



# Assistance Association for Political Prisoners (Burma)

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## **The Role of political prisoners in the national reconciliation process**

### **I. EXECUTIVE SUMMARY AND RECOMMENDATIONS**

For decades, the people of Burma have been striving for peace, democracy and the full realization of their human rights. Recognizing this goal, political parties like the National League for Democracy (NLD) and ethnic nationality groups have attempted to engage in a process of national reconciliation, but the ruling military regime (known as the State Peace and Development Council, SPDC) has resisted this at every turn. At its heart, ‘national reconciliation’ is resolution of the conflicts brought about by the struggle for democracy, human rights, equality, and self-determination that have been ongoing since independence. Burma’s 2,100 plus political prisoners represent that struggle, yet the SPDC continues to deny their existence.

This report sets out the vitally important role of Burma’s political prisoners in a process of national reconciliation, leading to democratic transition. A genuine, inclusive process of national reconciliation is urgently needed to resolve the current conflicts and make progress towards peace and democracy.

A crucial first step in a national reconciliation process is official recognition of ALL Burma’s 2,100 plus political prisoners, accompanied by their unconditional release. This is an essential part of trust-building between the military rulers, democratic forces, and wider society. In order for progress towards genuine national reconciliation and democratic transition to be sustainable, ordinary people across Burma must believe in the process. As long as activists remain in prison or continue to be arrested for voicing their political dissent, the people of Burma will have no trust in any political process proposed by the SPDC.

In practice, a national reconciliation process must involve an inclusive tripartite dialogue between the ruling military regime, the National League for Democracy and representatives of all ethnic nationality groups to discuss the unification of Burma into a peaceful federation that fully respects the rights of all ethnic nationality groups.

High-level dialogue between the ruling military generals and imprisoned political leaders like Daw Aung San Suu Kyi, Shan Nationalities League for Democracy leader U Khun Htun Oo and other ethnic nationality representatives is very important. Imprisoned national figures like 1988 student leader Min Ko Naing, comedian Zarganar and monk leader U Gambira, who are widely admired across Burma, can help unite ordinary people behind the process of dialogue if given the opportunity to do so.

Political prisoners have been jailed under draconian laws for their belief in democracy, human rights, equality and self-determination, and are committed to those principles. At a local level, released political prisoners can also add value to the dialogue process once it begins. Many of them are community leaders and respected figures (monks, labour activists, lawyers, teachers, doctors, journalists), held in high regard in their local areas all across Burma. They can lend much-needed encouragement and support to the dialogue process taking place at the national level.

The junta's 'Roadmap to Democracy' is designed to legitimize military rule behind a smokescreen of 'democratic reform'. It does not include the release of political prisoners or a dialogue for national reconciliation, crucial steps in a transition to democracy. Steps in the junta's Roadmap, such as the reconvening of the National Convention and the constitutional referendum, have been accompanied by the arrests of political activists.

The National Convention and constitution-drafting process have marginalized democratically-elected representatives, ethnic nationality groups, pro-democracy activists and ordinary citizens, despite efforts to participate in good faith and to shape a constitution founded on principles of democracy, human rights, equality and self-determination.

The resulting 2008 Constitution is a barrier to national reconciliation and democratic transition because it entrenches military rule, marginalizes ethnic nationalities, and undermines human rights. It also excludes current political prisoners from participation in elections on grounds of their imprisonment.

The SPDC's planned 2010 elections will be based on the 2008 Constitution. Without tripartite dialogue for national reconciliation - with the official recognition and unconditional release of all political prisoners as a crucial first step - elections will not be a solution for Burma. As part of tripartite dialogue, a comprehensive review of the 2008 Constitution to address issues of the exclusion of political leaders from positions of power, self-determination, human rights, impunity, and the independence of the judiciary is vitally important. In addition, elections can not be considered 'free' or 'fair' if they are held without erasing the criminal records of political prisoners to guarantee their right to participation, after their release from prison. In practice this means that, if they choose to do so, they are able to stand as political candidates, vote in independently-monitored free and fair elections, join political parties, and form political parties or civil society groups, without any restrictions or qualifications from authorities.

There have been six separate amnesties for prisoners since November 2004, mainly to appease the international community at perceived critical junctures. According to the SPDC's own figures, 45,732 prisoners were released under those amnesties, but AAPP statistics show that only 1.3% of them were political prisoners.

*I could not accept releasing me under section 401 of the Criminal Procedure Code after putting me in prison longer than I should have stayed.... I was released in overdue time after serving my full prison term. But they wanted to release me under their scheme [Section 401]. I argued with them on this point the whole of yesterday... I told them I want to be released as a political prisoner.*

U Win Tin, founding member of the NLD, released under an amnesty in September 2008.

The SPDC uses Section 401 of the Criminal Procedure Code as the legal mechanism for those amnesties. Clause 1 of Section 401 grants the President of the Union power to suspend a sentence, while Clause 3 gives power to cancel that suspension and order re-arrest of a person at any time without a warrant, requiring that he or she must serve the remainder of the original sentence. These powers lie with the executive and not the judiciary.

Presently, once a former political prisoner, is released they face ongoing human rights abuses. They are constantly under watch by Military Affairs

*MI came to my house, and watched me. They followed me when I left the house. If I went anywhere, they needed to inform someone, every time. I felt disappointed, but not afraid. I was worried it would be a problem for other people, mainly my friends. Even today there is still surveillance on my house.*

Former political prisoner Thida Thway, released in 2002.

Security, commonly known as Military Intelligence (MI) and their network of spies and informers. They regularly face arbitrary arrest, and they and their families are harassed and threatened. They are denied education and employment opportunities. The pervasive climate of fear after decades of military rule means that friends and neighbours are sometimes afraid to associate with ex-political prisoners, in case they themselves are arrested. The authorities do their utmost to prevent former political prisoners from pursuing political activism. Many do continue their activism, but run the risk of re-arrest and imprisonment under the terms of Section 401.

A general amnesty for all political prisoners motivated by genuine political will on the part of the SPDC is needed. This can pave the way for inclusive tripartite dialogue for national reconciliation. As long as there are political prisoners, there can be no national reconciliation or democratic transition in Burma.

### **Recommendations to the International Community**

The international community must take a united stand to publicly press the ruling military regime to immediately take these steps:

1. Officially recognize all political prisoners and unconditionally release them under a genuine amnesty;
2. Begin an inclusive tripartite dialogue for national reconciliation with Daw Aung San Suu Kyi, U Khun Htun Oo and representatives of other ethnic nationality groups;
3. Undergo a comprehensive review of the 2008 Constitution as part of tripartite dialogue for national reconciliation, to address the following issues in particular:
  - a) The exclusion of political leaders from positions of power
  - b) Self-determination and equality for ethnic nationality groups
  - c) Independence of the judiciary
  - d) Protection of human rights
  - e) Impunity
4. Erase criminal records of all political prisoners to enable them to fully participate in democratic transition without restrictions;
5. Cease ALL human rights violations against the people of Burma.