



BURMAPARTNERSHIP

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Strengthening Cooperation for a Free Burma

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Tension, Discord and Insecurity: The State of Burma/Myanmar's Peace Process

While it appears that the peace process in Burma is making substantial progress, and this is certainly what the government is espousing, the realities on the ground for many people are much the same as they have always been. In non-ceasefire areas incidences of conflict occur almost daily between the Burma Army and the Kachin Independence Organization (KIO) and conflict with the Ta'ang National Liberation Army (TNLA) has sharply increased since the start of 2014, while in areas where ceasefires have been signed, sporadic fighting continues. Meanwhile, severe human rights violations continue, including the systematic use of rape as a weapon of war by the Burma Army. To date there has been no effort from the government to put this unreformed and unrepentant institution under civilian control or make any meaningful moves towards finding justice for those victims of human rights abuses.

As for the peace process itself, there has been a disproportionate focus, especially from the government side, on achieving a nationwide ceasefire agreement (NCA). These discussions have been ongoing for over 18 months, and the supposed benefits of this agreement are uncertain. The Burma Army and the government appear to have contradictory positions with the Burma Army proving to be particularly obdurate, while on the ethnic armed group side, increased inter and intra group tension is further complicating the process.

While the peace process appears stuck, this has not stopped other actors advancing their own agendas. Investment in fragile areas by private actors is serving to exacerbate the situation, particularly with land grabs. For the 120,000 refugees living in camps on the Thailand-Burma border, recent developments based on false presumptions of a successful peace process are causing widespread anxiety concerning possible forced return by the Thai government. The government of Japan has released an assessment that proposes mass industrial development in eastern Burma in order to entice refugees back to become industrial workers. Meanwhile, since the military coup in Thailand in May 2014, there has been more talk of the refugees being sent back, including a high profile meeting between the military chiefs of both Burma and Thailand, in which return was discussed. The reasons why the refugees fled in the first place; insecurity, landmines, and land confiscation among others, are still very much existent in Burma today, and any talk of return is premature. Any return must be voluntary with well informed that the rights of refugees protected and they must be able to participate in all aspects of the process including the decision-making.

It is vital to have a closer look at the situation of peace and conflict in Burma today, and the grievances and sufferings of ethnic minority people are taken into account. Every peace process takes time and Burma is just at the beginning. Before we can talk of success and transition there needs to be much more political will and commitment on the side of the Burma Army to begin building trust. The NCA is not a sacred agreement that

will immediately produce sustainable peace. It is a mere starting point on an arduous path to the political dialogue that involves, fundamentally, changing the 2008 Constitution to ensure the right of self-determination, ethnic equality and justice for ethnic people of Burma.

Ongoing Conflict

Since the Burma Army broke the 17 year ceasefire with the KIO in June 2011 the onslaught has been relentless, including airstrikes in January 2013. Around 120,000 civilians have been displaced and are living in internally displaced persons (IDP) camps while clashes occur daily in Kachin State and northern Shan State. Recent clashes have centred on northern Shan State and Hpakant in Kachin State.¹

The other main ethnic armed group that hasn't signed a ceasefire deal, the Ta'ang National Liberation Army (TNLA), has seen attacks increase throughout 2014, with over 100 clashes as of July 2014.²

Incidences of armed conflict are not restricted to those with groups that have not signed a ceasefire. In Shan State, there are continued attacks on the Shan State Army – North (SSA-N) and Shan State Army – South (SSA-S). An offensive involving 3000 Burma Army troops was launched against SSA-N positions in June this year. In Karen State, tension, especially in the KNU's Brigade 5 area, has resulted in occasional clashes, some of which are not reported to KNU headquarters. Recent flare-ups with the Karen Democratic Benevolent Army (DKBA) in Karen State and Mon State have also led to serious incidences of armed conflict, including the use of rocket propelled grenades causing several fatalities.³

Human Rights Violations

As conflict continues and the Burma Army strengthens and reinforces its positions in ceasefire areas, human rights violations continue unabated, particularly in Kachin State and northern Shan State with little redress available for victims.

Sexual violence is a pressing problem that has been highlighted time and time again but continues, despite Burma endorsing the Declaration of Commitment to End Sexual Violence in June 2014. The Women's League of Burma outline how, in fact, sexual violence is used systematically as a weapon of war in their report, 'Same Impunity, Same Pattern.'⁴ They have documented over 100 cases of rape since the 2010 elections although the actual figure is likely to be much higher given the difficulties of recording these cases, both due to fear of repercussions as well as social stigma. 47 of these cases involved gang rape and one of the documented cases involved a girl as young as eight years old. Since the report was released, five more cases have been documented in northern Shan State and Kachin State. In Chin State the attempted rape of a 55 year old

¹ "200 Kachin Civilians Flee Fighting near Hpakant", The Irrawaddy, 13 August, 2014, <http://bit.ly/1uYntzl>

² "One Civilian Killed as TNLA, Govt Troops Clash", The Irrawaddy, 18 August, 2014, <http://bit.ly/YEVKth>

³ "One Civilian Killed as TNLA, Govt Troops Clash", The Irrawaddy, 18 August, 2014, <http://bit.ly/YEVKth>

⁴ "More Clashes Between Govt and Karen Rebels in Mon State", The Irrawaddy, 29 September, 2014, <http://bit.ly/YJOBr3>

⁴ "Same Impunity, Same Pattern: Sexual Abuses by the Burma Army Will Not Stop Until there is a Genuine Civilian Government", Women's League of Burma, 14 January, 2014, <http://bit.ly/1qTO005>

woman by a Burma Army soldier provoked protests by over 600 Chin women.⁵ The response of the authorities was to charge the organizers of these protests under Section 18 of the Peaceful Assembly Law, a law enacted under the Thein Sein Government which ostensibly allows peaceful protests. Yet Section 18 prohibits any protests or assemblies in the absence of prior permission from the authorities – in violation of international law and norms on the right to freedom of assembly and expression.

In eastern Burma, Karen Human Rights Group have documented new patterns that have emerged centred around economic interests, particularly land grabbing.⁶ Thus, companies with links to the military and government are able to take land for economic projects such as mono-plantations and mining operations, while the military itself is confiscating land to build more bases. In Shan State, due to the offensive described above, 800 people have been displaced as Burma Army shells hit their villages while Burma Army troops looted possessions and destroyed farmland.⁷

These human rights violations continue with impunity and justice remains elusive. One of the women raped in Kachin State has tried to get the case heard in the court system, a system that is totally lacking in independence, competence and transparency. Her family has subsequently been harassed and intimidated by local authorities. The Myanmar National Human Rights Commission has remained an ineffective body that lacks independence as it has failed to address sexual violence in conflict zones, or indeed any other pattern on human rights violations committed by the Burma Army.

This impunity is, in fact, enshrined in the 2008 Constitution. Under the 2008 Constitution, a courts-martial system was established which, under its mandate, according to the Burma Lawyers Council, “members of the military never have to appear before civilian courts, regardless of their crime.”⁸ While courts-martial systems are common in other countries, the military justice system in Burma is practically non-existent. While in Indonesia, for example, decisions made in the military courts can be appealed at the civilian Supreme Court, the highest power in the military justice system in Burma is the Commander-in-Chief of the Armed Forces, Senior General Min Aung Hlaing, who can overturn any decision made.⁹

Prospects for Peace?

The peace process has been stumbling along since a raft of individual ceasefires were signed in late 2011/early 2012 but there has not been much progress since. There has been an overwhelming focus on the signing of a Nationwide Ceasefire Agreement (NCA). There have been six rounds of official talks between the government's Union Peacemaking Working Committee (UPWC) and, representing the ethnic armed groups, the Nationwide

⁵ “Drop Charges Against Chin Activists; End Impunity for Sexual Violence” Chin Human Rights Organization, 15 July, 2014, <http://bit.ly/1sLqbLX>

⁶ “Truce or Transition? Trends in Human Rights Abuse and Local Response in Southeast Myanmar Since the 2012 Ceasefire”, Karen Human Rights Group, 14 May, 2014, <http://bit.ly/YK3kCw>

⁷ “Burmese Government Must Stop New Military Operation Against Ceasefire Group in Northern Shan State”, Shan Human Rights Foundation, 10 July, 2014, <http://bit.ly/1u7Hdmb>

⁸ “Revealing Burma’s System of Impunity,” Burma Lawyer’s Council, 9 September 2011, <http://bit.ly/nLgQHb>

⁹ “Myanmar: civil-military relations and constitutional reform”, Melissa Crouch, East Asia Forum, 21 June 2013, <http://bit.ly/123MSvn>

Ceasefire Coordination Team (NCCT) in order to finalize the NCA. Despite regular statements from the government side that the NCA is nearly complete, each round of talks does not end conclusively. One major stumbling block is the Burma Army's imposition of six points in negotiations, one of which is for the ethnic armed groups in negotiations to accept the 2008 Constitution, a deeply flawed document that centralizes control of the country in violation of ethnic people's right to self-determination and entrenches the power of the Burma Army.

Much effort has been put into the creation of the yet unfinished and unsigned NCA but most of the ethnic armed groups already have a ceasefire agreement with the Burma Government individually, which have not been implemented. Instead, the Burma Army continues to attack these groups. What is the point, therefore, of signing another ceasefire agreement? Part of the current NCA negotiations involve setting a code of conduct and reposition of troops. If such issues were settled and adhered to this would go a long way to stop the regular breaches of current ceasefire agreements and would be a major step forward. Yet this is a sticking point for the Burma Army, as they claim that the code of conduct would delay the peace process.¹⁰ This, however, is contradictory. A code of conduct would advance the peace process as it would reduce conflict and help build trust while it could help reduce incidences of human rights violations. Thus, the difficult parts of negotiations such as this code of conduct among others, are the issues that need most compromise, yet they are being avoided by the Burma government and the Burma Army. It is easy for the government to proclaim that they are nearly there, that the agreement is 80% finished, yet the hard issues are nowhere near agreed.

There is also the problem of the differing statements of the government and the Army. The main government negotiator, Minister Aung Min, has stated that a federal system, one of the key demands of the ethnic armed groups is something that the government is willing to accept yet the military has not indicated any such acceptance. The government can promise many things, but the Burma Army, which is still the most powerful institution in Burma as enshrined in the 2008 Constitution, also needs to be on board. Furthermore the Commander-in-chief of the Burma Army, Min Aung Hlaing, has not been present in any of the UPWC-NCCT negotiations. So far the military hasn't shown any indication that it has the genuine political will to negotiate on the fundamental issues that the ethnic armed groups are calling for. In fact, in comments made to a group of officers in November 2013, Min Aung Hlaing stated, "We made peace agreements, but that doesn't mean we are afraid to fight. We are afraid of no one. There is no insurgent group we cannot fight or dare not to fight,"¹¹ while also stating that the military intends to follow the policies of retired dictator, Than Shwe.

Ethnic Disunity

Complicating this process is the disunity and discord of ethnic armed groups. At the recent congress of the main ethnic alliance, the United Nationalities Federal Council (UNFC), the KNU, one of the strongest and most politically powerful armed groups, suspended its membership, ostensibly due to disagreements over the structure of the UNFC. This has angered many members of the Karen community as well as elements within

¹⁰ "Military Issues Hold Back Progress on Ceasefire Deal", Myanmar Times, 29 September, 2014, <http://bit.ly/10hu9zi>

¹¹ "Military Chief Blames Ethnic Groups for Conflict, Says Army 'Afraid of No One'", The Irrawaddy, 14 January, 2014, <http://bit.ly/1akRods>

the KNU itself.¹² Some members of the current KNU leadership is very close to the government and has met separately with Min Aung Hlaing and the government on six occasions. There is a distinct lack of transparency regarding the content of these meetings. While certain aspects of peace-making need to remain confidential, as is the case with peace processes the world over, the balance here has not been struck, and leads to suspicion over the motives of both the KNU leadership and the government's strategy. Memories of divide and rule tactics are still very fresh in the minds of ethnic communities. There are also powerful factions of the KNU that do not agree with the actions regarding the KNU's suspension of membership from UNFC and a split is a real possibility in what has traditionally been the most powerful ethnic armed group.

Civil Society and Women Remain Side-lined

Civil society organizations in Burma are strong and vocal yet are worryingly excluded from peace talks. While lip service is paid by both sides to the importance of their involvement, they don't have a presence in peace talks. On the government side, it is safe to say that they are simply ignored, The Myanmar Peace Center, which is generously funded by foreign donors, including the EU and Japan, is the government's support center although its activities and the money it spends lack transparency. The UNFC is in the process of setting up a mechanism for civil society involvement and the KIO has set up a technical assistance team through which Kachin civil society can voice their concerns and recommendations. It is worrying, however, that the UNFC feels that the initial peace talks should comprise of three stakeholders; political parties, the government, which includes the Executive, Parliament and the Burma Army, and the ethnic armed groups, while civil society should enter at the next stage. It is imperative that civil society, particularly from ethnic minority communities, are involved in all stages of the peace process, as they represent the communities that have long suffered from this decades long civil war and armed conflict.

There are similar concerns regarding women's participation. The peace talks have very few women present with no women at all from the government's side. This is a hugely detrimental. Women often feel the sharp end of conflict as outlined above regarding sexual violence. But not only this, their experiences of war are very different to that of men, and face different challenges and hardships. It is not just men with guns who are part of this conflict. It is whole communities, including women. Furthermore, it is very often women who are peace builders in their communities, advocating for the rights of displaced people, organizing community empowerment projects, and supporting the survivors of rights violations. It is much harder to input perspectives from women and from civil society after the peace process has started; they need to be present from the beginning.

Refugee Anxiety

¹² "Karen Groups Call for KNU to Reconcile with UNFC", DVB, 13 September, 2014, <http://bit.ly/1qTO005>

The uncertainty over what is happening in the peace talks, the continued conflict in Kachin and northern Shan States, as well as the military coup in Thailand is causing anxiety for the 120,000 refugees who live in camps in Thailand. This is further exacerbated by certain policies of the international community, which are developing their own policies for Burma on the assumption that peace is just around the corner. Thus, ration cuts have been cut in the camps by donors, while the government of Japan, which has a close relationship with its counterparts in Burma and have huge economic and geopolitical interests in the country, have designed a plan for industrial development of eastern Burma, of which the refugees, most of whom are from rural backgrounds, are to provide the cheap labor force.¹³ This is farcical. The conditions from which refugees fled still exist today. Landmines plague the region, the Burma Army still has a strong military presence if not stronger, ceasefires remain fragile, and there is no sustainable peace. Meanwhile, the ongoing political negotiations, and increase in economic activity, leave villagers inside Burma vulnerable to exploitive land expropriation. Yet the refugees feel that they may be forced back to the country very soon and are understandably frightened. Return should be completely genuinely voluntary, and cutting rations and restricting their movement as the current Thai regime is doing, does not make return voluntary. It puts unnecessary pressure on them that lead them feel they have no other option but to return. If the government of Japan had bothered to consult refugees, community based organizations, or done a comprehensive analysis of the conflict, they would have developed the same perspective. But they didn't, and as any other investor will find out, unless there is sustainable peace in the ethnic areas of Burma, they won't be able to invest sustainably, and may create unnecessary tension in this fragile time and impose further vulnerability and harm on this long suffering population.

Conclusion

The state of Burma's peace process is characterized by tension, discord and insecurity. The most vulnerable populations are still suffering yet their concerns and voices and hopes are still neglected. The ongoing conflict, the human rights violations, the insecurity; this remains the reality. Fundamental change is going to occur when the aspirations of ethnic people are listened to and materialized in the political discourse of the country and this fundamental change will occur when the 2008 Constitution is amended. This is because it solidifies the role of the Burma Army and centralizes power in Naypyidaw. The ethnic armed groups as well as the ethnic civil society organizations and communities are not calling for secession. They want a federal system in which ethnic nationalities attain equality and the right to govern themselves within the Union of Burma. The Burma Army quite simply does not want this. It hasn't indicated that it will relinquish power, nor that it will accept greater rights to the ethnic people, nor that it will become an accountable institution under civilian control. With the 2015 General Election looming, it is unlikely that constitutional change will occur beforehand, and it is therefore likely that the military will continue to occupy 25% seats in Parliament, to continue its offensives in northern Burma, to continue committing gross human rights violations, and to continue protecting itself from any other influence, whether domestic or international. Until the Burma Army shows genuine political will in the peace process, the current state of affairs will remain uncertain and peace will remain elusive. Meanwhile, those communities who have suffered for decades will continue to suffer.

¹³ "Critique of Japan International Cooperation Agency's Blueprint for Development in Southeastern Burma/Myanmar", Karen Peace Support Network, 12 September, 2014, <http://bit.ly/1By6RAz>

Recommendations

To the International Community:

- To call on the government to halt armed conflict in Kachin State and northern Shan State.
- To support the efforts of ethnic people of Burma in their struggle for equality. It is not just the Burma Government that needs to be listened to.
- To continue to support those in refugee camps and ensure that undue pressure is not put on them to return.
- To refrain from investing in large-scale development projects until a sustainable political settlement has been attained.
- To look beyond the nationwide ceasefire agreement as a marker for progress in the peace process.
- To consult with all relevant actors and disclose publicly any strategy before engaging in the peace process.
- To demand the end to human rights violations and for an effective accountability mechanism for those victims.

To Ethnic Armed Groups:

- To put aside individual differences and work together as one for peace-building.
- To prioritize the communities on the ground in all talks with the government.
- To be transparent and disclose relevant information around peace talks.
- To include civil society and women's groups at every stage of the peace process.

To the Government and the Burma Army:

- To immediately halt all offensives in Kachin State and northern Shan State.
- To end the resupplying and reinforcement of troops and the building and establishment of new military infrastructures in ethnic areas.
- To cease human rights abuses and end impunity for perpetrators.
- To publicly commit, including the Burma Army, to changing the 2008 Constitution and accepting a federal system of governance.
- To ensure women's participation in all negotiations and peace-building activities through specific mechanisms or measures.