

# Burma's Continuing Human Rights Challenges

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One year ago Burma conducted tightly controlled elections that transferred power from a ruling military council to a nominally civilian government in which the president and senior government officials are all former generals. In 2011 the new government has taken a number of positive actions, enacted new laws that purport to protect basic rights, and promised important policy changes. The real test, however, will be in the implementation of new laws and policies and how the government reacts when Burmese citizens try to avail themselves of their rights.

Meanwhile, the main elements of Burma's repressive security apparatus, and the laws underpinning it, remain in place. In ethnic areas, the human rights situation remains dire. While there are grounds for hope that fundamental change will come to Burma, it is too early to conclude that it has in fact begun.

Since President Thein Sein assumed power on March 30, the rhetoric of the government has been markedly different from the unyielding State Peace and Development Council government, which brooked no dissent. Media restrictions have relaxed and a number of bills passed in the second session of parliament since August suggest a new commitment, on paper at least, to protect some basic rights. The new government has pledged additional reforms and made significant gestures to the political opposition. Senior members of the government have talked about pursuing widespread economic reform, promoting democracy, respecting human rights, sponsoring peace talks with ethnic armed groups to end the civil war, and permitting democracy leader Aung San Suu Kyi a level of freedom she has hitherto not been permitted since 1989. She has met regularly with senior government officials, and described these talks as more substantive and hopeful than any past rounds of dialogue.

These changes, while being greeted with widespread domestic and international optimism, are at an elite national level. There has been little change in basic modes of governance or repression at the local level throughout the country. Military abuses continue with impunity in ethnic areas. The government continues to suppress dissent through a raft of repressive laws and the lack of an independent judiciary. Large

numbers of political prisoners remain in prison. The new government largely continues the official culture of denial over the human rights situation.

With this backdrop, it is too early to know whether the government's change of tone and talk of reform is cynical window-dressing or evidence that significant change will come to the country. Governments should therefore take a measured approach that emphasizes the need for action and not just words. They should respond positively to concrete progress, but remain wary of mere promises.

#### *Abuses in Ethnic Conflict Areas*

Although the government has promised to seek national reconciliation with more than a dozen armed groups, fighting has escalated in Kachin, Shan, and Karen states since the elections. The military has continued a litany of abuses against civilians in ethnic conflict areas including extrajudicial killings, attacks on civilians, use of forced labor, and pillaging villages. Nearly 500,000 people continue to be internally displaced in eastern Burma alone, with an estimated 112,000 new cases of displacement recorded this year alone.

Fighting in Karen State flared on election day on November 7, 2010. Conflict between government forces and ethnic Karen insurgents has displaced more than 10,000 civilians, some of whom fled to Thailand. All parties to the conflict make widespread use of anti-personnel landmines. Abuses by the Burmese army in Karen State since November 2010 include forced labor, targeting of civilians, attacks on livelihoods, and the longstanding practice of using convict porters. In January 2011, an estimated 1,300 prisoners were drawn from 12 prisons and labor camps throughout Burma to be used on operations in eastern and northern Karen State and Pegu Region. In some cases, prisoners were used as "human shields" to trigger landmines, draw fire during ambushes, or protect soldiers. Injured porters were left to die, and many were summarily executed for failing to carry heavy loads of munitions and supplies. Many of these abuses are war crimes under international humanitarian law.

In northern Burma, longstanding ceasefires with the Shan State Army-North (since 1989) and the Kachin Independence Organization (since 1994) broke down in March and June respectively. Sporadic fighting and human rights abuses by the Burmese army have displaced more than 30,000 people in Shan State, and a similar estimate in Kachin State. According to credible reports, government forces have destroyed villages, used civilians as forced labor, and targeted civilians during offensive operations.

Human Rights Watch documented a range of abuses by the Burmese army in June and July during operations in Kachin State, including killings and attacks on civilians, use of

forced labor, and ill-treatment and torture during interrogation. Kachin villagers told Human Rights Watch how Burmese army soldiers had occupied their villages and confiscated their property and belongings. Some described being held by Burmese soldiers, who interrogated them harshly for information about the Kachin Independence Army, including by threatening to kill them. Human Rights Watch documented the killings of three Kachin civilians by Burmese soldiers in June and is investigating credible allegations of other killings. In one case, a Burmese soldier shot and killed a 52-year-old woman and her 4-year-old grandson in their home at close range as they tried to flee.

Human Rights Watch has long called for an end to abuses by the military and non-state armed groups in ethnic areas. In August, the government invited armed groups for peace talks, and created a parliamentary "Committee for Eternal Stability and Peace." Preliminary peace talks were to be the purview of local state assemblies, not the national parliament and central government. Some armed groups and ethnic political parties including the Karen National Union, Shan State Army-South, and New Mon State Party have indicated they may be willing to participate in such talks. In October, the central government renewed peace deals with the United Wa State Army and Shan State Special Region-4 militia, both of whom are implicated in widespread narcotics production and smuggling, and the widespread use of child soldiers. Human Rights Watch believes that any agreements between the state and ethnic groups should include mechanisms to promote and protect the human rights of the affected populations.

The new government should also provide a safe environment for disclosing information about military personnel involved in abuses, launching impartial and transparent investigations, and making known any punishments imposed. Human Rights Watch reiterates its call for the formation of a United Nations-formed commission of inquiry into alleged violations of international humanitarian law and human rights law, as called for by UN Special Rapporteur Tomas Ojea Quintana in March 2010, and so far supported by 16 countries including the United States, United Kingdom, Australia, France, and Canada, among others. Until the military demonstrates clear intent to appropriately discipline its troops, prosecute past abuses, and instill a culture of respect for the laws of war, the international community should continue to press for an international mechanism to ensure these longstanding problems are addressed.

Since the elections, the role of Burma's dominant institution, the armed forces, has largely fallen off the international agenda. This is despite the current government being largely comprised of former senior generals and a constitutional provision that provides one quarter of national, state, and regional assembly seats for serving military officers. And the military commander-in-chief retains total control over military justice matters.

The military remains the bedrock of Burma's governance. Yet a culture of impunity for human rights violations continues to pervade the armed forces, as evidenced by its ongoing abuses in ethnic conflict areas. One of the major challenges facing the new government should be military reform. The new government has made little mention of military affairs in its relatively fast-paced legislative and public relations blitz of 2011. The international community should be raising this as a key demand in all its dealing with the new Burmese government.

#### *Fundamental Freedoms and Political Prisoners*

Basic rights to freedom of expression, association, and peaceful assembly remain tightly circumscribed in Burma. The government staged two general amnesties of prisoners in 2011. In May and June, a general amnesty included a one-year reduction of all sentences, freeing an estimated 20,000 prisoners. Of these, 77 were believed to be political prisoners. In October, following months of rumors, another amnesty freed more than 14,000 prisoners. Disappointing widespread expectations of a major release of political prisoners, an estimated 220 political activists, journalists, artists, and other critics of the government were released, including famed comedian Zargana, labor rights activist Su Su Nway, journalist Nay Min, and several members of the National League for Democracy. Large numbers of political prisoners remain in Burma's horrid prisons. Officially, the government continues to deny the very existence of political prisoners, although one of President Thein Sein's political advisors, Ko Ko Hlaing, estimated that only 600 prisoners could be deemed political prisoners, and that the October amnesty released nearly half of them.

A number of repressive laws used to stifle activists and those challenging the government remain in force, including the State Protection Act (1975), Unlawful Association Act (1908), and several others. If the new government is serious about respecting basic rights, it should repeal or amend these laws to bring them into line with international standards, but so far they have shown no inclination to do so. Similarly, the government needs to take urgent steps to allow the judiciary to operate independently. The courts and law in Burma are used as an instrument to serve the interests of the government and military, not the Burmese people.

Prominent activists such as the leaders of the 88 Generation Students Group including Min Ko Naing, Buddhist monks and leaders of the 2007 peaceful protests such as U Gambira, and key ethnic nationality leaders such as the Shan politician Hkun Tun Oo remain in prison. The government continues to arrest and imprison activists, including a former army officer Nay Myo Zin, sentenced to ten years under the Electronics Act; Nay Myo Zin has been repeatedly tortured and abused while in custody. In his report to the UN General Assembly in September, the UN Special Rapporteur on human rights in

Burma, Tomas Ojea Quintana, stated that ill-treatment and torture, such as beatings and stress positions, and the denial of adequate medical care were prevalent in Burma's prisons.

The government has used political prisoners as a currency for concessions with the international community, and despite almost unified international calls for the complete and unconditional releases of all political prisoners, Thein Sein's administration has fallen well short of this key condition for marking progress.

Burma's government should immediately and unconditionally release all remaining political prisoners, cease the harassment and arbitrary detention of political activists, and repeal laws used to stifle dissent.

#### *Political Party Registration and Elections*

In late October the Political Party Registration law was amended in parliament, removing restrictions on candidates with prior prison convictions from contesting elections. The clause stating parties must "preserve and protect" the 2008 Constitution was removed, and now parties must "respect the Constitution, law and order." In addition, the requirement that any party contesting elections must have contested a minimum of three seats in the previous general election was dropped. This paves the way for the NLD to register. These are important improvements. The test is whether this will translate into genuine pluralism.

The 2010 election was a sham, controlled by the government at every stage of the process through restrictions on the ability of the NLD and others to participate, restrictions on campaigning, the lack of an independent election commission, state control over the media, and ballot stuffing on election day. All these problems will need to be addressed for the upcoming by-elections to be free and fair. If the government is serious about democracy, it should publish a plan for new national elections that will allow the Burmese people to choose their government in a free and fair poll.

#### *Parliamentary Reform*

Since parliament was convened in January, and the government formed in March, the national and 14 state and regional assemblies have sat for two sessions: January-March and August-October.

The new parliamentary structure in Burma has created more space for discussion on previously off-limits issues in the bicameral national assemblies and 14 state and regional assemblies. Previously sensitive issues have been discussed, such as nationality for the ethnic Rohingya Muslim minority, prisoner amnesties, teaching of ethnic languages in the official curriculum in ethnic minority areas, and cross-border trade issues. Yet, questions have to be approved two weeks in advance and the formalistic speeches found in the transcripts show little signs of robust democratic debate. This is

certainly a change, but it remains a long way from being a genuinely democratic legislative forum and representative people's house.

#### *Passing of New Rights-Related Legislation*

The national assembly has passed laws on the formation of trade unions, peaceful assembly and protests, and political party reform. These laws guarantee basic rights but contain caveats which could be used to stymie people seeking to fully implement them. For example, on its face the Labor Organization Law allows for the formation of trade unions and grants unions the right to strike. Workers in the private sector must provide three-days notice to strike, while in the public sector 14 days notice is required. Employers who dismiss workers for organizing or participating in strike action are subject to criminal penalties. However, the law limits the independence of trade unions because unions will have to register with a national registrar appointed by the president.

Observers have cautioned that it remains to be seen whether independent unions will really be able to operate in practice. The international community, especially the International Labor Organization, should urge the Burmese government to implement the law consistent with the right to freedom of association and international labor standards when the new law and related regulations come into force. Labor activists who remain in prison need to be released.

The Peaceful Assembly Bill is currently before the parliament's upper house. The draft text has not been made public, so it is impossible to analyze the provisions. However, details surfacing in the lower house debate show that protest leaders are required to provide extensive personal details to the government in violation of their basic rights under international law. Further, in a country where authorities have ruthlessly persecuted protest leaders for years, and where many remain behind bars today, the required submission of identifiable details is likely to deter applications. For instance, a small protest by farmers in Rangoon in late October was broken up by police forces and several farmers and their legal representative charged with unlawful assembly and ignoring a police order to disperse.

The passing of new laws are an encouraging sign. But when unions start organizing and public protests start, the question is whether the government will allow these basic freedoms or revert to past repressive practice.

#### *National Human Rights Commission*

In September the government formed a National Human Rights Commission by decree, bypassing the new parliament. The 15-member commission, led by former military officers, comprises mostly retired senior bureaucrats and academics. In October it

made a call, clearly orchestrated from above, for the government to enact an amnesty of “prisoners of conscience.” The commission also called for citizens to submit complaints, although the requirement to provide their full names and national identification details could be dangerous and will certainly act as a deterrent to many potential complainants.

The United Nations and donor states should not consider supporting the commission until it conforms with the Principles relating to the Status of National Human Institutions for the Promotion and Protection of Human Rights (the “Paris Principles”). This will require significant changes in its mandate and membership. In the meantime, the current commission should demonstrate its independence and willingness to address serious human rights abuses so that it can be taken seriously as a human rights voice within the country.

#### *Role of Aung San Suu Kyi and the NLD*

Democracy leader Aung San Suu Kyi has been permitted greater freedom to travel around Burma since her release on November 13, 2010. She has visited Pagan and Pegu, north of Rangoon. She also attended a national economic workshop in the capital, Naypyidaw, for the first time (as a private citizen, not as a representative of the National League for Democracy) where she met with President Thein Sein, symbolically photographed together standing beneath a giant portrait of Suu Kyi's father, General Aung San, the founder of Burma's modern army. She has been allowed unfettered access to international media. She attended the annual Martyrs Day ceremony in July along with 3,000 supporters, the first time this has happened in a decade. She has expressed a willingness to work with the president and satisfaction at the quality of her discussions with her government liaison, Labor Minister Aung Mye Thazan.

The government has increased pressure on the NLD to formally register, but sticking points remain, including restrictive electoral laws and the continued imprisonment of large numbers of NLD members and democracy activists. The looming fault-line between the NLD and government will be the legal registration of the party.

#### *Media Freedom*

There has been a marked relaxation in media restrictions in 2011, with more open reporting on government decisions and policies and coverage of parliamentary debates. Private media have been permitted to run stories about Aung San Suu Kyi. For instance, an opinion piece by Aung San Suu Kyi, as well as interviews with prominent exiled journalists such as *The Irrawaddy* magazine founder Aung Zaw have been published in Burmese language media.

Internet censorship has been relaxed to permit access to exiled news media and other banned sites, although in many cases the widespread use of proxy servers has made government bans negligible for many years. Internet access in Burma remains extremely low in any case, with only an estimated one percent of the population having regular access to the internet. The use of social media to discuss sensitive political, environmental and economic issues increased, but again this is restricted to relative elites in urban areas. Lifting of the ban on selling hard copies of regional newspapers was welcomed, but censors still removed sensitive stories early in 2011, such as those in the *Bangkok Post* that discussed previous government orchestrated attacks on Aung San Suu Kyi.

International media have in most cases still been denied access to Burma, and most continue to clandestinely access the country as tourists. Burmese staff of the Voice of America Burmese Service, previously derided in official propaganda as "sowing hatred among the people," have been permitted to report openly from inside Burma.

Despite this partial liberalization, the censorship board continues to oversee all political and economic publications and prohibit some stories from being published. Fourteen journalists of the exiled media group Democratic Voice of Burma (DVB) continue to be incarcerated, as well as several other journalists. State controlled and private media are sharply restricted on reporting on sensitive issues such as army abuses in ethnic conflict areas, high level corruption, and rapacious business practices such as land seizures.