



Asian Forum for Human Rights and Development (FORUM-ASIA)

Briefing Paper on the Situation of Human Rights in Burma/Myanmar

28th Regular Session of the UN Human Rights Council

1. Introduction

While there has been positive developments in some areas relating to democratisation and human rights in Burma/Myanmar, progress has stalled and the situation has even worsened in many other areas. The current transition process is controlled by the government without meaningful inclusion of political opposition groups, civil society, ethnic forces and people. Little has been done to realise a truly democratic system while restrictions on civil society have worsened. While severe hurdles to a free and fair election remain, newly introduced regulations further undermine the possibility of free and fair election in 2015. Existing and newly introduced laws continue to impose undue restrictions on the rights to freedoms of expression, association and assembly and many archaic and restrictive laws are being used to harass, intimidate and arrest human rights defenders and political activists. Peace process remains stalled while discriminatory laws and spread of hate speech continue to fuel communal violence and violence against ethnic and religious minorities.

It is thus vital to maintain pressure on the government of Burma/Myanmar through a resolution on the situation of human rights in Myanmar under agenda item 4 of the UN Human Rights Council to highlight these concerns, and to ensure that it continues with its reforms and addresses these issues as a matter of extreme urgency.

2. 2015 elections and restrictions on campaigning

Existing constitutional provisions and new regulations are aimed at restricting the ability of the NLD and ethnic parties to fully participate in the 2015 elections. Burma Army, which retains 25 per cent of seats in the parliament under the 2008 Constitution, continue to interdict any amendment that could result in a more democratic and pluralistic constitution. In June, the parliament voted to retain Article 59(f), which bars Aung San Suu Kyi from running for president.

In July, the Election Commission approved new regulations that seriously restrict the freedom to campaign. The new rules limit when and where individuals are allowed to campaign, place undue restrictions on candidates' public statements and events, and restrict the campaign period to 30 days, despite an NLD proposal for an extension. Party leaders and other party members wishing to campaign on behalf of candidates also require specific permission from the regime Election Commission. This is likely to hinder Aung San Suu Kyi's ability to campaign across Burma in support of the NLD.¹

Amendments to the Political Parties Registration Law passed by the National Assembly in March 2014

1 "Developments after the 2013 UNGA resolution", Altsean Burma and FIDH, September 2014

prohibit temporary identity card holders (which include many Rohingya) from forming political parties. In addition, high fees associated with election registration present a serious obstacle to the participation of smaller parties and independent candidates.

Furthermore, changes proposed by the parliament to the electoral system, including a switch to a system of proportional representation, gives an undue advantage to the ruling USDP over the other parties in the 2015 election. Many ethnic political parties have objected to such a change since the proposed system would make it difficult for minority parties to win seats.

Recommendations:

- Hold a referendum to amend the 2008 Constitution, including Article 59(f), ensure full compliance with international human rights norms and standards before the 2015 elections;
- Repeal the restrictive 2014 amendments to the Political Parties Registration Law that prohibit temporary identity card holders from forming political parties;
- Rescind the new regulations that impose restrictions on the freedom to campaign, including limitations on when and where individuals are allowed to campaign and undue restrictions on candidates' public statements and events;
- Ensure that meaningful participation of all citizens, including the opposition, civil society and minorities, in the context of elections is guaranteed by upholding the rights to freedoms of expression, peaceful assembly and association.

3. Freedom of expression and the freedom of press/media

The Press Law and the Printers and Publishers Registration Law was approved by the parliament in March 2014. Although these new laws mark the end of the draconian Printers and Publishers Registration Act of 1962, they impose significant restrictions on freedom of expression and allow government control over media. Several clauses in the junta-era law that prohibit the publication of material which insult religion, undermine the rule of law, or threaten ethnic unity or national security are retained in these new laws. Journalists risk detention, criminal charges, fines or suspension of their publishing licenses under these clauses. Between December 2013 and July 2014, the government arrested and/or sentenced at least 14 media professionals to prison terms under oppressive and outdated law^{5.2} These risks and continuing threats, arrests and sentencing of journalists have further encouraged self-censorship and stifled debate on controversial issues.

While legal framework and regulatory policies continue to restrict legitimate exercise of the right to freedom of expression, discriminatory and hate speech against Rohingyas by Buddhist monks, much of which amount to incitement to violence and hatred, have increased to alarming levels without check leading to escalation of communal violence and violence against religious and ethnic minorities, especially Rohingyas.

Recommendations:

- Repeal or amend all laws that place undue restrictions on the right to freedom of expression and media freedom, including the Press Law and the Printers and Publishers Registration Law, and ensure that all legislation are in full compliance with international human rights norms and standards;
- Stop all forms of threats and harassment, including arrests, detentions, criminal charges, and judicial harassment against journalists;
- Take urgent steps to address escalating extremist nationalist sentiment in the country by ensuring official rejection and condemnation of instances of hate speech as defined under international human rights law, and ensure that perpetrators are held to account in compliance with international

2 "Developments after the 2013 UNGA resolution", Altsean Burma and FIDH, September 2014

- human rights norms and standards;
- Conduct inter-faith and inter-cultural forums and educational programmes at the national level to counter the spreading of hate speech)

4. Political prisoners and continued attacks against political activists and human rights defenders

The government failed to fulfill its promise to release all political prisoners by the end of 2013³, and the number of political prisoners in detention increased in 2014. According to Assistance Association for Political Prisoners (AAPP), as of January 2015, there are 159 political prisoners incarcerated, with 213 activists awaiting trial for their political activism.⁴ According to AAPP data, in February 2015 alone, 5 political prisoners were arrested⁵, with 37 awaiting trial on various charges⁶ and an additional 18 civilians and activists sentenced for political action.⁷ Among the many in detention, awaiting trial, or being sentenced are land rights defenders, activists who protested human rights violations committed by business corporations and Rohingya rights activists. Many of them are charged under the Article 18 of the Peaceful Assembly and Procession Act that prohibits protest without prior permission from the local authorities, Section 500 of the Penal Code that criminalises defamation and/or Section 505 of the Penal Code that allows long prison terms for “insulting the state.”⁸ Legislative amendments to the Peaceful Assembly Act, passed in June 2014, were also discernibly more restrictive and punitive.

The latest instance is the ongoing crackdown on the country-wide protests against the restrictive National Education Law, which has thus far witnessed indiscriminate and violent attacks against the protestors in Letpadan by security forces as well as hired thugs. On 10 March 2015, student protestors and their supporters, including monks and villagers, were beaten and hauled onto police trucks, with a further ten casualties reported⁹.

Besides pressing charges for political offences under controversial and repressive legislations, the Burma/Myanmar authorities are also increasingly using trumped up charges under standard criminal legislation against political activists and HRDs. Such criminal charges include counterfeit (Section 236 of the Penal Code) and trespass (Section 447 of the Penal Code), which are legitimate criminal provisions and therefore non-controversial in themselves. The effective use of trumped up criminal charges against political activists and HRDs has to a large extent been enabled by a judiciary that lacks independence. The judiciary remains under the control of the government and the army which consequently serves to further entrench the culture of impunity and violations of the rule of law.

Recommendations:

- Immediately cease the stifling of political activists, peaceful protestors and human rights defenders – including through criminalisation of their activities under restrictive legislation and trumped up

3 “Thein Sein pledges to free all political prisoners by end of year,” Democratic Voice of Burma (DVB), 16 July 2013, <http://www.dvb.no/news/politics-news/thein-sein-pledges-to-free-all-political-prisoners-by-end-of-year/29926>.

4 “Monthly chronology 2015: Summary of current situation,” Assistance Association for Political Prisoners (Burma), (17 February 2015), <http://aappb.org/2015/02/2456/>

5 “Arrested in February 2015,” Assistance Association for Political Prisoners (Burma), February 2015, <http://aappb.org/wp-content/uploads/2014/10/February-2015-arrested-list.pdf>

6 “Awaiting trial in February 2015,” Assistance Association for Political Prisoners (Burma), February 2015, <http://aappb.org/wp-content/uploads/2014/10/Awaiting-trial-in-feb-2015.pdf>

7 “Sentenced for February 2015,” Assistance Association for Political Prisoners (Burma), February 2015, <http://aappb.org/wp-content/uploads/2014/10/Sentenced-list-in-feb-2015.pdf>

8 “Monthly chronology 2015: Summary of current situation,” Assistance Association for Political Prisoners (Burma), 17 February 2015, <http://aappb.org/2015/02/2456/>

9 “Burma/Myanmar: Continuing Crackdown on Student Activists and Supporters Evidence of Rapidly Shrinking Democratic Space,” FORUM-ASIA, Equality Myanmar and Burma Partnership, 10 March 2015, <http://www.forum-asia.org/?p=18470>

criminal charges, as well as other forms of threat, harassment and intimidation – and ensure that their fundamental rights to assembly, association and expression are respected and protected at all times;

- Release all political prisoners unconditionally, including those detained since the start of 2014, refrain from any further judicial harassment or imprisonment of people for their legitimate activities, and resolve any discrepancies regarding the number detained by ensuring a thorough investigation by an independent review panel composed of competent domestic and international experts, including UN representatives;
- Repeal or amend all laws that place undue restrictions on the legitimate activities of human rights defenders and political activists, including the Peaceful Assembly and Procession Act and Section 505 of the Penal Code, and ensure that all legislation are in full compliance with international human rights norms and standards;
- Establish the rule of law and undertake urgent judicial reforms to ensure the independence, impartiality and accountability of the judiciary, lawyers and prosecutors, and to draw on the assistance of the UN and other international organisations in this regard.

5. Peace Process

The peace process has been stagnating after the preliminary ceasefire agreements were signed in 2011, and since then there has been renewed fighting in Kachin and Northern Shan states. The talks frequently stalled due to disagreement over key demands. The government has been consistently backtracking on its peace pledges, including its unwillingness to allow for genuine political dialogue prior to the signing of a ceasefire agreements. Underlying issues such as regional autonomy, natural resource management, transitional justice, human rights abuses committed by the Burma Army, the formation of a federal army or ethnic rights remain unresolved.

Meanwhile the Burma Army continues its offensives against the Kachin Independence Organization (KIO), and the Ta'ang National Liberation Army (TNLA) while human rights abuses persist, both in ceasefire and non-ceasefire areas. Over the past year, Myanmar Armed Forces clashed at least 120 times with ethnic armed groups in Kachin and Shan states, and attacked Karen National Liberation Army at least twice in violation of a 2012 ceasefire agreement.¹⁰

Recommendations:

- Ensure that all parties adhere to international human rights and humanitarian law;
- Immediately undertake genuine political dialogue to address underlying issues, such as regional autonomy, natural resource management, transitional justice, and ethnic rights;
- Ensure meaningful and inclusive participation of all relevant stakeholders, especially ethnic groups, in political dialogues and negotiations;
- Address the issue of impunity by ensuring full accountability of human rights abuses committed by the Burma Army;

6. Continuing discrimination against religious minorities

In February 2014, the government proposed a discriminatory legislative agenda aimed at restricting the rights of Rohingya and other Muslims and would further entrench discrimination against minorities. The bills, that make up the 'National Race and Religion Protection' package, are the Population Control Healthcare Bill, the Bill Relating to the Practice of Monogamy, the Bill on Religious Conversion, and the Myanmar Buddhist Women's Special Marriage Bill.

10 "Developments after the 2013 UNGA resolution", Altsean Burma and FIDH, September 2014

In addition to these new developments, as previously documented¹¹, explicit, official government policies of imposing extensive restrictions on the freedoms of Rohingya, especially in Rakhine/Arakan State as well as discriminatory legislations such as the 1982 Citizenship Law continue to aggravate the situation of Rohingya communities.

Recommendations:

- Address discrimination and other forms of human rights violations against ethnic and religious minorities in the country, including by repealing discriminatory legislation such as the 1982 Citizenship Law, and the cessation of other discriminatory policies and practices;
- Withdraw the four 'national race and religion protection' bills currently before the parliament.

7. Myanmar National Human Rights Commission

Any early optimism for the independence and effectiveness of the Myanmar National Human Rights Commission (MNHRC) has increasingly faded as the early nominal positive developments (soliciting inputs on draft enabling law in newspapers) amount only to window-dressing measures to showcase the Burmese government's reformist credentials.

The MNHRC continues to violate the minimum standards and normative framework set out in the Paris Principles for their effective work and functioning. Salient examples include the problematic positions in relation to chronic and gross violations and abuses in the country, particularly in the Rakhine State, and sensitive cases involving the military (e.g. Ja Seng Ing, sexual violence in armed conflict zones). When FORUM-ASIA, Burma Partnership and Equality Myanmar held a press briefing and launch of the performance report of the MNHRC on 25 September 2014, the government reconstituted the MNHRC in secrecy without a merit-based, transparent and consultative process.

Recommendations:

- Amend the enabling law of the MNHRC to ensure full compliance with the Paris Principles, namely in relation to the selection and appointment process and ensuring a broad and robust human rights mandate to promote the independence and good governance of an NHRI;
- Amend the enabling law of MNHRC to provide the commission with full protection mandate and to investigate all allegations of human rights violations including those leveled against police and members of the Tatmadaw;
- Ensure integrity of the MNHRC's complaints-handling mechanism to prevent against undue reprisals or breaches of confidentiality (Ja Seng Ing case);
- Make timely and comprehensive interventions, with a long-term and systematic follow-up plan, such that it addresses widespread and institutional rights violations and abuses in the country.

11 Fortify Rights, February 2014, Policies of Persecution: Ending abusive state policies against Rohingya Muslims in Myanmar, http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf