

MEMORANDUM

To: U Thein Sein, President of Myanmar; U Thura Shwe Mann, Speaker of the Union Parliament; Aung San Suu Kyi, Member of Parliament; the Myanmar National Human Rights Commission

From: William Ford, Policy Advisor

Date: October 30, 2015

RE: A Policy of Reintegration of Former Political Prisoners in Myanmar

Executive Summary

The government of Myanmar should unconditionally release all political prisoners, expunge conditionality clauses of those previously released and proactively support former political prisoners' social, economic, educational and political reintegration into Burmese society.

The process of political reconciliation and national unification in Myanmar has been primarily focused on the cessation of civil war and political empowerment of Myanmar's ethnic minority communities. It has failed to acknowledge past abuse of the country's nearly 10,000 former political prisoners and has failed to support their reintegration into Myanmar society. In addition, the U Thein Sein government has revitalized old strategies of harassment, intimidation and imprisonment of political activists. In doing so, the Myanmar government has missed a valuable opportunity to demonstrate commitment to political reform and has wasted the substantial social, political and moral capital of former political prisoners that could be used for social good.

Myanmar's ability to reconcile past abuses and unify its diverse and fractured population will dictate the trajectory of the country's reform. If that process is not adequately inclusive, it will fail. If past abuses go unrecognized, it will fail. If dissidents are imprisoned rather than heard, it will fail. This fragile process requires that Myanmar's incoming administration acknowledge past abuse against political activists, reintegrate former political prisoners into society, and cease practices that create more political prisoners.

Background

Myanmar's history of political repression is most clearly manifest by the nearly 10,000 former political prisoners currently living in the country. Efforts to document the experiences of these individuals have

regularly revealed systematic torture, forced labor, and denial of basic human necessities. Myanmar's political transition since 2011 has been marked by a series of amnesties of political prisoners (PP). The PP population peaked in August 2009 at 2,211 prisoners, and began to sharply decline in 2011 until only 31 PPs remained behind bars in January 2014. That number has since steadily increased. Currently, Myanmar imprisons 112 PPs and 486 individuals are awaiting trial for political offenses. In addition to the concerning spike in political arrests since 2014, Myanmar's 10,000 former PPs have received no support despite social isolation, economic hardship, and physical and mental suffering resulting from their imprisonment.

Legal barriers limit the ability for former political prisoners (PPs) to reintegrate into political, economic and social life. Article 401 (3) of the Criminal Procedures Code, for example, states that former PPs who violate the law will be re-arrested 'without warrant and remanded to complete the un-expired portion of the sentence'. As a policy, the Myanmar Passport Issuing Office announced that former PPs must present documents in addition to those required for non-PPs and may be subjected to longer waiting periods. PPs are regularly stripped of their ID cards upon arrest. Cards are often not returned upon release, making it impossible to obtain a passport, travel within Myanmar, vote, or find employment. Professional licenses, including legal and medical licenses, are typically voided upon arrest, prohibiting them from returning to their profession upon release. Given that many former PPs were arrested as students, most are banned from public offices because of inadequate academic credentials. Imprisoned student activists are labeled 'truant' and are summarily expelled from school.

In addition to legal barriers to reintegration, many former PPs suffer severe physically and psychologically as a result of imprisonment. An analysis by Assistance Association for Political Prisoners (AAPP) and Former Political Prisoners Society (FPPS) found that 76% of 430 former PP respondents had experienced psychological torture and 74% had experienced physical torture. The majority of respondents indicated that they had received no care for their mental or physical ailments.

While former PPs struggle to reintegrate, the number of political prisoners has steadily increased and recently surpassed 2013 levels. Highly restrictive laws and a volatile political environment have resulted in a recent spike in political arrests. In addition, the number of those facing trials has steadily increased from 70 in early 2014 to 486 in the latest report by AAPP.

Recommendations and Implementation

Formal acknowledgement of past abuses should be made public during the first 6 months of the new government in order to build trust and indicate a shift in policy toward former political prisoners and political dissidents. The new administration must revitalize an independent committee to review and release all PPs early in its tenure. This committee was transformed and effectively dismantled in early 2015 upon the government's announcement that all PPs had been released and the country, therefore, had no need for a PP review committee. That committee should include representatives from the former political prisoner committee, including from AAPP and FPPS. Once all PPs have been released, this committee should be reconstituted to assess past abuses and design a restitution program for former PPs and their families.

A restitution program for former PPs and their families should, at a minimum, include:

1. Return of all confiscated belongings or land;
2. Renewal of ID cards and the opportunity for all former PPs to obtain passports without undue barriers;
3. The opportunity for re-entry into academic programs that were cut short as a result of imprisonment;
4. Restoration of professional licenses;
5. Erasure of all political crimes from former PPs criminal records.

A program of rehabilitation and reintegration for former PPs should be established that includes physical and psychological care for individual former PPs and for families, and vocational training. Physical and psychological support is the most urgent need for former PPs. This pillar of reconciliation will ease social and economic integration of former PPs, and will ensure the sustainability of the process as a whole.

To demonstrate a commitment to freedom for political activists to challenge their government without fear of reprisal, Myanmar should sign and ratify the International Covenant on Civil and Political Rights and the UN Convention against Torture. The United Nations Office of the High Commissioner for Human Rights should be permitted to establish an official presence in Myanmar without barriers to carry out its mandate. The Government of Myanmar should translate into Burmese and disseminate the *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. These principles should be the foundation for the restitution program and follow-on initiatives.

The legal framework should amend or repeal laws criminalizing peaceful political dissent. The following laws, Constitutional sections and criminal codes should be repealed or amended:

- Criminal Code Section 142, 143, 144, 145, 146, 147, 152, 500 and 505(b) and Criminal Procedures Section 401(3)
- Article 18 of the 2011 Peaceful Assembly and Peaceful Processions Act
- The 1908 Unlawful Associations Act
- The 2004/2012 Electronic Transactions Law
- The 2013 Telecommunications Law

Attempts to avoid acknowledging past abuses, and to take appropriate action, disproportionately benefits perpetrators at the expense of survivors of abuse. Failing to acknowledge and address abuses would prevent survivors and others impacted from re-establishing a sense of communal belonging and from reintegrating into the social and economic fabric of Myanmar society. Without acknowledging abuses of political activists, reforming policies that create political prisoners, and supporting the reintegration of former PPs into Myanmar, the democratic process will exclude many of the individuals who were most critical to its development. Not only is this approach morally wrong in a normative sense, but it will result in the exclusion of a segment of Myanmar's population that has the moral authority, social capital and political awareness to contribute significantly to a peaceful transition to a more democratic Myanmar.