

# “Prison Conditions in Burma and the Potential for Prison Reform ”



**Assistance Association for Political Prisoners (Burma)**

နိုင်ငံရေးအကျဉ်းသားများကူညီစောင့်ရှောက်ရေးအသင်း (မြန်မာနိုင်ငံ)

P.O Box 93, Mae Sot, Tak Province 63110, Thailand  
e.mail: [info@aappb.org](mailto:info@aappb.org) website: [www.aappb.org](http://www.aappb.org)

---

## Acknowledgements

This research project was made possible with the generous funding and support of the National Endowment for Democracy and the United States Department of State's Bureau for Democracy, Human Rights and Labor.

We extend our thanks to the efforts to the research team involved with compiling the data, writing the report and assisting with editing including Ko Aung Khaing Min, Ko Zarny, Katherine Lee, Declan O'Briain, Stephanie Bigum, Charlie Thame, Jon Wilcox, Jella Knauf and AAPP research team. Our thanks go to Ko Aung Khaing Min who translated and edited the Burmese version of this report.

## “Prison Conditions in Burma and the Potential for Prison Reform”

Written and published by the Assistance Association for Political Prisoners  
September 2016

Assistance Association for Political Prisoners  
[www.aappb.org](http://www.aappb.org)  
[info@aappb.org](mailto:info@aappb.org)

## About AAPP

Founded in 2000 by former political prisoners living in exile in Thailand, the Assistance Association for Political Prisoners (AAPP) is a non-profit, human rights non-governmental organization based in Mae Sot on the Thailand-Burma border. AAPP is dedicated to campaigning for the release of all political prisoners in Burma, in addition to providing support and aid to current political prisoners, former political prisoners, and their families. Staffed by former political prisoners, the organization has extensive experience and knowledge of the conditions faced by political prisoners inside prison and after their release, and the effects incarceration has on their families and livelihoods. In order to alleviate some of the physical, mental and financial trauma caused by imprisonment, AAPP runs a range of assistance programs inside Burma, including mental health counseling and educational and vocational opportunities for former political prisoner and their families.

As well as providing assistance, AAPP documents and reports on human rights abuses carried out by the government against political prisoners and activists. As such, AAPP is widely regarded as a reliable and credible source of information on political prisoner issues in Burma. In recent years it has expanded its expertise into human rights and transitional justice training, delivered to lawmakers, former political prisoners, civil society groups and military personnel. Through advocacy and lobbying efforts AAPP continually stresses the importance of releasing all political prisoners in Burma as part of the transition towards democracy and national reconciliation.

## Table of Contents

	Page
<b>1. Overview of the situation</b>	
1.1. Why Prison Reform?	----- 6
1.2. International Norms and Rules Governing Prisons	----- 7
1.2.1. Hard laws	----- 7
1.2.2. Soft laws	----- 8
1.3. The State of Prisons in Burma Today	----- 11
1.3.1. Legal Framework within Burma	----- 11
1.3.2. Conditions within Burma	----- 12
<b>2. Key Issues</b>	
2.1. Physical Conditions	----- 14
2.1.1. Overcrowding	----- 14
2.1.2. Pre-trial Detention	----- 16
2.1.3. Division of Prisoners	----- 19
2.1.4. Health Conditions	----- 21
2.2. Mistreatment of Prisoners	----- 25
2.2.1. Torture	----- 25
2.2.2. Solitary Confinement	----- 29
2.2.3. Deaths in Custody	----- 32
2.2.4. Prison Labor	----- 33
2.2.5. Visitation Rights	----- 36
<b>3. Potential Reform Projects</b>	
3.1. Legislative Reform	----- 38
3.1.1. Ratification of International Treaties	----- 38
3.1.2. Repeal and Amendment of Outdated and Vague Laws	----- 40
3.1.3. Key Areas of Concern	----- 41
3.1.4. Creation of a Ministry of Justice	----- 45
3.2. Operational Reform	----- 48

3.2.1.	Prison Staff Training	-----	48
3.2.2.	Education and Vocational Training	-----	52
3.2.3.	Independent Monitoring Mechanism	-----	56
3.2.4.	Establishment of a Reliable Complaints Procedure	-----	59
3.2.5.	Facilitate the Release of those Unnecessarily Detained	-----	60
3.2.6.	Alternatives to Detention and Imprisonment	-----	61
<b>4.</b>	<b>Key Challenges</b>	-----	63
<b>5.</b>	<b>Looking Ahead</b>	-----	65
<b>6.</b>	<b>Recommendations</b>	-----	65

## Executive Summary

As Burma emerges from decades of authoritarian rule and international isolation, the issue of human rights and human rights abuses has been of large concern to many actors involved. Holding those accountable for crimes committed in the past has been at the forefront for many observers. However, Burma must also take steps toward ensuring that the opportunity for such abuse is removed and cannot be repeated in the future.

Prisons are one such place where abuses are particularly likely to occur. They are hidden from the public eye, and prisoners are shown little sympathy by the general public. This creates an environment of increased impunity, which in turn leads to the violation of basic human rights for many individuals. This is true for both political prisoners and criminal prisoners alike. Reforming the prison system, although perhaps not politically expedient, is therefore crucial to eliminating human rights violations.

This paper, therefore, is a preliminary assessment of the potential for such a reform in Burma. The research is ongoing and will hopefully provide a valuable resource for other individuals and organizations interested in the penal system in Burma and its reform. It is meant as a foundation from which to work from and build upon.

Section 1: provides a summary of the paper. It first delineates the reasons for undertaking such a project. A brief overview of the international soft and hard law related to prisons, the domestic legislation pertaining to the same topic, and the current prison conditions in Burma are then provided. The sections that follow this expand upon these topics, providing greater detail and analysis of these broad findings.

- Section 2: outlines the major issues that have been identified in the research. For each issue, the analysis will follow a similar model. First, the international rules and norms pertaining to that issue will be highlighted, as well as any other relevant international human rights literature. Second, any domestic legislation on the topic (if it does in fact exist) will be presented and analyzed in the terms set out by international rules and norms. Third, the actual conditions in Burma's prisons will be assessed and compared to both the stated legislation in the country as well as the international normative framework pertaining to prisons.
- Section 3: suggests potential reform projects, which have been divided into legislative and operational reform projects, and outlines their benefits.
- Section 4: identifies some of the key challenges to reform.
- Section 5: makes a number of suggestions on areas for further research.
- Section 6: makes a number of recommendations to the government, political parties and civil society groups of Burma and to the international community.

## Chapter - 1

### Overview of the situation

The following provides a brief summary of the current paper.

#### 1.1. Why Prison Reform?

The prison system in any given country comprises only a small part of that country's judicial and legal system, and therefore an even smaller portion of the overall governance structure and institutions that a country has. In the case of Burma, other issues have occupied center stage during the ongoing 'democratization' process. However, the prison system directly reflects a country's legislation, administration and judiciary. Since the NLD landslide electoral victory and inauguration of a new democratically-elected government under President Htin Kyaw, the issues dominating the agenda have been resurrecting the peace process and achieving national reconciliation. The new government has also begun reforming archaic and repressive legislation, and this paper makes a strong case for bringing prison reform to the top of the current legislative agenda. Many of the key topics in current discussions of the country's future, from human rights to the rule of law, are extremely pertinent to the issue of prisons and prison reform.

Prisons are often forgotten when we speak of issues such as human rights. This might be due to the fact that they house society's criminals, who are seen by

some to have given up these rights when they chose to commit a criminal act. But it could also be simply a function of the demonstrable fact that society in Burma has for many years suffered circumstances not greatly better than those faced by prisoners. When poverty and oppression remain regardless of physical imprisonment, it is hard to garner public support in favor of time-consuming, and often costly, reform. Despite the role it plays in public safety, the prison system is nevertheless neglected by most ordinary citizens, yet the benefits of a strong prison system reach beyond the protection of prisoners' human rights. As the United Nations Office on Drugs and Crime notes, prison reform can have a positive impact on poverty alleviation, public health, and social cohesion. In turn, these positive effects can end up saving the state money in the long term.<sup>1</sup> Undertaking such a project in Burma is necessary to ensure the protection of human rights within the country, but it is also beneficial to society more broadly. Moving forward, it is crucial that policy makers and activists, both within the country and the international community, take note of "the contribution of the penal system as a whole to ensuring a safer society is vital."<sup>2</sup>

1. "Prison Reform and Alternatives to Imprisonment," United Nations Office on Drugs and Crime, 2014,

2. "Guidance Note 1: Penal Reform Projects and Sustainable Change," Guidance Notes on Prison Reform (International Centre for Prison Studies: 2004), 2.



## 1.2. International Norms and Rules Governing Prisons

Since the establishment of the United Nations (UN) in 1945 following World War II, international norms, and increasingly law, surrounding human rights has increased dramatically. This has also meant the establishment of conventions, guidelines and protocols surrounding the detention of individuals by state authorities. Such international initiatives have taken the form of both ‘hard law’ and ‘soft law’. Here, we list the key international texts that pertain to places of detention.

### 1.2.1 Hard laws

The more stringent of the two categories of international law, hard law “consists of legally binding international standards that require actors to conform their behavior accordingly.”<sup>3</sup> International hard law becomes binding once a given country has signed and ratified the given legislation, something that Burma has been slow to do in a number of areas. However, even if a country has not ratified a certain convention or treaty, the rules that the convention or treaty delineates represent the international standards that are expected of countries today. International hard law that pertains to prisons is contained within a number of different conventions, covenants, and statutes:

○ The Universal Declaration of Human Rights (UNDHR) forms the basis of customary

international law; it also served as the foundation for the International Covenant on Civil and Political Rights.<sup>4</sup> The Declaration is not, in itself, considered a legally binding instrument. However because it is now considered international customary law many States consider adopting the legislation as binding national legislation. In 1948, Burma voted in favor of the declaration.<sup>5</sup> The document contains specific provisions which guarantee a free and fair trial and the protection of the rule of law, while also outlawing any form of torture or arbitrary detention.

○ The Fourth Geneva Convention, which Burma has ratified, outlines strict rules for the protection of civilian persons during conflict, and pertains to a number of prison issues such as prison health and forced labor.<sup>6</sup>

○ The International Covenant on Civil and Political Rights (ICCPR), which Burma has not ratified, was an effort to bring principles outlined in the UN Charter and the UNDHR onto a more firm legal footing.<sup>7</sup> Certain sections within the covenant pertain directly to prisoner rights; its overarching message is summarized well in Article 10(1), which states that, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>8</sup>

○ The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment (UNCAT)<sup>9</sup>, as well as its corresponding optional protocol, is perhaps the most important piece of international hard law with regards to prison reform. The Thein Sein Government, despite its promise, failed to ratify the convention before the end of its term and the new NLD-led government is yet to do so.<sup>10</sup> The optional protocol is particularly important, as it establishes an independent system of international and national visitations to places of detention in order to prevent torture.<sup>11</sup>

○ The UN Convention on the Rights of the Child,<sup>12</sup> to which Burma is a state party. Among other provisions, Article 37 of this Convention provides that the arrest, detention or imprisonment of a child may be used only as a measure of last resort and for the shortest appropriate period of time.

### 1.2.2 Soft laws

In contrast to hard law, “soft law consists of non-binding normative instruments that actors may choose to conform with.”<sup>13</sup> These often take the form of declarations and principles that are issued by the UN General Assembly. Due to the fact they are not enforceable in the same way that hard law is, states do not need to sign or ratify them; instead, they act as international guidelines by which individual nations can be judged and held accountable.

○ The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a precursor to UNCAT, and calls for state governments to bring their national legislation in line with international norms regarding torture.<sup>14</sup>

○ The United Nation’s Standard Minimum Rules for the Treatment of Prisoners (hereinafter “Nelson Mandela Rules”) is the key international standard when dealing with issues of prison and prison reform.<sup>15</sup> It outlines the minimum rules for detention facilities that are acceptable to the UN. Instead of offering a strict outline of the exact ways in which places of detention should be designed and operated, the Nelson Mandela Rules provide a baseline standard that can be adapted to local conditions and specifications. Part I of the document outlines the minimum rules for a wide range of topics, including: prison file management; separation of categories of prisoners; accommodation; personal hygiene; clothing and bedding; food; exercise; health-care services; restrictions, discipline and sanctions; instruments of restraint; searches of prisoners and cells; information to and complaints by prisoners; contact with the outside world; books; religion; retention of prisoner property; notifications;

3. Gary Hill et al., *International Standards that Relate to Detentions, Corrections, and Prisons* (International Network to Promote the Rule of Law: 2010), 1.

4. UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) (henceforth: UDHR).

5. Department of Public Information United Nations, *Yearbook of the United Nations 1948-1948* (New York: United Nations Publications, 1950), 535.

6. International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 (henceforth, Fourth Geneva Convention).

7. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171 (henceforth, ICCPR).

8. *Ibid.*, Article 10(1).

9. UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 U.N.T.S. 85, 113 (henceforth: UNCAT); UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199 (henceforth: UNCAT Optional Protocol).

10. September 2014 Chronology, Assistance Association for Political Prisoners (Burma) (AAPP), 8 October 2014, <http://aappb.org/2014/10/aapp-b-monthly-chronology-for-september-2014/>.

11. UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199, Article 1 (henceforth: UNCAT Optional Protocol).

12. UN General Assembly, *Convention on the Rights of the Child*, November 20, 1989, 999 U.N.T.S. 171 (henceforth: CRC)

13. Hill, *International Standards that Relate to Detentions, Corrections, and Prisons*, 1.

14. UN General Assembly, *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 9 December 1975, A/RES/3452(XXX) (henceforth: Declaration on the Protection of All Persons from Torture).

15. United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955 (henceforth: SMRs). Also known as “the Mandela Rules”.

investigations; removal of prisoners; institutional personnel and internal and external inspections. Part II pertains to special categories of prisoners, such as prisoners under sentence, prisoners with mental disabilities and/or health conditions, prisoners under arrest or awaiting trial, civil prisoners, and persons arrested or detained without charge. The Nelson Mandela Rules are heavily relied upon in the following paper.

- The United Nations Basic Principles for the Treatment of Prisoners, which are also cited throughout this paper, outlines 11 principles that essentially summarize the key points of the SMR.<sup>16</sup>
- The Body of Principles for the Protection of Persons Under any Form of Detention or Imprisonment is another crucial international instrument. Its focus is primarily on ensuring the protection of prisoners' fundamental human rights, including their right to fair trial.<sup>17</sup> Principle 1 states: "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person."<sup>18</sup>

- The Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)<sup>19</sup>; The UN Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules)<sup>20</sup>; and The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)<sup>21</sup> all delineate minimum rules and guidelines for specific categories of prisoners.

**In addition to these overarching international instruments, there are a number of UN documents that refer to specific issues pertaining to prison reform:**

- The Principles Relating to the Status of National Institutions (Paris Principles) provides the framework for the establishment of national human rights monitoring institutions.<sup>22</sup>
- The Basic Principles on the use of Force and Firearms by Law Enforcement<sup>23</sup> and the Code of Conduct for Law Enforcement Officials<sup>24</sup> both provide strict restrictions on the use of firearms by law enforcement personnel, as well as outlining more broadly the way in which they should treat individuals in detention.

16. UN General Assembly, Basic Principles for the Treatment of Prisoners, 28 March 1991, A/RES/45/111.

17. UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988, A/RES/43/173 (henceforth: Principles for the Protection of All Persons under Detention).

18. Principles for the Protection of all Persons Under Detention, Principle 1.

19. UN General Assembly, Standard Minimum Rules for the Administration of Juvenile Justice, November 29, 1985, A/RES/40/33.

20. UN General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, December 14, 1990, A/RES/45/113.

21. UN General Assembly, Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary, December 21, 2010, A/RES/65/229.

22. UN General Assembly, Principles Relating to the Status of National Institutions, 20 December 1993, A/RES/48/134 (henceforth: Paris Principles).

23. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF. 144/28/Rev. 1 at 112 (henceforth: Basic Principles on the Use of Force and Firearms).

24. UN General Assembly, Code of Conduct for Law Enforcement Officials, 5 February 1980, A/RES/34/169.

overview of the current prison system in Burma.

### 1.3.1 Legal Framework within Burma

**The prison system in Burma is designed, at least in theory, according to two major legislative texts:**

- The Prisons Act, also known as the India Act of 1894, provides the framework for the establishment of a prison system in colonial era Burma and continues to be used today.<sup>28</sup>
- The Manual of Rules for the Superintendence and Management of Jails in Burma (Jail Manual), revised most recently in 1950, expands upon The Prisons Act and remains the most pertinent document regarding prisons in Burma.<sup>29</sup>

Both of these texts are severely outdated, and therefore lack many of the safeguards that are required by international law. Moreover, large components of both texts are redundant today, as they spend a great deal of time on issues (such as the division of power between colonial and local staff) that no longer bear relevance to the prison system in Burma. The Code of Criminal Procedure and The Myanmar Penal Code are also relevant to some specific issues regarding prisons, such as rules surrounding pre-trial detention.<sup>30</sup> More recent

- The Basic Principles on the Independence of the Judiciary outlines the qualifying criteria for an independent judiciary, a crucial component to any serious prison reform project.<sup>25</sup>
- The Basic Principles on the Role of Lawyers guarantees basic legal rights, such as right to legal counsel, for all persons in detention.<sup>26</sup>
- The Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment addresses the role that medical personnel must play in preventing and reporting torture in detention facilities.<sup>27</sup>

## 1.3 The State of Prisons in Burma Today

Throughout this paper, Burma's prison system will be measured against the international norms and rules outlined above. This will happen on two levels: 1) a comparison to existing domestic legislation regarding prisons in Burma, and 2) a comparison to the actual conditions in Burmese prisons. Here, we therefore provide a brief summary of the major legislation that will be cited and an

25. UN General Assembly, Basic Principles on the Independence of the Judiciary, 29 November 1985, A/RES/40/32 / 13 December 1985, A/RES/40/146.

26. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Role of Lawyers, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF. 144/28/Rev.1 at 118.

27. UN General Assembly, Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 1982, A/RES/37/194 (henceforth: Principles of Medical Ethics Relevant to the Protection of Prisoners)

28. The Prisons Act, 1894.

29. Government of Burma, Manual of Rules for the Superintendence and Management of Jails in Burma (revised edition) (Rangoon: Supdt., Govt. Printing and Stationary, 1950) (henceforth: Jail Manual).

30. The Code of Criminal Procedure, 1898; The Myanmar Penal Code, 1861.

legislation, such as the Union Judiciary Law which enshrines an independent judiciary, has taken incremental steps towards resolving this issue of the separation of powers.<sup>31</sup> The State Protection Law of 1975 provided expansive powers to the state that contradict international norms, enabling them to detain or place under house arrest for up to five years without charge or trial any person suspected of performing an act endangering the state sovereignty and security, and public law and order.<sup>32</sup> In a sign of their commitment to legislative reform, the new Burma Government repealed this law in May 2016.<sup>33</sup>

### 1.3.2 Conditions within Burma

Despite the obvious need for legislative updates and reform, the more pressing issue in Burma is the actual conditions that individuals face in prisons, detention centers, and labor camps throughout the country, examined in greater detail in Section 2. As is recognized by the U.S. State Department in their human rights report for that year, the Thein Sein Government began to make improvements to the prison system in 2015.<sup>34</sup> However, conditions in prisons and labor camps continue to be harsh due to inadequate access to medical care and basic needs including food, shelter and hygiene. As is illustrated below, the existing legislation in Burma does provide certain safeguards against mistreatment in prison, however these are routinely ignored. This

illustrates the existing divide, not only between international norms and prison conditions in Burma, but also between domestic legislation and prison conditions. Removing this gap is therefore of utmost importance in order to move forward.

The U.S. State Department, in their 2015 human rights report on Burma, stated that there were approximately 43 prisons and approximately 50 labor camps in Burma.<sup>35</sup> While this represents a decrease in the numbers of labor camps as compared with figures for 2013 and 2014, the estimated figure of 60,000 prisoners in Burma has remained constant across the same period.<sup>36</sup> This gives the country a prison population rate of 113/100,000.<sup>37</sup> It should also be noted that labor camps were renamed “agriculture and livestock breeding career training centers” and “manufacturing centers” according to a statement made by the Ministry of Home Affairs in October 2014. This may account for the decrease in reported numbers of labor camps. The overall prison population consists of approximately 16.3% women and 1.6% juveniles, percentages that have remained stable since 2013.<sup>38</sup> The International Center for Prison Studies has documented a steady rise in the overall prison population in Burma since 1993, while the prison population rate has remained relatively stable.<sup>39</sup>

Within this prison population, a number of key issues have been identified that need to be

addressed in a prison reform project. Section 2 expands on these issues and divides them into two broad categories: physical and material conditions in the prisons and treatment of prisoners.

It is important to keep in mind that these issues are not isolated from one another, and therefore cannot be solved individually. They are, instead, mutually reinforcing and interwoven, and

therefore require a comprehensive and well thought out solution that takes their interconnectedness into account. This feature of the prison system is a primary theme in both the analysis of the current prison system and the possible reform initiatives. Examples of their overlapping nature are provided throughout the research.

31. Union of Myanmar, The Union Judiciary Law, 28 October 2010.

32. State Protection Law, Pyithu Hluttaw Law No. 3, 1975.

33. Htoo Thant, “Hluttaws revoke oppressive state protection law,” The Myanmar Times, 26 May 2016. <http://www.mmmtimes.com/index.php/national-news/hay-pyi-taw/2012-hluttaws-revoke-oppressive-state-protection-law.html>

34. United States Department of State, 2015 Country Reports on Human Rights Practices – Burma (Washington, DC: GPO, 2016), 4.

35. Ibid.

36. This is confirmed when one compares the figures published by the US State Department in the human rights reports for 2013, 2014 and 2015.

37. “World Prison Brief,” 2014.

38. “World Prison Brief: Myanmar (formerly Burma),” International Centre for Prison Studies, accessed on 9 June 2016, <http://www.prisonstudies.org/country/myanmar-formerly-burma>. United States Department of State, 2015 Country Reports on Human Rights Practices – Burma (Washington, DC: GPO, 2016), 4.

39. “World Prison Brief,” 2014.

## Chapter - 2 Key Issues

The following section examines a number of key issues, divided into two broad categories: physical conditions of prisons and the treatment of prisoners. Despite being categorized separately there is a great deal of overlap between these two categories, and issues that are placed under one heading often have aspects that are relevant to the other. Each identified problem is analyzed according to: 1) the international rules and norms that pertain to it; 2) the domestic legislation that is applicable; and 3) the actual conditions in prisons pertaining to the given issue.

### 2.1 Physical Conditions 2.1.1 Overcrowding

Prison overcrowding has been identified worldwide as one of the most prevalent problems facing penitentiary systems in both the developed and developing world.<sup>40</sup> Overcrowding causes a great deal of issues, placing strains on the public health system in prisons, the sanitation infrastructure, and the individual prisoners and staff themselves.<sup>41</sup> It limits the ability of staff to create a safe and secure environment for themselves and the prisoners and prevents them from separating prisoners according to separate classes. In its most severe form, “it can lead to conditions that constitute inhuman and degrading treatment for prisoners and unacceptable working conditions for prison staff.”<sup>42</sup> It is therefore interlinked with a number of the other human rights issues that will be discussed in this section, including torture, health care provision, and the separation of

prisoners. It is therefore worthwhile examining its prevalence within prisons in Burma.

#### International Rules and Norms

International standards provide specific parameters regarding the minimum space that a prisoner should be guaranteed, although room has been left to account for location specifics of a given prison. Overcrowding is dealt with in SMR Rule 13, which states that, “Accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating, and ventilation.”<sup>43</sup> The Handbook on Strategies to Reduce Overcrowding, a joint document between the United Nations Office on Drugs and Crime (UNODC) and the International Committee for the Red Cross (ICRC)

has expanded upon this guideline, and recommends at least 5.4 square meters per person in single cell accommodation and 3.4 square meters in shared accommodation, excluding space for toilets and showers.<sup>44</sup> However, these are merely guidelines, and a number of factors need to be taken into consideration when determining each prisoner’s minimum space, including: condition of the building, ventilation and light, amount of time spent in the area, and facilities and services available at the prison.<sup>45</sup>

Given the fact that, at its worst, overcrowding can be considered cruel, inhuman, and degrading treatment,<sup>46</sup> the international instruments that pertain to torture and other cruel and inhuman treatment (expanded upon below) may also be relevant to the issue of overcrowding.

#### Domestic Legislation

Both The Prisons Act and Jail Manual have provisions against overcrowding in prisons. Article 7 of The Prisons Act states: “Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein...provision shall be made, by such officer and in such manner as the Governor may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.”<sup>47</sup>

The Jail Manual provides a more specific account of what the government deems “convenient and safe”, although its provisions fall short of those recommended by the International Committee of the Red Cross (ICRC):

- Article 991 guarantees a minimum of 36 square feet (3.34 square meters), which is only slightly smaller than the ICRC’s recommendation for shared accommodation.<sup>48</sup>
- Article 996 states that, “timely arrangements shall be made to avoid the confinement of prisoners in excess of the sanctioned numbers.”<sup>49</sup>
- Article 997 reiterates the ICRC’s focus on proper ventilation: “Thorough ventilation of the sleeping barracks is of the greatest importance.”<sup>50</sup>
- Article 998 guarantees the daily cleaning and upkeep of the sleeping barracks, another focus of the ICRC’s assessment of the minimum accommodations standards needed in prisons.<sup>51</sup>

This domestic legislation, if complied with, would provide at least some assurance against chronic overcrowding in prisons in Burma. Although they may fall short of international standards, the general clauses that call for overcrowding to be dealt with in a timely and efficient manner illustrates that the authors of these texts understood the importance of providing prisoners with a decent accommodation in which to live.

#### Prison Conditions in Burma

Despite existing legislation meant to protect against prison overcrowding, a number of sources indicate that the problem persists in the prison system in Burma. The latest figures (2002) from the International Centre for Prison Studies indicate that the official capacity of detention facilities, excluding

40. Tomris Atabay, “Handbook on Strategies to Reduce Overcrowding in Prisons,” United Nations Office on Drugs and Crime (UNODC) (New York: United Nations, 2013), 9.

41. “Guidance Note 4: Dealing With Prison Overcrowding,” 1.

42. Ibid., 1.

43. SMRs, Rule 10.

44. Atabay, Handbook on Strategies to Reduce Overcrowding

45. Ibid.

46. UN General Assembly, Human rights implications of overincarceration and overcrowding, August 10, 2015, A/HRC/30/19.

47. The Prison Act, Article 7.

48. Jail Manual, Article 991.

49. Ibid., 996.

50. Ibid., 997.

51. Ibid., 998.



**POLICE**

၁/၇၂၅၂

labor camps, is 26,100, with the occupation level at 144.3%.<sup>52</sup> More recent reports indicate that this trend continues. During his 2012 country visit, for example, Special Rapporteur Tomas Ojea Quintana observed that, “the number of prisoners held in Insein prison far exceeded its maximum holding capacity and that the issue of prison congestion was ‘an important source of grievances that should be addressed in a timely fashion.’”<sup>53</sup> The State Department made similar findings in their 2015 report, noting that in some prisons, pre-trial detainees were held together with convicted prisoners and political prisoners were occasionally held together with common criminals; overcrowding is a significant contributing factor to this.<sup>54</sup> Furthermore, site visits by the MNHRC investigation team in 2016 have revealed overcrowding in Hkanti Prison, Sagaing Region, which was reported to hold 688 prisoners despite its 300 people capacity<sup>55</sup>; and Loi-Kaw Prison, Kayah State found to be holding 518 prisoners despite a capacity to hold 409 prisoners.<sup>56</sup>

### 2.1.2 Pre-trial Detention

As noted above the overuse and misuse of pre-trial detention is directly linked to overcrowding, in that it leads to a great deal of people remaining in prison when they should be free. International

law suggests the use of pre-trial detention in a limited number of circumstances; it is meant as the exception rather than the rule. Pre-trial detention may be warranted in cases where there is reasonable grounds to assume the accused was involved in the commission of the offence, or if there is a risk of flight, commission of another serious offence, or that their trial will be seriously interfered with if they are freed.<sup>57</sup> However, delays in the criminal justice process, arbitrary arrests and detention, lack of legal access or inability to afford bail, and corruption in the penitentiary system all account for its overuse.<sup>58</sup> Furthermore, pretrial detention is frequently misused, particularly when the authority in charge of detention is the same as the one in charge of investigation; in these circumstances, pre-trial detention is employed by the investigator as a means to pressure the defendant into providing a confession.<sup>59</sup> This also limits a defendant’s ability to access legal assistance, which “can have a devastating effect on defendants’ ability to prepare for trial.”<sup>60</sup> Conflating such powers indicates a disregard for individual rights, and the way in which a judicial system uses pre-trial detention is therefore seen as a good indicator of their adherence to the rule of law.<sup>61</sup> Given the multitude of factors that lead to its overuse and misuse, pre-trial detention is

52. “World Prison Brief,” 2014.

53. UN Human Rights Council, Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana, 7 March 2012, A/HRC/19/67.

54. US Department of State, 2016, 4.

55. Myanmar National Human Rights Commission (MNHRC), Statement regarding the visit to the prison, police lock-up and district hospital guard ward in Hkamti township, February 29, 2016. <http://www.mnhrc.org.mm/en/statement-regarding-the-visit-to-the-prison-police-lock-up-and-district-hospital-guard-ward-in-hkamti-township-sagaing-region-statement-no-22016/>

56. MNHRC, Statement on the visit to the prison, court lock-up, police lock-up and the guard ward in Loi-Kaw Township, March 17, 2016. <http://www.mnhrc.org.mm/en/statement-on-the-visit-to-the-prison-court-lock-up-police-lock-up-and-the-guard-ward-in-loi-kaw-township-kayah-state-statement-no-3-2016/>

57. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, chapter 1, section C, paragraph 2(b).

58. Atabay, “Handbook on Strategies to Reduce Overcrowding,” 23.

59. “Guidance Note 4: Dealing with Prison Overcrowding,” 1.

60. *Ibid.*, 1.

61. *Ibid.*, 2.

“one of the most complex challenges to address.”<sup>62</sup>

### International Rules and Norms

Article 6(1) of the UN Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”) states that pre-trial detention shall be used only as a last resort, while article 6(2) identifies that alternatives to pre-trial detention should be employed and article 6(3) requires that offenders have a right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.<sup>63</sup> Another important consideration on the issue of pre-trial detention is the accused’s right to be presumed innocent and treated accordingly, which is guaranteed under international law.<sup>64</sup> The ICCPR also provides prisoners with fair trial rights, including: prompt notification of the reason for their arrest, adequate time and facilities to prepare a defense, to be tried without undue delay.<sup>65</sup> These safeguards are reiterated in Principles for the Protection of all Persons under Detention.<sup>66</sup>

The Basic Principles on the role of Lawyers ensures that all persons are entitled to a lawyer regardless of means, guaranteed access to a lawyer within 48 hours, and informed of their right to a lawyer upon being arrested.<sup>67</sup> Given the fact that a large amount of pre-trial detention results from the unlawful arrest of individuals and given the lack of legal recourse to rectify this, ensuring that standards such as these are met is crucial to reducing the number of pre-trial detainees.

62. Atabay, “Handbook on Strategies to Reduce Overcrowding,” 23.

63. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Section 6.

64. ICCPR Article 14(2)

65. ICCPR, Article 14 (3) a, b, c.

66. Principles for the Protection of All Persons Under Detention, Principle 10, 11 and 39.

67. Basic Principles on the Role of Lawyers.

68. Government of Burma, Code of Criminal Procedure, July 1, 1898.

69. *Ibid.*, Chapter XXXIX.

70. Union Judiciary Law, Article 3(a), (b), (c).

### Domestic Legislation

The domestic legislation in Burma establishes pre-trial detention as the norm rather than the exception, which contravenes these international standards. Article 220 of the Code of Criminal Procedure requires magistrates to commit those awaiting trial to custody.<sup>68</sup> Chapter XXXIX places limits on who is eligible for bail, but does not require the Court to grant bail for any individual. It goes through the procedure under which a person shall be released once they post a bond. If an individual is permitted by the Court to post a bond, the individual must be released as soon as the bond has been executed; the Court must issue an order admitting the individual to bail must issue a release order to the jail and the officer must release him when he receives that order.<sup>69</sup>

In addition, the fairly recent Union Judiciary Law, at least in theory, prescribes that justice be administered according to a number of principles, including the independence of the judiciary to apply justice according to the written law, the dispensing of justice in open court, and the right to legal counsel and the right of appeal.<sup>70</sup> Ensuring that the use of pre-trial detention is the decision of the courts, and not the prosecution or law enforcement, is important to ensure that pre-trial detention is not used as a coercive instrument, so these guarantees are essential.

## Prison Conditions in Burma

Pre-trial detainees constitute a disproportionate percentage of overall detainees in Burma, with the latest figures (2009) estimating that one in ten prisoners falls under the category of pre-trial detainee.<sup>71</sup> As a percentage of the prison population, this number has been steadily declining since 2001 (15.7%); however, overall numbers have increased from 4,966 in 2001 to 6,495 in 2009.<sup>72</sup> As a report from 2013 states, “Arbitrary and lengthy pre-trial detentions resulted from lengthy legal procedures, large numbers of detainees, judicial inefficiency, widespread corruption, and staff shortages.”<sup>73</sup> This list mirrors closely the causes of pre-trial detention outlined in the introduction to this section. The Special Rapporteur noted in 2016 “procedural failings for individuals in detention, such as the length of pre-trial detention and the denial of bail, including for those with chronic or serious health conditions, remain issues of concern.”<sup>74</sup>

Pre-trial detention is often arbitrarily extended in Burma, particularly in the cases of political prisoners. In 2015, frequent arbitrary extensions of pre-trial detention by authorities were reported.<sup>75</sup> In March 2015, 127 individuals were arrested for a protest held against the National Education Law in Letpadan, 53 of which remained in detention facing trial over a year after their arrest.<sup>76</sup>

Another area of particular concern is the use of pre-trial detention to stifle political opposition and

activists within Burma. Although bail is often granted for those criminal prisoners who can afford it, it is often denied to political prisoners.<sup>77</sup> AAPP has conducted extensive research on this particular issue, with a number of concerning findings. Research conducted by AAPP has found “Many of the political prisoners have never even been convicted of a crime, and are held in pre-trial detention for prolonged periods of time, sometimes waiting years before attending a trial.”<sup>78</sup>

### 2.1.3 Division of Prisoners

The division of prisoners according to different categories is another issue that cannot be seen as isolated. Prison overcrowding makes it increasingly difficult to ensure that prisoners are separated according to their status, and therefore has an adverse effect on the division of prisoners in Burma. Conversely, ensuring that prisoners are divided according to their awaiting trial/convicted status can have a positive effect on ameliorating some of the issues faced by those in pre-trial detention. Again, this interconnectedness should be kept in mind when assessing both the problems and possible solutions for this particular issue.

The present research is primarily concerned with two types of divisions: 1) The division between pre-trial detainees and convicted prisoners, and 2) the division between criminal and violent prisoners, on the one hand, and civil and political prisoners, on

the other. This is not an exhaustive list, and future research should examine divisions between male and female prisoners and between juvenile and adult prisoners in particular.

## International Rules and Norms

The international instruments pertaining to detention facilities are most concerned with the division between un-convicted and convicted criminals, as it is seen as extremely important to distinguish between the innocence of one group and the guilt of the other. This division is enshrined in hard law by ICCPR Article 10(2)(a): “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons.”<sup>79</sup> This division is also provided for in the Principles for the Protection of All Persons Under Detention.<sup>80</sup> The Nelson Mandela Rules reaffirm and expand upon this basic principle; in addition to guaranteeing the separation of pre-trial and convicted prisoners,<sup>81</sup> they also ensure that “un-convicted prisoners are presumed to be innocent and shall be treated as such”<sup>82</sup> which guarantees them some special privileges.<sup>83</sup>

The Nelson Mandela Rules also provide for further divisions according to “sex, age, criminal record, the legal reason for their detention and the

necessities of their treatment,” such as poor health.<sup>84</sup> Rule 11(c) calls for the division between civil and criminal prisoners, while Rule 93 calls for prisoners to be classified in order to separate ‘bad characters’ and provide varied facilities depending on the type of prisoner.<sup>85</sup> These basic divisions outlined by the international legal instruments are codified and detailed in Burmese penal law as well, as is shown below.

## Domestic Legislation

The domestic legislation in Burma goes to great lengths to guarantee that prisoners are divided into strictly defined classes and held separately according to those classes.

The Prisons Act, Section 27.1, calls for the division of prisoners according to gender, age, un-convicted or convicted status, and civil or criminal status.<sup>86</sup> The act provides a framework that the Jail Manual then builds upon. The Jail Manual delineates a number of different divisions:

- Section XVIII deals with the issue of prisoners awaiting trial, and guarantees that they are held separately from convicted prisoners,<sup>87</sup> provided with additional amenities,<sup>88</sup> and are not “subject to further restraint than is necessary for their safe custody and the maintenance of jail discipline.”<sup>89</sup>

71. “World Prison Brief,” 2014.

72. Ibid.

73. US Department of State, 2016, 8.

74. UN Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee, 18 March 2016, A/HRC/31/71.

75. US Department of State, 2016, 8.

76. UN Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee, 18 March 2016, A/HRC/31/71.

77. US Department of State, 2016, p. 7.

78. AAPP, “Democracy Deferred and Hope Betrayed: The Systematic Torture of Political Prisoners in Burma,” Draft Report for the UN Special Rapporteur on the Human Rights Situation in Burma, 12 July 2011, 11.

79. ICCPR, Article 10(2)(a).

80. Principles for the Protection of All Persons Under Detention, Principle 8.

81. SMR, Rule 11(b), Rule 93(1).

82. SMR, Rule 84(b).

83. See, for example: SMR Rule 87, which allows for un-convicted prisoners to purchase their own food from outside of the prison; SMR Rule 89, which states that they cannot be required to work; SMR Rule 90, which allows them to purchase books and magazines without restriction.

84. SMR, Rule 11.

85. SMR, Rule 11(c), Rule 93.

86. The Prisons Act, Section 27.1(1-4).

87. Jail Manual, Article 696.

88. Ibid., Article 695, 701.

89. Ibid., Article 705.

○ Section XIX divides prisoners according to their civil or criminal status, and further divides civil prisoners into two categories: ‘special’, who “by social status, education or habit have been accustomed to a superior mode of life”; and ‘ordinary’, which includes any prisoners not included in the special category.<sup>90</sup> These two subcategories should, if circumstances permit, be held apart from each other as well.<sup>91</sup>

Despite the fact that this legislation is outdated, and as such the way in which prison classes are defined is somewhat archaic, this attention to the division of prisoners is indicative of the legislators understanding that this is an important issue.

## Prison Conditions in Burma

Unfortunately, these rules and regulations are not followed in prisons throughout Burma. The US State Department’s 2015 country report on Burma found evidence that pre-trial detainees were being held along with convicted prisoners while political prisoners were often held with common criminals.<sup>92</sup> In previous years, it had been noted that although some high profile political prisoners were provided with greater protection, low profile political prisoners were actually subject to worse conditions and treatment than other criminals.<sup>93</sup> These claims have been substantiated by the personal testimony of former political prisoners.<sup>94</sup>

### 2.1.4 Health Conditions

The right to health in prison covers a wide range of topics, ranging from dietary concerns, to sanitation systems, to the provision of basic medical care. These issues are exacerbated due to the fact that, “Prison populations contain an over-representation of members of the most marginalized groups in society, people with poor health and chronic untreated conditions, mental health problems, the vulnerable and those who engage in activities with high health risks such as injecting drugs and commercial sex work.”<sup>95</sup> Once again, the issue of prisoner health is often exacerbated by other issues facing the prison system, such as overcrowding, which puts undue strain on sanitation systems and the limited medical staff available. Given that the right to health is considered a fundamental human right, guaranteeing this right in prisons is critical when discussing prison reform projects.

### International Rules and Norms

Rule 24 of the Nelson Mandela Rules, Principle 9 of the Basic Principles for the Treatment of Prisoners<sup>96</sup>, and the Principles of Medical Ethics Relevant to the Protection of Prisoners<sup>97</sup> all enshrine the main guiding principle of healthcare in prison, which is that “prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge and without discrimination on the grounds of their legal status”

90. Ibid., Article 721.

91. Ibid., Article 723.

92. US Department of State, 2016, 8

93. United States Department of State, 2011 Country Reports on Human Rights Practices – Burma (Washington, DC: GPO, 2012), 4

94. AAPP/FPPS, “‘After Release I had to Restart my Life from the Beginning’: The Experiences of Ex-political Prisoners in Burma and Challenges to Reintegration”, May 2016, p. 47.

95. “Guidance Note 10: improving Prison Health Care”, 2.

96. Basic Principles for the Protection of Prisoners, Principle 9.

97. Principles of Medical Ethics Relevant to the Protection of Prisoners, Article 1.

○ Rules 18-21 outline personal hygiene protocols and requirements for clothing and bedding.<sup>104</sup>

Similarly, the Code of Conduct for Law Enforcement Officials stipulates that “law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.”<sup>105</sup> This multifaceted concern with prisoner health care indicates the importance of providing fair and quality treatment to individuals under detention.

## Domestic Legislation

The legal framework within Burma is also quite clear in its commitment to the proper medical treatment of prisoners in Burma. Article 24 of the Prisons Act and Article 397 of the Jail Manual both guarantee that prisoners have a full medical examination upon arrival at the prison,<sup>106</sup> while Article 37 of the Prisons Act and Article 166 of the Jail Manual mandates that prison officials immediately seek medical assistance for any prisoner who is ill or injured.<sup>107</sup> The Prisons Act guarantees that each prison has at least one chief medical officer,<sup>108</sup> while the Jail Manual expands upon their core duties. The chief medical officer is required to:

○ Visit the sick daily,<sup>109</sup>

<sup>98</sup> The Principles for the Protection of all Persons Under Detention provides for a medical examination upon admission to prison and regular medical care provided from that point forward.<sup>99</sup> The Nelson Mandela Rules provide more specific regulations regarding health care facilities inside prisons:

○ Rule 22(1) guarantees that “Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”<sup>100</sup>

○ Rule 27(1) stipulates that those in need of special care need to be transferred to a hospital or treatment facility.<sup>101</sup>

○ Rule 30 repeats Article 24 of the Principles for the Protection of All Persons Under Detention, stating that a medical officer shall “see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary.”<sup>102</sup>

○ Rule 31 states that a physician shall have daily access to all sick prisoners and that medical examinations should be undertaken in confidentiality.<sup>103</sup>

98. SMR’s Rule 24(1)

99. Principles for the Protection of All Persons Under Detention, Article 24.

100. SMR’s, Rule 22(1).

101. Ibid., Rule 27(1).

102. Ibid., Rule 30.

103. Ibid., Rule 31.

104. Ibid., Rule 18-21.

105. Code of Conduct for Law Enforcement Officials, Article 6.

106. The Prison Act, Article 24; Prison Manual, 397

107. The Prison Act, Article 37; Prison Manual, 166

108. The Prison Act, Article 6

109. Jail Manual, Article 884.

- Visit every prisoner in solitary confinement or on a punishment diet daily,<sup>110</sup>
- Report any cases where the physical or mental wellbeing of a prisoner is being negatively affected by the discipline or treatment observed in prison,<sup>111</sup>
- Carry out weekly inspections of the entire jail to ensure good sanitation, proper water provisions, and the amelioration of overcrowding,<sup>112</sup>
- Visit all prisoners at least once a week.<sup>113</sup>

In addition to these specific duties of the medical officer, the Jail Manual also stipulates that vaccinations should be provided free of charge to prisoners<sup>114</sup> and that prisoners should be transferred to civilian hospitals if proper care cannot be provided by the prison system.<sup>115</sup> In short, “efficient medical examination is the most fundamental of all matters affecting jail management.”<sup>116</sup>

## Prison Conditions in Burma

Despite the strict provisions laid out in

Burmese law, the lack of proper health provisions in prisons in Burma is well documented.

Prisoners are plagued by a large number of different illnesses, including heart disease, malaria, high blood pressure, and tuberculosis;<sup>117</sup> with dysentery and scabies considered a fairly normal condition in prison.<sup>118</sup> HIV/AIDS rates also remain high due to the use of syringes and sexual abuse in the prison system.<sup>119</sup> Not only are diseases such as these more prevalent in prisons, but basic health conditions such as diabetes and asthma are exacerbated due to the substandard living conditions that prisoners are faced with.<sup>120</sup>

Yet health issues reach beyond simply disease and infection. In their submission to the Universal Periodic Review (UPR) in 2011, AAPP confirmed “that malnutrition, poor sanitation and unclean water are a serious problem throughout the prison system, posing a major health risk.”<sup>121</sup> Extensive research conducted with ex-political prisoners in 2016 confirmed poor levels of sanitation, little or no provisions of food and water, and a severe shortage of quality health care.<sup>122</sup> Eighty-eight percent of ex-political prisoners surveyed said they felt they did not receive all of the provisions described in the Jail Manual, revealing that in practice the Jail Manual is

110. Ibid., Article 885.

111. Ibid., Article 886.

112. Ibid., Article 890.

113. Ibid., Article 891.

114. Ibid., Article 887.

115. Ibid., Article 948.

116. Ibid., Article 926.

117. US Department of State, 2012, p. 3; US Department of State, 2014, p. 5; US Department of State, 2015, 5; US Department of State, 2015, p. 4.

118. Dina FineMaron and M Francesca Monn, “From Bad to Worse: Health in Burma’s Prisons,” Physicians for Human Rights, 7 February 2012, <http://physiciansforhumanrights.org/blog/from-bad-to-worse-health-in-burmas-prisons.html>; “Myanmar: Urgent Health Concerns,” Amnesty international, 14 May 2009, <http://www.amnesty.org.nz/news/myanmar-urgent-health-concerns>.

119. US Department of State, 2012, p. 3; US Department of State, 2014, p. 5; US Department of State, 2015, p. 5; US Department of State, 2015, p. 4.

120. Maron, “From Bad to Worse.”

121. AAPP, “Submission to the United Nations Periodic Review of Burma,” p.6.

122. AAPP/FPPS, ““After Release I had to Restart my Life from the Beginning,” pp. 41-45.

rarely adhered to.<sup>123</sup> Sewage containers overflow with excrement while cell blocks leak, allowing for stagnant bodies of water to become breeding grounds for mosquitoes.<sup>124</sup> Many of the above medical conditions, therefore, stem from the poor dietary and sanitation conditions in the prison system, while other conditions are compounded by them. One example is drawn from Sittwe Prison, where it was reported that the water wells and sewage holes are so close to one another that, during the rainy season, sewage flows into the drinking water causing cholera outbreaks and prisoner deaths.<sup>125</sup> More importantly, malnutrition and lack of access to clean drinking water are serious health concerns in their own right, with some prisoners living on the brink of starvation.<sup>126</sup>

Contributing to the abysmal health conditions in prisons is the inability, or sometimes refusal, of prison authorities to administer proper medical care in a timely fashion. As of 2011, AAPP found that there was one doctor for every 7,314 prisoners and that at least 12 prisons were without a designated doctor.<sup>127</sup> In addition to not being able to provide adequate care, AAPP has also documented a pattern of abuse whereby political prisoners have been infected with incurable viruses such as HIV and leprosy or are denied lifesaving medical treatment resulting in death.<sup>128</sup> This is corroborated by the Karen

Human Rights Group (KHRG), who found that convict porters, “were denied basic and/or lifesaving medical treatment” and died from curable injuries and diseases.<sup>129</sup> Individual cases of such occurrences are rampant: In May 2010, political prisoner Kyaw Soe died due to prolonged ill-treatment in custody and lack of access to medical care<sup>130</sup>; Kay Thi Aung miscarried in Mandalay Prison due to the fact that she did not receive proper medical care during her pregnancy, and she suffered from malnutrition and heart problems following her miscarriage<sup>131</sup>; and Phyo Wai Aung died five months after his release in a case that former Special Rapporteur Thomas Quintana said, “highlighted the inadequate health care that prisoners are provided with in Myanmar’s prisons.”<sup>132</sup> AAPP’s 2016 survey of ex-political prisoners revealed 27 deaths in prison, largely from preventable and treatable diseases.<sup>133</sup> The U.S. State Department report for 2015 records the death of 120 persons in 46 prisons and labor camps between 2011 and 2014, as a result of “weather, diet, lifestyle, and accidents.”<sup>134</sup> These cases merely highlight the systematic denial of medical treatment and the inadequacy of the prison health system to care for its inmates.

The health of many prisoners has also been compromised due to their transfer to prisons far

123. Ibid., p.42.

124. Maron, “From Bad to Worse.”

125. AAPP, “Submission to the United Nations Periodic Review of Burma,” p.6.

126. Ibid., p.6.

127. AAPP, “Submission to the United Nations Periodic Review of Burma,” p.5.

128. AAPP, “Democracy Deferred and Hope Betrayed.”

129. Karen Human Rights Group (KHRG), “From Prison to the Frontlines: Analysis of Convict Porter Testimony 2009 – 2011” (Karen Human Rights Group, July 2011), p.31.

130. AAPP, “Submission to the United Nations Periodic Review of Burma,” p.3.

131. Amnesty International, “Myanmar: Urgent Health Concerns.”

132. UN Human Rights Council, Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana, March 6, 2013, A/HRC/22/58.

133. AAPP/FPPS, ““After Release I had to Restart my Life from the Beginning,”” p.44.

134. US State Department, 2016, p.5.

from their homes. Some have been transferred over 1000 kilometers away from their homes, where they previously relied upon family and friends to provide them with their necessary medication.<sup>135</sup> This once again illustrates the interconnectedness of many of the problems that prisoners face, as unlawful prison transfers negatively affect prisoner health.

## 2.2. Mistreatment of Prisoners

### 2.2.1. Torture

The issue of torture and other cruel, inhumane and degrading treatment or punishment is one that has been covered extensively, both in the international human rights community and domestically in Burma. The widespread use of torture as a means of punishment within Burmese prisons since the 2010 elections is well documented and has been covered extensively elsewhere.<sup>136</sup> The following gives a brief analysis of this extensive literature. Again, the issue cross cuts many of these categories. As we have already seen, overcrowding can, in some serious cases, constitute a form of inhumane and degrading treatment. Similarly, the section that follows this, on solitary confinement, will show that it can amount to torture, cruel, inhumane or degrading treatment.

## International Rules and Norms

International legal instruments such as the UDHR and the ICCPR enshrine basic guarantees against the use of torture or cruel, inhumane or degrading treatment or punishment, laying a

framework that has been built upon over the past sixty years.<sup>137</sup> In addition, the Declaration on the Protection of all Persons from Torture and UNCAT are the core documents prohibiting torture. The Convention defines torture as,

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>138</sup>

The Declaration on the Protection of all Persons from Torture provides specific rules regarding the training of law enforcement<sup>139</sup> and also mandates that, “Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.”<sup>140</sup> The UNCAT reaffirms these principles and acts as the international ‘hard law’ with regards to torture prevention. It ensures that all acts of torture are considered offences under each countries criminal law.<sup>141</sup> Its optional protocol goes further, and mandates

the establishment of a national monitoring body that is granted regular and independent visits of places of detention.<sup>142</sup>

A number of additional soft law instruments also prohibit torture. The Nelson Mandela Rules include a prohibition of torture<sup>143</sup> as well as a list of punishments that are forbidden as they may amount to torture.<sup>144</sup> The Code of Conduct for Law Enforcement Officials specifically forbids a law enforcement official from being involved in or complicit in acts of torture,<sup>145</sup> while the Principles of Medical Ethics Relevant to the Protection of Prisoners introduces a similar statute pertaining to medical personnel.<sup>146</sup>

## Domestic Legislation

In both the Prisons Act and Jail Manual, no explicit mention is made of torture. Since they both predate the UN and the emergence of international normative law pertaining to human rights, they fail to capture the essence of principles that, since that time, have become standard in the international legal context. However, they both contain specific conditions regarding the use of different punishment techniques and the limitations of prison officials to inflict harm on detainees. Therefore, the issue of torture represents one area where updating the domestic legislation would go a long way towards guaranteeing its prevention.

The Prisons Act does have a number of

provisions that ensure that punishment is only applied according to the law and within strict parameters. Only punishments that are defined in the law are allowed to be inflicted on prisoners, meaning that prison staff cannot stray from the defined punishment techniques.<sup>147</sup> In addition, any prisoner meant to be subject to severe punishment (such as penal diet or whipping) must undergo a medical examination prior to punishment to ensure that they are fit for treatment;<sup>148</sup> this provision is repeated in the Jail Manual.<sup>149</sup>

The Jail Manual also defines exactly who is able to administer which type of punishment, and which individuals are able to authorize certain types of severe punishment.<sup>150</sup> Furthermore, it states that any jail staff member who contravenes these rules is subject to be charged under Article 54 of the Prisons Act.<sup>151</sup> It also mandates that, “no officer shall, on any pretext, strike a prisoner, except in self-defense, or in defense of another, or in the repression of disturbance, and no more force shall then be used than is absolutely necessary.”<sup>152</sup> Finally, the Jail Manual ensures that no prisoner is to be interrogated without permission from a higher government authority and that a jailor must always be present during an interrogation.<sup>153</sup>

The Penal Code goes furthest towards preventing the use of torture against detainees and prisoners. Sections 330 and 331 outlaw “hurt” and “grievous hurt” used “for the purpose of extorting

135. Maron, “From Bad to Worse.”

136. See, for example: Network for Human Rights Documentation – Burma (ND-Burma), *Extreme Measures: Torture and Ill Treatment in Burma Since the 2010 Elections* (Thailand: Network for Human Rights Documentation – Burma, 2012).

137. UDHR, Article 5; ICCPR, Article 7.

138. UNCAT, Article 1.

139. Declaration on the Protection of All Persons from Torture, Article 5.

140. Declaration on the Protection of All Persons from Torture, Article 6.

141. UNCAT, Article 4(1).

142. UNCAT Optional Protocol, Article 1.

143. Nelson Mandela Rules, Rule 1.

144. Nelson Mandela Rules, Rule 43.

145. Code of Conduct for Law Enforcement Officials, Article 5.

146. Principles of Medical Ethics Relevant to the Protection of Prisoners, Article 2.

147. The Prison Act, Article 49.

148. *Ibid.*, Article 50.

149. Jail Manual, Article 829.

150. *Ibid.*, Article 113, 815.

151. *Ibid.*, Article 132.

152. *Ibid.*, Article 114.

153. *Ibid.*, Article 33.

from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of any offence or misconduct,” effectively barring the use of physical abuse as a means of interrogation.<sup>154</sup>The infractions carry a sentence of seven and ten years respectively. Section 166 then states that any public servant who disobeys the law and inflicts injury to any person can be punished with up to a year in prison.<sup>155</sup> Yet the current laws fail to make specific mention of torture, including psychological torture, and do not meet the minimum standards laid out in the international legal instruments listed above.

## Prison Conditions in Burma

Human rights observers have long documented the use of torture in detention facilities not only as a means of extracting information and false confessions, but also to punish, degrade and humiliate detainees. The use of torture in detention centers in Burma continues to be documented. As recently as November 2015, AAPP has received evidence of the torture of two pre-trial detainees in MyinGyan Prison.<sup>156</sup> Both Amnesty International<sup>157</sup> and the US State Department in their most recent reports have expressed concern about torture in prisons in Arakan State, where prison conditions are among the worst.<sup>158</sup> Furthermore in 2014, the report by

the UN Special Rapporteur on the situation of human rights in Myanmar cites ongoing concern, “about the ongoing practice of torture in places of detention in Myanmar and the absence of accountability”<sup>159</sup> which have been reiterated in 2016.<sup>160</sup>

Reports have come from multiple prison facilities, with multiple allegations of prisoners dying in prison due to their torture.<sup>161</sup> According to a report by ND-Burma, 152 political prisoners have died since 1988 due to “grievous torture and severe ill-treatment perpetrated by prison authorities.”<sup>162</sup>

Ex-political prisoners interviewed in 2015 and 2016 reported at length the effect torture in prison has subsequently had on their lives after release, leaving many psychologically and/or physically damaged.<sup>163</sup> Of those interviewed in the report by the Assistance Association for Political Prisoners (AAPP) and Former Political Prisoner Society (FPPS) 72 percent of former political prisoners surveyed reported having been subject to physical torture and 75 percent to psychological torture demonstrating the systematic and widespread nature of torture in Burma, particularly against political prisoners.<sup>164</sup> The report detailed various methods of torture including beatings with rods and chains, hooding, forced stress positions, electric shocks, sleep deprivation and solitary confinement.

The use of torture by the government and

military in Burma, in addition to contravening multiple pieces of international law is institutionalized. As AAPP stated in their submission to the UPR in 2011, “evidence suggests [torture] has become a cultural norm, amongst the military, police, and security officials, for extracting false confessions, creating a climate of fear and as a punishment.”<sup>165</sup> For example, torture methods that were originally documented by the Special Rapporteur on the situation of human rights in Myanmar in 1993 have been found to have been used consistently between the years 1988 and 2010.<sup>166</sup> Such torture methods include: beating with rods and chains, the ‘iron road’<sup>167</sup>, the ‘motorcycle position’<sup>168</sup>, mock execution, mock suffocation and drowning, water torture, sleep deprivation, water deprivation, forcing detainees to watch others being tortured, and solitary confinement.<sup>169</sup> Other evidence corroborates the charge of systematic torture, including the routine use of secret detention centers, incommunicado detention, and vague emergency laws that allow for the military and government to operate with impunity.<sup>170</sup> In particular, the substantial network of secret detention centers indicates the development of a planned system of repression from one administration to another.<sup>171</sup> In one former prisoner’s own words: “To be taken to a secret detention center means to disappear. It is as if one has arrived in another world where blackness replaces vision, silence replaces sounds of life, and

shackles and thumb cuffs restrict movement and touch.”<sup>172</sup> Such circumstances are far too common in Burma; ending torture, and especially the systematic use of torture in detention facilities, is therefore of utmost importance to any prison reform project being undertaken.

## 2.2.2. Solitary Confinement

Solitary confinement can, in its more severe forms, constitute a form of torture or cruel, inhumane or degrading treatment.<sup>173</sup> Therefore, much of the above applies in this section. However, it is treated as a separate issue here as it is a widely used means of punishment in Burma that needs to be addressed specifically by prison authorities and human rights advocates.

## International Rules and Norms

The international legal framework is not as extensive with regards to solitary confinement. That being said, “the international instruments make clear that solitary confinement is not an appropriate punishment other than in the most exceptional circumstances: whenever possible its use should be avoided and steps should be taken to abolish it.”<sup>174</sup> Principle 7 of the Basic Principles for the Treatment of Prisoners does state that, “Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken

154. The Myanmar Penal Code, Section 330 and 331

155. Ibid., Section 166.

156. AAPP (2015), Students on Hunger Strike Tortured at MyinGyan Prison, Press Release, 13 November, viewed 13 November 2015, <<http://aappb.org/2015/11/students-on-hunger-strike-tortured-at-myin-gyan-prison/>>

157. “Amnesty International Report 2015-2016,” 262.

158. US State Department, 2016, p.5.

159. UN Human Rights Council, Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana, 2 April 2014, A/HRC/25/64, p.4.

160. UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, 18 March 2016, A/HRC/31/71, 12.

161. Progress Report of the Special Rapporteur, 2013, p.4.

162. ND Burma, E\_treme Measures: Torture and Ill Treatment in Burma Since the 2010 Elections, p.26.

163. AAPP/FPPS, “‘After Release I had to Restart my Life from the Beginning.’”

164. Ibid, p.37.

165. AAPP, “Submission to the United Nations Periodic Review of Burma,” p.2.

166. ND-Burma, E\_treme Measures: Torture and Ill Treatment in Burma Since the 2010 Elections, p.22-23.

167. Ibid., p.22-23.

168. Ibid., p.22-23.

169. Ibid., p.22-23.

170. AAPP, “Democracy Deferred and Hope Betrayed,” p.6.

171. Ibid., p.7.

172. Ibid., p.7.

173. Committee for the Prevention of Torture, “The CPT Standards: “Substantive” sections of the CPT’s General Reports,” 2006. <http://bit.ly/1JR026g>

174. Andrew Coyle, A Human Rights Approach to Prison Management: Handbook for Prison Staff, 2nd Edition (London: International Centre for Prison Studies, 2009), 84.



and encouraged<sup>175</sup>. Solitary confinement refers to the confinement of prisoners for 22 hours or more a day without meaningful human contact, whereas prolonged solitary confinement is solitary confinement for a time period in excess of 15 consecutive days.<sup>176</sup> The Nelson Mandela Rules prohibit prolonged solitary confinement as it amounts to torture or other ill treatment.<sup>177</sup> They also prohibit solitary confinement in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures;<sup>178</sup> and for pregnant women, women with children and breastfeeding mothers in prison. The Nelson Mandela Rules further stipulate that punishing prisoners by placing them in a dark cell should be completely prohibited.<sup>179</sup> 'Dark cells' are an extreme form of solitary confinement in which an individual is kept entirely alone, is subject to sensory deprivation, and lacks access to light, sound, and fresh water; close confinement is when prisoners have access to light and air and can hear other prisoners.<sup>180</sup> As is outlined below, prisoners in Burma are often kept in the most abysmal form of solitary confinement in contravention of these specific rules.

## Domestic Legislation

The domestic legislation regarding solitary confinement falls short of the international framework outlined above. The domestic legal framework

provides no clear understanding on when to resort to solitary confinement, or that it should be used as a last resort. Regarding the guidelines on the duration of solitary confinement the Prisons Act states that separate confinement (the cutting off of communication, but not sight of, other prisoners with an allowance of one hour of exercise per day and meals with at least one other prisoner) cannot be inflicted for more than three months, while cellular confinement (without any communication with other prisoners, but still in sight of them) cannot be applied for more than 14 days and cannot be re-applied until an equivalent period of regular confinement has elapsed; the two types of confinement can also not be used in combination in order to prolong the total period of isolation.<sup>181</sup> Both types of confinement should be considered solitary confinement. Therefore domestic legislation on the duration of this kind of punishment is woefully inadequate. Other guidelines concerning the conditions of solitary confinement exist in domestic legislation.

The Jail Manual reiterates a number of these rules, ensuring that prisoners undergo a medical examination prior to solitary confinement,<sup>182</sup> have daily medical examinations while in solitary confinement,<sup>183</sup> are not subject to the punishment if they are deemed unfit,<sup>184</sup> and are not subject to extended periods of solitary confinement that contravene the legal limits defined above.<sup>185</sup> The Jail

175. Basic Principles for the Treatment of Prisoners, Principle 7.

176. SMRs, Rule 44

177. SMRs, Rule 44(1)

178. SMRs, Rule 44(2)

179. SMRs, Rule 43(c)

180. Coyle, A Human Rights Approach to Prison Management, p.84-85.

181. SMRs, Prison Act 46(8) (10), 47 (3).

182. Jail Manual, Article 468, 862.

183. Ibid., Article 469, 865.

184. Ibid., Article 473.

Manual also defines the type of cell that is suitable to solitary confinement, in that they should have “a general yard in connection with the cell constructed for separate or cellular confinement, in which each prisoner can be bathed, fed, and exercised at regular hours”<sup>186</sup>; the cell is subject to approval by the Inspector General of the prison.<sup>187</sup>

It is important to understand these specific legal guidelines as they have been routinely and grotesquely ignored by prison authorities in Burma.

## Prison Conditions in Burma

In Burma, “Solitary confinement is routine, and the practice is not motivated by legitimate penological concerns but a political will to demoralize and marginalize political prisoners.”<sup>188</sup> It is one of the most common forms of punishment, especially with regard to political prisoners.<sup>189</sup> A research report by AAPP identified a number of punishment methods used against political prisoners during their incarceration. Of those interviewed for the report, 32 percent were kept in solitary confinement during their prison sentence.<sup>190</sup> Prolonged solitary confinement is often used as a form of punishment within Burma’s prisons. More specifically, the use of ‘dog cells’ has been well documented.<sup>191</sup> The dog cells are remnants of the colonial era and were originally meant for

canines used by the police. Now they are used as a form of punishment in Burmese prisons: “Once in the dog cell, [prisoners] are forced to crawl on all fours, beg for food, and are not allowed to talk. The cells are 8 feet by 8 feet with no mats, no windows, and one pot for use as a toilet. The cells are also effectively soundproof.”<sup>192</sup> The use of these cells goes far beyond the parameters set out in both international and domestic law, and constitutes a form of inhuman treatment which amounts to torture due to the psychological effect that it has on individuals. Their continued use is indefensible.

### 2. 2. 3. Deaths in Custody

Deaths in custody represent a violation of one of the most fundamental human rights, the right to life. States have a duty to respect and ensure the right to life of persons within their jurisdiction, including when such persons are held in custody.

International Rules and Norms

The right to life is enshrined in the UDHR, where it states that “Everyone has the right to life, liberty and security of person.”<sup>193</sup> This right is repeated in the ICCPR,<sup>194</sup> the Principles for the Protection of All Persons under Detention,<sup>195</sup> and the Basic Principles for the Treatment of Prisoners.<sup>196</sup>

More specific regulations have also been

outlined with regards to the use of force against persons in detention. The Basic Principles on the Use of Force and Firearms states that “law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened,”<sup>197</sup> a principle which is reinforced by the Code of Conduct for Law Enforcement Officials.<sup>198</sup> If a death does occur in prison, an independent investigation must be carried out by the prevailing authority in order to determine the legality of the death.<sup>199</sup>

### Domestic Legislation

The domestic legislation also puts limits on the use of force by the military, police, and security personnel. As was mentioned in an earlier section, the Penal Code in Burma forbids public servants from contravening the law and inflicting injury to any civilian.<sup>200</sup> In addition, the Jail Manual limits the use of firearms to cases where either a prisoner is escaping or where the officer is under attack and is at risk of suffering egregious pain or death.<sup>201</sup> There is no section of the law dedicated to proscribing the key principles governing the use of force by prison officials. Therefore the current domestic legislation is inadequate to ensure the protection of prisoners.

197. Basic Principles on the Use of Force and Firearms, Principle 15, 16.

198. Code of Conduct for Law Enforcement Officials, Article 3.

199. Principles for the Protection of all Persons Under Detention, Principle 34.

200. Ibid., Section 166.

201. Jail Manual, Article 317.

202. AAPP, “Submission to the United Nations Periodic Review of Burma,” p.3.

203. Progress Report of the Special Rapporteur, 2013, p.4.

204. Progress Report of the Special Rapporteur, 2013, p.4.

205. Amnesty International, “Myanmar: Ensure Independent and Impartial Investigation into Death of Journalist,” 30 October 2014, <http://www.amnesty.org/en/library/asset/ASA16/028/2014/en/341e230c-64dc-455b-9ad1-4f8f71759fd2/asa160282014en.pdf>.

206. Shwe Aung, “Par Gyi Laid to Rest, But Questions Remain,” Democratic Voice of Burma, 8 November 2014, <https://www.dvb.no/news/par-gyi-laid-to-rest-but-questions-remain-burma-myanmar/45725>.

207. Shan Human Rights Foundation “Torture, e\_trajudicial killing, and use of civilians as human shields by Burma Army during new offensive,” 1 June 2016, <http://bit.ly/1TMwuXT>

## Prison Conditions in Burma

Deaths in custody have been reported consistently in Burma for over twenty years. AAPP has documented 242 political prisoners who have died while incarcerated from 1988 to 2016 and this number does not reflect the death of criminal prisoners or political prisoners unaccounted for by AAPP. In 2008, during Cyclone Nargis and riots at Insein Prison, 36 inmates were killed by riot police with no one being held accountable; in the aftermath, four additional inmates died during interrogation.<sup>202</sup> More recently, in 2013, allegations were made that prisoners in Buthidaung Prison were tortured to death.<sup>203</sup> That year also saw the custodial death of Than Htun and Myo Myint Swe.<sup>204</sup> On October 4, 2014, Aung Kyaw Naing (aka Ko Par Gyi) was killed while in the custody of the military; he was shot five times.<sup>205</sup> In the follow up investigation, headed by the Myanmar National Human Rights Commission (MNHRC), the commission largely sided with the government in what has been criticized by many as a cover up.<sup>206</sup> Deaths in detention continue to be documented throughout Burma, particularly in conflict areas. The Shan Human Rights Foundation reported the extrajudicial killing of at least three civilians on May 19, 2016 after they were arrested by the Burma Army<sup>207</sup> This continued disregard for the basic sanctity of human life is indicative of the long and arduous process that prison reforms in Burma face.

185. Ibid., Article 474.

186. Ibid., Article 860.

187. Ibid., Article 463.

188. AAPP, “Submission to the Universal Periodic Review,” p.2-3.

189. AAPP, “The Situation of Political Prisoners In Burma: May to August 2011,” Draft Briefing Paper for the UN Special Rapporteur on the Human Rights Situation in Burma (AAPP 2011), p.2.

190. AAPP/FPPS, ““After Release I had to Restart my Life from the Beginning””: p.46

191. For e\_amples, see: AAPP, “The Situation of Political Prisoners in Burma,” p. 5; ND-Burma, “E\_treme Measures”, 25; Amnesty International, “Amnesty International Report 2012: The State of the World’s Human Rights,” 2012, p. 248; AAPP/FPPS, ““After Release I had to Restart my Life from the Beginning,”” p. 47.

192. For e\_amples, see: AAPP, “The Situation of Political Prisoners in Burma: May to August 2011,” p.5.

193. UDHR, Article 3.

194. ICCPR, Article 6;

195. Principles for the Protection of All Persons Under Detention, Principle 1.

196. Basic Principles for the Treatment of Prisoners, Principle 1.

## 2. 2. 4. Prison Labor

The illegal use of prisoners, particularly in prison camps and as forced porters in the military, remains a significant problem in Burma.

### International Rules and Norms

The Nelson Mandela Rules provides the most comprehensive rules regarding the use of prison labor:

- Rule 97(1): “Prison labor must not be of an afflictive nature,”<sup>208</sup>
- Rule 99(2): The interest of prisoners should not be subordinate to the goal of financial profit,
- Rule 101(1): Safety and health precaution which are equivalent to those of free individuals are needed to protect prisoners,
- Rule 102(1): Maximum working hours must be fixed by law according to local custom and legislation, (2) with one day of rest per week and sufficient time for education,
- Rule 103(1): “There shall be a system of equitable remuneration of the work of prisoners.”

If these rules were followed by a given country’s prison system, they would be operating within the delineated international norms regarding prison labor.

### Domestic Legislation

Domestic legislation in Burma reflects a number of these standards. Article 35(1) of the Prisons Act, for example, states that “no criminal

prisoner sentenced to labor or employed on labor at his own desire shall... be kept to labor for more than nine hours in any one day.”<sup>209</sup> Part (3) of the same article ensures that any prisoner unfit to work due to health will not be required to do so.<sup>210</sup> Similarly, Article 593 of the Jail Manual ensures that all prisoners are free to work for pay and can stop work at any time (excluding prisoners sentenced to hard labor, also known as “rigorous imprisonment”).<sup>211</sup> Prison laborers are also guaranteed three meals a day<sup>212</sup> and are only permitted to carry a certain amount of weight,<sup>213</sup> while juveniles (below 18 years of age) are excluded from hard labor.<sup>214</sup>

### Prison Conditions in Burma

Prisoners in Burma are forced to labor in prison, prison labor camps and at the battlefield as porters.

Hard labor along with imprisonment is a sentence that continues to be handed down in Burma. The nature of the labor inside prisons depends on the location of the prison, it can consist of carrying barrels of water, or bags of rice, carpentry, gardening and disposing of other prisoners’ waste.

Prison labor can pose additional health and safety risks to inmates already facing dire conditions in prison.

In prison labor camps prisoners often face even worse conditions. Government figures place the number of camps at 46, with over 10,000 inmates serving the hard labor components of their sentences there.<sup>215</sup> Food, clothing, and medical supplies are



208. SMR’s, Rules 97-103.

209. The Prisons Act, Article 35(1); see also Prison Manual, Article 1028.

210. Ibid., Article 35(3).

211. Prison Manual, Article 593.

212. Ibid., Article 1076.

213. Ibid., Article 1035.

214. Ibid., Article 622.

215. Thanoe Wai, “Over One Thousand Die in Labour Camps Over Last Decade,” Democratic Voice of Burma, 13 October 2014, <https://www.dvb.no/news/over-one-thousand-die-in-labour-camps-over-decade-burma-myanmar/44996>; US State Department, 2016, p.4.

scarce in the camps, making labor camp conditions “harsh and life threatening.”<sup>216</sup> Prisoners are forced to work on dangerous jobs, contributing to the building of large scale development and infrastructure projects for the government.<sup>217</sup> A first person account provides an accurate portrayal of life at the prison camps:

We had to start hard labor by carrying heavy logs for firewood while fettered. In hilly Chin State, as you know, there are many ravines and steep hills. We had to carry these heavy logs from the bottom of the ravines to the hilltops, including Sundays, without holidays. When carrying logs, the man in back must keep pace with the front man, otherwise the security guards would beat him up. When someone fell to the ground from exhaustion after a long workday, a security guard would come and kick him in the chest. We had such ill-treatment and persecution in this labor camp... We had our meals rationed, the notorious so-called ‘Briyani’ (Danbauk) meal. It was a mixture of small stones, un-husked paddy and even some mice faeces. The work was so hard but we were poorly fed. Within two to three weeks, the prisoners became pale and lost weight due to malnutrition. Some fell ill and others got bruises and abscesses due to our fetters. Some got boils. I myself got a boil three or four times. A monk from Myitkyina died of the harsh prison environment on the last full moon day of Waso.<sup>218</sup>

According to Burma’s Minister for Home

Affairs, “over one thousand inmates died in Burma’s prison labor camps between May 2004 and August 2014.”<sup>219</sup> Such deplorable conditions are unacceptable. The situation of forced porters is of equal concern. A report published by KHRG entitled *From Prison to the Front Line* provides a thorough analysis of the issues surrounding the use of prisoners as military porters in Burma.<sup>220</sup> The report documents the use of prisoners as forced porters since 1993, with at least 700 verified cases between January and July of 2011 alone.<sup>221</sup> During their research, “57 of 59 porters interviewed reported serious violations of international humanitarian law, including: failure to protect porters from dangers arising from military operation; execution of porters; refusal or failure to care for wounded or sick porters; and other forms of cruel or inhuman treatment, such as corporal punishment.”<sup>222</sup> Their research draws from 24 different prisons and prison labor camps, with the porters they documented coming from 13 out of 14 government delineated states and divisions.<sup>223</sup> Their treatment violates a number of the rules listed above, as they were often forced to walk for up to 14.5 hours in a day with extremely heavy packs, little food, and inadequate drinking water.<sup>224</sup> The way in which porters were deployed is also cause for serious concern: they were deliberately alternated with soldiers, were used as human shields by government soldiers, and were forced to walk through mine fields in order to clear mines for the government forces.<sup>225</sup>

216. US Department of State, 2012, p.3.

217. AAPP, “Democracy Deferred and Hope Betrayed,” p.19.

218. *Ibid.*, p.20.

219. Wai, “Over One Thousand Die in Labour Camps Over Last Decade.”

220. Karen Human Rights Group (KHRG), “From Prison to the Frontlines: Analysis of Convict Porter Testimony 2009 – 2011” (Karen Human Rights Group, July 2011).

221. *Ibid.*, p.7.

222. *Ibid.*, p.8.

223. *Ibid.*, p.8-9.

224. *Ibid.*, p.30.

225. *Ibid.*, p.26-29.

Eliminating forced porter service, and correcting labor camps, as well as harsh and forced labor in prison should be of primary concern to prison reformers in Burma.

## 2. 2. 5 Visitation Rights

The visitation rights covered here fall into two issue areas: family visits and access to legal counsel.

## International Rules and Norms

With regards to family visitations, the Nelson Mandela Rules ensure that every prisoner has the right to inform their family of his or her detention or transfer, and guarantees that prisoners can, under supervision, “communicate with their family and reputable friends at regular intervals”, both by correspondence and by receiving visits.<sup>226</sup> These rules are reaffirmed in the Principles for the Protection of All Persons Under Detention,<sup>227</sup> which also ensures that a detained person, upon request, can be kept in a detention facility near his usual place of residence.<sup>228</sup> The right to legal counsel and the right to confidential meetings with that counsel are also enshrined in the Principles for the Protection of all Persons Under Detention.<sup>229</sup>

## Domestic Legislation

Both the Prisons Act and Jail Manual ensure visitation rights for civil and un-convicted

226. SMRs, Rule 58(1)

227. Principles for the Protection of All Persons Under Detention, Principle 15, 16, 19.

228. *Ibid.*, Principle 20.

229. *Ibid.*, Principle 17, 18.

230. The Prisons Act, Article 40; Prison Manual, Article 790, 780(1), 781.

231. Prison Manual, Article 780.

232. AAPP, “The Situation of Political Prisoners In Burma: May to August 2011,” p.6.

233. AAPP, “Submission to the United Nations Periodic Review of Burma,” 5; Progress Report of the Special Rapporteur, 2012, p. 8.

234. AAPP, “Submission to the United Nations Periodic Review of Burma,” p.5; AAPP, “The Situation of Political Prisoners In Burma: May to August 2011,” p.3.

235. “The Situation of Political Prisoners In Burma: May to August 2011,” p.3.

236. *Ibid.*, p.10.

prisoners, while the Jail Manual allows for up to two visitations per month with family.<sup>230</sup> The Jail Manual also ensures that newly convicted prisoners are granted communication and visitation rights for the preparation of bail or appeals.<sup>231</sup>

## Prison Conditions in Burma

Current research highlights a number of trends with regards to prison visitations in Burma. Although prisoners are legally entitled to two visitations per month, they are often limited to one visit with family members on their ‘immediate household list’.<sup>232</sup> In addition, prisoners, especially political prisoners, are often transferred to remote prisons without any notification being given to their families, making family visits prohibitively expensive.<sup>233</sup> Prison authorities have also been known to forbid prison visits for ‘security reasons’, and have used the withholding of visitations as a form of punishment.<sup>234</sup> In the case of one political prisoner, Noble Aye, “authorities responded to her protest by essentially holding her incommunicado in a punishment cell with an absolute and indefinite ban on family visits.”<sup>235</sup> In another case, Ye Min Oo was held incommunicado for over one year prior to finally being sentenced.<sup>236</sup> Such abuses are unacceptable according to both international norms and domestic laws.

## Chapter - 3 Potential Reform Projects

Sections 1 and 2 presents substantial evidence of a prison system in Burma which is archaic, ineffective and unjust. In light of this, there is a strong argument for establishing genuine reform to the penal system. This section presents a number of potential reform projects that respond to the key issues outlined above.

### 3.1. Legislative Reform

Having revoked or amended many repressive laws since taking office in April 2016, the new Government has demonstrated a clear commitment to legislative reform as part of its aims of national reconciliation, economic development and democratization. Particularly pertinent to prison reform is the repeal of the State Protection Law, which empowered the authorities with broad powers of arrest and pre-trial detention. As has been mentioned, reform to the prison system, and to the criminal justice sector in general, must be integrated and comprehensive rather than piecemeal. AAPP welcomes the repeal of this law, however it represents just one component of a broad framework of domestic law that is frequently repressive and ineffective. This section suggests four further areas for key legislation reform that it urges the new Government to make and outlines their benefits.

#### 3.1.1 Ratification of International Treaties

The benefits of ratifying international

conventions such as UNCAT, UNCAT Optional Protocol and ICCPR have been outlined by various international human rights monitoring mechanisms.<sup>237</sup> Through ratification and implementation of these international conventions, Burma can signify to the world its commitment to reform, help instigate a culture of accountability and increase respect for the rule of law, and use the conventions as guidelines for domestic legislation reform. Ratification of these conventions can provide a framework for making steps towards changing prison culture and the general ethos from retributive justice to rehabilitative justice.

#### Guideline for Domestic Legislation

By using international conventions and norms to guide the drafting of new domestic laws and legislation, Burma can ensure that new laws will be relevant and useful and in line with international human rights law and standards. Such reforms can help to tackle prominent issues within Burma's prison system such as transparency, corruption, overcrowding, pre-trial detention, and prison labor

which, as we have seen, are prominent issues in Burma's prisons and in the criminal justice system as a whole. The ICCPR, for example, is an essential human rights convention that ensures all persons have their rights respected in the criminal justice system. A major shortcoming of Burma's domestic legislation is that it does not provide for the presumption of innocence before the law, double jeopardy, the right to be heard in a fair trial, nor the right to challenge hostile evidence.<sup>238</sup> This can lead to prison overcrowding and unnecessary use or misuse of resources, increasing the strain on the judicial system as a whole.

The ratification of UNCAT would obligate Burma to include an internationally recognized definition of torture and inhumane and degrading treatment in Burma's Penal Code and outlaw torture in all its forms. The implementation of the CAT Optional Protocol can also be useful in ensuring an increase in accountability and respect for rule of law. The CAT Optional Protocol specifies the requirement of independent national committees tasked with monitoring and implementing torture prevention practices within at-risk institutions in the State, such as prisons and detention centers.<sup>239</sup> The CAT Optional Protocol requires the State to implement these monitoring mechanisms themselves, but suggests obtaining assistance from international organizations such as the Association for Prevention of Torture (APT). These monitoring bodies can also act as policing mechanisms where prisoners and detainees

can report any abuse that can then be investigated by prosecution bodies. This creates a new level of accountability by ensuring that everyone is complying with the new reforms in prison operations.

### Promotes Accountability and Respect for Rule of Law

According to a report by the OHCHR and Pacific Islands Forum Secretariat (PIFS), ratification of international conventions against torture can help to provide a legal context of "obligation and accountability... while, at the same time, help to measure progress in development."<sup>240</sup> Such accountability has not previously existed in Burma. In 2011 the government instituted a National Human Rights Commission that was designed to take complaints and investigate abuses of human rights within the country. It was tasked with "the aim of uplifting and protecting the fundamental rights of citizens included in the constitution of the Republic of the Union of Myanmar."<sup>241</sup> However, the commission has been criticized as being influenced by Burma's government and military. It lacks the authority and independence to enforce its own human rights recommendations.<sup>242</sup> This commission is not exclusively for prisons, but is a nationwide monitoring commission tasked with investigating and championing the rights of the people of Burma. An additional monitoring mechanism may be needed for the prevention of torture and other inhumane and degrading treatment in Burma's institutions.

237. UN General Assembly, Report of the Working Group on the Universal Periodic Review Myanmar, December 23, 2015, A/HRC/31/13. [http://www.upr-info.org/sites/default/files/document/myanmar/session\\_23\\_-\\_november\\_2015/a\\_hrc\\_31\\_13\\_e.pdf](http://www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/a_hrc_31_13_e.pdf); UN Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women - Myanmar, November 7, 2008, CEDAW/C/MMR/CO/3. <http://www.burmalibrary.org/docs5/CEDAW-C-MMR-CO-3.pdf>

238. IBAHRI (2012), The Rule of Law in Myanmar: Challenges and Prospects, Report of the International Bar Association's Human Rights Institute (IBAHRI) Supported by the IBAHRI Trust and the Open Society Foundations, p. 35.

239. UNCAT Optional Protocol, Article 3.

240. OHCHR Regional Office for the Pacific & PIFS (2009), Ratification of Human Rights Treaties: Added Value for the Pacific Region, OHCHR & PIFS, Suva, Republic of the Fiji Islands, p. 8.

241. MNHRC (n.d), About: Formulation of Myanmar National Human Rights Commission, accessed 30 November 2015, via <<http://www.mnhrc.org.mm/en/about/>>

242. Burma Partnership & Asian Forum (2015), End of Mission Statement on the Impact and Effectiveness of the Myanmar National Human Rights Commission (MNHRC), accessed 1 December 2015, via <<http://www.burmapartnership.org/2015/11/end-of-mission-statement-on-the-impact-and-effectiveness-of-the-myanmar-national-human-rights-commission-mnhrc/>>

States who have ratified international conventions are legally accountable for violations of those conventions. This is an important component of reform, as it facilitates a change in ethos to trusting authorities and respecting the rule of law. The CAT Optional Protocol, in particular, has provisions relating to accountability.

The CAT Optional Protocol specifies the requirement of independent national and international committees tasked with strengthening “the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment”.<sup>243</sup> These monitoring bodies are essential to the reform process as they offer measures of accountability for those who violate human rights, thereby promoting a culture of respect for the rule of law. Such a monitoring body will be discussed further in the operational reforms section of this chapter.

### 3.1.2 Repeal and Amendment of Outdated and Vague Laws

Along with signing and ratifying international conventions, Burma must also update its domestic legislation to reflect those standards. The standards and laws outlined in Burma’s existing legislation—which are designed to protect prisoners and their fundamental rights—such as in the Jail Manual, Prisons Act, Code of Criminal Procedure, 2008 Constitution, Union Judiciary Law and the Penal Code are frequently not complied with. Furthermore, the criteria outlined within the existing legislation are outdated and fall short of international standards. In order for real reform to take place, a total restructuring of the domestic legal framework is needed. Outdated rules must be replaced with relevant laws, vague wording must be rewritten to ensure no abuse of power or misunderstanding occurs, and laws that

conflict with international standards must be replaced by those that uphold principles of human rights.

The need for such reforms is demonstrated by the provisions of outdated, vague and draconian laws such as the Jail Manual and Penal Code. A major problem with Burma’s domestic legislation is that much of it was written during the British occupation and, as such, is outdated and irrelevant. The Nelson Mandela Rules provide an incredibly clear and comprehensive outline of prisoner rights. For this reason, it is suggested that Burma uses the Nelson Mandela Rules as a guide for reform. The introduction of new legislation needs to be coupled with prison staff training so that all persons directly affected by the new legislation are aware of what the laws mean and how they should be interpreted so as to limit abuse.<sup>244</sup>

After learning that a draft Prisons Law was under review by the Parliament in 2015 AAPP and FPPS prepared a revised draft Prisons Law. The revised version of the law was submitted to Parliament for consideration and intended to bring the law in line with international standards. At the time of writing this draft Prisons Law was yet to be adopted.

### 3.1.3 Key Areas of Concern

AAPP recommends specific focus on reforming legislation pertaining to pre-trial detention, the division of prisoners and access to healthcare.

#### Pre-trial Detention

As identified earlier, the overuse and misuse of pre-trial detention is a major issue in itself, but also contributes to overcrowding and poor health conditions in Burma’s prisons. Addressing the overuse and misuse of pre-trial detention will have a multitude of benefits, and requires both legislative

and operational reform. This section will pose some suggestions for legislative reform and its benefits.

It has been established earlier that in some cases detention of an accused person is necessary for safety and order within the community. However, it would appear that the use of pre-trial detention in Burma seems to be the rule rather than the exception, which undermines the presumption of innocence.<sup>245</sup> The right to be presumed innocent until proven guilty is enshrined in Article 11 of the Universal Declaration of Human Rights. Introducing this internationally recognized right into domestic criminal justice legislation could help change the culture to one of a presumption of innocence which can help facilitate stronger limitations on the use of pre-trial detention.

Another legislative reform that could contribute to this change is the reduction of non-bailable offences whereby bail is the exception not the norm and will only be granted under exceptional circumstances. This directly contravenes the presumption of innocence provided for in international law. These non-bailable offences appear in many articles of the Penal Code and are used frequently by police in Burma to detain prisoners, often activists without having to justify their detention. The overuse of these provisions in order to detain people only damages respect for police, the criminal justice system, and the rule of law and contributes to the numbers of accused in pre-trial detention.<sup>246</sup>

The introduction of non-custodial remand procedures to existing legislation could be another legislative reform to achieve a reduction of pre-trial detention numbers. This could include home arrests, periodic meetings with the prosecutor and travel

restrictions.<sup>247</sup>

All of these reform measures are aimed at reducing the number of people in pre-trial detention. Reduction in the number of people in pre-trial detention will have a range of positive knock on effects, particularly concerning prison overcrowding, financial strain on families of detainees, and the respect for the rule of law. Limiting the number of persons detained whilst awaiting trial would also be more cost-effective for the State. The costs of keeping accused persons in detention pending their trials puts a strain on the correctional and judicial department’s resources. On average, pre-trial detainees attend more court hearings than their liberated counterparts.<sup>248</sup> The State is required to cover the costs of transporting and guarding detainees at their hearings. These costs are in addition to the costs of generally housing and feeding pre-trial detainees. Moreover, if international standards are to be complied with, new facilities are to be designated solely for the purpose of keeping pre-trial detainees separate from convicted prisoners. It would therefore be more cost-effective if the number of pre-trial detainees were minimized.

Providing non-custodial alternatives to pre-trial detention during the pre-trial investigation and sentencing, including different types of bail, will not only have a positive impact on conditions within prisons but will also help the broader community. People from lower socioeconomic communities tend to be the most adversely effected by pre-trial detention. They cannot afford access to legal assistance, often do not understand the law or their rights, and many of those detained are the sole income earner for their families. Additionally, prison environments have been

243. UNCAT Optional Protocol, Article 3.

244. Penal Reform International (2013), *Making Law and Policy that Work: A Handbook for Law and Policy Makers on Reforming Criminal Justice and Penal Legislation, Policy and Practice*, London, United Kingdom, p. 37.

245. Open Society Justice Initiative (2014), *Presumption of Guilt: The Global Use of Pretrial Detention*, Open Society Foundations, New York, USA, p. 11.

246. Open Society Justice Initiative (2014), *Presumption of Guilt: The Global Use of Pretrial Detention*, Open Society Foundations, New York, USA, p. 127.

247. Venegas, V & Vial, L (2008), “Boomerang: Seeking to Reform Pretrial Detention Practices in Chile”, Justice Initiatives, Open Society Justice Initiative, p. 46.

248. Atabay, “Handbook on Strategies to Reduce Overcrowding,” p. 106.

known to promote criminal behavior, rather than stifle it. Schönteich argues, “an unintended by-product of prisons is that they serve as schools or breeding grounds of crime.”<sup>249</sup>As not all accused persons will be convicted, it would be beneficial for the State not to expose individuals presumed innocent to this type of environment. Allowing these people to await trial in their community would enable accused persons to more easily receive legal assistance, find favorable evidence and witnesses for their cases, limit their exposure to crime and will also reduce the strain on families.

While the benefits of increasing non-custodial remand procedures are abundant, legislative reform in this area must be coupled with reform of the remand process in Burma’s judicial system. Judges in Rangoon are overwhelmed with heavy caseloads and can be assigned up to 40 cases per day.<sup>250</sup>This has led some judges to drastically limit the time allocated to hear cases. Sometimes they are only able to allot ten minutes to hearing a case, therefore limiting the likelihood of a fair trial. There are no alternate dispute resolution options in Burma, and therefore processing bail requests takes time.

This situation is not unique to Burma. Many developing states with overworked judicial systems face similar problems. A human rights group in Malawi began to tackle this issue through the introduction of a Paralegal Advisory Service (PAS) in 2004. The PAS provided basic legal services in prisons, police stations, and courts. One initiative of the service was the creation of a standardized bail application form. Prisoners, with the help of paralegals, completed the bail application form, which was then checked for accuracy by prison staff, against prisoner files. The approved forms were collected and presented

to a judge who would review 30 bail applications in the space of one hearing. This increased efficiency and helped to alleviate the strain on the judicial department. This initiative was fairly successful and contributed to the reduction in pre-trial detainee numbers in Malawi’s prisons. Creative access to legal assistance, such as the PAS in Malawi, could be beneficial to Burma’s overrun judicial department.

### Division of Prisoners

Another major concern within Burma’s prison system is laws and practices surrounding the division of prisoners. Dividing prisoners based on gender, age, un-convicted or convicted status, and civil or criminal charges is a necessary security measure that prison administrators need to enforce. Much like pre-trial detention reform, reform of the law and practice surrounding division of prisoners is beneficial not only for prisoners themselves, but for the wider society as a whole. Security of prisoners and prison staff can be better managed through the division of prisoners, and segregating violent and non-violent prisoners can also stifle the phenomenon of breeding criminal behavior inside prisons. If applied well, classification of prisoners can also provide a rewards program for prisoners attempting to increase their privileges, thereby creating incentives for good behavior.

While the classification of prisoners is outlined in Burma’s domestic legislation it is outdated and archaic and therefore in need of reform.

### **AAPP and FPPS have made a range of suggestions on prisoner classification in a revised version of the draft Prisons Law. See Appendix:**

The initial classification of prisoners is to ensure that all inmates are kept safe. Formal

classification procedures need to be established in the law to accurately determine appropriate classifications for prisoners upon their admission to prisons. Upon admittance into prisons and detention centers, convicted prisoners should undergo physical and psychological testing to determine if the prisoner has any health conditions that need attention and special treatment. These findings, coupled with whether or not the prisoner is a habitual offender, and the type of crime committed—such as violent or non-violent crime—all help to determine what classification a prisoner receives. Division of prisoners based on this assessment can ensure that violent criminals do not influence or pose a threat to non-violent and non-criminal prisoners, such as political and civil activists. They also help jailors determine what type of security measures are necessary to ensure the safety of staff, other prisoners and the prisoner in question. Additionally, having additional privileges for different classifications can promote good behavior. Rewards schemes whereby prisoners who demonstrate good behavior can move into a different classification which affords them increased time out of cells or more access to entertainment materials will provide incentives for good behavior and encourage a safer prison environment.

Reform of prisoner classification and assessment can have other positive ripple effects. A focus on division of prisoners based on classification can help lead to a shift in how Burma sees pre-trial detainees, and perhaps even begin discussions on non-custodial remand procedures. Assessment of prisoner character to determine what security risk, if any, they pose can help identify detainees appropriate for non-custodial remand and alternative forms of detention. These legislative reforms will help to limit the number of persons detained whilst awaiting trial and help to tackle the overpopulation issue in Burma’s prisons. Furthermore, a more robust assessment of prisoners can ensure that persons

suffering from mental health issues or substance abuse can be designated to an appropriate facility.

### Access to Health Care

While legislative reforms on pre-trial detention and division of prisoners should reduce the spread of disease inside prison, access to medical care and healthcare professionals is still in desperate need of reform. Reform of legislation relating to required numbers of healthcare professionals, prisoner access to such professionals and the medical treatment they recommend is essential for minimizing major health concerns in Burma’s prisons. As such, the Prisons Act and the Jail Manual must be amended to reflect this. In the draft Prison Law it was recommended that in every prison a hospital or proper place for the reception of sick prisoners shall be provided, with enough medicine and if needed, the Prison Department must arrange for a sick prisoner to meet with a specialist. Male and female medical staff must be appointed to work in prisons by the Ministry of Home Affairs in close negotiation with the Ministry of Health. Furthermore, in line with the Nelson Mandela Rules, each prison should be provided with at least one qualified medical officer with knowledge of psychiatry. The services of a qualified dental practitioner should be available to all prisoners and qualified staff in pre- and post-natal treatment must be provided in institutions with female prisoners. Large institutions should have at least one medical officer living on the premises.

Sufficient access to medical care benefits not only prisoners and staff, but society as a whole. Prison health is of concern to the entire community, and may prove costly for governments in the long term if prisoner health care is not adequately monitored and provided. Cases of diseases beginning in prisons and then spreading to the wider community are common, and can prove deadly. Infectious diseases such as tuberculosis (TB) and HIV/AIDS are prominent in

249. Schönteich, Martin, “The Scale and Consequences of Pretrial Detention Around the World,” Justice Initiatives, Open Society Justice Initiative, 2008, p. 32.

250. Khin Wine PhyuPhyu (August 26, 2015), Myanmar Times, “In outer Yangon, caseload cuts court dates to 10 minutes” Translation by Emoon, accessed 20 October 2015, <<http://www.mmmtimes.com/index.php/national-news/yangon/16152-in-outer-yangon-caseload-cuts-court-dates-to-10-minutes.html>>

prisons throughout the world. The rate of TB, for example, is 81 percent more prevalent in prisons, and HIV is 50 percent higher.<sup>251</sup> These diseases can, and have, spread to the wider community. In the 1990s an outbreak of TB occurred in prisons in the United States. Due to the treatment of prisoners by medical staff, the disease then spread to patients in nearby hospitals, which resulted in mortality rates between 72-91 percent.<sup>252</sup>

This is not only a concern for prisoners and prison staff, but also society as a whole, as most prisoners will eventually be released back into society and can carry untreated diseases with them.<sup>253</sup> Additionally, prison staff are exposed to the same health conditions and are constantly moving in and out of prisons. It is therefore extremely important to provide access to healthcare services and professionals upon admittance into prisons, and periodically thereafter. Reduction in prison population can also help reduce the likelihood of major disease outbreaks.

### 3.1.4 Creation of a Ministry of Justice

The final legislative reform that we identify is the need for a separation of powers and the establishment of a newly formed, independent Ministry of Justice. Independence of the judiciary is an essential step for the reform of the criminal justice sector. Limiting the influence of the executive powers

in the judiciary helps to tackle corruption and ensures that judges are able to make impartial decisions that are not influenced by the State. Separation of the departments responsible for police and prison administration is important for limiting the potential for abuse of power and corruption. This in turn helps to limit arbitrary incarcerations, lifting the strain on the prison sector, changing prison objective from retribution to rehabilitation, and promoting respect for the rule of law all of which are crucial to prison reform.

### Independent Judiciary

The International Bar Association, in its report on the rule of law in Burma, reported on the lack of public trust of the criminal justice system.<sup>254</sup> This lack of trust can be attributed in part to a lack of separation of powers which can give rise to corruption and lack of respect for the rule of law.

The 2008 Constitution states that “the three branches of sovereign power namely legislative power, executive power and judicial power are separated, to the extent possible,”<sup>255</sup> further stating that the judiciary is “to administer justice independently according to the law”.<sup>256</sup> The reality, however, is that the judiciary is controlled by the executive.<sup>257</sup> The President has the power to appoint a large number of senior-level judges, including the Chief Justice of the Supreme Court. The President also nominates three out of nine Constitutional Tribunal judges, and

251. Sander, G (2015), Preventing Infectious Diseases in Prisons: A Public Health and Human Rights Imperative, Accessed 16 November, 2015, via <[www.penalreform.org/blog/preventing-infectious-diseases-in-prisons-a-public-health/](http://www.penalreform.org/blog/preventing-infectious-diseases-in-prisons-a-public-health/)>

252. Schönleich, M (2008), “The Scale and Consequences of Pretrial Detention around the World”, Justice Initiatives, Open Society Justice Initiative, p. 20.

253. Gatherer, A; Enggist, S & Møller, L (2014), “The Essentials about Prisons and Health”, in S. Enggist; L. Møller; G. Galea & C. Udesen (eds.), Prisons and Health, World Health Organisation Regional Office for Europe, Copenhagen, Denmark, p. 2.

254. IBAHRI (2012) Myanmar Rule of Law, p. 58.

255. Government of the Republic of the Union of Myanmar (2008), Constitution of the Republic of the Union of Myanmar, Nay Pyi Daw: Printing and Publishing Enterprise, Ministry of Information, para. 11 (a).

256. Government of the Republic of the Union of Myanmar (2008), Constitution of the Republic of the Union of Myanmar, Nay Pyi Daw: Printing and Publishing Enterprise, Ministry of Information, para. 19 (a).

257. IBAHRI (2012) Myanmar Rule of Law, p. 57.

both the President and the Chief Justice determine the remaining seven to eleven judges of the Supreme Court, as well as regional and state court Chief Justices. The government is very involved in the appointment of lower level judges as well.<sup>258</sup> In addition, the executive branch holds authority over the judiciary’s annual budget.<sup>259</sup>

According to Transparency International, Burma scored -1.5 on the Rule of Law indicator, based on 2010 figures.<sup>260</sup> This means that the public’s confidence in government, judicial system, including the police and the courts is well below average.<sup>261</sup> This is symptomatic of a society riddled with abuse of power, corruption and a lack of respect for lawful procedures. For any significant legislative reform to take place there must be a shift in culture whereby the rule of law is respected by citizens and law enforcement officials.

In order to change this culture a separation of power between the executive and the judiciary is necessary. The International Bar Association’s report on the rule of law in Myanmar raised concerns regarding the executive’s power over judges and prosecutors.<sup>262</sup> In Burma, corruption can be found at all levels of the criminal justice sector from within police stations and prosecutors’ offices, as well as inside the judiciary and prisons.<sup>263</sup> Corruption can play a factor in the arbitrary arrest of political activists

and impunity of government and military personnel from the law and contributes to large numbers of pre-trial detainees, prison overcrowding and disrespect for the rule of law.<sup>264</sup> The creation of an independent Ministry of Justice that resides over these matters will assist in changing this culture and minimizing corruption. Within the Ministry of Justice, a Judicial Appointments Board should be established to appoint judges to necessary positions without the influence of the president or the executive branch. Candidates should be selected based on merit, not political consideration, and advice taken from the senior judiciary, who are in a position to identify able practitioners. The system of selection should be open and encourage all suitable candidates to come forward. If the judiciary is to have the confidence of citizens, it must fairly reflect all sections of society that are in a position to provide candidates of the requisite ability.

### Function of the Ministry of Justice

The newly formed Ministry of Justice should have a number of functions. It should be responsible for prison administration and include the Judicial Appointments Board. The Ministry of Justice should also be in charge of managing the budget, salaries and pensions for judges, to ensure that wages reflect their status and limit the potential of bribes.<sup>265</sup>

258. Ibid.

259. Ibid.

260. Corruption by Country/ Territory: Myanmar, Transparency international (2015), accessed 21 September 2015, <<https://www.transparency.org/country/#MMR>>

261. Ibid

262. International Bar Association Human Rights Institute The Rule of Law in Myanmar: Challenges and Prospects, International Bar Association, London, U.K. (2012)

263. Huber, A (2014), Andrea, “Corruption is a significant factor in human rights violations in many criminal justice”, , Penal Reform International, October 27, 2014, <<http://www.penalreform.org/blog/corruption-significant-factor-human-rights-violations-many-criminal/>>.

264. Ibid

265. International Commission of Jurists (2013), The Right to Council: The Independence of Lawyers in Myanmar, International Commission of Jurists, Geneva, Switzerland, p. 42; High Commissioner for Human Rights & International Bar Association (2003), Human rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, United Nations, Geneva, pp. 116-7.

A shift in culture is needed whereby prison staff are not seen as punishers. The role of prison staff should be to rehabilitate, educate and protect prisoners.<sup>266</sup> They are the custodians of prisoners and also workers who provide rehabilitation training, education and protection to those who have lost their right to liberty. Prisons are designed to be a temporary punishment that helps to rehabilitate offenders so that they can re-enter society after the completion of their sentence and continue onto a crime-free life. However, for rehabilitation to be the focal point a complete, society-wide, change in perception of prisons and prison staff is required.

### Prisons Under Civil Authority

Along with the creation of a Ministry of Justice to ensure an independent judiciary, a transfer of jurisdiction of the prison system from the Ministry of Home Affairs to the newly established Ministry of Justice is also required for sustainable reform. Separating the police and prison departments is important for limiting abuse of power and placing emphasis on rehabilitation rather than retribution.

The International Center for Prison Studies stresses the necessity of having a clear separation between the departments responsible for the police and prison administration emphasizing that prisons should be under civil authority.<sup>267</sup> It is important that the police and prison departments be separated as they hold conflicting priorities and functions. The police are charged with “investigating crime[s] and arresting criminals”<sup>268</sup> whereas the prison system should be a custodial body that holds pre-trial detainees after arrest and convicts after sentencing. Within the prison system, pre-trial detainees should be treated

as innocent until proven guilty, their detention should not be used as a tool in the investigative process or as a means to force prisoners to confess to the charges made against them.<sup>269</sup> Creating a clear distinction between police and prison administration and their roles in the criminal justice sector can limit mistreatment of accused persons and minimize the risk of coercion.

In Burma, the administration of the police and prisons comes under the Ministry of Home Affairs, which remain under control of the military. Creating a Ministry of Justice and placing the jurisdiction of prison administration under the newly formed ministry can help ensure a separation of powers and facilitate the “close link that should exist between the judicial authority and the prison system,”<sup>270</sup> while at the same time ensuring the separation of the police and prison departments.

As stated earlier this is not an exhaustive list, but these five reforms are the main areas of concern identified by AAPP, and are important for laying the foundation of the reform of the prison sector, and the criminal justice sector as a whole.

## 3.2. Operational Reform

Section 2 identifies gaps between domestic legislation and prison conditions. Legislation reform on its own is not sufficient to bring about long-term sustainable change to the prison system in Burma. Operational reform must be introduced alongside legislative reform measures to ensure a holistic process and effective implementation. This subsection outlines a number of key operational reforms we recommend the Burma Government take.

### 3.2.1 Prison Staff Training

Prison staff training is the most crucial operational reform that must be implemented in Burma for lasting change. The importance of prison staff training cannot be overstated. Prison staff are both the facilitators and main beneficiaries of a change in prison culture and perception. The focus on staff training can have a multitude of positive outcomes if correctly implemented, but can stifle substantial reform if not. Prison staff training is required under international standards<sup>271</sup> therefore it is essential that prison staff training be made mandatory as part of legislative reforms.

Apart from the prisoners themselves, prison staff are the most affected by new reforms and will be the main instigators of change. It is therefore beneficial to frame new reforms in the context of how they can benefit prison staff members. This will ensure staff are more receptive to the training and prison reform in general. New staff training, if properly carried out, will help change the perception of prisons, help change the focus from retribution to rehabilitation, address issues of corruption, human rights abuses and respect for rule of law.

## Increase Job Satisfaction

Prison staff are responsible for the “allocation to the beds and cells, access to meals, family visits, parcels, letters, telephones, work, education, factors and transfers to other prisons. It is the staff who defuse potential disorder or deal with hostage-taking incidents, either violently or through negotiation.”<sup>272</sup> It is the staff that will speak to prisoners either respectfully or with disrespect, and set the precedent for treatment of inmates.<sup>273</sup> It is the staff that will initiate a change in

prison culture and facilitate a system that is designed to rehabilitate criminals, not solely to punish them.

While it is evident that prison staff would benefit tremendously from prison reforms that aim to improve prison conditions in general, a focus on improving prison staff’s job satisfaction and working conditions will provide a greater incentive for cooperation on reform projects and a broader shift in morale and culture.

The initial training of newly recruited prison staff is essential, but ongoing training is also needed. Especially as better methods in prison conduct are discovered. A training center for new recruits, much like the police academy can be useful, but for ongoing training there are a number of different methods to be used. It would be beneficial for a mobile team of trainers that travel the country conducting training sessions, monitoring conduct within prisons, and enforcing the correct treatment of prisoners.<sup>274</sup> Senior members of staff, experienced in the profession, should be provided the opportunity to conduct these trainings. “Senior training staff should have worked in prisons and know what the job involves. In some countries, staff are specially selected as trainers and the best prison staff are expected to spend a few years training new staff. In other countries, staff are sent to teach in the training school when they can no longer cope with day-to-day work in prisons or have worked for so long that they deserve a quieter, less stressful life.”<sup>275</sup>

Another way to improve job satisfaction is providing advanced training to high performing staff for them to acquire specific skills on top of regular training. This training can also be conducted by a registered education organization so that prison staff

266. Coyle, Andrew, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, 2nd edn., London: International Centre for Prison Studies, 2009, p. 16.

267. “Guidance Note 7: Moving Prisons to Civilian Control”, p. 2.

268. Coyle, A (2009), *A Human Rights Approach to Prison Management*: p. 19.

269. *Ibid.*, p. 20.

270. *Ibid.*, p. 19.

271. SMRs, rule 74,75

272. Guidance note 8, p. 2.

273. *Ibid.*

274. *Ibid.*, p.5.

275. *Ibid.*, p.4.

can receive formal certification.

The potential for certified training and career progression could act as an incentive for job applicants to start a career with the prison system in Burma. Making prison work a more attractive a career choice will increase the scope of job applicants, creating competition which will contribute to a higher quality pool of applicants. This could assist in creating a more educated and well-trained workforce in the prison system. For current staff, participation in training sessions on prison administration at a formal educational institution can help them appreciate the value and importance of their work. Training in a formal educational institution may also make staff more receptive to the implementation of new ideas and practices.

### Human Rights Training including Practical Application

It is important that prison staff training is taught in a practical and non-abstract manner. Such training should focus on the importance of respecting human rights and how that applies directly to the prison setting. Abstract conceptual ideas about human rights, without reference to how they are applied in the everyday dealing with prisoners, will go unheeded by prison staff. Practical human rights training tailored to the prison setting will be more likely to be successful in ensuring prison staff adopt the new training material and practices. An example of this is the balance between maintaining security and dignity. Cell and body searching, drug testing, and the restricted and legal use of restraints all infringe upon a prisoner's dignity, yet are daily activities for prison staff. There are, however, ways to conduct such responsibilities that are respectful and less degrading than they need to be. Prison staff must

be trained in practical terms, how to conduct these daily activities whilst maintaining their integrity, and the dignity of inmates.<sup>276</sup>

Human rights training should not be taught in isolation of other prison staff training topics. It should be integrated in all aspects of staff training so that it becomes ingrained in standard staff procedure. If human rights are taught as a separate subject, and by external teachers from human rights organizations, prison staff may view the implementation of the human rights training as additional or optional. Instead human rights training should be overarching and integrated into every step of the training process. It should be the foundation upon which all staff conduct is framed.

Prison staff training should also focus on the prohibition of torture and other inhumane and degrading treatment, and how this right can be upheld in the prison system context. While staff are likely to deny any such treatment exists, further discussion and analysis could bring to light new understandings of interactions with prisoners that may then be considered inhumane treatment.<sup>277</sup> Training should then involve discussions of measures that replace these practices with more humane procedures.<sup>278</sup> If prison staff can see inmates as human beings deserving of dignity and respect, the overall performance and culture of the prison system will improve. Such a change in ethos requires strict accountability measures for those who violate the rights of inmates. However, fear of consequences should not be the only deterrent. Improvements in job satisfaction and opportunities for career progression for high performing staff members are other incentives for prison staff to implement training.

Whether or not trainees implement the practices learned in training is considerably

influenced by the abilities of the trainers. Trainers should ideally have expertise in human rights and have familiarity with the prison system. Therefore, a mix of human rights defenders, academics and senior prison staff will be the most beneficial. Also utilizing resources from organizations with expertise in human rights and in prison conditions, such as AAPP who has the experience of being staffed by former prisoners themselves, will also be extremely beneficial to training programs. Understanding rights from a prisoner perspective is a useful tool in training procedures.

These training programs should be understood as being part of a continuous and on-going reform process. Trainers should make "regular visits to follow up, support, encourage and strengthen the resolve of those who have made a commitment to the training and are often facing considerable criticism."<sup>279</sup> The public or even those within the criminal justice sector will not unanimously support prison reform. Therefore, trainers who are able to regularly check in to see how the staff are handling new reforms is essential to the process.

### Fostering a Cultural Change

In addition, informing the wider community of changes in procedure and other reforms to the prison sector can also help encourage change. Materials outlining prisoner rights, appropriate conduct between prisoners and prison staff, and major changes in practices should be disseminated. Posters throughout prisons, especially in common areas, distribution of booklets or pamphlets to prisoners, visitors and prison staff can help to educate all those involved in changes in procedures. This will be especially helpful in the initial stages of

reform, and can also help tackle problems relating to corruption.

A Director of State Prison in Brazil, for example, issued an information booklet detailing what provisions prisoners were afforded by the State. This was initiated to combat the problem of prison guards demanding payment for basic articles to which prisoners were entitled. This type of education also assists in the use of accountability mechanisms. If staff, prisoners and visitors all understand the correct treatment of prisoners, then it is easier for people involved to identify abuses and to report them accordingly. This access to information is essential to ensure the right of prisoners and is required under Rule 54 of the Nelson Mandela Rules.<sup>280</sup> However, it is important to remember that the introduction of new procedures and codes of conduct will be better received if the focus is on the benefits to the staff, rather than the fear of reprimand if these procedures are not followed.

While the support from, and the proper training of, prison staff is the most essential part of the operational reform process, this cannot be achieved without the implementation of other reforms in the system. Specifically, legislative reforms involving a change in jurisdiction of the correctional facilities department increasing prison staff wages and improving the standing of prison workers to a civil servant status. Furthermore, it is important that new legislation includes provisions guaranteeing that prisoners are promptly informed of their rights, prison law and regulations and complaints mechanisms. The simultaneous implementation of all reforms outlined in this chapter will ensure a more sustainable reform process.

276. Ibid., p.6.

277. Ibid.,

278. Ibid.

279. Ibid.

280. Nelson Mandela Rules, Rule 54.

### 3.2.2 Education and Vocational Training

Access to vocational and education training is an important provision given to prisoners to help facilitate their rehabilitation and assist their re-entry into society. The Nelson Mandela Rules, Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, and the United Nations Basic Principles in the Treatment of Prisoners include provisions for the entitlement of prisoners to education and vocational training.

It has been found that receiving education and/or vocational training whilst incarcerated reduces the chances of reoffending after release.<sup>281</sup> Additionally, introducing more meaningful activities than, for example, playing cards or watching television, can improve the lives of both prisoners and prison staff. It can help to create a more humanizing environment, with prisoners being given meaningful goals rather than simply awaiting the end of their sentence. Training can also be more cost-effective than re-incarceration, especially if their contribution to society post-release is taken into consideration.

#### International Standards

The Nelson Mandela Rules outline the primary purpose of prison sentences to be “to protect society against crime and to reduce recidivism.”<sup>282</sup> The rules go on to say “Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.”<sup>283</sup> This means that

persons released back into society must be equipped with the tools to function positively in their society and limit the chances of recidivism. The provision of education and other vocational trainings has been proven to reduce the likelihood of re-offence and improve chances of employment post-release.<sup>284</sup> For this reason, international standards regarding the provision of education or vocational training whilst incarcerated are included in international standards regarding the correct treatment of prisoners.

The Nelson Mandela Rules highlight the need for proactive programs that help to facilitate rehabilitation through “remedial, moral, spiritual, social and health- and sports-based” therapy and employment programs.<sup>285</sup> The Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment allows for the provision of educational materials to “ensure security and good order in the place of detention or imprisonment.”<sup>286</sup> This principle highlights the importance of meaningful activities to maintain order in prisons. The provision of culturally relevant and productive activities is required for prison staff to maintain order within prisons. Without such activities inmates are more likely to participate in violent behavior, become less likely to follow rules, attempt to harm others and themselves, and become generally less manageable.<sup>287</sup> Productive activities occupy inmate’s time in a way that helps with the overall management of inmate behavior. This, along with the need to equip inmates with the tools to successfully function in society upon their release, are the main reasons why provision of education and vocational training are important to prison reform.

### Ensuring the Dignity of Prisoners and Rehabilitation

The provision of education and vocational trainings can also assist in the change of perception of prisoners by prison guards and society as a whole. As discussed earlier, the cooperation of prison staff is fundamental to the prison reform process. Vital to how prison staff treat prisoners is the way they perceive them. Through meaningful education and training programs, prisoners are given the opportunity to strive towards a better life post-release. Providing education to prisoners will also assist prison staff to understand that prisoners are only deprived of their liberty for a temporary period, and are still entitled to other rights. Reform has already begun to take place in Rangoon’s Insein Prison. Prisoners are now provided with books and freedom to practice their religion in meditation areas. Insein Prison is the first prison in Burma to provide formal education courses for inmates, launching a formal study program in 2010. In 2014, two inmate students became the first to receive their high school graduation certificates. These graduates also told the Myanmar Times that they planned to continue their studies through Rangoon’s University of Distance Education.<sup>288</sup> The two students also helped 17 inmates to take their tests the following year and seven passed the exam in June 2015, representing 41 percent of prison students taking the test, a pass rate higher than the national average of 37.6 percent. Their graduation was marked with a party with pop stars serving sentences, at which the media was invited to a question and answer session with senior

prison staff.<sup>289</sup>

While this is an extremely important step forward in the humanization of the prison system in Burma, there is still much to be done. As recently as August 2015 students detained for their involvements in political protests were denied bail to sit their university exams.<sup>290</sup> This is a common consequence for political prisoners in Burma. Denying students the opportunity to take their exams, and the difficulties political prisoners face when attempting to resume their education post-release, undermine the reforms provided in Insein Prison. The stigma associated with being a prisoner, political or otherwise, makes it incredibly difficult to continue studies or find employment post-release.<sup>291</sup> These conflicting practices are damaging to the reform process and are detrimental to the change in prison ethos.

Reform of the penal system must be taken seriously with focus given to the right to education. The perception of former prisoners by the wider community needs to be changed so that former prisoners can contribute to their societies and not fall back to crime. This can be achieved by focusing on a culture of rehabilitation in prisons that is promoted within society, along with equipping prisoners with the skills or education for meaningful employment. The benefits to be gained from education and employment programs can have positive effects on the wider community, and therefore should be understood as a positive and necessary reforms. Such programs have proven ability to reduce rates of crime and be more cost-effective for the State.

281. Davis, L. Bozik, R. Steele, J. Saunders, J. & Miles, J. (2013), *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education To Incarcerated Adults*, RAND Corporation, Santa Monica, U.S.A., p. 39.

282. SMR, Rule 4, para 1.

283. Ibid.

284. Davis, “Evaluating the Effectiveness of Correctional Education,” p. 39.

285. SMR, Rule 4, para. 2.

286. Declaration on the Protection of all Persons Under Detention, Principle 28.

287. Martin, Mark D./Kaledas, Richard J., “Programs and Activities: Tools for Managing Inmate Behavior,” Washington: U.S. Department of Justice National Institute of Corrections, 2014, p. 2.

288. ShweGu ThitSar, “Behind the Walls of Insein,” Myanmar Times, September 1, 2014. [http://www.mmmtimes.com/inde\\_php/home-page/142-in-depth/11549-behind-the-walls-of-insein-2.html](http://www.mmmtimes.com/inde_php/home-page/142-in-depth/11549-behind-the-walls-of-insein-2.html)

289. ShweGu ThitSar, “Star-studded party set for Insein Prison students,” Myanmar Times, June 10, 2015. [http://www.mmmtimes.com/inde\\_php/national-news/yangon/14951-star-studded-party-set-for-insein-prison-students.html](http://www.mmmtimes.com/inde_php/national-news/yangon/14951-star-studded-party-set-for-insein-prison-students.html)

290. AAPP, “AAPP and FFPS Call for the Release of the Graffiti Students,” August 26, 2015. <http://aappb.org/2015/08/3207/>

291. For more detail, see: AAPP/FFPS, “After release I had to restart my life from the beginning”: The Experiences of E-political Prisoners in Burma and Challenges to Reintegration, May 2016.

## Reducing Crime Rates

Prisons are known to be mentally damaging to inmates, causing psychological stress and making it difficult for prisoners to return to society post-release.<sup>292</sup> Former convicts often revert back to crime because they are unable to find employment and cannot cope with their newfound freedom. It is important that prison systems ensure this does not happen by creating programs and an environment that facilitate rehabilitation and aftercare. Studies show that rates of reoffending after incarceration are high.<sup>293</sup> These rates have a lot to do with the stigma attached to being a prisoner, which makes it difficult for former convicts to find employment. However, studies show that education and vocational training leads to lower rates of recidivism, and an increased chance of employment post-release.<sup>294</sup>

These lower rates of recidivism suggest that it can be more cost-effective to provide training and education rather than having to incur the costs of re-incarcerating people. In addition, the phenomenon of crime breeding more crime in neighborhoods, communities and within families can be stifled through productive education programs in prisons. If prisoners, once released, can become positive role models through finding meaningful employment, this can reduce the risk of passing on their criminal behavior to those surrounding them.

The International Prison Centre Guidance Notes suggest, for developing countries like Burma, the effective use of resources is essential for

sustainable education and training programs. Utilizing the knowledge and skills of prisoners themselves can be a cost-effective, community-based approach to providing education to prisoners. Prisoners can teach or tutor other prisoners to ensure sustainability to education programs in prisons, such as in the example of the two graduates in Insein. Additionally, awarding prisoners the opportunity to act as teachers and educators provides a level of importance and responsibility that can assist managing behavior in prisons and promote stronger respect between prisoners and prison staff.<sup>295</sup>

## Preventing the Exploitation of Prisoners

While prison work can be used as a way to help facilitate reintegration, and help manage prisoner behavior, it is also extremely important to ensure that inmates are not exploited for cheap labor. The provision of vocational training and experience should be understood as a learning and skill gaining experience, and not a form of cheap labor. In many countries, prisoners often work for sub-minimum wages, long hours, and in poor conditions.<sup>296</sup> Mechanisms designed to monitor the treatment of prisoners should also include a focus on labor rights. Working conditions, wages, work breaks and hours should meet international standards, and prisoners should be protected against exploitation.

This is important not only for the maintenance of human rights, but also for prisoners to not form—or

harbor—negative associations towards work.<sup>297</sup> The employment of inmates needs to focus on vocational training and work experience. Their contribution needs to be recognized through salaries, which they can use for purchasing authorized comforts, such as snacks or clothing, or be given to family members. Again this can work as a reintegration tool, adding a sense of responsibility and self-worth to the lives of prisoners, as well as encourage the perception of prisons as rehabilitation centers.

A successful example of this kind of initiative is the Tihar Jail Initiative in India, set up to provide opportunities for reformation and rehabilitation to the prison inmates of Tihar Jail by channeling their energy towards a positive direction. Inmates have the opportunity to manufacture a wide range of products, such as Bakery products, Handloom & Textile, Apparel, Furniture, Pure Mustard Oil, Recycled hand-made paper products, paintings, designer candles & lamps, Jute bags, herbal products and much more.<sup>298</sup> These products are manufactured inside Tihar Jail Factory, which is certified for complying with international standards in quality management, environmental management, occupational health and safety management, and food safety management. The products are made available to the public at outlets in Delhi and are offered at competitive prices. The inmates working in the factory are provided with wages at the rates decided by the Government of Delhi. Twenty-five percent of the wages earned by these inmates goes towards a Victim Welfare Fund, which is used to provide compensation to the victims and their families. The factory employs around 700 inmates in various units. Similar initiatives should be considered as part of the prison reform process in Burma.

297. Ibid.

298. Ibid.

## 3.2.3 Independent Monitoring Mechanism

The need for an independent monitoring mechanism was raised in the legislative reforms section and for its effective implementation its mandate should be enshrined in law.

The current National Human Rights Commission, the MNHRC, is the only national monitoring system in the country. However, as previously stated, there is little confidence in the commission's independence from the government and military. It is essential that detention centers are regularly inspected and monitored to assess their compliance with international and domestic standards and crucial that the body responsible is independent. The establishment of an independent Prison Monitoring Body, assisted by national and international human rights organizations could help to achieve these aims. Such a body would have a reliable and confidential complaints procedure for prisoners, staff and outsiders to report abuses and other complaints. The cooperation of the government is needed for this new body to have sufficient power and ability to prosecute those who are not complying with the new standards. Real consequences for those that fail to uphold human rights are integral to the establishment of a reliable and respected monitoring body.

## Myanmar National Human Rights Commission

Established on September 5, 2011, the MNHRC is tasked with protecting and promoting human rights outlined in the 2008 Constitution. Its responsibilities include receiving instances and complaints regarding human rights violations, investigating these instances, and referring violations

292. Schönleich, M. (2008), "The Scale and Consequences of Pretrial Detention Around the World", Justice Initiatives, Open Society Justice Initiative, p. 32.

293. Deady, C. (2014), Incarceration and Recidivism: Lessons from Abroad, Pell Center for International Relations and Public Policy, via <<https://www.salve.edu/pellcenter>>; Travis, A (2010), Reoffending Rates top 70% in Some Prisons, Figures Reveal, The Guardian, accessed 4 December 2015, via <<http://www.theguardian.com/uk/2010/nov/04/jail-less-effective-community-service>>.

294. Davis, Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education To Incarcerated Adults, RAND Corporation, Santa Monica, U.S.A., p. 47.

295. Guidance Note 9, p. 7.

296. Alouti, F (2014), "Prison Labour: A Vehicle for Reintegration or Exploitation?", 31 December 2014, via Equal Times, <<http://www.equaltimes.org/prison-labour-a-vehicle-for?lang=en#.VmUJsXsaCKI>>.

to relevant bodies as well as to promote human rights in Burma.<sup>299</sup>

The MNHRC however, has been criticized due to its lack of independence from the government. Under the previous government the MNHRC received funding from the government. This has changed under the new government and the MNHRC now receives funding from the parliament, however the process remains unclear and requires greater transparency and accountability. Additionally, bonuses for MNHRC members come from the President, meaning that the government and the presidential essentially control its viability.<sup>300</sup> The selection process for committee members has also been criticized for its lack of transparency and the lack of objective selection criteria, which further compromises the body's independence<sup>301</sup>. Moreover, there are no laws protecting commission workers from being arbitrarily dismissed.<sup>302</sup> This allows for government corruption and the commission being susceptible to influence from the executive power.

Through an investigation in 2014 into the effectiveness of the MNHRC in addressing human rights violations, Burma Partnership found that the commission was "ineffective and has actually contributed to the culture of impunity and hate in certain parts of Burma."<sup>303</sup> An investigation by the commission into the prison conditions and police lockups in the Tanintharyi Division found conditions to be substandard and requiring immediate attention.<sup>304</sup>

However, recommendations made by the commission to the President's Office have gone unheeded.<sup>305</sup> It therefore seems that the current monitoring body in Burma has been inadequate in addressing issues regarding prison conditions and is in need of drastic reform if it is to fulfill its mandate. The establishment of a monitoring body with a specific focus on the penal system and human rights in prison would provide a more specialized approach to monitoring some of the country's most vulnerable people.

### A Monitoring Body for Prisons

The Association for the Prevention of Torture (APT) supports States in implementing National Preventive Mechanisms (NPM) for identifying and preventing torture and ill-treatment which often include the establishment of bodies tasked with conducting visits to prisons and detention centers in order to monitor, assess conditions and suggest torture prevention practices. NPMs are domestic mechanisms, independent of, but supported by the government. The implementation of such a monitoring system can help create a stronger level of accountability for instances of torture within prisons and detention centers.

A recent example of the successful implementation of a NPM is in Kazakhstan. In 2008 Kazakhstan ratified the CAT Optional Protocol and implemented their NPM on torture prevention in 2014.<sup>306</sup> The NPM conducted a comprehensive review

of closed institutions in Kazakhstan, and was able to outline the shortcomings of the correctional system in relation to international standards. The NPM worked closely with civil society groups and government organizations to conduct a thorough investigation into closed institutions in order to investigate conditions within prisons and detention centers.<sup>307</sup> The NPM was able to find instances of torture and submitted these cases to prosecution bodies to hold the perpetrators of violations accountable under the law. The establishment of the NPM in Kazakhstan was a significant step towards the realization of prisoner rights, and human rights in general.

The implementation of a similar domestic mechanism in Burma can be beneficial to the reform of the prison system and should be established in collaboration with existing domestic human rights bodies. Such a mechanism may act as a framework for additional bodies with functions for inspection, monitoring and complaints handling. Involving local organizations with expertise in Burma's prison system is recommended to help such a mechanism achieve its aims. National monitoring mechanisms create a stronger national participation and accountability, and require a strong participation from both the public and private sectors. The engagement of civil society in the reform of the prison system can help secure sustainable change as it instigates a stronger sense of accountability and change of ethos for respect for rule of law.<sup>308</sup> The benefit of creating a domestic legislated mechanism for monitoring is that such monitoring may be carried out on a permanent basis under law and would guarantee safe access to international watchdogs and external verifiers.

### 3. 2. 4 Establishment of a Reliable Complaints Procedure

Along with the establishment of a NPM, there is also the need for a reliable and confidential system for prisoners and prison staff to make complaints regarding treatment of individuals inside prisons. Prisoners should have access to a transparent and fair internal complaints procedure administered by prison staff and overseen by senior prison officials. In addition, an independent complaints body or ombudsman should be created under the NPM to deal with complaints not effectively resolved by the internal process.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Nelson Mandela Rules outline that all prisoners have a right to make a complaint regarding their treatment "to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power". Further, they outline the requirements for an effective complaints procedure including complete confidentiality and independence, implementation of protections for whistle blowers.<sup>309</sup>

With the establishment of such a procedure it is important to ensure that prisoners understand that their complaints will be taken seriously and treated with complete confidentiality. In most prison systems, prisoners are supposed to be allowed to bring complaints to prison authorities, judges or even state prosecutors.<sup>310</sup> However, the prevalence of corruption in all areas of Burma's government departments and the absence of an effective independent complaints

299. Myanmar National Human Rights Commission (MNHRC), "MNHRC Myanmar." <http://www.seanf.asia/index.php/about-us/mnhrc>

300. Burma Partnership/Equality Myanmar, "Burma: All the President's Men," 2014. <http://www.burmapartnership.org/wp-content/uploads/2014/09/All-the-Presidents-Men1.pdf>

301. Ibid

302. Ibid

303. Ibid

304. MNHRC (2015), Statement Regarding the Visit to the Prison and Police lockup of Kaw Thauung Township and Myeik Township Situated in Tanintharyi Region Statement No.(14/2015), via <<http://www.mnhrc.org.mm/en/statement-regarding-the-visit-to-the-prison-and-police-lockup-of-kaw-thaung-township-and-myeik-township-situated-in-tanintharyi-region-statement-no-142015/>>.

305. "President's Office Ignores Proposal to Investigate Prisons," Eleven Myanmar, December 8, 2015. <http://www.elevenmyanmar.com/politics/presidents-office-ignores-proposal-investigate-prisons>

306. Association for the Prevention of Torture, "Kazakhstan – OPCAT Situation," 2014. [http://www.ap.t.ch/en/opcat\\_pages/opcat-situation-34/](http://www.ap.t.ch/en/opcat_pages/opcat-situation-34/)

307. NPM Coordinating Council Kazahksatan, "Consolidated Report of the National Preventative Mechanism Members on the Preventative Visits Carried out in 2014," 2015, p. 6.

308. Commonwealth Human Rights Initiative (2011), "Civil Society and Human Rights Institutions", The International Journal of Non-For-Profit Law, vol. 13, no. 4, pp. 5-52, p. 32.

309. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 33; Mandela Rules, Rule 56.

310. "Guidance Note 11: E\_ternal Inspection Monitoring and Redressing Grievances," p. 3.

mechanism often means that prisoners do not feel comfortable making complaints either for fear of retribution or skepticism that their complaints will be addressed.

For prisoners to trust a complaints procedure it is important that it take all complaints seriously including those concerned with prison conditions, such as cell allocation or prison transfers. Taking all complaints seriously and treating complainants equally helps prisoners trust the complaints procedure and helps to “contribute to prisoners’ sense of being treated with justice and fairness.”<sup>311</sup>

Newly implemented complaints procedures need to be promoted within prisons so that prisoners are aware of where they can take their concerns. Access to the complaints body should be easily obtained through oral and/or written communication. In addition, there should be a procedure in place where prisoners can discreetly and anonymously issue complaints. There needs to be mechanisms in place to prevent prisoners receiving reprisals for issuing complaints, and follow-up investigations need to be made to ensure solutions were implemented and sustained.

### 3.2.5 Facilitate the Release of those Unnecessarily Detained

The release of pre-trial detainees is a relatively short term reform that can help alleviate issues relating to overcrowding, the strain on the prison and judicial system, free up resources for reform and simultaneously demonstrate the government’s commitment to the prison reform process.

## Amnesty

A review committee should be set up with the mandate of reviewing the cases of all prisoners within Burma’s prison system and determining criteria for

release. The review committee should have a specific focus on pre-trial detainees, and those charged with non-bailable offences. If, according to this criteria, it is deemed that it is not necessary that the person remain in detention they shall be released. Such criteria should be dependent on the criminal history of the charged, type of crime, maximum sentence if convicted, circumstances of dependents—such as children—and ties with the community. As a priority, the review committee should consider the prospects of persons who have been detained for extended periods and have served their sentence awaiting trial. Persons who have already served the maximum sentence for their offence prior to trial should be immediately released, and potentially have their charges dropped in light of serving time in pre-trial detention.

The criteria for a nationwide amnesty of convicted prisoners must also be created and implemented. These criteria must be clear and consistent and the process transparent. Political prisoners must be included in this amnesty along with those who are first time offenders of misdemeanor offences. A change in the culture of sentencing should see these types of minor offences be sentenced with alternative punishments, such as community service or restrictions on travel, however these changes will take a considerable amount of time. The release of pre-trial detainees, political prisoners, and minor offenders will help to relieve the strain of overcrowding in prisons and free up resources to be used in other areas of the reform process.

The new NLD-led government issued two major releases in their first month in office. On April 8, 2016 the government announced that they had released 199 political prisoners under 494 of the Code of Criminal Procedure<sup>312</sup>. In a second release on April 17, 2016 the President announced a pardon of 83 political prisoners under 401. (1) of the Code

of Criminal Procedure. In 2011, after President Thein Sein came into power, a number of prisoner amnesties under 401. (1) of the Code of Criminal Procedure were issued.<sup>313</sup> However, these amnesties are conditional as Section 401 allows the President to issue a part or complete amnesty, either conditionally or unconditionally, to anyone sentenced in Burma. The same section also allows for the President to remove the amnesty, requiring the formerly sentenced person to complete their sentence.<sup>314</sup> Section 401 states that police can arrest a former prisoner—without warrant—to carry out the rest of their sentence retroactively. This kind of conditional release ensures that former prisoners live in a constant state of fear of being rearrested and taken back to prison. It is therefore vital that persons released under amnesty are released without condition; a sentiment shared by the Special Rapporteur on the situation of human rights in Myanmar.<sup>315</sup>

## Post- Release Support Services

It is important to note that large scale releases without properly implemented and effective post-release facilities for former prisoners can be detrimental to the reform process. Mental health, employment and education programs are necessary to help limit recidivism.<sup>316</sup> The stress of being incarcerated, as well as the difficulty in dealing with freedom post-release can lead many to revert back to crime, develop mental health issues, or become unable to function in society. It is therefore incredibly important that the proper facilities and monitoring agencies are established to assist former prisoners to ease back into society and comply with the rule of law.

312. Code of Criminal Procedure: Article 494.

313. “Profile: Myanmar President Thein Sein,” BBC News, November 10, 2014. <http://www.bbc.com/news/world-asia-pacific-12358204>

314. Code of Criminal Procedure: On Suspension, Remissions, and Commutations of Sentences. Article 401

315. UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 2 April 2014, A/HRC/25/64, accessed 13 December 2015, via <http://www.refworld.org/docid/532068854.html>.

316. OECD (2008), The OECD DAC Handbook on Security System Reform: Supporting Security and Justice, OECD Publishing, Paris, p. 205.

317. Ibid.

The use of early release provisions and parole systems can be very useful if implemented correctly. However, they require adequate monitoring agencies, which necessarily result in high administration costs.<sup>317</sup> There must be an agency set up for former prisoners to “check-in” with trained professionals who are able to determine if the former prisoner is adjusting well post-release. These professionals would also determine if (more) mental health counseling or employment training is required. In most countries, persons released early from their sentence are assigned a parole officer who is responsible for ensuring that the former prisoner is coping with their release.

### 3.2.6 Alternatives to Detention and Imprisonment

Individual liberty is one of the most important fundamental human rights which makes it necessary to justify any kind of restrictions to it, especially considering that owing to poor prison conditions many inmates are deprived of more than their liberty. This is particularly relevant when it comes to unconvicted prisoners who should be treated under a presumption of innocence. Providing alternatives to detention and imprisonment through non-custodial remand procedures and alternative sentences to imprisonment will help address many of the issues covered in previous chapters including overcrowding and the misuse of pre-trial detention.

## Non-Custodial Remand Procedures; Bail and Other Alternatives

The reduction of non-bailable offences and development of alternative remand procedures,



proposed as a legislative reform in Section 3.1.3 is aimed at reducing pre-trial detention numbers. However, for these legislative reforms to reduce pre-trial detention it is important that operational measures including improved bail application processes, affordability of bail as well as other alternative remand procedures are considered.

While it is necessary for Burma to begin creating the infrastructure to carry out bail application processes in a more systematic and organized manner, services that can complement existing structures such as the PAS in Malawi can go far to ease some of the strain on the criminal justice system and fast-track these processes. The creation of a standardized bail application form by the PAS, for example, helped judges assess applications faster as a result were able to process more. In addition, such programs can help pinpoint the areas most in need of reform to limit pre-trial detention numbers; such as unreachable bail amounts, blocks to legal aid or poor administration.

While increasing access to bail will facilitate the reduction in pre-trial detainees, there must be consideration of alternatives considered for those who cannot post bail. Accused persons not being able to afford bail often cause high numbers of pre-trial detainees in many countries. However, the use of high bail amounts ensures not only that the poor are significantly more likely to be detained, but also means they are unable to access legal assistance and more likely to be convicted than those who are not detained.

The use of other remand measures needs to be implemented so that the poor are

not disadvantaged. An example of a project that successfully tackled this issue is the Pre-trial Services (PTS) project in South Africa. The service focused on providing residing judges the personal information of the defendant in order for contextual remand decisions to be made.<sup>318</sup> The project was successful in facilitating a context-driven approach towards instigating a bail system that does not economically discriminate. By introducing a system that caters to the individual circumstances of each accused person, the pre-trial detention numbers in South Africa's prison system began to drop, due in large part to the reduction of blanket detention practices and persons who could not afford to post bail.

Another way to facilitate the release of pre-trial detainees without having to deal with the issues surrounding bail is by using alternative remand procedures such as compelling the accused to appear in court on specified days or to report to local authorities on a regular basis. These alternatives are significantly less expensive than incarceration and also ensure that families and communities are not overly disrupted by the removal of primary earners or care takers. They are also just as effective. Studies conducted in Costa Rica showed that persons charged under misdemeanor offences and who were released under a personal recognizance were just as likely to show up to their scheduled court dates as those released on bail.<sup>319</sup>

A post-release infrastructure and pre-trial monitoring is essential to ensure the success of these non-custodial remand procedures and compliance with the rule of law.

318. Ehlers, L (2008), "Frustrated Potential: The Short and Long Term Impact of Pretrial Services in South Africa", Pretrial Detention, Open Society Justice Initiatives, Spring 2008, p. 121.

319. Ibid., p. 126.

## Chapter - 4 Key Challenges

Prison reform projects are not easy to implement, even in the most favorable conditions. In poorer countries such as Burma, there is often little public support for such projects given the fact that conditions outside of prison are not much better for a lot of people. Given this significant hurdle, prison reform projects need to meet four essential criteria if they are going to have a strong chance of being successful: political will, a well-organized administration to deliver changes, individuals within the system supportive of change and public support.<sup>320</sup>

In Burma's current political climate, there is potential for garnering political support for such a project, although the organizational capacity to implement one may be limited. Prison reform is often a lengthy ideal, with optimal projects lasting from at least three to five years; this means that a project must be sustainable and not subject to changing political or public whims.<sup>321</sup> It can be difficult to maintain support for such a long-term project. In addition, due to political instability, the prospect of reform being undertaken by one regime, only to be halted following a change in government, is very real. If that were to occur, there is a strong possibility that partial reform could do more harm than good.

With the advent of a new government

dedicated to key reforms, economic and infrastructural development and establishing a sustainable peace agreement, we are optimistic that there will be sufficient support for such a project. The new government has already demonstrated its commitment to democratization and reform in securing a better future for Burma. However, a lack of funding and institutional barriers posed by the continuing control of key ministries by the military pose significant challenges. In particular, transferring control of the prison sector from the Ministry of Home Affairs to a Ministry of Justice will be difficult. Without the full support of the government and military it is likely that prison reform practices will be met with red tape and bureaucratic stoppages leading to an inefficient reform project.

Securing political will of Ministry officials will be critical to the success of specific programs such as human rights training for prison staff.

In addition to political and capacity issues, another key hindrance to a successful project is the presence of institutionalized and widespread corruption in Burma. This perhaps poses the biggest challenge to the implementation of prison reform. According to the 'Corruption Perception Index 2015', established by Transparency International, Burma

ranks 147 out of 168 countries and territories along the measure of perceived corruption.<sup>322</sup> Shortly after taking the newly-created position of State Counselor, Aung San Suu Kyi declared that tackling corruption would be a key priority of the new government. However, this is unlikely to be achieved quickly. Many of the issues surrounding inept prison systems, such as overuse of pre-trial detention or provision of prisoner goods, are related to corruption within the prison system and the judicial system. When such issues are widespread and permeate all aspects of daily society, creating change within one given institution (i.e. prisons) is difficult to affect.

Finally, reiterating the point made above, the prison reform project must be comprehensive and incorporate both legislative changes and changes in the operation of prisons. Piecemeal or compartmentalized reforms are often ineffective, and can actually be counterproductive.<sup>323</sup> The combination of institutionalized corruption and a lack administrative capacity will make it difficult to implement such a comprehensive and long lasting reform program.

Addressing these key challenges will be crucial to gaining public support for prison reform. Without the public's support the prison system could become a political black hole that politicians are reluctant to engage with. Public support is crucial to the success of the prison reform process, and can be gained through the proper education and awareness raising initiatives. Such measures should be designed from the outset and act as an integral component of the project. In a democracy, reform should not take place in a vacuum, divorced from public will and every effort should be made to inform the public in a clear and transparent manner of the huge benefits to be gained from such an initiative. Such benefits go well beyond protecting prisoners' rights, to ensuring a safer society, and making a significant positive impact on poverty alleviation, public health, and social cohesion. These positive effects can end up saving the state money in the long term, as well as rebuilding public trust and respect for the rule of law.

320. "Guidance Note 1: Penal Reform Projects and Sustainable Change," 2.

321. *Ibid.*, p.4.

322. Transparency International, "Corruption by Country/ Territory: Myanmar," 2015.

323. "Guidance Note 1: Penal Reform Projects and Sustainable Change," p.4

## Chapter - 5 Looking Ahead

As stated in the introduction, this report merely represents initial research into issues surrounding prisons and prison reform in Burma. A number of actions could be taken to take this concept to the next stage. Given time and space constraints, a number of crucial elements have been left out or given minimal coverage in this report. In particular, specific issues regarding female and juvenile prisoners have not been covered, yet should be incorporated as part of any prison reform project. In addition, basic prisoners' rights such as religious rights, right to exercise, and others have only been given a cursory overview; more information is needed pertaining to the situation faced by prisoners in Burma in order to determine areas for improvement along these lines. Full cooperation from relevant ministries is required for further research to be conducted.

## Chapter - 6 Recommendations



### Recommendations to the Burma Government and Parliament

- Initiate prompt, independent, and impartial investigations into all allegations of torture or other ill-treatment made by current or former detainees or prisoners. Ensure that all detainees and prisoners are treated in accordance with the Nelson Mandela Rules;
- Become a party, without reservations, to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR);
- Review all legislation pertaining to the prison sector in order to bring it in line with international standards, in collaboration with civil society. This process should start by amending the draft Prisons Law to ensure it is in line with international human rights standards.
- Establish a Ministry of Justice and transfer control of the prison administration to this new ministry.
- Ensure all prison staff are adequately trained, including in human rights and the use of force, in line with international standards;

- Provide education and vocational training for prisoners with the intent of assisting their rehabilitation and reintegration into society after their release;
- Establish an independent monitoring mechanism for prison conditions in Burma with regular and unrestricted access to prisons to assess their compliance with international and domestic standards;
- Ensure prisoners have access to an independent complaints mechanism to review allegations of violations of their human rights or other issues related to their conditions, treatment, and imprisonment in general;
- Facilitate the release of those unnecessarily detained (see Section 3.2.5) and consider alternatives to detention and imprisonment in order to reduce overcrowding of prisons.

### Recommendations to Political Parties and Civil Society Groups in Burma

- Advocate and urge the Burma government to make prison reform a priority and implement the above recommendations;
- Build on this research to generate specific policy recommendations to present to parliament.

### Recommendations to the International Community

- Assist lawmakers in Burma to recognize prison reform as a priority and ensure the government implements the above recommendations;
- Support the Burma government in its efforts to implement a prison system that complies with international standards and fully integrates human rights.

## Revised Prisons Law by AAPP and FPPS

To have rule of law, and to prevent prisoners from reoffending, the objective is not to punish prisoners but to change them physically and psychologically, and for them to learn appropriate professions while in prison and to reintegrate in society easily after being released, the Union Parliament enacts this law.

The Ministry of Home Affairs and a newly-established ministry of justice should cooperate to govern the prison department.

### Chapter I Names and Definitions

1. This law shall be called The Prisons Law.
2. The definitions included in this law shall carry meaning as specified below:
  - (a) “Prison” means a place used permanently or temporarily upon the decree issued by the Ministry (of Home Affairs) with the agreement of the Government of the Republic of the Union of Myanmar cabinet permanently or temporarily for the detention of prisoners; it includes all defined territories, lands, buildings and parts of buildings defined as prisons or camps.
  - (b) “Separate room” means a dormitory or cell set up separately to prevent communication with other prisoners.
  - (c) “Work camp” means any temporary or permanent place belonging to the prison department where prisoners are to work in agriculture, animal breeding, and production.
  - (d) “Prisoner” means any person held in prison. This includes a convicted prisoner, a political prisoner, a pretrial detainee, a prisoner who has received the death penalty, a prisoner with long-term imprisonment, a juvenile prisoner and a civil prisoner.
  - (e) “Convicted prisoner” means any prisoner who is found guilty according to an existing law under the writ, warrant or order of any Court or authority exercising criminal jurisdiction.
  - (f) “Political prisoner” means anyone who is detained or sentenced for actions relating to political activities.
  - (g) “Pretrial detainee” means any prisoner who is held in detention during the trial period/investigation period on the charge/suspect of violating an existing law.

- (h) “Prisoner with long-term imprisonment” means any prisoner who is sentenced to a total imprisonment of 20 years or more.
- (i) “Juvenile prisoner” means any convicted prisoner who is between 16 and 18 years of age.
- (j) “Civil prisoner” means any prisoner who lost a civil case indicted by civil law and was sent to prison with a civil warrant by the Court.
- (k) “Personal record” means according to this law, the necessary personal record and information related to each prisoner stated in written form, or in electronic form in the Prisoners Management Information System.
- (l) “Case record” means the records containing photographs, fingerprints and footprints related to the convicted prisoner.
- (m) “Prison visit” means visits whereby members of the family of a prisoner, members of concerned embassies, and/or authorized persons are allowed to meet the prisoner and to give the prisoner authorized items.
- (n) “Prison visit guest” means a person who is authorized to come to prison with the intention to meet or provide assistance to a prisoner.
- (o) “Official guest” means any representative from an authorized organization or any legal representative, who comes to prison so as to provide assistance to and/or observe and investigate the prison and prisoners.
- (p) “Prohibited article” means any item that is not allowed to be taken in or out of a prison according to the procedure prescribed by this law or issued by an order.
- (q) “Punishment” means any penalty decided by the relevant Court related to the case according to the original case, appeal case, revision case, special appeal case and writ application or remaining punishment after amnesty, or in case of appropriate bail the person who guarantees the bail, or in absence of the person who guarantees the bail, the penalty to be sent to jail.
- (r) “Imprisonment order” means an order issued by a Court or a legally authorized person, for a person to be sent to prison.
- (s) “Detention order” means during the period of investigation on the charge/suspect of violating an existing law, an order issued by a Court or a legally authorized person, for a person to be sent to prison.

- (t) “Remission” means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jails.
- (u) “Parole Order” means the order by the government allowing or awarding any prisoner, who abides by the prison rules, to reside in a defined area/anywhere inside the country for a remainder of their sentence, based on parole board’s recommendation that who should be released under parole. The Parole Board has the power to choose eligible prisoners or to clarify appeals requested by a prisoner for parole, then submit its recommendation to the government.
- (v) “Prison industries” means agricultural, animal breeding (poultry), and production activities carried out in prison, and general or odd jobs in prison.
- (w) “Ministry” means the Ministry of Home Affairs of the Republic of the Union of Myanmar.
- (x) “Director General” means the Director General of the Prison Department.
- (y) “Superintendent” means the prison officer assigned to manage a prison.
- (z) “Prison officer” means any managerial officer, ranging from deputy level up to Director General level in the Prison Department.
- (aa) “Staff” means any officer or employee in the Prison Department.
- (bb) “Medical staff” means any staff officially recognized by the Ministry or in cooperation with the Ministry of Health to serve duty full time or part-time in the Prison Department.
- (cc) “Vocational training” means training places used permanently or temporarily to learn vocational training for prisoners in order to look for jobs after release, or means vocational trainings for prisoners run by concerned ministries or civil society groups.

## Chapter II Prisons management

### Duty and authorities

3. With the consent of the Government of the Republic of the Union of Myanmar, the Ministry may, in order to keep prisoners, build, demolish and move prisons in agreement with the UN Standard, based on necessity.

The Ministry has the sole responsibility for having an adequate amount of money for the annual prison

budget.

There shall be the establishment of a parole board.

With the consent of the Chief of Justice, there shall be the establishment of a Commission of Prison Investigation, which can investigate freely at any prison at any time. Additional Para

The judge of High Court, Session Court Judge and magistrate with jurisdiction in an area where a prison is located may enter and examine the conditions of said prison and question any affiliated prisoners or prison officials at any time. (S)he may write his or her observations in reference to the conditions of the prison and the prisoners in a Visitors' Book.

A Visitors' Book, to be kept by the Officer in Charge, will be produced for the Commission of Prison Investigation's reference upon each visit.

The Ministry must open justice offices in prisons and have a set and just procedure in place to handle prisoner complaints.

Prisoners must be given a prisoner classification of either A, B or C from the set classification standards.

4. The Director General shall set the maximum number of prisoners for each prison, following the standards prescribed in the procedure, in order to ensure the security and efficient administration of the prisons.
5. If the number of prisoners exceeds the set maximum limits, the Director General shall, according to the procedures laid out in this law, transfer prisoners to another prison. If it is not convenient to make the transfer of prisoners to another prison or in the event of an endemic disease breakout, temporary shelters and safe custody shall be provided to keep prisoners safe and comfortable.

## 6. The Director General:

- a. Shall implement the objectives and duties of the Prison Department.
- b. Shall, regarding financial matters, manage the budget allocated by union budget law in accordance with financial rules and regulations and guidance given by the Ministry.
- c. May assign all or part of his or her duties and authorities to any prison officer from the Prison Department.
- d. Shall manage as a special case any situation that endangers prisoners' safety, be it the outbreak of an epidemic disease, the occurrence of a natural disaster or any other situation with the potential to cause danger to prisoners.
- e. May place in isolation any prisoner who commits a crime in prison. Additionally, if necessary, the Director General may file any lawsuit following criminal procedures against any prisoner who commits a crime in prison.

f. Shall, when a prisoner complains through the Superintendent that he or she has been denied one of his or her rights prescribed by this law, make a ruling decision.

g. Shall appoint the Superintendent, prison staff, vocational trainers and medical staff for every prison.

Shall train all prison staff to understand and abide well by this law.

Shall host workshops, seminars, capacity building trainings and conferences for all prison staff to understand and practice international standards.

Shall arrange for prison observation trips abroad.

Shall arrange a program for prison staffs' future.

## 7. The Superintendent:

- (a) Shall manage all matters relating to discipline, labor, expenditure, punishment and control in the prison; this practice shall be free from torture, free from corruption and include rehabilitation for prisoners.
- (b) Shall keep prisoners based on gender, age, numbers, and illness in line with this law.
- (c) Shall manage, in line with prisoner's situation and prisoner's group, prisoner's participation in labor.
- (d) Shall manage, in line with existing law, punishment that does not include any form of torture for prisoners who commit prison offences.
- (e) Shall closely supervise prison staff to ensure that they obey the law, procedures, orders and instructions.
- (f) Shall systematically keep prison records, prisoner biographies and records of prisoners' cases.
- (g) Shall keep in a separate room any prisoner if sufficient evidence is available to require the need to keep said prisoner under maximum security.
- (h) Shall provide a medical examination once a day to any prisoner who is kept in solitary confinement for over 24 hours, either because of punishment or for other reasons.
- (i) Shall help any prisoner, who is not assigned to hard labor, to be employed if he or she wants to work.
- (j) May use a weapon or gun to arrest any prisoner who commits any violation under article 49 of this law and does not follow orders to stop, but the Superintendent shall warn before shooting and must not use excessive power. While using weapons the prisoner shall not be killed.

- (k) Shall train all prison staff to know and understand well international standards.
- (8) The Director General and Superintendent may award remission to a prisoner in accordance with the procedures laid out in this law.
- (9) The Director General and Superintendent shall ensure prison staff do not torture prisoners, nor subject prisoners to cruel, degrading or inhuman treatment.
- (10) Medical officers must provide healthcare to prisoners and prison staff. Prison officers must agree with and take necessary steps to continue forward with medical officers' decisions for prisoners' health.

### Behavioral Change and Provision of Vocational Training

- (11) The Prison Department must have a correctional plan that aims at reintegrating prisoners into society as good persons who will not reoffend after being released. This plan must assist prisoners both physically and psychologically.
- (12) In order to assist prisoners in building character, the Prison Department shall systematically and regularly provide religious lectures, meditation camps, professional counseling and educational ceremonies. Places of worship in the prisons must be created for each religion. No prisoner can be forced to worship.
- (13) In order to have greater knowledge of domestic and international affairs, the Prison Department must open libraries in the prisons where prisoners can read newspapers, journals, magazines, publications, and books, including literature relating to vocational and human rights, and watch television.
- (14) The Prison Department shall provide educational opportunities for prisoners who are still studying or who are illiterate. The Prison Department must arrange for prisoners who are enrolled in studies and interested in continuing their education and to sit for their exams.
- (15) The Prison Department must provide entertainment, information and educational programs for the prisoners for recreational purposes.
- (16) In order to ensure the good health of the prisoners, the Prison Department must provide space and facilities for exercising. Additionally, a timetable for these activities must be provided to prisoners.
- (17) Regarding the assigning of labor, the Prison Department shall provide appropriate vocational, agricultural and livestock trainings.
- (18) The Prison Department must provide daily or appropriate wages to prisoners when the Prison Department shall produce products with the use of prison labor.

- (19) The Prison Department must offer vocational trainings for prisoners so that they will be better equipped to look for jobs after their release. If needed, in order to create vocational trainings, the Prison Department can collaborate with other Government agencies and ministries and the private sector. Additional Para

### Healthcare

- (20) In every prison, a hospital or formal place for the care of sick prisoners shall be provided, completes with adequate medicine and if needed, the Prison Department must arrange for a sick prisoner to meet with a specialist. In case of emergency, with the consent of a medical officer, if a sick prisoner needs to be referred urgently to an outside hospital where he or she has access to intensive care options, the officer in charge in the prison must manage to transfer the prisoner to the hospital outside.
- (21) In order to provide both physical and mental health care, the ministry can appoint medical, dental and mental health staff with the assistance of the Ministry of Health.
- (22) The Ministry of Health, upon request by prisons without medical staff, shall provide relevant medical staff.
- (23) As part of the health care program, preventative health care must be practiced and provided for.
- (24) The nutrition of the prisoners must be standard.

## Chapter III Prisoners Management

### Admission of Prisoners

25.

- a. Whenever a prisoner is admitted into prison, he or she shall be searched by the prison staff on duty, in a way that avoids degrading or treating inhumanely the prisoner, and all weapons and prohibited articles shall be taken from him or her.
- b. If a prisoner's possessions including money is not prohibited by the relevant court, or bringing the possession to prison is official or the possession is sent to prison for the use of the prisoner, the relevant prison officer shall take custody of the possession by listing all items and checking over the list with the prisoner.
- c. A medical officer shall thoroughly examine each prisoner immediately or within five days after the admission of the prisoner to prison. The health condition of the prisoner, any wounds on the body of the prisoner or similar marks or symptoms shall be recorded. Appropriate prison officers shall keep the records of the

medical examination of the prisoner. If a prisoner or a family member of a prisoner requests records of the medical examination, the prison authority must provide the records.

- d. Female staff and female medical officers shall search and examine female prisoners.
26. (A) Following the death of any prisoner, the Superintendent or prison officer in charge shall get the death certificate from the medical officer relating to the cause of death, register the death in the record and, if necessary, file the record at the police station. Also following the death of any prisoner, the prison authority must inform of the death to a family member of the deceased prisoner. If a family member requests to conduct a funeral themselves, the prison authority must help the family member to be able to do it. If a family member cannot come in time, necessary arrangement shall be provided for a funeral service to take place according to traditional customs.

## Separation of Prisoners

- 27.
- a. In a prison where not only male prisoners but also female prisoners are kept, the female prisoners shall be imprisoned in separate buildings, or if there is only one building, in a separate part of this building, to ensure that the male prisoners cannot see, talk to and communicate with the female prisoners.
- b. Juvenile prisoners shall be separated from other prisoners.
- c. Children under 16 years of age shall not be received/admitted as prisoners.
- d. Pretrial detainees shall be kept apart from convicted prisoners.
- e. Civil prisoners shall be kept apart from convicted prisoners.
- f. Prisoners under sentence of death shall be confined in a cell apart from other prisoners.
- g. Political prisoners shall be separated from other prisoners.
- h. Those who are imprisoned by reason of a criminal offence again and again (Jail birds) shall be separated from those who are convicted for reasons not including bad character .
- i. LGPT prisoners shall be separated from other prisoners.
- j. Long time prisoners and gang stars shall be separated from other prisoners.
- k. Prisoners who suffer from mental illnesses, abnormalities and/or infectious diseases shall be observed

and treated in specialized institutions.

28. Without exceeding beyond the provisions stated in article 27, convicted prisoners may be kept together or individually in separate rooms or in one of either ways.
29. No prisoner shall be kept separately in separate confinement without arrangement to be able to communicate with the jailer on duty. A prisoner who has to be kept in separate confinement is to be closely monitored by the jailer. A prisoner who is kept separately for more than 24 hours because of punishment/penalty or other reason is to be subject to an examination by a medical staff/officer once a day.

## Transfer of Prisoners

- 30.
- a. Prisoners to be transferred to other prisons are to be examined by a medical officer before the transfer.
- b. No prisoner shall be transferred to another prison without a medical examination and approval stating they are suitable to be transferred by the medical officer.
- c. If any prisoner is in a prison far from his or her family and the prisoner requests to move to a prison near to where his or her family is living, the prison authority shall move the prisoner to the prison near to his or her family.
- d. Standards and norms for prisoners to be transferred to work sites shall be followed through orders and instructions.
- e. No prisoner shall be sent to a front line as a porter.
- f. A prisoner shall be transferred to a prison close to his or her family when a prison situation requires the need to transfer a prisoner. The prison authority must inform a prisoner's family immediately in the case of a transfer.
- g. When a prisoner is transferred to or from a prison, they shall be treated well and in a manner that allows them to maintain their human dignity.

## Release/Discharge of Prisoners

- 31.
- a. The Director General may submit to the ministry upon the approval/request made by the Superintendent on the suspension of sentenced penalty/imprisonment or reduction or exemption/amnesty of sentenced imprisonment to a/one prisoner or more than a prisoner.
- b. The ministry may submit to the president through the cabinet for the suspension of sentenced penalty/imprisonment or reduction or exemption/amnesty of sentenced imprisonment to a prisoner or more than a prisoner.
- c. The Superintendent shall release a prisoner on Presidential Order, or if the sentence is suspended or

reduced, or if they are exempt from sentence, or at the end of the prison term.

- d. Any prisoner who is at the end of his or her prison term but is suffering from a serious health condition or is infected with a dangerous endemic disease and is deemed to require medical treatment to recover by the medical staff, shall be transferred to the nearest hospital.
- e. When a prisoner is released, the prison authority shall provide enough money or a warrant to take public transportation for the prisoner to return to his or her place of residence.
- f. When a prisoner who has been in prison for long time and who has no family contacts is released, the prison authority shall provide a way for him or her to reach his or her family home. (Note: The prison authority shall get in contact with the relevant local authorities prior to the prisoner's release to know the whereabouts of the prisoner's family.)

## Court Appearances

- 32.
  - a. Upon receiving the order to send a prisoner to court or an authorized person, the Superintendent needs to carry this out carefully in line with existing law.
  - b. If due to any reason the prisoner is unable to attend court, the Superintendent shall inform the concerned court the reason as to why the prisoner is unable to attend the court. (If necessary, the Office in Charge of the prison shall report in person to the court.)
  - c. If special security is needed to send the prisoner to the court, the Superintendent shall report to the Director General.
  - d. When pre-trial and convicted prisoners are brought to courts, they shall be treated well and in a manner that allows them to maintain their human dignity.

## Visits to Prisoners

- 33. In each prison, in order for visiting guests and official guests to be able to meet prisoners, a schedule and regulations shall be arranged.
- 34. The Superintendent concerned:
  - a. May request the name, address and documents of anyone who comes to meet a prisoner. If there is any suspicion, a search shall be conducted of this visitor by the Superintendent, or by an assigned prison officer. Such a search shall not be carried out in front of any prisoners or any other visitors. If a visitor is female, a female staff shall carry out the search.
  - b. Anyone who refuses such a search can be denied their visit. Such denial shall be written in the record

book including the complete reason for the denial.

- c. No prison staff shall record, note or listen when a prisoner meets with family or an official visitor.
- d. A prisoner is allowed to speak in an ethnic language if a prisoner cannot speak in the Burmese language.
- 35. Any visiting guest who may pose harm to security, peace and tranquility and rule of law shall not be allowed the visit.
- 36. When it is not appropriate for a prisoner to attend court, the trial should be brought to the prison. The Superintendent may allow this after thorough consideration. However, the prison authority or an authorized person from court shall inform the detainee's lawyer and family members, and they shall still be allowed to hear and defend before the court.
- 37. If in accordance with this law, a prisoner and his or her lawyer are allowed to discuss freely in a designated area.
- 38. If any organization or anyone wants to donate food or things for prisoners, the Superintendent may allow it after thorough consideration.

## Employment of Convicted Prisoners

- 39.
  - a. No convicted prisoner is to work for more than eight hours in a day.
  - b. The medical officer shall go frequently to inspect the working site of the prisoners. The medical officer shall report his or her observations and recommendations to the Superintendent.
  - c. If the medical officer certifies that the prisoner is not in good health because of the work currently undertaken, he or she may be assigned to another type of work deemed more suitable.
  - d. Prisoners shall be allowed to take rest on official and gazetted holidays.
  - e. All work within the prison or work site for prisoners shall have vocational training intentions and be meant to help rehabilitate the prisoner for life after their release. No work done by prisoners shall be for the financial benefit of the prison authority.
  - f. No disabled prisoner shall be assigned to work.
  - g. Sick prisoners shall be allowed to have medical leave from prison work upon the recommendation of medical officers and an officer in charge of the prison.

40. The Superintendent shall:
- a. Pay set wages to prisoners working in income-generating activities in prisons.
  - b. Make sure that defined compensations are established regarding injuries, and death of prisoners while working.

### Giving or withdrawing Parole Order

41. (A) The ministry, with agreement with the Government of the Republic of the Union of Myanmar is allowed to give legal permission to a prisoner to stay with certain principles at a designated place within the country as part of his or her remaining sentence.
- (B) No one can detain and arrest a prisoner who is granted a legal permission by his or her original sentence without receiving an order of withdraw legal permission and to be punished again for his or her original sentence.
- (C) If a situation given to withdraw legal permission to a prisoner, Ministry, with the approval of the Government of the Republic of the Union of Myanmar must inform to prison department about withdrawing his legal permission.
- (D) Upon the recommendation of the parole board, and with the approval of the Union Government, the prison authority may release any convicted prisoner who has already served a part of his or her sentence.

### Civil Prisoner and Pretrial detainee/Detainee

42. Civil prisoners and pretrial detainees may, according to instruction, take in or purchase outside food and clothing verified and allowed by the prison Superintendent during the times allowed.
43. Civil prisoners and pretrial detainees shall not give away, or lend or sell any part of the above mentioned food and clothing to any prisoner. If provisions 42 in this section are violated, the Superintendent may revoke the right to purchase or receive food from outside for an appropriate period.
44. Regarding provisions of clothing, bedding and food, the Superintendent:
- a. Shall make arrangements for prisoners who cannot afford these provisions on their own.
  - b. Whenever clothing or bedding is supplied to a civil prisoner, who has been committed to prison in execution of a decree in favor of a private person, the Superintendent shall submit to such a person an account of the cost of the clothing or bedding, with a demand, in writing, for payment of the cost; and if payment is not made within 48 hours of receipt of this demand, the Superintendent shall release the civil prisoners in respect of whom the demand was made.

### Prisoners' Rights

45. Prisoners:
- a. May report in person to the Superintendent matters regarding health, food and accommodation, and grievances concerning their rights provided for by existing laws and regulations. No prison staff shall prevent or delay a prisoner in making these reports. A prisoner shall be allowed to have enough time to make these reports.
  - b. Shall exercise freely his or her religion and beliefs.
  - c. Shall not be discriminated against based on race, origin, religion, culture, position, status, gender, or wealth.
  - d. Shall enjoy a reduced period of imprisonment according to procedures laid out in this law.
  - e. A prisoner who abides by prison rules and regulations and who follows well the principles which are imposed by the parole board can apply for a parole order.
  - f. Prisoners who suffer from torture or humiliation by prison staff or by other prisoners are entitled to complain or petition to the prison authority, Director General, Home Affairs Minister, or administrative court, or to the National Human Rights Commission, which is set up by the Paris Principle, parliament affair committees or President of the Union of Myanmar. Prisoners can complain before the court either in person or, when necessary, through family members, a lawyer or by writing a letter. Authorities in charge of the prison shall assist prisoners in making these forms of complaints.
  - g. No prison staff shall open or read any complaint letter by a prisoner.
  - h. Any prisoner who creates false complaints shall be charged according to criminal procedures.
  - i. Any organization or person who receives a complaint letter by a prisoner must take action immediately following receiving the letter and investigate the case.
  - j. Any prisoner shall have the right to take in and study books, journals and newspapers.
  - k. In women's institutions there shall be special accommodation for all necessary pre-natal and postnatal care and treatment. Arrangement shall be made wherever practical for children to be born in a hospital outside of the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
  - l. Female prisoners may keep their child with them in prison until the child reaches 6 years of age. The prison must provide the necessary food and clothes, as instructed by a child specialist.

- m. There shall be special accommodation and treatment for disabled prisoners.
- n. Any prisoners shall have the right to continue their education and to receive vocational training.
- o. Prisoners who are working on profit-producing sites shall receive suitable wages.

## CHAPTER (IV) PRISON OFFENCES

(46) The following acts are declared to be prison offences when committed by a prisoner:

- (A) Disobedience or violations of this law and related regulations;
- (B) Failure to obey this law and regulations regarding prison visits, prison visit guests, and official guests;
- (C) Any assault or use of criminal force;
- (D) The use of insulting or threatening language;
- (E) Immoral or indecent or disorderly behavior;
- (F) Willfully disabling himself or herself from labor;
- (G) Refusing to work without any proper reason;
- (H) Filing, cutting, altering or removing handcuffs, fetters or bars without due authority;
- (I) Willful idleness or negligence at work by any prisoner sentenced to imprisonment with labor;
- (J) Willful damage to prison property;
- (K) Tampering with or defacing history – tickets, records or documents;
- (L) Feigning illness;
- (M) Willfully bringing a false accusation against any officer or prisoner;

- (N) Any attack or preparation for an attack, or assisting an attack upon any prisoner, prison-officer or any other person;
  - (O) Omitting or refusing to report, as soon as it comes to his or her knowledge, the occurrence of any of the above declared prison offences, or committing or preparing to commit prison offences;
- (47) A – The Superintendent may examine any person committing any such offence, and determine thereupon, and punish such offence by one of the following:
- (1) A formal warning;
  - (2) Loss of privileges admissible under the remission system for a certain period (The prison authority shall inform to a prisoner how many days he or she will lose privileges for.);
  - (3) Solitary confinement for a period not exceeding fourteen days (No prisoner is to be placed in a total dark room.);
  - (4) Separate confinement for any period not exceeding three months;
- (B) If punished by one of the above, a prisoner has the right to appeal to the Director General. However, the subsequent decision made by the Director General is final.

## Chapter (V) Offences and Punishments

### Offences

- (48) No person is allowed to introduce or remove, or attempt to introduce or remove, any prohibited articles into or from prison.
- (49) No person is allowed to introduce or remove, or attempt to supply to any prisoners outside the limit of prison, any prohibited articles;
- (50) No one is allowed to communicate, or attempt to communicate, with any prisoner unlawfully;
- (51) Every prison officer must not fail to report to the supreme office as soon as it comes to his or her knowledge a prisoner who committed prison offences under sections 48, 49 and 50;

(52) No prisoner is allowed to riot, rebel, escape, or damage prison properties and buildings with a crowd, or attempt or prepare or encourage to do the above at any time;

(53) Any prison staff will be guilty if he or she commits the following:

(A) Any violation of his or her duty;

(B) Willful breach or neglect of any rule or regulation or lawful order made by a competent authority;

(C) Withdrawal from the duties of his or her office without permission;

(D) Withdrawal from the duties of his or her office without having given previous notice in writing of his or her intention for the period of two months;

(E) Absence should not exceed any permitted leave period knowingly without any proper reason;

(F) Work an additional job without prior permission;

(G) Cowardice while in duty;

(H) Torture, cruel, inhuman or degrading treatment that violates human rights or humiliates a prisoner;

(I) Stopping, delaying or preventing a prisoner's right which is granted by the rules and regulations;

(54) Without permission, no prison officer or person related with a prison officer shall sell any products or borrow or take money by dealing directly or indirectly with a prisoner, for his or her own personal interests.

(55) No prison staff or persons related to prison staff are allowed to deal with a representative who is contracted to import products into prison for his or her personal interest, or other interest or making money interest.

## Punishment

(56) If any prisoner is guilty of violation of section 46 by reason of having frequently committed such offences, he or she shall be sentenced to imprisonment which may extend to one year, but not exceed one year;

(57) If anyone is guilty of violation of section 48/49/50 and 51, he or she shall be sentenced to imprisonment not exceeding six months, or subject to a fine not exceeding 100,000 kyats, or to both. However, if anyone takes in or out an item which can be harmful to society, such as drugs, he or she shall be charged under existing criminal procedures.

(58) If any prisoner is guilty of violation of section 52, he or she shall be sentenced to imprisonment not ex-

ceeding three years, or subject to a fine not exceeding 500,000 kyats, or to both.

(59) If any prison staff is guilty of violation of section 53, he or she shall be sentenced to imprisonment not exceeding three months, or subject to a fine not exceeding 50,000 kyats, or to both. If anyone violates section 53 (h), he or she shall be charged under existing laws.

(60) If any prison staff is guilty of violation of section 54 and 55, he or she shall be sentenced to imprisonment not exceeding six months, or subject to a fine not exceeding 100,000 kyats, or to both. However, if anyone takes in or out an item which can be harmful to society, such as drugs, he or she shall be charged under existing criminal procedures.

## Chapter (VI) GENERAL (OR) MISCELLANEOUS

(61) When any person, in the presence of any officer of a prison, commits any offence specified in sections 48, 49, and 50, and refuses on demand of such officer to state his or her name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may detain him or her, and shall without unnecessary delay hand him or her over to a Police-officer, and thereupon such Police-officer shall proceed as if the offence had been committed in his or her presence.

(62) If any prisoner is guilty of any offence against section 46 which, by reason of him or her having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he or she has power under this Act to award, the Superintendent may forward such prisoner to the Court.

(63) A prisoner, when being taken to or from any prison in which he or she may be lawfully confined, or whenever he or she is working outside or is otherwise beyond the limits of any prison in or under the lawful custody or control of a prison officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he or she were actually in prison.

(64) All lands which produce natural resources and buildings appurtenant used for prisons which have been declared by the Government of the Republic of the Union of Myanmar are regarded as restricted areas;

(65) Income and other taxes for a prison and prison product must be paid in line with existing law;

(66) When a convicted prisoner is sent to prison, it must include writ (or) summary of case file, warrant written by order of any Court or authority exercising criminal jurisdiction;

(67) Any cases taken action under this act shall be considered police jurisdiction;

(68) The rules and regulations, decrees, instructions, directives and procedures, under the Prisons Act 1894, The Prisoners Act 1900 and The Identification of Prisoners Act which are deactivated by this law, shall be used the same if they do not contradict this law;

(69) In order to implement this law:

(A) With the approval of the Government of the Republic of the Union of Myanmar, the Ministry can issue rules and regulations;

(B) The Ministry and Prison Department can also issue commands, orders, instructions and procedures;

(70) The following laws are removed (or) repealed by this law:

(A) The Prisons Act, 1894

(B) The Prisoners Act, 1900

(C) The Identification of Prisoners Act, 1920