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We have waited and seen enough: ASEAN must support a Commission of Inquiry in Burma

**Eight months after Burma's November 2010 elections,
democracy remains an illusion and sparks of war are flying**

Despite the expectations of the international community, there has been no genuine progress towards democracy and peace since the November 2010 elections.

Rather, the military regime has embarked on a manipulative program of window dressing, while refusing to take concrete steps towards meaningful democratic reforms. Months after the convening of the regime-dominated parliament, 1,994 political prisoners remain behind bars and the arbitrary arrest of citizens continues to take place. Daw Aung San Suu Kyi is again at risk, facing fresh threats from the regime issued against her and the National League for Democracy (NLD).

Militarization, armed conflict, and displacement have increased in ethnic areas after the breakdown of ceasefire agreements between the Burma Army and a number of ethnic armed groups. The Burma Army continues to commit crimes against humanity and war crimes with impunity, including rape, murder, and forced labour.

The people of Burma can no longer “wait and see.” In light of the last 8 months, it is clear that not only has the human rights situation in Burma deteriorated, but the military junta has shown no willingness to transform Burma into a democratic country.

Fraudulent elections

In November 2010, the military regime organised Burma's first elections in 20 years in an attempt to give itself a new civilian face. But the international community must not allow itself to be fooled. Extensive documentation has shown that the elections were marred with irregularities, intimidation, and fraud, and were deemed neither free nor fair by several international election monitoring bodies. The overwhelming electoral “victory” of former generals, regime-backed political parties and business cronies, taken alongside the restrictive 2008 Constitution, ensures

that Burma's first "civilian" government in nearly 50 years will perpetuate the military regime's policies.

Today's disillusion

Pro-democracy political parties, organizations and the people of Burma had little faith in the 2010 elections, predicting the unlikelihood of the regime loosening its control over the political landscape. However, many actors in the international community adopted a policy of giving the regime some time to settle in and begin to implement genuine change, telling critics to "wait and see." Developments since the elections have clearly illustrated the military regime's real intentions. International observers must no longer be misled.

The Assistance Association of Political Prisoners – Burma reports that 1,992 political prisoners remain behind bars. On 16 May, Thein Sein issued an order that commuted death sentences to life in jail and reduced all prison sentences by one year. However, this move was little more than a false amnesty, with common criminals as most of those freed. Only 55 of the 14,578 inmates released were political prisoners, freed because there was less than a year remaining on their sentences. In her video statement to a US Congressional Committee, Daw Aung San Suu Kyi questioned the regime's intentions in detaining political prisoners, stating:

"Why are they still in prison if this government is really intent on making good progress toward democracy? If it is sincere in its claims that it wishes to bring democracy to Burma, there is no need for any prisoners of conscience to exist in this country."

Moreover, arbitrary arrests continue to take place. On 3 April, a volunteer with the NLD-supported blood donation group was arrested while on his way to donate blood at a hospital.¹ On 19 May, a court sentenced five farmers to prison terms ranging from 8 to 12 years for "trespassing" on their own land, which had previously been unlawfully confiscated from them.²

The release of the 1,994 political prisoners is an important and necessary benchmark for democracy and political freedom in Burma. We call on ASEAN to urge the regime to immediately and unconditionally release all political prisoners.

Daw Aung San Suu Kyi is again at risk, facing fresh threats from the regime against her and the NLD. On 28 June, Daw Suu and NLD Chairman U Aung Shwe received a letter from the Ministry of Home Affairs pressuring the party to cease their "unlawful" activities. State-run New Light of Myanmar followed up the letter with a commentary quoting the threatening letter:

¹ Mizzima (04 Apr 11) Blood donation group volunteer arrested in Rangoon

² DVB (23 May 11) Farmers given lengthy jail terms

“If they really want to accept and practice democracy effectively, they are to stop such acts that can harm peace and stability and the rule of law as well as the unity among the people including monks and service personnel.”³

In recent months, Daw Suu has delivered numerous speeches at important regional and international forums and held numerous meetings with her party members and youths from across the country. Seemingly prompted by these actions, the regime issued threats veiled as warnings to the party and its leader, stating, “We are deeply concerned that if Daw Aung San Suu Kyi makes trips to countryside regions, there may be chaos and riots, as evidenced by previous incidents.”⁴

Such a warning refers to the 2003 Depayin Massacre, in which Daw Aung San Suu Kyi and the NLD convoy was attacked by members of the Union Solidarity and Development Association (the predecessor to the Union Solidarity and Development Party that now holds over 77% of the parliamentary seats). Over 100 individuals died in the attack, many of whom were NLD members and youths who sought to protect the democracy leader. Daw Aung San Suu Kyi narrowly escaped with her life but was immediately arrested and detained.

The regime clearly feels that Daw Aung San Suu Kyi, the NLD, and the extent of their local and international support, pose a threat to its tightly controlled grip on power. With memories of the recent revolutions of the Arab Spring, the regime cannot afford to have Daw Suu and the NLD taking to the streets and rallying mass public support. With many of the architects of the Depayin Massacre still in the regime’s leadership, further violence against Daw Aung San Suu Kyi and the NLD is sadly a very real possibility.

ASEAN must therefore call on the regime to take responsibility for the safety of Daw Aung San Suu Kyi, NLD members and their supporters, and encourage the regime to engage in dialogue with them and representatives of democratic and ethnic opposition groups.

“Sparks of war flying”⁵ in Burma

The post-election period has seen increased instability and the escalation of armed conflict between the Burma Army and ethnic armed groups. Civilians in the border areas of Karen, Shan and Kachin States have faced increasing human rights abuses and threats to their personal security as the regime has sought to bring ethnic armed groups under their control as Border Guard Forces (BGF) and decades-long ceasefires have broken down.

³ Irrawaddy (29 Jun 11) NLD Pressured to Cease Political Activities

⁴ AP (29 Jun 11) Myanmar's Suu Kyi warned over plans for tour

⁵ Daw Aung San Suu Kyi used this phrase during an address at the NLD headquarters on her 66th birthday on 19 June 2011.

Fighting erupted in Karen State on 8 November 2010, merely one day after the elections. The Burma Army attacked Brigade 5 of the Democratic Karen Buddhist Army (DKBA) ceasefire group, which had refused to join the rest of the DKBA in transforming into a BGF. Fighting in the state has continued sporadically since then, with more than 6,000 displaced civilians still seeking refuge in hiding sites along the Thai-Burma border.

More recently, the regime broke its long-standing ceasefire with the Shan State Army-North (SSA-N), attacking the group on 13 March. As a result, the SSA-N merged with the non-ceasefire Shan State Army-South, and clashes with the Burma Army have continued for the past three months. In early June, spurred on by the refusal of the Kachin Independence Army (KIA) to accept the regime's BGF proposal as well as their strategic control of areas with lucrative Chinese hydropower projects, the Burma Army launched a full-scale attack on the KIA, breaking another long-standing ceasefire. Already, as many as 20,000 civilians have fled to the China-Burma border area, with scores of civilians suffering grave human rights violations, including rape and forced labour. Fleeing civilians have had little access to much-needed humanitarian support along the China border, and Kachin community groups have formed to provide vital assistance.

The fighting between the Burma Army and the SSA and KIA, as well as the ongoing conflict in Karen State, shows no signs of abating and in fact the movement of Burma Army troops into Shan and Kachin States suggests that the regime intends to continue fighting. Increasing militarization, seen recently in the movement of trains full of arms and troops into Kachin State,⁶ indicate that the Burma Army is preparing for further offensives.

The increasing incidents of conflict-related human rights violations throughout Eastern Burma and the likelihood of these continuing, underscore the urgent need for a United Nations-led Commission of Inquiry into crimes against humanity and war crimes in Burma. The regime's "seven-step roadmap to democracy," including the fraudulent elections in November 2010, has only served to consolidate their power in ethnic areas and throughout the country. The regime has failed to recognize and respect ethnic rights and the concerns of ethnic communities, perpetuating animosity and distrust which are likely to lead to further armed conflict between the Burma Army and ethnic armed groups, and associated human rights violations. A Commission of Inquiry would have a significant preventative value, and would support peace efforts and national reconciliation. Without such an investigation, lasting change will be impossible in Burma.

The military regime's failure to bring peace to the country requires that ASEAN and the international community to now take responsibility. As witnesses of the crimes against humanity and war crimes being committed in one of their member states, ASEAN countries must support the establishment of a UN-led Commission of Inquiry, urge Burma's leaders to declare a nationwide ceasefire and call for an end of attacks on ethnic communities.

⁶ DVB (28 Jun 11) Trains carry weaponry into Kachin capital

The United Nations High Commissioner for Refugees recently named Burma as the fifth largest refugee producing country in the world, with 415,700 people forced to flee from conflict at home.⁷ With ongoing conflict and associated human rights violations, such as rape and forced labour, this number is likely to continue rising. These displaced populations are extremely vulnerable and require immediate protection and assistance. We call on ASEAN members to provide protection and humanitarian assistance to the refugees and displaced communities from Burma in their countries.

Looking ahead: 2014

Burma's request to assume the ASEAN chairmanship in 2014 provides an excellent and unique opportunity for ASEAN to promote peace and democracy in Burma, and enter a dialogue with the military regime on these fundamental issues. ASEAN must address the situation in Burma as an example of its commitment to human rights and democracy throughout the region. In this regard, ASEAN should not allow Burma to take up the 2014 chairmanship unless the regime takes concrete steps to prove that they intend to carry out genuine democratic transition and national reconciliation by meeting the following necessary benchmarks:

1. Immediate and unconditional release of all political prisoners;
2. Declaration of a nationwide ceasefire with ethnic armies and cessation of attacks on ethnic communities; and,
3. Genuine tripartite dialogue with ethnic nationality representatives, including armed groups, and the pro-democracy movement, led by Daw Aung San Suu Kyi and the NLD, as well as guarantees on the personal security of Daw Aung San Suu Kyi.

Summary of Recommendations to ASEAN

- Support the establishment of an UN-led Commission of Inquiry into crimes against humanity and war crimes in Burma
- Provide protection and humanitarian assistance to refugees and displaced communities from Burma in ASEAN countries
- Deny Burma the 2014 ASEAN chairmanship unless the following 3 conditions are met:
 1. Immediate and unconditional release of all political prisoners;
 2. Declaration of a nationwide ceasefire with ethnic armies and cessation of attacks on ethnic communities; and,
 3. Genuine tripartite dialogue with ethnic nationality representatives, including armed groups, and the pro-democracy movement, led by Daw Aung San Suu Kyi and the NLD, as well as guarantees on the personal security of Daw Aung San Suu Kyi.

⁷ UNHCR Global Trends 2010, p.8