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International Community's Premature Rewards Fail to Address Armed Conflict and Human Rights Violations in Burma

While many Western governments have rushed to reward the Thein Sein government's steps towards reform, the situation on the ground remains unchanged for the majority of the people of Burma, particularly in ethnic regions.

The Thein Sein government is keen to advertize its progress in long-standing conflicts in Karen State and Shan State, pointing to ceasefires signed over the last few months yet these ceasefires have been broken numerous times by the Burma Army. The worst situation is seen in Kachin State as the Burma Army offensives against the Kachin Independence Army (KIA) have escalated, resulting in a huge increase of human rights violations against Kachin people.

While such issues are having grave consequences for people in ethnic regions, the international community closely followed the outcome of the by-elections held on 1 April. The National League for Democracy (NLD) won in convincing fashion and, while this holds symbolic value, the available seats only amounted to less than 7% in Parliament. The military still has a stranglehold on any position of power in Burma.

Sanctions imposed by many countries have been loosened or lifted. This is despite none of the benchmarks stated for sanctions to be lifted being met. The continued detention of hundreds of political prisoners, new laws that do not change the situation on the ground for the people, escalation in armed conflict, and another election marred by irregularities does not represent democratic change in Burma.

April by-elections

After a small amendment to the Political Parties Registration Law, the NLD was able to re-register as a political party and conducted a spirited campaign for all but one of the available seats in the 1 April by-elections. The elections were filled with irregularities such as wrong voters lists with the omission of some individuals and the inclusion of deceased persons. Reports of bribery were commonplace, as was intimidation, while certain ballot papers were covered with a thin layer of wax, making it difficult to place a mark for particular candidates. In Kachin State, polls were cancelled in three constituencies, with the Thein Sein government claiming a lack of security. Despite this the NLD prevailed and swept to victory, winning 43 of 45 available seats, with the Thein Sein government garnering praise from the international community.

Even though the NLD won the majority of seats contested this only amounts to less than 7% representation in Parliament. Not only does this severely restrict their ability to actually accomplish anything in Parliament, the inherently undemocratic 2008 Constitution negates any positives that can be taken from their victory. The constitution provides a catch-22 situation whereby the military

holds 25% of the seats in Parliament and any amendment to the constitution requires a vote of over 75%. Also, key ministries are assigned to military personnel only while the Commander-in-Chief of the armed forces has the power to assume complete legal, executive and judicial control in a state of emergency. Therefore, despite the NLD winning overwhelmingly and Daw Aung Suu Kyi now in office, the reality is that the results were insignificant. The military still yields complete control over the country. As former political prisoner and recipient of the Amnesty International Human Rights Defender Award, Ko Ko Naing stated, the general elections of 2015 “will be the true litmus test of democracy.”¹ If the polls then are free and fair and all seats are contested, then perhaps the opposition would consequently be able to amend the undemocratic constitution.

New laws

New laws have been promulgated to ostensibly grant the people of Burma more freedom of association, to form trade unions, to assemble and protest. However, these laws are at times vague, at times still very restrictive, and at times completely insufficient to protect the basic rights of the people.

On 2 December 2011, President Thein Sein formally approved the Peaceful Demonstration and Gathering Law that would allow peaceful protests under certain conditions. Yet as the UN’s Special Rapporteur for human rights in Burma, Tomás Ojea Quintana notes, the conditions under which peaceful protest may or may not be organized “may result in disproportionate restrictions. The law requires information on the time, place and reason for the demonstration to be provided to the authorities in advance, as well as details about speakers and the slogans that will be used. The law also prohibits protests at factories, hospitals and Government offices, and provides a penalty of a year of imprisonment if a protest is staged without permission.”²

The Labor Organization Law, promulgated in October but only coming into force five months later, in which trade unions are allowed to be formed and the right to strike is given, is also inherently flawed. In a briefing paper released in March, the International Trade Union Confederation notes that the new law does not fully afford the rights guaranteed under ILO Conventions 87 and 98.³ Moreover, the Labor Organization Law is nearly devoid of any operable language regarding collective bargaining and dispute settlement. Therefore, in the absence of such language, it remains unclear which laws - if any - govern industrial disputes.

Meanwhile, many of the draconian laws that have been used to imprison thousands of activists by successive military regimes have not been repealed. Such laws include the Unlawful Association Act, the Emergency Provisions Act and the Electronics Act. There are currently over 900 political prisoners in Burma who have been charged under these laws or similarly repressive legislation. The political prisoner issue has taken a back seat since January, yet on 8 May, Phyo Wai Aung was given the death sentence for allegedly being behind the 2010 water festival bombing in Rangoon. The reality is that he was tortured into a confession and suffered human rights abuses by the police from day one of his arrest until his subsequent death sentence. While there remain over 900 political prisoners inside Burma, many of whom have had comparable experiences to Phyo Wai Aung, Win Mra, Chairman of the newly formed, government-backed Myanmar National Human Rights Commission (MNHRC), stated that the issue is “a moot point right now because there are so many other things happening.”⁴

¹ [“Step by Patient Step on the Road to Democracy”](#) NZ Herald, 18 April 2012.

² [Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar](#), Tomás Ojea Quintana, 10 March 2012.

³ [“Burma Sanctions Benchmarks”](#) International Trade Union Confederation, 6 March 2012.

⁴ [“Myanmar’s Grim, Unfinished Reform: Hundreds of Political Inmates Languish in Remote Prisons”](#) Washington Post, 9 May 2012.

Ethnic conflict

In the last few months the Burma Army has turned much of Kachin State into an area ravaged by war. Tensions have been rising as people in Kachin State are faced with large-scale development projects infringing on the lives of ordinary people by having detrimental social and environmental effects. When the Kachin Independence Organization (KIO) did not agree for its armed wing, the Kachin Independence Army (KIA), to become part of the Border Guard Force the response from the Burma Army was extreme and an offensive was launched on 9 June 2011. Today, attacks on KIA positions are a daily occurrence. A Human Rights Watch Report released in March stated that the “Burmese army has attacked Kachin villages, razed homes, pillaged properties, and forced the displacement of tens of thousands of people. Soldiers have threatened and tortured civilians during interrogations and raped women. The army has also used antipersonnel mines and conscripted forced laborers, including children as young as 14, on the front lines.”⁵ The Kachin Women’s Association of Thailand reported 60 cases of rape by the Burma Army since hostilities began.⁶

The government’s response to these accusations has been inadequate. One example of the neglect of these human rights violations is the case of Sunlut Roi Ja, a Kachin woman who was arrested by the Burma Army on 28 October 2011 and has not been seen since. At a hearing at the Union Supreme Court on 23 February 2012 the authorities denied any knowledge of her abduction. In fact the MNHRC has deemed such violations as unimportant with the Chairman, Win Mra, telling journalists that an inquiry into these abuses was “not appropriate at this present time.”⁷

There have been peace talks with the KIO, who desire a political dialogue, yet Thein Sein’s government is keen on relegating a political solution to a much later stage of the peace process. Due to the lack of trust in the Burma Army, the KIA stipulate that in order for them to sign a ceasefire, the Burma Army must leave KIO territory. This distrust is not surprising. When President Thein Sein ordered the Burma Army to halt offensives on 10 December 2011, the army ignored his commands and continued their attacks. Even during peace negotiations, the Burma Army continues their attacks.

The KIO only needs to look at the actions of the Burma Army after much-lauded ceasefires have been signed with other ethnic groups. While the KIA are the only major ethnic group with which the Thein Sein government has not signed a ceasefire, reports continue to emerge of attacks in Shan State on the Shan State Army North and the Shan State Army South (at least 15 clashes as of 18 March), while in Karen State the Burma Army raided a military base of the Democratic Karen Buddhist Army.

A closer look at the negotiation process gives hints as to the real motivation behind the ceasefires. Businessmen close to the regime have attended many peace talks, while at the second meeting with the Karen National Union, part of the delegation from Naypyidaw consisted of the Minister of Energy, the Minister for Heavy Industry and the Minister of Electricity. With huge development projects in Karen State something the Thein Sein government is striving for, its desire for a ceasefire is a self-serving economic one, not a genuine political one. Meanwhile in Mon State, shortly after the ceasefire was brokered, the Minister for Mon State met with the Tala Mon Company to discuss a US\$1 billion seaport at Kalegawk Island, similar to that of the controversial Tavoy Deep Sea Port Project. Such development projects, however, have not proven to be beneficial to local ethnic people. Hsa Ji of the Kachin Development Networking Group (KDNNG)

⁵ [“Untold Miseries: Wartime Abuses and Forced Displacement in Burma’s Kachin State”](#) Human Rights Watch Report, 20 March 2012.

⁶ [“Regime has been denying that it has been committing human rights violations”](#) Kachin Women’s Association Thailand, 5 February 2012.

⁷ [“Head of HR Commission Rules Out Conflict-zone Inquiry”](#) The Irrawaddy, 15 February 2012.

recently warned of the dangers of this kind of development in Kachin State, “Burma’s Thein Sein government collects taxes on mining operations and military and government authorities locally and in Naypyidaw gain billions of kyat in bribes from mining and logging businesses.”⁸ With ceasefires signed, the Thein Sein government can advance its development projects from which it gains huge benefits. However a political settlement, the stated aim of ethnic armed groups, is still far from being realized.

Sanctions

The US, the EU, Australia, Norway and Canada all announced significant lifting of sanctions after the April by-elections, while maintaining arms embargoes. This was a major goal for the military-backed administration as Thein Sein articulated in a Washington Post interview, “if you would like to see democracy thrive in our country, you should take the necessary actions to encourage this by easing the sanctions that were placed on our country.”⁹ The benchmarks for the lifting of sanctions have been consistent until 2012: the unconditional release of all political prisoners, an end to human rights abuses and genuine dialogue between ethnic nationalities and the democratic opposition. Today, more than 900 political prisoners remain incarcerated, ethnic conflict and human rights violations continue unabated, repressive legislation still exists and is still used to repress the people, while the military-backed government has a firm grip on power. Those benchmarks have not been met, yet many countries have eased or lifted sanctions.

This is a huge problem for Burma. With the imminent influx of investment and development money, it is the military commanders and their elite cronies who will benefit. There is no rule of law in Burma, no safeguard policies or mechanisms for environmental or social impact assessments for development projects, and human rights violations become much more prominent in regions where these projects take place, predominantly in ethnic regions. Ethnic armed conflict will only be exacerbated as people are left out of the development process and due to the complete lack of accountability of the ruling military. There are already doubts over the authenticity of Thein Sein’s decision to suspend construction of the Myitsone Dam in Kachin State, a development project that has huge social and environmental consequences for Kachin people while the benefits go to China and Burman elites. It has been reported that work has restarted there. Similarly in Tavoy, Tenasserim Division, the Tavoy Deep Sea Port Project has forced many people off their land due to the deficiency in Burma of land tenure laws.

Conclusion

This is the situation on the ground for the people of Burma. While the military-led government of Thein Sein achieved its political objectives of improving its international image and gaining legitimacy through its minimal reform steps, the Burma Army continues to commit human rights violations in ethnic regions that may amount to crimes against humanity and war crimes, people are forced off their land for development projects, people remain imprisoned for exercising their political beliefs and the political opposition is not in a position to change the path for the millions of people who are suffering at the hands of the military. In all these, the international community has chosen to reward the military-backed government prematurely while it is unclear how rewarding such a state of affairs will encourage the Thein Sein government to engage in actual, substantive democratic reform and end a culture of impunity and human rights abuses.

⁸ [“Lessons from the Kachin ‘development’ experience”](#) Kachin Development Networking Group, May 2012.

⁹ [“Burma’s President Gives his First Foreign Interview”](#) Washington Post, 20 January 2012.

Recommendations to the international community

Refrain from investing in development projects in Burma until:

- Armed conflict and human rights violations, particularly in ethnic areas, are brought to an end
- The rule of law is established whereby those in power can be held accountable and the culture of impunity ends
- International best practices, including social and environmental impact assessments with meaningful participation of potentially affected local communities and civil society, are mandatory for any project
- Local communities' concerns are addressed and the people play an active role in decision making regarding resources in their areas
- Corruption and cronyism, that have so long hampered ethical development in Burma, are eradicated and laws are established to ensure revenue and contract transparency

Maintain these benchmarks and refrain from rewarding the government until:

- Ethnic conflict has ended and a sustainable political solution is found
- All political prisoners are released unconditionally
- The 2015 election is conducted freely and fairly