



Brigadier General Kyaw Kyaw Tun
Chairman of the Prisoners of Conscience
Affairs Committee
Vice-Minister - Ministry of Home Affairs
10 Zeya Htarni Road
Nay Pyi Taw
Myanmar

www.hrw.org

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Dear General Kyaw Kyaw Tun,

OPEN LETTER ON THE ESTABLISHMENT OF THE PRISONERS OF CONSCIENCE AFFAIRS COMMITTEE

One month after the announcement of the reconstitution of the Committee for Scrutinizing the Remaining Prisoners of Conscience into the Prisoners of Conscience Affairs Committee we are writing to you to outline our concerns, expectations and recommendations for the new Committee.

Two years ago on 7 February 2013, President Thein Sein announced the establishment of the Committee for Scrutinizing the Remaining Prisoners of Conscience (Scrutinizing Committee), with the stated aim *“to scrutinize the remaining political prisoners serving their terms in prisons throughout the country so as to grant them liberty”*. This was followed by several mass prisoner amnesties, with a large number of prisoners of conscience released in 2013. However by 2014 it was no longer clear whether the Scrutinizing Committee was still operating. On 5 January 2015 President Thein Sein reconstituted a new Prisoners of Conscience Affairs Committee (the Committee) composed of 28 members and with the new stated objective of *“promptly carrying out prisoners of conscience affairs at the grassroots level”*.

Amnesty International and Human Rights Watch hope that the reconstitution of the Committee will offer a genuine opportunity to put an end to the arbitrary arrest and detention of scores of political activists, human rights defenders, journalists, farmers and others solely for the peaceful expression of their human rights. The reconstitution of the Committee also offers the opportunity to remedy the failings of the previous Scrutinizing Committee, as well as to address some of the long-term and systemic changes we believe to be necessary to ensure the release of all prisoners of conscience, and to bring about an end to arbitrary arrests and detentions in Myanmar. Failure to address these concerns would call into question the government’s willingness to resolve the issue of prisoners of conscience in Myanmar and would suggest the newly constituted Committee was established to deflect international criticism.

1. FAILURE TO RELEASE PRISONERS OF CONSCIENCE AND PREVENT NEW ARRESTS

Amnesty International and Human Rights Watch note that despite several mass prisoner amnesties since 2012 – which included a large number of prisoners of conscience – and the establishment of the Scrutinizing Committee in 2013, prisoners of conscience continue to be jailed in Myanmar. Prisoners of conscience remain behind bars and peaceful protesters, journalists, human rights

defenders – particularly those involved in land disputes – and farmers continue to be arrested, charged and imprisoned simply as a result of their peaceful activities. This situation highlights the need for the new Committee to continue reviewing all cases where individuals have been deprived of their liberty solely for the peaceful exercise of their human rights, with a view to securing their release.

Furthermore, we believe that hundreds of individuals who have been charged or else who are under trial for the peaceful exercise of their human rights are at risk of joining Myanmar's new prisoners of conscience. As such, the new Committee should also review all the cases of those currently on trial who may be arbitrarily detained in future. Failure to do so means that prisoners of conscience will continue to be imprisoned.

2. THE SCRUTINIZING COMMITTEE'S SHORTCOMINGS

We are aware that the Scrutinizing Committee was not consulted prior to the Presidential amnesties, preventing it from providing input to the government on the identity and location of prisoners of conscience to release. Some members also faced difficulties in getting access to prisons and obtaining information about prisoners, undermining their efforts to identify prisoners of conscience. This troubling lack of co-operation from the authorities seriously undermined the effectiveness of the Scrutinizing Committee. It is therefore vital that the new Committee receives appropriate support from the government – including through its Committee members – and is given access to prisons and the authority to question relevant state officials. To ensure the Committee is given the means to carry out its mandate it is crucial also that it is properly resourced.

The Scrutinizing Committee was also marked by an overwhelming lack of information and transparency regarding its mandate and procedures. No terms of reference or description of its functions were ever published and public communications or reports on its activities were never provided. Its meetings also took place on an *ad hoc* basis, with little prior notice. In 2014 it met only three times, leading some of its members as well as national and international observers to question whether it was still even operating. If the reconstitution of the Committee is to be meaningful, the Committee needs to address these failures by having a clearly defined mandate, which is made publicly known, and by operating transparently including by publishing regular activity reports.

The Committee should also comprise members selected on the basis of relevant criteria, including their expertise in the issues the Committee is dealing with. With regard to the last of these points, Amnesty International and Human Rights Watch note that out of the 28 members of the new Committee, only one is a woman and only two are representatives of former prisoners of conscience associations. We also note with regret the exclusion from the new Committee of the Assistance Association for Political Prisoners – Burma (AAPP-B), whose representatives – also members of the Scrutinizing Committee – had been vocal in highlighting concerns about its operations. We urge you to take steps to ensure that the new Committee comprises representatives of all relevant stakeholders, including civil society and former prisoners of conscience.

The people affected by the detention of prisoners of conscience include women, men and children, either as prisoners or as family members of prisoners. Accordingly the Committee's composition should also ensure that some members have specific expertise regarding gender issues and children's rights.

3. LEGAL FRAMEWORK

The ongoing arrest and detention of peaceful activists and human rights defenders takes place in a context where the rights to freedom of expression and peaceful assembly remain severely restricted in law.

Amnesty International and Human Rights Watch have identified several laws – both longstanding and recently enacted – which are frequently used by the authorities to arrest and imprison peaceful activists and human rights defenders. These include among others Section 505(b) of the Penal Code, the Peaceful Assembly and Peaceful Procession Law, the Emergency Provisions Act and the Official Secrets Act. Some of the provisions of these laws place broad and vague restrictions on the exercise of human rights which go well beyond the limited necessary and proportionate restrictions permissible under international human rights law. Unless these laws are brought into line with international human rights law and standards, the detention of individuals solely for the peaceful exercise of their human rights is likely to continue in Myanmar.

Our organizations are also aware of cases where the Myanmar authorities have misused provisions in the criminal law to arbitrarily arrest and detain peaceful activists, human rights defenders and journalists. In these cases individuals have been jailed on the pretext that they have committed a crime, while in reality they were charged and imprisoned solely because of their criticism of the authorities.

If the authorities are committed to tackling the issue of prisoners of conscience and continued arbitrary detentions they should address the root causes which allow prisoners of conscience to be detained. We therefore strongly recommend that the new Committee's mandate include the review of all laws used to detain prisoners of conscience and to make recommendations to the Parliament with a view to repeal or amend these laws to bring them into line with international human rights law and standards. In addition, the Committee should formulate and present recommendations to the relevant authorities aimed at ending the abuse of the criminal law through the fabrication of criminal charges against individuals for politically motivated reasons.

4. SITUATION OF FORMER PRISONERS OF CONSCIENCE

Amnesty International and Human Rights Watch are further concerned about the current situation of former prisoners of conscience and other former political detainees. In particular, we are concerned that many former prisoners of conscience who have been released only conditionally continue to be at risk of re-arrest if they engage in peaceful political activities. Prisoners of conscience should be released unconditionally and their criminal record should be cleared. They must not be subject to any conditions which would restrict them from fully exercising their rights or which would penalise them for doing so.

We also note that, owing to their status as former prisoners, they are subjected to stigmatization and face various administrative obstacles. For example, we are aware of former prisoners of conscience having difficulty obtaining passports or, in the case of those who fled abroad, obtaining visas to return to Myanmar. Moreover, many prisoners of conscience and other political detainees also suffered long periods of imprisonment, often in solitary confinement, which has taken a toll on them and their families.

While we welcome ongoing efforts by civil society organizations to provide rehabilitation support for former detainees, we are not aware of any formal government programme providing such support, or funding such programmes. Furthermore, we note that available programmes focus on counselling and psychosocial support, where in fact many former prisoners of conscience also require practical support and assistance in gaining access to education and employment opportunities and other forms of rehabilitation to enable them to resume a normal life.

We also note that many former prisoners of conscience in Myanmar have been subjected to torture and other ill-treatment. Such acts are crimes under international law, and the Myanmar authorities have an obligation to investigate and appropriately prosecute those responsible – including those with command responsibility who ordered such treatment or who knew, or should have known, that those under their command were committing acts of torture or other ill-treatment and did not take

all measures in their power to prevent, suppress or report it. Victims and their families should be granted adequate reparations.

Accordingly, we believe that it is essential that the new Committee should monitor the situation of released prisoners of conscience and ensure their rights are respected including by ensuring all conditions attached to their release are lifted and that they have access to restitution, compensation and rehabilitation programmes.

5. RECOMMENDATIONS TO THE NEW COMMITTEE

In order to ensure that the Committee is able to establish and carry out a strong, clearly defined and comprehensive mandate, Amnesty International and Human Rights Watch call on the Committee to ensure it has the power to:

- Review the cases of all those charged or deprived of their liberty simply for the peaceful exercise of their human rights, with a view to securing their release and having the charges against them dropped;
- Review all laws used to charge and detain prisoners of conscience, and recommend to Parliament the repeal or amendment of all such laws to bring them in line with international human rights law and standards;
- Formulate and present recommendations to the relevant authorities aimed at ending the abuse of the criminal law to fabricate criminal charges against individuals for politically motivated reasons;
- Ensure that all conditions attached to the release of prisoners of conscience are lifted; and
- Provide support and assistance to former prisoners of conscience and their families by ensuring that they have effective access to restitution, compensation, assistance in gaining access to education and employment opportunities and other forms of rehabilitation to enable them to resume a normal life.

In addition, to ensure the Committee operates independently, effectively and transparently, Amnesty International and Human Rights Watch call for the Committee to:

- Broadly share with the public its mandate, its terms of reference, and operational procedures, and publish regular activity reports;
- Insist it is properly resourced, receives appropriate support and co-operation from government offices, and is given access to prisons, prisons' records and the authority to question relevant state officials;
- Invite a sufficient number of additional members to join the committee who are selected according to objective and relevant criteria, including their independence and expertise in human rights issues, so as to ensure that the Committee overall has adequate gender and ethnic representation, as well as expertise on gender issues and children's rights. The Committee should be comprised of a wide range of stakeholders, including former prisoners of conscience and their representatives;
- Ensure resources are provided to build the human rights capacity of Committee members and seek technical assistance and advice from external experts in this regard; and
- Ensure the Committee's programme of work is developed in consultation with former prisoners of conscience, their families and representatives, and takes in to account the different experiences of women and men.

Thank you for your consideration. We look forward to receiving your responses to the above, and are available should you have any questions.

Yours sincerely,

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Asia-Pacific Director
Amnesty International

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Asia Director
Human Rights Watch

Cc: U Soe Thane, Union Minister, Office of the President
Daw Aung San Suu Kyi, Chairperson of the Pyithu Hluttaw Rule of Law and Peace and Stability Committee
U Tun Shin, Union Attorney-General of Myanmar
U Win Mra, Chairman of the Myanmar National Human Rights Commission