

Myanmar

Justice on Trial

I. INTRODUCTION

On 22 May 2003 Amnesty International submitted a 29-page memorandum to the State Peace and Development Council (SPDC, Myanmar's military government), in order to provide the SPDC with the opportunity to comment on and to clarify various issues about the administration of justice raised in the document. The Memorandum reflected the organization's findings during its first visit to the country from 30 January to 8 February 2003, and drew on its institutional knowledge and expertise about both international human rights standards and human rights in Myanmar. The text of the original Memorandum has now been updated to reflect comments from the SPDC, which were received by Amnesty International on 9 July 2003. The updated Memorandum forms the text of this document, along with a summary of the current human rights situation in Myanmar.

Recent attacks on the National League for Democracy (NLD)

Since the submission of the Memorandum to the SPDC on 22 May, political tensions escalated sharply during a National League for Democracy (NLD) tour of Upper Myanmar, culminating in a violent attack on NLD leaders on 30 May. What follows below is a summary of both the attack and the subsequent deterioration in the human rights situation in Myanmar. Daw Aung San Suu Kyi, NLD General Secretary, U Tin Oo, NLD Vice Chairman, and other NLD members had been travelling in Upper Myanmar, with the prior permission of the SPDC, during the month of May. As larger and larger crowds gathered to see the NLD leaders, tension increased between the NLD and the Union Solidarity Development Association (USDA), an organization established, organized, and supported by the SPDC.¹ NLD members and supporters were reportedly harassed, intimidated, and threatened by USDA members in various locations as they attempted to conduct their legitimate political party activities, including giving speeches and opening local NLD offices. However the SPDC reportedly did very little to diffuse tensions between the USDA and the NLD. While Amnesty International acknowledges the universal right to peacefully assemble and conduct protest demonstrations, the actions of the USDA went beyond such non-violent expressions of dissent.

On 29 May 2003 Amnesty International sent a letter by facsimile to His Excellency Colonel Tin Hlaing, Minister for Home Affairs, expressing grave concern about the situation in Upper Myanmar. At the time of writing, no response has been received. What follows is an excerpt from this letter:

“...Our first concern is the harassment and intimidation which the National League for Democracy (NLD) has experienced several times at the hands of the Union Solidarity and

¹ On 15 September 1993 the State Law and Order Restoration Council (SLORC, renamed the SPDC in November 1997) announced the formation of the USDA, which was stated to be a “social organization”, and which the SPDC says currently has some 16 million members. Widespread unofficial sources indicate that some USDA members have received military training from the army.

Development Association (USDA) this month. Examples include crowds of USDA members armed with knives and stakes blocking vehicles carrying NLD leaders on several occasions in Upper Myanmar. Two NLD members were reportedly struck and injured by USDA members. USDA members reportedly threatened to run down with vehicles a crowd waiting to see Daw Aung San Suu Kyi, NLD General Secretary, in Kyidauk Pauk village, Mandalay Division, if they did not disperse. A government spokesman quoted in *Agence France Presse* on 27 May responded to these reports by stating: “*We would like to urge local authorities to see that the local populace are more understanding and forgiving towards the NLD*”. However Amnesty International does not regard this statement as sufficient and we therefore urge your government to provide stronger protection to the NLD and to ensure that the USDA and others do not intimidate and threaten them in any way. Such protection by a government should be extended to all members of society.”

In the absence of an investigation conducted by an independent body, it is difficult for anyone to establish precisely what happened on the night of 30 May. The almost complete lack of freedom of expression throughout Myanmar, including the absence of a free press, has deterred eyewitnesses and others from coming forward with their accounts of the 30 May events. In addition politically active people are reported to be under intense surveillance by Military Intelligence (MI) personnel, and arrests and interrogation of political activists continue two months after the attack itself.

In spite of these severe restrictions on the free flow of information, many sources have been able to provide detailed accounts of the events. Amnesty International has, in reviewing all the available evidence, found numerous reports given from both within Myanmar and outside the country to be consistent with one another. Widespread allegations implicate the USDA in the violent attacks on NLD members and supporters; and also name the security forces, including police and the military, as having been responsible for arrests in the aftermath of the initial violence.

After evaluating information from a variety of sources, including SPDC public statements, Amnesty International believes the following summary of the events to be credible. On the evening of 30 May, some 200 NLD members, NLD General Secretary Daw Aung San Suu Kyi and Vice-Chairman U Tin Oo were attacked by a crowd of hundreds of individuals, reportedly from the USDA, while travelling on a remote road from Budalin to Dapaiyin, outside of Monywa, Sagaing Division. The available evidence indicates that the attack was premeditated. According to a press conference given by the SPDC on 31 May, four persons were killed and 50 injured after members of the NLD clashed with 5,000 people protesting against Daw Aung San Suu Kyi’s visit. Unofficial reports indicate that the death toll was considerably higher.

In a rural area after nightfall, attackers armed with sharpened sticks, clubs and iron bars blocked the NLD motorcade and began attacking NLD supporters and the vehicles in which Daw Aung San Suu Kyi, U Tin Oo, and other NLD leaders were travelling. NLD Youth members and others attempted to protect the leaders, and some were reported to have been injured or killed in the effort. Many other NLD supporters were reported to have been beaten by attackers, several of them beaten to death. Attackers repeatedly hit the heads of NLD supporters, including several women, with iron bars and bamboo staves, until they lost consciousness. The security forces eventually arrived on the scene and gunshots were also heard at that time. Some people managed to escape, but Daw Aung San Suu Kyi, U Tin Oo, and many other NLD members and supporters who fled the scene were later detained. Scores of other NLD members were also arrested during or after the event. NLD offices around the country, including the NLD headquarters in Yangon, were shut down by the authorities, and remain closed at the time of writing.

In the 31 May SPDC press conference and in subsequent statements, SPDC spokesmen accused Daw Aung San Suu Kyi, U Tin Oo, and other NLD members of having incited unrest during the NLD tour of Upper Myanmar in May. The SPDC said further that Daw Aung San Suu Kyi was being held in “protective custody” at an unspecified location. U Tin Oo is also detained at an unnamed location in Upper Myanmar. Eight other NLD leaders, all of them elderly, are being held under de facto house arrest. Amnesty International believes that all 10 NLD leaders were arrested solely for the peaceful expression of their non-violent political views, and urges the SPDC to release them immediately and unconditionally. In addition the whereabouts of a number of NLD members and supporters are unknown, although most of them are believed to be in detention. An updated list of people either missing or in detention, along with the names of five people who were killed is found in Appendix I of this report. Amnesty International calls on the SPDC to clarify the whereabouts of all these individuals, and release those held solely for the peaceful expression of their political opinions.

On 10 June during a visit to Myanmar, Ambassador Razali Ismail, the United Nations (UN) Secretary General’s Special Envoy to Myanmar, visited Daw Aung San Suu Kyi at an unnamed location in Yangon. Ambassador Razali reported that she was in good health and that a Military Intelligence officer was present during their brief meeting. She told him she was being held under Article 10A of the 1975 State Protection Law, which provides for the administrative detention without charge or trial or judicial appeal for up to five years of anyone deemed by the government to be a threat to state security. Daw Aung San Suu Kyi’s detention under the vaguely-worded provisions of this law contradicts the SPDC’s own statement that she is being held for her own protection.² Amnesty International remains gravely concerned about the safety of Daw Aung San Suu Kyi after the events of 30 May 2003, and urges the SPDC to release her immediately and unconditionally.

During the last week of June a delegation of the International Committee for the Red Cross (ICRC) travelled to Upper Myanmar, where they visited U Tin Oo, who was reported to be in good health. The ICRC was also given access to at least 30 others arrested on and after 30 May, with the exception of Daw Aung San Suu Kyi, who has been held incommunicado in solitary confinement since Ambassador Razali’s visit of 10 June. Amnesty International is further concerned that in the wake of the attack, the authorities have continued to arrest and interrogate NLD supporters, some as recently as mid July 2003.

Since 30 May, Amnesty International has again written directly to the SPDC on several occasions, raising its concerns about the fate of people who were reported killed, injured, missing or in detention. The organization has also issued numerous press statements and Urgent Actions, along with a list of people of concern, all of which have been made public on its website. In addition it submitted a list of people of concern to the SPDC dated 20 June. On 14 July, Amnesty International received a response from the SPDC with a list, indicating that 48 people were still in detention. The SPDC stated that they were being held in “*temporary custody*” or “*for their security while under interrogation.*”. Amnesty International urges the SPDC to clarify the legal basis for such detention in Myanmar law. The SPDC correspondence also stated that eight senior NLD leaders are not under house arrest but “*are requested...to stay at home peacefully*”. However according to unofficial reports, these eight elderly men are not able to meet with people or receive telephone calls.

² A more detailed discussion of the 1975 State Protection Law is found in Section VII of this report.

Amnesty International, along with most of the international community, remains gravely concerned by the violent crackdown on the NLD.³ The organization requests the SPDC to permit an independent, immediate, impartial, and effective investigation into the 30 May events, and to bring those found responsible for attacks on the NLD to justice. The longer the delay in bringing those found responsible to justice, the more the culture of impunity will prevail. In the climate of fear experienced by the people of Myanmar, it is almost impossible for them to exercise their rights to freedom of expression and assembly.

In the interest of finding a solution to the human rights crisis in Myanmar, Amnesty International fully supports the work of Ambassador Razali and Professor Paulo Sergio Pinheiro, the UN Special Rapporteur on Myanmar. It urges the SPDC to cooperate fully with them in the fulfilment of their mandates, which include visits to Myanmar, and to grant them unimpeded access to anyone they request to meet there.

II. RECENT ARRESTS AND RELEASES OF POLITICAL PRISONERS

Over 100 people are known to have been arrested or to have gone missing on or since the events of 30 May, a list of whom is found in Appendix I of this report. These include Members-of-Parliament-elect; 10 NLD senior leaders; and other NLD members and local supporters. Although the International Committee for the Red Cross (ICRC) reported that it was able to visit Upper Myanmar and also conducted routine visits to Insein Prison, Yangon, no one else has been known to have been granted access to these detainees. All those who are detained should be granted immediate access to their families and lawyers. Amnesty International further calls on the SPDC to release immediately and unconditionally all of those held for the peaceful expression of their political views.

Amnesty International is also concerned by the treatment of the people detained since 30 May in prisons and other detention centres. Many of those who were arrested were reported to have sustained serious head injuries when they were beaten by USDA members with iron bars and sticks on 30 May, and according to reports they are not receiving proper medical care. Moreover those who are in detention have been or are being interrogated for prolonged periods under duress by MI personnel. As discussed below in greater detail in Section IV, Amnesty International is concerned by a pattern of prolonged interrogation during incommunicado detention for hours or even days of political detainees by MI personnel. It urges MI and other prison personnel to abide by international standards, which prohibit incommunicado detention. Moreover, no one in detention should be subjected to torture, or to cruel, inhuman or degrading treatment. Everyone in detention should receive a medical examination on arrival, and should be given proper and prompt medical care.

During the NLD senior leadership trip to Upper Myanmar in May 2003, some NLD members were arrested and sentenced to terms of imprisonment before the events of 30 May. A group of NLD members were arrested on 19 May 2003 in Sagaing Division. Those

³ For the first time in its history, the Association of Southeast Asian Nations (ASEAN, which admitted Myanmar as a member in 1997) issued a statement expressing concern about the human rights situation of a member country at its Ministerial Meeting in Cambodia during July 2003. In addition Japan announced that all new aid to Myanmar would be suspended because of the 30 May events there. The US Government has recently enacted new economic sanctions legislation; and the EU has increased its sanctions against the Myanmar Government.

arrested include: U Win Myint Aung, MP-elect for Tabayin 2; U Win Maung, Treasurer; U Tin Hlaing, Ko Win Nyunt, Ko Bo Htay, Ko Kyaw Tin, Ko Tin Maung, Ko San Aung, and Ko Than Min, all NLD committee members from Min Swe Hnit and Pyan Kyah villages.

U Win Myint Aung, U Win Maung and U Tin Hlaing were each sentenced to two years' imprisonment on 22 May in Monywa, Sagaing Division in a trial which Amnesty International believes did not meet international fair trial standards. They were reported to have been sentenced under Section 505 (b) of the Myanmar Penal Code, which provides for two years' imprisonment for anyone who "*makes, publishes, or circulates any statement, rumour or report – (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity...*". According to Amnesty International's information, they did not incite people to violence, but were engaged in peaceful opposition political party activities. Moreover they were tried and sentenced three days after their arrest, in what appears to have been summary court proceedings. It is not known if they had access to legal counsel, or were able to present a defence, nor is it known if they had access to medical care or their families during their detention.

In the past Amnesty International welcomed the SPDC's public commitment to releasing political prisoners, as they made clear in the Information Sheet, NO. C-2200 (I/L) 6 May 2002, entitled *Turning a New Page*. This document states: "*We have released nearly 600 detainees⁴ in recent months and shall continue to release those who will cause no harm to the community nor threaten the existing peace, stability, and unity of the nation.*" However Amnesty International notes with regret the pace of releases has slowed considerably since November 2002, when 115 prisoners were released. To date some 30 political prisoners⁵ who had been arrested before the 30 May events are known to have been freed since the November releases. On 4 May 2003 18 political prisoners were released, including prisoners of conscience Dr. Salai Tun Than, a 75-year-old academic and Ma Khin Moe Aye (f), who was arrested for her involvement in writing a history of the Myanmar student movement in January 1998. Dr. Zaw Min, U Htay Thein, and U Tin Myint, all of whom were arrested in July 1989, were released on 26 and 28 April 2003 from Mandalay Correctional Facility. All of the prisoners of conscience named above have major health problems.

In addition to the recent mass arrests and the slow pace of releases of political prisoners, Amnesty International is also concerned that from July 2002 through April 2003, at least 27 people are known to have been arrested for political reasons. At least 10 of them are prisoners of conscience, arrested for their peaceful conscientiously-held beliefs and non-violent opposition activities. These are: Aung Thein and Kyaw Naing Oo, NLD youth members arrested for the possession of an expatriate opposition publication; Thet Naung Soe and Khin Maung Win, two law students arrested for a peaceful silent protest at Yangon City Hall; Ma Than Htay and Thin Thin Oo, two Buddhist nuns also arrested for a peaceful protest at Yangon City Hall; U Sai Nan Di, a Shan NLD member arrested for his peaceful NLD organizing activities; U Shwe Maung, arrested for making a *Khamauk*⁶, a bronze hat used as a symbol for the NLD; Ma San San Maw (f), arrested for complaining loudly when

⁴ Hundreds of these prisoners were pregnant women or others with humanitarian concerns who were not political prisoners.

⁵ 45 prisoners were released on 16 March 2003; nine of the 45 individuals appear to be political prisoners, imprisoned under the provisions of the 1950 Emergency Provisions Act; the remaining 36 prisoners were charged with common criminal offences and were released for humanitarian reasons. A group of 21 political prisoners were released in late April and early May 2003.

⁶ U Shwe Maung and others were allegedly planning to carry the hat in a procession from Mandalay to Yangon.

she did not receive government-subsidized rice, and her sister Ma Aye Yi Htay. Some of the other 17 people are possibly prisoners of conscience, but Amnesty International does not have sufficient information about their cases at this time. Amnesty International urges the SPDC to charge the other 17 people arrested since July 2002 with recognizably criminal offences and try them promptly and fairly, or release them. Further details about these 27 prisoners are found in Appendix II.

Amnesty International believes that there are over 1300 political prisoners in Myanmar, including those who have been arrested on or after 30 May. The organization renews its recommendations to release immediately for humanitarian reasons those who are ill and elderly, as listed (but not limited to) in Appendix III of this Memorandum. The Members of Parliament-elect listed in Appendix IV should be released immediately and unconditionally. All prisoners of conscience listed in Appendix V (those held under the administrative detention provisions of Section 10a of the 1975 State Protection Act) should also be released immediately and unconditionally. All other individuals listed in Appendix V should be released, or charged with a recognizably criminal offence and tried promptly and fairly.

Amnesty International is also concerned that prisoners of conscience who have been released since January 2001 were not released unconditionally. Many were asked to sign a statement under Section 401 of the Criminal Procedure Code, which states: “(1) *When any person has been sentenced to punishment for an offence, the President of the Union may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been punished.*” Amnesty International is concerned that the power to suspend or remit a sentence should be a judicial, not an executive function.

Part (3) of Section 401 states that if the condition on which a sentence has been suspended or remitted, is, “*in the opinion of the President of the Union, not fulfilled*”, the released person can be re-arrested by a police officer without a warrant and made to serve the unexpired portion of his sentence. The decision to re-arrest an individual should lie with the judicial rather than the executive branch of the government. Some political prisoners have evidently refused to sign a statement under Section 401; still others have signed the statement but remain imprisoned months after doing so. Amnesty International is concerned that former prisoners of conscience can be re-arrested for engaging in peaceful political activity and made to serve the remainder of their sentence.

With regard to Section 401 of the Criminal Procedure Code, the SPDC stated in its 9 July response that “*...the Government may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.*” In many jurisdictions the executive has the power to grant clemency, but Amnesty International is concerned that under Section 401 the executive also has the power to order re-arrest. Moreover Amnesty International is concerned that prisoners of conscience are not always released unconditionally, as they must sign an undertaking that they will not engage in political activities or risk being re-arrested and made to serve the remainder of their sentence.

Former political prisoners and their families are often kept under close surveillance by Military Intelligence personnel, which is a form of intimidation and harassment. Article 12 of the Universal Declaration of Human Rights (UDHR) states *inter alia*: “*No one shall be*

subjected to arbitrary interference with his privacy, family, home or correspondence,...”. In addition some former political prisoners have not been permitted to obtain a passport and travel abroad. Part 2 of Article 13 of the UDHR says: “*Everyone has the right to leave any country, including his own, and to return to his country.*” Amnesty International calls on the SPDC to release all prisoners of conscience unconditionally, with no restrictions on their peaceful political activities or their freedom of movement.

On 3 February 2003 during its visit to Myanmar, Amnesty International received from His Excellency Colonel Tin Hlaing, Minister for Home Affairs, a list of prisoner releases since early 2001. Amnesty International appreciates the time which was taken to prepare such a list, which was cross-checked with Amnesty International’s internal release list. Both the list prepared by the Ministry of Home Affairs and the list of 45 prisoner releases which was sent to Amnesty International by the Ministry of Defence, have been used to update the internal list. However many of the people appearing on both lists from the SPDC were not political prisoners, but were convicted for common criminal offences.

Recommendations with regard to recent arrests and releases

1. Release all prisoners of conscience immediately and unconditionally and lift restrictions on those prisoners of conscience who have already been released.
2. Immediately release on humanitarian grounds all prisoners who are ill or elderly, as listed in Appendix III.
3. Release all political prisoners who have served their sentences and are still being held under Articles 10(a) or 10(b) of the 1975 State Protection Law, as listed in Appendix V.
4. With regard to those people who have not yet been charged or tried whose names appear in Appendix V, charge them with a recognizably criminal offence and try them promptly and fairly; or release them.

III. BACKGROUND TO THE MEMORANDUM

The most urgent and immediate concerns about the human rights situation in Myanmar have been briefly outlined above. What follows is an analysis of the administration of justice with regard to human rights as well as a detailed set of recommendations, which, if implemented, could begin to reform the justice system. The comments from the SPDC received by Amnesty International on 9 July 2003 are reflected throughout this report.

Communication with the SPDC

On 7 February 2003 at the end of its visit to Myanmar, Amnesty International delegates submitted a preliminary memorandum to the SPDC welcoming *inter alia* the high level of cooperation and assistance which government officials provided to the delegation in accommodating its requests during the visit. The 7 February memo detailed several areas of concern to the delegation and put forward some immediate recommendations for urgent

consideration. In framing these recommendations, the delegation suggested practical improvements which it believed could be made promptly by the SPDC without major investment in time and resources. These included: the immediate release of prisoner of conscience⁷ U Htwe Myint, and of prisoner of conscience Ma San San Maw and her 18 month old child on urgent humanitarian grounds; access to reading and writing materials for all prisoners; and giving all prisoners the opportunity for daily social interaction with one another.

On 19 March Amnesty International received a facsimile from the Ministry of Defence with an attached list of the names of 45 people who had recently been released from prison. It appears that nine of the named individuals were political prisoners, all sentenced under the 1950 Emergency Provisions Act. The fax also stated that political prisoners now had access to reading materials, which was one of the recommendations made in the 7 February memorandum. In addition it reported that political prisoners were no longer held in isolation.

Amnesty International welcomed these developments in a 21 March letter to the SPDC, and reiterated its recommendation that U Htwe Myint and Ma San San Maw be immediately released on humanitarian grounds. At the time of writing, neither of these prisoners of conscience has been released. Attached to the letter was a list of the 27 political prisoners who were known to have been arrested from July 2002 to March 2003, and who were still in prison, about whom the organization was seeking further information.⁸ Also appended to this report are three updated lists of political prisoners, which were originally given to the SPDC during Amnesty International's recent visit to Myanmar. The five lists appended to this report are in no way comprehensive and only represent a fraction of over 1300 political prisoners held in Myanmar.

The original 29 page memorandum submitted to the SPDC covered the following areas: arrest and pre-trial detention; torture and ill-treatment; trials of political prisoners; discussion of some of the key laws in force relating to human rights; prison conditions; mechanisms for the investigation of human rights violations; and a set of recommendations to the SPDC. As is its normal practice with regard to all countries, Amnesty International bases its work on international human rights standards, which are discussed in detail below. This submission also provides a comparison of Myanmar laws to actual practices with regard to arrest and detention procedures and conditions of imprisonment. Amnesty International acknowledges that improvements in the administration of justice system will take time, but also believes that such crucial reform must be addressed as a matter of priority if human rights are to be protected. The events of 30 May highlight all too clearly the desperate need for accountability and an end to impunity in Myanmar, which can only be accomplished if the SPDC commits itself to a reform process. However, recent events indicate that the SPDC lacks the political will to make such a commitment.

In the material which follows, Amnesty International discusses the administration of justice in Myanmar with reference to domestic law, actual practices, and international

⁷ Amnesty International calls for the immediate and unconditional release of all prisoners of conscience, people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, sexual orientation, colour, language, national or social origin, economic status, birth or other status – who have not used or advocated violence.

⁸ Please see Appendix II for the complete list.

standards which should guide the conduct of all states, including Myanmar. These include: the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (The Body of Principles)⁹; the Standard Minimum Rules for the Treatment of Prisoners (The Standard Minimum Rules)¹⁰; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹¹; the Basic Principles on the Role of Lawyers¹²; the Basic Principles on the Independence of the Judiciary¹³; and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴. Also cited is the 2001 Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment.¹⁵

IV. ARREST AND PRE-TRIAL DETENTION OF POLITICAL PRISONERS

Since 1988 Amnesty International has documented its serious concerns about arrest and pre-trial detention procedures in Myanmar. These include: covering the individual's head during transport to a detention centre; prolonged interrogation; torture and ill-treatment; holding suspects in incommunicado detention, with no access to a lawyer, family, or adequate medical care; and the inability of the accused to challenge the legality of their detention. All of these practices contravene international human rights standards, which are referred to below.

Political arrests

Myanmar law

Amnesty International notes that some safeguards against unlawful arrests are contained in Myanmar law and procedure, although they do not appear to be implemented in political arrests. Arrest procedures are elaborated in Chapter V of the 1957 edition of the 1898 Myanmar Criminal Procedure Code, a law introduced during the period of British colonial rule which is still used by the SPDC. Under Sections 60, 61, 81, 100, and 167, some judicial oversight of the arrest and detention of individuals is provided. However, numerous cases of political arrests documented by Amnesty International over the past 14 years demonstrate that such oversight is often not exercised in practice.

Arrests in practice and international standards

⁹ Adopted by General Assembly resolution 43/173 of 9 December 1988.

¹⁰ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹¹ Adopted by the General Assembly on 9 December 1975 (resolution 3452 XXX)

¹² Adopted by consensus at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990 and welcomed by the UN General Assembly.

¹³ Adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

¹⁴ Adopted by General Assembly resolution 55/89 Annex, 4 December 2000.

¹⁵ General Assembly, Fifty-sixth session, 3 July 2001, A/56/156.

Amnesty International has interviewed dozens of former political prisoners over the last 14 years who have described what happened to them at the time of their arrest. Most of them reported that they had been arrested by Military Intelligence (MI) personnel who were in plainclothes. In Chapter 5 of Myanmar's Criminal Code, which concerns arrest procedures, police officers appear to be designated as the arresting authorities, and their powers of arrest, with or without warrant, are subject to review by a magistrate.

MI personnel presumably make arrests, detain and interrogate people under orders from their superiors. They appear to have the authority to arrest without warrant, detain, and investigate anyone suspected of political dissent. Amnesty International sought clarification about the legal basis for arrest, detention and interrogation by MI personnel in its 22 May Memorandum to the SPDC. In the 9 July response from the SPDC, the government said: *"In Myanmar, the accused is not arrested by the MI personnel. It is the Member of the Police Force who conducts the arrest. However, in some cases, the intelligence team formed under the National Intelligence Bureau Law (Law No. 10/1983) may conduct arrest. In the said team, MI personnel may participate from time to time."*¹⁶ Amnesty International has not been able to obtain a copy of Law No. 10/1983, and so cannot comment on the provisions in the law which allow for MI personnel to conduct arrests. It therefore remains unclear whether political arrests conducted by MI personnel are extra-legal. According to the SPDC response to the 22 May Memorandum, *"No action is taken extra-legally in Myanmar."*

Extra-legal detention contravenes international law. Principle 2 of the Body of Principles states: *"Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose."* MI personnel do not appear to be accountable to any judicial authority. Principle 9 states: *"The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority."*

Arrests of individuals interviewed by Amnesty International generally took place in the evening or the middle of the night when MI personnel typically arrived at the individual's home. MI often searched the premises, presumably for documents which were deemed illegal, particularly publications from exile opposition groups, which were then confiscated. To Amnesty International's knowledge, political arrests conducted by MI personnel are not subject to control by a judicial authority, in violation of international human rights standards. According to Principle 4 of the Body of Principles:

"Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority."

It is not clear whether MI personnel informed suspects of the reasons for their arrest and the charges brought against them, although political suspects were subjected to prolonged interrogation. Principle 10 of the Body of Principles states: *"Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him."* In most cases it is also not clear to Amnesty

¹⁶ The National Intelligence Bureau (NIB) is the overall body in Myanmar responsible for intelligence-gathering; Military Intelligence Services (MIS) in theory report to the NIB.

International at what stage detainees were informed of the charges against them - it appears that they may not have been told until they were brought to court at the beginning of their trial.

Immediately after arrest, individuals were often hooded while being driven to an interrogation centre, which they often could not identify because they were not able to see where they were being taken. Former political prisoners reported that they guessed they were at an MI detention centre, generally referred to by the number of that particular office, for example, MI-7. The vast majority of them said that they had been interrogated at various MI offices around the country.

Political detainees were sometimes taken to other places of detention besides an MI office and interrogated there. They were not in general told by the arresting authorities where they were being taken. To ensure that detainees have access to the outside world and as a safeguard against human rights violations such as “disappearance” and torture, all detained people have the right to be held only in an officially recognized place of detention.¹⁷ Subsection (d) of Section F, Recommendations of the 2001 Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, states *inter alia*: “*Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law.*” In its response to the Memorandum, the SPDC stated: “*There is no disappearance of person in Myanmar. Also, no secret places of detention. The accused is detained only in officially-recognized place of custody*”. However according to Amnesty International’s information, political detainees do not necessarily know where they are being held, nor are their families informed of their whereabouts.

With regard to the arrest and detention procedure, the SPDC made the following comments in their response to Amnesty International: “*In practical terms, whenever an information of offence is obtained, first information report is fielded at the police station. The accused can be detained at the police station for twenty-four hours. If it is necessary to detain the accused for more than twenty-four hours, he shall be produced to the Court under Section 167 of the Criminal Procedure Code and under the remand of the Court, detention can be continued.*” However according to Amnesty International’s information, political detainees are generally not brought before a judicial authority after 24 hours of detention. Moreover, the legal basis for detention at MI offices for interrogation has not been made clear by the SPDC.

Pre-trial detention

Myanmar law

Myanmar law does provide for some protection against arbitrary or unlawful detention. It also appears to provide protection against prolonged detention. Section 61 of the Criminal Code stipulates: “*No police-officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167,*

¹⁷ Please see Body of Principles, Principle 11, and Standard Minimum Rules, Rule 7 (2).

exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the police-station, and from there to the Magistrate's Court". Under Section 167, detention pending investigation can last for 24 hours only, unless permission is obtained from the Magistrate. The police must bring the accused to the Magistrate in order to obtain such permission. Section 167 also allows the judiciary to authorize the detention of suspects "a term not exceeding 15 days in the whole" beyond the initial 24 hours if additional time for investigation is considered necessary. The SPDC response stated: "Since Sections 61 and 167 are mandatory provisions, they shall be observed without fail." However, as stated above, these sections are not implemented in political arrests.

Section 100 of the Criminal Procedure Code also provides for a judicial authority to call any person who "is confined under such circumstances that the confinement amounts to an offence" and "make such an order as in the circumstances of the case seems proper". This power appears to operate only when a magistrate has "reason to believe that any person is confined under such circumstances that the confinement amounts to an offence" requiring the magistrate to have detailed knowledge of the cases of all the persons in custody, and to act independently on this in order to call for individuals to be brought before the court. It does not specify explicitly that the individual who believes that he or she is wrongly confined, their family or legal representative can inform the magistrate that they believe that the detention is unlawful, or in a formal way challenge the lawfulness of detention. It is not clear whether detainees, their families or legal representatives can contact magistrates to express their concerns; and if so, the magistrate does not appear to be obliged to consider and take action on the matter. The magistrate merely has discretion to do so. International human rights law requires that there be a formal procedure to challenge the legality of detention, which would oblige a case to be considered, once formally submitted.

With regard to the right of the accused to challenge the legality of their detention, the Myanmar Government's response to the submitted Memorandum was as follows: "In the presence of the magistrate, the legality of detention can be challenged by the accused of his family or Legal representative." However Amnesty International still seeks clarification from the government as to which article in the Code of Criminal Procedure provides for the right to have the legality of the arrest challenged by the accused.

Section 342 of the Penal Code provides that "Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both." It is not clear what constitutes "wrongful confinement" and if this applies to the police and military, who currently conduct arrests and detain suspects. Amnesty International is seeking clarification about whether the police and military found responsible for wrongful confinement have been brought to justice.

Detention in practice and international standards

Former political prisoners told Amnesty International that they were routinely held for periods longer than 24 hours without a warrant or a special order from a Magistrate. If the investigation process lasted over 24 hours, they were not brought before any judicial authority. This is in contravention of Sections 61 and 67 of the Myanmar Criminal Code which state that detainees must be brought before a magistrate 24 hours after arrest, who can renew the detention orders for 15 days. Former political prisoners also reported not having received any notification of a detention order or the reasons for their arrest, in contravention of Principle 11 (2) of the Body of Principles: “2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.”

During and after interrogation, political suspects were generally not permitted access to a lawyer, their family, friends, or to medical care. Principle 17 (1) of the Body of Principles states: “A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.” Most political detainees were held in incommunicado detention (detention without access to the outside world), which facilitates torture and ill-treatment. Amnesty International has found in its work around the world that detainees are most at risk of torture or ill-treatment during the interrogation process immediately after arrest. Moreover prolonged incommunicado detention can be in itself a form of cruel, inhuman, or degrading treatment.¹⁸ Principle 19 of the Body of Principles states that detained or imprisoned people have the right to be visited by their families and communicate with the outside world.

Most political detainees were not permitted to see a lawyer until charges were brought against them, if indeed they were permitted to seek counsel at all. According to senior police officials whom Amnesty International met with on 5 February 2003, only once an individual is formally charged under the Penal Code, will he/she be allowed a visit from a lawyer. Police officials also explained that the maximum time which someone can be held without charge or access to a lawyer is two to four weeks, depending on the severity of the crime. The reason given for this delay in access to counsel was that a lawyer would not be able to assist a client until there was a clear charge. However, Principle 7 of the Basic Principles on the Role of Lawyers states: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”

Former political prisoners told Amnesty International that they were not brought before any judicial authority before the actual trial, nor did they have the opportunity to challenge the lawfulness of their detention before a court. Under international human rights standards, everyone deprived of their liberty has the right to take proceedings before a court to challenge the lawfulness of their detention. This safeguards the right to liberty and provides protection against arbitrary detention and other human rights violations. Section 1 of Principle 32 of the Body of Principles states: “A detained person or his counsel shall be entitled at anytime to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without

¹⁸ UN Commission on Human Rights Resolution 1997/38, paragraph 20.

delay, if it is unlawful.” As outlined above, there is no explicit procedure to bring challenges to the attention of a judge, in a manner requiring judicial action.

The family of the detainee was typically not informed where the authorities were taking their relative after arrest and often did not learn of their whereabouts until the time of the trial. Political detainees were not permitted to communicate with anyone, including with their family or friends. The vast majority of political detainees interviewed by Amnesty International were held in incommunicado detention until they had been sentenced, after which time they were generally permitted a family visit every two weeks. Part 1 of Principle 16 of the UN Body of Principles states:

“1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention, or imprisonment or of the transfer and of the place where he is kept in custody.”

Furthermore, detainees awaiting trial are entitled to receive visits from their families, under international standards:

“An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends and for receiving visits from them, subject only to restriction and supervision as are necessary in the interest of the administration of justice and of the security and good order of the institution.”¹⁹

After Military Intelligence has completed the interrogation process, detainees may be transferred to another place of detention to await trial. This facility is sometimes the prison itself, particularly Insein Correctional Facility in Yangon Division, where there is believed to be a remand section. It may also be a police detention centre, particularly one attached to the Special Branch, who are sometimes believed to have responsibility for political prisoners within the civilian police force.

Medical care in pre-trial detention

Former political detainees in Myanmar have reported that they received little or no medical care before being brought to trial. Individuals with pre-existing health conditions which need immediate treatment may not receive proper care; and detainees often experience adverse consequences to their health because of prolonged interrogation and sleep deprivation. Principle 24 of the Body of Principles states: *“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”*

With regard to medical care in custody, the SPDC provided the following response to Amnesty International: *“General medical examination is made to all detainees on admission to the place of detention and a proper medical care is provided to any detainees as and when required.”*

¹⁹ Rule 92 of the Standard Minimum Rules.

A specific report of lack of medical care is the case of U Sai Pa, the 61 year-old Deputy Chairman of the National League for Democracy (NLD) of the Shan State, who died on 9 October 2002. He had been arrested along with Sai Nan Di, another NLD leader, on 13 or 14 September in Kengtung, eastern Shan State. They were conducting NLD political party organizing activities at the time. The two were brought to court on 27 September when U Sai Pa was reported to be in good health, and their next court appearance was due to take place on 10 October. U Sai Pa reportedly died after being taken to hospital the evening of 8 October when he was already unconscious and near death. He was believed to have become weak after being deprived of sleep during interrogation and reports indicated that he did not receive proper medical treatment after becoming ill. Amnesty International sought clarification from the SPDC about the circumstances of U Sai Pa's death in custody, including whether an independent investigation was initiated by the authorities and a post mortem and autopsy carried out.

In its response to this request, the SPDC provided the following information, which is quoted here in its entirety:

“Regarding the death of U Sai Pa in Kyaing Ton [Kengtung] Custody on the 9th October 2002 at 7.30am, he was arrested on 14th September 2002 opened the case at Kyaing Ton Police Station by 1950 Emergency Provision Act. During the remand period he was ill and sent to Kyaing Ton General Hospital on 8 October. He was hospitalized at special ward for medical treatment. He died from Acute Hepatitis. Necessary medical treatment and care were provided by the Physician Consultant Dr. Yan Lin Myint. He died at 7.30am on the 9th October. Post mortem examination was done by Assistant Surgeon Dr. Kyaw Naing Htun. The cause of death was due to Septicemia and Hepatic encephalopathy due to Cirrosis of liver. This was the finding of autopsy report.”

Amnesty International takes note of this clarification but remains concerned that U Sai Pa did not receive prompt medical care while he was in custody. The organization is further concerned by the general lack of medical care in pre-trial detention in Myanmar.

Recommendations with regard to arrest and pre-trial detention

1. Ensure that all detainees have the right to challenge the lawfulness of their detention before a court, and ensure that they be released if their detention is found to be illegal. Article 100 of the Code of Criminal Procedure should be changed to establish an accessible procedure for detainees, their families, and their lawyers to challenge the legality of a detention.
2. Prohibit incommunicado detention and ensure that all prisoners have immediate, confidential, and regular access to relatives, doctors, and lawyers.
3. Keep procedures for detention and investigation under regular review. All prisoners should be promptly told of their rights, including the right to lodge complaints about their treatment.
4. Clarify the legal basis of the use of Military Intelligence Offices as interrogation centres for political detainees. Secret or unofficial places of detention should be abolished under Myanmar law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

5. Ensure that all detained people receive prompt and full communication of any order of detention, with the reasons for such detention.
6. Ensure that all detainees receive a medical examination soon after they are arrested, and are provided with proper medical care.

V. TORTURE AND ILL-TREATMENT

Article 1 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as: *“1...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.”* Section 2 of Article 1 characterizes torture as *“...an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment”*.

Definitions of torture under Myanmar law

Torture does not appear to be comprehensively, fully and explicitly prohibited under Myanmar law. However Articles 330 and 331 of the 1957 edition of the 1861 Burmese Penal Code, which remains in force, outlaw “hurt” or “grievous hurt”, but not specifically “torture”, inflicted during interrogation. These articles provide for up to seven or 10 years’ imprisonment, respectively, for anyone who inflicts “hurt” or “grievous hurt” on someone *“for the purpose of extorting from the sufferer any confession or any information which may lead to the detection of an offence or misconduct”*. Use of rape as torture would similarly be prohibited by Article 376, which outlaws rape generally, and also provides a penalty of 10 years’ imprisonment or *“transportation for life”* for this offence.

Articles 323 and 325 would appear to prohibit “hurt” or “grievous hurt” of detainees and prisoners outside the context of interrogation. Article 323 states that a person who *“voluntarily causes hurt”* shall be imprisoned for up to one year and Article 325 calls for the imprisonment for up to seven years of someone who *“voluntarily causes grievous hurt”*. Article 166 of the Burmese Penal Code prohibits public servants from unlawfully injuring anyone while discharging their duties, and provides a penalty of up to one year for this offence.

The SPDC responded that torture was explicitly prohibited under Myanmar law: *“In Section 330 of the Penal Code, the ingredients of ‘torture’ are prescribed. The following are the illustrations of the said section: ‘(a) A, police officer tortures Z in order to induce Z to confess that he committed a crime, A is guilty of an offence under this section. (b) A, police-officer tortures B to induce him to point out where certain stolen property is deposited, A is guilty of an offence under this section. Whoever voluntarily causes grievous hurt in the commission of “torture” shall be punished with imprisonment up to seven years. Whoever voluntarily causes grievous hurt in the commission of “torture” shall be punished with imprisonment up to ten years.’”*

Amnesty International takes note of this clarification, but remains concerned that torture is not explicitly prohibited in all instances in Myanmar law. For example Myanmar law does not appear to explicitly prohibit torture when it is used to punish prisoners, a practice which has occurred in the Myanmar prison system.²⁰ Torture also does not appear to be prohibited when it is used by the authorities to intimidate or harass people. The use of torture to punish or to intimidate people should be explicitly prohibited by law, as stated in Articles 1 and 7 of the UN Declaration Against Torture.

Amnesty International also takes note of a publication given to them during their February 2003 visit, entitled “*Myanmar Police Force*”. Section 7 on human rights states: “...*To treat [the] suspect or offender in line with human rights all the police personnel must follow the principles as follow[s]: (a) The suspect or offender should be treated as [a] human being; (b) The torture [sic] is strictly prohibited in course of police investigation; (c) Degrading human dignity is strictly prohibited in [the] course of police investigation.*” Amnesty International welcomes these regulations, but is seeking clarification about how they are enforced, and whether their breach is punished by criminal or administrative sanctions.

The organization also received a copy of the State Law and Order Restoration Council, The People’s Police Force Maintenance of Discipline Law, No 4/95, promulgated on 26 April 1995. Section 17 of Chapter V, entitled Offences, provides for punishments of police who “(c) *causes or allows a prisoner or a person in custody to strike or otherwise ill-treat another person knowing such act being done [sic] fails to prevent or take action; (d) strikes or otherwise ill-treats any person subject to this Law, being his subordinate in rank or position... (g) strikes or otherwise ill-treats any prisoner, any person in custody or any person detained...*”. A police officer found guilty of such abuses can receive a sentence of up to three years’ imprisonment. Amnesty International welcomes these provisions with regard to the police force, but is seeking information from the SPDC about regulations which apply to Military Intelligence personnel who currently conduct arrests, and detain and interrogate political suspects.

Torture and ill-treatment during pre-trial detention

Amnesty International has reported many cases of political prisoners being tortured and ill-treated while being held in incommunicado detention in order to extract confessions, contrary to international standards.²¹ The prohibition of torture under international human rights law is absolute. Article 5 of the Universal Declaration of Human Rights (UDHR) states: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*” The UDHR is an affirmation of the human rights and fundamental freedoms referred to in the Charter of the United Nations, of which Myanmar is a member. It is also a principle under customary international law, binding on all states, regardless of whether or not they have ratified any human rights treaties, that the right not to be tortured is non-derogable and may

²⁰ Please see *MYANMAR: The Institution of Torture*, December 2000, AI Index ASA 16/24/00.

²¹ Please see for example: *Myanmar: prisoners of conscience and torture*, May 1990, AI Index ASA 16/04/90; *Myanmar: ‘In the national interest’*, November 1990, AI Index ASA 16/10/90; *Myanmar: ‘No law at all’*, October 1992, AI Index ASA 16/11/92; *Myanmar: The climate of fear continues*, October 1993, AI Index ASA 16/06/93; *Myanmar: Renewed repression*, July 1996, AI Index ASA 16/30/96; *Myanmar: Update on Political Arrests and Trials*, September 1996, AI Index 16/46/96; *Myanmar: The Institution of Torture*, December 2000, AI Index ASA 16/24/00.

never be suspended even during times of war, threat of war, internal political instability, or states of emergency. No circumstances may be used to justify torture or other cruel, inhuman or degrading treatment or punishment.²²

Torture is further condemned under Principle 6 of the Body of Principles:

“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment...[which]... should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”

Torture and cruel, inhuman or degrading treatment of political detainees occur most frequently in Myanmar during initial interrogation by MI personnel. While torture of political detainees appears to have decreased in recent years, it is still a very serious problem which needs addressing further. Alleged prolonged interrogation under duress of people held in incommunicado detention since the 30 May 2003 attack against the NLD heightens Amnesty International’s concern about the use of torture and ill-treatment in Myanmar.

Young male political activists remain particularly vulnerable to torture and ill-treatment during interrogation, usually in the form of severe beatings. Other political detainees may be less subject to physical abuse, but they are often at risk of psychological torture, which has taken the form of sleep deprivation, continuous interrogation, and threats and verbal abuse, as MI personnel attempt to extract information from them. Interrogations lasted from several hours to several days. Political detainees reported being interrogated for several hours without a break through the night, while rotating teams of interrogators questioned them. They were often made to stand for prolonged periods when being questioned. Sometimes they were also deprived of adequate food and water. They were sometimes threatened with physical abuse if they did not answer questions to the satisfaction of interrogation teams. They were also sometimes subjected to verbal abuse in the form of slurs against their characters.

There are several rights guaranteed under international standards which aim to safeguard people during the investigation of an offence. These include the presumption of innocence; the prohibition against torture and cruel, inhuman or degrading treatment; the prohibition against compelling people to confess guilt or testify against themselves; and the right to remain silent and the right of access to counsel.

No one who is being interrogated for a criminal offence may be compelled to confess guilt or testify against themselves. Principle 21 (1) of the Body of Principles also specifically prohibits forced confessions. Principle 21 (2) further provides: “2. *No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or judgement.*”

²² See Article 3 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendations with regard to torture

1. Designate and define torture as a specific crime of the utmost gravity in the Myanmar Penal Code.
2. Issue clear orders to Military Intelligence personnel, armed forces involved in counter-insurgency operations, prison guards, and members of the police force not to torture or ill-treat anyone in their custody.
3. Initiate prompt, impartial, independent and effective investigations into allegations of torture, deaths in custody, and ill-treatment of prisoners, whether they are held in prisons or other official places of detention.
4. Bring perpetrators to justice where there is evidence of involvement in torture or ill-treatment.
5. Adopt safeguards to ensure that detention does not become an opportunity for torture. It is vital that all prisoners be brought before a judicial authority promptly after being taken into custody and that their access to lawyers, medical professionals and their families be assured.
6. Ensure that confessions or other evidence obtained through torture are never invoked in legal proceedings.
7. Ensure that the highest authorities publicly condemn torture in all its forms whenever it occurs.

VI. TRIALS AND SENTENCING

Amnesty International has had a number of ongoing concerns about political trials in Myanmar since 1989. In July 1989 Martial Law Orders 1/89 and 2/89 established military tribunals with special summary powers to try martial law offenders, in contravention of international standards for fair trial.²³ Orders 1/89 and 2/89 were revoked under Order 12/92 in September 1992, which Amnesty International publicly welcomed at the time.

However trials of political detainees in Myanmar still fall far short of international standards for fairness. Concerns regarding the actual conduct of trials include lack of independence of the judiciary; inability of defendants to call and question witnesses; denial of the right to counsel; lack of judicial appeal; and trials held *in camera*, in violation of the right to a public trial. Another major problem is the fact that defendants in political cases do not have adequate time to prepare a defence, with or without a lawyer.

It is important to make clear at this stage that scores of political prisoners held in Myanmar are considered by Amnesty International to be prisoners of conscience, and therefore by definition should never have been arrested in the first place. As such they should never have been detained, brought to trial, and sentenced for the peaceful expression of their political beliefs. Amnesty International considers many other political prisoners to be

²³ Please see *MYANMAR (BURMA): Prisoners of conscience, A chronicle of developments since September 1988*, November 1989, (AI Index ASA 16/23/89).

possible prisoners of conscience, where there is no evidence that they have advocated or committed violence.

Some political prisoners in Myanmar may have advocated or committed violence, but they did not receive fair trials, particularly if they were sentenced by military tribunals established by Martial Law Orders 1/89 and 2/89. Amnesty International calls for all political prisoners to receive a fair trial; the judiciary should review all convictions of political prisoners and should ensure that any of them who have not received a fair trial be re-tried promptly and in accordance with international fair trial standards, or released. Article 10 of the Universal Declaration of Human Rights states: *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”*

The right to presumption of innocence

A fundamental principle of the right to fair trial is the right of every person charged with an offence to be presumed innocent until and unless proved guilty according to law after a fair trial. The right to be presumed innocent applies not only to treatment in court and the evaluation of evidence, but also to treatment before trial. Article 11 of the Universal Declaration of Human Rights states: *“1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence.”*²⁴

Section 342 of the Myanmar Code of Criminal Procedure provides for some important fair trial rights: the right not to be compelled to testify against oneself or to confess guilt, an important part of the presumption of innocence. However according to the accounts of former political prisoners, political detainees are compelled to provide testimony against themselves and confess guilt during pre-trial interrogation by MI personnel. It is not clear whether the right not to testify against oneself and not to confess guilt are in practice protected during trials of political detainees. In the 22 May Memorandum to the SPDC, Amnesty International sought further information about whether political suspects have the right not to testify against themselves or confess guilt during the actual trial proceedings, as opposed to pre-trial interrogation.

The following response was received from the government: *“In Myanmar, a person charged with an offence shall be presumed innocent until and unless proved guilty according to law. The burden of proof establishing the crime is always upon [the] prosecution side. The Evidence Act and Criminal Procedure Code are based on the principle of the right and fair trial.”* Amnesty International notes that Myanmar law does protect the right to presumption of innocence, but is concerned that this right is not protected in practice during political trials.

The right to the presumption of innocence requires that judges and juries refrain from prejudging any case. It also applies to all other public officials. This means that public authorities, particularly prosecutors and police, should not make statements about the guilt or innocence of the accused before the outcome of a trial. It also means that the authorities have a duty to prevent the news media or other powerful social groups from influencing the outcome of a case by pronouncing on its merits. The presumption of innocence is not,

²⁴ See also Principle 36 (1) of the Body of Principles and Rule 84 (2) of the Standard Minimum Rules.

however, considered to be violated if the authorities inform the public about criminal investigations and in doing so name a suspect, or state that a suspect has been arrested or has confessed, so long as there is no declaration that the person is guilty.

The SPDC often gives press conferences after a series of political arrests have been made, explaining the events which led up to the arrests and naming detained individuals who were reportedly involved in anti-government activities.²⁵ Brigadier General Than Tun, of the Ministry of Defence, gave a press conference on 10 February 2003. He named 14 individuals who had been detained in connection with “...*some plots by expatriate NLD terrorists to perpetrate bomb explosions, and how the members of their terrorist gang and the lackeys they had dispatched were apprehended.*”²⁶ He further reported that some NLD members in Myanmar had accepted funds from NLD expatriates “...*to carry out antigovernment acts and to create disorder and unrest in the country.*”²⁷ As well as specifically naming the individuals, the SPDC spokesman also categorically stated that they were involved in specific activities. One example is as follows: “*Maung Maung Myint was planning to distribute anti-government propaganda pamphlets. He was therefore taken into custody in the teashop at the corner [of] the Sanpya Hospital in Thingangyu Township on 5 February 2003.*”

Amnesty International is concerned that the 10 February 2003 press conference was not limited to informing the public about criminal investigations and the arrests of suspects, but effectively declared these named individuals as guilty before they were charged and tried. While Amnesty International recognizes that any government has the right to keep the public informed of threats to public security, it maintains that governments should not prejudge the guilt or innocence of suspects before their trial has even begun.

The right to a public hearing

The right to a public hearing is guaranteed under international human rights standards. Article 11 of the UDHR states: “*1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*” The right to a public hearing means that not only the parties in the case, but also the general public, have the right to be present. The public has a right to know how justice is administered, and what decisions are reached by the judicial system.

The right to a public hearing appears to be provided for under Myanmar law. Chapter II, Judicial Principles, of the Judiciary Law, 2000, was promulgated by the SPDC on 27 June 2000.²⁸ Section 2 of Chapter II states: “*The administration of justice shall be based upon the following principles;...(e) dispensing justice in open court unless otherwise prohibited by law;...*”.

²⁵ For examples please see pages 71-72 in *MYANMAR (BURMA): Prisoners of conscience, A Chronicle of Developments Since September 1988* (AI Index ASA16/23/89), November 1989; pp 19-20, *MYANMAR: Intimidation and Imprisonment, September – December 1996*, (AI Index ASA 16/01/97), February 1997.

²⁶ TV Myanmar, Yangon, in Burmese, 1330 GMT 10 February 2003, as reported by the British Broadcasting Corporation (BBC), 11 February 2003.

²⁷ A list of the 14 named individuals is found in the list in Appendix II of this Memorandum.

²⁸ The Judiciary Law, (the State Law and Order Restoration Council Law No. 2/88) which was promulgated on 26 September 1988, was repealed by Section 28, Chapter VIII of the Judiciary Law, 2000.

However in practice political trials in Myanmar are generally held *in camera*, and are not open to the defendants' families or to the general public. Political defendants are often tried at the Special Court at the Insein Correctional Facility, which is a closed court. Information about trials is difficult to obtain for all interested parties. It is not known if transcripts of trial proceedings are made available to the defendants, but it appears that they do not have such access. All these factors seriously hamper the ability of the defendant to appeal his/her sentence judicially, as they do not have the means to prepare an appeal.

Amnesty International received a response from the SPDC about the right to a public hearing, which is quoted below in its entirety:

“In Section 352 of the Criminal Procedure Code, it is prescribed as follows: ‘The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open court, to which the public generally may have access, so far as the same can conveniently contain them: Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.’ Moreover in Section 353, it is prescribed as follows: ‘Except as otherwise expressly provided, all evidence taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.’ Open Court is conducted in practice.”

Amnesty International is concerned that the Judge or Magistrate can order the court to be closed to the public “*if he thinks fit*”, which does not specify precisely which circumstances would allow for a judicial authority to call for a trial to be held *in camera*. Under international human rights standards, the grounds on which the press and the public may be excluded from all or part of the hearings is limited to: morals (for example, some hearings involving sexual offences); public order, which relates primarily to order within the courtroom; national security in a democratic society; when the interests of juveniles or the private lives of the parties so require; or to the extent strictly necessary, in the opinion of the court, in special circumstances where publicity would prejudice the interests of justice. However, according to the first-hand accounts received by Amnesty International about political trials in Myanmar, the courts are usually closed to the public.

The role of the judiciary

The independence of the judiciary is provided for to a certain extent under the Judiciary Law, 2000. Chapter II, Judicial Principles states *inter alia*: “2. *The administration of justice shall be based upon the following principles;- (a) administering justice independently according to law;(e) dispensing justice in open court unless otherwise prohibited by law;... (f) guaranteeing in all cases the right of defence and the right of appeal under the law...*”. The Judiciary Law also provides for judicial appeal through the court system, which consists of Township Courts, District Courts, State and Divisional Courts, and the Supreme Court.

Amnesty International has not attended the proceedings of a court in Myanmar concerning a political case, nor has it had access to the transcripts of trial proceedings. However, Amnesty International's interviews with former political prisoners about their trials indicate that in practice the independence of the judiciary is severely compromised in

political cases. Several of them reported that when they complained to judges about the torture they had experienced during interrogation, the judges said they regretted this, but there was nothing that they could do. This is in contravention of Principle 33 of the Body of Principles, which states that all allegations that statements have been extracted through torture or other cruel, inhuman or degrading treatment must be promptly and impartially examined by the competent authorities, including judges. Former political prisoners also reported that the judges' deliberation consisted of little more than the judge reading out their sentence from a letter he had been given or a piece of paper he took from his pocket. Most former prisoners said that they believed that the sentence was determined by Military Intelligence, not by the judge, who was acting on MI's orders.

The independence of the judiciary is a fundamental principle of international human rights standards and one of the most basic requirements in a functioning legal system, if it is to protect human rights effectively. Principle 2 of the Basic Principles on the Independence of the Judiciary states: "*The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*"

It would appear that the Judiciary Law, 2000 does not provide for security of judges' tenure, in contravention of international fair trial standards. In order to ensure the independence of the judiciary, judges should have security of tenure, to insulate them from concern that their post will be affected by political reaction to their decisions. Judges should have guaranteed tenure until they reach the age of mandatory retirement. They may only be suspended or removed from office if they are incapable of carrying out their duties, or for conduct incompatible with their office.²⁹

The SPDC responded to Amnesty International's concern about the lack of independence of the judiciary in political trials by stating: "*In Myanmar, the trial is conducted by the magistrates and judges. They conduct the trial on [a] person's behalf, but on their own in accordance with law and pass judgement on the findings of the proceedings. No person is authorized to influence them to pass judgement that is inconsistent with law.*" Nevertheless Amnesty International is concerned that in practice judges conducting political trials are not independent and are subject to influence by Military Intelligence.

The right to legal counsel and adequate time to prepare a defence

Amnesty International is concerned that in most cases when political suspects are tried, they are permitted no legal counsel whatsoever. In the absence of a lawyer, they also often do not appear to have the opportunity to defend themselves. Section 340 of the Myanmar Criminal Procedure Code provides for the right to counsel or self-defence: "*(1) Any person accused of an offence before a criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader. (2) Any such person as aforesaid may offer himself as a witness on his own behalf at the inquiry into or trial of such offence or in such proceedings.*" The definition of a "pleader" under the Code of Criminal

²⁹ Please see Principles 11, 12, and 18 of the Basic Principles on the Independence of the Judiciary.

Procedure is “*a pleader authorized under any law for the time being in force to practice in such Court and includes (1) an advocate for the High Court so authorized and (2) any other person appointed with the permission of the Court to act in such proceeding*”. Amnesty International is concerned that this law may allow unqualified persons to act as lawyers by the court, under subsection 2. Principle 6 of the Basic Principles on the Role of Lawyers requires that lawyers defending the rights of individuals must have the experience and competence commensurate with the nature of the offence of which their client is accused.

On the few occasions when political detainees are allowed the right to counsel, they are not given enough time to confer with counsel before or during the trial. Defendants often do not meet with their lawyer until the trial actually begins, and then only briefly. In addition MI personnel have been reported to listen to discussions between a political prisoner and his lawyer. Principle 8 of the Basic Principles on the Role of Lawyers affirms the right to legal counsel and adequate time to prepare a defence: “*All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.*”

International law provides for the right of the accused to defend himself in person or through a lawyer. They also have the right to confidential communication with their lawyer, and the right to have adequate time to prepare a defence. Principle 1 of the Basic Principles on the Role of Lawyers states: “*All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.*” Principle 22 of the Basic Principles on the Role of Lawyers requires governments to recognize and respect the fact that all communications between lawyers and their clients within their professional relationship are confidential.

The right to call and examine witnesses

With regards to calling witnesses and the production of evidence during the trial, Amnesty International has received information which indicates that Military Intelligence (MI) personnel are often called as prosecution witnesses. MI provides the court with the testimonies of defendants based on MI interrogation, which are almost always given under duress. In many if not most political cases the only witnesses who are permitted to be called are those whom the prosecution calls, and these individuals are almost always government employees.

Article 208 of the Myanmar Criminal Procedure Code allows the defendant the right to cross-examine prosecution witnesses, and to call witnesses to support the defence case. Article 353 requires that all evidence be given in the presence of the accused or his lawyer. However according to information received from former political prisoners, defendants in political trials were not permitted to cross-examine prosecution witnesses, such as MI personnel. Defendants were also not permitted to call witnesses to support their case.

International fair trial standards provide for the right of the defence to question witnesses against the accused. The right to call and examine witnesses ensures that the defence has an opportunity to question witnesses who will give evidence on behalf of the accused and to challenge evidence against the accused.

With regard to the right to legal counsel and adequate time to prepare a defence, the SPDC said in its 9 July response that “*There are specific provision[s] in Sections 254, 225, and 256 [of the Criminal Procedure Code] regarding ‘charge to be framed when offence appears proved’, ‘plea’, and defence respectively.*”. These sections do appear to provide for the right of the accused to testify on his own behalf and to call witnesses and to cross-examine witnesses. However in practice these rights do not appear to be upheld in political trials.

The right to judicial appeal

Amnesty International is concerned that in many cases, political prisoners do not have the opportunity to appeal against their sentence to a judicial body. As most political prisoners are not permitted legal counsel, they also may not have the means to appeal the sentence. The right to judicial appeal appears to be protected in Myanmar law. Chapter XXXI of the Criminal Procedure Code outlines the procedure for appeals, which may be brought on issues of fact and law. Article 419 of the Criminal Procedure Code requires that “[E]very appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgement or order appealed against.” To Amnesty International’s knowledge, political prisoners generally do not receive copies of the judgement against them. For these reasons it is believed that in practice it is generally impossible for political prisoners to appeal against their sentence.

Under the UDHR, everyone convicted of a criminal offence has the right to a fair trial. The right to a fair trial is generally interpreted in international law as including the right to judicial appeal. The rights to a fair and public trial must also be observed during appeal proceedings. Such rights include, among others, the right to adequate time and facilities to prepare the appeal; the right to counsel; the right to a hearing before a competent, independent and impartial tribunal established by law within a reasonable time; and the right to a public and reasoned judgement within a reasonable time.

In its response, the SPDC stated that the right to judicial appeal is protected under Myanmar law: “*Under Sections 408, 409, and 410 of the Criminal Procedure Code, judicial appeal can be filed. In Myanmar appeal is a right under the law. For offence that could be sentenced with death penalty, the State engages the defence counsel for the accused. This is the legal right of the accused.*” Amnesty International notes that the above-mentioned Sections of Chapter XXXI of the Criminal Code do provide for the right to judicial appeal, but remains concerned that political prisoners rarely have the right in practice to appeal their sentence.

Sentences

Amnesty International is extremely concerned that sentences for political prisoners are almost always set at the maximum length possible under the provisions of the relevant law. In cases where an individual is convicted for several offences, the sentences are applied cumulatively, rather than served concurrently. Therefore some political prisoners are frequently sentenced for such long periods that it is inevitable that they will die before they are due for release.

Some of those who received lengthy sentences are prisoners of conscience, who never should have been arrested and imprisoned in the first place. One such example is prisoner of conscience Thet Win Aung, who was sentenced in January 1999 to 59 years' imprisonment under the provisions of the 1950 Unlawful Associations Act; the 1963 Printers and Publishers Act; and the Burma Immigration (Emergency Provisions) Act.

With regard to sentencing, the SPDC provided the following response to Amnesty International: "In Myanmar, regarding sentences, there are of two kinds, namely, mandatory and discretionary. Mandatory means the minimum sentence that should be given when a crime is prescribed, and the magistrate is empowered to give a sentence which may be maximum or below the maximum level depending on the facts of the case...Sentences the offenders cumulatively or concurrently can be applied by the magistrates in accordance with the law, freely and independently." Amnesty International notes that judicial authorities can hand down sentences in an independent manner but remains concerned that in political cases the authorities almost always hand down the longest possible sentence under the law, and that sentences are served cumulatively rather than concurrently.

Recommendations with regard to trial procedures

1. Ensure that all political detainees are promptly charged and tried by procedures which conform fully to internationally-accepted standards for fair trial.
2. Ensure that all political detainees have access to legal counsel and adequate time to prepare a defence. Detainees should have the right to meet with their lawyers privately.
3. Past evidence indicates that courts are subject to interference from Military Intelligence. The SPDC must make every effort to ensure that the military does not manipulate the judiciary, whether directly or indirectly, and permits the courts to determine cases objectively, impartially and independently.
4. Review the convictions of all political prisoners and ensure that any who have been unfairly tried be re-tried promptly and in accordance with international fair trial standards, or released.
5. Ensure that all members of the government refrain from the practice of prejudging the guilt of political suspects through the press. Remarks in the press should be confined to providing names of those arrested with details about charges, if any, brought against them, and time and date of arrests.
6. Ensure that members of the judiciary have security of tenure; proper training, and freedom from interference by the executive branch of the government.
7. Ensure that all trials are held in public.
8. Ensure that all political prisoners have the right to judicial appeal by a higher tribunal.

VII. DISCUSSION OF KEY LAWS IN FORCE RELATING TO HUMAN RIGHTS

According to information available to Amnesty International, the 1974 Constitution was effectively abrogated on 18 September 1988, with the formation of the State Law and Order Restoration Council (SLORC). The People's Assembly (*Pyithu Hluttaw*) was also abolished under Announcement No 2/88 of 18 September. However, in spite of the absence of a constitution or parliament, the SPDC routinely promulgates decrees and orders which have the force of law. The government and court system also continue to use laws from the colonial period; and from the post independence period under both Prime Minister U Nu and later under military rule by General Ne Win.

This section will examine some of the key laws and decrees which are frequently used to criminalize peaceful political activities, including: the 1923 Official Secrets Act; the Emergency Provisions Act (Myanmar Act XVII, 1950); the Unlawful Associations Act, 11 December 1908 and Law No 6/88 (Law on Formation of Associations and Organizations), 30 September 1988; the People's Assembly Law No 3, 1975, State Protection Law, 5 February 1975, and Law No 11/91, (Law Amending the Law Safeguarding the State from the Danger of Destructionist Elements (State Protection Law)); Law No 10/96, the Computer Science Development Law; and Law No 5/96, the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions, 7 June 1996. There are other laws and decrees of concern to Amnesty International which are not covered in this memorandum.³⁰ In this section, the organization is focusing on those laws which are most frequently used by the judiciary to punish those who exercise their rights to freedom of expression and assembly as proclaimed in the Universal Declaration of Human Rights

The SPDC often states that as a temporary military government, governing in the absence of a constitution or parliament, it does not have the power to promulgate or repeal legislation. Nevertheless the SPDC has issued dozens of decrees since September 1988, which have the force of law. Some of the decrees and orders promulgated by the SPDC amend laws which were promulgated before September 1988. Law No 11/91 (Law Amending the Law Safeguarding the State from the Danger of Destructionist Elements), dated 9 August 1991, amends Article 14 of the 1975 State Protection Act to increase detention without charge or trial from up to three years to up to five years, renewable on a yearly basis rather than every 180 days. Other SPDC decrees rescind earlier decrees issued by the SPDC itself. For example Order 12/92, issued 26 September 1992, revokes Martial Law Orders No 1/89 and 2/89, which gave administrative and judicial powers to some Regional Military Commanders. It appears that the SPDC has widespread *de facto* power to promulgate, amend, and revoke laws. Amnesty International is therefore urging the SPDC to repeal those laws which infringe on the most basic of human rights, in particular the rights to freedom of expression and assembly.

In its response to Amnesty International, the SPDC stated: "*The legislature of Myanmar repealed 137 laws in 1992 and 14 laws in 1993. Thus, it is evident that the review of existing laws is made on a permanent basis.*" However, as stated above, the SPDC is

³⁰ Other laws of concern include but are not restricted to the 1962 Printers and Publishers Registration Law and Law No 16/89 amending this law; Order 1/90 (Reporting Missing People and Guests); Order No 1/91 (Public Personnel To Be Clear of Party Politics); and the Television and Video Law 1985.

operating in the absence of a parliament or Constitution, both of which were abolished on 18 September 1988. Amnesty International is therefore seeking clarification from the SPDC as to what the “legislature” comprises under the current government, and what powers it has, under what body of law. In view of the SPDC response with regard to its ability to repeal and amend laws, Amnesty International reiterates its call to the SPDC to repeal those laws which infringe basic human rights.

The 1950 Emergency Provisions Act

The 1950 Emergency Provisions Act is by far the most frequently used law by the judiciary in Myanmar to sentence people tried for political reasons. Hundreds of people have been sentenced under its provisions, including members of legal political parties; young political activists; teachers; owners of small businesses; writers and journalists; lawyers; Buddhist clerics; and academics. It would appear that this law was originally enacted to deal with the growing armed opposition which emerged shortly after independence from the United Kingdom in 1948. As the SPDC has stated, 17 cease-fires with armed opposition groups have been agreed since 1988 and armed opposition is currently much less of a threat to state sovereignty.

The vaguely-worded provisions of the Emergency Provisions Act have been employed to sentence prisoners of conscience to long terms of imprisonment for many years, but particularly since the current government came to power.³¹ Articles 2, 3, and 4, which concern assisting people involved in treason, all provide for the death penalty or life imprisonment. Amnesty International is opposed to the death penalty in all instances. The death penalty violates the right to life and is the ultimate cruel, inhuman or degrading punishment. It is irrevocable and can be inflicted on the innocent, and it has never been shown to deter crime more effectively than other punishments.

Article 5 of the Emergency Provisions Act is the clause most often used to sentence political detainees, particularly Articles 5e and 5j. Article 5e states: *“If anything is done intentionally to spread false news knowing it to be false or having reason to believe that it is false or if any act which is likely to cause the same is done...shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both”*. What constitutes “false news” is not sufficiently defined in this law and so is often used to sentence people who criticize the authorities, but who are not advocating or committing violence. Those who peacefully express their political opposition views are frequently sentenced under these provisions. The right to freedom of expression is enshrined in the Article 19 of the UDHR, which states *inter alia*: *“Everyone has the right to freedom of opinion and expression;...”*.

The majority of people who are sentenced under Article 5e have not caused danger, disturbance, or incited hate crimes, but have sought to peacefully express their non-violent political opposition views, by speaking publicly, holding a peaceful protest demonstration, or participating in a legally registered political party.

³¹ Prisoner of conscience Nay Min was arrested in 1988, and accused of sending false news to the British Broadcasting Corporation (BBC); in October 1989 he was sentenced to 14 years’ hard labour under Section 5 e/j of the 1950 Emergency Provisions Act. He was released in November 1996.

Article 5j states: “*Anyone who...causes or intends to disrupt the morality or the behaviour of a group of people or the general public, or to disrupt the security or the reconstruction of stability of the union...such a person shall be sentenced to seven years in prison, fine, or both.*” As with Article 5e, disrupting “the morality or behaviour” or “the security or the reconstruction of stability of the union” is not specifically defined and so is liable to criminalize the peaceful expression of political opposition opinions, or the right to freedom of peaceful assembly and association.³²

International human rights standards require that all criminal laws are precise, so that people understand what conduct is prohibited, and can govern their conduct accordingly. Use of vague laws is open to abuse through criminalizing conduct which is not understood as criminal before the event. Article 11 (2) of the UDHR states: “*No-one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.*”

The SPDC responded to Amnesty International’s concerns about the 1950 Emergency Provisions Law by stating that “*The armed rebellion broke out in Myanmar beginning in 1949, and in 1950, under the government of the Anti-Fascist People’s Freedom League, the Emergency Provisions Act was enacted to suppress the armed insurrection and to restore law and order. In most countries the world over, there are relevant domestic laws to restore law and order and to suppress armed insurrection similar to the Emergency Provisions Act, 1950 of Myanmar. The allegation that the enactment of Emergency Provisions Act amounts to violation of human rights means the denial of the objective reality of Myanmar.*”

Amnesty International acknowledges that governments have a duty to protect their citizens from attacks by armed opposition groups. However in the majority of cases known to Amnesty International, people who were sentenced to imprisonment under the provisions of the 1950 Emergency Provisions Act, were sentenced solely on account of their peaceful and non-violent political opposition activities.

Not only does the Myanmar judiciary repeatedly use these two clauses to sentence prisoners of conscience, but it also almost always hands down the maximum sentence of seven years’ imprisonment. One recent example is the case of Thet Naung Soe and Khin Maung Win, two law students at Yangon University. On 18 August 2002 Thet Naung Soe staged a solitary peaceful protest in front of Yangon City Hall. He was arrested along with Khin Maung Win, who was reportedly nearby, as soon as he unfurled the fighting peacock flag, a traditional symbol of political opposition and student resistance in Myanmar. On 17 August a statement had been reportedly distributed among students, calling for dialogue between the SPDC and the NLD and for all political prisoners to be released.

Thet Naung Soe was reportedly sentenced in October 2002 to 14 years’ imprisonment under 5j of the 1950 Emergency Provisions Law. It is not clear why Thet Naung Soe received a sentence of 14 years and Amnesty International is seeking further information about his sentence. Khin Maung Win was reportedly sentenced to seven years under the same provisions in November 2002. Amnesty International considers them both to be prisoners of conscience, arrested solely for the expression of their peaceful political views.

³² Articles 19 and 20 of the Universal Declaration of Human Rights enshrine these rights.

The 1975 State Protection Law³³

The 1975 State Protection Law concerns the declaration of a “*state of emergency or restriction of a citizen’s fundamental rights.*”³⁴ It allows the authorities *inter alia* to order the detention or restricted residence without charge or trial of anyone they believe “*has performed or is performing or is believed to be performing an act endangering the state sovereignty and security, and public law and order,...*”³⁵ Amnesty International is concerned that terms such as “*security*” are not adequately defined in this law, allowing for the authorities to arrest and detain without charge or trial anyone whom they deem to be a threat to any aspect of the state’s functioning or public life, without having to produce evidence of the danger they present. In addition it is only necessary for the authorities to “*believe*” that citizens are endangering the state in some way, with no burden of proof to demonstrate that they actually are a threat.

Prolonged detention without charge or trial is in contravention of international human rights standards. Article 11 of the Universal Declaration of Human Rights states: “*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*”

Section 10 (a) of the 1975 State Protection Law provides for detention of a “*citizen*” who is “*endangering the state sovereignty and security...*” and Section 10 (b) for restricted residence, or house arrest. Law No 11/91 (Law Amending the Law Safeguarding the State from the Danger of Destructionist Elements), dated 9 August 1991, amends Article 14 of the State Protection Act to increase detention without charge or trial from up to three years to up to five years, renewable on a yearly basis rather than every 180 days. Under Article 19 of the State Protection Law, the person who is being held under Article 10 (a) or (b) can appeal his sentence to the Ministry of Home Affairs, but there is no right to judicial appeal. During Amnesty International’s meeting with the Attorney General on 3 February 2003, the Attorney General confirmed that people appealing against their detention or restriction orders can only appeal to the executive, not the judicial branch of the government. Under international standards, a detained person is “*any person deprived of personal liberty*”.³⁶ Any case of detention must be subject to judicial control and appeal, not the decisions of the executive branch of the government.

Daw Aung San Suu Kyi, General Secretary of the NLD, was held under house arrest under the provisions of Article 10(b) of the 1975 State Protection Law from 20 July 1989 until 10 July 1995. She was re-arrested in September 2000, and held under *de facto* house arrest until 6 May 2002. As mentioned above, she was arrested a third time on 30 May 2003, and is currently being detained incommunicado at an unknown location outside of Yangon. She is reportedly being held under the provisions of Article 10 (a), which allow for detention without charge, trial, right to legal counsel, or right to judicial appeal; Amnesty International is seeking confirmation from the SPDC that she is in fact being held under these provisions, which contradict official statements that she is being held under “*protective custody*”.

³³ The full name of the law is The Law to protect and defend the state from the dangers of those saboteurs seeking to destroy it, People’s Assembly Law No 3, 1975, 5 February 1975.

³⁴ Chapter 2.

³⁵ Section 7.

³⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Amnesty International calls for her immediate and unconditional release as a prisoner of conscience.

The administrative detention provisions under Section 10 (a) and (b) of the State Protection Law have been used to detain other prisoners of conscience and other political prisoners without charge or trial. They have also been used to extend the sentences of at least 19 political prisoners who have served their original sentences but whom the authorities are detaining after the expiration of their sentences. Appendix V of this Memorandum lists these individuals, several of whom are prisoners of conscience.³⁷ The latter include U Thu Wai and U Htwe Myint, President and Vice-President of the Democracy Party respectively; Paw U Tun alias Min Ko Naing, a student leader arrested in March 1989; and Ko Ko Gyi, Myat San, Soe Moe Hlaing, and Zaw Min, who were arrested in December 1991 for their participation in a peaceful student demonstration. The UN Working Group on Arbitrary Detention defines one category of arbitrary detention as “*when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence.)*”³⁸ Amnesty International believes that the individuals named above are being held arbitrarily as prisoners of conscience, and calls on the SPDC to release them immediately and unconditionally.

The SPDC response to Amnesty International with regard to the 1975 State Protection Act was as follows: “*This Law prescribes restriction under the authority of the Central Body formed under this Law to safeguard the sovereignty and security of the State or public peace and tranquillity. A person dissatisfied with the decision of the Central Body may file appeal to the Government.*” Amnesty International remains concerned that under this law people can be held without charge or trial for up to five years, and that they have no right to appeal to a judicial body, only to the executive branch of the government.

1908 Unlawful Associations Act

The SPDC also uses the Unlawful Associations Act to sentence political detainees to long terms of imprisonment. Article 15 (2) of the Unlawful Associations Act states: “*‘unlawful association’ means an association – (a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or (b) which has been declared to be unlawful by the President of the Union under the powers hereby conferred.*” Amnesty International acknowledges the right and the duty of every government to protect its citizens from violence committed by armed groups, as is specified under 15 (2) (a) of this law. However under clause 15 (2) (b), any association can be declared unlawful if the head of state so deems it. Declaring an association to be unlawful can be based solely upon the head of state’s opinion rather than on reason or evidence. Human rights standards on freedom of expression and association require that interference with this right must be necessary and proportionate to a threat posed. Associations whose methods are non-violent, which could include trade unions, political parties, student associations, or religious organizations, could arbitrarily be declared unlawful under these provisions. Amnesty

³⁷ Since the original list was compiled, three people have been released, which is noted in the updated list found in Appendix V.

³⁸ *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, Office of the High Commissioner for Human Rights website.

International believes that this law violates the rights to freedom of expression and association under the Universal Declaration of Human Rights.

Article 17 (1) of the Unlawful Associations Act states: “*Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of such an association, shall be punished with imprisonment for a term (which shall not be less than two years and more than three years and shall also be liable to a fine).*” Amnesty International is concerned that not only can a member of an illegal organization be imprisoned, but anyone in any way associated with an unlawful organization is at risk of imprisonment. This could include for example, a landlord who rents space to such an association or someone who attended only one meeting of an organization.

17 (2) of the Unlawful Associations Act states: “*Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term (which shall not be less than three years and more than five years and shall also be liable to a fine)*”. Amnesty International is concerned that members and leaders of an organization which has been declared unlawful can be arbitrarily imprisoned under these provisions.

Thet Win Aung, who was arrested on 4 October 1998, was reportedly sentenced in January 1999 to a total of 59 years’ imprisonment under Sections 17 (1) and 17 (2) of the Unlawful Associations Act, Section 5e of the Emergency Provisions Act, the 1962 Printers and Publishers Registration Law, and Section 13 (7) of the Burma Immigration (Emergency Provisions) Act, (Burma Act XXI, 1947). A young political activist and leader of the All Burma Federation of Student Unions (ABFSU), he was active in the December 1996 student demonstrations in Yangon and again in small demonstrations during mid-1998. He is currently imprisoned in Khamti Prison, Sagaing Division, far from his family in Tamwe township, Yangon Division. Amnesty International considers him to be a prisoner of conscience, arrested for his peaceful political opposition activities, and calls for his immediate and unconditional release.

Amnesty International has few details about the trial and sentencing of Thet Win Aung. However the organization is particularly concerned that he has received an inordinately long sentence of 59 years. It is seeking further information about why Thet Win Aung received an exceptionally long sentence.

It is not clear to Amnesty International precisely which organizations have been declared illegal by the SPDC or by previous governments. For example it is not known what the legal status is of the ABFSU. The university student union movement was originally founded by students during the pro-independence struggle in the 1920s and has been at the forefront of the pro-democracy movement.³⁹ Many ABFSU members remain in prison and are considered by Amnesty International to be prisoners of conscience.⁴⁰

³⁹ Politically-active students unions since the 1920s have had various names; Amnesty International uses ABFSU as the most recently-active student organization.

⁴⁰ Amnesty International makes a clear distinction between members and supporters of the All Burma Student Democratic Front (ABSDF), an exile armed opposition group, and the ABFSU, which does not advocate or practice violence.

Under Law No. 6/88 (Law on Formation of Associations and Organizations) of 30 September 1988, Chapter 1, A: “*association or organization means association, organization, union, party, committee, headquarters, syndicate, front,...or similar association and organization that may not have a name but is composed of a group of people for a purpose or program.*” Any such organization must, under Chapter 2, C, seek permission to operate or it is not allowed to function.

Members of organizations which are denied permission to register can be sentenced to three years’ imprisonment. It is not clear if members of organizations which do not attempt to register can also be sentenced. Amnesty International is concerned that organizations such as the ABFSU, which has not sought permission to operate, could be considered unlawful. Its members could therefore be sentenced to imprisonment under the 1908 Unlawful Associations Act. It is seeking further clarification from the SPDC about organizations deemed to be illegal in Myanmar.

The SPDC responded that under the Law on Formation of Associations and Organizations, a political organization is required to register, and if they do not do so, “*...no activity or function can be performed. In Section 5 of this law, the organization that has no right for registration is prescribed.*” It appears from this answer, that the ABFSU and any other political organization which does not officially register is automatically considered to be illegal, and thus its members could be sentenced under the provisions of the 1908 Unlawful Associations Law.

The Official Secrets Act

The judiciary uses the Burma Official Secrets Act of 1923, a law which dates from the British colonial era, to sentence political prisoners, sometimes along with other laws which criminalize the right to freedom of expression and association. Article 3 of this act provides for from three to 14 years’ imprisonment “(1) *If any person for any purpose prejudicial to the safety or interests of the State*” obtains or communicates information “(c)*...which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy*”. Amnesty International is concerned that the phrase “*interests of the state*” is too broad and allows for the imprisonment of people who possess information which is not a threat to the security of the State. The organization is further concerned that under the provisions of this law the government has the power to declare possession of a wide range of official documents as an offence [Article 6 (2)].

Other provisions of this law provide for two years’ imprisonment for anyone who receives, possesses or passes on official information deemed to be secret. Dr. Khin Zaw Win, a dentist and graduate student at a university in Singapore, was arrested on 4 July 1994 when he was at Yangon International Airport on his way to Singapore. According to official sources he had in his possession computer discs “*with anti government material and facts and confidential reports containing data on the Ministry of Energy of Myanmar*” . He was also accused of contacting foreign diplomats and sending false information to the UN Special Rapporteur on Myanmar.⁴¹

⁴¹ *Action taken against destructive elements*, New Light of Myanmar, an official government newspaper, 23 August 1994.

Dr. Khin Zaw Win was sentenced to 15 years' imprisonment at a civilian court in Insein Prison on 6 October 1994, including two years under Section 5 of the Official Secrets Act.⁴² This Section provides *inter alia* for two years' imprisonment for receiving or communicating any secret official information. Khin Zaw Win is currently imprisoned in Myitkyina Prison, Kachin State. Amnesty International believes that he is a prisoner of conscience, imprisoned for the peaceful expression of his political views, and calls for his immediate and unconditional release.

Law No 5/96

On 7 June 1996 the SLORC issued Law No 5/96,⁴³ “to protect the stable, peaceful and systematic transfer of state responsibility; and the successful implementation of National Convention tasks from disruption and opposition”.⁴⁴ This law states that the drafting and distribution of a constitution “with no lawful authorization” is illegal. Section 3, Subsection A of Chapter II of the law states: “No person or organization is allowed directly or indirectly to violate either of the following prohibitions: instigating, protesting preaching, saying [things] or writing and distributing materials to disrupt and deteriorate the stability of the state, community peace and tranquillity and the prevalence of law and order.”

Anyone who violates these provisions can be sentenced to three to 20 years' imprisonment and may also be subject to fines. Amnesty International believes that the provisions of Law No 5/96 are vague and sweeping and grant the power to arrest persons for the peaceful exercise of their political beliefs. Amnesty International is so concerned by the vaguely-worded provisions of this law, which are in clear breach of international standards relating to the principle of clarity and certainty of criminal law, freedom of expression, and the potential for its abuse, that it believes this law should be repealed. Law No 5/96 criminalizes the right to freedom of expression as proclaimed in Article 19 of the Universal Declaration of Human Rights. For example anyone who wrote a draft Constitution could be sentenced to a long term of imprisonment under the provisions of this law. Amnesty International is not aware of any individuals who have sentenced to imprisonment under the provisions of this law, and sought further information from the SPDC about its use since it was promulgated.

The SPDC responded that the “objective of the law is to protect disintegration of the Union, to build a concrete platform for flourishing real multiparty Democracy so as to transfer the state responsibility systematically” and that no one had been sentenced under the provisions of this law. Amnesty International welcomes the fact that no legal action has been taken against anyone under this law, but renews its calls to the SPDC to repeal the law.

⁴² He was also sentenced to seven years' imprisonment under Section 5(e) of the 1950 Emergency Provisions Act; three years' imprisonment under Section 17/1 of the 1908 Unlawful Associations Act; and three years for currency and customs offences.

⁴³ The full title of the law is: Law No 5/96, The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions.

⁴⁴ *TV Myanmar*, Yangon, in Burmese 1330 GMT 7 June 1996, as quoted in British Broadcasting Corporation Summary of World Broadcasts 10 June 1996.

The Computer Science Development Law, SLORC Law No. 10/96

There is very little access to either the Internet or to email services in Myanmar, and very few people have computers, partly because of the expense but also because of strict limitations on their use. Law No 10/96, the Computer Science Development Law, promulgated by the SLORC on 20 September 1996, strictly regulates the use of computers and access to the Internet, which under the provisions of this law are controlled by the Ministry of Communications, Posts and Telegraphs. Chapter IX, Prior Sanction and Licence, of Law No 10/96 states that permission for the importation, possession, and use of any computer must be sought from this Ministry before the acquisition of a computer. The law further states that anyone who wants to set up a computer network must seek prior permission from the Ministry. Under Chapter X, Offences and Penalties, anyone who does not seek prior permission for importation, possession, or use can be sentenced to a term of imprisonment from seven to 15 year's imprisonment. The same penalty applies to anyone who sets up a computer network or "*connects a link inside the computer network*". Anyone who fails to comply with a prohibition from the Ministries of Education or Communications, Posts and Telegraphs can be sentenced to six months' imprisonment.

Computer use is even further restricted by section 34 of Chapter X, which provides for imprisonment of seven to 15 years for anyone, who by using a computer network or any information technology, carries out "*any act which undermines State Security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture*; or who obtains or sends and distributes "*...any information of State secret relevant to State security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture*".

Amnesty International is concerned by that the provisions of this law greatly restrict the right to freedom of expression. Article 19 of the Universal Declaration of Human Rights states: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*" (emphasis added). The organization is further concerned that the vaguely-worded provisions of section 34, Chapter X allow for the imprisonment of real or imputed critics of the SPDC, who have not advocated or committed violence.

Amnesty International is not aware of any people having been charged and sentenced under the provisions of the Computer Science Development Law and sought clarification about anyone who has been imprisoned under this decree. The SPDC provided the following response: "*This law is also aimed to develop our nation and community. [The] Government encourages and upgrades the capability of computer skill starting from primary school to university. Establish the MICT Park open to all classes of our people. The computer using spreads all over our country up to the townships and some ward and village. We need to protect the transnational organized criminal[s] who committed the cyber crime and jeopardized the nation. But up to now we have never taken legal action against anybody under this law.*" Amnesty International welcomes the fact that no legal action has been taken under this law, and acknowledges the need for governments to enact legislation concerning internet use. Nevertheless the organization believes that the Computer Science Development Law No/96 prevents freedom of expression by requiring that everyone seek prior permission from the government to own a computer. Moreover the vaguely-worded provisions of Section 34, Chapter X can be used to criminalize freedom of expression.

Recommendations with regard to laws in force

1. Review all criminal laws relating to freedom of expression and association and reform them so that the laws are clear and specific, and do not breach the internationally recognized right to freedom of expression and association.
2. Review and amend all criminal laws to eliminate the death penalty as a possibility for sentencing, particularly the 1950 Emergency Provisions Act and the laws relating to treason.

VIII. CONDITIONS OF IMPRISONMENT

Amnesty International has noted an improvement in prison conditions in recent years, and hopes that this trend will continue and accelerate. Prison conditions in Myanmar, which have constituted cruel, inhuman, or degrading treatment or punishment, are an ongoing concern to Amnesty International.⁴⁵ These concerns include: beatings as a form of punishment; lack of adequate food, sanitation, and medical care; lack of reading and writing materials for political prisoners; and the practice of holding political prisoners in isolation. Conditions in prisons and labour camps throughout the country have been harsh for both criminal and political prisoners.

However since the International Committee for the Red Cross (ICRC) has been able to visit prisons in Myanmar beginning in 1999, there has been a gradual and notable improvement in the lives of political prisoners. Amnesty International welcomes the ongoing cooperation between the ICRC and the SPDC, and the willingness on the part of the Minister for Home Affairs, and senior officials in the Prisons Department, to make necessary changes. However it is important to note that prison conditions vary considerably from prison to prison in different locations in the country. For example conditions for political prisoners in Myitkyina Prison, Kachin State, and in Myingyan Prison, Mandalay Division, have been very poor, although conditions in Myingyan Prison have reportedly improved.

Amnesty International also welcomes the discussions held during its meeting with the Director General of the Prisons Department and his colleagues on 4 February 2003. The Director General mentioned that under the provisions of the Jail Manual, men and women are held separately, men under 21 years of age are held separately, and convicted prisoners are held separately from pre-trial detainees, in accordance with international standards. Section 8 of the Standard Minimum Rules for the Treatment of Prisoners provides for the separation of categories of prisoners, including the ones listed by the Director General.

However Amnesty International is concerned about the welfare of women and their young children in prisons. In the organization's 7 February 2003 memorandum to the SPDC, a request was made for the immediate release on humanitarian grounds of prisoner of conscience Ma San San Maw, a young NLD member sentenced in January 2003 to two years' imprisonment, and her 18 month child. She had been arrested in September 2002 with her sister, Ma Aye Yi Htay, who also received a two year sentence. They were arrested and sentenced for complaining that they did not receive government-subsidized rice. They were reportedly charged under Article 505 of the Penal Code, which provides for up to two year's imprisonment for causing "fear or alarm" to the public. At this time Amnesty International renews its call for the immediate and unconditional release of Ma San San Maw and her child, and Ma Aye Yi Htay.

Amnesty International is concerned that women and their children held in prisons may not be receiving adequate and specialized care. The Standard Minimum Rules, Rule 23(2) states: "*Where nursing infants are allowed to remain in the institution with their*

⁴⁵ Please see *Myanmar: Conditions in prisons and labour camps*, September 1995, AI Index 16/22/95; and *Myanmar: The Institution of Torture*, December 2000, AI Index ASA 16/24/00.

mothers, provision shall be made for a nursery staffed by qualified persons, where infants shall be placed when they are not in the care of their mothers.”

The Director General said during the 4 February meeting, that the use of trustees, or inmates given the power by the authorities to discipline other inmates, is now forbidden, in accordance with international standards. In the past Amnesty International has been told by former political prisoners of trustees beating fellow-inmates. Section 28 (1) of the Standard Minimum Rules for the Treatment of Prisoners states: “28. (1) *No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.*” Amnesty International welcomes the prisons department’s prohibition on the use of trustees to enforce discipline on other prisoners and hopes that this is enforced in all prisons in Myanmar.

The Amnesty International delegation welcomed the opportunity to have received a guided tour conducted by the Director General of the Prisons Department, of Insein Correctional Facility, where they saw gardens, prisoner workshops, and storerooms. The leader of the delegation was also able to visit the No. (3) New Life Agricultural Production Camp in Nyaungton Township, Ayeyarwaddy Division, in order to observe the conditions there. These prisoners farmed rice and fruit, and also had access to books and other recreational materials. There was also a school for local children and a clinic. In the past Amnesty International has expressed its concerns about conditions for criminal prisoners working in labour camps.⁴⁶

During the 4 February meeting, Amnesty International delegates were given copies of *Ministry of Home Affairs, 9 Guidelines of Senior General Than Shwe*, which are guidelines given by the Senior General in 1997, referring to Rehabilitation Centres such as the one visited by the leader of the Amnesty International delegation. These include *inter alia*: provision of family visits, schools, and medical care, and access to media. Amnesty International was only able to see these guidelines being put into practice at the New Life Camp.

The delegation also received copies of the 11 instructions from Lieutenant General Khin Nyunt, Secretary-1 of the SPDC, under the Ministry of Home Affairs in 1999. These instructions include *inter alia* provision for sanitation, medical care, and adequate space for inmates, all of which are set out in the Standard Minimum Rules for the Treatment of Prisoners. Amnesty International takes note in particular of two instructions, which are quoted here in full: “(5) *To keep up with the effort for the development of the inmates’ mental and social factors*” and “(11) *To adopt certain internationally acceptable and modern practice of prison administration.*” Instruction (5) is in agreement with Contact with the outside world, Sections 37 – 39 of the Standard Minimum Rules, concerning communications with family and access to media. It also is covered under Books, Section 40 of the Standard Minimum Rules, concerning the establishment of a prison library.

Amnesty International welcomes the SPDC’s statement in its 19 March 2003 letter to the organization that political prisoners now have access to reading materials and opportunities for socialization. The organization publicly acknowledged this positive development in a press release dated 1 April, which was sent to the SPDC. However Amnesty International remains concerned that the instructions about reading materials and socialization from Senior General Than Shwe and General Khin Nyunt may not have not

⁴⁶ *Myanmar: Conditions in prisons and labour camps*, September 1995, AI Index 16/22/95.

been fully implemented throughout the prison system and labour camps. It calls on the Prisons Department to ensure that these regulations are uniformly enforced in all places of detention and imprisonment, for all categories of prisoners. Amnesty International also calls on the Prisons Department to ensure that prisoners have access to writing materials and to other reading materials besides religious texts and domestic newspapers.

In the response which Amnesty International received on 9 July 2003, the SPDC stated: *“The full implementation of instructions on Reading Materials and Socialization from Senior General Than Shwe and Secretary (1) General Khin Nyunt have been progressing gradually and is planned to cover throughout the prison system and labour camps in the near future.”* Amnesty International welcomes this statement, but is concerned that many people arrested since the events of 30 May, including Daw Aung San Suu Kyi, are being held in isolation, in spite of the directives from Senior General Than Shwe and Secretary-1, General Khin Nyunt.

During Amnesty International’s 4 February meeting with the Director General of the Prisons Department, the Medical Officer explained that all inmates have equal access to medical care, and that those prisoners who could not afford to pay for medication would receive them free. Sections 22 through 26 of the Standard Minimum Rules outline in detail medical services to be provided to all prisoners. Amnesty International welcomes the efforts made by the Insein Prison medical staff with regard to the health of the inmates there. The organization again takes note of ongoing cooperation with the ICRC on this issue. However it remains concerned that in some cases prisoners who are ill are not receiving adequate medical care, and that there are undue delays before a seriously ill prisoner is seen by a physician. Amnesty International is further concerned that prisoners may not be routinely provided with mosquito nets, which in many areas of the country makes them at risk of contracting malaria and other serious insect-borne diseases.

Amnesty International is also concerned about a number of political prisoners who are in poor health and whose releases on humanitarian grounds it continues to call for. All of these prisoners suffer from chronic and in some cases multiple health problems and should be at home with their families. Appendix III of this memorandum is an updated list of these prisoners, whose releases Amnesty International is still seeking.

Although in most cases political prisoners are permitted family visits every two weeks, these visits are not conducted in privacy. Military Intelligence personnel normally listen to conversations between prisoners and their families, and take notes during the visits.

A number of political prisoners are being held in correctional facilities which are located extremely far from their families’ homes. Prisoners from Yangon Division for example, are being held in Myitkyina Prison in the far north, Myingyan Prison in Upper Myanmar, and in Khamti Prison, Sagaing Division. Political prisoners in Myanmar are dependent upon their families to supplement their diet and to bring them necessary medicines. If their families are only able to visit infrequently, in some cases only once or twice per year, this presents a hardship for both the prisoners and their relatives. Amnesty International recognizes that the ICRC is in many cases able to provide for the transportation costs of family visits, but nevertheless believes that in normal circumstances political prisoners should be held in prisons near their families. Principle 20 of the Body of Principles states: *“If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.”*

Amnesty International is seeking information about whether there is judicial oversight of detention facilities in Myanmar. Section 25, Chapter VIII of the Judiciary Law, 2000 appears to provide for some judicial oversight of detention facilities. All levels of judges except for those at the township level “...*may, if necessary, inspect prisons, yebet [labour] camps, and police lock-ups for enabling convicted persons and those under detention to enjoy rights to which they are entitled to in accordance with the law and relating to the proceedings and for preventing undue delay in the trial of cases.*” Amnesty International welcomes in principle these provisions, allowing for the judicial oversight of all places of detention. However it has no information about whether judges do regularly visit places of detention, and whether they are able to visit all areas of all facilities at any time without prior notice.

For visits to places of detention to be an effective method of preventing torture, visits should be carried out by experts with appropriate training and experience in assessing conditions and practices which facilitate the use of torture and ill-treatment: it is not clear whether or not the judges carrying out these visits have been trained and are qualified to do so. Also, in order for the visits to lead to an accurate picture of conditions, the following requirements must be satisfied.

1. There should be access to all places of detention, and access to all premises in which detainees may be held, to avoid evidence of torture and ill-treatment being hidden in inaccessible areas;
2. It must be permitted for the visiting judges to interview detainees personally, without witnesses, so that they are not intimidated by the presence of prison staff, and can speak freely;
3. There should be complete liberty to select the places they wish to visit;
4. The duration and frequency of visits shall not be restricted, so that visits can lead to a full picture of conditions.
5. In order for visits to places of detention to lead to practical improvements, the judges must be able to report to the government on their findings, and make recommendations for change, which are taken seriously by the authorities and acted upon.

It is not clear whether or not these pre-requisites for effective prevention of torture through visits to places of detention are being fulfilled. Amnesty International would welcome further information about the practice of the judges undertaking this work.

Finally with regard to the administration of the prison system, Amnesty International seeks a point of clarification with regard to the role of Military Intelligence (MI) personnel. It is the organization’s understanding that the prison system is administered by the Prisons Department, under the control of the Ministry of Home Affairs. However MI personnel, dressed in prison guard uniforms, also work in those prisons where political prisoners are held. It appears that they are responsible for political prisoners, although it is not known if they report to the Prison Director or to their MI superiors. Amnesty International would be grateful therefore, to learn what the chain of command is for MI personnel working in prisons, and under what jurisdiction they fall.

Recommendations with regard to conditions of imprisonment

1. Ensure that all prisoners in every prison, labour camp, and other detention facilities in Myanmar have opportunities for socialization with one another; and that all prisoners have access to reading materials of their choice, and writing materials.
2. Ensure that all prisoners in every prison and detention facility in Myanmar receive proper medical care on a timely basis; and that all prisoners are issued with mosquito nets.
3. Ensure that all women and their children held together in prisons receive adequate and specialized medical and nutritional care. The detention of children should be avoided whenever possible. Article 37 (b) of the Convention on the Rights of the Child, to which Myanmar is a State Party, states that imprisonment of children “*shall be used only as a measure of last resort*”.
4. Allow political prisoners to stay in prisons which are close to their families so their families can visit them on a regular basis and provide them with necessary food and medicine.

IX. INVESTIGATION OF HUMAN RIGHTS VIOLATIONS

Amnesty International has expressed its concerns on a regular basis for many years on the use of forced labour of civilians by the military.⁴⁷ In 1988, the organization began to document cases of forced portering of ethnic minority civilians by the Myanmar army in the context of its counter-insurgency campaigns.⁴⁸ Many other organizations, including the International Labour Organization, have condemned this practice. However, despite these concerns, the practice continues with impunity in many parts of Myanmar. Failure to investigate violations such as forced labour, promptly, effectively, independently and impartially, and to prosecute those responsible, encourages further violations, and is a breach of the general obligation under international human rights law to provide victims of human rights violations with an adequate remedy.

The International Labour Organization (ILO)

The Myanmar Government acceded to ILO Convention No. 29 on forced labour in 1955. For many years the ILO has been raising its concerns with the Myanmar Government about this practice. An ILO Commission of Inquiry published a report on Myanmar in July 1998 and in 2001 an ILO High Level Team also published a report on forced labour after an extensive visit to the country.

The Ministry of Home Affairs issued Order No 1/99⁴⁹ on 14 May 1999 and the Order Supplementing Order No 1/99 on 27 October 2000. These two directives abolished the use of compulsory labour except for in an emergency, and in that case stipulated *inter alia* that such labour must be paid at local rates, and that it be of “*direct benefit to the community*”. Clause 5 of the latter directive stated that “*any person including local authorities, members of the Armed Forces, members of the Police Force and other public service personnel shall have action taken against him under Section 374 of the Penal Code or any other existing law.*” Article 374 of the Penal Code provides for punishments of anyone who is guilty of using unlawful compulsory labour of up to one year, or a fine, or both.

Amnesty International welcomed the Memorandum of Understanding agreed between the SPDC and the ILO in March 2002 which provided for the establishment of an ILO Liaison Office in Yangon. A permanent ILO Liaison Officer was appointed in October 2002. The mandate of the ILO Liaison Officer is to provide technical assistance to the SPDC in the eradication of forced labour of civilians by the military or anyone else. This would include drawing up a Plan of Action. The ILO has stated that the establishment of a credible

⁴⁷ The first major Amnesty International report which addressed forced labour was *Burma: Extrajudicial Executions and Torture of Members of Ethnic Minorities*, May 1988, AI Index ASA 16/05/88 and the most recent report was *Myanmar: Lack of Security in Counter-insurgency Areas*, 17 July 2002, AI Index ASA 16/007/02).

⁴⁸ *Burma: Extrajudicial Execution and Torture of Members of Ethnic Minorities*, May 1988, AI Index ASA 16/05/88).

⁴⁹ The full title is Order Directing Not to Exercise [sic] Powers Under Certain Provisions of The Towns Act, 1907 and the Village Act, 1907. The latter Acts issued under British colonial rule allowed for the local authorities to collect porters and messengers under certain circumstances.

mechanism by the SPDC to investigate reports of forced labour should be a part of a plan of action.

During its visit to Myanmar, Amnesty International met with His Excellency U Tin Winn, the Minister of Labour, on 7 February, when he discussed the translation into ethnic minority languages and the dissemination of Order No 1/99 and Order Supplementing Order No 1/99 to the general populace. He also explained that under Section 374 of the Penal Code civilians can bring cases of forced labour to the police or authorities involved. He stated that under the Attorney General Law of 2001 civilians had the right to complain to the authorities. He reported that the SPDC had taken action against local township authorities, and that his office would send some examples to Amnesty International of people who were brought to justice under Section 374.

In May 2003 Amnesty International received a letter dated 12 May from the Myanmar Embassy in London, which forwarded a 3 April 2003 letter from the Director General of the Department of Labour in Myanmar. Attached to this letter were two cases of service personnel who were brought to trial and “*given appropriate sentences*” for the “*exaction of forced labour*”. The first case involved a Sub-Inspector of Police from Mogok Police Station, Mandalay Division, who had taken some people he had arrested to perform forced labour at his home on 11 January 2001. The authorities investigated this case and discharged the Sub-Inspector from the Police Force and sentenced him to two years’ imprisonment. The second case involved a Sergeant from the 31st Infantry Regiment in Thanbyuzayat township, Mon State, who forced two villagers to serve as porters and “*was summarily tried and severely reprimanded*” on 14 March 2001. Bringing to justice those who have been found responsible for forced labour sends a clear signal to all members of the armed forces and the Police Force that such practices are not acceptable.

On 15 May 2003 the Director General of the ILO announced that the SPDC and the ILO had agreed a “*Formal Understanding on the Facilitator to assist possible victims in Myanmar to seek remedies available under the relevant legislation and as provided under the Forced Labour Convention No. 29 (1930) and the reaffirmation of your government’s commitment to eradicating forced labour, expressed in this Formal Understanding*”. The Director General went on to state that: “*It is now of utmost importance that the Plan of Action...is finalised promptly. As you will recall, the (ILO) Governing Body stressed the importance of concluding this before the International Labour Conference, which starts in Geneva in the beginning of June.*”⁵⁰

Before the International Labour Council (ILC) annual meeting took place during June 2003, the SPDC and the ILO agreed a Plan of Action, which included the mandate for a Facilitator to receive complaints about forced labour; conduct an initial assessment; and seek a solution. However given the USDA attack on the NLD on 30 May and subsequent mass arrests of political activists, Amnesty International is concerned that the ability of the Facilitator to carry out his mandate is severely impaired by the climate of fear in Myanmar. Plans to eradicate forced labour cannot progress until civilians can come forward to make complaints without fear of reprisal by the military.

⁵⁰ ILO London eNews, - Thursday 15 May 2003, *ILO and Myanmar agree on Facilitator to help end forced labour.*”

In the response received by Amnesty International, the SPDC stated that “[The] *Union of Myanmar has agreed to prepare a ‘Plan of Action’ in cooperation with the ILO. [The] ILO has postponed to sign the instrument after agreement. There is a clause providing the right to file individual complaint in this ‘Plan of Action’.*” As stated above, Amnesty International is concerned that given the recent attack on the NLD and the arrests of scores of NLD supporters, those who have been subjected to forced labour or to other human rights violations would risk reprisals at the hands of the authorities.

Other concerns about impunity

Amnesty International is gravely concerned by the serious deterioration in the human rights situation beginning in May 2003. This crackdown by the SPDC has had an extremely negative impact on any attempts to bring peaceful change and reform to the country. Since the 30 May attacks, Amnesty International has repeatedly expressed its fears for the safety of NLD leaders and others, and urged the SPDC to allow an independent, impartial, effective, and prompt investigation into these events. Those found responsible for the violence, including members of the security forces and USDA members, must be brought to justice for their crimes. Until justice prevails, security forces and paramilitary groups will commit serious human rights violations with complete impunity. Ordinary Myanmar citizens will continue to live in a climate of fear and insecurity, and will have no redress for human rights violations committed against them.

At this time Amnesty International is also seeking information about whether investigations have taken place about reports of torture and ill-treatment by Military Intelligence personnel, both during initial interrogation of prisoners and after sentencing. As noted above, the organization remains concerned that MI personnel continue to hold detainees in incommunicado detention, deprive them of sleep, and interrogate them for hours, even days at a time. These practices constitute cruel, inhuman, or degrading treatment and should be promptly, impartially, independently, and effectively investigated. The organization is further alarmed by recent credible reports of prolonged interrogation under duress of those held in incommunicado detention after the 30 May events by MI personnel.

During Amnesty International’s 4 February 2003 meeting with the Director General of the Prisons Department, he stated that any prison staff found to have ill-treated an inmate would be punished. The organization welcomes this assurance, and would like further information about what procedures are used for disciplining a prison guard, and under what provision of Myanmar law this falls.

Amnesty International takes note of the provisions in the People’s Police Force Maintenance of Discipline Law, No 95, and in the publication *Myanmar Police Force*, both of which prohibit ill-treatment by police officers; the former also provides for punishment of those found responsible for such practices. During Amnesty International’s 5 February meeting with the Deputy Director General of the Police Force, he said that in addition to these directives and laws applying only to the police force, the police can be prosecuted under the Myanmar Penal Code. He also stated that victims of abuses by the police can file a complaint with the local Peace and Development Council. Amnesty International welcomes these assurances, and would be interested to receive case material about police officers who were brought to justice under the provisions of these laws.

Recommendations with regard to impunity

1. Provide a comprehensive list of all those who were arrested, killed or injured in the 30 May violent attack, and immediately clarify the whereabouts of all those who are reported missing.
2. Allow an independent, impartial, effective and immediate investigation into the 30 May violence and bring those found responsible to justice.
3. Ensure that the Plan of Action agreed by the ILO and the SPDC can be credibly implemented, which can only occur when the SPDC takes steps to protect all Myanmar citizens from fear of reprisal, including those who have been subjected to forced labour by the military.
4. Ensure that all reports of human rights violations are investigated promptly, effectively, impartially, and independently; and bring those found responsible to justice.
5. Publicly condemn human rights violations, including forced labour; torture; and cruel, inhuman or degrading treatment.

IX. CONCLUSIONS AND GENERAL RECOMMENDATIONS

Amnesty International again reiterates its grave concern to the SPDC about the significant decline in the human rights situation in Myanmar since 30 May 2003. The violent attacks on that day, which resulted in the deaths and injuries of an unknown number of people; the subsequent crackdown on the NLD; and the arrests of scores of political activists, have strengthened the culture of impunity in Myanmar. No progress can be made on the protection of human rights in Myanmar until the SPDC holds accountable those found responsible for the 30 May events and its aftermath.

In this report, Amnesty International has outlined its major concerns about the administration of justice in Myanmar with regard to human rights. The organization believes that the State Peace and Development Council should conduct a comprehensive review of all laws and procedures in order to bring them into conformity with human rights law and standards.

Amnesty International further recommends that the SPDC accede to the following international human rights laws: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol; the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention Relating to the Status of Refugees and its Protocol; the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography; the ILO Convention concerning the Prohibition and Immediate Action for the

Elimination of the Worst Forms of Child Labour (Convention No. 182) of 1999; the Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; and the Additional Protocols of 1977 to the Geneva Conventions of 12 August 1949.

APPENDIX I

PERSONS OF CONCERN TO AMNESTY INTERNATIONAL

- a) Reportedly Detained on 30 May 2003
- b) "Disappeared" after 30 May 2003
- c) Persons reportedly killed on 30 May 2003
- d) Under house arrest, whom the State Peace and Development Council (SPDC) has stated are being requested to stay at home.
- e) Detained after 30 May 2003
- f) Persons about whom SPDC has provided further information
 - i) Four persons named on list of 20 June 2003 about whom the SPDC has not clarified present whereabouts
 - ii) 13 persons raised by Amnesty International, whom the SPDC states are not in detention or hospitalized and names/addresses "incorrect"
 - iii) Seven persons whom the SPDC has stated have returned home or to Mandalay
 - iv) Persons reportedly detained after 30 May, whom the SPDC has stated were not detained

** By a name indicates that there have been unconfirmed reports that the person in question was injured during the attack.

Amnesty International calls on the State Peace and Development Council to provide full information about those listed below and all persons known to the SPDC to be missing, detained, and killed, and to release those detained on account of their peaceful expression to the right of freedom of expression, association and assembly.

a) DETAINED AFTER 30 MAY 2003

(those whom the SPDC has stated are "*in temporary custody*" appear in bold capitals)

1. **AUNG KYAW MYINT, AKA AUNG KYAW KYAW OO, AGED 32, NLD YOUTH MEMBER MANDALAY SOUTHEAST**
2. **AUNG SAN SUU KYI (DAW) (F), AGED 58, NLD GENERAL SECRETARY**
3. **Aung San**, NLD Chair, Butalin, Mandalay Division
4. **AUNG SOE, NLD DIVISIONAL ORGANIZATIONAL COMMITTEE CHAIR, MANDALAY DIVISION (SPDC HAS STATED THAT HE WAS "UNHURT")**
5. **Aung Thu Win**, student, Monywa **
6. **Aung Zaw Lay**, NLD member, Amarapura, Mandalay Division**
7. **Bo Maung (U)**, aged 55, NLD MP elect, Tabayin 1 Sagaing Division, former lawyer
8. **Bo Nyunt**, NLD Butalin **
9. **HLA MYINT (DR.), NLD MEMBER, AMARAPURA TOWNSHIP**
10. **HLA OO, NLD MEMBER, MANDALAY NORTHEAST, JOINT NLD YOUTH OFFICER FOR UPPER MYANMAR**
11. **Htwe (U)**, Mandalay Northwest township **
12. **KYAW SOE LIN, AGED 25, NLD YOUTH MEMBER MANDALAY, 2ND YEAR LAW STUDENT, DRIVER FOR DAW AUNG SAN SUU KYI**
13. **Kyaw Zin Lin**, NLD Youth headquarters, Yangon, bodyguard
14. **Min Aung**, Chaung –U, Sagaing Division **
15. **MIN LWIN, AGED 34, NLD YOUTH TOWNSHIP CHAIR, MANDALAY SOUTHWEST OR NLD YOUTH MEMBER, YANGON (NOT CLEAR WHICH OF TWO MIN LWINS DETENTION WAS ACKNOWLEDGED BY SPDC)**
16. **MOE ZAW, AKA PHO THAW, AGED 32, NLD YOUTH MEMBER, SANCHAUNG, YANGON**
17. **MYINT KYAW, AGED 37, NLD YOUTH MEMBER, TAMWE TOWNSHIP, YANGON**
18. **MYINT KYI (U), AGED 52, NLD MP ELECT, KATHA, SAGAING DIVISION, ZOOLOGY GRADUATE ****
19. **MYINT NGWE, AGED 38, NLD YOUTH MEMBER, YENANCHAUNG, MAGWAY DIVISION**

20. Myo Kyaw Thu, Mandalay Southwest
21. MYO MIN, AGED 31, NLD YOUTH MEMBER, MANDALAY NORTHEAST TOWNSHIP
22. MYO NYUNT, AGED 37, NLD TOWNSHIP SECRETARY, AHLONE, YANGON
23. MYO ZAW AUNG, AGED 23, 3RD YEAR MEDICAL STUDENT, NLD SECURITY, MOGAUNG, KACHIN STATE
24. Naing Naing Aung, NLD Secretary, Kyaukse, Mandalay Division
25. Naw Ohn Hla (f),
26. NE WIN (U), SECRETARY NLD STATE ORGANIZATIONAL COMMITTEE, KACHIN STATE, VICE CHAIRMAN MYITKYINA NLD
27. Nyan Nain Da, Reverend, monk, Yankin monastery, Monywa, Sagaing Division **
28. PA PA (U), AGED 71, NLD VICE CHAIR, SAGAING DIVISION, MP MYINMYU 1, SAGAING DIVISION, FORMER CIVIL SERVANT
29. PAW KHIN, AGED 56, NLD MP-ELECT, MYINGYAN 1, MANDALAY DIVISION, NLD DIVISIONAL ORGANIZER BUSINESSMAN (SPDC HAS STATED THAT HE WAS "UNHURT")
30. Pone Pone (f), from Indaw, Sagaing Division
31. SAW HLAING (U), AGED 47, NLD MP INDRAW, SAGAING DIVISION, LAWYER **
32. Soe Moe Kyaw, Tabayin, Sagaing Division
33. Tauk Tun Oo, NLD Dipeyin **
34. Than Aung, (U), **
35. THAN HTUN, AGED 47, NLD ORGANIZATIONAL COMMITTEE MEMBER, MANDALAY SOUTHEAST
36. Than Myat Soe, Sagaing Division
37. THAN TUN, NLD MEMBER, KAMARYUT TOWNSHIP, YANGON
38. Than Win (U), NLD Mandalay Northwest**
39. Thein Aung, Mandalay Northwest
40. Thein Aye
41. THEIN OO, (U) NLD HEADQUARTERS OFFICER IN CHARGE
42. Thet Tun Oo, (Ko), NLD Youth member Lewe township, Mandalay Division
43. Thet Tun, aka Kalar, aged 30, NLD Youth headquarters
44. THET ZAW, AKA THET TUN, AGED 30, NLD YOUTH DEPUTY CHAIRMAN YANGON
45. THURA, AKA THIHA, AGED 29, NLD YOUTH MEMBER, MANDALAY SOUTHEAST TOWNSHIP
46. TIN AUNG AUNG, AGED 59, NLD MP-ELECT, MANDALAY DIVISION NORTHWEST 1, NLD DIVISIONAL ORGANIZER, ENGINEER**
47. TIN HTUT OO, AGED 40, NLD MP-ELECT, LEWE 1, MANDALAY DIVISION PHYSICS GRADUATE, BUSINESSMAN (SPDC HAS STATED THAT HE WAS "UNHURT")
48. TIN OO (U), AGED 75, NLD DEPUTY CHAIRMAN (SPDC HAS STATED THAT HE WAS "UNHURT")
49. TOE LWIN, AGED 32, NLD YOUTH MEMBER BAHAN TOWNSHIP, YANGON,
50. Tun Myaing (U) NLD joint secretary Sagaing Division , NLD MP elect, Wetlet 1 Sagaing Division
51. TUN MYINT, AGED 36, NLD TOWNSHIP SECRETARY, BAHAN TOWNSHIP, YANGON
52. TUN ZAW ZAW, AGED 38, NLD YOUTH CHAIRMAN
53. U Kywe, Mandalay NW
54. WIN AUNG (DR.), NLD MEMBER, AMARAPURA TOWNSHIP, MANDALAY DIVISION
55. Win Ko (U), NLD member, Mandalay Northeast**
56. Yan Naing Win, 2nd year student, Monywa **
57. Ye Ye
58. Zaw Aung, NLD Youth Mandalay
59. Zaw Khin, aka Zaw Lay, NLD Amarapura, Mandalay Division **
60. Zaw Tun, Saipingyi township, Sagaing Division
61. ZAW WIN TUN, AGED 27, NLD YOUTH MEMBER, MANDALAY SOUTHWEST
62. Zawtika (U), monk, Sagaing Division **
63. Zin Aung Lin (Ko), Monywa Division
64. Zin Zin Latt, NLD member, Mandalay Division**

b) “DISAPPEARED” AFTER 30 MAY 2003

1. **Aung Aung**, Democratic Party for a New Society
2. **Aung Aung Latt (f)**, Mandalay Northeast township
3. **Aung Kyaw Soe**, Mandalay Northeast township
4. **Aung Kyaw Tun ****
5. **Aye Win**, Htundon new township
6. **Chit Yin**, Mandalay Southeast township
7. **Cho (U)**, NLD office owner, Myitkyina
8. **En-Din La Seng**, Daning township, Kachin State
9. **Hla Than (U)**, NLD Mandalay Northwest township
10. **Khin Aung Htwe**, NLD member Mandalay Northeast township
11. **Khin Maung Thaung**, Mandalay Southwest township
12. **Ko Lay**, NLD Mandalay Northeast township
13. **Kyaw Aye (U)**, driver, Sagaing Division
14. **Kyaw Htaik**, Mandalay Northeast township
15. **Kyaw Kyaw**, Mandalay Northwest township
16. **Kyaw Myo Oo**, Mandalay Northeast township
17. **Kyaw Soe**, Mandalay Northwest township
18. **Kyaw Than**, Mandalay Northeast township
19. **Kyaw Zwa Win**, Mandalay Northwest township
20. **Lin Htut Soe**, Mandalay Northeast township, Mandalay Division
21. **Maung Zaw**, NLD Htundon new township
22. **Min Oo**, Mandalay Northwest township
23. **Min Thein**, Mandalay Southwest township
24. **Myint Htay**, NLD Youth Hlaingthaya township, Yangon
25. **Myint Oo**, Mandalay Southeast
26. **Myo Oo**, NLD Mandalay Northwest township
27. **Naing Naing**, Democratic Party for a New Society
28. **Nay Myo Lin**, Mandalay Northwest township
29. **Ngwe Kyaing (f)**, wife of NLD office owner
30. **San Lwin**, Mandalay Northeast
31. **Saw Aung (U)**, aged 68, NLD MP elect, Monywa 2, Sagaing Division, former teacher and high court advocate
32. **Soe Soe**, Mandalay, Htundon new township
33. **Than Saung (U)**, NLD member **
34. **Than Win (Ko)**, Mandalay Northeast **
35. **Than Tun Oo**, NLD Mandalay Northwest
36. **Than Win (Daw) (f)**, NLD Monywa, Mandalay Division
37. **Than Zaw Win (U)**, NLD Sagaing Division
38. **Thanda Soe (Ma) (f)**, NLD member Mandalay Northwest (sister of Kyaw Soe Lin)
39. **Thein Aung Lay**, Mandalay Northwest
40. **Tin Maung Aye**, NLD Mandalay Northwest township **
41. **Tin Myint (U)**, NLD Mandalay Southwest
42. **Toe (f)**, Mandalay Southwest township
43. **Toe (U)**, Mandalay Southwest township
44. **Tun Tun**, NLD Mandalay Northwest township
45. **Tun Tun Win**, Mandalay Northeast
46. **Win Myint Oo**, Mandalay Southeast township
47. **Win Phyu Ei**, f, Mandalay Northeast township
48. **Wunna (f)**, Mandalay Southwest
49. **Wunna Aung**, Mandalay Southwest
50. **Yan Naung Soe**, Mandalay Northeast
51. **Ye Min San**, Htundone new township
52. **Yi Yi Linn (f)**, Mandalay Northeast**
53. **Zaw Zaw Aung**, Mandalay Southwest

c) **REPORTED TO HAVE DIED ON 30 MAY 2003.**

Names in bold and capital letters have been confirmed to have died by the SPDC.

1. **MIN ZAW OO, STUDENT, MONywa,**
2. **Myint Oo (U)**, Mandalay Southeast,
3. **MYINT SOE, NLD ORGANIZER, MANDALAY SOUTHWEST**
4. **PYIN NYA THIRI (U), BUDDHIST MONK**
5. **Ragu**, aka **San Myint**
6. **Thein Soe**, NLD member, Thingangyun, Yangon
7. **Thein Toe Aye**, NLD member, Mandalay Southwest
8. **TIN MAUNG OO, NLD MANDALAY DIVISION PHOTOGRAPHER, MANDALAY SOUTHWEST TOWNSHIP ORGANIZER DIED**
9. **Toe Toe Lwin (f)**, NLD Youth, Bahan township, Yangon
10. **Win Thiha Maung**

d) **UNDER HOUSE ARREST**

The SPDC have stated that these persons are “*being requested to stay at home peacefully*”

1. **Aung Shwe (U)** NLD Chairman, aged 85, NLD MP elect Mayangone 1, Yangon Division
2. **Hla Pe (U)**, aged 76, NLD MP elect, Mawlamyine Gyun, Ayeyarwaddy, NLD CEC member
3. **Kyi Maung (U)**, aged 82, NLD MP elect Bahan 2, Yangon Division former NLD Chairman
4. **Lun Tin (U)**, aged 82, NLD Central Executive Committee member, NLD MP elect, Mawlamyine 1, Mon State
5. **Lwin (U)**, NLD treasurer, aged 79, NLD MP-elect, Thongwa, Yangon Division
6. **Nyunt Wei (U)**, aged 77, NLD Central Executive Committee member, NLD MP-elect Taungoo, Bago Division
7. **Soe Myint (U)**, aged 80, NLD Central Executive Committee member, NLD MP-elect, South Okkalappa, Yangon Division
8. **Than Tun (U)**, aged 82, NLD Central Executive Committee member, NLD MP elect, Taungtha 2, Mandalay Division

e) **DETAINED AFTER 30 MAY 2003**

(Names in bold and small capitals are those stated by the SPDC to be in “*temporary custody for their security while still under interrogation*”)

1. **Aung Phan (U)**, NLD secretary Matupi township, Chin State
2. **Aung Than**, Kawthaung, Tanintharyi Division
3. **Aye Win**, NLD Patheingyi township Ayeyarwaddy Division, reportedly sentenced to four years' imprisonment
4. **BO ZAN (U), AGED 65. NLD MP ELECT, KYAUKPADAUNG 1 TOWNSHIP, MANDALAY DIVISION, FORMER BUSINESSMAN**
5. **Hla Shwe, (U)** Singu township, Mandalay Division, reportedly sentenced to two years' imprisonment
6. **Hnout Khan Hmwe (U)**, also known as Mr. Moustache, Kawthaung, Tanintharyi division
7. **Htaung Moe (Ko)**, NLD member Matupi township, Chin State
8. **Kan Htun (U)**, divisional secretary, Mandalay Division
9. **KO (U), NLD TOWNSHIP CHAIR, MOGAUK TOWNSHIP, MANDALAY DIVISION**
10. **Ko Gyi (U)**, NLD Mandalay Division treasurer (father of Kyaw Soe Lin)
11. **Ko Ko Lwin**, NLD Youth Monywa, reportedly sentenced to six years' imprisonment
12. **Kyaw Din (U)**, NLD Township Vice chair, Mogauk township, Mandalay Division
13. **KYAW HTIN OR DIN(U), NLD MEMBER, MOGAUK, MANDALAY DIVISION**
14. **Kyaw Kyaw Lwin**, Kawthaung, Tanintharyi division
15. **Kyaw Kyaw**, NLD
16. **Kyaw Tint (Ko)**, Thayawaddy

17. **Kyi Nyo** (Ko), Tabayin,
18. **La Seng** (U), NLD organizational committee chairman, Kachin state
19. **Mae Hnin Kyi** (Daw) (f), aged 55, NLD MP elect, Mogauk 1, Mandalay Division, botany graduate
20. **Mann Pa Htan**, NLD Youth Chairman, Matupil township, Chin State
21. **MARAM BAUKLAH (U), NLD MEMBER, MYITKYINA TOWNSHIP, KACHIN STATE, LAWYER**
22. **MARIT HLA SAING (U), NLD ORGANIZATIONAL COMMITTEE CHAIRMAN, KACHIN STATE**
23. **Maung Maung Latt** (U), aka Dr. Hlaing Ni, aged 52, NLD MP elect Tharketa, Yangon Division, medical doctor
24. **Maung Maung Lay**, NLD Youth, student, Kyimindine, Yangon
25. **Min Min Zaw**
26. **Myint Htay**, NLD-Youth, Tamwe Yangon Division
27. **Myint Sein** (Ko)
28. **Myo Aung**, Khin U, Shwebo, student union member, reportedly sentenced to three years' for possessing foreign currency
29. **Myo Khin** (Ko) NLD member, Yankin township, Yangon
30. **Myo Thant** (U), former NLD Divisional organizational committee member, Mandalay Division
31. **NAING ZAW WIN (U, JOINT SECRETARY NLD ORGANIZATIONAL COMMITTEE, KACHIN STATE**
32. **Nyo, U**, NLD deputy chairman, Madaya, Mandalay Division, reportedly sentenced to three years and three months imprisonment,
33. **Salai Pa Thang**, aged 32, Matupi, Chin State
34. **San (U)**, Singu township, Mandalay Division, reportedly sentenced to two years' imprisonment
35. **SAN LIN (U), NLD TOWNSHIP CHAIR MOGAUK TOWNSHIP, MANDALAY DIVISION**
36. **San Oo Maung** (U), brother of Sein Tun, NLD joint chair, Singu, Mandalay Division, reportedly sentenced to two years' imprisonment
37. **Saw Htay (U)**, aged 69, NLD MP elect, Singu, Mandalay Division, deputy chairman NLD Mandalay division, former teacher
38. **Saw Tun**, lawyer, Monywa division, reportedly sentenced to two years
39. **Sein Tun** (U), NLD township organizational committee chairman, Singu, Mandalay Division, reportedly sentenced to two years' imprisonment
40. **Than Tun**, Kawthaung township, Tanintharyi division
41. **Thaung Naing** (U), NLD organizational committee secretary, Madaya Mandalay Division
42. **Thein Myint** (Ko), NLD Youth member, Yenanchaung, Magway Division
43. **THEIN OO, (KO) NLD HEADQUARTERS OFFICE STAFF**
44. **Thein Soe** (Ko)
45. **Thein Tun**, student, Monywa, reportedly sentenced to ten years' imprisonment.
46. **Thet Naing, (U)**, Singu township, Mandalay Division, reportedly sentenced to two years' imprisonment
47. **Thet Zaw**, aka Thet Tun, NLD Youth headquarters deputy
48. **Thet Zaw**, sports magazine ("First Eleven) editor
49. **Tin Myint (U)** NLD township executive committee, Khin U, Sagaing Division. Reportedly sentenced to two years' imprisonment for possessing political documents
50. **Tin Tin Nyo** (Ma) (f), NLD member Dallah township
51. **Tin Tin Oo**, NLD member Dallah township, Yangon
52. **Wimala (U)**, abbot of Myauk-kyaung,
53. **Win Naing**, Kawthaung, Tanintharyi division

f) OTHER INFORMATION PROVIDED BY SPDC ABOUT DETAINEES WHOSE CASES WERE RAISED BY AMNESTY INTERNATIONAL

i) Reportedly detained after 30 May. The SPDC has not clarified whether still detained, and has stated that the first four have received hospital treatment for injuries.

1. **Aung Ko**, NLD member, Mandalay Northwest **
2. **Chit Tin**, NLD township committee organizer Mandalay South East **

3. **Win Mya Mya (Daw) (f)**, NLD divisional organizer, Mandalay**
4. **Ye Myint Aung**, NLD member, Mandalay Northeast division**

ii) The SPDC has stated that the following, who were missing after May 30, are “*neither injured, hospitalized, nor are in custody*”, that their names/addresses are incorrect, and have not clarified current whereabouts.

1. **Andastiya (U)**, Buddhist monk, Kayah state
2. **Aung Khin (U)**, NLD member Mandalay
3. **Htut Soe**, NLD Youth member, Yangon division**
4. **Khin Maung Oo**, NLD photographer, Mandalay NW**
5. **Ko Myo**, NLD Yankin township member, Yangon
6. **Kyi Kyi Myint (f)**, NLD member Mandalay**
7. **Kyaw Tin Win**, NLD Youth member, Dawbon, Yangon Division
8. **Maung Zaw Khin**, NLD member Amarapura township, Mandalay division (son of Dr. Hla Myint)
9. **Min Lwin**, aged 35, NLD Youth member, Yangon or NLD Youth member Mandalay Southwest (not clear which Min Lwin they commented on)
10. **Myint Wai**, NLD member Yenanchaung, Magway Division
11. **Soe Win**, driver
12. **Thein Tun**, NLD Youth member, student Yankin township, Yangon Division
13. **Zaw Lin**, NLD member, Amarapura township, Mandalay division**

iii) Persons the SPDC has reported to have returned home or to Mandalay

1. **Aung Htoo**, NLD township organizer, Bohtataung Yangon Division
2. **Daw Nyunt Nyunt (f)**, NLD member Mandalay Northwest**
3. **Dr. Hla Soe Nyunt**, NLD member Mandalay
4. **Khin Aye Myint (f) ****
5. **Khin Oo**, NLD Youth member Mayangone township, Yangon Division
6. **Myo Naing**, NLD Divisional organizer, Mandalay Division
7. **Thein Soe**, NLD photographer, Thingangyun, NLD Youth headquarters **

iv) Persons reportedly detained after 30 May 2003, whom the SPDC has stated were not detained

1. **Aye Win (U)**, NLD member, Mogauk, Mandalay Division
2. **Hla Maung (U)**, aged 68, MP elect (formerly Patriotic Old Comrades League, then independent), Kyar in Seiikyit township, Kayin State, member of the Committee Representing the People's Parliament (CRPP).
3. **Kyaw Thaug (U)**, NLD divisional organizational committee secretary, Sagaing Division
4. **Myo Chit (U)**, NLD township secretary Yankin township, Yangon
5. **Thar Lin (U)** NLD member, Mogauk, Mandalay Division
6. **Tun Tin (U)**, NLD legal advisor
7. **Win Ko (U)** NLD member, Mogauk, Mandalay Division

APPENDIX II

Persons arrested Since July 2002, list submitted to the State Peace and Development Council 21 March 2003

	<u>Name</u>	<u>Position</u>	<u>Date & Place of Arrest</u>	<u>Reason for Arrest</u>	<u>Sentence</u>	<u>Additional Notes</u>
1	Ko Hla Htut Soe		September 2002	Possession of the exile opposition publication, <i>The New Era Journal</i>	Sentenced to three years' imprisonment in early 2003	
2	U Be Da		As above	As above	As above	
3	U Myint Yi		As above	As above	As above	
4	Ko Htay		As above	As above	As above	
5	Aung Thein	NLD youth	July 2002	As above	Sentenced to seven years' imprisonment	
6	Kyaw Naing Oo		As above	As above	As above	
7	Thet Naung Soe		August 2002	Protest at Yangon City Hall	Sentenced to 14 years in November 2002	
8	Khin Maung Win		As above	As above	Sentenced to seven years' imprisonment in November 2002	
9	Than Htay (f)	Buddhist nun		Protest at City Hall January 2003	Reported by unofficial sources to have been sentenced to seventeen years' imprisonment	Mentioned in 10 Feb 2003 Press Conference
10	Thin Thin Oo (f)	Buddhist nun		As above	Reported by unofficial sources to have been sentenced to seventeen	As above

					years' imprisonment	
11	Sai Phat	Shan NLD	September 2002			*Death in custody in October 2002
12	U Sai Nan Di		As above		Sentenced to seven years imprisonment	
13	U Shwe Maung	Made a hat, the symbol of NLD	7 Nov 2002 in Mandalay		Sentenced to 3 years imprisonment	Mentioned in 10 Feb 2003 Press Conference
14	Thet Htwe aka Nyein Lu					As above
15	Maung Maung Myint					As above
16	Khin Win aka Bodaw	Vice-Chair Kamayut NLD				As above
17	Maung Maung Aye					As above
18	Sai Nyunt Lwin	Secretary 1, Shan NLD				As above
19	Tun Yin	Dallah NLD				As above
20	Thaung Kyi	North Okalappa NLD				As above
21	Tin San	Joint- Secretary Thanlyin township NLD				As above
22	Khin Soe	Kunyangon NLD				As above

23	Ma San San Maw (f)	NLD Youth member	September 2002		Sentenced late January 2003 to two years imprisonment for reportedly criticizing the government in a rice queue	In Insein Prison with 19 month old child
24	Ma Aye Yi Htay (f)		As above		As above	
25	Soe Lay aka Soe Naing Win					Mentioned in 10 Feb 2002 Press Conference
26	Aung Htaik					As above
27	Zaw Weik					As above

APPENDIX III

Confidential

There are humanitarian grounds for the release of many of those listed below, including the elderly and those who have illnesses exacerbated by their treatment in detention.

NAME	SENTENCE & DATE OF ARREST	PROFESSION/ AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
NE OO (Kalay prison)	14 years= imprisonment under the 1950 Emergency Provisions Act (EPA) Arrested February 1998	NLD Township Organizational Chairman, Dagon, Myothit township	He is believed to have had serious bouts of malaria.	He was charged with involvement in a plot to assassinate members of the SPDC
WIN TIN, 72 years old (Insein Prison)	20 years= imprisonment under the 1950 EPA, Section 216 of the Penal Code, arrested in 1989.	former journalist , editor and senior advisor to Aung San Suu Kyi, member of the NLD Central Executive Committee	He has suffered health problems and has been held for months in a military dog cell without bedding, and deprived of food and water for periods during interrogation. He is currently believed to be ill and to require treatment for haemorrhoids and benign prostatic hypertrophy.	He was first sentenced in October 1989 for harbouring a girl who had received an illegal abortion and has subsequently been sentenced two times - firstly, while still imprisoned for "giving seditious talks, organizing subversive movements within the NLD and writing and publishing pamphlets to incite treason against the state." His third prison sentence of 7 years was given for allegedly writing political analyses in prison: authorities stated he " <i>secretly published anti-government propaganda to create riots in jail</i> ". In his trial transcript it stated that he had asked another prisoner to copy out a letter to the United Nations Special Rapporteur with information on conditions in Insein Prison; and that he had written political analyses, articles on students and human rights, and papers supporting the work of Daw Aung San Suu Kyi and calling for her release, which authorities said he planned to smuggle out of the prison. While authorities investigated this incident, Win Tin and others were held in cells designed for military dogs.
NAY LIN SOE (Tharawaddy Prison)	14 years= imprisonment, arrested in February 1998	Physics student and activist in the Democratic Party for a New Society (DPNS)	He has cataracts and has reportedly had malaria. He was reportedly tortured during his initial interrogation.	He was reportedly arrested for having links with the students in exile.
PAW U TUN AKA MIN	20 years= imprisonment,	Student and head of the	He was tortured in the early	He was arrested for his leading role in the organization of

KO NAING (Sittwe Prison)	commuted to 10 years. Arrested on 24 March 1989	ABFSU	stages of detention and has been held for long periods in solitary confinement. There is concern for his health.	student demonstrations during 1988 and 1989. He continues to be held beyond the expiry of his sentence under the State Protection Law. The UN Working Group on Arbitrary Detention has stated that he is being arbitrarily detained.
TIN AUNG (Kalay Prison)	10 years' imprisonment, Currently being held under Administrative detention law	Businessman	He is reportedly suffering from malaria and dysentery	He was arrested for suspected links to the Communist Party of Burma, and is being held beyond the expiry of his sentenced under the State Protection Law.
SEIN HLA OO, 64 years old (Myitkyina Prison)	7 years=imprisonment under the 1950 EPA, arrested in August 1994	NLD MP elect (Insein 2 Yangon) and editor	He is believed to be suffering from heart disease.	He was sentenced for allegedly telling foreign diplomats and journalists " <i>fabricated news</i> " and distributing documents produced by groups in exile " <i>to cause misunderstanding of the government,</i> " which authorities characterized as " <i>anti-government activities.</i> " He has not been released at the end of his sentence.
HTWE MYINT, c 70 years old (Insein Prison)	7 years=imprisonment. Arrested in 1995	Democracy Party, former diplomat	He is suffering from a heart condition.	He was arrested for circulating seditious pamphlets. This is his second period of imprisonment for his political activities.
WIN HTEIN Myingyan Prison	14 years' imprisonment, Arrested in May 1996	NLD advisor	He is reported to have been ill-treated in detention.	He was sentenced during a crackdown on the NLD for " <i>instructing</i> " Daw Aung San Suu Kyi's bodyguard, Maung San Hlaing," to speak to journalists about torture in prisons in the country, and for allegedly arranging for the collection of videotapes of failing rice crops. Authorities characterized these acts as " <i>spreading false information to destabilise the existing peace and tranquillity in the country.</i> " He was also detained under an administrative detention law between 1989

				and 1995, and was reportedly ill-treated at that time in detention.
KYAW ZAW (Kalay Prison)	14 years' imprisonment, Arrested in December 1996	Student	Reportedly suffering from malaria	He was arrested in connection with student demonstrations in December 1996. He is the son of another political prisoner, U Kyi Tin Oo, in Insein Prison.
THAN NYEIN (Dr.) (Insein Prison)	6 years= imprisonment under the 1950 EPA Arrested on 28 October 1997.	NLD MP-elect (Kyauktan 1, Yangon) doctor	He is suffering from liver disease	He was sentenced after an attempt by the NLD to hold a meeting with Daw Aung San Suu Kyi and NLD Youth in Mayangone township, Yangon. This is the second time that he has been detained.
MAY WIN MYINT (f), 52 years old (Insein Prison)	6 years= imprisonment under the 1950 EPA. Arrested on 29 October 1997.	NLD Member of Parliament elect (Mayangone township, Yangon)	She is reported to have been mistreated and deprived of drinking water during interrogation.	She was arrested after the NLD attempted to hold a meeting with Daw Aung San Suu Kyi and the NLD youth in her township, which authorities characterized as <i>anti-government activities with a mob.</i>
AUNG HTUN (Insein Prison)	13 years=imprisonment under the 1950 EPA. Arrested on 17 February 1998.	former student, ABFSU activist	He is believed to be suffering from ill health and to have been severely tortured during interrogation. His health has reportedly seriously deteriorated recently.	Aung Htun was sentenced in connection with his distribution without official permission of articles and a history he wrote of the student movement after leaving prison, which authorities stated were <i>largely exaggerated and biased accounts of events based on a few facts.</i> Authorities stated Ko Aung Tun had received money as funds for <i>illegal activities</i> from an illegal resident in Japan, but did not specify what these were, and that he had provided assistance for opposition political activists, including two NLD youths, who guarded Daw Aung San Suu Kyi, to flee to the jungle, but did not specify the time or nature of this assistance. This is his second period of detention as a result of his political activities.
THAR BAN, c. 61 years old (prison not known – Rakhine)	7 years= imprisonment under the 1950 EPA arrested in February 1998	United Nationalities Democratic Party activist, former writer	His health is reported to have deteriorated in detention.	He was sentenced in connection with his alleged assistance to Ko Aung Tun with the preparation and distribution of a history of the student movement. This is the second time he has been imprisoned for his political activities.

state)				
KHUN SAI AKA KO MYO HTUN, 51 years old (Shwebo Prison)	7 years imprisonment under the 1950 EPA, arrested in February 1998	former teashop owner	He was reportedly severely tortured during his interrogation.	He has been arrested for his political activities three times. He was sentenced in connection with his alleged part in helping distribute the uncensored student history papers allegedly prepared by Aung Tun.
THET WIN AUNG (Khamti Prison, Sagaing Division)	52 years' imprisonment under the 1950 EPA, Unlawful associations act, Arrested in 1998	Student	Reportedly suffering from malaria	He was arrested in connection with his activities to organize peaceful demonstrations by students in support of the convening of the People's Parliament
KYI TIN OO, c. 58 years old (Insein or Mandalay Prison)	10 years' imprisonment 1950 EPA and 17/1. Arrested in March 1994.	Poet	Reportedly suffering from hypertension and heart problems.	He was reportedly arrested for publishing articles of a political nature. His son, Aung Kyaw Hein, is also detained.
KHIN KHIN LEH (f) 36 years old (prison not known)	Life imprisonment. Arrested on 19 July 1999.	Teacher	She has been reported to be suffering from lung disease, diarrhoea and gout.	She was arrested in connection with her peaceful political activities, and a march that was planned to support the National League of Democracy on the occasion of the anniversary of the assassination of General Aung San. The march was also planned to call for the lowering of food prices and the revision of civil servants salaries. Her three year old daughter was arrested at the same time, and was held in custody for up to five days.
SAW NAING NAING, 60 years old (Insein Prison)	21 years=imprisonment Arrested in September 2000.	NLD MP-elect (Pazundaung, Yangon)		He was sentenced for reportedly issuing a statement calling for the lifting of restrictions against the NLD and its leaders, at a time when when Daw Aung San Suu Kyi and other leaders of the NLD were held under house arrest. This is the second time he has been imprisoned for his peaceful political activities

SALAI TUN THAN (Dr.), 74 years old (Insein Prison)	7 years= imprisonment under the 1950 EPA. Arrested on 29 November 2001	retired rector of the Yezin University in Pyinmana (Southern Mandalay Division)		He was reportedly sentenced for his peaceful protest in front of Yangon City Hall. He was wearing an academic gown and handing copies of a petition to demand political reforms, including calling on the military regime to hold multiparty general elections within one year. Dr Salai Tun Than, who is not affiliated with any political movement, was petitioning the government in his own name.
MYO AUNG HTWE 28 years old	Death, commuted to life imprisonment, commuted to 10 years' imprisonment by SLORC amnesty in 1997, under the UAA and Provisional Arms Act Arrested in February 1991	Student	Reportedly suffering from a heart condition	He was arrested in connection with an attack on a radio station at Yegu.
AYE AUNG (Kalay Prison)	24 years imprisonment Arrested in September 1998	Physics student	Reportedly suffering from malaria and dysentery	He was arrested in connection with his activities to organize peaceful demonstrations by students in support of the convening of the People's Parliament
DO HTAUNG (Mandalay Prison)	7 years' imprisonment, Arrested in May 1996	NLD MP-elect (Kalay, Sagaing)	He is reportedly suffering from hypertension, coronary atherosclerosis and hearing impairment	He was arrested during a mass crackdown on the NLD. He was sentenced with 19 others in Mandalay, under charges of high treason. He is alleged to have cooperated with the distribution of "anti-government propaganda" within the country, and authorities stated that he had arranged for people to attend "a political resistance workshop to be conducted by the exiled NLD organization in India"; and was entrusted to open an NLD office in Myanmar.
HLA SHWE	14 years' imprisonment, Arrested in February 1998	Formerly of People's Progressive Party	Reportedly suffering from a nervous disorder	He was sentenced in connection with Ko Aung Htun's writing of a student history

<i>KHIN MOE AYE (f)</i> RELEASED on 26th APRIL 2003⁵¹	<i>7 years' imprisonment</i> <i>Arrested in early 1998</i>	<i>Reportedly ABFSU</i>	<i>She is believed to have eye and other health problems</i>	<i>She was reportedly sentenced in connection with the preparation of a history of the student movement by Ko Aung Htun.</i>
KYAW ZAW aka Aung Kyaw Hein (Kalay Prison)	14 years' imprisonment, Sentenced in 1996	student	He is reportedly suffering from malaria	He was sentenced in connection with student protests
SAW NAN DI	7 years and six months' imprisonment, 1950 EPA, 5 [j], 33 of Drug Special Act Arrested on 13 September 2002	NLD Divisional Organizational Committee Chairman, Shan State	He reportedly has liver and kidney disease	It is not known in which connection he was arrested. U Sai Phat, deputy chairman of NLD Shan state organizational Committee member, who was arrested with him, died in custody, reportedly of cerebral malaria.
SHWE HTOO (Taunggyi Prison)	42 years' imprisonment under 124/d, 5/j, 17/1 and 19/b, arrested in July 1998	Former tutor and formerly affiliated to ABFSU	He was reportedly severely beaten during a protest in Mandalay Prison in 2000, and his health has reportedly deteriorated since	He was arrested in connection with calls for the convening of the People's Parliament.
SU SU WIN (f) Insein Prison	7 years' imprisonment Arrested in early 1998	Reportedly ABFSU	She is believed to have eye and other health problems.	She was reportedly sentenced in connection with the preparation of a history of the student movement by Ko Aung Htun.

⁵¹ Released on 26th April 2003, "taking consideration of health and humanitarian concerns" (Myanmar Information Committee Yangon, Information Sheet no. C-2614 (I/L) 4th May 2003

APPENDIX IV

Members of Parliament-elect imprisoned, detained or missing 2003

July

1) 18 imprisoned

In chronological order of date of arrest

1	
Name/age	Ohn Kyaing, also known as Aung Win; born 1944
Constituency	Mandalay SE, Mandalay Division
Date of arrest	7 September 1990
Sentence	seven plus 10 years' imprisonment under Sections 5a, 5b and 5j of the 1950 Emergency Provisions Act
Place of detention	Toungoo Prison, Shan State
Reasons for arrest	sentenced to seven years' imprisonment for publishing pamphlets condemning the authorities' attack on a group of five monks in August 1990 during which three demonstrators are alleged to have been shot. The authorities stated that this was to "create misunderstanding and discredit the government in the eyes of the people", and subsequently sentenced him to an additional 10 years' imprisonment for inciting public disturbances.
2	
Name/age	Dr Myint Naing; born 1951
Constituency	Kanbalu, Sagaing Division
Date of arrest	end 1990
Sentence	25 years' imprisonment under Section 122/1 of the Penal Code, commuted to 10 years in 1993
Place of detention	Thayet Prison, Magway Division
Reasons for arrest	Convicted of high treason for his alleged involvement in discussions about the formation of a parallel government in Mandalay. The discussions took place after the SPDC refused to recognize the results of the elections.
3	
Name/age	Dr Zaw Myint, also known as Dr Myint Aung
Constituency	Amarapura, Mandalay Division
Date of arrest	November 1990
Sentence	10 years' imprisonment under Section 122/1 of the Penal Code; plus seven years' imprisonment in 1996
Place of detention	Myitkyina Prison, Kachin State
Reasons for arrest	First sentenced for alleged involvement in discussions about the formation of a parallel government in Mandalay. Second sentence for allegedly being among a group of prisoners writing to the UN Special Rapporteur on Myanmar about prison conditions.
4	
Name/age	Khin Maung Swe; born 1944

Constituency	Sanchaung, Yangon Division
Date of arrest	August 1994; late 1990
Sentence	10 years' imprisonment in 1991; released in 1992; seven years' imprisonment under Section 5e of the 1950 Emergency Provisions Act in 1994
Place of detention	Insein Prison
Reasons for arrest	First arrested in 1990 for alleged involvement in discussions about the formation of a parallel government; released under an amnesty in 1992. Rearrested after allegations that he told diplomats and foreign journalists "fabricated news" and gave them documents produced by expatriate groups, the terms of the amnesty were revoked and he was sentenced to a further seven years.
5	
Name/age	Sein Hla Oo; born 1938
Constituency	Insein 2, Yangon Division
Date of arrest	August 1994; late 1990
Sentence	25 years' imprisonment in 1991; released in 1992; seven years' imprisonment under Section 5e of the 1950 Emergency Provisions Act in 1994
Place of detention	Myitkyina Prison, Kachin State
Reasons for arrest	First arrested in 1990 for alleged involvement in discussions about the formation of a parallel government; released under an amnesty in 1992. Rearrested after allegations that he told diplomats and foreign journalists "fabricated news" and gave them documents produced by expatriate groups, the terms of the amnesty were revoked and he was sentenced to a further seven years.
6	
Name/age	Khun Myint Tun
Constituency	Thaton, Mon State
Date of arrest	June 1996
Sentence	seven years' imprisonment under Section 122/2 of the Penal Code or Section 5j of the 1950 Emergency Provisions Act
Place of detention	Mandalay Prison
Reason for arrest	Arrested during a mass crackdown on the NLD in 1996. Sentenced with 18 others in Mandalay on charges of high treason. He is alleged to have cooperated with the distribution of "anti-government propaganda", and with arranging for people to attend "a political resistance workshop to be conducted by the exiled NLD organization in India", and the opening of an NLD office in Myanmar
7	
Name/age	Kyaw Khin; born 1939
Constituency	Taunggyi, Shan State
Date of arrest	3 June 1996

Sentence	10 years' imprisonment under Section 5j of the 1950 Emergency Provisions Act and the 1985 TV and Video Act
Place of detention	Thayet Prison, Magway Division
Reason for arrest	Arrested during a crackdown on the NLD in 1996. Authorities alleged that he had been contacted to obtain "recorded videotapes with antigovernment messages broadcast by foreign television stations" to agitate civil unrest. These tapes reportedly included videotapes and audio cassettes with foreign news reports and documentaries on Myanmar.
8	
Name/age	Dr Than Nyein
Constituency	Kyauktan 1, Yangon Division
Date of arrest	28 October 1997
Sentence	Six years' imprisonment under Section 5j of the 1950 Emergency Provisions Act
Place of detention	Insein Prison
Reason for arrest	arranging a meeting with Daw Aung San Suu Kyi and NLD Youth in Mayangone Township, Yangon.
9	
Name/age	Daw May Win Myint; born 1950
Constituency	Mayangone, Yangon Division
Date of arrest	28 October 1997
Sentence	Six years' imprisonment under Section 5j of the 1950 Emergency Provisions Act
Place of detention	Insein Prison
Reason for arrest	arranging a meeting with Daw Aung San Suu Kyi and NLD Youth in Mayangone Township, Yangon.
10	
Name/age	U Ohn Maung; 73-years-old
Constituency	Nyaunglebin 1, Bago Division
Date of arrest	1998 - exact date unknown
Sentence	not known
Place of detention	Tharwaddy Prison, Bago Division
Reason for arrest	possibly in connection with NLD calls to convene a parliament. Was among a group of MPs released on 31 July 2001, but was immediately rearrested reportedly because he refused to agree to not carry out any political activities. Reportedly in poor health.
11	
Name/age	Dr Min Soe Lin; born 1957
Constituency	MNDP Ye-1, Mon State
Date of arrest	September 1998
Sentence	Seven years' imprisonment under Section 5j of the 1950 Emergency Provisions Act
Place of detention	Mawlamyine Prison, Mon State
Reason for arrest	his support for the formation of a Committee Representing the People's Parliament, and for his role in organizing Mon National Day 50 th Anniversary celebrations (for which permission had been refused by the authorities).
12	

Name/age	Min Kyi Win; born 1952
Constituency	MNDP Mudon, Mon State
Date of arrest	September 1998
Sentence	Seven years' imprisonment under Section 5j of the 1950 Emergency Provisions Act
Place of detention	Mawlamyine Prison, Mon State
Reason for arrest	in connection with his support for the formation of a Committee Representing the People's Parliament
13	
Name/age	Soe Myint; born 1946
Constituency	Minbu 1, Magway Division
Date of arrest	September 1998
Sentence	seven years' imprisonment
Place of detention	Pathein Prison, Ayeyarwady Division
Reason for arrest	alleged to have received instructions from Daw Aung San Suu Kyi to organize NLD party members to support calls for the convening of parliament in September 1998
14	
Name/age	U Toe Po
Constituency	Yebyu, Tanintharyi Division
Date of arrest	2 September 1998
Sentence	seven years' imprisonment under Section 5j of the 1950 Emergency Provisions Act
Place of detention	Insein Prison
Reason for arrest	In connection with NLD calls to convene a parliament in September 1998.
15	
Name/age	Kyaw San
Constituency	Taze 1, Sagaing Division
Date of arrest	6 September 1998
Sentence	seven years' imprisonment
Place of detention	Tharawaddy
Reason for arrest	not known
16	
Name/age	Yaw Hsi
Constituency	Putao, Kachin State
Date of arrest	2 October 1998
Sentence	5 and a half years' imprisonment
Place of detention	
Reason for arrest	Possessing an opium soaked cloth – reportedly a popular local cure for dysentery.
17	
Name/age	Saw Naing Naing
Constituency	Pazundaung, Yangon Division
Date of arrest	13 September 2000
Sentence	21 years' imprisonment under Section 5j of the 1950 Emergency Provisions Act and Sections 17/20 of the Printers and Publications Act

Place of detention	Insein Prison
Reason for arrest	Issuing a statement when Daw Aung San Suu Kyi and other NLD leaders were held under house arrest. The statement called for the lifting of restrictions on the NLD and its leaders. He had previously been detained for nine years until his release in late 1999.
18	
Name/age	U Win Myint Aung
Constituency	Dapaiyin 2, Sagaing Division
Date of arrest	19 May 2003
Sentence	2 years' imprisonment
Place of detention	not known
Reason for arrest	He was reportedly accused of making a statement that discredited the State Peace and Development Council.

22 MPs reportedly detained or “disappeared” after 30 May 2003**Under house arrest**

1

Name/age Aung Shwe, aged 85
 Constituency Mayangone 1, Yangon Division
 Other: NLD Chairman

2

Name/age Hla Pe (U) aged 76
 Constituency Mawlamyine Gun, Ayeyarwaddy Division
 Other NLD role: Member of Central Executive Committee

3

Name/age U Kyi Maung, aged 82
 Constituency Bahan 2, Yangon Division
 Other former NLD Chairman

4

Name/age Lun Tin (U), aged 82,
 Constituency Bahan 2, Yangon Division
 Other NLD role: Member of Central Executive Committee

5

Name/age U Lwin, aged 79
 Constituency Thongwa, Yangon Division
 Other NLD role: NLD treasurer

6

Name/age Nyunt Wei (U), aged 77
 Constituency Taungoo, Bago Division
 Other Member of Central Executive Committee

7

Name/age Soe Myint (U), aged 80
 Constituency South Okkalappa, Yangon Division
 Other NLD role: Member of Central Executive Committee

8

Name/age Than Tun (U)
 Constituency Taungtha 2, Mandalay Division
 Other NLD role: Member of Central Executive Committee

DETAINED AT 30 MAY INCIDENT

9

Name/age Bo Maung (U); aged 55
 Constituency Tabayin 1, Sagaing Division

10

Name/age Myint Kyi (U); aged 55
 Constituency Katha, Sagaing Division

11
Name/age Pa Pa (U), aged 71
Constituency Myinmyu 1, Sagaing Division
Other NLD role Vice Chair, Sagaing Division Organizational Committee

12
Name/age Paw Khin (U); aged 56
Constituency Myingyan 1, Mandalay Division
Other NLD role Chair, Mandalay Division Organizational Committee

13
Name/age Saw Hlaing (U), aged 47
Constituency Indaw, Sagaing Division
Other information Reportedly injured

14
Name/age Tin Aung Aung, aged 59
Constituency Mandalay Division, Northwest 1
Other information Mandalay Division Organizational Committee member

15
Name/age Tin Htut Oo (U), aged 40
Constituency Lewe 1, Mandalay Division

16
Name/age Tun Myaing (U), aged 54
Constituency Wetlet 1, Sagaing Division
Date of arrest Joint secretary, Sagaing Division Organizational Committee

“DISAPPEARED”

17
Name/age U Saw Aung (U), aged 68
Constituency Monywa 2, Sagaing Division
Date of arrest 13 September 2000

ARRESTED AFTER 30 MAY 2003

18
Name/age Bo Zan (U), aged 65
Constituency Kyaukpadaung 1, Mandalay Division
Other information former businessman

19
Name/age Mae Hnin Kyi (Daw) (f), aged 55
Constituency Mogauk 1, Mandalay Division
Other information Botany graduate

20
Name/age Maung Maung Latt (U), aka Dr. Hlaing Ni, aged 52
Constituency Tharketa, Yangon Division
Other information: medical doctor

21

Name/age Saw Htay (U), aged 69
Constituency Singu, Mandalay Division
Other information Deputy Chairman

REPORTED ARRESTED BUT DETENTION DENIED BY SPDC

22

Name/age Hla Maung (U), aged 68
Constituency Kyar-in-Seikkyi, Kayin State
Other information Formerly Patriotic Old Comrades League, then independent, member
of the Committee representing the People's Parliament.

APPENDIX V

PRISONERS HELD UNDER SECTION 10 A) of the State Protection Law, beyond the expiry of their sentences.

Prisoners released after the presentation of this memorandum appear on this list in italic script.

NAME	SENTENCE & DATE OF ARREST	PROFESSION/AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
AUNG THAN (Patheingyi Prison)	10 or 20 years' imprisonment, commuted to 10 years' imprisonment October 1989	NLD township organizational committee chairman, Thegong, Bago Division Teacher	Reportedly tortured.	For alleged involvement in strike committees.
BO BO HAN (Mandalay Prison)	December 1991, 15 years commuted to 10 years' imprisonment. Possibly sentenced to a further 7 years in November 2001	Student	Not known	Possibly given a further sentence in November 2001 for violation of prison rules. Kyaw Mya and Than Naing were also sentenced in this connection – more information is required.

NAME	SENTENCE & DATE OF ARREST	PROFESSION/AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
HAN SHIN WIN aka Bo Han c. 48 years old (Insein Prison)	c. 1989, 20 years under 17/1, commuted to 10 years	Suspected Communist Party of Burma Teacher	Not known	For alleged links with the Communist Party of Burma.
HTAY KYWE (Thayarwady Prison)	March 1990 12 or 15 years' imprisonment	Student	Not known	Sentenced for organization of press conference to commemorate the death of Phone Maw.
HTAY NYUNT (Mandalay)	November 1989, 20 years commuted to 10 years	Suspected Communist Party of Burma Police officer	Not known	For alleged links with the Communist Party of Burma.
<i>HTAY THEIN</i> 45 years old (Mandalay Prison) RELEASED 26/04/03 ⁵²	<i>July 1989, 10 years</i>	<i>University lecturer, Suspected Communist Party of Burma</i>	<i>Reportedly mentally ill, possibly as a result of torture during custody.</i>	<i>For alleged links with the Communist Party of Burma.</i>

⁵² Released on 26 April 2003, "taking consideration of health and humanitarian concerns" (Myanmar Information Committee Yangon, Information Sheet no. C-2614 (I/L) 4th May 2003
Myanmar: Justice on Trial

NAME	SENTENCE & DATE OF ARREST	PROFESSION/AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
HTWE MYINT (Insein Prison)	June 1995 7 years' imprisonment	Democracy Party, Transport company manager	Parkinson's disease and heart problems	Sentenced for distributing seditious pamphlets. Sentence extended under 10 a for a further year.
KHIN MAUNG THAN(Mandalay Prison)	December 1990 10 years' imprisonment	Lawyer, National Politics Front, suspected Communist Party of Burma	Reportedly tortured	Accused of being CPB underground in 107 th press conference.
KHIN MAUNG YI aka Tin Aye c. 36 years old(Mandalay Prison)	July 1989 10 years' imprisonment	Suspected Communist Party of Burma, student	Not known	Alleged links with the Communist Party of Burma
KHIN WIN aka Bodaw Khin Win, aka Ye Kyaw Swa (Insein Prison)	1989, 20 years commuted to 10 years	NLD	Not known	Alleged links with the Communist Party of Burma.

NAME	SENTENCE & DATE OF ARREST	PROFESSION/AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
KO KO GYI (Thayet Prison)	11 December 1991 20 years under 5a, b, j of the Emergency Provisions Act, commuted to 10 years	ABFSU	Not known	Participation in December 1991 peaceful demonstrations
KYAW MYA (Pathein Prison)	October 1990, 10 years Possibly sentenced to seven years' imprisonment in November 2001	Suspected Communist Party of Burma	Not known	Possibly given a further sentence in November 2001 for violation of prison rules. Bo Bo Han and Than Naing were also sentenced in this connection – more information is required.
MYAT SAN (Taungoo Prison)	December 1991 15 years' imprisonment commuted to 10 years' imprisonment	Student, ABFSU	Believed to have been denied treatment for gastric ulcer in 1998.	Participation in December 1991 peaceful demonstrations.

NAME	SENTENCE & DATE OF ARREST	PROFESSION/AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
NAING MYINT, aka Myint Soe (Mandalay Prison)	October 1989, 16 years, believed to have been later commuted to 10 years	Suspected CPB	Not known	Alleged links with the Communist Party of Burma
PAW U TUN aka Min Ko Naing (Sittwe Prison)	March 1989, 20 years commuted to 10 years' imprisonment	Student, head of ABFSU	Reportedly suffering from gastric ulcer, mental illness and other health problems, possibly exacerbated by torture during his early detention.	He was arrested for his leading role in the organization of student demonstrations during 1988 and 1999, and headed the All Burma Free Students Union. He has been held for long periods in solitary confinement.
<i>SOE MOE HLAING</i> <i>aka Mae Gyi</i> <i>(Thayarwady)</i> RELEASED 04/05/03⁵³	<i>December 1991</i> <i>10 years'</i> <i>imprisonment</i>	<i>Student</i>	<i>Not known</i>	<i>Participation in December 1991 peaceful demonstrations</i>

⁵³ Released on 4 May 2003, "taking consideration of health and humanitarian concerns" (Myanmar Information Committee Yangon, Information Sheet no. C-2614 (I/L) 4th May 2003
Myanmar: Justice on trial

NAME	SENTENCE & DATE OF ARREST	PROFESSION/AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
THET KHAING Aka Ko Latt (Insein)	July 1989 20 years' commuted to 10 years' imprisonment	Suspected CPB	Not known	Alleged links with the Communist Party of Burma
TIN AUNG (Insein)	July 1989 10 or 20 years commuted to 10 years' imprisonment	Suspected CPB	Not Known	Alleged links with the Communist Party of Burma
THU WAI (Insein Prison) late 60s	June 1995 7 years' imprisonment	Democracy Party	Unspecified health problems	Sentenced for distributing seditious pamphlets. Sentence has just been extended under 10 a for a further year.

NAME	SENTENCE & DATE OF ARREST	PROFESSION/AFFILIATION	HEALTH/TREATMENT IN DETENTION	REASON FOR ARREST
TIN AYE KYU aka Hmaing Lwin (Mandalay Prison)	October 1989 17 or 20 years' imprisonment, commuted to 10 years' imprisonment	Lawyer, National Politics Front	Not known	Arrested for having alleged contact with CPB. 2 nd arrest.
ZAW MIN (<i>Dr</i>) (Mandalay) RELEASED ON 26/04/03⁵⁴	<i>July 1989</i> <i>20 years' imprisonment commuted to 10 years' imprisonment</i>	<i>Suspected Communist Party of Burma</i>	<i>It is believed that he has been detained in solitary confinement for very significant lengths of time throughout his imprisonment and has consequently suffered major psychological damage</i>	<i>He was imprisoned for his alleged contacts with the Communist Party of Burma (CPB) --- it is believed that a motive for his arrest was his alleged support for the formation of an interim government.</i>
ZAW MIN aka Are Bye (Thayet)	December 1991 10 years' imprisonment	Vice Chairman of ABFSU	Not known	Participation in peaceful demonstrations in December 1991

⁵⁴ Released on 26 April 2003, "taking consideration of health and humanitarian concerns" (Myanmar Information Committee Yangon, Information Sheet no. C-2614 (I/L) 4th May 2003)