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# BURMA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2011

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In 2010-2011, human rights defenders continued to face harsh repression. Many remained detained in very harsh conditions, as they were subjected to torture and forced labour, and denied medical treatment, which led to the death of at least one human rights defender in May 2010. In particular, the crackdown on trade unionists, land rights activists, lawyers who provided legal assistance to political prisoners as well as on individuals active in relief efforts in the aftermath of Cyclone Nargis, continued unabated.

## Political context

2010 was largely dominated by the first national elections in twenty years in Burma, which were held on November 7, 2010. Yet, it is estimated that at least 1.5 million voters were excluded from the electoral process – largely on ethnic basis<sup>1</sup>. The pre-election period, election day, and the post-election period were marred by restrictions as well as widespread repression and human rights abuses<sup>2</sup>. Concerns were raised about restrictions in terms of campaigning, registration, freedoms of expression and assembly, limited access to the media and lack of free and balanced reporting<sup>3</sup>. Additionally, Directive 2/2010 which was issued on June 23, 2010, prohibited most activities related to electoral campaigning, including the holding of flags, chanting slogans, and walking to and from assembly

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1/ On March 9, 2010, the Political Parties Legislation Law was enacted, which bars monks, nuns, leaders of other religions, civil servants and political prisoners, among others, from participating in the elections. On September 16, 2010, the regime announced that voting would be cancelled in approximately 3,400 villages in ethnic nationality areas, supposedly due to security concerns. See Assistance Association for Political Prisoners (AAPP) Report, *Silencing dissent: The ongoing imprisonment of Burma's political activists in the lead up to the 2010 elections*, November 2010.

2/ The elections were considered as not having met internationally accepted standards. See Declaration by Catherine Ashton on behalf of the European Union (EU) on the elections in Burma/Myanmar, November 7, 2010 and EU Council Conclusions on Burma/Myanmar, April 12, 2011. The EU Council concluded that the general elections were not free, fair or inclusive, but considered that they may provide the potential for peaceful change and greater pluralism. The EU also decided to renew the sanctions against Burma for an additional twelve months, while at the same time pledging to closely monitor developments and adjust measures if necessary.

3/ See UN General Assembly Report, *Situation of human rights in Myanmar, Report of the Secretary-General*, UN Document A/65/367, September 14, 2010. The Human Rights Council considered the elections a “missed opportunity” and expressed its concerns about the lack of independence of the electoral commission and the restrictions imposed by electoral laws. See Human Rights Council Resolution, UN Document A/HRC/16/24, March 25, 2011.

venues<sup>4</sup>. Serious restrictions were introduced on the media, which were prohibited from publishing interviews with various opposition figures, as well as commenting on electoral laws and the 2008 Constitution. International observers and media representatives were also barred from following the electoral process on election day. In light of the restrictive electoral laws and a Constitution that effectively guarantees military dominance for the new Government, the largest opposition party, the National League for Democracy (NLD), and the second-largest vote winner in the 1990 elections, the Shan Nationalities League for Democracy (SNLD), decided to boycott the elections<sup>5</sup>. The military-backed Union Solidarity and Development Party (USDP)<sup>6</sup> took 80% of the parliamentary seats. On November 13, six days after the elections, Daw Aung San Suu Kyi, General Secretary of the NLD, was released after spending seven years under house arrest.

The new military-dominated Parliament held its first meeting on January 31, 2011 and subsequently elected high-ranking officials from the former ruling State Peace and Development Council (SPDC) to Burma's top political offices, ensuring the continued dominance of the political system by the same group of people who ruled Burma for the past decades. Human rights abuses committed under the previous regime continued unabated. Extrajudicial killings, forced labour, torture, rape and recruitment of child soldiers were still committed in Burma with total impunity.

Individuals continued to be subjected to imprisonment on political grounds and without being accorded the right to a fair trial and due process, such as legal representation and open trials<sup>7</sup>. Incommunicado detention as well as torture and ill-treatment remained rampant in Burma's prisons and detention centres<sup>8</sup>. Conditions in prisons were also very poor, lacking in hygiene and often not providing adequate nutrition and medical care to prisoners. Many political prisoners were kept in remote locations far away from their hometown, making it extremely difficult for family members to

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4/ See AAPP Report, *Silencing dissent: The ongoing imprisonment of Burma's political activists in the lead up to the 2010 elections*, November 2010.

5/ The NLD was dissolved on May 7, 2010, after it failed to re-register as a political party within the deadline imposed by the Election Commission. On September 14, the Election Commission officially confirmed the dissolution of the NLD.

6/ USDP was formed in April 2010 by Prime Minister (and former General) Thein Sein and 27 other SPDC cabinet ministers.

7/ See AAPP Report, *Silencing dissent: The ongoing imprisonment of Burma's political activists in the lead up to the 2010 elections*, November 2010.

8/ See AAPP Reports, *Torture, Political Prisoners and the Un-rule of Law: Challenges to Peace, Security and Human Rights in Burma*, as well as *Silencing dissent: The ongoing imprisonment of Burma's political activists in the lead up to the 2010 elections*, October and November 2010.

deliver food and medicine. As of April 2011, a general amnesty for political prisoners had yet to take place and over 2,000 of them remained detained<sup>9</sup>, despite repeated calls by the international community.

Relations with UN human rights mechanisms remained strained throughout the reporting period. In particular, the Special Rapporteur on the Situation of Human Rights in Myanmar, Mr. Tomás Ojea Quintana, has been denied access to the country since February 2010. On March 26, 2010, the Human Rights Council adopted a resolution calling for the release of all political prisoners, to ensure a free, transparent and fair electoral process and to lift the restrictions on freedoms of assembly, association, movement and expression<sup>10</sup>. A similar resolution was adopted on March 25, 2011, which strongly condemned the ongoing systematic violations of human rights and fundamental freedoms which also forced thousands of people to seek refuge in neighbouring countries<sup>11</sup>. The human rights record of Burma was examined in the framework of the Universal Periodic Review (UPR) mechanism of the Human Rights Council in January 2011, during which Burma denied there were any political prisoners and rejected seventy recommendations<sup>12</sup>.

### Targeting of trade unionists and land rights activists

In 2010-2011, trade unionists continued to be subjected to arbitrary detention and harsh sentences. As of April 2011, Mr. **Bo Min Yu Ko**, aka **Phyo Gyi**, a member of the Mandalay branch of the All Burma Federation of Student Unions (ABFSU), the largest national student organisation, outlawed by the regime, remained detained in Mandalay. Arrested in September 2008, he was sentenced on January 3, 2009 to a total of 104 years of imprisonment by the Obo Prison Court in Mandalay. Moreover, on May 21, 2010, with his first sentence set to expire in one year, Mr. **Kyaw Ko Ko**, a leader of ABFSU, received an additional five-year jail sentence

9 / According to AAPP, as of December 31, 2010, there were 2,189 political prisoners in Burma. See AAPP Report, *AAPP 2010 Annual Report: Political Prisoners in Burma*, 2011.

10 / See Human Rights Council Resolution, UN Document A/HRC/13/25, March 26, 2010.

11 / See Human Rights Council Resolution, UN Document A/HRC/16/24, March 25, 2011.

12 / On the recommendations proposed, the Government accepted, among others, calls for the ratification of the core international human rights instruments; to bring the judiciary in line with international standards; to cooperate effectively with Human Rights Council special procedures and mechanisms; to end and prohibit torture, forced labour and child labour; and to undertake further efforts to prevent the use of child soldiers and demobilise existing ones. The seventy recommendations rejected were calling, among others, to take immediate steps to end continuing violations of international human rights law; to amend the Constitution to bring it in line with international human rights standards; or to repeal Article 445 of the Constitution that effectively grants immunity to military and State officials even for criminal offences. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Myanmar*, UN Document A/HRC/17/9, March 24, 2011.

by a Rangoon's Kyauktada Township Court for "unlawful association" and "subversion", which according to his defence lawyer, he was alleged to have committed during the monks' protests in 2007. Mr. Kyaw Ko Ko was arrested in March 2008 along with Mr. **Nyan Linn Aung**, another leader of ABFSU. Both men were sentenced on February 9, 2009 to three years of imprisonment each by Rangoon Mingalar Taung Nyunt Township Court for "possessing illegal videos" of the 1988 uprising under the Video Act, which regulates uncensored videos. As of April 2011, Messrs. Kyaw Ko Ko and Nyan Linn Aung remained detained in Taunggyi prison. As of April 2011, Ms. **Su Su Nway**, a labour activist and a member of the youth wing of the NLD, also remained detained in Hkamti prison. Arrested in November 2007 during a UN visit to Myanmar to investigate the September 2007 crackdown, after attempting to put up leaflets near the hotel where a UN investigator was staying, she was sentenced on November 11, 2008 to twelve years and a half in prison<sup>13</sup>.

Land rights activists also continued to face repression in 2010-2011. As of April 2011, Mr. **Ko Zaw Htay** remained detained in Thayet prison. On January 23, 2009, Mr. Ko Zaw Htay was found guilty of giving out official secrets and sentenced by Magwe Township Court to ten years in prison on charges of "leaking sensitive information", for taking video footage of army-confiscated land and sending it abroad in order to help farmers in Natmauk township, Magwe division, to lodge complaints before the International Labour Organisation (ILO) on the seizure of more than 5,000 acres of land by the military. On a positive note, on March 5, 2010, Mr. **Pho Phyu**, a labour rights lawyer who had assisted farmers whose land had been forcibly seized by the army, was released from prison after his sentence was reduced to one year imprisonment following pressure by the ILO. Yet, shortly after his release, he received a notice that his licence had been revoked. He had been arrested on January 15, 2009 and sentenced to a four-year imprisonment on March 17, 2009 after representing labour activists detained for reporting the seizure of farmland to the ILO<sup>14</sup>. On August 24, 2010, Messrs. **Myint Maung** and **Thura Aung**, two activists who had assisted farmers in central Burma in filing legal proceed-

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13/ Ms. Su Su Nway was the first person to successfully prosecute local authorities for their practice of forced labour in 2005. She had already been imprisoned after successfully taking legal action against village authorities over their use of forced labour. The officials concerned received prison terms, following which Ms. Su Su Nway was charged with "criminal intimidation" and sentenced to eighteen months in jail in October 2005. She was later released in June 2006.

14/ Following the ILO Liaison Office in Rangoon intervention, on February 17, 2010, the Magwe Divisional Court reduced to four months the initial jail terms against the eleven arrested farmers who had complained to the ILO over land confiscation by the regime. They were all released from Thayet prison, as they had already served more than four months in pre-trial detention.

ings against the seizure of their farmlands by local industry, were released from Thayet prison after winning an appeal through the Central Court in Mandalay division, which reduced their sentences to six months and one year, respectively. Mr. Myint Maung had been sentenced in December 2009 to two years in prison under section 427 of the Criminal Code, while Mr. Thura Aung had been given seven years in late 2008 under section 6 (1) of the Public Property Protection Act<sup>15</sup>.

Moreover, on June 23, 2010, Mr. Pho Phyu and six others labour rights activists were summoned by the Rangoon police chief and told that their request to form an independent labour union had been rejected, with officials from the Burmese Government's Labour Department reportedly citing "international law". He added that Rangoon authorities had said that if, following the rejection, the group published any manifesto or other written material, then they would be charged under Burma's draconian Press Law<sup>16</sup>.

### **Ongoing arbitrary detention of relief workers assisting Cyclone Nargis victims**

As of April 2011, a dozen of individuals who were arrested in 2008 for carrying out relief activities in the Irrawaddy delta following the passage of Cyclone Nargis remained under detention, including Mr. **Nyan Tun**, who was given a fourteen years' imprisonment sentence in September 2008 and remained detained in Tharawaddy prison, Mr. **U Thura**, aka **Zarganar**, prominent comedian, film director and activist, who remained detained in Myitkyina prison in Kachin State, in the country's far north, where he was transferred in December 2008<sup>17</sup>, as well as Ms. **Phyo Phyo Aung** and Messrs. **Aung Thant Zin Oo** and **Shein Yarza Tun**. The three were arrested in June 2008 along with Ms. Phyo Phyo Aung's father, Dr. **Nay Win**, and Messrs. **Aung Kyaw San** and **Phone Pye Kywe** for organising to collect bodies of Cyclone Nargis victims for burial, and had started an organisation called "The Group that Buries the Dead". On April 10, 2009, the six relief workers were sentenced by a special court in Insein prison to jail terms ranging from two to four years<sup>18</sup>. In January 2011, Dr. Nay Win and Messrs. Aung Kyaw San and Phone Pyae Kywe were released<sup>19</sup>.

15/ See APPP Monthly Chronology of Burma's Political Prisoners for August 2010.

16/ See APPP Monthly Chronology of Burma's Political Prisoners for June 2010.

17/ On February 13, 2009, he was granted a 24-year reduction of his original 59-year sentence by Rangoon Divisional Court.

18/ Messrs. Aung Thant Zin Oo and Shein Yarza Tun and Ms. Phyo Phyo Aung were sentenced to four years each, while Dr. Nay Win and Messrs. Aung Kyaw San and Phone Pye Kywe were sentenced to two years each.

19/ See APPP Monthly Chronology of Burma's Political Prisoners for January 2011.

Furthermore, on February 17, 2010, Mr. **U Ghawthita**, a Buddhist monk who was active in relief efforts for Cyclone Nargis victims, was sentenced by the Rangoon Western District Court to seven years of imprisonment for “meeting and obtaining support from anti-Government groups in Thailand”. He had been arrested at Rangoon airport on August 26, 2009 upon his return from a missionary tour in Thailand. As of April 2011, he remained detained in Yamethin prison<sup>20</sup>.

### **Harsh conditions of detention of defenders in prison, leading to the death of one defender**

Human rights defenders who are arbitrarily detained in Burmese prisons face very harsh conditions of detention, including torture and the denial of food and medical treatment. In some cases, this led to the tragic death of prisoners. Many died from curable diseases such as diarrhoea, tuberculosis or malaria. On May 19, 2010, Mr. **Ko Kyaw Soe**, a member of the Human Rights Defenders and Promoters Network (HRDP), passed away in Myingyan prison hospital, at the age of 39, due to prolonged ill-treatment in custody and the denial of medical treatment for respiratory problems. Mr. Ko Kyaw Soe had been arrested on September 17, 2007 and sentenced to ten years in prison on November 11, 2008 under Article 17.1 of the Unlawful Association Act, Article 13.1 of the Immigration Act and Article 505.B of the Criminal Code. He was tortured during interrogation, reportedly beaten, burnt with cigarettes and electrocuted. In Myingyan prison, he suffered from a respiratory disease and stomach problems. When his relatives had requested the prison authorities to buy him appropriate medicine, authorities replied that they were taking care of him adequately and carefully<sup>21</sup>. Furthermore, in November 2010, when detained human rights defender Ms. **Sanda** complained about the conditions of her detention, she was transferred to Putao prison, in Kachin State, 1,150 miles from her family. Ms. Sanda was arrested in May 2010 after she raised concerns at Twante township hospital after witnessing a car accident where a woman did not receive necessary medical treatment due to the absence of medical staff. On May 7, 2010, she was sentenced to one year and six months in prison under Article 353 of the Criminal Code in relation to her complaint. In detention, Ms. Sanda’s health declined severely<sup>22</sup>.

20/ See AAPP Monthly Chronology of Burma’s Political Prisoners for February 2010.

21/ See AAPP Press Release, May 19, 2010.

22/ See AAPP Report, *AAPP 2010 Annual Report: Political Prisoners in Burma*, 2011.