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# Myanmar

## The Administration of Justice - Grave and Abiding Concerns

### I. INTRODUCTION

For the first time in its history, Amnesty International visited Myanmar in February 2003 and again in December of that year. During the visits the organization held talks with a number of government officials; interviewed political prisoners in three different prisons; and met members of Myanmar civil society. The major focus of both trips was political imprisonment, as over 1300 political prisoners continue to be held throughout the country. Serious concerns include arbitrary arrests of prisoners of conscience; torture and ill-treatment; trials falling far short of international fair trial standards; laws criminalizing the exercise of the rights to freedom of expression; and prison conditions. Other ongoing concerns in Myanmar include forced labour of civilians by the military and forcible relocations of members of ethnic minorities during the Myanmar army's counter-insurgency activities. Extrajudicial executions and torture of civilians also occur in the same context. Moreover, since 1991 Amnesty International has documented human rights abuses committed by armed opposition groups fighting the central Myanmar government.

Most recently, two Amnesty International delegates visited Myanmar from 2 – 19 December 2003 and held a press conference in Bangkok, Thailand on 22 December. Before its departure from Yangon, the delegation submitted a confidential memorandum to the State Peace and Development Council (SPDC, Myanmar's military government) citing their preliminary findings. At the press conference an Official Statement was delivered, which also reported the delegation's initial findings and made recommendations to the SPDC.<sup>1</sup>

During the December visit Amnesty International conducted extensive interviews with 35 male and female political prisoners, whose arrest dates ranged from 1983 until September 2003. Those interviewed included members of armed opposition groups; political party members; young activists; and human rights defenders. Most were prisoners of conscience, arrested solely for their non-violent political opposition activities.<sup>2</sup> They ranged from senior political party leaders to ordinary party members criticizing government policies on the economy and education. Some of them had no political affiliation, but had been politically active in the past, or had attempted to assist families of political prisoners. Three had been sentenced to death for high treason.

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<sup>1</sup> Please see Appendix I, *Myanmar: Amnesty International's Second Visit to Myanmar Official Statement*, 22 December 2003, (AI Index ASA 16/037/2003).

<sup>2</sup> 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.

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This report provides updated information about the criminal justice system which was obtained during the December trip, and other subsequent developments.<sup>3</sup> Areas covered in the report are: political arrests; trials and sentencing, including death sentences; ill-treatment and torture; laws criminalizing the exercise of the rights to freedom of expression; and prison conditions. This document reflects detailed and substantive discussions Amnesty International held with Myanmar government officials, including the Minister for Home Affairs; Deputy Foreign Minister; Attorney General and Chief Justice; and police and prison officials. During these meetings, the organization obtained clarification about some criminal justice procedures such as the arrest process, and several laws repeatedly used to criminalize the exercise of fundamental human rights. Finally, the report provides a set of recommendations to the SPDC, all of which were also made to the government in *Justice on Trial*, published by Amnesty International in July 2003.

Myanmar is not state party to most international human rights treaties. Amnesty International has consistently urged the SPDC to accede to these treaties. However, the fact that the SPDC has not done so does not release it from its obligation to respect fundamental human rights which, being provided for under customary international law, are binding on all states.

Relevant provisions of international law may be found, *inter alia*, in: the Universal Declaration of Human Rights;<sup>4</sup> the United Nations (UN) Basic Principles for the Treatment of Prisoners;<sup>5</sup> the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>6</sup>; the UN Standard Minimum Rules for the Treatment of Prisoners<sup>7</sup>; the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>8</sup>; the UN Basic Principles on the Role of Lawyers<sup>9</sup>; the UN Basic Principles on the Independence of the Judiciary<sup>10</sup>; and the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or

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<sup>3</sup> Please see *MYANMAR: Justice on trial*, 30 July 2003, (AI Index ASA 16/019/2003), a detailed report on the administration of justice in Myanmar.

<sup>4</sup> Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

<sup>5</sup> Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

<sup>6</sup> Adopted by General Assembly resolution 43/173 of 9 December 1988.

<sup>7</sup> 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.

<sup>8</sup> Adopted by the General Assembly on 9 December 1975 (resolution 3452 XXX)

<sup>9</sup> 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.

<sup>10</sup> 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.

Degrading Treatment or Punishment.<sup>11</sup> An extensive review of Myanmar's specific obligations under international human rights law is provided in *Myanmar: Justice on trial*.

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<sup>11</sup> Adopted by General Assembly resolution 55/89 Annex, 4 December 2000.

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## II. BACKGROUND

Since the violent attack on the National League for Democracy (NLD, the main opposition party in Myanmar) on 30 May 2003, the human rights situation in Myanmar has deteriorated. NLD leaders and supporters were attacked at night in a remote area near Depayin in Sagaing Division, Upper Myanmar. At least four people were killed, and scores of people were injured in an attack believed to have been instigated by the government-backed Union Solidarity and Development Association (USDA)<sup>12</sup>. NLD General Secretary Daw Aung San Suu Kyi and U Tin Oo, NLD Vice Chairman, who were both at the scene, were arrested along with scores of other NLD supporters there.

Immediately after 30 May Amnesty International strongly urged the SPDC to permit an independent, impartial, and effective investigation into the 30<sup>th</sup> May events, and to bring those found responsible to justice. At the time of writing the SPDC has not permitted such an investigation, which contributes to the overall climate of fear on the part of the population and impunity for the security forces in the country.

Following the Depayin violence, there has been an upsurge in the detention of those peacefully exercising their right to freedoms of expression and association. They continue to be held without charge, or have been prosecuted under repressive deeply flawed legislation in trials that do not meet international standards for fair trial. Examples include people detained for protesting about the 30th May violence; a solitary demonstrator who called for the release of all political prisoners; and others who had simply expressed concern about the quality of education in personal letters.

### *Subsequent developments*

In August 2003 the government reassigned duties to senior officials, including the appointment of General Khin Nyunt as Prime Minister. That month he announced a seven-point plan for Myanmar, known as a “road-map”, to initiate a transition phase to democracy. The Prime Minister also initiated discussions with some armed opposition groups who have not yet agreed a cease-fire with the central government. In January 2004 the SPDC verbally agreed a truce with the Karen National Union (KNU, a Karen ethnic nationality armed opposition group), although details of the

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<sup>12</sup> The USDA was established by the government as a “social organization” in 1993, with millions of members nationwide. Widespread reports indicate that many people have been forced to join the USDA.

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ceasefire have not yet been decided. The KNU has been fighting against the central Myanmar government since 1949 for greater autonomy for the Karen ethnic minority group. The Karenni National Progressive Party (KNPP, a smaller Karen-related ethnic minority armed opposition group) will also reportedly begin ceasefire discussions with the SPDC in April 2004. It is not known whether the SPDC is engaging or is willing to engage with the remaining armed opposition groups in ceasefire talks, including the two largest, the Shan State Army-South (SSA-South) and the Chin National Front (CNF).

After the 30 May 2003 Depeyin violence, the Association of Southeast Asian Nations (ASEAN)<sup>13</sup> expressed their concern about the situation during their July 2003 Ministerial Meeting in Phnom Penh. This was the first time in ASEAN's history that it had issued a statement expressing concern about the human rights situation in a member country. In December the Royal Thai Government convened a meeting of "like-minded" countries on developments in Myanmar in Bangkok, known as the "Bangkok Process". Participants included selected ASEAN and EU countries, Japan, Australia, and the SPDC. In March 2004 the Thai Foreign Minister announced that his government would host a second round of the "Bangkok Process" in April.<sup>14</sup> On 17-18 April, Ireland, as President of the EU, will host an Asia-Europe meeting (ASEM) of Foreign Ministers in Kildare. Asian countries are urging that Myanmar, along with Cambodia and Laos, be permitted join ASEM at the same time as the 10 new EU accession states, at the ASEM Hanoi Summit in October. However, the EU reportedly does not consider that the time is right for membership for Myanmar.

Tan Sri Razali Ismael, the UN Secretary General's Special Envoy for Myanmar, made his 12<sup>th</sup> visit to Myanmar from 1 – 4 March 2004, when he met Prime Minister Khin Nyunt and Daw Aung San Suu Kyi. After his visit he announced that the Prime Minister was committed to democratization in Myanmar and that Daw Aung San Suu Kyi was willing to work for a harmonized relationship with the Prime Minister. However Sergio Paulo Pinheiro, the UN Special Rapporteur for Myanmar, was not permitted by the SPDC to visit the country in advance of the 2004 UN Human Rights Commission. This is the first time since taking up his mandate that Professor Pinheiro has been denied access to Myanmar shortly before the Human Rights Commission's consideration of Myanmar's human rights record. Professor Pinheiro addressed the Commission on 26 March 2004.

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<sup>13</sup> ASEAN comprises 10 countries, including Indonesia, the current chair, Malaysia, the Philippines, Thailand, Brunei, Singapore, Cambodia, Vietnam, Laos, and Myanmar, which was admitted in 1997.

<sup>14</sup> *Reuters*, 23 March 2004, Bangkok.

The Myanmar Government ratified the International Labour Organization (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. In May 2002 the ILO appointed a Liaison Officer in Yangon in order to assist the authorities in eliminating the practice of forced labour. In May 2003 agreement was reached on a joint Plan of Action on forced labour, including the establishment of an independent Facilitator who could receive complaints from victims of forced labour or their representatives. This Facilitator would be able to conduct an initial assessment of such cases and take up those cases he found to be prima facie plausible with the appropriate authorities, so that judicial or informal remedies could be obtained. Following the 30 May Depayin incident, the implementation of this Plan of Action, including the Facilitator, was put on hold. A recent high treason case, while highlighting the need for such a mechanism, has also raised further concerns about the possibility for its credible implementation. Following recent discussion of this issue in its Governing Body, before going ahead with the implementation of the Plan of Action, the ILO will examine whether the safeguards built into the Facilitator mechanism are sufficiently strong to give the necessary credibility and confidence in this mechanism.<sup>15</sup>

### *Human rights and the National Convention*

As part of the seven point “roadmap”, the Prime Minister announced in August 2003 the re-convening of the National Convention, established in 1992, convened in 1993 and adjourned in 1996, in order to draft a new constitution. From 1992 - 1996 Amnesty International reported on the human rights situation in the context of the first National Convention process, which failed to protect the rights to freedom of expression and assembly. Delegates were not permitted to speak or meet openly, and some of those who objected to these procedures were arrested and sentenced to long terms of imprisonment. In its reports Amnesty International also outlined in detail human rights provisions which should be included in the final constitution.<sup>16</sup>

The SPDC has established three committees to convene the current National Convention. According to a statement made by Foreign Minister U Win Aung on 8 February 2004, the National Convention will be convened during 2004.<sup>17</sup> All the ethnic nationality ceasefire groups have reportedly agreed to participate in the

<sup>15</sup> For a full discussion of the High Treason case, please see pages 17-21 of this report.

<sup>16</sup> See for example *Myanmar: 'No law at all'* October 1992, (ASA Index Number 16/11/92).

<sup>17</sup> *Agence France Presse* (AFP), 8 February 2004, Phuket, Thailand.



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process.<sup>18</sup> The two largest participating groups are the United Wa State Party (UWSP, a Wa armed opposition group who agreed a ceasefire in 1989) and the Kachin Independence Organization (KIO, a Kachin armed opposition group who agreed a ceasefire in 1994). However at the time of writing it is not known if political parties, including the NLD and ethnic-minority parties which stood in the 1990 elections, will participate in the Convention or will be invited to do so. Nor has the complete list of delegates and the timeline for the National Convention been made public.

During its meetings with SPDC officials in December, Amnesty International raised the protection of human rights during the National Convention and in the new Constitution. The delegation urged officials to ensure that freedom of speech and association was guaranteed and that there was no government censorship of written or oral statements delivered by participants. They also called on the SPDC to allow all groups to meet freely both during the National Convention meetings and outside the formal sessions. In addition the organization provided detailed information about necessary human rights safeguards to be incorporated in any constitution-drafting process. Amnesty International further explained to officials that in its work on all countries, it confined itself to human rights and took no position on political systems or particular governments.

Amnesty International is concerned by the continued arrests, surveillance, and intimidation of members of opposition political parties in the lead-up to the National Convention. Members and leaders of these parties have been followed, interrogated, and intimidated for attempting to engage in legitimate and peaceful political activities, including holding party meetings. Some have been arrested for their non-violent protests, for example, calling for an investigation into the 30 May 2003 violence. Amnesty International is further concerned that many legitimate participants in a constitution-drafting process are currently imprisoned or held under *de facto* house arrest. These include members of parliament-elect from several political parties;<sup>19</sup> young political leaders; and other prominent members of civil society. Such developments do not promote an enabling environment for the National Convention process to go forward in a free and open manner. During its discussions with government officials, Amnesty International urged the government to free all prisoners of conscience and to refrain from arresting or otherwise punishing

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<sup>18</sup> The SPDC states that it has agreed cease-fires with 17 armed opposition groups since 1989. The vast majority of these cease-fires still hold; however, no political agreements have been made between the SPDC and these groups.

<sup>19</sup> Members of parliament-elect are the successful candidates in the May 1990 general elections; however the then SLORC did not convene parliament or a constitution-drafting assembly.

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participants in the upcoming National Convention for expressing their peaceful political views.

### *Summary of recent arrests and releases*

There are an estimated 1300 – 1400 political prisoners in Myanmar, many of them prisoners of conscience. Beginning in January 2000, the SPDC began to release political prisoners, as part of a process of reconciliation between the NLD and the SPDC facilitated by Ambassador Razali. Over 100 political prisoners were released in November 2002 after one of Ambassador Razali's periodic visits to Myanmar. However since that time the pace of releases has slowed considerably, and political arrests continue to occur. These arrests are of particular concern in the context of the National Convention convening process, and contribute to a climate of fear and uncertainty for political activists.

Scores of people were arrested during or after the 30 May violence in Depayin.<sup>20</sup> Most of those arrested on the actual day have been released; however four NLD CEC members remain under *de facto* house arrest. They are: U Aung Shwe, NLD Chairman; U Tin Oo, NLD Vice-Chairman; Daw Aung San Suu Kyi, NLD General Secretary; and U Lwin, NLD spokesperson. U Tin Oo, aged 77, was transferred to house arrest on 15 February 2004 after having been held for over seven months in harsh conditions at Kalay prison.

On 22 January 2004 the Ministry of Foreign Affairs of the Union of Myanmar issued a statement, providing the names of 26 people who were released on 16 January 2004.<sup>21</sup> The statement also announced that 151 people in total arrested on 30 May had been released. While welcoming their release, Amnesty International is concerned by reports that individuals may have been required to sign undertakings attaching conditions to their release. Moreover scores detained on 30 May were in detention for at least six months. This includes members of the NLD Youth wing, who had provided security during the incident, released in December 2003, and NLD Members of Parliament, released in January 2004. Many of those released are still reportedly suffering from injuries sustained during the attack.

Amnesty International has received further information about individuals who were arrested in June and July 2003 and still held. They include NLD members and persons who are not members of registered political parties. NLD members have been sentenced to between one and 12 years' imprisonment. Among these are a township chairman, and

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<sup>20</sup> For a discussion of arrests in the context of the 30 May events, please see pages 5-9, *MYANMAR: Justice on trial*, July 2003, (AI Index 16/019/2003).

<sup>21</sup> British Broadcasting Corporation Monitor, 25 January 2004.

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members of the party's Youth wing, from Ayeyarwaddy, Yangon, Mandalay, and Sagaing Divisions, Chin and Kachin States. Authorities have stated that they have been sentenced for “spreading rumours”, and “inciting people to act illegally”. Other sources have stated that individuals were arrested for distributing leaflets about the 30 May events; calling for the reopening of NLD offices; and for their other legitimate political activities undertaken during Daw Aung San Suu Kyi's visit to Chin State and Mandalay Division earlier in 2003.

- Former political prisoner Aye Win, an NLD member from Patheingyi township, was sentenced to four years' imprisonment on 9 July 2003 under Sections 227 & 505 (b) of the Criminal Code for violating the terms of his release from a previous term of imprisonment for political activities, and for spreading rumours. He had reportedly organized a demonstration in protest at the events of 30 May 2003, and had originally been arrested in 1998 for flying a peacock flag<sup>22</sup> above his local school.
- Among those detained during this period who are not affiliated to registered political parties are a football journal editor and former organizer for the Democratic Party for a New Society; a former member of the New Mon State Party; and students from Bago, Magway, Mandalay, Sagaing, Tanintharyi and Yangon divisions, who received sentences of between five years' imprisonment and the death penalty. A group of seven students from Dagon university arrested in June 2003 were reportedly convicted in January 2004 for forming a student football union.

Between 30 July 2003 and the time of writing an NLD Member of Parliament, NLD township chairpersons, a private teacher, students, farmers and Buddhist monks from Ayeyarwaddy, Bago, Mandalay, Sagaing, Tanintharyi and Yangon divisions have been arrested by the authorities. Amnesty International has received reports that they have been sentenced to between two and 17 years' imprisonment.

- In October 2003 six students were reportedly arrested for distributing leaflets criticizing the “road map” (the official plan for political transition) that had been announced in August 2003. It has been reported that they were sentenced on 20 February 2004 to prison terms of between seven and 17 years.
- In late December 2003 at least six NLD members from Mandalay Division were arrested, including Daw Hnin Pa Pa Hlaing, and her son, Ko Aung Naing Thu. It is not known whether they have been charged, but opposition sources have stated that they were arrested under suspicion of contacting persons outside Myanmar.

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<sup>22</sup> The flying peacock is the symbol of the student movement and also of the NLD.

- In February 2004 the chair and seven members of the NLD Bogale township, Ayeyarwaddy Division, were reportedly detained in connection with plans to celebrate Union Day. It is not known whether they have yet been charged.

During its first visit to Myanmar in early 2003, Amnesty International submitted three lists of political prisoners to government officials: prisoners who should be released on urgent humanitarian grounds; prisoners held under Article 10 (a) and (b), the administrative detention provisions of the 1975 State Protection Act; and prisoners who were elected to parliament in the 1990 general elections. The lists are in no way comprehensive and comprise a small proportion of the over 1300 political prisoners in Myanmar. The three lists were updated and appended to *Myanmar: Justice on trial*, published in July 2003. They have been further updated to include the most recent information available to Amnesty International, and are found in Appendix II, III, and IV of this report. Amnesty International renews its calls to release these prisoners before the National Convention is convened.

At the same time as arrests have continued, a few political prisoners have been released after having served their sentences. However there have been no large-scale releases since November 2002. Amnesty International is concerned that not only do prisoners of conscience continue to be arrested, but also that hundreds of political prisoners arrested in previous years remain in prisons around the country. In this regard, the organization supports the call by Professor Paulo Sergio Pinheiro, the UN Special Rapporteur on Myanmar, for a general amnesty of political prisoners. Amnesty International understands these to include prisoners of conscience; possible prisoners of conscience<sup>23</sup>; and other political prisoners such as members of armed opposition groups who should be released on urgent humanitarian grounds.

### **III. UPDATE ON THE ARREST AND PRE-TRIAL DETENTION PROCESS**

Amnesty International's concerns about the arrest and pre-trial detention process for political detainees are extensive. These include arbitrary arrest by Military Intelligence (MI) personnel; prolonged interrogation accompanied by torture and ill-treatment; incommunicado pre-trial detention, including denial of access to lawyers, families, and adequate medical care; and the inability of the accused to challenge the

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<sup>23</sup> Possible prisoners of conscience in Myanmar are those whom Amnesty International believes are probably being imprisoned solely on account of the peaceful political activities but about whom the organization does not have detailed and extensive information.

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legality of their detention. These concerns were discussed in detail with regard to international standards, Myanmar law, and actual practice in *Myanmar: Justice on Trial*, published by Amnesty International in July 2003. On 22 May 2003 Amnesty International submitted a detailed Memorandum about the administration of justice to the SPDC for their comments and clarification. On 9 July the SPDC provided their written comments, which were reflected in the 30 July report.

The material below provides updated information about arrest and pre-trial detention in Myanmar obtained during Amnesty International's visit to Myanmar in December 2003. This information reflects substantive discussions the delegation held with the Attorney General; the Chief Justice; and the Minister for Home Affairs about the arrest and pre-trial detention process. These discussions and other information gathered during the December visit have deepened Amnesty International's concerns about arbitrary arrests and pre-trial detention.

### *Arbitrary arrests and detention without judicial oversight*

For the past 15 years Amnesty International's research both inside and outside the country about the arrest process overwhelmingly indicates that personnel from Military Intelligence (MI) branches conduct the vast majority of political arrests<sup>24</sup>. The other agency which is sometimes also involved in political arrests is the Special Branch (SB) of the Myanmar Police Force.

During a meeting on 15 December 2003 with the Attorney General U Aye Maung and his deputies, Amnesty International delegates sought to clarify the role of MI in the arrest process. In its response to the organization's May 2003 Memorandum, the Myanmar government had stated: "*In Myanmar, the accused is not arrested by the MI personnel. It is the Member of the Police Force who conducts the arrest.*"<sup>25</sup> However dozens of former political prisoners have consistently told Amnesty International over the last 15 years that they were arrested by MI branch personnel.

During the 15 December meeting, the Attorney General stated that different agencies can become involved in the investigation phase of a case, including MI, under the provisions of the National Intelligence Bureau Law (Law No. 10/1983).

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<sup>24</sup> MI branch offices are designated by numbers, e.g., MI-25; MI-7 etc.

<sup>25</sup> Page 13, *Myanmar: Justice on trial*, July 2003, (AI Index 16/019/2003)

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Prior to the meeting Amnesty International had obtained an unofficial translation of this law, which appeared to establish various government agencies, including the Directorate of Defence Services Intelligence (DDSI, the central intelligence body), as part of the National Intelligence Bureau. The law did not appear to provide for arrest powers to Military Intelligence. At the 15 December meeting the Attorney General clarified that there was a separate law for each government department about the conduct of an investigation of a case. However Amnesty International has not been able to obtain copies of these laws.

The Attorney General's staff clarified that MI was not in fact conducting arrests or detaining political suspects, but was conducting "investigations". They said further that "*Detention starts when the police take over.*" When the delegation stated that dozens of former political prisoners had named MI as the arresting agent, who then detained them in one of the MI branch headquarters for several days or weeks, the Attorney General reiterated that this was considered to be part of the investigation process, not the arrest and detention process.

Amnesty International considers this position untenable under international legal standards. Detention begins at the moment when an authority deprives persons of their liberty. Under the Universal Declaration of Human Rights (UDHR), such deprivation must not be arbitrary.<sup>26</sup> Arrests may only be carried out by legally authorised persons, and a detainee's rights,<sup>27</sup> including the right to be informed of the charges against him or her; to have access to legal counsel and medical care; to have his or her family informed of his or her whereabouts; and to have his or her arrest subjected to prompt judicial review cannot be waived simply by renaming the arrest and detention "investigation". Principle 2 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 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.*"

Amnesty International met with the Chief of the Myanmar Police Force and his deputies on 19 December 2003, in order to seek clarification about the role of the police in the arrest process. According to a previous statement by the SPDC, "*In practical terms, whenever an information of offence is obtained, first information*

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<sup>26</sup> According to Article 9 of the UDHR, "No one shall be subjected to arbitrary arrest, detention or exile."

<sup>27</sup> For the rights listed here, which are by no means exhaustive, see, for instance, Principles 4, 9, 10, 11, 15-19, and 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988.

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*report is fielded at the police station [sic]. 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.”*<sup>28</sup> During the December meeting police officials stated that a First Information Report is necessary in the case of a cognizable offence, namely, the most serious crimes for which the police have enhanced investigation and arrest powers. If someone makes a complaint about a cognizable offence at a police station, an inquiry would take place and the First Information Report would be filed, on the strength of which the police can take action. However, according to information received by Amnesty International, in political arrests First Information Reports are not known to have been filed, nor is the accused brought before the court after 24 hours to obtain a court order for the continuation of the detention.

During the meeting with the police the delegation also sought clarification about the role of Special Branch (SB) of police, who have sometimes been cited by former political prisoners as being involved in their arrests. Police Officials stated that the main purpose of SB is to collect information, especially in political cases, and that the SB functions as the intelligence arm of the police. They went on to say that the initial investigation in custody could be undertaken by Military Intelligence, Bureau of Special Investigation (BSI, under the Ministry of Home Affairs), SB, or the ordinary police. In criminal cases the police are responsible for the investigation. According to the police, in “*other cases, including National Security cases*” different departments of the National Intelligence Bureau, such as the BSI, SB, or Criminal Investigation Department (CID) conduct the investigation.

There do appear to be some safeguards against unlawful arrests in the 1898 Myanmar Criminal Procedure Code, which was introduced by the British Government during colonial rule and is still used by the SPDC. Section 100 of the Criminal Procedure Code 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

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<sup>28</sup> as quoted on page 15, *MYANMAR: Justice on Trial*, July 2003 (AI Index 16/019/2003).

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.<sup>29</sup> Specific provisions which would enable the accused to challenge the legality of their detention appear to be lacking in Myanmar law. Moreover information obtained from former political prisoners indicates that in practice there is no judicial oversight of their arrest and detention, including the ability to challenge the legality of their detention.

MI personnel normally arrest political suspects at their home, where they often search the premises. Suspects are generally not given a reason for their arrest, but are only told they are being taken in for questioning. MI often hoods suspects and then takes them to one of the MI branches, for example, MI 6. Political suspects are then extensively interrogated by MI staff and are not permitted to inform their families or seek legal or medical assistance. Moreover families are not informed about their relative's whereabouts.

After the interrogation process is completed, the detainee is usually transferred to another detention facility, for example the remand section of Insein Prison, the largest prison in Myanmar. They generally continue to be held incommunicado, and are still not told what charges are being brought against them. They normally only learn this once they are taken to court, which may be weeks or months after their initial arrest. Once sentenced, the individual is transferred to an area of a prison where convicted prisoners are held.

Amnesty International's concerns about the arrest and initial detention procedure in Myanmar have been reinforced by information gathered during its December 2003 visit to the country. In practice there appears to be little or no protection against arbitrary arrest, as pre-trial detainees have no ability to challenge the legality of their detention, and they are kept incommunicado and deprived of any legal counsel until the first trial hearing. Moreover the arresting authorities, in political cases normally MI personnel, do not appear to obtain a court order for continued detention beyond 24 hours. Those protections which are found in Myanmar law against arbitrary detention are not in practice upheld.

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<sup>29</sup> Please see pages 15 – 17 of Myanmar: Justice on Trial, July 2003, (AI Index ASA 16/019/2003).



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## *Torture and ill-treatment during pre-trial detention*

Amnesty International has reported extensively about practices of torture and ill-treatment in Myanmar since 1988, and continues to have grave concerns about their use during initial interrogation of political detainees.<sup>30</sup> Torture and cruel, inhuman or degrading treatment of political detainees occur most frequently during initial interrogation by MI personnel. Former political prisoners have consistently told Amnesty International that they were held in complete isolation after their arrest, with no access to lawyers, families, or medical care. Holding people in prolonged incommunicado detention facilitates the use of torture and other forms of ill-treatment and may itself constitute ill-treatment or even torture.<sup>31</sup> Recent examples include reliable public reports of people arrested on or after 30 May being tortured during interrogation while being held incommunicado.

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 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

Former political prisoners have over the last 15 years told Amnesty International that during initial detention at MI branch offices, they were usually interrogated for several hours or even days by rotating teams of MI officers. Some of them reported in detail that they had been subjected to torture and ill-treatment, usually taking the form of severe beatings, and deprivation of water, food, and sleep for days at a time. Detainees were beaten with fists and bamboo sticks, kicked with boots and forced to stand for prolonged periods while being questioned. Some were slapped repeatedly on both ears. MI officers also subjected detainees to near-suffocation by placing a plastic bag over their head. Some detainees reported being

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<sup>30</sup> See for example *MYANMAR: The Institution of Torture*, December 2000 (AI Index 16/24/2000)

<sup>31</sup> The Resolution of the UN Commission on Human Rights (UN Doc. E/CN.4RES.2003/32, 23 April 2003, paragraph 14).

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blindfolded during interrogation. Detainees were also sometimes forced to assume extremely painful positions for long periods of time while being interrogated.

Political detainees most at risk of torture are male political activists, particularly if they have participated in the student opposition movement or have had contact with members of exiled opposition groups in Thailand or other countries. Such contact has included, for example, any written or oral communication with these members, even of a personal nature; travel to the Thai border; or even unsolicited approaches by alleged members of exile groups to an activist. Young male political activists who were former or current students who attempted to organize meetings, demonstrations, or to distribute written materials were also vulnerable to torture during initial interrogation.

When the problem of torture and ill-treatment in Myanmar was raised by the Amnesty International delegation with the Attorney General and his staff on 15 December, they insisted that reports of torture would not be taken seriously as there were no witnesses present who could corroborate allegations of torture made by political detainees. The delegation responded that as political detainees were held incommunicado, it was impossible for witnesses to be present. The delegation also explained that, in Amnesty International's experience, the presence of a suspect's lawyer and the use of recording equipment during interrogations not only protected suspects from torture and ill-treatment, it was also widely welcomed by security forces in many countries as an effective means of protecting them from false allegations of torture.

During the 19 December meeting with police officials, the Amnesty International delegation inquired about the procedure for a victim to lodge a complaint about allegations of ill-treatment. Police officials responded that a police officer at a higher rank than the alleged perpetrator would conduct the investigation. Military Intelligence is part of the Ministry of Defence, which has its own regulations. This information was confirmed by the Chief Justice during the delegation's meeting with him on 16 December. The Chief Justice also stated that the accused could in principle complain to the judge about ill-treatment under Section 342 of the Penal Code, which provides for punishment of those engaging in "wrongful confinement". However he said that the judiciary would usually not investigate the complaint and that it would be up to the relevant ministry to conduct an investigation. Several former political prisoners have told Amnesty International that when they complained about their treatment to a judge, the judge told them there was nothing he could do about it.

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Amnesty International is extremely concerned that torture and ill-treatment of political detainees continue to occur in Myanmar. The organization reiterates its recommendation to the SPDC to instruct the police force, including Special Branch officers, and Military Intelligence personnel not to hold political detainees in incommunicado detention, a practice which facilitates torture. Interrogation rules and practices should be constantly monitored and held under systematic review.<sup>32</sup> All security personnel should receive clear orders from their superiors not to torture or otherwise ill-treat detainees. Moreover the SPDC should initiate prompt, effective, independent, and impartial investigations into all serious allegations of torture and ill-treatment. Those found responsible should be brought to justice.

#### **IV. UPDATE ON POLITICAL TRIALS AND SENTENCES**

Amnesty International has wide ranging concerns about all aspects of political trials in Myanmar, which fall far short of international standards for fairness. These problems are discussed in detail in *Myanmar: Justice on trial*<sup>33</sup>, and include a judiciary which is not independent from the executive branch of the state; the inability of defendants to call and question witnesses; denial of the right to counsel; inability of the accused to speak in his/her own defence; and trials held *in camera*, in violation of the right to a public trial. Moreover defendants in political cases do not have adequate time to prepare a defence, with or without a lawyer.

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 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. Amnesty International calls for all political prisoners to receive a fair trial; the judiciary should review all convictions of

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<sup>32</sup> The UN Special Rapporteur on Torture has noted that: “Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventative measures against torture.” (Report to the General Assembly, UN Doc A/56/156, 3 July 2001, para. 39(e),)

<sup>33</sup> See pages 25 – 35.

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.*”

Information which Amnesty International obtained during its December 2003 visit to Myanmar and other reliable reports from outside the country heighten its concerns about trials there. In spite of the provisions of the Judiciary Law 2000 stipulating that trials be held in open court,<sup>34</sup> political trials continue to be closed to the general public. Information about political trials, including transcripts of trial proceedings, is extremely difficult to obtain by interested parties, including the defendants. The Judiciary Law also provides for the independence of the Judiciary. However in political trials judges appear to take directions from Military Intelligence or the police.

Political detainees are almost never permitted to see a lawyer before the first court hearing and therefore do not have adequate means to prepare a defence. During Amnesty International’s meeting with the Chief Justice on 16 December 2003, he confirmed that defendants are not permitted to see a lawyer until the trial proceedings begin. Such denial of legal counsel until the first day of the trial prevents the accused from having adequate time to prepare a defence. In practice defendants in political cases are often denied any access to a lawyer, even during the trial proceedings. Some political defendants have been permitted to defend themselves, which the Chief Justice affirmed was possible in principle. However in other cases defendants were not allowed to speak in their own defence whatsoever, nor could they cross-examine prosecution witnesses or call defence witnesses. In some cases where the defendant’s family appear to have been able to engage a lawyer, the defendant could not normally meet privately with the lawyer and did not have adequate time to prepare a defence.

In many of cases documented by Amnesty International, convictions of political detainees are reported to be made solely on the basis of the testimony of the prosecution, usually from MI and police personnel. Such testimony from the security forces has included for example, a confession extracted from defendants during torture or ill-treatment. Under international standards confessions extracted under torture are not admissible as evidence.<sup>35</sup> Evidence, including confessions by the

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<sup>34</sup> Section 2 of Chapter II of the Judiciary Law.

<sup>35</sup> Please see *inter alia*, Article 12 of the UN Declaration against Torture.

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accused, elicited as a result of torture or other cruel, inhuman or degrading treatment cannot be used in any proceedings, except those brought against alleged perpetrators.

The length of trial proceedings varies, and has sometimes encompassed a number of trial hearings over several days. However some political prisoners were charged, tried and sentenced in one day. At least two trials of political prisoners were reported to have lasted only 30 minutes, and essentially consisted of little more than the judge reading out the charges and sentence. These summary trial proceedings further undermine the ability of the accused to adequately prepare a defence by calling witnesses, cross-examining prosecution witnesses, and speaking in his/her own defence.

Amnesty International is concerned that many if not most of the fair trial guarantees under international law and standards are denied to political detainees in Myanmar. Such fair trial safeguards include the right to legal counsel; the right to adequate time and resources to prepare a defence; the right not to have confessions obtained under torture admitted as evidence; the right to an open trial, and an independent judiciary.<sup>36</sup>

## *Sentencing*

In most cases of political imprisonment, the maximum sentence provided for under the specific law is handed down. Moreover in cases where an individual is convicted of several offences, for example 5j of the Emergency Provisions Act and 17/1 of the Illegal Associations Act, the sentences are applied cumulatively, rather than served concurrently. Some political prisoners, including prisoners of conscience, have been sentenced to such long terms of imprisonment that it is inevitable that they will die before completion of their sentences.<sup>37</sup> Those political detainees who have been in contact with exile opposition groups are particularly at risk of receiving long sentences. One prisoner of conscience received a 17 year sentence because the prisoner had provided material assistance received from abroad to families of political prisoners.

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<sup>36</sup> For international fair trial standards, see for example the UN Basic Principles on the Role of Lawyers; the UN Basic Principles of the Independence of the Judiciary; and the Universal Declaration of Human Rights, Articles 7, and 9-11.

<sup>37</sup> For example Myo Min Htike, a second year Yangon Institute of Technology (YIT) student, was reported sentenced to 52 years' imprisonment after his arrest in 1998. Hnin May Aung (f), was reportedly sentenced to 42 years' imprisonment under 5j of the 1950 Emergency Provisions Act; sections 17 and 20 of the 1962 Printers and Publishers Law; and 17/1 of the Illegal Associations Act.

Amnesty International raised these issues with the Chief Justice during the 16 December meeting. He stated that the length of sentence is at the judge's discretion and that there are no sentencing guidelines from the Supreme Court. When asked about guidelines for handing down a sentence with hard labour, the Chief Justice said that this was also up to the individual's judge's discretion.

### *The death penalty*

In Myanmar the death penalty is mandatory for high treason and premeditated murder, and optional for the manufacturing of drugs and drug-trafficking. Execution is by hanging. Myanmar law guarantees the right of judicial appeal, and it also stipulates that people tried for capital offences must be provided with a lawyer if they cannot pay for one themselves. If the Supreme Court upholds a death sentence, the defendant may petition the Head of State for clemency. Although executions have not been known to have been carried out for many years in Myanmar, death sentences are regularly handed down, including for political detainees, as recently as November 2003. During the Amnesty International meeting with the Minister of Home Affairs on 5 December 2003, he reported that some 200 people were on death row, but stated that the government would not carry out any executions. He also stated that the government is considering commuting these death sentences. While Amnesty International welcomes all commutations of death sentences, it also calls on governments around the world to abolish the death penalty both in law and in practice. Amnesty International is categorically opposed to the death penalty as the denial of the right to life and the ultimate cruel, inhuman or degrading punishment, and campaigns for its abolition in all countries.

On 26 September 2002 the Yangon Divisional Court No 1 handed down the death penalty to U Aye Zaw Win, Aye Ne Win, Kyaw Ne Win, and Zwe Ne Win, the son-in-law and three grandsons of the late General Ne Win, who was head of State from 1962 until 1988. The four were sentenced under Article 122(1) of the Myanmar Penal Code, which states: "*Whoever commits High Treason within the Union of Burma shall be punished with death.*" The Ne Win family was widely believed to have been involved in economic activities which were contrary to SPDC interests; and to have attempted to influence some members of the military to support their businesses. The death sentences were upheld by the Supreme Court on 15 August 2003. At the time Amnesty International wrote to Senior General Than Shwe as Head of State urging him to commute the sentences. The four men remain under sentence of death in Insein Prison.

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### Nine people sentenced to death for High Treason – November 2003

On 28 November 2003 nine men were sentenced to death for High Treason under Article 122 (1) of the Penal Code. They are: Nai Yekha alias Nay Win; Shwe Mahn alias Zaya Oo; Zar Naing Tun alias Phyu Lay; Zaw Myo Htet alias Zaw Zaw; Myo Htway alias Chin Gakoung; Min Kyi alias Nai Min Kyi, a lawyer; Zaw Thet Htway alias Thet Zaw; Aung Lunn; and Aye Myint alias Myint Aye Maung, a lawyer. Thet Zaw, the Editor of a popular sports magazine entitled *First Eleven*, was arrested on 17 July 2003 during a raid on his offices in Yangon. The other eight men were also arrested in the second half of July.

On 26 July 2003 the SPDC conducted a press conference in Yangon explaining *inter alia* why they were arrested, the details of which follow.<sup>38</sup> The group was accused of plotting to plant bombs in strategic locations on 19 July<sup>39</sup> and also planning to assassinate SPDC members, as instructed by various exile opposition groups in Thailand. According to the government spokesperson, this violence was planned in order to spark a mass uprising against the government. Nai Yekha, Myo Htway, Aung Lunn, and Shwe Mahn were reported to have been arrested in Yangon in possession of weapons and explosives. Zar Naing Tun and Zaw Myo Thet were arrested on 16 July.

Interrogation of these detainees resulted in the arrest of “*three more accomplices*,” Min Kyi, Aye Myint, and Thet Zaw, *First Eleven* editor. Min Kyi, Shwe Mahn, Aye Myint and Thet Zaw were not specifically accused in the press conference of anything other than having had contact with some Myanmar opposition groups in Thailand. During the Amnesty International 5 December meeting with the Home Minister, he confirmed that the nine death sentences had indeed been handed down on 28 November 2003. He also confirmed the details given at the 26 July 2003 official press conference.

Amnesty International is concerned that contents of the 26 July press conference did not uphold the right of the accused to the presumption of innocence. A

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<sup>38</sup> A report of the press conference including photographs of the accused and of explosives, SPDC official website, Myanmar.com, 26 July 2003. The SPDC periodically holds press conferences after a series of political arrests, explaining the events which led up to the arrests and naming detained individuals who were reportedly involved in anti-government activities.

<sup>39</sup> 19 July is Martyrs Day in Myanmar, commemorating the date of the assassination of independence hero General Aung San and his colleagues in 1947.

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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.<sup>40</sup>

The right to presumption of innocence requires that judges, juries, and all public officials refrain from prejudging any case. This means that public authorities should not make statements about the guilt or innocence of the accused before the outcome of the trial. The presumption of innocence is not, 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.

While the 26 July press conference did provide information to the public, it also made sweeping assertions in tendentious language about the guilt of the accused. For example the government spokesperson asserted in the press conference that Min Kyi, Aye Myint, and Thet Zaw “*had been in contact with Lwan Ni (a) Kyaw Kyaw of the rank of leading committee member of the ABSDF, Maung Maung, (a) Pyi Thit Nyunt Wai of the FTUB and Aung Moe Zaw of the DPNS<sup>41</sup> and through them they had conveyed false information and rumours with regard to the internal situation of the country. It was discovered through further interrogation that these 3 UG members<sup>42</sup> ....had through Shwe Mann (a) Zeya Oo, become acquainted with explosive experts Maung Maung (a) Pyi Thit Nyunt and Zar Ni Thwe in January 2003.*”

As discussed above, political trials in Myanmar fall far short of international fair trial standards. Amnesty International is concerned that the trial of the nine people sentenced to death on 28 November 2003 was not fair. Trials must always scrupulously observe all the international standards protecting the right to fair trial. All safeguards and due process guarantees set out in international standards applicable during pre-trial, trial and appellate stages must be fully respected. This is especially true in capital cases, in view of the irreversible nature of the death penalty. Amnesty International is further concerned that Aye Myint, Min Kyi, Shwe Mahn, and Thet

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<sup>40</sup> For a discussion of this right in reference to Myanmar please see *Myanmar: Justice on Trial*, July 2003, (AI Index ASA A16/019/2003), page 26 – 28.

<sup>41</sup> The All Burma Students Democratic Front (ABSDF) is a student-led exile armed opposition group formed after the pro-democracy movement in 1988; the FTUB is the Federation of Trade Unions, Burma, an exile opposition group; and the DPNS is the Democratic Party for a New Society, a student-led political party some of whose members are now in exile.

<sup>42</sup> UG stands for “Underground”, a term commonly used in Myanmar for people operating clandestinely.



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Zaw, who were arrested and tried solely on the basis of their alleged contact with Myanmar exile opposition groups, may be prisoners of conscience, who may have been sentenced to death solely for peacefully exercising their rights to freedom of expression and association.

Concerns about Aye Myint, Min Kyi, and Shwe Mann are heightened by a 19 March 2004 International Labour Organization (ILO) report submitted to its Governing Body in Geneva<sup>43</sup>, which met to discuss Myanmar on 23 and 25 March 2004. The report is discussed in detail below. According to this report, the ILO had become aware of an unofficial English translation of the court judgement, in which the nine death sentences were handed down for High Treason. Amnesty International has also obtained this unofficial translation, which cites alleged contact by Min Kyi, Aye Myint, and Shwe Mahn with the ILO about forced labour in Myanmar. The ILO wrote to the SPDC Minister for Labour on 12 March 2004, stating *inter alia*:

*“The sentence was passed, taking into account of evidence relating to information received from, or passed to, the ILO by some of the persons convicted...If the translation is an authentic one, it could affect the very basis of the ILO’s presence in the country. It would indeed seem impossible to reconcile the commitment of your Government to eradicate forced labour in cooperation with the ILO with the notion that contacts with the ILO could constitute an act of high treason.”*<sup>44</sup>

On 17 March 2004 the ILO Liaison Officer *ad interim* in Yangon met with the Minister of Labour and requested copies of the original trial documents and access to the “*relevant convicted persons*”. The Minister stated in the meeting that: “*The Minister indicated that although the authorities considered that the translation of the court judgment was not fully accurate, they did not contest the general veracity of the document. The Minister stressed that it was certainly not the case that contacts with the ILO could be considered illegal....In his view, therefore, it was clear that the judge had made mistakes and the case would have to be reviewed.*”

On 19 March 2004 the ILO in Yangon interviewed Aye Myint and Min Kyi at Insein Prison. The meetings took place individually and in private, during which the prisoners reported that although “*they had no major concerns regarding their current conditions of detention*”, immediately after their arrest they had been interrogated for several days, deprived of food, water, and sleep, and beaten. The ILO further stated

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<sup>43</sup> See International Labour Office, Governing Body, Eighth Item on the Agenda, *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Latest Developments*, GB. 289/8/2, 289<sup>th</sup> Session, March 2004.

<sup>44</sup> Appendix I, GB 289/8/2, 289<sup>th</sup> Session, March 2004.

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that the ILO “considered that the case was not investigated or prosecuted in a systematic or credible way. It appeared the police or intelligence officers initially used methods of entrapment and that the subsequent procedures of investigation and prosecution were unsound, without any of the fundamental guarantees necessary to produce a credible outcome. [The ILO] believes in this context it is important for the authorities to make available, in addition to the original judgment, the full transcript of the trial proceedings.”

The ILO said that after interviewing the two prisoners it became clear that there was a “significant ILO dimension” to the case of Shwe Mann, also one of the nine sentenced to death. In the report’s conclusion, the ILO stated that “On the basis of all the information available, the only conclusion...was that the convictions of these three persons for high treason were unsound. They should be released pending a full review of the case.” Amnesty International supports this call for release of the three prisoners pending a review. In this regard the organization urges the SPDC to review the totality of judicial procedures against all nine persons, and in particular against the three men with ILO contacts and of the journalist Thet Zaw. Such reviewing should include the validity and cognizance of the charges, the conduct of the trials and sentencing. All death sentences should be commuted.

On 25 March 2004 the ILO Governing Body adopted its Conclusions on Myanmar, the contents of which are summarized below. The ILO Facilitator in Yangon was able to interview Shwe Mahn on 25 March and reported that he was in good health, but that he had been beaten both at the time of his arrest and during interrogation at an MI detention centre. The Governing Body expressed their concern about the ILO dimension to the three death sentences handed down to Aye Myint, Min Kyi, and Shwe Mahn. Furthermore the Governing Body fully supports the ILO Yangon Liaison Office’s recommendation that the three men be released pending review of the trial proceedings.

In view of this development, the Governing Body decided to postpone the implementation of the Plan of Action, which would provide for the Facilitator to hear complaints about forced labour in Myanmar and to find a solution. The Governing Body Conclusions stated *inter alia* that:

“...there is general agreement on the potential usefulness of the Facilitator mechanism. The question which remains, however, is whether there can be sufficient confidence that the guarantees which are built into the mechanism offer the necessary protection to victims who want to make a complaint and whether the necessary conditions and safeguards were put into place to allow the Plan of Action to go ahead. The Office will have to examine this question more thoroughly in light of the results of the review of the recent cases and any further

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*assurances provided by the Government. The results of this examination should then be submitted to the Officers of the Governing Body and should be found sufficiently convincing before proceeding to the implementation of the Plan of Action.*

*The situation as it stands by the end of May on these various issues should be reported to the International Labour Conference through the Committee on the Application of Standards.”*

Amnesty International believes that the death sentences against Thet Zaw, Aye Myint, Min Kyi, and Shwe Mann not only violates the right to life, but also the right to freedom of expression. Article 19 of the Universal Declaration of Human Rights proclaims *inter alia* the freedom “...to seek, receive and impart information and ideas through any media and regardless of frontiers.” The organization is further concerned that their trials were not fair, and that confessions extracted under torture may have been admitted as evidence during the trial.

## V. UPDATE ON PROBLEMATIC LAWS

Amnesty International has longstanding concerns about many of the laws in force in Myanmar, the provisions of which criminalize the right to freedom of expression and assembly.<sup>45</sup> These include laws enacted by the British colonial government; by the democratically elected Prime Minister U Nu government; by the Burma Socialist Program Party (BSPP) under General Ne Win; and decrees enacted by the present military government in the absence of a parliament. This section will provide updated information about key laws which Amnesty International was able to obtain during its December 2003 visit to Myanmar.

The authorities continue to use the **1950 Emergency Provisions Act** most frequently in political cases, particularly 5j, which provides for seven years’ imprisonment for 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 of the reconstruction of stability of the Union;*”. For example the vast majority of the 52 people arrested after 30 May 2003 on the list which the Minister of Home Affairs provided to the Amnesty International delegation on 19 December 2003 were charged under these provisions. Amnesty International is concerned that the broad and vaguely worded provisions of Article 5 have been used to sentence scores of prisoners

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<sup>45</sup> For a discussion of problematic laws in Myanmar, please see pages 25 – 47, Myanmar: *Justice on Trial*, July 2003, (AI Index ASA 16/019/2003).

of conscience. International human rights standards require that all criminal offences are defined precisely and clearly, so that people understand what conduct is prohibited.

Government officials provided the Amnesty International delegation with a copy of the **1962 Printers and Publishers Law** in the *Bama* language.<sup>46</sup> This law was enacted by the Chairman of the Revolutionary Council of the Union of Myanmar in October 1962, shortly after General Ne Win seized power in a *coup d'état*. It stipulates strict regulations for published materials and provides for a Central Registration Board to which publishers must submit applications for registration. Article 3 (Part I) of the law states that all printing presses and publishing businesses must be registered. Part 8 provides for three years' imprisonment for anyone who does not comply with the law. Under Article 10 (Part 4), a registration certificate would be withdrawn if it was obtained with a view to "*harming the ideology and views of the Revolutionary Government of the Union of Myanmar.*" In June 1989 the State Law and Restoration Council (SLORC)<sup>47</sup> issued a series of amendments to the 1962 Printers and Publishers Law, including increasing the punishment from three to seven years.<sup>48</sup> For example on 27 June 1989 then Brigadier General Khin Nyunt announced that although legally registered political parties could apply for exemption to the 1962 Printers and Publishers Law, they could not print material which "*Opposes the SLORC...Insults, slanders or attempts to divide the Defences Forces; Instigates actions that affect law and order and peace and tranquillity;...*". Amnesty International is concerned that the vaguely worded language of this announcement could be used to penalize peaceful opposition political activity.

The 1962 Printers and Publishers Law has been used to hand down seven year sentences, often in conjunction with other laws, particularly 5j of the 1950 Emergency Provisions Act. One prisoner of conscience was sentenced to seven years under the Emergency Provisions Act and seven years under the amended Printers and Publishers Law. This prisoner was charged and tried for writing a letter to a friend about forced labour in Myanmar. Amnesty International is concerned that the censorship

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<sup>46</sup> Amnesty International has had the original law translated into English; however this is an unofficial translation.

<sup>47</sup> The military seized control in September 1988 after massive, largely peaceful protests against 26 years of military rule under General Ne Win. The SLORC, renamed the State Peace and Development Council in November 1997, announced that general elections would be held in May 1990 and at the same time issued regulations and decrees greatly restricting the rights to freedom of expression and assembly.

<sup>48</sup> For a discussion of these amendments and announcements, please see pages 6-7 of *Myanmar (Burma): Prisoners of Conscience, A Chronicle of Developments since September 1988*, November 1989, AI Index ASA 16/23/89. Law No 16/89 amends the 1962 Printers and Publishers Law.

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provisions of the 1962 Printers and Publishers Law and its 1989 amendments law curtail the right to freedom of expression.

Amnesty International was also able to obtain new information about the use of Articles 10a and 10b of the **1975 State Protection Law**. The 1975 State Protection Law concerns the declaration of a “*state of emergency or restriction of a citizen’s fundamental rights.*”<sup>49</sup> It allows the authorities *inter alia* to order the detention or restricted residence for up to five years 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, ...*”<sup>50</sup> 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.*”

Moreover there is no right to judicial appeal for persons held under 10a or 10b; both the Attorney General and the Chief Justice confirmed that appeals are a matter for the Ministry of Home Affairs, not the court. When asked about the administrative detentions, the Attorney General stated that persons detained under Articles 10a or 10b are still considered to be under pre-trial investigation. However, according to Amnesty International’s information, many of those currently held under 10a or 10b have in fact been tried and are held after having served their sentences.

During Amnesty International’s visit to Myanmar in December 2003, U Htwe Myint and U Thu Wai, two elderly prisoners of conscience and leaders of the Democracy Party, had their detention orders under Article 10a renewed for one year on 10 December. U Kyaw San, an NLD MP-elect and elderly prisoner of conscience, had his detention orders under Article 10a renewed for one year in September 2003. These three men are all in frail health. Amnesty International asked the SPDC during its early 2003 visit to release these prisoners on urgent humanitarian grounds, and at this time reiterates this recommendation.

According to the Minister of Home Affairs during the 19 December meeting with Amnesty International, the decision about whether to invoke 10a or 10b of the 1975 State Protection Act rests with a committee which includes the Ministry of Home Affairs, the Chief of Military Intelligence, the Ministry of Foreign Affairs, the

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<sup>49</sup> Chapter 2.

<sup>50</sup> Section 7. 10a pertains to administrative detention in prison and 10b to house arrest. Article 14, as amended in 1991, authorizes the Cabinet to prolong any “restriction” for up to five years.

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Ministry of Defence Chief of Staff, and the Chief of Special Branch, which has the power to extend the detention three times by 60 days each time. A cabinet decision is necessary in order to extend the detention orders by one year at a time. At the 8 December meeting with the Director General of the Prisons Department, he explained that prisoners held under 10a are not under the remit of the prison system, but rather under the remit of the Ministry of Home Affairs as the executive branch responsible for these cases.

Amnesty International also raised the 1908 Unlawful Associations Act with the Attorney General, the Chief Justice, and the Minister for Home Affairs during its December visit.<sup>51</sup> Under clause 15 (2) (b) of this law, any association can be declared unlawful if the head of state so deems it. Article 17 (1) provides for imprisonment of from two to three years for anyone who is a member or otherwise associated with an illegal organization, and Article 17 (2) provides for imprisonment of from three to five years for anyone who manages an illegal organization. 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, can arbitrarily be declared unlawful under these provisions. Amnesty International believes that this law violates the rights to freedom of expression and association under the Universal Declaration of Human Rights. The Illegal Associations Act is often used to sentence anyone who has had any contact with exiled opposition groups in Thailand, including people who have corresponded with them or have travelled to meet with them in Thailand.

During its December meetings Amnesty International attempted to clarify with the authorities precisely which organizations were deemed to be illegal in Myanmar. The Attorney General and the Chief Justice indicated that the Ministry of Home Affairs had a list of illegal organizations, which the delegation asked for during its 19 December meeting with the latter. The Minister indicated that he would provide the organization with a copy, but to date Amnesty International has not received such a list.

Finally, Amnesty International raised its concerns with regard to **Law No 5/96** in meetings with officials, particularly members of the National Convention Convening Committee, during its December 2003 visit. This law forbids anyone from

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<sup>51</sup> See pages 41-44 of *Justice on Trial*, July 2003, AI Index ASAA 16/0019/2003.

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drafting a constitution or promulgating a draft constitution without permission. Anyone who violates these provisions can be sentenced to three to 20 years' imprisonment and may also be subject to fines. This law was enacted in the context of the last National Convention. On 7 June 1996 the SLORC issued Law No 5/96,<sup>52</sup> "to protect the stable, peaceful and systematic transfer of state responsibility; and the successful implementation of National Convention tasks from disruption and opposition".<sup>53</sup> 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."

The status of this law is particularly relevant now that the SPDC has announced that it will soon reconvene the National Convention in order to draft a new constitution. Amnesty International is 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. The organization is also concerned that Law No 5/96 criminalizes the right to freedom of expression as proclaimed in Article 19 of the Universal Declaration of Human Rights. Finally, although the SPDC stated that no one had been sentenced under the provisions of this law in its 9 July 2003 response to Amnesty International's 22 May Memorandum, Amnesty International is concerned by the potential to use this law to arrest persons for the peaceful exercise of their political beliefs. For these reason, the organization renews its calls to the SPDC to repeal the law.

The SPDC has repeatedly stated publicly that as a temporary military government without a parliament they could not reform the legal system. When Amnesty International raised the issue of repealing or amending laws which criminalize the rights to freedom of expression and assembly, both the Attorney General and the Home Affairs Minister explained that some laws are being reviewed and reformed by a committee in the Attorney General's Office. The Attorney General stated further that 132 "outdated acts" have been abolished by this committee. When the delegation suggested that such laws as the 1950 Emergency Provisions Act and the 1975 State Protection Act should be reformed, the Attorney General responded

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<sup>52</sup> 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.

<sup>53</sup> *TV Myanmar*, Yangon, in Burmese 1330 GMT 7 June 1996, as quoted in British Broadcasting Corporation Summary of World Broadcasts 10 June 1996.

that these laws were enacted to “maintain peace and order” and that once “peace and order” have been achieved, the Attorney General will consider revising these laws.

In the past both the SLORC and the SPDC have repealed their own decrees and also amended laws enacted by previous governments. For example in September 1992 the SLORC repealed Order 1/89 and 2/89, which effectively abolished military tribunals empowered to try civilians. At the time Amnesty International welcomed this repeal. In August 1991 the SLORC enacted Law No 11/91 (Law Amending the Law Safeguarding the State from the Danger of Destructionist Elements), which 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.

Amnesty International renews its calls for urgent legal reform, particularly in light of the imminent reconvening of the National Convention, where the rights to freedom of expression and assembly need to be fully guaranteed and protected. Amnesty International also reiterates its recommendation for a moratorium on prosecutions using legislation which criminalizes peaceful dissent. These measures are essential to ensure the rights to freedom of expression and association are fully guaranteed and protected.

## **VI. THE MYANMAR PRISON SYSTEM**

The Amnesty International delegation spent three days in Insein Prison in Yangon Division interviewing political prisoners and meeting with prison officials. The organization also spent one day in Mawlamyine Prison, Mon State, meeting prisoners and officials; and several hours at Bago Prison, Bago Division. The delegation was able to interview 35 political prisoners intensively and under its own terms of reference. These included interviewing prisoners privately in areas chosen by the organization and by the prisoners themselves; and a commitment from the SPDC that there would be no reprisals against anyone who talked to the delegation. Amnesty International would like to thank the political prisoners who talked to the delegation for all the help and useful information which they provided. The organization would also like to express its appreciation for the cooperation and assistance which prison officials extended to its delegation and welcomes their willingness to hold open and frank discussions.



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However the prisons department does not have ultimate responsibility for political prisoners held in jails throughout the country. According to detailed and consistent information provided to Amnesty International for the past 15 years, MI personnel located inside the prisons are responsible for political prisoners. MI personnel reportedly have offices in the prisons and appear to be present on a full-time basis. MI reportedly give or withhold permission for medical care and determine other issues concerning political prisoners, instead of the prison authorities.<sup>54</sup>

### *Continuing humanitarian concerns*

Amnesty International has noted the gradual improvement of prison conditions for political prisoners in recent years in the Myanmar prison system.<sup>55</sup> Beginning in 1999 the International Committee for the Red Cross (ICRC) has been able to visit both security and common law detainees in prisons as well as common law detainees in labour camps, which Amnesty International has repeatedly welcomed. However improvements have not been uniform in the 41 prisons around the country where political prisoners are held, and conditions vary considerably from one prison to the other. Moreover prison conditions are still generally harsh, and inadequate food and medical care continues to be the norm. During its January – February 2003 trip to Myanmar, Amnesty International noted improvements in Insein Prison but also expressed concerns about lack of proper medical care and adequate food. At the end of that visit the delegation urged the SPDC to permit opportunities for socialization and to provide reading and writing materials for all political prisoners. These recommendations were made by the delegation with a view to identifying immediate improvements which the SPDC could implement without major resource implications. During Amnesty International's December trip, the delegation was pleased to note that most of the prisoners interviewed were permitted to read some materials, albeit censored. However none of them was permitted any writing materials.

Some of the prisoners who were interviewed in December 2003 were allowed to socialize with one another, particularly in Mawlamyine Prison, where they appeared to be more free to move around and meet in their compound for several hours per day. Treatment of political prisoners by prison guards had reportedly improved in both Mawlamyine and Bago Prisons. However in Insein Prison some

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<sup>54</sup> Amnesty International has not received any official comment from the Myanmar government about the role of MI inside prisons although it raised the question in its 22 May 2003 Memorandum to the SPDC.

<sup>55</sup> for a full discussion of prison conditions, please see pp 48 – 53, Myanmar: *Justice on trial*, July 2003, (AI Index 16/019/2003)

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political prisoners were only allowed to socialize “unofficially” during their bath and exercise time outside of their cells. The ability to socialize with fellow political prisoners appeared to vary from cell block to cell block in Insein Prison. Conditions in different cell blocks in that prison also varied. Some compounds where political prisoners were held were more crowded and less spacious than others. Most but not all political prisoners were held separately from prisoners convicted of criminal offences in the three prisons visited by Amnesty International.

After political detainees were moved from an MI centre to the Remand Jail in Insein Prison awaiting trial, they were held incommunicado, and thus had no opportunity to meet their families, lawyers or other inmates. The proscription against family visits during pre-trial detention is particularly harsh because families bring needed medicines and food to prisoners to supplement the inadequate food and medical care in prison. Only when a political prisoner was tried and sentenced was he/she able to meet family members and socialize with fellow inmates.

Amnesty International remains concerned by the lack of proper medical care in prisons, in spite of efforts by the prison staff to provide some medical care within their limited resources. Many political prisoners suffer from several chronic health problems which have been caused or exacerbated by the harsh prison regime. They require specialist treatment and medication on a regular basis, which some but not all of them receive. Many of those requiring medications and specialist treatment appear to rely on their relatives to pay for it. Most of these individuals are prisoners of conscience and should be released immediately and unconditionally. One of them is Nai Ngwe Thein, an 80 year-old veteran politician and prisoner of conscience serving a seven year sentence under 5j of the 1950 Emergency Provisions Act in Mawlamyine Prison. Other political prisoners, including former combatants with severe health problems, should be released on urgent humanitarian grounds. These include for example members of the Karen National Union, some of whom are ill and elderly and have been in prison for 20 years.

Delays or complete lack in medical care has contributed for many years to deaths in custody of political prisoners. Deaths in custody which may have been avoided with proper, timely intervention reportedly continue to occur. A recent case was the death in Insein Prison of Ko San Htein Aung, a member of the Rakhine ethnic nationality and former employee at the central jail in Sittwe, capital of Rakhine State. He died on 28 August 2003 after receiving no medical care for suspected dysentery. He had been sentenced to seven years’ imprisonment under Article 5j of the 1950 Emergency Provisions Act.

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Amnesty International is also extremely concerned about the practice of taking common criminal prisoners for portering duties by the Myanmar military. These inmates are reportedly taken in large numbers from the prison system to carry goods for the military in counter-insurgency areas. Portering for the army is the most arduous form of forced labour, a practice which has been endemic in Myanmar for decades. Porters have been forced to carry very heavy loads of military supplies for several days or even weeks, sometimes in extremely dangerous conditions, including through minefields and during battles between the army and armed opposition groups. They are routinely deprived of adequate food, water and medical care, and as a result they often become too weak to perform their duties. Soldiers sometimes beat or kick them if they are too weak to carry their load or keep up with the military column. Many prisoners convicted of common crimes have reportedly died as a result of their ill-treatment during portering. Civilians, particularly members of ethnic minorities, have been routinely seized by the military for such duties, but Amnesty International has also received reliable reports since 2000 that prisoners convicted of common crimes are also taken on a regular basis to porter for the army.

Prison conditions for common criminals appear to be worse than those for political prisoners. Common criminal prisoners are also routinely taken to labour camps around the country, where conditions vary considerably. Such prisoners can allegedly pay large sums of money to avoid being taken for portering or labour camp duties; however those who are unable to pay must work in the labour camps. Although political prisoners are generally exempt from portering or labour camp duties, Amnesty International is concerned by the use of common criminal prisoners for such duties, which often constitute cruel, inhuman or degrading treatment.

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## VII. CONCLUSION AND RECOMMENDATIONS

Amnesty International's widespread concerns about political imprisonment in Myanmar have been reinforced and heightened as a result of information obtained during its December 2003 visit to the country. Arbitrary arrests; torture and ill-treatment during incommunicado detention; unfair trials; and laws which greatly curtail the rights to freedom of expression and assembly continue as major obstacles to the improvement in the SPDC's human rights record. In the run-up to the reconvening of the National Convention, Amnesty International renews its calls to the SPDC to:

1. release all prisoners of conscience immediately and unconditionally.
2. seriously consider a general amnesty for all political prisoners.
3. stop arresting people solely for the peaceful exercise of their rights to freedom of expression and assembly.
4. in the absence of a legislature, initiate a moratorium on the use of laws restricting the rights to freedom of expression and assembly, particularly the 1950 Emergency Provisions Law; the 1975 State Protection Law; the 1962 Printers and Publishers Law and the 1908 Illegal Associations Law.
5. repeal Law No 5/96, the provisions of which allow for up to 20 years' imprisonment of anyone who drafts a constitution without official permission and otherwise criminalizes the right to freedom of expression and assembly.
6. instruct the police force, including Special Branch officers, and Military Intelligence personnel not to hold detainees in incommunicado detention, a practice which facilitates torture.
7. issue clear orders to all members of the security forces not to torture or otherwise ill-treat detainees.
8. initiate prompt, effective, independent, and impartial investigations into all serious allegations of torture or ill-treatment.
9. bring to justice those found responsible, under internationally agreed standards of fair trial.
10. ensure that international fair trial standards are upheld in political cases, including the right to legal counsel, the right to presumption of innocence, the right to a public trial, the right to defend oneself, and the right to adequate time and resources to prepare a defence.
11. accede to international human rights treaties, in particular 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 the

International Convention on the Elimination of all Forms of Racial Discrimination.

## **VIII. APPENDICES**

*APPENDIX 1: Myanmar: Amnesty International's Second Visit to Myanmar: Official Statement*

*APPENDIX II: Table*

*APPENDIX III: Prisoners Held Under Section 10 A) Of The State Protection Law*

*APPENDIX IV: Members of Parliament-elect Detained in Myanmar*

PLEASE SEE THE PDF FOR APPENDICES



