



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

**Burma: Free and fair elections do not
mean civil and political rights exist,
evidenced by continued detention of
political prisoners**

By

Assistance Association of Political Prisoners – Burma

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Executive Summary

For the first time in decades, Burma will be holding Parliamentary by-elections that allows major opposition parties to contest the available seats. The move has been hailed by many in the international community as evidence of democratic progress and the elections are now being used as a benchmark for lifting sanctions if deemed “free and fair” by international monitors.

However, whether the elections are conducted in a free and fair manner is not a genuine reflection of the level of civil and political liberties accorded to the people of Burma. There are hundreds of political prisoners still behind bars, and those who have been released face deprivation of fundamental freedoms and extensive monitoring by security forces.

What matters most is not what happens on the day of the elections, but how the campaigns are conducted in the months preceding. There have been countless reports of ballot fraud, intimidation, and harassment of opposition groups that show the elections will be anything but free and fair.

We call on the international community to not be fooled by the charade and maintain pressure on the U Thein Sein regime until all political prisoners are released and concrete measures are taken to ensure political and civil liberties are enjoyed by all in Burma.

The upcoming by-elections in Burma are a tactical concession that, *at its best*, will result in the transformation of civil society leaders and democracy activists to Members of Parliament for the first time in decades. With this role comes great responsibility. These newest Members of Parliament will be expected to act as watchdogs for democracy and human rights, ensuring Parliamentary proceedings act within the rule of law and not at the whim of the military regime as it has been doing.

That democracy icon Daw Aung San Suu Kyi, along with other human rights and democracy activists, are being allowed to contest the 48 available seats is a symbolic gesture that has deep resonance with the people of Burma. Allowing oppositional voices in the nation's political system is an essential first step in creating a climate where there can be a genuine political dialogue to resolve the human rights situation in the country.

However, there is a great danger in putting too much emphasis on the April elections. Whether the elections are free and fair will be of little consequence to the hundreds of political prisoners currently behind bars in Burma. AAPP is verifying the number of political prisoners and can confirm that at least 493 political prisoners are behind bars and is in the process of confirming data for others¹.

Consider for a moment that Parliament has refused multiple times to repeal draconian laws that authorize the imprisonment of thousands of ordinary Burmese. Special Rapporteur Quintana has even highlighted 11 laws that do not comply with international standards and go against universal freedoms of assembly, expression, and beliefs². These laws are still widely practiced and implemented to this day. More, the military-dominated National Security and Defense Council (NSDC) can veto any actions taken by Parliament that it feels poses a threat to national security and stability, a right granted in the infamously repressive Constitution.

The U Thein Sein regime may not have a lot to lose in the Parliamentary by-elections, but the struggle for human rights and democracy certainly do.

The immediate release of all remaining political prisoners without conditions is a vital step towards national reconciliation and would bolster Burma's efforts to transition to a stable and vibrant democracy. Not one political prisoner must be left behind at expense of political expediency. As stated by US Secretary of State Hillary Clinton, one political prisoner is one too many³.

It is essential that an independent and regular body is authorized with a mandate of verifying the remaining number of political prisoners in order to secure their release and documenting the conditions of detention. Similar calls have been made by Special Rapporteur Quintana, who stated in a 5 February press statement that a "comprehensive and thorough investigation is needed to clarify records and determine accurate numbers⁴." Human Rights Watch and Amnesty International have also demanded an investigation into the remaining number of political prisoners.

The deaths of 2 former political prisoners soon after their release from prison underscore the urgency with which Burma must open its prison doors and allow for prison

¹ Given the lack of prison transparency, the number of political prisoners is believed to be much higher. For updated information on where AAPP is in the verification process, please visit www.aappb.org.

² "Burma's Parliament: A Tool for Institutionalized Oppression," ALTSEAN, 28 November 2011

³ "US Urges Release of All Political Prisoners in Burma," Irrawaddy, 4 January 2012

⁴ Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana, 5 February 2012

transparency and accountability. Thet Nwe, NLD member, died just 9 days after his release on 13 January, from injuries sustained from extreme torture that left him weak and shattered. His sister asked the government to “stop tormenting people under false and unfair charges like they did my younger brother⁵.” Zaw Lin Htun, an 88 Generation activist, died approximately 1 month after his release on 12 October from a litany of serious cancers exacerbated by a denial of medical care in prison.

AAPP has documented that at least 152 political prisoners have passed away as a direct result of torture and conditions of detention that amount to torture, including malnutrition, forced labor, and unsanitary medical conditions such as HIV infected needles. The importance of an independent monitor has been made by former UN Special Rapporteur on Torture, Manfred Nowak, in saying that it is the most effective and sustainable mechanism for preventing torture and transforming a prison complex into one based on human dignity and human integrity rather than fear and cruelty.

There is an urgent need for a monitor to act on behalf of the prisoners, not the interests of the regime. This need has only been accentuated by the Myanmar National Human Rights Commission (MNHRC), a military-backed human rights body that recently investigated allegations of mistreatment in Insein prison during the October hunger strike. The NHRC did not interview any participants of the hunger strike according to families of political prisoners in Insein prison, and were in fact barred from leaving their cells when the NHRC visited⁶.

AAPP and inside groups documented the human rights abuses brought against the peaceful protestors, which included denial of water, family visits, parcels that contained vital medication and nutrition, and transfers to heinous military dog cells for further punishment away from the public eye. By working in the shadows without consulting any civic society groups, the NHRC thus acted in violation of the Paris Principles, which sets out the minimum standards required by national human rights institutions to effectively fulfill its role.

Political prisoners are held in nefarious conditions of detention that further erode their prisoner rights and human dignity. Cases of unannounced prison transfers, prolonged solitary confinement, forced starvation, placements in remote prisons where there is no doctor, and denial of basic medical care continue unabated. These grievous human rights violations, practiced on a mass scale, continue in a manner that is arguably widespread and systematic.

Take the case of Phyo Wai Aung, an independent activist that has been held in Insein prison without formally receiving a sentence for over 2 years. On 20 February, Phyo Wai Aung and his 2 lawyers have been charged with contempt of court for contesting the legality of the prosecution’s witnesses submitting their statements in advance to the court. In addition, these statements were missing from the official case file. This ruling is just the latest in a long pattern of grievous human rights abuses and blatant miscarriages of justice, which includes severe torture to extract a confession, from the moment Phyo Wai Aung was arrested in April 2010.

⁵ Tortured activist dies days after jail release, DVB, 23 January 2012

⁶ Myanmar Human Rights Commission checks on Insein prison hunger strike, Radio Free Asia, 27 December 2011

The remaining political prisoners are a bleak reminder that civil and political liberties have yet to reach Burma. Their continued detention is only possible in an environment where sham trials replace transparent courts, and the law is used as a weapon against the people rather than serving to protect their rights. Myint Aye, co-founder of Human Rights Defenders and Promoter's Network, is serving a life sentence in the remote Loikaw prison. Khun Kawrio, a Kayan educator on democracy, is suffering from water in his lungs also in Loikaw prison. Than Zaw, one of Burma's longest serving political prisoners, has been in prison for over 23 years under accusations of playing a role in a bomb plot, even when the person responsible confessed and already has been released. These political prisoners all have an integral role to play in the transition to democracy and in setting a foundation for an independent civil society.

There is a real risk of the plight of these individuals being obscured by the media attention over the 13 January releases, the most substantial release of political prisoners in Burma to date. While the freeing of 302⁷ political prisoners is commendable, the amnesty must go much further to secure the release of all political prisoners without delay. Political prisoners must not be used as bargaining chips, their freedom secured only when it benefits the U Thein Sein regime. No human's life should be subject to barter.

While the international community praises the 4 prisoner releases authorized under U Thein Sein's tenure, these releases have had no broader political significance. Only 650 political prisoners were released, out of a total 35,610 prisoners⁸. All of the releases were of a highly limited nature, with 3 even failing to qualify as an amnesty. In the wake of the so-called amnesty on 17 May, Daw Aung San Suu Kyi made clear that "the word "amnesty" means an order by the government that allows prisoners to be free....it is just a commutation, not an amnesty⁹."

The apparent decrease in political prisoner numbers does not signify a more democratic environment. The current number of political prisoners is now at pre-Saffron levels, a number that at the time was abhorrent enough to impose economic sanctions on Burma and cause international outrage. While the situation appears to have improved, in reality it has remained the same as when under direct military rule 5 years ago.

There have been accounts of ongoing harassment and constant surveillance of former political prisoners as well as of other activists. There have been at least 3 re-arrests since January 2012, including prominent monk U Gambira, who has been arrested twice since his release, high-ranking Karen leader Mahn Nyein Maung, and charity worker Nay Myo Zin. There has also been a disturbing trend of village arrests for dissident monks, where former political prisoner monks have been banished from their monastery and condemned to the confines of a remote village. Also, monasteries deemed as "safe havens" for activist monks have been receiving pressure from officials, leaving the monks nowhere to go. Wanton destruction continues in ethnic areas, with innocent civilians being arrested en masse and tortured in secret detention centers.

⁷ AAPP has been able to document 302 political prisoners released so far.

⁸ This is more limited than when Than Shwe recognized the existence of political prisoners and released 427 at once upon assuming office in 1992.

⁹ Suu Kyi says presidential commutation not 'amnesty,' Mizzima, 20 May 2011

The case of Mahn Nyein Maung reveals the unchanging deceptive nature of the U Thein Sein regime. Mahn Nyein Maung now faces fresh legal action under the Unlawful Associations Act and high treason, the latter carrying the death penalty, even though he was told his freedom would be granted if he agreed to help cease fire negotiations with the Karen National Union. The cruel double-speak surrounding Mahn Nyein Maung's potential freedom, and the continued imprisonment of political prisoners, give no reason for the people of Burma to trust the U Thein Sein regime. On 13 March, Mahn Nyein Maung was sentenced to life imprisonment with 3 years. Without trust, there can be no genuine national reconciliation.

Universal freedoms, such as freedom of expression, are only selectively granted when it serves to legitimize the regime in the eyes of the international community. These freedoms are generally reserved for prominent activists who hold significant political clout, such as Aung San Suu Kyi, or do not pose a particular threat to the regime, such as Zarganar. For the rest, however, freedom of expression is something that remains an unattainable abstract.

Public protests have always been viewed with suspicion and contempt by the regime, especially when the protestors challenge the regime's economic interests. Peaceful demonstrators continue to be targeted by state authorities and subject to deprivations of their liberty simply for exercising their most basic rights. Sixteen protestors were arrested in February and are now facing trial for contesting the rising costs of beef in Bassein Township. There are only 5 beef tenders in Bassein and all are controlled by one person, who sets the price of beef at his will. The situation has deteriorated to the point that those who buy beef at a cheaper price from another vendor face arrest and imprisonment. The exploitation of ordinary Burmese at the hands of regime authorities must not continue.

There have been perceived openings in Burma before that have been followed by periods of increased repression. We must not fall into the trap of comparing the latest instances of small-scale reforms in Burma with previous periods of overt military rule. The regime continues to maximize benefits from the bare minimum of concessions. The most recent and overt example of this is the upcoming Parliamentary elections. Faced with the prospect of an easing of sanctions if the elections are deemed "free and fair," the U Thein Sein regime has been doing everything in its power to give the illusion of fairness by allowing oppositional parties to contest the available Parliamentary seats while, away from the radar of the international community, it continues to systematically marginalize and harass oppositional voices. In addition, there have been increased incidences of ballot fraud, with inaccurate voter lists mushrooming throughout Burma and names of deceased cropping up in the lists.

What matters is not the outcome on the day of the elections, but how the election is carried out in the preceding weeks, and whether the process infringes upon civil and political rights. That the National League for Democracy has been the subject of harassment during the state-wide campaign tour is cause for serious alarm and undermines the legitimacy of the by-elections. There have been enough cases of the NLD being arbitrarily denied permits to hold speeches, censorings of Aung San Suu Kyi's speeches by state media, individuals being barred from attending NLD rallies by being forced to work on a Sunday, and destruction of NLD posters to show that the election will in no way be free and fair.

The U Thein Sein regime continues to officially deny the existence of political prisoners. Most recently, at the ASEAN summit in Bali in October, U Thein Sein stated there

were no political prisoners in Burma's jails, only criminals who had violated the prevailing law. More, the Foreign Minister, Wunna Maung Lwin, contradicted visiting UK Foreign Secretary William Hague on 5 January in saying political prisoners were not acknowledged in Burma, and were all criminals.

It is too much and too soon to reward the U Thein Sein regime with a lifting of sanctions. If lifted, there will be a false tendency to believe the human rights issues have been solved, and Burma is closer to the final stages of democracy. Lifting sanctions will only legitimize and reward a regime for symbolic changes that do nothing to improve the welfare of the people of Burma. For example, the easing of media restrictions has been largely applauded, but less than 0.5% of the people of Burma even have access to the internet. In fact, the human rights situation has worsened over the course of the year, evidenced by the broken ceasefires, increased incidences of land confiscations, mass displacement, rape as a weapon of war, and forced labor.

International pressure has gone a long way in securing the release of political prisoners and forcing the U Thein Sein regime to concede to limited concessions. If sanctions are lifted, there will be no incentive for the regime to continue reforming and the international community will lose the only bait it has to urge further reforms. This is not the time to lift sanctions, but to maintain pressure until all political prisoners are released and there is concrete evidence that the human rights situation on the ground has improved. The people of Burma need the international community to stand in solidarity with the internal opposition and democracy movement now more than ever.

In support of the rights and dignity political prisoners, we call for:

1. The unconditional release of political prisoners without delay, with recognition of their political status.
2. The authorization of an independent body to verify the number of remaining political prisoners in Burma.

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For more information:

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

Bo Kyi (Joint-Secretary): +1 (415) 812 0409