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Lieutenant General Ko Ko  
Minister of Home Affairs  
Ministry of Home Affairs  
Office No. 10  
Nay Pyi Taw  
Republic of the Union of Myanmar

8 November 2012

Dear Minister

### **OPEN LETTER CALLING FOR THE ESTABLISHMENT OF A REVIEW MECHANISM FOR PRISONERS**

I would like to take this opportunity to welcome some of the recent positive developments in the Republic of the Union of Myanmar, including the release of prisoners of conscience<sup>1</sup> in the prisoner amnesties of January, July and September 2012. However, Amnesty International remains concerned that many prisoners of conscience are still behind bars, and other prisoners and detainees continue to be at risk of human rights violations.

In that respect more than 68,400 Amnesty International members in 17 countries around the world,<sup>2</sup> including Australia, Belgium, Canada, France, Germany, Hong Kong, Ireland, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, Thailand, Taiwan, UK and the USA, have recently signed a petition calling for the immediate and unconditional release of all remaining prisoners of conscience, and for the establishment of a review mechanism to establish the true reasons why all those who remain behind bars were imprisoned.

### **DETAINEES, PRISONERS AND PRISONERS OF CONSCIENCE**

Despite the recent releases, our organization believes that many prisoners of conscience remain imprisoned in Myanmar. Some of them have been charged with, or convicted of serious offences, although they have not in fact committed any crimes and were arbitrarily detained or imprisoned solely for their peaceful political activities; for example, we consider that human rights defender U Myint Aye, who is serving a life sentence in Loikaw prison, Kayah state, is a prisoner of conscience and should be released immediately and unconditionally.

We are also concerned that many detainees and prisoners<sup>3</sup> have been subjected to a range of human rights violations including torture and other ill-treatment, and incommunicado detention. Many prisoners have been imprisoned as a result of trials which fell short of international fair trial standards. Finally, many prisoners including prisoners of conscience have been placed in prisons which are long distances from their home towns thus denying them the right to family life. Most prisoners depend on family members to bring them food and medicine to supplement the inadequate provision of these basic necessities in prisons in Myanmar.

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<sup>1</sup> Amnesty International defines prisoners of conscience as those who are detained solely for their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation, or other status, who have not used or advocated violence or hatred.

<sup>2</sup> Amnesty International members signed the petition between mid-June and August 2012.

<sup>3</sup> For the purpose of this letter, the term detainee is used when a person has been deprived of his or her liberty for any reason other than as a result of being convicted of an offence. The term prisoner is used when a person has been deprived of his or her liberty as a result of being convicted of an offence.

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## REVIEW MECHANISM

In order to prevent arbitrary detentions and uphold human rights for detainees and prisoners, Amnesty International recommends that the Myanmar authorities immediately set up a review mechanism to identify all detainees and prisoners who were charged or convicted as a result of proceedings which fell short of international human rights standards - including convictions which relied on confessions extracted after individuals were tortured.

The UN Special Rapporteur on the Situation of Human Rights in Myanmar has also called for the establishment of a review mechanism:

*“All remaining prisoners of conscience should be released immediately and unconditionally. A comprehensive and thorough investigation, based on broad and public consultations with all stakeholders, is needed to clarify records and determine accurate numbers. A review mechanism comprising all relevant stakeholders may be established and lessons learned from other countries should be taken into account. The Government should consider this issue urgently and seek international assistance as necessary.”<sup>4</sup>*

The review mechanism should be independent, impartial and professional, and provided with the resources it needs to conduct a thorough investigation. It should be established with the assistance of the United Nations and with participation from relevant civil society representatives. Its mandate should be based on international human rights law and standards and include the power to summon officials or witnesses, as well as means for protecting witnesses and their families from harassment, intimidation or revenge.

Such a body should have the powers to:

- Identify all those who have been arrested, and ensure that they are not held incommunicado, are not subjected to torture and other ill-treatment, and are promptly charged with a recognisable criminal offence, or else released.
- Identify whether a person is a prisoner of conscience, and ensure that any such individuals are immediately and unconditionally released. Prisoners of conscience should not be granted conditional releases, such as under section 401 of the Code of Criminal Procedure.
- Identify whether any other prisoner has been unfairly tried, and ensure that this person is immediately released, unless they are promptly charged with a recognisable criminal offence and remanded by an independent court. For those who are prosecuted, the review mechanism should ensure that they are tried in proceedings that fully comply with international fair trial standards and, if convicted, that the time they have already spent in pre-trial detention or prison, is deducted.
- Where individuals report that they have been tortured, ensure that they have access to adequate medical care at all times in accordance with international law and standards, and that prompt, thorough and effective investigations by independent and impartial bodies into all these reports are conducted.
- Identify all those who are held in prisons which are long distances from their families, and ensure that those who are not freed are offered the opportunity to move to a prison close to their home.

The work of the review mechanism should be conducted in the context of a broader review of national laws which have been used to criminalize peaceful dissent in Myanmar. In particular, the 1962 Printers and Publishers Registration Law, the Unlawful Associations Act, the Penal Code, the Electronic Transactions Law and the 1950 Emergency Provisions Act should be revised to ensure that they are in line with international human rights law and standards.

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<sup>4</sup> UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, 25 September 2012, A/67/383, recommendation 86. Weblink: <http://www.ohchr.org/en/countries/asiaregion/pages/mmindex.aspx>, last accessed 7/10/2012. Also see Press release, “Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar”, 4 August 2012. Weblink: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12405&LangID=E>, last accessed: 7/10/2012.

## **JUSTICE, REPARATIONS, REHABILITATION AND REINTEGRATION**

Although Amnesty International welcomes the recent release of many prisoners of conscience, we are concerned that some of them have faced restrictions in the enjoyment of their human rights since their release. Further, many struggle with reintegrating into a fast-changing society. Long periods of imprisonment have taken an educational and occupational toll on many of them, and often a financial toll on their families.

In order to improve the human rights of former prisoners of conscience, Amnesty International recommends that the Myanmar authorities ensure that all those released are allowed to exercise fully their human rights, including the rights to freedoms of expression, peaceful assembly, association, and movement within the country and abroad. Former prisoners of conscience should also be provided with relevant support such as skills training to facilitate their reintegration into society.

As many former detainees and prisoners, including prisoners of conscience, were subjected to various forms of torture and other ill-treatment, Amnesty International also recommends that the Myanmar authorities, including the National Human Rights Commission, take steps to initiate prompt, effective, independent, and impartial investigations into all reports and allegations of torture and other ill-treatment made by individuals in places of detention or after their release. All those alleged to have been involved in torture, ill-treatment and other human rights violations, including persons with command responsibility, should be investigated and, if there is sufficient admissible evidence, they should be prosecuted in proceedings which meet international fair trial standards, and victims and their families must receive reparations.

In order to prevent future abuses within the criminal justice system, Amnesty International also recommends that the Myanmar authorities strengthen the independence of the judiciary, allow access for independent monitors to all pre-trial detention centres and prisons, and ensure that lawyers can carry out their work free from intimidation. Likewise, Amnesty International calls on the Republic of the Union of Myanmar to accede – without making any reservation – to the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We very much hope you will take into consideration our recommendations to ensure an increased respect of human rights for current and former detainees and prisoners in the Republic of the Union of Myanmar. It is our sincere hope that progress will be made, both in law and in practice, and we remain at your disposal should you have questions about any of the issues highlighted above.

Thank you for your attention,

Yours sincerely,

Isabelle Arradon  
Asia Pacific Deputy Programme Director

### **Copies to:**

U Wunna Maung Lwin, Minister of Foreign Affairs;

Chairman U Win Mya, Chairman of the Myanmar National Human Rights Commission;

Myanmar Ambassadors including in the United Kingdom and other countries where the petition was signed.