



Assistance Association for Political Prisoners (Burma)

နိုင်ငံရေးအကျဉ်းသားများကူညီစောင့်ရှောက်ရေးအသင်း (မြန်မာနိုင်ငံ)

P.O Box 93, Mae Sot, Tak Province 63110, Thailand

e.mail: info@aappb.org website: www.aappb.org

The recognition of political prisoners: essential to democratic and national reconciliation process

Date: November 9, 2011

Reconciling divide on political prisoner numbers

The exact number of political prisoners in Burma has been hotly disputed over the past few months. It comes as no surprise that members of the U Thein Sein regime, such as the Presidential Advisor and Foreign Minister, dispute the numbers of political prisoners, saying estimates of political prisoners are inflated and erroneous. The burden of proof rests on the U Thein Sein regime, not the opposition, and calls for the regime to publicly disclose its prisoner lists along with evidence proving the status of each political detainee. AAPP will do the same once the verification process is complete.

Members of the domestic and international community have also begun to question the number of political prisoners. In order to resolve this dispute, there must be a consensus on what constitutes a political prisoner. The definition used by AAPP, outlined below, is clear and appropriate to the situation of the democracy and national reconciliation movement in Burma. AAPP respectfully asks all organizations working for the freedom of political prisoners to release their definition of political prisoners so as to move closer towards a consensus on political prisoner numbers

Although AAPP is committed to providing the most reliable and up to date information on political prisoner numbers, the emphasis should be on eradicating the repressive policy that violates fundamental civil, political, and human rights rather than the numbers.

What is a political prisoner?

AAPP defines a political prisoner as anyone who is arrested because of his or her perceived or real involvement in or supporting role in opposition movements with peaceful or resistance means. AAPP maintains that the motivation behind the arrest of every individual in AAPP's database is political, regardless of the laws they have been sentenced under.

Due to the reality of the democracy and reconciliation movement in Burma, AAPP does not use the limiting term prisoners of conscience, which refers strictly to individuals who were arrested for peaceful activities. This term significantly diminishes the scale of political prisoners as many have been wrongfully accused of violent crimes such as murder, bomb plots, or terrorist acts. In addition, political prisoners are sentenced under non-violent criminal laws under the penal code and would not be considered political prisoners. Those imprisoned because of their role in the armed struggle for liberation should be viewed with the backdrop of violent crimes committed by the state, particularly against ethnic minorities.

Denial of political status is denial of dignity

P.O Box 93, Mae Sot, Tak Province 63110, Thailand, e.mail: info@aappb.org, web: www.aappb.org

The U Thein Sein regime employs a variety of terms to refer to political prisoners in their ongoing effort to deny their existence. In Burma's prison system there are three categories of prisoners: special; ordinary; and criminal. The separation of these categories is murky at best, and political prisoners generally fall under both the special and ordinary categories. In a positive report on reforms underway in Burma, the International Crisis Group refers to political prisoners as "security detainees," and explains that security detainees include political detainees as well as those arrested for violent offenses¹.

Even though the regime does not recognize political prisoners, it has created new categories in order to suspend their basic prisoner rights. It is clear that political prisoners are held in particular contempt and treated unfairly compared to the rest of the prisoner population. This is evident in the additional obstacles political prisoners are made to go through in requesting external medical care; the heavy surveillance during family visits for political prisoners; the cruel, inhumane, and degrading treatment they are subjected to during interrogation; and the denial of political prisoners' right to remission days.

The refusal of the U Thein Sein regime to accord these prisoners with political status is a constant source of frustration for the political prisoner community. A clear example of this is when Burma Vice President U Tin Aung Myint Oo claimed to visiting US Senator John McCain that there are no political prisoners in Burma. This sparked outrage among political prisoners, especially for Noble Aye, a female political prisoner serving 11 years in the remote Monywa prison. Four days later she wrote an open letter to President Thein Sein demanding state authorities to publicly acknowledge the existence of political prisoners. In the letter, she explains how she is a genuine political prisoner arrested solely for her activities working towards a democracy in saying, *"The refusal of the members of new government, a government that is attempting to be open, transparent, fair and truly democratic in Burma, is in reality diverted from justice, a basic element in a genuine democracy. This constant refusal of the existence of political prisoners is dishonest and also ignores the real situation in Burma."*

For this, Noble Aye was placed in solitary confinement and had her family visits banned indefinitely for "violating prison regulation." Granting other political prisoners like Noble Aye with political prisoner status would at a minimum restore and affirm their human and civil dignity.

Hunger strikes to demand recognition of political status

Since the swearing in on the nominally civilian regime in March, there have been at least 3 hunger strikes led by political prisoners in Burma's prisons. All of the hunger strikes were prompted by general prisoner releases that resulted in a small number of political prisoners released as criminal offenders, not as political prisoners. The striking political prisoners demanded recognition of their status as political prisoners as well as a restoration of their basic prisoner rights. The underlying aim of the hunger strikes is accurately summed up in U Gambira's statement to the Minister of Home Affairs regarding his decision to undertake a hunger strike in Kale prison, *"According to a democratic form of Government we, the political prisoners, must have rights. We must have the right to have*

¹[Myanmar: Major Reform Underway, International Crisis Group, 22 September 2011, p. 10](#)

health care, to be able to get enough food, to communicate with our families freely, to read officially published books, to listen to radio, and to be treated according to the prison laws.”

All of the three hunger strikes were quickly stifled by both prison and state authorities and led to a period of heightened repression and security within the prison. In the most recent hunger strike in Insein prison, still ongoing, 8 of the 15 striking were placed in military dog cell – a notorious punishment cell. Similarly, the previous hunger strike in Insein prison, which began on the 23 May, 11 of the strikers were placed in the military dog cell.

What these hunger strikes have in common is their desire to officially be recognized as political prisoners and have their basic rights fully accorded to them. The level of punishment meted against them for their peaceful protesting is a clear violation of their rights and in some cases amounts to cruel and inhumane treatment, and even torture. It is minimum international standard that prisoners have the right to complain about conditions in the prison. Political prisoners, however, are severely punished for any complaints made and there is no opportunity for them to seek redress.

Political acts needs to be updated to meet current situation

The judicial system in Burma is inherently flawed and criminalizes every aspect of life, while de-politicizing the democratic and reconciliation aspirations of the Burmese people. In policy and practice, activities against the regime are never deemed as political and acts that would constitute a political offence have never been defined to meet the current situation. The one exception is in 1980, when Burma, then under socialist rule, issued an amnesty for political cases. The amnesty outlined specific laws that when violated would constitute a political offense, such as the Emergency Provisions Act and the Unlawful Associations Act. However, this manner of defining a political offense is limiting because laws enacted after the 1980 order that similarly violate basic civil and political rights, such as the Electronic Transactions Law or the Printers and Publishers Act fail to be included and are consequently not deemed political offenses. In addition, many political prisoners are held under non-political acts such as charges under the penal code. Before the 12 October release, 98 political prisoners were imprisoned under the Printers and Publishers Act and 45 were imprisoned under the Electronic Transactions Law.

Analyzing certain factors of the act committed on an individual basis rather than attaching a political offense to a particular law would lead to a more accurate picture of political cases. For example, whether the motivation behind the offense was political, humanitarian, or criminal; the context in which the offense was committed, especially if it was part of a political uprising; and the motivation behind the arrest.

Agreement as to what constitutes a political offense and acknowledging those who are political prisoners are crucial precursors to ensuring the dignity of political prisoners during subsequent prisoner releases.

The U Thein Sein regime has exploited this lack of consensus on defining a political prisoner in an attempt to distort the magnitude of the political prisoner situation and deflect attention from the continued harassment and imprisonment of activists. The majority of the political prisoners in Burma are not recognized as such because the only definition of a political case comes from a general amnesty order issued by the State Council in 1980 while Burma was under socialist rule. However, this is in no way a

substitute for a definition on political prisoners, as the order merely outlines a number of laws from before 1980 that may be deemed political. One way to bridge the deep divide between the varying definitions of a political case is by creating a joint committee that involves independent human rights groups to define a political offense in the Burma context.

Ongoing human rights abuses after prisoner release

Although AAPP warmly receives the release of any political prisoner, they mean little in face of draconian laws that heavily circumscribe basic civil and political rights. Indeed, political prisoners face ongoing human rights abuses upon their release. These include:

1. Harassment and arbitrary arrest
2. Denial of education and employment opportunities
3. Discrimination against former political prisoners and their families
4. Social exclusion

It is nearly impossible for former political prisoners to resume their normal lives outside of the prison walls. Students are barred from enrolling in school and finishing their studies; lawyers and doctors have their licenses revoked; artists are banned from performing; and former political prisoners are not allowed to hold political office due to their criminal records. For example, Zarganar, famed satirist and charity worker, and Zayar Thaw, musician and human rights activist, have not been allowed to perform since their releases in May and October 2011, respectively.

Most recently, a group of 22 lawyers, 7 doctors, and 7 students who have had their licenses revoked and been dismissed from school due to their status as former political prisoners sent a petition to U Thein Sein and the Myanmar National Human Rights Council in an attempt to have their licenses reinstated and their right to education restored. One of those is U Aung Thein, a prominent NLD lawyer who has represented high profile individuals such as U Gambira, and was sentenced to 4 years imprisonment for contempt of court. According to U Aung Thein, the plight of a former political prisoner *“is like punishing a person twice. We were imprisoned and when we were released lawyers and doctors cannot do their work and students have been dismissed from school. In this era, that should not happen².”*

The release of any political prisoner must protect the dignity of those released. This means political prisoners must be released unconditionally with recognition of their political status and a wiping of their criminal records. The 401 form is a serious breach of basic civil and political rights and its employment should be immediately terminated. Each prisoner release should be publicly announced in advance with a list of those who are going to be released. These steps would restore the dignity of political prisoners and bridge the deep divide between the democracy movement and the U Thein Sein regime.

²[Professionals urge authorities to reinstate their licenses, Mizzima, 7 November 2011](#)

Political prisoners can be instrumental in achieving national reconciliation and democracy, but only if they are recognized as political prisoners. Their release is only a partial victory and means little if they are barred from taking part in the national reconciliation and democratic process and founding of civil society.

Political prisoners: their role in national reconciliation

Political prisoners have all made significant contributions for the sake of their beliefs in creating a just Burma. Without their unconditional release, there can be no progress towards national reconciliation and democratic transition in Burma. Each political prisoner should be given the opportunity to resume their previous work, whether humanitarian or political, and participate in the democratic transition. After their release from prison, political prisoners must have their criminal records erased, in order for them to claim their rights to stand as political candidates, join political parties, and form political parties or civil society groups if they choose to do so, without restrictions.

Political prisoners have an important role to play in shaping the political landscape of Burma. Key groups of political prisoners have already made significant contributions to democracy, national reconciliation, and civil society, and will continue to do so once they are unconditionally released and their criminal records are erased so they face no barriers in resuming their important work.

An independent and vibrant civil society is important to hold the government accountable in any democracy. It is important that civil society is independent from the ruling regime so as to gain the trust of the people and for accountability. The establishment of the Myanmar National Human Rights Commission is incongruous to civil society as it is staffed by members of the previous military regime and sponsored by the U Thein Sein regime.

Political prisoners are critical to every level of civil society in Burma, to shape it and prepare it for democracy. This includes teaching others about their rights, and how to claim it. Again, they must have their criminal records erased, so that they are free to establish civil society organizations without fear of harassment.

Summary of recommendations for U Thein Sein regime to:

1. Officially acknowledge existence of all political prisoners;
2. Set up a joint committee to determine criteria for political prisoners;
3. Publicly announce prisoner releases in advance, with a list of those to be released;
4. Release political prisoners with recognition of their political status, not anonymously;
5. Political prisoners' release must be unconditional;
6. Completely erase criminal records of political prisoners.

Assistance Association for Political Prisoners (Burma)

For more information:

Tate Naing (Secretary): +66 (0) 81 287 8751

Aung Khaing Min +66 (0) 88 420 4710