transactions Law (2004)	33(a), 33(b) & 38	Using electronic transactions technology to commit any act detrimental to the security of the State; sending or receiving information relating to secrets of the security of the State; attempting, conspiring or abetting.	Fifteen years
6/88	5, 6, 7	Prohibition of forming organizations that are not permitted to register under the Political Parties Registration Law 1988; organizations that attempt to incite unrest; membership thereof or aiding and abetting.	Five years

Law	Section	Offences	Maximum Tern
6/96	3, 4, 5, 6	“The Law protection the peaceful and systematic transfer of state responsibility and the successful performance of the functions of the National Convention against disturbances and oppositions’.	Twenty years
Printers & Publishers Act (1962)	17/20	All printed material must be submitted to the Press Secrutingy Board for vetting prior publication.	Seven years
Official Secrets Act (1923)	3	Any person who communicates information calculated to be, directly or indirectly, useful to an enemy.	Fourteen years
Television And Video Law (1996)	32(B)	Copying, distributing, hiring or exhibiting etc a video that has not passed censorship.	Three years

The extreme nature of criminalising peaceful dissent is illustrated by the case of independent activist U Ohn Than.

3. Case study: U Ohn Than – the individual activist⁵

“I believe that I represent myself and the true will of the people. I have never joined any political party or organization... I took a big risk demonstrating, in order to expose the real political situation, out of loyalty to the people of Burma,” (U Ohn Than, 2008).

Well-known for his solo protests, U Ohn Than is a political prisoner who has spent at least 18 years in Burma’s prisons. He received a life sentence, in April 2008, for a peaceful protest he staged outside the US embassy in Rangoon.

On 15 August 2007, the Burmese regime dramatically increased the cost of fuel prompting a series of protests that swelled to the nationwide monk-led demonstrations of September, known as the ‘Saffron Revolution.’ On August 23, 60-year-old U Ohn Than stood outside the then US embassy in Rangoon and held a poster with a series of points written on each side. The points included a call for the UN Secretary General to intervene and for soldiers to protect and respect the ordinary people. He was taken away shortly after in a vehicle by men in plain clothes.

This was not the first time U Ohn Than had been arrested. He was imprisoned for the first time in 1988 for his involvement in the pro-democracy demonstrations. He was released in 1995 but re-arrested and sentenced to seven years in 1996 for writing and distributing material considered ‘anti-government’. After his release in 2003, he staged a solo protest outside the UN office in Rangoon in 2004 and received another two years in prison (AAPP, 2009c).

For his 2007 protest, he was sentenced to life imprisonment for sedition, under the Criminal Procedure Code Article 124 (A). Like other political cases, there were a number of serious violations of Ohn Than's right to a fair trial. From his arrest, he was held incommunicado for four months, in a special military interrogation camp until his case was finally brought to a court. He was not tried in an open court but in a special court inside a prison. He did not have access to a lawyer and had to represent himself.

During the trial, Ohn Than was not allowed to call any witnesses for his defence, though nine witnesses appeared for the prosecution, and none were independent. Seven were police and local officials. The other two identified themselves as Swan Arr Shin, an SPDC supported organization set up to do the 'dirty work' of security agencies. Finally, the judge concluded that standing alone outside a foreign embassy with a placard amounted to an act of sedition and sentenced Ohn Than to life imprisonment.

4. Torture

Under international human rights law, prisoners retain their human rights and fundamental freedoms, except for such restrictions on their rights required by the fact of incarceration; the conditions of detention should not aggravate the suffering inherent in imprisonment. The most fundamental protection for prisoners is the absolute prohibition on torture. The prohibition is a matter of *jus cogens*, a peremptory norm of customary international law binding on all states. There are no circumstances under which torture can be justified: not in a time of war; when facing internal instability; or a state of emergency. The prohibition of torture is absolute.

The most widely accepted definition of torture is set out in Article 1 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁶ (CAT):

... 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Article 1 sets out four elements required to meet the threshold of torture: severe pain and suffering, physical or mental; intent; purpose; and state involvement. Quiroga and

Jaranson, note “the most important criteria in the definition of torture are the intention and purpose, not the severity of the pain” (2008, pp. 654-657). These two criteria are most important in determining responsibility and the degree of state involvement. It is important to note that torture can also be through omission, such as the deprivation of food leading to severe pain.

The definition of torture outlined above, while comprehensive, only mentions the immediate reasons for inflicting torture and not the underlying purpose, which is to effectively destroy the soul of a human being. Torture is designed to break down the identity of a strong man or woman, turning a politician, a union leader, or a leader of an ethnic minority group into a nonentity with no connection to the world outside of their torture chamber (Bo Kyi, 2000).

What makes torture so repugnant to our human instincts is that it is about stripping away the dignity of one human being by another. It is about asserting power and control and inflicting pain and despair. What makes torture so devastating is that it is carried out by the very people who are supposed to be protecting us: the State apparatus, the police, the military, the security and intelligence service.

As Kelman asserts, torture “is not an ordinary crime, but a crime of obedience: a crime that takes place not in opposition to the authorities, but under explicit instructions from the authorities to engage in acts of torture, or in an environment in which such acts are implicitly sponsored, expected or at least tolerated by the authorities”(2005, pp. 125-126). Survivors consequently have nowhere to turn.

Wider society is damaged both through the trauma inflicted on its members but also through an instilled awareness that basic human rights are neither guaranteed nor respected. The use of torture sends a strong warning not only to those within a political, social, or religious group, but to all citizens, that they do not live in a free or safe society.

If torture is a crime of obedience, as Kelman suggests, this leads to an important question: who are the perpetrators obeying? Crimes of obedience invariably accompany crimes of authority. “For every subordinate who commits acts of torture under official orders there is a superior – or typically an entire hierarchy of superiors – who issue the orders and who formulate the policies”(Kelman, p.126).

5. A brief history of political prisoners and torture in Burma

This paper focuses on the political prisoner situation in Burma, since 1988. Following the pro-democracy demonstrations of 1988 and the ensuing crack-down at least three thousand people were killed and thousands of people were arbitrarily arrested and detained for their involvement in the protests or perceived opposition to the regime. By 1990, there was an estimated 3,000 political prisoners. In the period directly before

the 1988 demonstrations, there were about 40 political prisoners in Burma. These were mostly ethnic related political activists largely from Arakan or Karen state⁷.

The practice of torture is not new to the post-1988 period. The use of torture as a method of extracting information and punishing political prisoners and criminals occurred prior to 1988. A former political prisoner described his ordeal at the hands of Military Intelligence personnel when he was arrested in 1976, as reported by Amnesty International:

“He was interrogated for an entire night, with shifting MI personnel questioning him. In order to force him to reveal information, he was tied up by his hands, suspended from the ceiling and spun around, known as the “helicopter”. He was also forced to assume a half-crouching position, while standing on the tips of his toes, known as “the motorcycle” (Amnesty International, 2000).

The methods of torture employed by Military Intelligence after the 1988 pro-democracy movement are the same techniques described above. However, with the increase in the number of political prisoners in the last 22 years there has been a concomitant increase in torture and ill-treatment.

When the AAPP was first founded in 2000, there were approximately 2,500 political prisoners. This figure dropped to 1,100 in 2005/2006 and then doubled again after 2007. The number of political prisoners in Burma in September 2008 was over 2123. Among these political prisoners, about 700-900 were arrested during and in the aftermath of the peaceful protests led by the 88 Generation Students group in August and peaceful marches led by Buddhist Monks in September 2007 (AAPP, 2009b and 2010a). The figure has increased throughout 2009 and 2010 and AAPP now documents 2193 political prisoners. (AAPP, 2010f).

As well as being a well-established norm of international law, the prohibition of torture is also reflected in Burmese domestic law. The Burmese Penal Code prohibits ‘hurt and grievous hurt’ during interrogation⁸ and outlaws the injury of anyone by a public servant. Though such provisions indicate a prohibition of torture, the failure to explicitly define and designate torture as a grave crime, in Burmese law, allows torture to take place more easily.

This paper will first discuss the nature of torture in Burma’s places of detention: who are the victims, what methods are used and what is the purpose of torture, then explore to what extent torture is systematic and state policy in Burma.

6. The victims

Nobody can be considered immune from torture, in Burma, although those individuals considered dissidents, or in opposition to the regime are more likely to be targeted. Frequent victims include politicians, union leaders, journalists, human rights defenders and members of ethnic minorities. It is important to note that ordinary civilians with no political or ethnic affiliations are also subjected to torture in normal criminal investigations (AAPP, 2011, pp. 6-7).

Torture and cruel and degrading treatment is meted out to all of the prison population, without distinction to age, health, and the special needs of women, children and those with disabilities. In Burma, victims of torture have included children as well as adults. Contrary to international standards and to Burma's own Jail Manual⁹, children are not separated from adult prisoners and are equally subject to the prisons' grossly inadequate conditions children are equally subject to the prisons' grossly inadequate conditions. AAPP has documented cases of children as young as 12 years of age being imprisoned and tortured due to their political beliefs.

Former child political prisoners report being tortured until they confessed, "*I was beaten at every question, I got kicked and punched especially when they thought I was lying. I had to cooperate in the end. I couldn't resist anymore,*" one recalls (AAPP, interview, March 2011). Former political prisoner, Ko Soe Lwin, was arrested and interrogated twice when he was a child. The first time he was arrested he was 12 years of age and was held incommunicado for over 2 months. Both his mother and father were former political prisoners, and it appears he was targeted because of his parent's political activities.

7. Torture Methods in interrogation centres and prisons

This section details the methods of torture sanctioned by the SPDC and used in Burma's interrogation centres and prisons as reported to AAPP by current and former political prisoners and their families. The torture documented occurred between 1988 and 2010.

Many torture survivors and their families, are unable to speak out about torture for fear of repercussions, especially for those who remain in Burma. Therefore, research by AAPP is in no way exhaustive.

These are not isolated cases but are emblematic of a wider problem. Worth noting is the bravery of those who speak out against these crimes, at the risk of further torture and persecution.

Individuals in the first phase of arrest and detention, before they have access to a lawyer, are at greatest risk of torture and other forms of ill-treatment. Incommunicado and secret detention are a common practice in Burma and often lasts until a confession is obtained,

which can take months and occasionally years. It can cause untold mental suffering for the detainee, as well as their family, and in this respect is a form of psychological torture.

In Burma, not all interrogation centers have been identified and several secret centers exist. Many political prisoners are kept in government 'guest houses' or on military bases which prohibit access to civilians. Both are used, along with torture and other ill-treatment, to extract confessions from detainees, to punish them or to force them to make undertakings to not criticize the government.

Incommunicado and secret detention are noted precursors to torture, as no one can be held accountable. The UN General Assembly declared that "prolonged incommunicado detention" and "detention in secret places" (General Assembly, 2007: para. 12), facilitates the perpetration of torture and other ill-treatment and can in itself constitute a form of such treatment.

Almost all political prisoners are beaten during interrogation. Some are subject to extreme physical assaults resulting in internal bleeding, unconsciousness and sometimes death. Beatings include being punched in the face, kicked in the head, beaten with rifles, sticks and iron bars.

A political prisoner, 13 years of age at the time of interrogation was subjected to severe physical torture: *"I was boxed repeatedly in the ears, until blood was flowing from my nose. I am now deaf in one ear, at the time I was only 13 years of age. My friend was subjected to the same treatment; he lost his hearing in both ears. After about 10 days, they beat me so hard two of my ribs were broken and I was unconscious... Sometimes they burnt plastic and dropped the hot liquid on my calf and legs. The plastic would stick to my skin and peeled off my flesh. They stuck needles under my finger nails and my toe nails. This was the worst torture I suffered"* (AAPP, interview, March 2011).

Since 1988, 146 political activists have died during incarceration as a direct result of severe torture or from the denial of food and medical treatment. Many die from curable diseases such as tuberculosis or Malaria. In May 2010, human rights defender Kyaw Soe, age 39, died in Myingyan prison due to prolonged ill-treatment and the denial of treatment for respiratory problems (AAPP, 2010c). Others, like Buddhist monk U Thilavantha, and NLD member Aung Hlaing Win, died from injuries sustained from torture (AAPP, 2006a).

8. Case study: the torture and death of Aung Hlaing Win

Aung Hlaing Win, aged 30, was tortured to death in an interrogation centre. He was an active member of the NLD. On 1 May 2005 he was accosted at Lucky restaurant in Rangoon by an unknown group of men believed to be soldiers. Ten days later, his family was informed by Lt. Col. Min Hlaing that he had died at an interrogation centre on 7 May.

Aung Hlaing Win, like most political prisoners, was arrested without warrant and taken to a Military Security Affairs Unit interrogation centre, where he was held incommunicado for one week. He was subsequently, tortured to death and his family was not informed of his arrest or whereabouts until three days after his death. The authorities claimed his death was a result of pneumonia and a heart attack. The forensic doctor who examined the body, testified that there were 24 external and internal wounds on his body. The injuries he sustained, during the seven days of interrogation include three fractured ribs, a fourth rib that was broken and pierced his heart, and bruising and abrasions over most of his body, including his throat, cheekbones, lips, shoulders, forearms, chest, knees, thighs and calves.

The authorities cremated the body of Aung Hlaing Win without the family's consent, before they could see it or have a proper burial. They tried to bribe his family into keeping silent, and while the authorities responsible for Aung Hlaing Win's death have been identified, no action has been taken to hold those responsible accountable. The families of political prisoners who have died while in custody frequently report being offered money to remain silent to the cause of death¹⁰.

Those who survive the beatings are often left permanently maimed. Injuries sustained from torture include paralysis, partial and full hearing loss, fractures, and brain damage.

Some prisoners are forced to wear shackles for periods as long as one year: *"the shackle stayed on for more than one year, and when it finally came off I was suffering from partial paralysis. I was not able to walk because my shackled legs had been held in an awkward position for so long"* (AAPP, interview, 2004).

Deprivation of food, water and sleep is common during interrogation or as a punishment. There is no set time for how long these deprivations last, and may only end when the prisoner is perceived to be nearly unconscious or dead. Deprivation causes the prisoner to lose all track of time, leading to disorientation, weakening the detainee both physically and psychologically. Political prisoners report being made to stand or remain hooded for days at a time. The practice of blindfolding and hooding, ensures that the victim can

not recognize their torturers rendering victims incapable of identifying the perpetrators (AAPP, interviews).

Solitary confinement is routine, and the practice is not motivated by legitimate penological concerns but a political will to demoralize, punish and marginalize political prisoners. The most notable case of solitary confinement is Min Ko Naing, kept in solitary for nearly 16 years in Sittwe Prison¹¹. In Burma, prisoners placed in isolation benefit from no special conditions intended to alleviate the hardship of being isolated; on the contrary, the restrictions they confront while segregated are often arbitrary and designed to heighten their isolation. In the opinion of the Special Rapporteur for Torture, the prolonged solitary confinement may amount to torture (Nowak, General Assembly, 2008).¹²

Other reported torture methods include: electric shock; burning; the “iron road”, rolling an iron rod up and down the shins until the skin peels off; “the helicopter”, being suspended from the ceiling by the arms and spun around while beaten (AAPP, 2006).

Political prisoners report the practice of being forced to witness the torture of their friends and colleagues. One notes: *“I was then made to strip naked and watch the interrogation of others for an hour. I saw several people lying on the floor, bloody and unconscious”* (AAPP, interview, July 2005). *Other psychological torture methods include death threats and verbal abuse. “I was punched, kicked and beaten by four men, while they cursed at me: ‘Mother fucking Muslim’, ‘we’ll kill you’, I believe that they treated me particularly badly because of my religion”* (AAPP, interview, July 2005).

Another explains, *“they held a gun to my head and threatened to kill me if I didn’t give the right answers to their questions. [They said] ‘We’ll take you to the side of a stream and kill you there, and then throw your body in.’”*

A distinct category of torture is sexual violence. As the Special Rapporteur on Torture explains: “[r]ape and other sexual forms of abuse are intended to violate the dignity of the victim in a very specific manner. Beyond the actual physical pain, sexual violence results in severe psychological suffering” (Nowak, 2010, p. 18). Sexual abuse has been reported by both male and female political prisoners, including harassment and molestation, beating or burning of the genitals, threats of rape, and rape. There is one documented case of sexual abuse of a male political prisoner where prison guards forced a dog to penetrate him. This survivor said *“I can forgive my torturers everything but the sexual abuse. No religion permits such an act. It has destroyed my self esteem, my dignity”* (AAPP, interview, July 2005). In another case a journal editor, arrested on October 16, 2009, was sexually violated by the interrogators who shoved a police truncheon into his anus. He sustained serious internal injuries from the abuse and remains partially paralysed.¹³

9. Conditions of detention amounting to torture

In Burma, torture is not limited to physical assaults and psychological abuse, but further, prison authorities routinely and deliberately aggravate prison conditions and deny medical care to political prisoners, causing a level of suffering, amounting to torture. Malnutrition, poor sanitation and unclean water are serious problems throughout the prison system, posing a major health risk. According to testimonies, political prisoners continue to receive very low quality food from prison authorities; often the food is rotten, half cooked, with stones and insects, resulting in food poisoning and gastric ailments.¹⁴ Many prisoners face starvation.

Since November 2008, at least 275 political prisoners have been transferred to remote prisons, in malarial zones, with extreme weather conditions, where there are no prison doctors.¹⁵ Political prisoners are not given preventative medicines, allowed mosquito coils or mosquito nets. Medical supplies in prisons are inadequate, and often only obtained through bribes to prison officials. It is left to the families to provide medicines and food, but prison transfers prohibit this. Often prisons are hundreds of miles from the political prisoner's hometown, and the public transport system poor and the travel costs too high. Sometimes the authorities may decide for 'security' reasons, to forbid all family contact (AAPP, 2010d).

Tuberculosis, Malaria and HIV are a constant and serious threat in Burma's prisons, due to overcrowding, lack of hygiene, lack of adequate medical care and exposure to extreme climates. Insein Prison houses about 9,000 to 10,000 inmates but its capacity is about 6,000. Sick and healthy prisoners are routinely mixed together. Inmates rely on shared razor blades, which promotes the transmission of Hepatitis and HIV. Re-using needles is commonplace, with medical staff using the same needle on a number of different prisoners (AAPP, 2010d and 2006b, p. 71).

Regardless of their illness, prisoners report receiving the same medication, and are given low grade or sometimes the wrong medication. Prison officials take common criminals to the local hospital for treatment, but are required to seek authorization before allowing political prisoners to seek medical assistance outside the prison, which can result in their waiting for weeks or months to receive treatment for life-threatening problems.

As of September 2010, there were at least 141 political prisoners in poor health; an estimated 19 require urgent medical treatment (AAPP, 2010e). It is evident that untreated injuries from torture, long-term imprisonment, transfers to remote prisons and denial of medical treatment is taking a toll on political prisoners' health.

10. The purpose of torture in Burma

Torture is routinely used to force confessions and the evidence obtained by torture is used in court to sentence individuals. The repeated use of torture to force confessions, along with other breaches of fair trial standards, in political prisoner cases, indicate an absence of the rule of law, or what Pinheiro, former UN Special Rapporteur for Burma, termed the 'un-rule of law' (Pinheiro, 2001, p.3).

Military Intelligence search, arrest and interrogate without warrant anyone deemed political, despite provisions in the Burmese Criminal Procedure Code for judicial oversight of arrests and detentions. All former political prisoners interviewed by AAPP were held longer than 48 hours without warrant and without being brought before a judicial authority. Basic rights of due process, including the right to a public trial and to be represented by a defense lawyer, are denied in political cases. In many cases, the accused are kept ignorant of the section of law under which they are charged. There are reported instances where Military Intelligence has passed sentences orally at the time of arrest, before any trial had taken place.

The State Protection Law allows for detention without charge or trial for up to five years¹⁶ and is frequently used to extend an already arbitrary and unjust detention¹⁷. The judicial system is controlled by the SPDC without judicial oversight, transparency or independence. Courts and other legal institutions exist to protect and promote the SPDC, not to provide justice to victims or fairly arbitrate disputes. One of the many examples is Bo Min Yu Ko, sentenced to 104 years imprisonment at the age of twenty one, while denied the right to any legal representation (AAPP, 2009a). Such harsh and cruel sentencing and the lack of due process is illustrative of the unlawful nature of the judicial system in Burma.

In Burma, there is a well-established pattern of wrongful imprisonment of those who speak out against the regime, with the SPDC blaming political dissidents and democracy activists for crimes they did not commit. This scape-goating amounts to a serious abuse of the criminal justice system. It prevents a proper investigation and ensures the real perpetrators are not brought to justice. Following bombings, such as those in 2010, 2005, 1996 and 1989, political activists have been falsely accused, tortured and unlawfully imprisoned for these crimes, in an attempt by the regime to damage the reputation of opposition groups (Wai Moe, 2010 and AAPP, 2010b).

The case of Thant Zaw and Nyi Nyi Oo, two NLD members wrongfully convicted of bombing a petroleum factory in July 1989, illustrates this. In the absence of any evidence of involvement in the bombing, confessions were extracted under repeated and brutal torture and the two were sentenced to death for high treason and murder. A man confessed to the bombing and received a 10 year sentence. Despite his confession,

sentencing and statement saying that the NLD members did not take part in the incident, Thant Zaw and Nyi Nyi Oo were never released (AAPP, 2010b).

Torture is also used as a form of initiation into prison, as one former political prisoner remembers: *“However, the authorities continued to torture political prisoners as they entered the prison. As we walked in they all beat us. This is the “fee” for entering prison”* (AAPP, interview, March, 2010).

Torture is usually less common in regular prisons once a prisoner has been convicted as the investigation process has been completed but in Burma torture is used to punish political prisoners once they have been sentenced and imprisoned.

One political prisoner recalls: *“My prison sentence was almost finished at this time, which I reminded them of, saying that they should avoid harming me. This only further angered them. Sein Maung Win [jailer] continued beating me until I fell to the floor, and then proceeded to jump up and down on the iron rod between my legs until I fell unconscious”* (AAPP, 2006b, p. 32).

11. State Responsibility for Torture in Burma

There is a clear chain of command leading from the perpetrators of torture to the highest offices of the SPDC. Torture during interrogation is committed primarily by the Military Intelligence Service under the Directorate of Defense Services. Interrogations are also conducted by the Bureau of Special Investigations (BSI) and the Myanmar Police Force, one branch of which is the Special Information Force (“Special Branch”). The BSI and the Myanmar Police Force are accountable to the Minister of Home Affairs (AAPP, 2006b: 24).

The abuses carried out in detention facilities, in Burma, are part of a systematic process where torture is not only accepted but also encouraged. Evidence suggests it has become a cultural norm amongst the military, police and security officials for extracting false confessions, creating a climate of fear and as a punishment. The same methods of torture have been practiced over the past twenty-two years on political prisoners. The prevalence of specific torture methods in prisons all over the country suggests that some form of “torture training” has been provided.

Under some circumstances torture can amount to a war crime or a crime against humanity. The Rome Statute of the International Criminal Court, Article 7 (f), defines torture as a crime against humanity when it is “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” The following section raises the question of whether torture of Burma’s political activists could constitute a crime against humanity.

12. Widespread Attack

Since March 1988, approximately 7,000 people have been held as political prisoners. However, this figure only reflects those cases that can be adequately verified. The actual number is likely to be much higher. The figures do not take into account the number of ethnic persons in Burma's rural areas who are frequently detained and tortured in unknown or inaccessible locations, separate from Burma's 42 prisons and various interrogation centers. AAPP does not have a comprehensive record of torture in ethnic areas, though, this has been documented to some extent by other organisations.¹⁸

Countless people have been detained for short periods of time and tortured. Those who are only detained and interrogated, and not imprisoned are not included in the estimate of former political prisoners.

These short, arbitrary detentions instill a deep fear into the civilian population as a whole, as they reinforce that anyone can be arrested at any time. Widespread attack is defined as "on a large scale, meaning that the acts are directed against a multiplicity of victims." The number of persons detained and tortured in Burma arguably constitutes a widespread attack.

13. Systematic Attack

A systematic act is defined as one which occurs following a "pre-conceived plan or policy. The implementation of this plan or policy could result in the repeated or continuous commission of inhumane acts."¹⁹ In order for an attack to be systematic, it does not have to be formally stated as state policy - government action or inaction can demonstrate the policy. In Burma, the SPDC systematically arrests, detains and imprisons civilians for their political affiliations with the intention to torture to eliminate any opposition to the regime.

A statement by a senior Burmese diplomat, Aung Lynn Htut, who defected and sought asylum in the United States, revealed the SPDC intended a "complete routing" of NLD members and their families by 2006 (Aung Lynn Htut, 2005).

Non governmental organisations documenting human rights violations in Burma, as well as the UN Special Rapporteur and the US State Department, have recorded evidence of the authorities committing politically motivated murder with complete impunity. The arbitrary and illegal deprivation of life is a grave human rights violation, and can constitute crimes against humanity, regardless of whether the death is from illegal execution, torture, excessive force or from life threatening conditions during detention.

The Ad Hoc Commission on the Depayin Massacre (Burma), compiled evidence to indicate that the events of 30 May 2003 in which 70 people were killed in an attack by SPDC affiliated forces on a NLD convoy carrying Daw Aung San Suu Kyi, could qualify as a crime against humanity. It was also indicative of a renewed effort on the part of the SPDC to systematically attack civilians with particular political affiliations. No action was ever taken by the regime to investigate the attack.

The regime also took no action to investigate or punish those responsible for the extrajudicial killings of at least 31 people during the regime's violent suppression of peaceful pro-democracy demonstrations in 2007, including Buddhist monk U Thilavantha and Japanese photojournalist Kenji Nagai (US Department of State, 2009 and Quintana, 2010).

These incidents of state sanctioned murder of NLD members and other political activists indicate that the current arrests, detention and torture of civilians who voice opposition to the regime are part of wider and systematic plan to maintain power and silence dissent.

14. Admission of Guilt and Premeditation

During the torture of some former political prisoners, the authorities have boasted about torturing other political prisoners to death (Tun Phone Myint, 1998, p.16).²⁰ Some cases of torture have been coldly premeditated by the authorities. Premeditation was made clear during the 1990 Hunger Strike, in Insein Prison, when the authorities set up speakers around the prison and then blared military music while carrying out one of the worse incidents of torture yet documented. Over 40 prisoners required hospitalization as a consequence of this episode (Amnesty International, 2000).

In response to the 1990 strike against hard labour, by political prisoners, in Thawaddy Prison more than 90 political prisoners were severely tortured for days on end twenty two seriously injured and 16 hospitalised. The torturers told the prisoners they could beat to death one in ten political prisoners and that they had been commanded to do this (AAPP interview, May 2010). The authorities savagely beat pigs nearby as political prisoners were being tortured. The squeals of the pigs were intended to cover the screams they knew would come from the tortured political prisoners. Pigs were also beaten for the same reason during another incident in 1992 (AAPP, 2006b, p. 27 and Amnesty International, 2000). The use of loud music and pigs to drown out the cries of political prisoners reveals the authorities had a plan for the torture they were about to inflict.

15. Conclusion

In Burma's detention facilities torture is widespread and systematic. The authorities intentionally inflict severe physical and mental pain and suffering on those deemed in

opposition to the regime. A number of political prisoners have died from such torture, many more have been tortured to the point of death only to somehow survive. When torture or ill-treatment results in death, the deceased person is used as a warning, silencing many.

The state security apparatus, rather than protecting the people, punishes them. The policies of state authorities and the actions of law enforcement officials are at complete odds with international human rights standards and pose a significant threat to the peace and security of the people of Burma.

The research reveals that torture is not limited to isolated cases but pervasive and practiced throughout the entire custodial system.

While the past decade has seen a strengthening of legal measures to bring torturers to justice, in Burma, after nearly 50 years of successive military rule, the un-rule of law, impunity and a pervasive culture of fear prevail. Torture remains a tolerated practice in Burma's places of detention because mechanisms to hold accountable those responsible for torture and ill-treatment are insufficient to provide redress to victims or to deter perpetrators. Torturers are rarely ever prosecuted; nor are they publicly named and shamed.

Argentinean anti-torture campaigner, Ariel Dorfman, once said: "Nobody tortures if they think they will be caught, if they think they will be exposed to public scrutiny. Nobody tortures if they know they will be laid out naked for everyone to see and judge, if they are sure that they will face in a court of law the men and women they stripped naked in some faraway, hidden room"(2009). As long as torturers are safe from justice, and can live, forever, in the timelessness of impunity, torture will continue in Burma.

Internationally, there is an increasing interest in, and a growing campaign for, a commission of inquiry into crimes against humanity in Burma. In some cases torture can constitute crimes against humanity or war crimes. A future commission of inquiry or independent investigation into violations of international law, in Burma, raises the possibility of the potential prosecution of the instigators and perpetrators of torture.

Though this paper exposes a dark side of humanity, we would also like to think that it serves as a testament to the human spirit, for the story of political prisoners in Burma is the story of survival and of courage. It is ultimately an account of men and women who have refused to be overcome by the darkness.

ENDNOTES

- ¹ Director General of the Prisons Department, Zaw Win, reported in *The Irrawaddy*, http://www.irrawaddy.org/article.php?art_id=17493
- ² AAPP is a human rights organization founded by former political prisoners based on the Thai/Burma border, which works for the release of political prisoners in Burma and exposes human rights abuses occurring in Burma, with a focus on torture and the denial of civil and political rights.
- ³ AAPP have, on file, interviews with former political prisoners. These interviews were conducted between 2000 and 2011 and form the basis of much of the papers research. AAPP also collects testimony from the family members of current and former political prisoners. AAPP Monthly Chronologies; media releases, other documentation, and thematic reports were also used in the research and can be found on the AAPP website: <http://www.aappb.org/>
- ⁴ On 28 May 1961, the article *Forgotten Prisoners* launched the campaign 'Appeal for Amnesty' and first defined a 'prisoner of conscience'.
- ⁵ The information on U Ohn Than is from an unofficial translation of the Court Report from his trial at the Western Rangoon District Court, Criminal Trial 12, 2008.
- ⁶ The CAT definition has been universally accepted by the 146 countries that are party to the Convention.
- ⁷ A number of people were arrested for opposition to the regime after General Ne Win overthrew the democratically-elected government in a coup d'état in 1962 and formed the Burmese Socialist Program Party. There was a surge of politically motivated arrests following the student led demonstrations in 1974. All political prisoners from this period, were released under an amnesty in 1981 and those living in exile allowed to safely return.
- ⁸ Articles 330 and 331 of Burmese Penal Code
- ⁹ CRC art. 37(a) (b) and (c); and Jail Manual, Part One, Section XIII - Juvenile Prisoners; and 1984 Prisons Act, section 27. The Prison Acts specifies that male prisoners under the age of 21 should be kept separate from adult prisoners, and of these, those who have not arrived at puberty should be separated from those that have.
- ¹⁰ The information in this case study was obtained by AAPP from Aung Hlaing Win's family.
- ¹¹ Min Ko Naing, after his sentencing in 2008, for his role in the August 2007 demonstrations, was transferred to Kengtung prison in Shan State, where he remains, in solitary confinement, at the time of reporting.
- ¹² Nowak emphasized that as "solitary confinement places individuals very far out of sight of justice. This can cause problems even in societies traditionally based on the rule of law. The history of solitary confinement is rich in examples of abusive practices evolving in such settings".
- ¹³ Information obtained by AAPP from the family members of the torture victim and submitted to the UN Special Rapporteur for Burma, Tomas Quintana.

- ¹⁴ Interviews with former political prisoners on file with AAPP, 2000 – to date.
- ¹⁵ According to the World Health Organisation, morbidity rates for malaria in Burma are highest in Arakan, Karen and Kayah states, and Sagaing and Tenasserim Divisions, where high profile political prisoners were transferred.
- ¹⁶ section 10 A of the State Protection Law
- ¹⁷ section 10 B of the State Protection Law
- ¹⁸ Amnesty International and Karen Human Rights Group are two examples, see Amnesty International's report: Crimes against humanity in Eastern Myanmar, published 2008.
- ¹⁹ Draft Code of the International Law Commission, Offence against International Peace and Security, Article 18, Commentary (3) .
- ²⁰ Tun Phone Myint, 'No Escape', Tortured Voices: Personal Accounts of Burma's Interrogation Centres. All Burma Students' Democratic Front, 1998. p.16

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