

Ratification of International Treaties:

Burma and the Argument for Ratification of UN Human
Rights Conventions, Protocols, and Covenants

Contents

1. Acronyms	5
2. Dictionary	8
3. Introduction	13
Ratification	15
Benefits of Ratification	17
3. Burma's Binding Obligations Under International Law	20
International Human Rights and other Treaty Law	20
International Law	23
Customary International Law	23
International Humanitarian Law	24
International Criminal Law	25
4. The Role of Human Rights Bodies in Burma's Transition	27
1) UNHRC	27
Special Procedures of the UNHRC	28
UPR	28
2) Treaty-Based Bodies	29
5. Obstacles to Reforms in Burma	31
6. Legislative Priorities	35
The UNCAT	35
The ICCPR	39
7. AAPP's Continued Efforts	48
8. Moving Forward	50
9. Conclusions / Recommendations	



Acronyms

AAPP	Assistance Association for Political Prisoners
APMBT	Anti-Personnel Mine Ban Treaty
ASEAN	Association of South East Asian Nations
Basic Principles	UN Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
CAT	Committee Against Torture
CCPR	Human Rights Committee
CCPR-Centre	Centre for Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
CIL	Customary International Law
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CoI	Commission of Inquiry
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
CRC	Convention on the Right of the Child
CRC-OP3	Optional Protocol to the Convention on the Rights of the Child on a communications procedure



CRC-OP-AC	Optional Protocol to the Convention on the Right of the Child, on the Involvement of Children in Armed Conflict
CRC-OP-SC	Optional Protocol to the Convention on the Right of the Child, on the Sale of Children, Child Prostitution and Child Pornography
CRPD	Convention on the Rights of Persons with Disabilities
CRPD-OP	Optional Protocol to the Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
CTI	Convention against Torture Initiative
DKBA	Democratic Karen Benevolent Army
EAGs	Ethnic Armed Groups
EU	European Union
ICC	International Criminal Court
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP1	First Optional Protocol to the International Covenant on Civil and Political Rights
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights

ICL	International Criminal Law
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
MNHRC	Myanmar National Human Rights Commission
NLD	National League for Democracy
OHCHR	Office of the United Nations High Commissioner for Human Rights
PAPPL	Peaceful Assembly and Peaceful Procession Law
SPT	Subcommittee on Prevention of Torture
TNLA	Ta'ang National Liberation Army
UDHR	Universal Declaration of Human Rights
UNHRC	United Nations Human Rights Council
UN	United Nations
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCAT-OP	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UPR	Universal Periodic Review

Dictionary

TABLE 1: DICTIONARY OF TERMS

Accession ¹	Accession is the process whereby a state accepts to become party to a treaty that has already been negotiated and signed by other states, and has the same legal effect as ratification. Accession generally occurs when the treaty has already entered into force. The conditions under which accession may occur, and the procedure involved, depend on the provisions of the treaty. Accession, even if less common, has the same legal effect as ratification.
Adoption ²	Adoption is the formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the states present and voting, unless, by the same majority, they have decided to apply a different rule.
Breach ³	There is a breach of an international obligation when conduct attributed to a state as a subject of international law amounts to a failure by that state to comply with an international obligation incumbent upon it.
Convention ⁴	The term convention – international convention – can be used interchangeably with terms such as international treaty, international agreement, compact and international contract. It indicates a formal and written agreement between subjects of international law. Conventions are binding only for all subjects who are party to them.

1. United Nations. Glossary of terms relating to Treaty actions, available online https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#acceptance
 2. Ibid
 3. Ibid
 4. Ibid

Customary International Law ⁵	Customary international law refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties. Customary law is binding for all and every subject of international law. Customary law is characterized by the presence of two elements: state practice – repetition of a certain behavior, and opinio juris – the perception of that behavior as legally binding.
Declaration ⁶	<p>Sometimes states make 'declarations' as to their understanding of some matter or as to the interpretation of a particular provision. Declarations merely clarify the state's position and do not purport to exclude or modify the legal effect of a treaty.</p> <p>Declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. Declarations can however also be treaties in the generic sense intended to be binding at international law. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations. Some instruments entitled 'declarations' were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights.</p>

5. Greenwood, C. (2008). Sources of International Law: An Introduction, available online http://legal.un.org/avl/pdf/ls/greenwood_outline.pdf.

6. United Nations. Glossary of terms relating to Treaty actions, available online https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#acceptance

Deposit ⁷	After a treaty has been concluded, the written instruments, which provide formal evidence of consent to be bound, and also reservations and declarations, are placed in the custody of a depositary. Unless the treaty provides otherwise, the deposit of the instruments of ratification, acceptance, approval or accession establishes the consent of a state to be bound by the treaty. For treaties with a small number of parties, the depositary will usually be the government of the state on whose territory the treaty was signed. Sometimes various states are chosen as depositaries. Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositaries. The depositary must accept all notifications and documents related to the treaty, examine whether all formal requirements are met, deposit them, register the treaty and notify all relevant acts to the parties concerned.
Entry into Force ⁸	Typically, the provisions of the treaty determine the date on which the treaty enters into force. Where the treaty does not specify a date, there is a presumption that the treaty is intended to come into force as soon as all the negotiating states have consented to be bound by the treaty. Bilateral treaties may provide for their entry into force on a particular date, upon the day of their last signature, upon exchange of the instruments of ratification or upon the exchange of notifications. Some treaties provide for additional conditions to be satisfied, e.g., by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required number of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states which gave the required consent. A treaty may also provide that, upon certain conditions having been met, it shall come into force provisionally.
General Principles ⁹	Basic rules whose content is very general and abstract and are generally considered to be part of positive law. Unlike agreements, general principles have not been 'posited' according to the formal sources of law. They are included in the list of sources of international law detailed by Article 38 of the International Court of Justice as 'General principles of law recognized by civilized nations'. Examples are the impartiality of judges, good faith, and res judicata.

7. Ibid

8. Ibid

9. Kohen, M and Schramm, B. (2013). General Principles of Law - International Law.

Human Rights ¹⁰	Human Rights are rights inherent to all human beings, whatever their nationality, sex, ethnic or national origin, color of skin, religion, language, or any other status. All human beings are entitled to human rights without discrimination. Human rights are universal, interrelated, interdependent, and indivisible. States assume obligations and duties under international law to respect, to protect, and to fulfill human rights. The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires states to protect individuals and groups against human rights abuses. The obligation to fulfill means that states must take positive action to facilitate the enjoyment of basic human rights.
Jus Cogens ¹¹	Jus cogens, also called peremptory norm, is a fundamental principle of international law that is accepted by the international community as a norm from which no derogation is ever permitted. They are so important that they prevail – even in case of contrast – over treaties. Among the other, jus cogens includes the prohibition of genocide, maritime piracy, slavery, and torture.
Objection ¹²	Any signatory or contracting state has the option of objecting to a reservation, inter alia, if, in its opinion, the reservation is incompatible with the object and purpose of the treaty. The objecting state may further declare that its objection has the effect of precluding the entry into force of the treaty as between objecting and reserving states.
Peremptory Norm	See 'Jus cogens'

10. Office of the High Commissioner for Human Rights. What are human rights?, available online <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

11. Cornell University Law School, Wex Legal Dictionary, available online https://www.law.cornell.edu/wex/jus_cogens

12. United Nations. Glossary of terms relating to Treaty actions, available online https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#acceptance

Ratification ¹³	Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.
Reservation ¹⁴	A reservation is a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved or, acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.
Signature ¹⁵	Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.
Treaty	See 'Convention'

13. Ibid

14. Ibid

15. Ibid

Introduction

The United Nations (UN) was founded following the end of the Second World War in 1945, with the purpose of promoting and maintaining everlasting world peace. A catalogue of universal human rights was established as a standard to be followed by the international community. Over the last seven decades, the UN has created a set of additional international treaties and conventions defining universal human rights, which are regularly expressed and guaranteed by law in the form of treaties as well as by customary international law, generally accepted principles, and other sources of international law. International human rights treaties lay down obligations binding governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. The ratification of these international treaties and conventions is a crucial step for a country as it reflects the recognition of norms and morals of the international community, respecting and promoting the human rights of its citizens.

Burma joined the UN soon after regaining independence, thus becoming the 58th member state of the UN on April 19, 1948. Ever since acceding to the UN, Burma has committed to adhering to the values and goals of the UN, such as promoting international peace and security, and encouraging respect 'For human rights and fundamental freedoms of all without distinction as to race, sex, language, or religion'.¹⁶

Under previous government regimes, the human rights situation in Burma has been characterized by serious violations including arbitrary detention, forced displacement, land confiscation, sexual violence, and torture,¹⁷ as well as human rights abuses stemming from ethnic conflicts,

16. Charter of the United Nations, Article 1, available online <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

17. Resolution adopted by the United Nations General Assembly on 29 December 2014, 69/248, Situation of Human Rights in Myanmar, available online <http://www.altsean.org/Docs/UNGA%20Resolutions/Res%2069%20248.pdf>



environmental destruction, militarization, and more. Since the National League for Democracy (NLD) took power in March 2016, Burma's first civilian Government in decades, and the country's alleged democratic transition, progress to ensure individuals' rights has been minimal.

Burma's human rights performance has been steadily examined by the UN and its human rights mechanisms for more than two decades. The UN General Assembly (UNGA) and the UN Human Rights Council (UNHRC) have passed 38 resolutions regarding Burma and the situation of human rights in the country.¹⁸ Since 1992, the UNHRC has collected information via five UN special rapporteurs about human rights abuses in Burma. Burma's human rights performance was evaluated by a Universal Periodic Review (UPR) in Geneva twice, first in 2011 and more recently in 2015. On both occasions Burma accepted recommendations from other nations and committed to signing and ratifying core international human rights treaties, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) as well as the International Covenant on Civil and Political Rights (ICCPR).

Despite the transfer of power to Burma's civilian government, commitments to sign core international human rights treaties and guarantee basic human rights remain unfulfilled, as the situation of human rights in Burma still falls significantly short of international standards.

So far, despite the efforts made by the new Government regarding national peace and reconciliation, the human rights situation in Burma has seen little improvement, demonstrating significant progress that needs to be made before a culture of human rights is fostered in Burma. The Government needs to both reform outdated domestic laws¹⁹ and ratify international treaties and conventions for this process to occur.

18. Office of the High Commissioner for Human Rights, General Assembly and Human Rights Council Resolutions: Burma, available online <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/MMIndex.aspx>

19. Much of Burma's domestic legislation falls short of international standards. To name an example, the lack of the presumption of innocence in Burmese law often leads to pre-trial detention, which is not in accordance with international law. Many laws are also deliberately vague so they can be openly interpreted and used for arbitrary judgments.

Indeed, the signing and ratification of UN treaties and conventions represent an opportunity for the Government to distance itself from the past military backed regime, establishing itself as a country that respects human rights and complies with international standards. By ratifying international treaties, the new Government would be able to show its dedication to address human rights violations in Burma, and thereby increase its credibility in front of the international community. Ultimately, the ratification of international treaties would demonstrate Burma's commitment to implement international standards domestically as well as the willingness to be held accountable to international standards, an extremely promising step forward for human rights.²⁰

Ratification

The Vienna Convention on the Law of Treaties, defines a treaty as 'An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'.²¹

Treaties can be referred to by several different names: 'international conventions', 'international agreements', 'covenants', 'final acts', 'charters,' and 'pacts and accords'. Treaties are binding for all subjects who have ratified or acceded the treaty. Ratification is the international act whereby a state indicates its consent to be legally bound to a treaty, unless differently specified in the treaty itself. In the case of bilateral treaties (a treaty strictly between two states), ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties (strictly three or more states) the usual procedure is for the depositary²² to collect the ratifications of all states, keeping all parties informed of the situation.

20. Office of the High Commissioner for Human Rights, General Assembly and Human Rights From the moment ratification takes place, a state can be held accountable for violating the provisions with the convention. See 'Ratification' in the Dictionary Section above.

21. Vienna Convention on the law of treaties, Article 2, available online <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

22. A depositary is a government or organization to which a multilateral treaty is entrusted. The main functions of the depositary are stated in Article 77 of the Vienna Convention on the Law of Treaties.

By ratifying a treaty, Burma is bound under international law to comply with the provisions of the treaty. Moreover, as stated by the Vienna Convention on the Law of the Treaties, to which Burma is party to, Burma must comply with the provisions of the treaty in good faith and cannot use domestic law as a justification for failing to comply with treaty obligations.

Upon ratification, states are obliged to ensure their domestic legislation is consistent with the aims and provisions of the treaty. In addition to this, many international treaties and conventions also require governments to subject themselves to regular reporting and scrutiny by the UN and related human rights bodies. If a state party is found to have breached any of the provisions under a treaty or convention they have ratified, they are considered to have acted in violation of international law. Becoming signatory to an international treaty or convention represents a state's endorsement of the agreement, but does not give rise to any binding legal obligation. Signatory states are however obliged to ensure they refrain from acts that undermine or contradict the intent of the treaty. Ratification of international treaties and covenants, therefore, is the most concrete way that a state can demonstrate its intent and commitment to upholding human rights through international law.

Ratification is a two-step process. Firstly, states must seek the required approval for the treaty at the domestic level and enact necessary legislation to give domestic effect to that treaty. Second, a formal, sealed letter stating the decision to be legally bound by the treaty or convention must be deposited with the UN Secretary General in New York. This letter is the formal instrument of ratification. Accession has the same legal effect as ratification but occurs when a state accepts to become party to a treaty that has already been negotiated and signed by other states. Accession generally occurs when the treaty has already entered into force. A treaty 'enters into force' when the terms required for the treaty to come into effect, as specified in the agreement, are met.

Benefits of Ratification

For Burma, there would be nationwide benefits arising from the ratification of international human rights treaties. Ratification would improve respect for human rights, the rule of law, and the credibility of the Government. Ratifying international law also establishes systems of monitoring and review,²³ fostering greater transparency and governmental accountability, as well as important complaint mechanisms, allowing individuals to pursue human rights infringements.²⁴ In addition, securing greater protection for human rights also improves people's sense of security, thereby increasing opportunities for productivity and economic development in the country.²⁵ Since human rights and humanitarian challenges are often interconnected and mutually reinforcing, improving the situation of human rights would have a far reaching impact. Guaranteeing individuals' rights through the ratification of international human rights treaties would help remedy a range of important humanitarian challenges, such as hunger, access to education, access to health care, gender equality, poverty, child labor, as well as legal and justice reform.²⁶

Ratifying key international treaties will also garner support for Burma from the international community, opening important channels for strategic and diplomatic communication. Improved international cooperation enhances a state's capacity to tackle complex issues by sharing knowledge,

-
23. Acceding to international conventions also means the human rights situation will be monitored and documented by UN organs and sanctions could be imposed if violations against the treaties occur. Documentation accountability and transparency of government actions are ensured by this means.
 24. Complaint mechanisms allow for individual complaints. The process will differ from mechanism to mechanism but allow individuals to air grievances. Regular reports that have been submitted to the UN offer the possibility of self-reflection and trend monitoring in order to gain a better understanding of domestic human rights problems and find effective ways to tackle them. Current complaint mechanisms in Burma are not effective.
 25. United Nations Trust Fund for Human Security. Human Security Handbook: an integrated approach for the realization of the Sustainable Development Goals and the priority areas of the international community and the United Nations system. January 2016, available online http://www.un.org/humansecurity/sites/www.un.org.humansecurity/files/hs_handbook_03.pdf
 26. Alston, P and Robinson, M. (2005). Human Rights and Development: Toward Mutual Reinforcement

perspectives and best practices with other states. Ratifying human rights treaties may also alleviate remaining sanctions on Burma which prevent it from rejoining international economic and political spheres. Though many international economic and political sanctions on Burma have been lifted, certain elements of sanctions from the European Union (EU) (and certain aligned third countries)²⁷, states such as the United States of America,²⁸ Canada,²⁹ Switzerland,³⁰ and Australia³¹ still remain in place, which restrict access to goods and financial capabilities that could be used for repression, as they wait for further proof of the Government's ability to foster democracy and respect its people's rights. Regaining international support, earning credibility and the respect of fellow states as well as rejoining the international economy should be of high priority for the NLD in pursuit of greater freedoms, economic development, and democracy.

Treaties and conventions strengthen domestic provisions that govern the use of force in relation to internal armed conflict. Burma's armed forces have been embroiled in a civil war with numerous ethnic armed groups (EAGs) for decades. The conflict has been the source of widespread displacement of people, as well as the precursor to vast amounts of human rights violations and breaches of humanitarian law, including rape and other forms of sexual violence, forced labor, arbitrary arrest, torture and other forms of ill treatment, landmine use, and the recruitment of child soldiers.³² Ratifying

27. Acceding to international conventions also means the human rights situation will be monitored by the Council of the European Union. Declaration by the High Representative on behalf of the European Union on the alignment of certain third countries. 13 May 2016, available online http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/cfsp/137089.pdf

28. U.S. Treasury Department. Executive Order: Termination of Emergency With Respect to the Actions and Policies of the Government of Burma. 7 October 2016, available online https://www.treasury.gov/resource-center/sanctions/Programs/Documents/burma_eo_termination.pdf

29. Global Affairs Canada. Canadian Sanctions Related to Burma. 24 May 2012, available online <http://www.international.gc.ca/sanctions/countries-pays/burma-birmanie.aspx?lang=eng>

30. Le Conseil Fédéral Suisse. Myanmar: le Conseil fédéral concrétise ses décisions antérieures et lève partiellement les sanctions. 9 May 2012, available online <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-44492.html>

31. Australian Government Department of Foreign Affairs and Trade. Sanctions Regimes: Myanmar. July 2012, available online <http://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar.aspx>

32. Amnesty International. Amnesty International Annual Report 2016/2017: Myanmar, available online <https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/>



international human rights treaties would be a tool for the Government to address the human rights abuses that have arisen and continue to arise as a result of armed conflict in Burma, preventing them from occurring in the future, in order to secure a pathway with EAGs for the peace and national reconciliation processes.

Burma's Binding Obligations Under International Law

International Human Rights and other Treaty Law

The foundation of international human rights is rooted in the UN Declaration of Human Rights (UDHR), which universally recognizes the basic fundamental freedoms inherent to all human beings. Though not legally binding itself, the UDHR is the basis for numerous legally binding international human rights treaties, and compels UN member states to adhere to its principles. As a UN member state, Burma has pledged its faith in fundamental human rights and to achieve, in cooperation with the UN, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Burma derives treaty responsibilities through its membership to the Association of Southeast Asian Nations (ASEAN). Burma has been a member of ASEAN since 1997 when it signed the ASEAN Charter, which codifies the norms, rules, and values of its members. States that are party to the ASEAN Charter must adhere to the principles and provisions as stated in Article 2, which states that ASEAN and its Member States shall 'Adhere to the rule of law, respect fundamental freedoms, and promote and protect human rights'.³³ Burma must fulfil its obligations enshrined in the ASEAN Charter, which forms the basis for its membership to the organization, and guarantee the rights of its citizens. Signing and ratifying core international human rights treaties such as the UNCAT and ICCPR would be conducive to this obligation.

For the purposes of this paper, AAPP will highlight treaties below that are most relevant to AAPP and its activities. A complete list of the UN treaties is available on the UN website.³⁴

33. The ASEAN Charter, Article 2, available online <http://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

34. United Nations Treaty Collection, available online https://treaties.un.org/Pages/Content.aspx?path=DB/titles/page1_en.xml

There are three categories concerning treaties in which states may be categorized:

- 1) Treaties ratified
- 2) Treaties signed but not ratified
- 3) Treaties not signed nor ratified

TABLE 2: Treaties ratified, signed but not ratified, and not signed nor ratified by Burma relevant to AAPP and AAPP activities

Treaty Name	Ratified and Date	Signed not ratified and date	Not signed, not ratified
Ottawa Treaty - Anti-Personnel Mine Ban Treaty (APMBT)	N/A	N/A	X
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – ratified with reservation to article 29 ³⁵	1997	N/A	N/A
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)	N/A	N/A	X
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)	N/A	N/A	X
Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)	1956	N/A	N/A
Convention on the Rights of the Child (CRC)	1991	N/A	N/A

35. Burma has a reservation against Article 29 of CEDAW that exempts it from arbitration of disputes between State parties

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC)	2012	N/A	N/A
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC)	N/A	2015	N/A
Optional Protocol to the Convention on the Rights of the Child on a communications procedure (CRC-OP3)	N/A	N/A	X
Convention on the Rights of Persons with Disabilities (CRPD)	2011	N/A	N/A
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP)	N/A	N/A	X
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	N/A	N/A	X
International Covenant on Economic, Social and Cultural Rights (ICESCR)	2017	N/A	N/A
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP)	N/A	N/A	X
International Covenant on Civil and Political Rights (ICCPR)	N/A	N/A	X
Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-1 OP)	N/A	N/A	X
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (ICCPR-2 OP)	N/A	N/A	X
International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)	N/A	N/A	X

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (UNCAT)	N/A	N/A	X
Optional Protocol of the Convention against Torture (UNCAT-OP)	N/A	N/A	X

*X = Not signed, N/A = Not applicable

International Law

Though Burma is party to relatively few international treaties, it nevertheless retains certain obligations under customary international law (CIL), including the laws on state responsibility, as well as international humanitarian law and international criminal law.

Customary International Law

Customary International Law (CIL) is binding law that arises from international customs and "General principles of law recognized by civilized nations".³⁶ CIL obligates all states to respect certain peremptory norms, or jus cogens, that include, for example, the unexceptional prohibition of slavery, torture, apartheid, and genocide. As Article 53 of the Vienna Convention on the Law of Treaties states, peremptory norms are 'Rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of states and their peoples and the most basic human values'.³⁷

36. See Statute of the International Court of Justice, art. 38(1), June 26, 1945, 156 U.N.T.S. 77.

37. See United Nations, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, art. 53, March 12, 1986.

CIL also encompasses the laws of state responsibility. These refer to laws which regulate state-to-state conduct, codified in 2001 by the UN International Law Commission in the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. Should peremptory norms be breached, a violating state is obliged under the laws of state responsibility to take action and rectify the problem.³⁸

It is therefore important to understand that although Burma may not be party to such treaties as the UNCAT, it is still bound by provisions of the conventions which have risen to the status of CIL, the UNCAT as one example.

International Humanitarian Law

International Humanitarian Law (IHL) refers to a body of laws, curated by the International Committee of the Red Cross (ICRC), that pertain to warfare and armed conflict. These binding principles, on both states and non-state armed groups, are highly relevant in light of Burma's long-standing civil war and the unavoidable humanitarian and human rights consequences resulting from armed conflict. As outlined by the International Court of Justice (ICJ), the principal judicial organ of the UN, the fundamental rules of IHL are "To be observed by all states whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law".³⁹ Therefore, both the Burmese Government and EAGs, involved in Burma's long standing civil war, bound by customary IHL, must recognize the peremptory character of international humanitarian law.

38. Report of the International Law Commission, 53rd sess, April 23-June 1, July 2- Aug. 10. 2001, Art. 41, commentary para. 3, U.N. Doc. A/56/10; GAOR, 56th Sess. Supp. No. 10 (2001).

39. International Court of Justice. Legality of the Threat or Use of Nuclear Weapons, op. cit. (note 6), p. 257, para. 79, available online <http://www.icj-cij.org/files/case-relat-ed/95/095-19960708-ADV-01-00-EN.pdf>

It is well documented that the Burma Military is responsible for violating these peremptory laws, as a result of “Deliberate and indiscriminate attacks on civilians, executions of civilians and captured combatants, sexual violence against women and girls, torture, the use of child soldiers, attacks on a population’s livelihood and food supplies, forced displacement of populations, and use of anti-personnel landmines”.⁴⁰ The Government therefore should sign and ratify the UNCAT and ICCPR to prevent offenses, as outlined in IHL, from occurring in the future.

International Criminal Law

International Criminal Law (ICL), is a body of law that prohibits certain actions by individuals and establishes a system to hold perpetrators criminally accountable. ICL prohibits acts such as genocide, crimes against humanity, and war crimes, codified in Articles 6, 7, and 8 of the Rome Statute Treaty, respectively. The International Criminal Court (ICC), an intergovernmental organization born out of the Rome Statute Treaty, is tasked with investigating and prosecuting individuals alleged to be responsible of war crimes, crimes against humanity, and genocide. Investigations and prosecutions are also conducted when States are unwilling or unable to prevent such crimes. Previous regimes in Burma committed and perpetrated war crimes, crimes against humanity, and human rights violations, living with impunity, and the current civilian government has so far failed to meet its obligations to investigate the crimes of the previous Governments and bring war criminals to justice, or address various humanitarian and human rights issues still endemic in Burma. Though Burma is not party to the ICC treaty, and in principle the ICC can only undertake a criminal investigation or prosecution if the suspected perpetrators are citizens of a state that is party to the ICC, it is possible for the ICC to obtain jurisdiction if it is referred a situation by the UN Security Council. The

40. Human Rights Watch. Burma: Q & A on an International Commission of Inquiry. 24 March 2011, available online <https://www.hrw.org/news/2011/03/24/burma-q-international-commission-inquiry>



Government of Burma must be aware of this body of supranational laws and take domestic measures, such as signing and ratifying core international human rights treaties, to prevent the occurrence of crimes relevant and punishable under international criminal law.

Given Burma's precedence of signing other international human rights treaties and the vast body of international law that prohibits human rights violations, Burma should sign and ratify both the UNCAT and ICCPR to ensure that violations to international law do not occur in the future.

The Role of Human Rights Bodies in Burma's Transition

The UN Office of the High Commissioner for Human Rights (OHCHR) is mandated to promote and protect human rights for all, leading global human rights efforts to objectively highlight and denounce human rights violations internationally. Based in Geneva and New York under the leadership of the High Commissioner for Human Rights, the OHCHR assists governments by providing expertise and training on administration of justice, legislative reform, human rights treaty ratification, and human rights education, to implement human right standards on the ground. The OHCHR also serves as the secretariat of the UN human rights monitoring mechanisms, which include the UNHRC, the UPR, special procedures, and treaty bodies. In different ways, these mechanisms monitor human rights globally and assist stakeholders, such as rights-holders, victims of human rights violations, states, and other actors, including the private sector, in achieving social justice impacts.

1) UNHRC

The UNHRC is an intergovernmental body, consisting of 47 seats held by member states of the UNGA, that is responsible for promoting and protecting human rights around the world. To date, it has adopted 16 resolutions on the situation of human rights in Burma. These resolutions have consistently expressed concern about human rights violations and abuses, urging the Government to take action on the issue.⁴¹ Five UNHRC resolutions have called on the Government to consider signing and ratifying international human rights treaties, including the resolution born out of Session 22 in

41. Human rights violations and abuses include: arbitrary arrest and detention, forced displacement, rape and other forms of sexual violence, torture and cruel, inhuman and degrading treatment or punishment, arbitrary deprivation of property, including land, and violations of international humanitarian law.



2013, which explicitly encouraged the government to accede to both the UNCAT and the ICCPR.⁴²

Special Procedures of the UNHRC

The UNHRC has given mandates to several UN special rapporteurs, as a special procedure mechanism, to investigate the situation of human rights in Burma. UN special rapporteurs have reported numerous grave violations of international law in Burma. Former UN special rapporteurs, Paulo Pinheiro, Yozo Yokota, and Tomás Ojea Quintana have all called for a Commission of Inquiry (CoI) into the breaches of human rights in Burma, clear indications of a dire human rights situation that still persists today.

In July 2017, UN special rapporteur Yanghee Lee issued a statement at the end of a 12-day visit accusing the Government of “Policies reminiscent of the previous military government, and of presiding over a worsening security and human rights situation”.⁴³ This recent statement among others illustrates the unacceptable lack of progress made in the way of guaranteeing human rights to all individuals in Burma.

UPR

The UPR is a UNHRC mechanism that periodically examines the human rights performance of all UN member states. During Burma’s first UPR in 2011 at the UNHRC under the Thein Sein Government, Burma “Made commitments to continue efforts toward promoting, protecting, and improving human rights, including ratifying all core human rights treaties and taking steps to

42. United Nations Human Rights Council. Resolution adopted by the Human Rights Council 22/14. Situation of human rights in Myanmar. 10 April 2013, available online <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/128/81/PDF/G1312881.pdf?OpenElement>

43. Office of the High Commissioner for Human Rights. Myanmar: UN expert lists catalogue of concerns as human rights slide in worsening conflict. 24 July 2017, available online <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21901&LangID=E>

guarantee fundamental human rights to freedom of expression, assembly, and association”,⁴⁴ accepting calls from States to specifically sign and ratify the UNCAT and the ICCPR. Burma reaffirmed its commitments to sign core international human rights treaties once more at the recommendation of numerous states during its second UPR in November of 2015. 41 of the 281 recommendations Burma received from other states during its second UPR were related to the ratification of international treaties such as, but not limited to, the UNCAT, ICCPR, and the ICERD. Among other recommendations regarding human rights issues that were adopted, Burma committed itself to signing and ratifying both the UNCAT and the ICCPR.⁴⁵ This was seen as an important step indicating the willingness of the government to work on the human rights situation. Despite these commitments, there are few signs that the Government is any closer to signing and ratifying core international human rights treaties, particularly the UNCAT and ICCPR.

2) Treaty-Based Bodies

Treaty bodies are essentially committees of independent experts that monitor the implementation of the nine-core international human rights treaties in accordance with the provisions of their respective treaty. These human rights treaty bodies, of which there are 10, are designed to foster the successful implementation of their corresponding treaty. The Human Rights Committee (CCPR) and Committee Against Torture (CAT) are two such bodies of independent experts that monitor the implementation of the ICCPR and the UNCAT respectively.⁴⁶

44. FIDH/ALTSEAN-Burma joint submission to the Human Rights Council’s 23rd Session of the Working Group on the Universal Periodic Review - Myanmar. 9 November 2016, available online https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf

45. United Nations Human Rights Council. Report on the 23rd Session of the Working Group on the Universal Periodic Review - Myanmar. 23 December 2015, available online https://www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/a_hrc_31_13_e.pdf

46. A tenth human rights treaty body that exists, the Subcommittee on Prevention of Torture (SPT), was established under the Optional Protocol to the Convention against Torture (UNCAT-OP).

States that are parties to the ICCPR are obliged to submit regular reports to the CCPR, composed of 18 independent experts, on how civil and political rights are being implemented, initially reporting to the Committee one year after acceding to the Covenant and then typically every four years thereafter. The CCPR may consider allegations of inter-state violations of rights set out in the ICCPR, if states are party to the International Convention on Civil and Political Rights-Optional Protocol One (ICCPR-OP1), and may also examine complaints brought forward by individuals who claim their rights, as outlined in the treaty, have been violated.⁴⁷

States that are party to the UNCAT are obliged to submit regular reports to the CAT, composed of ten independent experts that monitor the implementation of the Convention by its state parties, initially one year after acceding to the Convention and then every four years thereafter. The CAT performs a range of other functions as well. The Committee may consider complaints from individuals who claim that their rights under the Convention have been violated, perform inquiries, and consider inter-state complaints. The Subcommittee on Prevention of Torture (SPT), born out of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT-OP), establishes a torture prevention mechanism at the domestic level, visits locations where individuals' rights are being violated contrary to the UNCAT, and conducts inspections of places of detention.⁴⁸

Should Burma sign and ratify the UNCAT and the ICCPR, the implementation of the treaties would be assisted by monitoring from these bodies, ensuring that individuals' core human rights are fulfilled.

47. Office of the High Commissioner for Human Rights, Human Rights Committee <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx>

48. Office of the High Commissioner for Human Rights, Committee Against Torture <http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIntro.aspx>

Obstacles to Reforms in Burma

To ratify international treaties, the Government must make significant changes to domestic laws, aligning them to the provisions defined in the treaties. When ratifying the UNCAT and ICCPR, Burma would have to repeal or amend passages of its law that are not up to the standards of the UNCAT and ensure that laws prohibiting torture are more rigorous. Since 2016, when the NLD took office, some repressive laws have been repealed and amended. For example, repressive legislation such as the 1950 Emergency Provisions Act and the 1975 State Protection Act were both abolished in 2016.,^{49,50} This positive step demonstrates that it is possible to change pieces of legislation in Burma. Though some legislative changes have occurred, a broad framework of repressive laws, that remains at odds with international human rights treaties, still exists.^{9*} of the 14 laws that former UN Special Rapporteur on the situation of human rights in Burma Tomás Ojea Quintana identified in 2014 as not in line with international human rights standards still exist.⁵¹ Further scrutiny of these laws identified by the UN must take place at the legislative level and they must be immediately amended or repealed.

One major obstacle that lies in the way of Burma's ability to comply with its international obligations, including the UN Charter, is the 2008 Constitution, which severely diminishes the capacity of the civilian government to

49. Wai Moe, "Myanmar Repeals 1950 Law Long Used to Silence Dissidents", The New York Times, 5 October 2016, available online <https://www.nytimes.com/2016/10/06/world/asia/myanmar-burma-emergency-provisions-act.html>

50. Htoo Thant, "Hluttaws Revoke Oppressive Portection Law", The Myanmar Times, 26 May 2016, available online <http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/20512-hluttaws-revoke-oppressive-state-protection-law.html>

51. Office of the High Commissioner for Human Rights. Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, United Nations Human Rights Council Twenty Fifth Session. 1 April 2014, available online <http://www.ohchr.org/Documents/Countries/MM/A.HRC.25.64.pdf>

* The following laws are still in effect: Motion Picture Law (1996), Computer Science Development Law (1996), Unlawful Associations Act (1908), Electronic Transactions Law (2004), Penal Code Sections 143, 145, 152, 505, 505(b), Code of Criminal Procedure Section 295-A, Wireless Telegraphy Act (1933), Official Secrets Act (1923), Television and Video Law (1985).

Note: Section 66(d) of the Telecommunications Law was not widely used at the time Quintana's report was published, however the report states that the Government should "Remove provisions in defamation laws which provide for prison sentences".



establish democratic reforms and sign international human rights treaties. When Burma became a member of the UN in 1948, it was a sovereign state under its 1947 Constitution, as is required of states to accede to the organization. However, the Union of the Republic of Myanmar, as established under the 2008 Constitution, cannot be considered a sovereign state by international law due to the fact that sovereign states must have supreme power to make laws that are applicable to all institutions and citizens of the state, including the military.⁵² According to Black's Law Dictionary of legal terms, a sovereign state's civilian government requires "Supreme political authority" as well as "paramount control of the constitution and frame of government and its administration" and "the power[...]to make laws, to execute and to apply them" [to all institutions and citizens of the state].⁵³ The 2008 Constitution must be amended to place supreme authority in the hands of the civilian government. This is a crucial step in the democratization process that must be accomplished to ensure compliance with international law and treaties.

In recent years, the international community, despite lifting political and economic sanctions in acknowledging the initial steps taken toward democracy, has remained concerned about ongoing abuses of human rights in Burma. The international community continues to make recommendations to the Government in efforts to further encourage the democratization, reconciliation, and peace processes. The Government has a duty to listen to these calls and make good on their commitments to follow through on recommendations it has accepted in international forums to sign and ratify core international human rights treaties.

The Burma Military, which oversees key Government ministries (the Ministry of Home Affairs, the Ministry of Border Affairs, and the Ministry of Defence), operates with autonomy from the civilian Government and without oversight

52. Global Justice Center, *The 2008 Constitution Breaches Myanmar/Burma's Binding Obligations under International Law Including the United Nation's Charter*. November 2012, available online <http://globaljusticecenter.net/documents/2008ConstitutionBreaches.pdf>

53 Black, H. C., & Nolan, J. R. (1990). *Black's law dictionary: Definitions of the terms and phrases of American and English jurisprudence, ancient and modern*. St. Paul: West Publishing.

from any branch of government, as outlined in the Constitution.⁵⁴ The Military, which controls key branches of Government, also has 25% of seats reserved for Military representatives in both the Upper House and Lower Houses of Parliament, discernibly operating with supremacy over the civilian Government.

If the civilian Government can obtain more power within Government and reduce the governmental role of the Military, which has been the main source of oppression in the country for decades, Burma would be able to chart a course towards fulfilling promises of a democracy including the legislative reforms required to ratify international human rights treaties. In order to do this, the Constitution would require amendment. However, in order to amend the constitution, a majority of more than 75% of seats in Parliament is required to support amendment of the Constitution.⁵⁵

The primary onus for change is therefore on the Military to relinquish power in Government and accept civilian oversight, as is standard and essential in a modern-day democracy. Recent statements were made by senior Government officials at the Forum on Myanmar's Democratic Transition in Naypyitaw regarding the perceived importance of keeping the Military independent of civilian oversight and its critical role in Government. On August 11, Colonel Aung Myint Oo of the National Defense College stated that it is impossible to remove the Military from politics because of the need for the Government to be strong and because of the need for it to solve security problems in its territory.⁵⁶

However well-intentioned his comments might have been, they expose a clear discord between the Military's will and the will of the people, a misconception of what necessary elements a democracy entails and what the

54. Human Rights Watch, World Report 2017: Burma - Events of 2016, available online <https://www.hrw.org/world-report/2017/country-chapters/burma>

55. 2008 Constitution of Myanmar, Chapter XII, Article 436, available online http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

56. Htet Naing Zaw, "Impossible to Remove Tatmadaw from Politics: Army Colone", The Irrawaddy. 14 August 2017, available online <https://www.irrawaddy.com/news/burma/impossible-remove-tatmadaw-politics-army-colonel.html>



core purpose of a military is - to defend society, not to define it, as it has for more than five decades. It must be clearly understood that the concept of a representative democracy is based on the principle of civilian political control of armed forces. Though, historically, the power struggle between armed forces and governments is one of the oldest problems of human governance, civilian control in democracy has become the model of success and standard the world over. As Professor Emeritus of History from the University of North Carolina, Richard H. Kohn states, "Civilian control allows a nation to base its values, institutions, and practices on the popular will rather than on the choices of military leaders, whose outlook by definition focuses on the need for internal order and external security".⁵⁷

Further democratic reforms and the separation of the Military from Government do not entail the dismantling of the Military nor do they ignore its valued importance. Rather, the vision is one of a true democracy where the people govern themselves and are protected by an entity that, though closely cooperates with the Government, is held accountable by the civilian politicians who are representative of the will of the people.

Resolving this essential issue, which prevents further democratic reforms as well as the signing and ratifying of international human rights treaties, will permit Burma to fulfil its commitments under the standards of international law and empower the Government to make amendments to domestic laws, ensuring they adhere to international treaty standards. If the Military wishes to be perceived as a legitimate entity and part of the solution to democratic change, rather than a hindrance, it must modify the scope of its operations and accept civilian oversight.

57. Kohn, H. R. (1997). How Democracies Control the Military. *Journal of Democracy* 8.4. p. 140-153

Legislative Priorities

For many years, AAPP has documented widespread restrictions of civil and political rights in Burma, the criminalization of people's freedom of expression as well as a range of other human rights abuses. One of the most widespread and concerning abuses of rights, that continues to occur in the country systematically, is the use of torture as a method of interrogation and punishment. Another, is the persistent persecution of individuals due to their political motivations, in the absence of the rule of law, resulting in the criminalization of basic human rights. For these reasons, AAPP stresses the need for the immediate ratification of the UNCAT, the ICCPR, and their Optional Protocols as a top priority.

The UNCAT

The UNCAT and the UNCAT-OP, forbid the use of torture under international law. The CAT strictly monitors the adherence of states to the UNCAT. All states that have ratified the treaty must submit a report to the UN monitoring body every four years, stating what actions they have taken to implement the UNCAT. Furthermore, an inspection system for places of detention is established to ensure that places of detention conform to the requirements of the UNCAT and refrain from using torture against detainees.

Torture has long been a common means to punish and degrade detainees as well as to extract information and confessions in Burma. This applies especially to political prisoners, against whom torture is most commonly used both during interrogations and during detention. Between 1962 and 2013, 72% of political prisoners in Burma reported physical torture and 75% reported psychological torture.⁵⁸ Types of psychological torture techniques used in Burma include: prolonged solitary confinement, exposure

58. The Assistance Association for Political Prisoners. (2016). After release I had to restart my life from the beginning - The Experiences of Ex-Political Prisoners in Burma and Challenges to Reintegration, available online <http://aappb.org/wp-content/uploads/2016/05/Report-eng.pdf>

to venomous animals and mock executions.⁵⁹ Types of physical torture techniques used in Burma include: beatings with rods and chains, hooding and blindfolding, sleep deprivation, forced stress positions, electric shocks, tick-tock torture, water torture, and diet restrictions.⁶⁰

Torture is not only confined to prisoners, as it is also used on members of the general population as well. By way of example, in 2014, freelance journalist Aung Kyaw Naing A.K.A 'Par Gyi' disappeared following the completion of a photo documentation project in Kyaikmayaw Township, Mon State, reporting on the ongoing violent clashes between the government forces and the Democratic Karen Buddhist Army (DKBA). Eventually it was discovered that he had been arrested on September 30, 2014, by Light Infantry Battalion #204 and had died in custody on October 4. The official Government position on the matter was that he had been shot after attempting to take a gun from a guard and escape. His body was eventually buried by the military in a shallow grave, which was exhumed a few weeks later in order for a post-mortem examination to take place, upon which the medical examiner officially reported that Par Gyi's body exhibited signs of torture.⁶¹

By ratifying the UNCAT and the UNCAT-OP, Burma would not only be bound to forbid torture, but also to take legislative and practical action to completely and unconditionally end the use of torture now and in the future. Ratifying the UNCAT would bind Burma to the implementation of the UN monitoring system and the UNCAT-OP, which further calls for the establishment of domestic monitoring mechanisms. In 2011, the Government established the Myanmar National Human Rights Commission (MNHRC),⁶² allegedly designed to effectively deal with complaints in line with

59. Ibid p. 33-36

60. The Assistance Association for Political Prisoners. (2016). Prison Conditions in Burma and the Potential for Prison Reform, p. 32-33, available online http://www.burmalibrary.org/docs23/AAPPB-2016-09-Prison_Conditions+Reform-en-red.pdf

61. Committee to Protect Journalists. (2014). Aung Kyaw Naing "Par Gyi": Freelance|Killed in Kyaikmayaw, Myanmar|October 2014, available online <https://cpj.org/killed/2014/aung-kyaw-naing-par-gyi.php>

62. Republic of the Union of Myanmar, Myanmar National Human Rights Commission, available online <http://www.mnhrc.org.mm/en/>

the Paris Principles, which calls for the establishing of a National Human Rights Institution “Vested with competence to promote and protect human rights”.⁶³ Since the MNHRC was established, it has been largely ineffective as it is influenced by the Military and is therefore an unreliable and opaque body that is unable to impartially and transparently monitor the human rights situation in the country. To revisit the case above, the MNHRC report⁶⁴ on the death of Par Gyi in October 2014 was inconsistent with the evidence found, what included signs of torture on his body. The case ended swiftly when a private military tribunal acquitted the soldiers responsible for his death. The MNHRC failed to adequately investigate the circumstances around Par Gyi’s death, allowing for the continued impunity of the Military. The performance of the Commission has fallen well short of its intended function as a domestic monitoring system and must be restructured, according to the Paris Principles, so that the progress it was intended to create genuinely occurs.

It should be understood that it is not necessary for states to have been fully compliant with the UNCAT or the UNCAT-OP before signing or ratifying the treaty. The CAT expects that a process is undertaken towards satisfying the obligations of the Convention during the initial steps of becoming a signatory.⁶⁵ Burma continues to ignore obligations of the Convention, seeing how torture still continues to be used by state and non-state actors, but this should not deter the Government from signing the treaty and committing itself to meeting UNCAT standards.

63. Office of the High Commissioner for Human Rights. Principles Relating to the Status of National Institutions (The Paris Principles) - Adopted by General Assembly Resolution 48/134 on 20 December 1993, Article 1, available online <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

64. Republic of the Union of Myanmar - The Myanmar National Human Rights Commission. (2014). The Inquiry Report of the Myanmar Human Rights Commission into the Death of Ko Aung Naing (a) Ko Aung Naing Kyaw (a) Par Gyi, available online <http://www.mnhrc.org.mm/en/2014/12/the-inquiry-report-of-the-myanmar-national-human-rights-commission-into-the-death-of-ko-aung-naing-a-ko-aung-kyaw-naing-a-ko-par-gyi/>

65. Committee Against Torture Initiative, Annex 1: When to ratify UNCAT and OPCAT?, available online <http://cti2024.org/content/docs/Annex%201%20-%20When%20to%20ratify%20UNCAT%20and%20OPCAT.pdf>

The Government should also be aware that states can receive technical and financial assistance to aid them with their country's participation in the Convention. With the help available, states may overcome a variety of challenges, such as the burden of reporting to UN mechanisms like the Committee against Torture, with assistance from other states, the OHCHR, United Nations Development Program (UNDP) and the civil society.⁶⁶ Signing the UNCAT-OP provides for further steps toward torture prevention and allows states the opportunity to apply to the UNCAT-OP Special Fund which supports the implementation of projects based on the recommendations of the Subcommittee on the Prevention of Torture.

Though some strides have been made toward the signing of the UNCAT, progress has halted. In 2013, NLD parliamentarian, Aung Moe Nyo, put forward a Bill for Burma to sign the Convention. Though the Bill did not win much recognition, when Aung Moe Nyo raised the issue once more in 2014, Deputy Minister of Foreign Affairs, Thant Kyaw, stated that Parliament would aim to sign the UNCAT in September 2014.⁶⁷ In May 2015 a further step was taken when the Convention Against Torture Initiative (CTI) hosted a delegation from Burma in Geneva consisting of senior officials from the Ministry of Home Affairs, Ministry of Foreign Affairs, and the Attorney-General's Office to learn more about the Convention and its implications for the country. Delegates received training on UNCAT, discussed issues of concern and were offered guidance by representatives from other countries who had recently ratified the Convention.⁶⁸ Despite the Government's pledge to sign the treaty and the preparatory steps it has undertaken, years have gone by without any further advancement.

66. Committee Against Torture Initiative. UNCAT Ratification Tool, Second edition. 31 August 2016, available online http://cti2024.org/content/docs/20170214_CTI%20Ratification%20tool%20-%20executive%20action%20and%20annexes%20compilation%20FINAL.pdf

67. AAPP General Assembly Submission, October 2014, available online <http://aappb.org/wp-content/uploads/2014/10/UN-General-Assembly-AAPP-Submission-October-2014.pdf>

68. Committee Against Torture Initiative. CTI Host Myanmar Delegation Visit to Geneva. 8 May 2015, available online <http://www.cti2024.org/en/news/cti-host-myanmar-delegation-visit-to-geneva/>

At the time of writing, neither the UNCAT, nor the UNCAT-OP has been signed or ratified. In June 2017, AAPP published a Burmese language translation of the UNCAT in an effort to improve accessibility to the treaty and to facilitate Government and civilian understanding of it.⁶⁹ Not only would signing the UNCAT be an important first step in eradicating torture in Burma, it would also be a symbolic pledge of solidarity with the numerous survivors of torture who continue to seek acknowledgement. The new Government must see the signing and ratifying of this treaty, among others, as an opportunity to signal a clear break with the conduct of past governments and its desire to become a truly democratic state. In failing to support the signing of the UNCAT, lawmakers are failing to support the thousands of victims of torture and their family members who have suffered grave injustices at the hands of authorities working in a state-sponsored capacity.

The ICCPR

The ICCPR, ICCPR-OP1, and ICCPR-OP2,⁷⁰ guarantee every human being fundamental human rights, such as the right to life, freedom of speech, freedom of assembly, and freedom of religion. It is designed to protect individuals' freedoms from violations by governments, social organizations, and private individuals. Each state bound by the ICCPR, must submit a report to the CCPR every four years, stating what actions it has undertaken to comply with obligations outlined in the ICCPR and what the current state of human rights is like in their country.

When ratifying the ICCPR, Burma would have to repeal or amend passages of domestic law that can, and have been interpreted in such a way as to oppress its citizens and violate human rights. Supervision by the UNHRC

69. See Assistance Association for Political Prisoners, Burmese Translation - United Nation Convention against Torture, available online <http://aappb.org/wp-content/uploads/2017/06/UNCAT-Myanmar-edit-Gray-Final.pdf>

70. The ICCPR-OP2 is focused specifically on the abolition of the death penalty. The death penalty is still used as a legal sentence in Burma. Even though no executions were carried out in 2015, at least 17 people received death sentences. Amnesty International. Amnesty International Global Report 2015 - Death Sentences and Executions, available online <https://deathpenaltyinfo.org/documents/AIReport2015.PDF>

would put pressure on the Government to implement these policy changes and thereby take a step towards the end of human rights violations. Burma's ratification of the ICCPR would be highly beneficial for all those wishing to freely exercise their human rights without facing limitations on their personal freedoms.

Political and civil rights are still often denied to citizens of Burma and several pieces of legislation in Burma continue to enable the persecution and criminalization of the exercise of these basic rights. Examples of repressive domestic legislation in violation of the ICCPR can be seen below.

The 2013 Telecommunications Law

The Telecommunications Law is a controversial piece of legislation that includes Section 66(d), a vaguely worded provision that the Government continues to use to imprison people for expressing their beliefs and opinions under the guise of 'defamation'.⁷¹ Since being enacted, the Government has reportedly brought 65 cases against individuals.⁷² A grave source of concern for AAPP is that Section 66(d) has noticeably been used to persecute individuals more frequently under the current government, than under the previous government.⁷³

Section 66(d) does not adequately define what 'defamation' refers to, leaving the vagueness in the wording of the law open to interpretation, resulting in liberal application of the law. Not only are individuals vulnerable to persecution from the Government, which is seemingly falling into the same repressive patterns of previous regimes, but all individuals are vulnerable to criminal prosecution under the law by plaintiffs who deem posts to be offensive, untrue or objectionable due to the vague wording of the law.

71. Telecommunications Law, (2013), available online http://www.mcit.gov.mm/sites/default/files/Telecom%20Law%20English%20Version_0.pdf

72. Editorial Board, "Hope Dims in Myanmar, With Press at Risk", The New York Times. 10 August 2017, available online <https://www.nytimes.com/2017/08/10/opinion/hope-dims-in-myanmar-with-press-at-risk.html>

73. Assistance Association for Political Prisoners, June Chronology 2017, available online <http://aappb.org/wp-content/uploads/2017/07/JUNE-MiR-FINAL.pdf>

Moreover, in the recent past, it was possible for charges to be filed by third parties acting without the explicit permission of the alleged defamed individual. Before the Bill to amend the Telecommunications Law was passed, approximately 70% of the cases filed under Section 66(d) were brought about by a third party that was not the target of the defamatory post, in cases where AAPP is aware of the identity of the plaintiff.⁷⁴ The law was amended on August 25 and now cases may only be filed by third parties with the explicit permission of the 'defamed' individual, however, these revisions do not work retroactively.

Despite Parliament passing a bill to amend the law in August, making it possible for defendants to be granted bail by lowering the prescribed sentence to a maximum of two years, the decision of whether to grant bail to the defendant will still be left to the discretion of a judge. From the cases AAPP has been tracking since October 2015, there is clearly no standard criteria for detention or granting of bail to persons charged under Section 66(d), as many people continue to remain in detention regardless of submitting valid grounds for being released.

Section 66(d) is also a redundant law in that it is not the only piece of legislation accounting for defamation in Burmese legislation – it can also be seen in Section 500 of the Penal Code. Though both laws now stipulate punishment as being a maximum sentence of two years in prison, the penalties delivered under both Section 66(d) of the Telecommunications Law and Section 500 of the Penal Code are disproportionate to the 'crimes' being committed. The use of severe penalties prescribed by Section 66(d) and Section 500 not only showcase the continued restrictions on politically active individuals, but also illustrate a desperate need for domestic legislative reform. In June, AAPP along with 60 other international and domestic human rights organizations released a joint statement⁷⁵ calling for Section 66(d)

74. AAPP internal document available upon request

75. Human Rights Watch. Joint Statement by 61 Human Rights Organizations, Burma: Repeal Section 66(d) of the 2013 Telecommunications Law. 29 June 2017, available online <https://www.hrw.org/news/2017/06/29/burma-repeal-section-66d-2013-telecommunications-law>

of the Telecommunications law to be repealed. The statement emphasized that defamation should never be considered a criminal offense because imprisoning an individual for such an act does not warrant the deprivation of one's liberty, threatening the right to freedom of expression.

Section 66(d) is not proportionate to the 'crime' committed and criminalizes fundamental human rights to freedom of expression and opinion. AAPP recognizes that cases of legitimate defamation do arise from time to time, however, Section 66(d) urgently needs to be amended to end the criminalization of non-legitimate cases, in compliance with Article 15 of the ICCPR.⁷⁶ Charges which do amount to defamation should follow civil proceedings to reduce the high amounts of resources spent on pre-trial detention and lengthy trials pursuing these matters in the criminal justice system.

The 1908 Unlawful Associations Act

Section 17/1 of the Unlawful Associations Act is a broadly worded piece of legislation that has been used by the Burmese Government to arbitrarily detain individuals from ethnic minorities and conflict areas for decades. Journalists attempting to report on the country's ongoing civil war involving EAGs have also been persecuted through the use of the law. By way of example, in June 2017, Journalists Aye Naing, Pyae Phone Aung, and Lawi Weng along with the civilians Mai Tun Aye, Mai San Nyunt, and Mai Aung Kham were detained in Namhsan Township, Shan State while returning from a drug destroying ceremony they had reported on that was conducted by the Ta'ang National Liberation Army (TNLA), an organization the Government considers 'illegal', in commemoration of the United Nations Day Against Drug Abuse and Illicit Trafficking.⁷⁷ Charges against the three journalists

76. United Nations. International Covenant on Civil and Political Rights. 16 December 1966, Article 15, available online <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

77. Assistance Association for Political Prisoners. June Chronology 2017, available online <http://aappb.org/wp-content/uploads/2017/07/JUNE-MiR-FINAL.pdf>

and three civilians were eventually withdrawn by the Military on September 15, after they had spent 67 days in detention, but despite this, their arrest and incarceration were arbitrary, and should not be now ignored due to the dropping of the charges. When this is coupled with the fact that numerous other people who are currently serving sentences for similar convictions it is evidence enough for the immediate and unconditional amendment or repeal of the Act.

The case of the six individuals being arbitrarily detained in Shan State in relation to charges under Section 17/1 of the Unlawful Associations Act also highlights the lack of transparency and systematic abuse of rights that plagues the country's security forces and judicial system. The three journalists and three civilians were held incommunicado by military forces at an undisclosed location for more than 48 hours, were not given access to legal counsel, and were not remanded before a magistrate within 24 hours. Two of the defendants' three initial court hearings were unexpectedly rescheduled, which prevented them from having legal counsel present on the second occasion. The elements of their arbitrary arrest and detention violate Article 14 of the ICCPR, which states that "All persons shall be equal before the courts and tribunals" and that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".⁷⁸ Thus, the ratification of ICCPR is vital to guarantee a range of civil and political rights that human beings are entitled to.

Section 17/1 of the Unlawful Associations Act, which has been used to criminalize individuals' rights to freedom of movement, association, and expression, as outlined in Articles 12, 22, and 19 of the ICCPR, is a primary example of a law that would need to be amended or repealed to comply with the ICCPR.

78. United Nations. International Covenant on Civil and Political Rights. 16 December 1966, Article 14, available online <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

The 2011 Peaceful Assembly and Peaceful Procession Law

Sections 18, 19, and 20 of the 2011 Peaceful Assembly and Peaceful Procession Law (PAPPL) have been used to stifle freedom of expression and freedom of assembly in recent years. Contrary to facilitating individuals' exercise of peaceful protest, it has continued to foster an environment where peaceful assembly and peaceful protest is not respected, a continuation of conduct from previous Government regimes that has led to numerous arbitrary arrests and detentions. During 2014 and 2015, AAPP recorded 193 individuals being charged under Section 18, and 20 individuals being charged under Section 19. Sections 18, 19, and 20 of the PAPPL, which conflict with Article 21 of the ICCPR that guarantees freedom of assembly as a civil and political right, would necessarily require repealment or significant amendment to ensure compliance with the international treaty.

To reiterate, ratifying the ICCPR, which would require repealing or amending domestic legislation, would prevent the stifling and persecution of civil and political rights that occurs in the country. The legislative change would widely satisfy the demands of citizens as well as domestic and international Civil Society Organisations (CSOs), as it would prevent the persecution of individuals in pursuit of their innate rights and freedoms as human beings.

Some positive steps have been taken toward signing and ratifying the ICCPR. In June 2013, the MNHRC recommended that the Government sign and ratify the ICCPR and the ICESCR,⁷⁹ a motion that was welcomed by the international community that remains adamant about the safeguarding of individuals' rights in Burma. In 2015, the Centre for Civil and Political Rights (CCPR-Centre) launched a two-year project in Burma to assist national efforts toward the ratification of ICCPR.⁸⁰ The Ministry of Foreign Affairs,

79. Article 19, Myanmar: National Human Rights Commission Recommends Ratifying Key Human Rights Treaties. 21 June 2013, available online <https://www.article19.org/resources.php/resource/37119/en/myanmar:-national-human-rights-commission-recommends-ratifying-key-human-rights-treaties>

80. Center for Civil and Political Rights, Myanmar: Steps Towards ICCPR Ratification, available online <http://ccprcentre.org/ccprpages/myanmar-steps-towards-iccpr-ratification>

the Attorney General's Office, the MNHRC, and the OHCHR Regional Office participated in discussions alongside national and international civil society groups, including AAPP, in an effort to foster awareness and exchange perspectives about the process of, and reasons for ICCPR ratification.

Despite these positive steps, and the ratification of the ICESCR on October 6, 2017, no more meaningful progress has been achieved toward signing and ratifying the ICCPR, leaving all individuals in the country still vulnerable to abuses of their civil and political rights.



AAPP's Continued Efforts

For nearly 17 years, AAPP has researched and documented human rights violations in Burma. Monitoring the use of torture with regard to political prisoners has been a primary area of focus. Over the years, AAPP has published numerous reports on the use of torture against political prisoners in Burma such as *The Darkness We See* (2005); *Torture, Political Prisoners And The UN-Rule of Law: Challenges to Peace, Security and Human Rights in Burma* (2011); and *Prison Conditions in Burma and The Potential for Prison Reform* (2016). AAPP has also created other publications that document widespread abuses of civil and political rights, such as arbitrary arrests and detentions, included in works such as but not limited to *How to Defend the Defenders?* (2015); and *Prison Conditions in Burma and The Potential for Prison Reform* (2016).

In addition to research efforts, AAPP has also been dedicated to advocacy efforts. AAPP has persistently urged the Government to sign the UNCAT and the ICCPR. In 2014, AAPP submitted a report to the 65th UN General Assembly reminding the Government of the commitment Deputy Minister of Foreign Affairs, Thant Kyaw, made months previously in Parliament to sign the UNCAT. The report also highlighted several cases of torture that had occurred throughout 2014. AAPP submitted a report to Burma's second UPR in 2015 with updated information and accounts indicative of systematic torture and other rights abuses that had recently occurred, urging the Government to honor their commitment to sign UNCAT.⁸¹ In 2016, AAPP penned a letter to State Counselor Daw Aung San Suu Kyi urging her to sign the UNCAT to support the achievement of goals set out by the civilian led Government when it took power.⁸² On June 26 of this year, AAPP co-organized a public event held in Rangoon entitled *Ending Torture, Addressing*

81. Assistance Association for Political Prisoners, Submission to the United Nations Universal Periodic Review Of Burma/Myanmar, November 2015, available online <http://aappb.org/wp-content/uploads/2017/04/Final-AAPP-submission-2015.pdf>

82. Assistance Association for Political Prisoners, Request letter to State Counsellor, H.E. Daw Aung San Suu Kyi, 2016, available online <http://aappb.org/2016/09/4729/>

the Needs of Survivors is Key to Building Peace and Democracy to mark the UN International Day in Support of Victims of Torture. At the conference, AAPP released a joint statement with other CSOs calling on the Government to sign and ratify the UNCAT and ICCPR.⁸³ Additionally, AAPP launched a torture awareness initiative on various social media platforms to raise awareness about the phenomenon of torture in Burma.

As one of the participants of the events organized by the CCPR-Centre in 2016, as part of its two-year project in Burma to assist national efforts toward the ratification of ICCPR, AAPP stressed to other stakeholders in attendance that the fulfillment of many people's rights depended on the ratification of the ICCPR. A Burmese language translation of the ICCPR is accessible online⁸⁴ and AAPP encourages relevant governing bodies and lawmakers to recognize its important role in fostering an environment where individuals' rights are respected. It is the Government's duty to continue efforts to fulfill their commitment as soon as possible in signing the ICCPR. Fortunately, international partners and CSOs, like AAPP, are willing to assist in this process and should be consulted.

-
83. Assistance Association for Political Prisoners, Statement for International Day in Support of Victims of Torture, 26 June 2017, available online <http://aappb.org/wp-content/uploads/2017/06/Torture-Survivors-Day-2017-statement-FINAL-English.pdf>
84. Equality Myanmar, Burmese Translation of International Covenant on Civil and Political Rights (ICCPR), available online <http://equalitymyanmar.org/book/wp-content/uploads/2015/03/Combined-Articles.pdf>



Moving Forward

Looking forward, AAPP will continue its efforts to increase public awareness at the local level about the importance of preventing torture and other abuses of human rights from being committed while advocating for the signing and ratification of UNCAT as well as the ICCPR at the national level. This will be accomplished by continuing to hold informative public lectures about human rights in schools and villages nationwide as well as by providing human rights, human rights documentation, and transitional justice training workshops to former political prisoners, ethnic youths, activists, human rights defenders, and political party members. By way of example, AAPP hosted lectures to raise awareness among youth about human rights in 73 state high schools in Bago Division from August 1 to September 30 and has provided 25 training workshops so far, this year. In the coming year, AAPP plans to provide 24 human rights, human rights documentation, and transitional justice training workshops as well as other human rights awareness lectures in schools. Moreover, AAPP will continue to strive to lobby MPs in parliament to represent these important interests that are vital to all individuals in the country at the legislative level. There will be the continued collaboration with the MNHRC, fostering cooperation between the Government and civil society to better defend individuals' rights and freedoms and investigate human rights abuses. AAPP will also continue to seek out opportunities for collaboration with other CSOs through joint action programs in order to bring an end to torture and to guarantee individuals their civil and political rights, which may be accomplished when the Government signs and ratifies the UNCAT and ICCPR.

Like the UNCAT, other treaties will be translated into Burmese in order to assist the local population in understanding the content and the importance of international law for the democratization and the peace process in Burma. Providing international human rights education, specific to local contexts is important because many people, especially in remote areas, are not informed of the rights they are entitled to as human beings and under international law, and the benefits they will gain from their government's



implementation of international treaties. This is a particularly difficult task in light of the diversity of ethnicities and languages spoken in Burma but necessary to create an inclusive society. It is important to note that there is still much work to be done to foster wider awareness, understanding and the realization of human rights in Burma.

Conclusions / Recommendations

Human rights violations continue to be a regrettable but real part of everyday life in Burma, affecting the lives of thousands of individuals. Torture continues to be a common form of punishment as well as interrogation tool in Burmese prisons, and arbitrary arrests remain common occurrences. With the Government's continued failure to ratify international treaties, there is little means to prevent Burma from continuing on its path of committing mass human rights violations. Burma's citizens continue to be vulnerable to violations of their rights as long as the Government refuses to accede to these treaties.

Signing and ratifying the UNCAT and ICCPR are top priorities because of the broad range of positive effects that will be produced, which include restoring international and domestic credibility of the Government, proceeding with reparations that will assist those who have suffered rights abuses in the past, aiding in the resolution of the country's long standing civil war and national reconciliation, all to ensure that rights abuses do not occur in the future.

So far, there is no meaningful evidence to suggest that Burma will sign core international human rights treaties in the near future, despite repeated calls from the international community based on persistent concerns for lack of human rights in the country. Hopes that the civilian Government, sworn into power in 2016, would make the ratification of relevant international treaties part of their policy and show serious commitment to their alleged interest in human rights, making good on promises to sign as well as ratify the UNCAT and ICCPR, which have not yet been fulfilled. The Government has the necessary knowledge, support, and resources available to implement these core international human rights treaties and is due to fulfill their commitment to the international community and its own people, who deserve a Government which will finally respect and actively protect their human rights.

In light of the above, AAPP recommends, that the Government of Burma take the following actions:

- 1) Immediately sign and ratify the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) as well as the Optional Protocol of the Convention against Torture (UNCAT-OP) to provide greater protection for all individuals and end the use of torture in the country.
- 2) Immediately and unconditionally cease the practice of state-sanctioned torture and cruel, inhuman, or degrading treatment or punishment.
- 3) Immediately sign and ratify the United Nations International Covenant on Civil and Political Rights (ICCPR) as well as the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1) and Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2), guaranteeing citizens their rights enshrined in international and domestic law to foster a culture of respect for human rights on a path toward a meaningful peace, reconciliation, and democracy.
- 4) Immediately and unconditionally work towards the education of the armed forces and security sector regarding torture and civil and political rights and the elimination of its practice.
- 5) Sign and ratify all remaining core international human rights treaties, including, but not limited to, The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

