

**International Federation for Human Rights (FIDH)
Alternative ASEAN Network on Burma (ALTSEAN-Burma)
Asian Forum for Human Rights and Development (FORUM-ASIA)
Forum for Democracy in Burma**

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INTRODUCTION

Since taking office in March 2011, the military-dominated government of Myanmar has made numerous commitments, however it has not initiated substantive reforms toward reconciliation and compliance with international laws. Although the recent release of political prisoners and other positive actions taken by the government should be welcomed, key minimum benchmarks have not been met. As Daw Aung San Suu Kyi told the World Economic Forum in Davos in January 2012: “We are not yet at the point of a ‘great transformation’”.

The key minimum benchmarks are:

- Immediate and unconditional release of all remaining political prisoners
- Nationwide ceasefire leading to sustainable peace and an end to systematic and pervasive human rights violations, including the rape of women, in ethnic nationality areas
- A genuine and inclusive dialogue with all political parties, other pro-democracy forces, and ethnic nationality groups

Meeting these key benchmarks is essential to the initiation of a sustainable national reconciliation process. The government has taken actions that are positive, such as the release of some but not all political prisoners and the amendment of the elections law to allow for the re-registration of the National League for Democracy (NLD). While we acknowledge these developments, the international community must distinguish between public relations efforts primarily designed for the lifting of sanctions and genuine sustainable institutional reforms which have yet to be initiated. We strongly urge the international community to:

- continue to monitor the situation inside Burma and exercise its leverage over the government of Myanmar to address ongoing violence against ethnic nationalities and to prevent it from backsliding on its commitments
- urge the government of Myanmar to take concrete efforts towards genuine and meaningful political, legal and socioeconomic reforms that are necessary to guarantee the rule of law consistent with international norms and standards, a stable investment environment, equitable economic development, and human security. These reforms must also include security sector and legislative reforms to halt and prevent recurrence of impunity.

ONGOING DETENTION OF POLITICAL PRISONERS AND HARASSMENT OF ACTIVISTS

Despite the recent releases of over 300 political prisoners, it is estimated that at least 400 political prisoners, including approximately 50 Buddhist monks, remain detained in prisons across the country. Although high-level government officials in recent months continue to deny that there are political prisoners, their continued existence was confirmed by recently released prisoners and by information conveyed to the UN Special Rapporteur on the human rights situation in Myanmar, Tomas Ojea Quintana, during his most recent visit to Burma from 31 January to 5 February, 2012. The death of former political prisoner Thet Nwe just nine days after his release on 13 January is an indication of the dire conditions in Burma's prisons and allegations of ill-treatment and arbitrary transfer of prisoners to remote prisons continue to be received by the Special Rapporteur.

Despite the release of political prisoners, many activists and former political prisoners continue to face harassment. Almost all, with the exception of Zarganar, have been denied passports. [See Annex I for details].

Burma's political prisoners should not have been arrested in the first place, and therefore their release must be *unconditional* and accompanied by *effective remedies*. The full restoration and respect for their civil and political rights, including the right to freedom of movement and to participate freely in public life, is essential to the success of national reconciliation. However, the release of 300 political prisoners on 13 January 2012 was not unconditional — it was granted under Section 401 of the Criminal Procedure Code¹, under which the 'amnesty' could be revoked at the discretion of the President who can order their re-arrest without a warrant.

Recommendations

- The Burmese government must immediately and unconditionally release all remaining political prisoners
- Independent international monitors should be granted immediate and unfettered access to Burma's prisons to thoroughly clarify and determine the exact number, location, and detention conditions of the remaining political prisoners
- The Burmese government must provide an effective remedy to all political prisoners, through restitution, rehabilitation and/or compensation
- The Burmese government must refrain from arbitrarily arresting, harassing, and intimidating former political prisoners, members of the opposition, democracy activists, and human rights defenders, and must guarantee their freedoms of expression, association, assembly, and movement in all circumstances, in line with the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

ATTACKS AGAINST CIVILIANS AND SERIOUS CRIMES CONTINUE IN ETHNIC AREAS

The armed forces of Myanmar (the Tatmadaw) continue to attack civilians in the military offensive against the Kachin Independence Army (KIA) which began in June 2011. In December 2011 and again in January 2012, President Thein Sein ordered the Tatmadaw to halt all military operations against the KIA, but the attacks continued and additional troops have reportedly been deployed to the Kachin frontline.

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), as of January 2012, the ongoing fighting has displaced as many as 55,000 people in Kachin State and northern Shan State.² At least 10,000 refugees have reportedly fled into China's Yunnan province. In mid-December 2011, a UN delegation was finally allowed limited access to internally displaced persons (IDPs) in areas controlled by the KIA. However, since then the Burmese government has refused to allow independent humanitarian agencies any access to IDPs. Medical and other basic supplies are scarce and are dwindling. Volunteer aid workers who are able to access some of the camps expressed concerns that unsanitary conditions and cold weather have already led to outbreaks of cholera and diarrhea in camps along the border with China. There are also reports of pregnant women suffering miscarriages because of the lack of adequate nutrition and medical care.

¹ Paragraph 3 of Section 401 of the Criminal Procedure Code stipulates that "*If any condition on which a sentence has been suspended or remitted is, in the opinion of the President of the Union, not fulfilled, the President of the Union may cancel the suspension or remission, and there upon the person in whose favor the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to complete the un-expired portion of the sentence.*"

² Democratic Voice of Burma, "UN counts 55,000 displaced Kachin," 6 February 2012.

Following his January-February mission to Burma, the Special Rapporteur revealed that he continued to receive "*allegations of serious human rights violations committed during conflict, including attacks against civilian populations, extrajudicial killings, sexual violence, internal displacement, land confiscations, the use of human shields, the recruitment of child soldiers, as well as forced labour and portering*".

A November 2011 report by the humanitarian group Partners Relief and Development documented serious international crimes committed by Tatmadaw soldiers in October in Nam Lim Pa Village, Mansi Township, Kachin State, including extrajudicial killings, torture, attacks against civilians, arbitrary arrests, forced labor, and forced displacement.³ The findings of the Physicians for Human Rights report released on 30 November also documented a similar pattern of serious human rights violations committed by government troops in Kachin State between July and September 2011, including looting food from civilians, firing indiscriminately into villages, and using civilians as porters, and human minesweepers.⁴ In its latest report covering the period from November 2010 to December 2011, the Karen Human Rights Group (KHRG) also documented the occurrence of 17 categories of human rights abuses, including sexual violence, forced minesweeping, and summary executions, faced by villagers in eastern Burma (Karen [Kayin] State, Mon State, Pegu [Bago] Division, and Tenasserim [Tanintharyi] Division). Many of these crimes were related directly to armed conflict and perpetrated by Tatmadaw soldiers.⁵

The "initial peace agreements" forged between the government and several ethnic groups in recent months⁶ are not likely to be sustainable so long as violence continues in Kachin State and abuses committed against ethnic communities remain unaddressed. On 8 February, the chairman of the New Mon State Party (NMSP) said that the group would not sign a ceasefire with the Burmese government as long as the war against ethnic Kachin continues. On the same day, the Shan State Army-South warned that the recent peace agreement it entered into with the government would be "meaningless" if Tatmadaw troops continued to attack and abuse civilians in Shan State with total impunity.⁷

Zipporah Sein, General Secretary of the Karen National Union (KNU), told the media that the initial peace agreement signed with the government was an agreement "in principle" and that further political talks were needed. Even as the government was in negotiation with the KNU in December 2011, a court in Rangoon [Yangon] brought new charges under the Unlawful Association Act against **Mahn Nyein Maung**, a prominent KNU leader who was already in jail on immigration charges. On 2 February 2012, he appeared before the court to face charges of both unlawful association and treason for his role in the KNU; he faces the death penalty or life imprisonment if found guilty.

Despite these 'initial peace agreements', attacks continued in Eastern Burma. On 24 January, less than two weeks after the KNU signed an 'initial peace agreement' with the government, two Tatmadaw battalions fired mortars into the Ler Doh IDP camp in Eastern Pegu [Bago] Division. Fighting broke out in Shan State on 7 February when three Tatmadaw battalions blocked the exit routes of SSA-S soldiers when they tried to cross through its own territory near Shan State's border

³ Partners Relief and Development, *Crimes in Northern Burma: Results from a Fact-Finding Mission to Kachin State*, 28 November 2011. Available at: <http://bit.ly/wm2bjh>.

⁴ Physicians for Human Rights, *Under Siege in Kachin State*, 30 November 2011. Available at: <http://bit.ly/t4rBu6>.

⁵ Karen Human Rights Group, *'All the information I've given you, I faced it myself': Rural testimony on abuse in eastern Burma since November 2010*, 15 December 2011. Available at: <http://bit.ly/vizRbd>.

⁶ In January 2012, the Burmese government signed four 'initial peace agreements' with the Shan State Army-South, the Chin National Front, the Karen National Union, and the Shan State Army-North. On 1 February, it entered into a five-point oral agreement with the New Mon State Party, but there was no written agreement and no truce was called. The 18-19 January negotiation in Rullii, China, between the Kachin Independent Organization (KIO) and the government delegation did not result in an agreement.

⁷ Democratic Voice of Burma, "Shan army calls for end to state abuse," 8 February 2012.

with Thailand. The Tatmadaw also attacked a SSA-S outpost in Mongpyin Township in eastern Shan State.

Recommendations:

- Tatmadaw forces must cease attacks against civilians, including sexual violence against women and girls.
- All parties in Burma must take special measures to protect women and girls from gender-based violence; put an end to impunity for such violence by bringing perpetrators to justice and providing effective remedies to victims; and ensure the meaningful participation and representation of women in negotiating and implementing peace agreements, in line with UN Security Council Resolution 1325 (2000).
- The government of Myanmar must declare and enforce a nation-wide ceasefire, and enter into an inclusive political dialogue with all ethnic nationalities to address the root causes of the conflicts
- The United Nations and other independent humanitarian agencies must be allowed safe, immediate, full, and unhindered access to provide the necessary aid to all IDPs in Kachin State, northern Shan State and eastern Burma.
- The Burmese government must guarantee that independent humanitarian agencies and human rights groups can maintain a presence in post-conflict areas to monitor and ensure that the resettlement and rehabilitation of IDPs are carried out in a manner that meets international standards

REPRESSIVE LAWS

Following his latest visit to the country, the Special Rapporteur warned that there was "*a lack of clarity and progress on reviewing and reforming the laws...identified as not in full compliance with international human rights standards,*" and that these laws "*impinge upon a broad range of human rights and have been used to convict prisoners of conscience.*" Repeated calls by the UN General Assembly and the Human Rights Council to review these laws have not been heeded by the Burmese government. These laws remain on the books and contain blanket 'security' clauses that could be invoked to trump any other legal safeguards that currently exist or may be developed [For a list of these laws, please refer to Annex II]. In January and February, Daw Aung San Suu Kyi said during an election campaign event that her party would work in the Parliament to support the rule of law, repeal 'repressive laws', and amend the 2008 Constitution.⁸ However, on 2 February, Htay Oo, Secretary-General of the ruling Union Solidarity and Development Party (USDP), told media that there was no need for immediate adjustment to the 2008 Constitution⁹.

Several new laws adopted by the Parliament in the past six months fail to comply with international human rights standards. In addition, the 2008 Constitution codifies impunity by granting a blanket amnesty to all members of the previous military government, the State Peace and Development Council (SPDC).¹⁰ The new repressive laws include:

- **The Peaceful Gathering and Demonstration Bill**, adopted in December 2011, requires demonstrators to seek prior approval from the authorities and inform them of the time, place, and reason for a demonstration, as well as the planned route of the demonstration and details of the speakers and slogans to be used. The bill prohibits protesters from blocking traffic or causing other types of disturbances during the demonstration or gathering. The law also prohibits demonstrations at public offices, embassies, schools, hospitals, and factories. Those who demonstrate without permission

⁸ Radio Free Asia, "Pledge to Scrap 'Repressive' Laws," 29 January 2012; Christian Science Monitor, "Aung San Suu Kyi hits the campaign trail in Myanmar," 7 February 2012.

⁹ Radio Free Asia, "Ruling Party Against Amendments," 3 February 2012.

¹⁰ Section 445 in the chapter "Transitory Provisions" of the 2008 Constitution states: "No proceedings shall be instituted against the said [junta] or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties."

could be sentenced and imprisoned up to one year.

- **The Farmland Bill** grants broad discretionary power to the government to confiscate land for a wide range of activities and projects (such as the construction of factories, railways, pipelines, and amusement parks) that are deemed by the government to be of “national interest.” The law, which is being discussed by Parliament, also grants the President the power to determine the use of land for particular purposes in any part of the country. The law fails to include any adequate judicial safeguards against arbitrary confiscation by giving sole jurisdiction over land-related disputes to the Ministry of Agriculture and Irrigation and its agencies.
- **The Pyithu Hluttaw Election Law Amendment Bill**, already promulgated, strips the right to vote from individuals convicted under laws such as the Unlawful Association Act. This Bill disenfranchises a large number of political prisoners and activists and violates their right to freely participate in public life.
- **The Ward or Village-tract Administration Bill**, adopted by the USDP-controlled Lower House in September 2011, stipulates that ward and village-tract administrative office chiefs must be nominated by superior government officials and not by a public vote. Signature by the President is pending.

While the promulgation of the **Labour Organisation Law** in October 2011 is largely positive, the Burmese government has so far failed to implement it. An application to form a union by factory workers in Pegu was thus turned down in December. Tint Swe, the deputy Director-General of the Ministry of Information’s Press Scrutiny and Registration Division, revealed on 31 January 2012 that **a new media law** to regulate print publications would be introduced. Alarming, Tint Swe said that the proposed law contains elements drawn from similar laws in Vietnam, Cambodia, and Indonesia, where the media freedom could hardly be described as free as they ranked 172nd, 117th, and 146th, respectively, out of 179 countries on Reporters without Borders (RSF)’s Press Freedom Index in 2011-12. Tint Swe also said the proposed law would not change the Electronics Transactions Law, which is one of the repressive laws that severely limit the enjoyment of freedoms of expression, opinion and information using electronic media.

The repressive laws combine to form a system with little accountability measures as it places sweeping power in the hands of the current government. So long as these laws remain, they will undermine and prevent the emergence of the rule of law necessary to build mutual confidence among the government, the opposition, other pro-democracy forces, and the ethnic nationalities. The ongoing harassment of Buddhist monk U Gambira demonstrates that without genuine reforms, activists and former political prisoners could easily be arbitrarily re-arrested and prosecuted on trumped up charges. Therefore, comprehensive legislative and constitutional reforms are essential to a sustainable peace and the process of national reconciliation. Without these reforms, the small openings we have witnessed so far can be easily reversed and the root causes of human rights abuses and armed conflicts will remain unaddressed.

Recommendations:

- The government of Myanmar must conduct a participatory, transparent, and comprehensive review of the 2008 Constitution and all national legislation, with a view to repeal or amend laws or their provisions that are inconsistent with international human rights law, while ensuring the meaningful representation and participation by the democratic opposition, civil society, and ethnic nationalities in the legislative process
- Pending the repeal or amendment of repressive laws, the government of Myanmar at all levels should refrain from bringing charges against individuals under any of these laws
- The government of Myanmar should ratify or accede to additional international instruments—including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture (CAT), and the Rome Statute—and to incorporate them into domestic laws and ensure their effective implementation, including timely reports to treaty bodies

JUSTICE AND ACCOUNTABILITY

The Special Rapporteur's latest statement made it clear that "*justice and accountability measures, as well as measures to ensure access to the truth, are fundamental for Myanmar to move forward towards national reconciliation...and to prevent future violations from occurring*". The ongoing crimes documented by civil society groups, including those mentioned above, are part and parcel of the widespread and systematic human rights abuses that have been subject to repeated calls for independent and impartial investigations throughout the last 20 years. These grave violations of international human rights and humanitarian laws have been perpetrated with total impunity, up to this day. Therefore, in order to embark on a process of national reconciliation, achieve sustainable peace and development, and ensure a credible transition to democracy, there is an absolute need to guarantee institutional protection of universal human rights and the non-recurrence of abuses by providing remedy to victims and ensuring accountability by all actors through judicial or non-judicial means.

Functional and institutional guarantees of justice and accountability are lacking in Burma, all the while more crimes are being committed with impunity in the ongoing war in Kachin State. The Special Rapporteur clearly stated that the recently created National Human Rights Commission (NHRC) is neither independent nor in a position to credibly pursue justice and accountability in line with the Paris Principles.¹¹ It is created by the government through a 'notification', rather than a legislative instrument to ensure its permanency and accountability to the public through elected leaders. The NHRC has an unclear mandate that is based on the 2008 Constitution, which enshrines impunity and allows for restrictions on fundamental freedoms beyond what is permissible under international law. The President appointed all members of the commission without any consultation with the public; all commissioners are former civil servants or ambassadors who for many years have defended the Burmese government's human rights records in various international fora. In mid-February, NHRC Chair Win Mra publicly expressed reluctance to investigate allegations of human rights abuses in ethnic minority areas. No structural or institutional reforms have been implemented to build an independent and competent judicial system, which remains a relic from the past and is neither independent nor impartial. In his latest statement, the Special Rapporteur reiterated his concerns about the lack of independence and impartiality of the courts and said that "*there was little acknowledgement [by the Supreme Court justices] of any challenges and gaps, and a lack of willingness to address [his] previous recommendations.*" Therefore, urgent reforms of the judiciary are needed to transform it into a credible institution capable of providing justice and ensuring accountability for violations of domestic and international laws. Such reforms will also be crucial to reduce the deep-seated mistrust between the government and the ethnic nationalities that undermines the implementation of ceasefire agreement and eventual reconciliation.

Recommendations:

- Independent, impartial and effective investigations into all allegations of human rights violations must be initiated with a view to identify and bring perpetrators to justice, and to make public the findings of these investigations
- The NHRC should be fundamentally reformed to ensure a strong and broad mandate to both promote and protect internationally recognized human rights. It should enjoy autonomy and independence from the government while ensuring transparency, accountability and accessibility to victims
- The Burmese government must direct Tatmadaw commanders to publicly instruct all military personnel to fully respect international human rights and humanitarian laws, and to hold regular and substantive trainings for them at all levels on the application of these laws, with the assistance of the UN, especially the Office of the High Commissioner for Human Rights (OHCHR)
- The government of Myanmar must also take all necessary measures to reform the

¹¹ For a detailed analysis, please see: Burma Partnership, "Burma's NHRC: An Empty Gesture," January 2012. Available at: <http://bit.ly/zCclY1>

judiciary to ensure that the courts:

- are free to exercise independence and impartiality at all times
- apply and interpret laws in a manner that is consistent with international standards and protect, rather than undermine, fundamental freedoms of the people
- refrain from charging persons under repressive laws
- The Special Rapporteur should be allowed to make regular visits to the country and be granted full access to all places of detention and all ethnic areas

CONCLUSION

The absence of hostilities is necessary but not sufficient for national reconciliation, and the release of all political prisoners and the presence of the National League for Democracy (NLD) in the Parliament alone cannot guarantee a successful transition to democracy. Sustainable peace and reconciliation require genuine political and legislative reforms that would overcome the structural obstacles to the rule of law, address the long-standing grievances of ethnic groups, including the Rohingya, ensure equality and non-discrimination in both law and practice, and protect the right of all citizens to participate freely in democratic society.

Although Burma is not yet at the point of a 'great transformation', Daw Aung San Suu Kyi said her country has a "rare and extremely precious opportunity to reach such a point." Therefore, the progress and quality of the reforms and the human rights situation in Burma require the close attention and sustained action of the international community, including the UN General Assembly and the Human Rights Council, to ensure that the small positive steps taken by the Burmese government are transformed into substantive and irreversible reforms, and that previous recommendations by the General Assembly and the Council are fully implemented.

ANNEX I: Recent harassment against democracy activists and former political prisoners

In October 2011, police arrested seven protesters and a lawyer, Mr **Pho Phyu**, for their participation in a peaceful demonstration in Rangoon [Yangon] against arbitrary land confiscation. The police charged them with unlawful assembly.

In November 2011, Mr **Myint Hlaing**, from Bassein [Patheingyi], Irrawaddy [Ayeyarwady] Division, was briefly detained by the police on charges on violations of the Television and Video Law for filming a peaceful protest by farmers against land confiscation in September 2011. The Law is identified by the Special Rapporteur as not in compliance with international human rights law.

On 21 November 2011, police in Akyab [Sittwe], Arakan [Rakhine] State, detained at least 10 local activists for their involvement in a campaign to demand better electricity supply in Arakan [Rakhine] State.

In December 2011, the state-controlled Maha Nayaka Sangha Council of Rangoon [Yangon] issued an order to evict the prominent government critic and monk **Ashin Pyinna Thiha (Shwe Nya War Sayardaw)**, from the Sardu Pariyatti Monastery as a punishment for his giving a sermon at the Mandalay office of the NLD in September.

On 10 January 2012, police in Rangoon's [Yangon's] South Dagon Township briefly detained Mr **Soe Kywe**, a local resident who was protesting corruption among local regime officials.

On 4 February, several monks who were arrested following the brutal crackdown of the 2007 Saffron Revolution and who were released in January 2012, including **U Gambira**, were evicted from Maggin Monastery in Thingangyun Township in Rangoon [Yangon] by the Ministry of Religious Affairs and the government-controlled Maha Nayaka Sangha Council. On 10 February, U Gambira, who has repeatedly criticized the government since his release, was taken away from a monastery in Rangoon [Yangon] in the middle of the night by government officials. He was released the same day. On 19 February, state-run media reported that the Sangha Council recommended legal action be taken against U Gambira for trying to reopen monasteries that had been closed by the authorities since the 2007 Saffron Revolution.

ANNEX II: Repressive Laws in Burma

1. Unlawful Associations Act (1908)
2. Emergency Provisions Act (1950)
3. Printers and Publishers Registration Act (1962)
4. Motion Picture Law (1966)
5. State Protection Law (1975)
6. Television and Video Law (1985)
7. Law Relating to Forming of Organizations (1988)
8. Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Opposition (aka Law 5/1996)
9. Computer Science Development Law (1996)
10. Electronics Transactions Law (2004)
11. Sections 143, 145, 152, 505, 505(b) and 295-A of the Penal Code

For a description of these laws, please refer to the Altsean-Burma briefer: "**Burma's Parliament: A Tool for Institutionalized Oppression**," 28 November 2011 (Also available at: <http://bit.ly/w4pZKw>). Also see Report of the UN Special Rapporteur on the human rights situation in Burma, 5 September 2008 (A/63/341).