



Inter-Parliamentary Union

For democracy. For everyone.

Myanmar

Former parliamentarians elected in the elections of 1990:

(i) Were still in detention:

MYN236 - KHUN HTUN OO
MYN238 - KYAW MIN
MYN242 - KYAW KYAW
MYN261 - U NYI PU
MYN262 - TIN MIN HTUT

(ii) Died in custody or soon after their release:

MYN53 - HLA THAN
MYN55 - TIN MAUNG WIN
MYN72 - SAW WIN
MYN83 - KYAW MIN
MYN131 - HLA KHIN
MYN132 - AUN MIN
MYN245 - MYINT THEIN ¹

(iii) Were assassinated:

MYN/66 - Win Ko
MYN/67 - Hla Pe

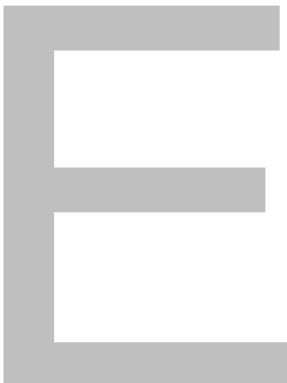
Decision adopted by the Committee on the Human Rights of Parliamentarians at its 152nd session (Geneva, 23 January to 3 February 2017)

The Committee,

Referring to the case of the above-mentioned former members-elect of the Pyithu Hluttaw (People's Assembly) of the Union of Myanmar, all voted into office in the elections of May 1990, and to the resolution adopted by the Governing Council at its 192nd session (Quito, March 2013),

Recalling that its long-standing examination of the cases of members of parliament-elect of the National League for Democracy (NLD) since the initial complaint in 1991 has over time come to concern a total of approximately 265 persons; the successive complaints concerned: (i) arrest and arbitrary detention of NLD members-elect of parliament between 1990 and 1993 under legislation proclaiming a state of emergency after the State Law and Order Restoration Council (SLORC) failed to convene parliament; (ii) further waves of arrests and detention without charge or trial that took place in particular during May 1996, February 1997, May 1998, May 2003 and October 2007; many of those arrested were released and later re-arrested; (iii) unfair summary trials leading to harsh sentences on various criminal grounds of a number of the detained members; (iv) inhuman conditions of detention and, in certain cases, acts of ill-treatment that resulted in the death of seven members-elect in custody or soon after their release; (v) the assassination of two members in exile abroad; and (vi) undue invalidation of the mandate of a number of the parliamentarians in question following a disqualification measure,

¹ On 2 April 2008, the Members of Parliament Union-Burma stated that Myint Thein had died following his release as his health had been badly impaired by his detention.



Recalling that, in the past, the Committee has systematically discontinued examination of the cases of members upon their release; it has only pursued outstanding cases of detention, as well as the cases of members who had died in detention and of those who had been assassinated,

Further recalling that, since 2010, Myanmar has embarked on a process of political reform and has undergone far-reaching changes, including the following:

- Hundreds of political prisoners have been granted amnesties and released since 2012, including the last five members-elect who remained in detention;
- The NLD was able to take part in by-elections in April 2012 and won seats in both houses of parliament; as a result, Ms. Aung San Suu Kyi, the leader of the NLD, was sworn in to parliament;
- General elections were held peacefully on 8 November 2015 and the NLD took an outright majority in both chambers of parliament;
- Following the elections, Ms. Suu Kyi and Mr. Shwe Mann held talks and agreed on “systematic and peaceful implementation of the people’s desire” to prioritize “national reconciliation and national (ethnic) unity in forming the houses of parliament”; on 2 December 2015, Ms. Suu Kyi met President Thein Sein and Army Chief Min Aung Hlaing, who pledged to assist the smooth transfer of power;
- On 1 February 2016, the newly elected parliament was sworn in; on 15 March 2016, it elected Mr. Htin Kyaw of the NLD as the country’s new president;
- Both houses of parliament have established fundamental rights, democracy and human rights committees,

Recalling that, with respect to the concerns in the cases at hand, the parliamentary authorities have confirmed that:

- 87 former parliamentarians had been tried in court for violating various laws and had to serve the prison terms handed down by the courts; all of these persons had been released by presidential order of the new government on humanitarian grounds;
- Parliament was in the process of amending and repealing laws that did not serve the purpose of reform;
- Parliament was taking steps, with the help of international and national organizations, to improve prison administration procedures and was examining a new prison bill;
- Parliament and the Government were earnestly collaborating to improve general conditions in the country and for the people and were making steady progress towards that end,

Recalling that the parliamentary authorities also stated that parliament was willing to do whatever it could under the Constitution to address any pending human rights matters of concern to the IPU,

Considering the following: in his report (A/HRC/31/71) of 18 March 2016, the Special Rapporteur on the situation of human rights in Myanmar welcomed the legislative reforms carried out since 2011 and the steps taken by the Government to review and amend some laws that did not meet international human rights standards; she was informed that parliament had passed more than 220 laws during that period; however, she pointed out that some of these newly adopted laws and older laws still in force do not comply with international standards and should be amended as a priority; the Special Rapporteur has, for example, pointed out that the draft prison act, which remains pending, falls below international standards in several areas; she has also emphasized the need for continued efforts to strengthen the independence of the judiciary; the Special Rapporteur has noted that democratic space has been opening up in Myanmar, as reflected in greater media and Internet freedom, new-found political freedoms and increased political and social activism; she has nonetheless observed that challenges and negative trends remain, particularly ongoing restrictions on the exercise of the rights to the freedoms of expression, association and assembly of people and the arrest of individuals in relation to the exercise of their rights; she expressed deep concern about the continuing application of problematic legal provisions (both historic and recently enacted) in that

respect; she recalled that, as long as these laws and other laws that have been used in the past to silence critics remain in force, there will always be a risk of perpetuating political imprisonment; the Special Rapporteurs also emphasized that the majority of political prisoners released in recent years have received a presidential commutation of their sentence under section 401 of the Criminal Procedure Code; this provision affords the President broad powers to return individuals to prison if a condition of their release is not satisfied; a release under section 401 also offers no provisions for review of the original detention and conviction; consequently, many former political prisoners are classified as ex-criminals on their release, which makes their subsequent access to work or education opportunities difficult; the Special Rapporteur has concluded in that respect that adequate compensation and support, including psychological support and employment training, should be provided to released political prisoners; in the legislative area, she recommended that the Government and Parliament of Myanmar undertake a comprehensive review of legislation and legal provisions that limit fundamental freedoms and contravene international standards, with clear target dates for the conclusion of the review; she has suggested that a process of legislative reform, with clear timelines for consultations, be established to ensure transparency and that a vetting mechanism be established to ensure that all draft legislation complies with international human rights standards,

Considering that, in an annex to the same report, the Special Rapporteur has recommended the amendment as a matter of priority of a number of legislative provisions and laws, including section 18 of the Peaceful Assembly and Peaceful Procession Act (2011, as amended in 2014); sections 143, 145, 146, 147, 500 and 505(b) of the Criminal Code, section 17(1) of the Unlawful Associations Act, the Official Secrets Act, the Emergency Provisions Act and section 66(d) of the Telecommunications Act, with a view to bringing them into line with international human rights standards,

Considering that, in its latest resolution (A/HRC/RES/31/24) adopted on 24 March 2016, the United Nations Human Rights Council has called upon the Government of Myanmar to take further steps to consolidate the progress made to end all remaining human rights violations and to address outstanding concerns, in particular regarding the right to freedom of expression, association and peaceful assembly, as well as the right to freedom of religion or belief, which are essential to ensure a safe and enabling environment; it has further urged the Government of Myanmar to provide for the full rehabilitation of former political prisoners; it has stressed the need for review and reform of legislation, including the Constitution, to ensure adherence to international norms and standards, and the need for a more independent, impartial and effective judiciary and an independent and self-governing legal profession,

Considering that the IPU is currently providing a comprehensive programme of assistance to the Myanmar Assembly of the Union,

1. *Welcomes* the wide-ranging reforms that have brought fundamental political changes to Myanmar since 2011; *takes note with satisfaction* that they have resulted in the release of all former members-elect under consideration in the present case, as well as in the improvement of the human rights situation and in initial attempts to reform legislation falling below international human rights standards;
2. *Considers* that, given the far-reaching changes that have occurred in Myanmar in recent years, the ongoing efforts of the Parliament of Myanmar to consolidate the progress made and to address outstanding issues, including through legislative reform, constitute a satisfactory settlement of the case, and therefore *decides* to close the case pursuant to article 25 of its Procedure for the examination and treatment of complaints;
3. *Reiterates nevertheless* its long-standing view that the former parliamentarians-elect who were detained and sentenced were all political prisoners held on the basis of unjust laws and unfair procedures; *further recalls* that seven former parliamentarians-elect died in prison or shortly after their release as a result of their conditions of detention and that two were assassinated without any light ever having been shed on their murders, a situation that it deplors; *recalls* the importance of the principles of truth, justice and reconciliation and *sincerely hopes* that the Myanmar authorities, in particular the Assembly of the Union, will seek to translate these principles into action in the future; *urges* the relevant authorities to ensure that the released political prisoners and their families are granted full rehabilitation;

4. *Trusts* that the Parliament of Myanmar will continue playing a critical role to ensure that the human rights of parliamentarians and of all people in Myanmar are fully protected and respected and will act decisively and speedily so as to review, and if need be repeal, all remaining unjust laws so as to bring them into compliance with international human rights standards; *wishes* to know if such overall review is currently under way or contemplated and to receive more information on the legislative reform already initiated, including in relation to the Prison Act;
5. *Suggests* that the IPU, in the context of its human rights and technical assistance programmes, examine with the parliamentary authorities the possibility of allowing them to benefit from its experience in order to ensure that: (i) the Parliament of Myanmar is fully equipped to conduct appropriate legislative reform in the area of human rights in compliance with international human rights standards; and (ii) the necessary regulatory and legislative framework is in place to protect current and future members of parliament in their work; *proposes* that a seminar take place in 2017 to discuss and review the existing situation and identify priority reforms and needs of the Parliament of Myanmar to that end;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities and to follow up on the offer of technical assistance extended to the Parliament of Myanmar.