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Strengthening Cooperation for a Free Burma

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We have waited and seen enough: The UN must establish a Commission of Inquiry in Burma

**Nearly a year after Burma's fraudulent 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, nearly 2000 political prisoners remain behind bars and the arbitrary arrest of citizens continues to take place.

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, including rape, murder, and forced labour, without any accountability for the perpetrators or justice for the victims.

The people of Burma continue to suffer while the international community chooses only to "wait and see." We have now waited long enough and have seen the regime's true colours. Not only has the human rights situation in Burma deteriorated, but the military junta has shown no willingness to transform Burma into a truly 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 is nothing more than the same decades old military regime in new clothes.

Today's disillusion

The National League for Democracy, pro-democracy organizations and the people of Burma had little faith in the 2010 elections, predicting that the regime did not actually intend to loosen its control over the country. However, many in the international community gave the regime the benefit of the doubt, adopting a "wait and see" approach to give the so-called "new civilian government" some time to settle in and implement reforms. Developments over the course of the past year have clearly illustrated the military regime's real intentions, to retain power at all costs. International observers must no longer be misled by the regime's public relations campaign.

The Assistance Association for Political Prisoners – Burma reports that nearly 2,000 political prisoners remain behind bars. On 16 May, President Thein Sein issued an order that commuted death sentences to life in prison and reduced all prison sentences by one year. Under this order, those prisoners with less than a year remaining on their sentences were freed. However, this move was little more than a false amnesty, having virtually no impact on the majority of political prisoners who are serving lengthy prison terms. 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."

The release of these close to 2,000 political prisoners is an important and necessary benchmark for democracy and political freedom in Burma. We call on the international community to urge the regime to immediately and unconditionally release all political prisoners.

While the regime has held a number of recent meetings with Daw Aung San Suu Kyi, something which is certainly an improvement over the regime's previous treatment of the opposition leader, it is clear that these meetings are merely a public relations exercise not intended to bring about a real dialogue with the opposition. In a joint statement made after Daw Suu's meeting with Aung Kyi, Minister of social welfare, relief and resettlement, the two stated that they "Will avoid conflicting views."¹ This demonstrates that the regime continues to fail to understand the meaning of true democracy, which involves the freedom to discuss opposing views, the ability of an electorate to choose between candidates with opposing viewpoints, and a government which is responsive to the will of the people.

¹ "Suu Kyi, Burmese gov't agree to work together to avoid conflicting views" Mizzima, 12 August 2011

There are many issues about which not only Daw Suu and the National League for Democracy, but millions of ordinary citizens of Burma have positions that differ from those of the regime yet speaking out about such issues can still get one arrested, tortured or executed. These issues include the prudence of a number of development projects including the Myitsone dam, a large scale hydropower plant on the Irrawaddy River, about which numerous environmental groups have expressed concerns and communities likely to be impacted have not been consulted.

In addition to the detention of civilians and the failure to allow for differing opinions on important national issues, the regime continues to engage in a number of other practices which are incompatible with true democracy. It prohibits free assembly with any gathering of more than five individuals still illegal under the law and prevents the establishment of a free press, an element considered integral to a free society. Finally, it is clear that the regime intends to keep Burma as a one-party state with the Union Solidarity and Development Party (USDP) in complete control. Such efforts are evident in the party seeking to entice citizens to join by taking steps such as conditioning the granting of loans on party membership and continuing its policy of threats and intimidation against the National League for Democracy, which it clearly views as the biggest threat to its grip on power.

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.”² 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 USDP). 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. 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 real possibility.

The regime needs to put an end to such thinly veiled threats and acts of intimidation and instead engage in genuine dialogue with the NLD. The international community must remind the regime that it bears the primary responsibility to protect not only Daw Aung San Suu Kyi, but the entire population of Burma.

“Sparks of war flying”³ 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

² “Myanmar's Suu Kyi warned over plans for tour” AP, 29 June 2011

³ Daw Aung San Suu Kyi used this phrase to describe the situation during an address at the NLD headquarters on her 66th birthday on 19 June 2011.

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. As the Special Rapporteur on the situation of human rights in Burma, Tomás Ojea Quintana, noted on 25 August 2011, at the conclusion of his fourth visit to the country:

“Also of concern are the ongoing tensions in ethnic border areas and armed conflict with some armed ethnic groups, which continue to engender serious human rights violations, including attacks against civilian populations, extrajudicial killings, sexual violence, arbitrary arrest and detention, internal displacement, land confiscations, the recruitment of child soldiers, as well as forced labour and portering.”

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), a 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), another ceasefire group, 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 five months.

In early June, spurred on by the refusal of the Kachin Independence Army (KIA), a third ceasefire group, to accept the regime’s BGF proposal as well as the KIA’s strategic control of areas with lucrative Chinese hydropower projects, the Burma Army launched a full-scale attack on the KIA, breaking a seventeen year-long ceasefire. Already, as many as 30,000 civilians have fled to the China-Burma border area, with scores of civilians suffering grave human rights violations, including rape, torture 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 the regime has been unwilling to enter into serious peace negotiations with the ethnic armed groups. On 17 August, President Thein Sein invited any of the ethnic armed groups engaged in conflict with the Burma Army to “hold talks with respective [regional] governments if they really favour peace.”⁴ But by issuing the invitation only for groups to talk individually with regional governments, the regime ignored one of the primary demands of the ethnic groups, that negotiations be conducted through the United Nationalities Federal Council (UNFC), an alliance of ethnic armed groups, to reach a nationwide ceasefire. The regime has thus signaled its intention to continue its policy of only piecemeal talks and agreements, part of its divide and rule strategy, rather than working towards true national reconciliation.

⁴ “Burmese gov’t still exercising an ethnic ‘divide and rule’ strategy” Mizzima 19 August 2011

War crimes and crimes against humanity are perpetrated by the regime's army throughout Eastern Burma on a daily basis, underscoring the urgent need for a United Nations-established Commission of Inquiry into crimes against humanity and war crimes in Burma. The Special Rapporteur clearly articulated the rationale for such a commission when he noted on 25 August 2011 that, "I continue to hold the belief that justice and accountability measures, as well as measures to ensure access to the truth, are fundamental for [Burma] to face its past and current human rights challenges, and to move forward towards national reconciliation."

The regime has failed to provide any such justice and accountability measures and has instead enshrined impunity for perpetrators in the 2008 Constitution and continuously denied that crimes are taking place. The military regime's failure to act requires that the international community now take responsibility. As witnesses to the crimes against humanity and war crimes being committed in Burma, UN Member States must support the establishment of a Commission of Inquiry, urge Burma's leaders to declare a nationwide ceasefire and call for an end of attacks on ethnic communities.

The United Nations High Commissioner for Refugees recently named Burma as the fifth largest refugee producing country in the world, with 415,700 people from Burma living as refugees as of the end of 2010.⁵ With on-going 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 Burma's neighbours, in particular China, Thailand, Bangladesh and India to provide protection and humanitarian assistance to the refugees and displaced communities from Burma in their countries.

Summary of Recommendations

- Support the establishment of a United Nations Commission of Inquiry into crimes against humanity and war crimes in Burma
- Provide protection and humanitarian assistance to refugees from Burma and work to provide cross-border assistance to those displaced communities still living in the country
- Use all available leverage to insist that the regime take the following steps:
 1. Immediately and unconditionally release all political prisoners;
 2. Declare a nationwide ceasefire with ethnic armies and cease all attacks on ethnic communities; and,
 3. Enter into a 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.

⁵ UNHCR Global Trends 2010, p.8