



Australian Government
Refugee Review Tribunal

Country Advice Myanmar

Myanmar – Union Solidarity and Development Party (USDP) – Treatment of supporters of the National League for Democracy (NLD) – 1988 Student protests – Protests in September 2007 – Support of monks in detention – Seaman Employment Control Division – Police – Legal grounds for detention – Prison conditions – Returnees
2 March 2011

1. Please provide background information on the ruling party in Myanmar and the political situation in Myanmar situation in general and in particular in respect to the treatment of supporters of the National League for Democracy (NLD).

Myanmar's first multiparty elections since 1990 were held in November 2010 and resulted in the Union Solidarity and Development Party (USDP) winning more than 80 per cent of the seats in the bicameral national parliament. Human Rights Watch, in its recently released annual report, observes that the elections "took place in an atmosphere of intimidation, coercion, and widespread corruption, with laws and regulations strongly favoring military controlled parties"¹.

The human rights situation remained dire in 2010. The government took no significant steps during the year to release more than 2,100 political prisoners being held, except for the November release of NLD leader Aung San Suu Kyi. According to Human Rights Watch:

In March the SPDC formed the Union Electoral Commission (UEC) and released a series of laws governing the conduct of the elections, which included provisions barring any person serving a prison sentence from party membership. This effectively forced the National League for Democracy (NLD) to decide whether to dismiss Aung San Suu Kyi – who was under house arrest – and more than 430 of its jailed members, in order to re-register with the UEC.

The NLD ultimately did not re-register, and the UEC declared it illegal.

Other provisions tightly regulated the campaigning of parties and candidates, warned against public disturbances, and expressly outlawed public criticism of the constitution and the military...

In April Prime Minister Lt. Gen. Thein Sein and 27 SPDC and government cabinet ministers resigned their military commissions and formed the Union Solidarity and Development Party

¹ Human Rights Watch 2011, *World Report 2011*, January – Attachment 1.

(USDP)... The military conducted its biggest reshuffle in years, with scores of senior officers resigning in order to run as USDP candidates.

The USDP was the only party that fielded candidates for virtually all 1,168 seats open for contest in the national bicameral assembly and 14 regional assemblies. The remaining seats, out of a total of 1,551, are reserved for serving military officers as stipulated in the 2008 constitution.

By November 37 parties had registered and were contesting the elections. Many were small, ethnic-based parties only contesting a limited number of regional seats...

The USDP won more than 80 percent of the seats in the bicameral national parliament.²

In February 2011, Myanmar's parliament elected prime minister and former general Thein Sein as president. An analysis by IHS Global Insight indicates that Thein Sein's election was widely expected, and that he "is known for his loyalty to junta supremo Than Shwe, who is now believed to be directing political processes from behind the scenes". His nomination and election are seen as confirmation of the military's intention to keep control over political processes:

Although the parliament now has a largely civilian façade, real change is unlikely. This suggests that at least in the short term, policies will be passed and implemented in as arbitrary a fashion as was the case under successive military administrations since 1962.³

In 2010, Thein Sein resigned from his military post in order to contest the polls, as part of a major military reshuffle ahead of the election. He is the leader of the USDP. In parliament, the military occupies an automatic 25% of all seats, and the pro-junta Union Solidarity and Development Party (USDP) commands close to 80% of the 75% of seats that were up for election:

The democratic opposition has very little foothold in parliament; the main opposition party, the National League for Democracy (NLD) was forcibly dissolved ahead of the elections, and the National Democratic Front (NDF) and the Democratic Party (Myanmar) received 12 and none seats, respectively. This suggests that policies will be passed and implemented in as arbitrary a fashion as was the case under successive military administrations since 1962.⁴

The country's two vice-presidents will be Tin Aung Nyint Oo and Sai Mouk Kham,⁵ who also are seen as military loyalists.⁶

The National League for Democracy (NLD) won Burma's previous elections in 1990 but was prevented by the military from taking power. NLD leader Aung San Suu Kyi, kept under house arrest for most of the past two decades, has not been allowed to participate in politics despite her release.⁷

² Human Rights Watch 2011, *World Report 2011*, January – Attachment 1.

³ Zalewski, J. 2011, 'Myanmar Names Retired General As President', *IHS Global Insight Limited*, 4 February – Attachment 2.

⁴ Zalewski, J. 2011, 'Myanmar Names Retired General As President', *IHS Global Insight Limited*, 4 February – Attachment 2.

⁵ Zalewski, J. 2011, 'Myanmar Names Retired General As President', *IHS Global Insight Limited*, 4 February – Attachment 2.

⁶ 'Burma's Parliament Elects Former PM as President' 2011, *Voice of America English Service*, 4 February – Attachment 3.

⁷ 'Burma's Parliament Elects Former PM as President' 2011, *Voice of America English Service*, 4 February – Attachment 3.

On 15 February 2011, *The Irrawaddy*, an independent paper published in Thailand, reported government warnings against Suu Kyi and the NLD for continuing to support international sanctions against Myanmar. According to that report:

One of Burma's leading state-run newspapers said on Sunday that pro-democracy leader Aung San Suu Kyi and the National League for Democracy (NLD) will meet "a tragic end" if they continue to ignore the present political climate of change while stubbornly continuing to support the West's economic sanctions on Burma.

"If Daw Suu Kyi and NLD blindly deny the obvious progress of this new era, new system and new political landscape leading to democracy that they want, and continue to walk on the wrong track, it will lead to the end of their history," said Myanma Alin in a commentary titled "Sanction, [sic] Daw Suu Kyi and NLD."

This criticism of Suu Kyi and the NLD followed a statement by the NLD that it had not found evidence for the lifting of sanctions imposed by Western countries. According to *The Irrawaddy*, the article was clearly intended to intimidate the NLD leadership, given that the "military junta usually warns the NLD and opposition democratic forces publicly through the state media before launching a major crackdown". Although increasingly pushed into a corner as the sole defender of sanctions, the NLD has "gained growing support at a grassroots level" and "the NLD's growing strength and visibility in the public life of the country is always translated as a threat to the junta".⁸

2. Please provide information on whether there are reports on political/student uprisings in 1988.

In March 1988, student protests against military rule and economic mismanagement led to the authorities closing all universities in Rangoon and ordering the protesting students to return home, following further protests sparked by the deaths of 42 student protestors from asphyxiation and heat after riot police had bundled them into a van. Demonstrations against the government nevertheless began to spread throughout towns and cities. Despite threats against those "creating disturbances", people continued to march in the streets, and independent newspapers and political posters were produced and distributed.⁹

Human Rights Watch has reported the ensuing events as follows:

On August 8, 1988 (commemorated in Burma as 8-8-88), a major nationwide protest took place, with hundreds of thousands of people (some estimate up to one million) marching in Rangoon calling for democracy, elections, and economic reforms. Two days later, as tens of thousands of protesters remained on the streets, army units trucked into Rangoon began shooting at unarmed protesters. At Rangoon General Hospital, five doctors and nurses who were helping the wounded were shot and killed by the soldiers.

The government authority then effectively collapsed. Much of the daily order of towns and cities was now in the hands of ordinary civilians, with the Buddhist monkhood (the Sangha) playing an important role as marshals of demonstrations to keep them peaceful and avert rioting, looting, and reprisals.

⁸ 'Burmese state-run paper warns of "tragic end" to Suu Kyi, party' 2011, *BBC Monitoring Asia Pacific*, source: *The Irrawaddy*, 15 February – Attachment 4.

⁹ Human Rights Watch 2008, *Vote to Nowhere – The May 2008 Constitutional Referendum in Burma*, May, pp. 12-14 http://www.burmacampaign.org.uk/reports/HRW_Road_To_Nowhere.pdf – Accessed 21 July 2009 – Attachment 5.

On September 18, 1988, the army forcibly retook control of the cities and towns. Army chief General Saw Maung declared martial law and the creation of the State Law and Order Restoration Council (SLORC, or *Na Wa Ta*), a collective of senior military officers who would form a “transitional” military government – and whose successor, the military State Peace and Development Council (SPDC), still rules Burma today. Through military brutality and a shoot-to-kill policy against protesters, the SLORC managed to deter further street protests. Estimates of the number killed range from 1,000 to 10,000 deaths nationwide, with 3,000 deaths a commonly accepted figure. Although the army was responsible for the vast majority of the deaths, mobs murdered some suspected military intelligence agents, soldiers, and government bureaucrats.¹⁰

3. Deleted.

4. Deleted.

5. Please provide information on the claim that monks participated in political activities in Myanmar in September 2007.

The participation of monks in prodemocracy demonstrations in Myanmar in September 2007 was widely reported. The US Department of State, for example, has reported that the government “did not hesitate to arrest and imprison lower-level Buddhist monks who opposed the government” and in September 2007 the regime violently suppressed peaceful demonstrations led by Buddhist monks. Security forces raided monasteries between 26 September and the end of the year in response to the prodemocracy demonstrations. International non-government organisations estimated that at least 150 monks were arrested between September and October, although many more monks were reportedly missing.¹¹

A Human Rights Watch report entitled *Crackdown – Repression of the 2007 Popular Protests in Burma* documents how protests in August 2007 against fuel price rises developed into the “Saffron Revolution” of September 2007, and the resulting violent crackdown by security forces. On 19 August, a peaceful march of some 400 protesters took place in Rangoon on the issue of the price increases, but also reflected a wish for political reform and an end to the rule of the military-led SPDC. Despite arrests on 21 August, protesters continued to gather in Rangoon, and the protests spread to other cities.

On 5 September, a group of Buddhist monks holding signs denouncing the price increases marched in Pakokku, a religious centre near the city of Mandalay, and reportedly were supported by thousands of other protesters. The army intervened, firing gunshots over the heads of the monks and beating monks and bystanders. The next day, the cars of a delegation of government and religious affairs officials visiting the monastery were burned, causing a standoff. From 17 September, in response to a call from the newly formed All Burma Monks Alliance (ABMA), monks throughout the country began daily marches. The security forces did not directly interfere in the protests for some days, although intelligence officials photographed and videotape the marchers. The number of participants grew to thousands, as an increasing number of monks participated and civilians began to join them.

¹⁰ Human Rights Watch 2008, *Vote to Nowhere – The May 2008 Constitutional Referendum in Burma*, May, pp. 12-14 http://www.burmacampaign.org.uk/reports/HRW_Road_To_Nowhere.pdf – Accessed 21 July 2009 – Attachment 5.

¹¹ US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Burma*, March, Section 2c – Attachment 8.

On 24 September, an estimated 150,000 people, including 30,000 to 50,000 monks, protested in Rangoon, and similar marches took place in other cities across the country.

A night-time curfew was announced on 25 September and a large number of army troops were moved into Rangoon. On 26 September, serious attacks against protesters took place at the main Shwedagon Pagoda, the Sule Pagoda, and in downtown Rangoon. During the night of 26-27 September, the security forces raided monasteries throughout Rangoon. The most violent raid took place at the Ngwe Kyar Yan Monastery, where security forces clashed violently with the monks, and detained some 100 monks. Further clashes took place on 27 September at the Ngwe Kyar Yan Monastery and the Sule Pagoda. Security forces beat and detained large numbers of protesters. Although thousands of people continued to try and organise protests on 28 and 29 September, the authorities retook control by flooding Rangoon with thousands of troops, riot police, and militia members.¹²

Further detailed information on the “Saffron Revolution” of September 2007 is provided in a 2008 report produced by the Human Rights Documentation Unit of the exiled National Coalition Government of the Union of Burma¹³.

6. Is there information that NLD supporters supported the monks by raising funds for them?

No specific information was found regarding fundraising by the NLD in support of the monks.

7. Is there any information that the monks were arrested and that they were not fed but relied on raised funds for food?

International non-governmental organisations have estimated that “at least 150 monks were arrested between September and October 2007, although at the end of 2007, many more monks were reportedly missing from their monasteries”.¹⁴

There are more than 400,000 Buddhist monks, including novices, in Myanmar and they depend on donations of food and other material needs.¹⁵ This may have continued to be the case for those imprisoned, given that the food provided by the prison authorities was “scarce and of poor quality”.¹⁶ One report includes comments by a monk on the general conditions and food provided during his detention following the September 2007 demonstrations:

There were about 400 of us in one room. No toilets, no buckets, no water for washing. No beds, no blankets, no soap. Nothing. The room was too small for everyone to lie down at once.

¹² Human Rights Watch 2007, *Crackdown – Repression of the 2007 Popular Protests in Burma*, Volume 19, No. 18(C), December, pp. 6-10 http://www.burmacampaign.org.uk/reports/HRW_Crackdown_2007_Report.pdf – Accessed 21 July 2009 – Attachment 9.

¹³ Human Rights Documentation Unit, National Coalition Government of the Union of Burma 2008, *Bullets In The Alms Bowl – An Analysis of the Brutal SPDC Suppression of the September 2007 Saffron Revolution*, Burma Campaign website, March <http://www.burmacampaign.org.uk/reports/BulletsInTheAlmsBowl.pdf> – Accessed 21 July 2009 – Attachment 10.

¹⁴ US Department of State 2008, *International Religious Freedom Report 2008 – Burma*, September, Section II – Attachment 11.

¹⁵ US Department of State 2008, *International Religious Freedom Report 2008 – Burma*, September, Section I – Attachment 11.

¹⁶ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 1c – Attachment 12.

We took it in turns to sleep. Every night at 8 o'clock we were given a small bowl of rice and a cup of water.¹⁷

8. Is there any information that the authorities identified political activists through observing those who provided support and funds to the monks while the monks were imprisoned?

No information was found on whether the authorities identified those providing support to imprisoned monks, however there were arrests of people who provided food and water to protesting monks, reported as follows:

On 11 September 2007, two men who were arrested for distributing water to monks during the protest on 28 August 2007 were sentenced to two years in prison by the Burmese Military Authority. The men, Ko Min Min (aka) Han Min Soe and Ko Maung Soe Thein, were marching with the monks in Sittwe to protest the recent increase in fuel prices.

On 26 September Thein Zaw (19) was arrested for donating food and drinking water to monks at the upper east gate of Shwedagon Pagoda. He was later charged with violation of Section 144 of the State Rebellious Act and Section 5(j) of the 1951 Emergency Provisions Act, and detained in Insein prison. He was not allowed a lawyer, and the prison authorities did not allow his family to meet him until two weeks after his arrest.

On 26 September 2007, pro-democracy politician Win Naing was arrested around 2:30 am at his home in Rangoon, after donating food and water to protesting monks.¹⁸

9. Is there any information on a petition made by the police to the chairman of the Seaman Employment Control Division demanding that seaman should not get involved in politics? Is there any information on whether and if so how that Division implemented such a petition?

No information was found regarding a petition by the police to the chairman of the Seaman Employment Control Division regarding political involvement by seamen.

The Seaman Employment Control Division (SECD) is one of seven divisions within the Department of Marine Administration, in the Ministry of Transport in Myanmar.¹⁹ Although the SECD acts as an agent in the employment of seamen rather than as an employer, it may be relevant to note that in Myanmar “[g]overnment employees generally were prohibited from joining or supporting political parties”.²⁰

Reports indicate surveillance and control of persons seeking employment through the SECD. A 2003 article in *The Irrawaddy*, a Thai-based expatriate newspaper, reported:

¹⁷ Human Rights Documentation Unit 2007, *Burma Human Rights Yearbook*, National Coalition Government of the Union of Burma website, September, p.?? <http://www.ncgub.net/BHRY/2007/pdf/YB2007.pdf> – Accessed 20 November 2009 – Attachment 6.

¹⁸ Human Rights Documentation Unit 2007, *Burma Human Rights Yearbook*, National Coalition Government of the Union of Burma website, September, pp.45-46 <http://www.ncgub.net/BHRY/2007/pdf/YB2007.pdf> – Accessed 20 November 2009 – Attachment 6.

¹⁹ ‘Organization’ (undated), Department of Marine Administration website <http://www.dmmyanmar.com/organization.asp> – Accessed 23 February 2011 – Attachment 13.

²⁰ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 1f – Attachment 12.

The SECD keeps a close eye on all seamen. Before leaving Burma, division officers brief them to warn them against making contact with the ITF [International Transport Workers' Federation], the SUB [Seafarers Union of Burma] and any other organization. Before Oct 1993, seamen were required to sign a contract stipulating they have no contact or involvement with external groups or organizations. Now that Burma is an ILO [International Labor Organization] member, there are no forms to sign, but the order is still made perfectly clear. The SECD forces all seamen to become members of the Myanmar Overseas Seafarers Association (MOSA), an organization the junta created in April last year to counter the SUB. It was founded as an NGO and a "union" but has made no real effort to hide its links to the ruling military regime or the SECD.²¹

The US Department of State has reported that "[i]n the past the government forbade seafarers who found work on foreign vessels through the Seafarers Employment Control Division from having contact with the Seafarers' Union of Burma – affiliated to the government-banned FTUB – and the International Transport Workers' Federation".²²

10. Is there any information on the Seaman Employment Control Division requiring the lodgement of a security such as a sum of 12,000,000 kyat, or the signing over of a person's house, as part of a condition of employment?

No information was found regarding the lodging of securities as a condition of employment through the SECD.

11. Is there information on a protest in June 2009 involving a protest against the government asking for free elections? Is there any information about persons who attended that march being imprisoned in Insein jail?

No reporting was found of an anti-government protest, seeking free elections, in June 2009, nor of ensuing imprisonments.

12. Please provide general information about the Myanmar police authorities including the level of partisanship or political affiliations.

Sources indicate that the Myanmar police authorities support the government. Information from Human Rights Watch regarding the involvement of the police in the response to anti-government protests in 2007, for example, indicates that all police units, including the riot police, the Special Branch, the Bureau of Special Investigation, the Criminal Investigation Department, and regular divisional police forces were active in suppressing the demonstrations or interrogating detainees. Human Rights Watch reports that:

The overall director-general of the police, Brigadier-General Khin Ye (also spelled Khin Yi), exercises command control of the regular police and riot police forces. He was personally present during the violent crackdown on protesters at the Shwedagon Pagoda on September 26 and is believed to have played a central role in orchestrating the suppression of the demonstrations in Rangoon.

...

All police battalions are subordinate to the Myanmar Police Force under the command of Brigadier General Khin Ye.

²¹ Thet, Ko 2003, 'Shoring up Burma's Seamen' *The Irrawaddy*, Vol. 11. No. 1, January

http://www.irrawaddy.org/article.php?art_id=2807 – Accessed 2 March 2011 – Attachment 14.

²² US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 7a – Attachment 12.

Riot Police were deployed throughout the crackdown... They worked closely with the army in most instances, and were frequently armed with rifles or shot guns.

In addition to their role on the streets of Rangoon, the riot police also played a role in the detention of protesters. Many protesters, particularly the '88 Generation protesters detained in August and other suspected opposition activists, were taken to lon htein bases for their initial interrogation and detention.²³

The US Department of State has reported that the Myanmar Police Force falls administratively under the Ministry of Home Affairs, and that Military Security Affairs (MSA) officers and Special Branch (SB) police officers “are responsible for detaining persons suspected of ‘political crimes’ perceived to threaten the government”. Police corruption was a serious problem, with police routinely extorting money from the civilian population. Impunity was also a serious problem, there being no effective legal mechanisms available to investigate security force abuses.²⁴ Additionally, the judiciary is not independent of the government.²⁵

13. Is there information about the Myanmar police interrogating the spouses of political supporters?

No information was found specifically about police interrogation of the spouses of political supporters.

14. Please provide information on what legal grounds, if any, the authorities in Myanmar act in arresting and detaining supporters of the political opposition or NLD.

According to the US Department of State, human rights observers in Myanmar reported that at the end of 2010 there were more than 2,000 “security detainees” in Myanmar, including political prisoners, violators of state security laws, and those accused of fostering religious disturbances. The government usually charged political detainees with criminal offenses and it denied holding any political prisoners. It was reported that:

The law does not prohibit arbitrary arrest or detention, and the government routinely employed both practices. The law allows authorities to extend sentences after prisoners have completed their original sentence, and the government regularly used this provision. The 1975 State Protection Law allows authorities to order detention without charge or trial of anyone they believe is performing or might perform any act that endangers the sovereignty and security of the state or public peace and tranquility.

...

By law warrants for searches and arrests are required; however, the MSA and police have special authority to conduct searches and make arrests at will. The law permits a court to detain persons without charge for up to two weeks, with the possibility of a second two-week extension. However, authorities frequently and arbitrarily extended detentions beyond this period, sometimes up to a year, without producing the detainees before a judge or informing

²³ Human Rights Watch 2007, *Crackdown – Repression of the 2007 Popular Protests in Burma*, Volume 19, No. 18(C), December, pp.103-104 http://www.burmacampaign.org.uk/reports/HRW_Crackdown_2007_Report.pdf – Accessed 21 July 2009 – Attachment 9.

²⁴ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 2d – Attachment 12.

²⁵ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 2e – Attachment 12.

persons of the charges against them. The government often held persons under the Emergency Act of 1950, which allows for indefinite detention.²⁶

The *Burma Human Rights Yearbook* of 2007 observed that the “military regime has long relied on vague and antiquated laws to legitimize its actions against the political opposition”, and provides the following detailed information regarding legal grounds for arresting or detaining political activists:

In order to imprison and sentence activists, the junta frequently turns to section 505 (b) of the *Penal Code*, using it as a blanket charge against protesters and pro-democracy group leaders. Under the penal code, section 505 (b) states that:

“Whoever makes, publishes or circulates any statement, rumor 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 tranquility... shall be punished with imprisonment which may extend to two years, or with [a] fine, or with both.”

The ambiguity of this law allows it to be utilized in multiple contexts and situations... Whatever the situation, section 505 (b) has been the favored law for retribution against pro-democracy activists and citizens alike. The section was used against many of the September protesters, even against persons who were merely offering water and food to monks.

The SPDC also makes use of other laws which have coalesced under the general umbrella of ‘security’ legislation. Primarily, these laws emanate from the *Emergency Provisions Act* (1950), the *Unlawful Associations Act* (1908), and the *State Protection Law* (1975). The *1950 Emergency Provisions Act* is a commonly used alternative to Section 505(b), used to sentence people for political reasons. The Act carries with it the possibility of a death sentence if convicted of articles 2, 3, and 4, all of which concern assisting in an act of treason. Two of the most common articles used in sentencing are Articles 5 (e) and 5 (j), which state that:

5 (e) *“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”*

...

5 (j) *“[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.”*

Both articles carry lengthy seven year prison sentences and heavy fines. Article 5(j) has been used so widely in the indictment of political prisoners that ‘5J’ is often used as short hand to denote a political prisoner.”

Another law often used to charge members of the pro-democracy movement is the *1908 Unlawful Associations Act*, which criminalizes association with groups, most often of a political nature. This Act comprises multiple articles which have been used to charge activists. The “offences” can range from something as simple as an individual who *“takes parts in meetings, or contributes or receives or solicits any contribution for such an association, or any way assists the operations of an unlawful association,”* as in article 17(1), to an individual that *“encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts,”* as in article 15(2).²³

²⁶ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 2d – Attachment 12.

The *1975 State Protection Law* allows the state to restrict a citizen's 'fundamental rights' during times of duress. SPDC authorities use this law to detain any individual or restrict them to residence for up to five years without charge or trial if they are suspected of "having performed, or is performing, or is believed to be performing an act endangering the state sovereignty and security, and public law and order..."

Another law used by the SPDC to repress political activism is Section 143 of the *Penal Code*. Following the September protests several NLD members were charged under Section 143, for unlawful assembly, which can lead to up to six months' imprisonment. These laws have severely restricted the rights of individuals, and political groups within Burma. Contorted and misused, overtime, these laws have eroded the basic civil liberties and protections needed to guard against a repressive state.²⁷

Human Rights Watch provides the following list of laws frequently used against political activists in Myanmar:

- Section 130(b) of the Penal Code:

"Whoever, by words either spoken or intended to be read, or by signs or by visible representations, publishes anything tending to degrade, revile or to expose to hatred or contempt any Foreign State, Head of State, Ambassador or other dignitary of a Foreign State, with intent to disturb peaceful and friendly relationship between the Union of Burma and that Foreign State, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

- Section 295(a) of the Penal Code:

"Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of persons by words, either [through] spoken or written [means], or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

- Section 505(b) of the Penal Code:

"Whoever makes, publishes or circulates any statement, rumor or report, 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 tranquility, shall be punished with imprisonment which may extend to two years, or with fine, or with both."

- Section 17(1) of the Unlawful Association Act:

"Whoever is 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 any such association, shall be punished with imprisonment for a term [which shall not be less two years and more than three years and shall also be liable to fine]."

- Section 17(2) of the Unlawful Associations Act:

"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

²⁷ Human Rights Documentation Unit 2007, *Burma Human Rights Yearbook*, National Coalition Government of the Union of Burma website, September, pp.33-34 <http://www.ncgub.net/BHRY/2007/pdf/YB2007.pdf> – Accessed 20 November 2009 – Attachment 6.

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 fine].”²⁸

15. Please provide information on how long political detainees are held in prison in Myanmar and the conditions under which they are held. Is there information on whether political detainees are permitted visits from family?

The US Department of State has reported that, in 2009 as in previous years, private citizens and political activists in Myanmar “continued to ‘disappear’ for periods ranging from several hours to several weeks or more”; such disappearances were attributed to authorities who detained individuals for questioning without informing family members.²⁹

The *Burma Human Rights Yearbook* has reported that Burma’s 1975 Protection Law (‘The Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts’) allows prolonged detention of any individual without trial:

This law allows extra-judicial, executive authorities *inter alia* to order a person’s detention in prison (Article 10A) or under house arrest (Article 10B) for up to five years (Article 14) without charge or trial if the person “*has performed or is performing or is believed to be performing an act endangering the state sovereignty and security, and public law and order...*” (Article 7).

The provisions in this law allow the SPDC to unquestionably hold any political threat, such as senior members of the NLD, under house arrest or in prison for extended periods... Only an internal government review can appeal decisions made from Act 10A, and such measures have ceased to exist in recent years.³⁰

Prison conditions in Myanmar are reported to be dire. The US Department of State refers to prison conditions as “harsh and life threatening”, with food, clothing and medical supplies being scarce and of poor quality. Former political prisoners complained of inedible food, beatings, and unsanitary conditions. Members of the security forces “routinely subjected detainees to harsh interrogation techniques designed to intimidate and disorient”. It was alleged that monks in particular were subjected to ill treatment in prison, with many of those held for participating in the September 2007 prodemocracy protests defrocked and forced to eat three meals a day, which is not in line with their usual religious practice of not eating after midday. The authorities beat, sometimes severely, those who resisted.³¹

The *Burma Human Rights Yearbook* noted that detainees suffered worsening conditions as the detention facilities became overcrowded following the large number of arrests during the September 2007 protests, and there were reports of insufficient food and water, as well as a lack of sanitary facilities.³²

²⁸ Human Rights Watch 2009, *Burma’s Forgotten Prisoners*, September, p.24 http://www.hrw.org/sites/default/files/reports/burma0909_brochure_web.pdf – Accessed 2 March 2011 – Attachment 15.

²⁹ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 1b – Attachment 12.

³⁰ Human Rights Documentation Unit 2007, *Burma Human Rights Yearbook*, National Coalition Government of the Union of Burma website, September, p.77 <http://www.ncgub.net/BHRY/2007/pdf/YB2007.pdf> – Accessed 20 November 2009 – Attachment 6.

³¹ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section 1c – Attachment 12.

³² Human Rights Documentation Unit 2007, *Burma Human Rights Yearbook*, National Coalition Government of the Union of Burma website, September, p.36

Family members of prisoners generally were allowed one or two visits per month, and in many cases supplemented prisoners' rations. However, the authorities sent some political prisoners to remote prisons located hundreds of kilometres from their families. While the government did not permit the International Committee of the Red Cross (ICRC) unfettered access to prisons, the ICRC maintained a role in supporting family visits to detainees.³³ The UN Special Rapporteur on the situation of human rights in Myanmar observed in August 2009 that "[m]ost prisoners of conscience rely on their families for medication and food supplies".³⁴

16. Please provide information on the treatment of failed asylum seekers to Myanmar.

No information was found to specifically address the treatment of failed asylum seekers to Myanmar, however, *Country Advice MMR37399* of 8 September 2010³⁵ provides information on the question of whether those who return to Burma from Western countries are targeted and the relevant excerpt from that advice is reproduced in the following paragraphs.

While everyone who travels abroad is questioned upon return, only some are targeted for punishment. A DFAT report from November 2006 stated that some returnees who had been engaged in anti-regime activities overseas appeared to have escaped close attention or retribution. It was not specified whether these returnees were from Western or non-Western countries. It is likely that those engaged in low-level activities are warned at their interview against continuing in that regard upon return to Burma.³⁶

What is of note however, is that anyone "returning to Burma after a lengthy period overseas would come at least to the attention of their local township authorities and their movements may be monitored for an initial period". There is a higher risk for those whose activities had been relatively high profile. Such returnees would be closely monitored by authorities both while overseas and upon their return.³⁶ The UNHCR, writing to DIAC in 2006 on behalf of three Burmese visa applicants, added that those with a political profile are "reasonably likely to be subject to disproportionate punishment, and so the question of whether or not an individual has such a profile must be carefully evaluated as part of the refugee status determination process".³⁷ Strong critics of the regime have been punished "summarily" upon return to Burma. DFAT expected that anyone belonging to the following organisations would classify as "strong critics": National Coalition Government of the Union of Burma (NCGUB), the Federation of Trade Unions of Burma (FTUB), the All Burma Students Democratic Front (ABSDF), the Shan State Army-South (SSA-S), the Network for Democracy and Development (NDD), and the Vigorous Burmese Student Warriors (VBSW).³⁷

The UNHCR added that even if an individual does not have a political profile, it is reasonable to believe that anyone "deemed to have applied for refugee status abroad, and who has the profile of someone who *may* harbor a political opinion, risks being charged under the *1950 Emergency Provisions Act* upon his or her return to Myanmar, and subjected to

<http://www.ncgub.net/BHRY/2007/pdf/YB2007.pdf> – Accessed 20 November 2009 – Attachment 6.

³³ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Burma*, March, Section – Attachment 12.

³⁴ UN General Assembly, *Situation of human rights in Myanmar - Note of the Secretary-General*, 24 August 2009, A/64/318, par.25 <http://www.unhcr.org/refworld/docid/4ac9c4602.html> – Accessed 1 March 2011 – Attachment 16.

³⁵ Country Advice and Information 2010, *Country Advice MMR37399*, 8 September – Attachment 17.

³⁶ Department of Foreign Affairs and Trade 2006, *DFAT Report 564 – RRT Information Request: MMR30908*, 24 November – Attachment 18.

³⁷ UN High Commissioner for Refugees 2006, Letter to DIMA: 'Return of asylum seekers to Myanmar', 15 June – Attachment 19.

disproportionate punishment”. If for instance, a manual labourer had been rejected for their asylum claims as they had been found to be an economic migrant, and they are unlikely to have been politically active, they would likely only be questioned by the government upon return and later released. However if someone who has the profile of an individual who could have been active “such as an intellectual or a student”, is rejected for an asylum claim, they risk being charged and punished under the Act – even if they were not known to have been politically active.³⁸

Those judged to have engaged in dissent while overseas may face severe penalties. This includes life imprisonment which is routinely imposed in Burma. DFAT advised in 2006 that those accused are denied access to legal counsel and defence lawyers are not allowed to participate in proceedings.³⁹ Amnesty International, in a 2007 report, added that forcibly returned asylum-seekers from Burma face arrest and interrogation under torture.⁴⁰ The Government did not permit the Office of the UN High Commissioner for Refugees (UNHCR) to fully monitor the potential areas of return so as to allow them to assess conditions for the voluntary return of refugees. This led the UNHCR to determine conditions remained unsuitable for their return.⁴¹

Attachments

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³⁸ UN High Commissioner for Refugees 2006, Letter to DIMA: ‘Return of asylum seekers to Myanmar’, 15 June – Attachment 19.

³⁹ Department of Foreign Affairs and Trade 2006, *DFAT Report 564 – RRT Information Request: MMR30908*, 24 November – Attachment 18.

⁴⁰ Amnesty International 2010, *Amnesty International - Urgent Action: UA 162/07*, 17 March – Attachment 20.

⁴¹ US Department of State 2010, *Country Reports on Human Rights Practices – Burma*, 11 March – Attachment 12.

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