



BURMA PARTNERSHIP

မြန်မာ့အရေး ပူးပေါင်းဆောင်ရွက်သူများ
Strengthening Cooperation for a Free Burma

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Protection of People Must be Priority in Burma's Protracted Peace Process

The peace process that began shortly after the new quasi-civilian Government came into power in Burma in March 2011 is now five years old, and despite the signing of a disputed nationwide ceasefire agreement (NCA) on 15 October, 2015, and the subsequent Union Peace Conference (UPC) in January 2016, communities on the ground are continuing to suffer at the hands of armed actors, in particular the Burma Army. The outbreak of conflict with the ethnic Kokang, Myanmar National Democratic Alliance Army (MNDAA) in February 2015, and the continuing offensives against the Kachin Independence Army (KIA), the Arakan Army (AA), the Ta'ang National Liberation Army (TNLA), and the Shan State Progressive Party (SSPP), as well as sporadic clashes with other Shan and Karen ethnic armed organizations (EAOs) have all pointed to a worsening of armed conflict in Burma.¹

The signing of the NCA seemed to be a key part of President Thein Sein's legacy and a very public attempt to gain plaudits, both domestically and internationally, in the lead up to the 2015 elections. Pressure on EAOs to sign the NCA before polling day came at the expense of addressing substantive issues that are needed to achieve a sustainable peace settlement, including making the NCA inclusive and ensuring the full and meaningful participation of women in the process, especially in decision-making. As such, many EAOs did not sign the NCA. Despite agreeing to the draft text of the NCA, only seven out of the 15 EAOs involved in negotiations actually signed, as did the All Burma Students Democratic Front.² Subsequent pressure on non-signatory EAOs in the lead up to the 8 November national elections was often fierce. In particular, the Burma Army launched an offensive against the SSPP in an attempt to capture its headquarters. The relentless shelling of villages displaced around 10,000 civilians and the SSPP believes that it is in retaliation for not signing the NCA.³

The non-signatory EAOs, including the United Nationalities Federal Council, an alliance that includes the KIA and the New Mon State Party, thus refused to join the Union Peace Conference (UPC), held between 12-16 January, 2016 in Naypyidaw. It was also described by the United Wa State Army, the largest EAO, as "meaningless."⁴ A statement by 126 civil society organizations (CSOs) described the holding of the UPC as

¹ See "Myanmar Peace Monitor" website, by *Burma News International*. <http://mmpeacemonitor.org/> (accessed September 15, 2015).

² Nyein Nyein, "Long-Sought Ceasefire Signed in Naypyidaw," *The Irrawaddy*, October 15, 2015. <http://www.irrawaddy.org/burma/long-sought-ceasefire-signed-in-naypyidaw.html> (accessed, October 17, 2015).

³ Lawi Weng, "SSA-N Official: 'We Will Not Let Them Take our Headquarters,'" *The Irrawaddy*, November 26, 2015. <http://www.irrawaddy.com/conflict/ssa-n-official-we-will-not-let-them-take-our-headquarters-2.html> (accessed, October 17, 2015).

⁴ Lawi Weng, "UWSA Will not Attend 'Meaningless' Dialogue," *The Irrawaddy*, January 7, 2016. <http://www.irrawaddy.com/burma/uwsa-will-not-attend-meaningless-political-dialogue.html> (accessed, January 19, 2016).

“an act of negligence and disregard of the ongoing armed conflicts occurring in Northern Shan State and Kachin State.”⁵ A particular point of contention for both CSOs and EAOs was the shift from a tripartite dialogue – Government, Political Parties, and EAOs – to one that included more parties, with Parliament and the Burma Army as added individual entities in addition to the Government. With the current Government, Burma Army, and the majority of Members of Parliament all under the same political umbrella, this only weakens the leverage for the ethnic side. Furthermore, the continued marginalization of voices from independent civil society throughout the peace process, particularly from ethnic communities and in particular, those of women from armed conflict affected communities, whether through ceasefire negotiations or the UPC, is of huge detriment toward achieving a sustainable peace.

Therefore, amid all the rhetoric of the signing of the NCA and the UPC, protection for civilians in armed conflict is not yet guaranteed by all parties involved. They continue to be the victims of human rights abuses that violate both international humanitarian law, specifically the Geneva Conventions, and international human rights law, including, among others, the Universal Declaration of Human Rights as well as being in violation of various UN Security Council (UNSC) Resolutions.

The incoming NLD Government thus has an enormous task on its hands. While Daw Aung San Suu Kyi gave an opening speech at the UPC – an event she described merely as an “acknowledgement” of the NCA⁶ - she has repeatedly stated that the peace process must be inclusive, a missing concept for the President Thein Sein Government. The UN General Assembly Resolution on Burma, passed in November 2015,

urges all parties to end violence and to fully implement existing ceasefire agreements, including by protecting individuals against ongoing violations and abuses of human rights and violations of international humanitarian law, and by granting safe, timely, full and unhindered humanitarian access.⁷

Unfortunately for Daw Aung San Suu Kyi and the incoming NLD Government, the 2008 Constitution safeguards the Burma Army’s power and places them above civilian control. As one representative of a major EAO stated, the NLD “*need to find the root cause of the civil war and ethnic problems*,”⁸ as oppose to the consequences of the root causes. Unless fundamental structural and institutional reforms occur, specifically regarding the constitutional role and entrenched impunity of the Burma Army, no amount of elections will realize the urgings of the international community, or indeed the aspirations of ethnic communities in Burma.

⁵ “Statement of Civil Society Organizations on the Union peace Convention to be held on 12th January 2016,” *126 Civil Society Organizations*, January 5, 2016. <http://www.burmapartnership.org/2016/01/statement-of-civil-society-organizations-on-the-union-peace-convention-to-be-held-on-12th-january-2016-5-january-2016-1-adoption-of-the-framework-for-political-dialogue-on-16th-december-2015-and/> (accessed January 29, 2016).

⁶ “Interview: Five Days is too Short to Complete a Peace Conference,” *Radio Free Asia*, January 14, 2016. <http://www.rfa.org/english/news/myanmar/myanmar-assk-01142016081658.html> (accessed January 29, 2016).

⁷ United Nations, General Assembly, *Situation of Human Rights in Myanmar*, A.C.3/70/70/L.39/Rev.1 (November 18, 2015) <http://www.burmalibrary.org/docs21/UNGA-2015-70-res-L.39-rev.1-en.pdf> (accessed January 29, 2016).

⁸ EAO representative, interview with Burma Partnership, January, 2016.

1. Overview of Conflict as of February 2016

In February 2015, a huge offensive against the MNDAA displaced up to 100,000 people in the Kokang region in Shan State, with many fleeing towards China, and forced to live as internally displaced persons (IDPs) in camps along the border as the main Kokang town of Laukkai was subject to a ferocious military onslaught from the Burma Army.⁹ The ongoing war by the Burma Army against the KIA and TNLA has seen more villagers displaced, and the use of airstrikes against the KIA in early 2015, in the largest airborne offensive in Burma since World War II, demonstrates the scale of the attacks.¹⁰ Also, the AA has allied with the KIA and TNLA in northern Burma, and has engaged in skirmishes with Burma Army in western Burma, in Chin and Rakhine States, with hundreds of villagers displaced as a result.¹¹ Attacks in late 2015/early 2016 in Rakhine State, just weeks before the UPC, left hundreds displaced.¹²

Meanwhile, the term “ceasefire groups” continues to be rendered meaningless by regular engagement of fighting this past year between the Burma Army and two Shan EAOs, the Restoration Council of Shan State (RCSS), and most heavily, the SSPP. In Karen State, fighting has flared between the Burma Army and the Democratic Karen Benevolent Army (DKBA) and the Karen National Union (KNU).¹³ In particular, this has occurred surrounding the construction of a new highway linking Burma with Thailand that goes through different areas of Karen EAOs’ domain, resulting in land grabbing from local communities, tension and eventually, armed conflict. The fighting between the Burma Army and the EAOs in ceasefire areas is also linked to increased militarization in many ethnic areas, especially around strategic military and economic positions, with premature investments creating more friction in fragile conflict areas, in Karen and Shan States in particular.¹⁴

The number of IDPs as a result of armed conflict increased up to 662,000¹⁵ in 2015 due to the 70,000 fleeing the war against the MNDAA and ongoing conflict with the KIA. Meanwhile, the 100,000 refugees living on the Thailand-Burma border continue to be anxious about premature repatriation,¹⁶ as many conditions that caused their flight in the first place - conflict, landmines, militarization and related human rights violations - remain as they were when they left Burma, while other factors such as land-grabbing are creating new patterns of displacement.

⁹ Zue Li, “Can China Untangle the Kokang Knot in Myanmar,” *The Diplomat*, May 20, 2015.

<http://thediplomat.com/2015/05/can-china-untangle-the-kokang-knot-in-myanmar/> (accessed September 15, 2015).

¹⁰ “Myanmar Air Force Launches 3 Rounds of Airstrikes in Southern Kachin State,” *Kachinland News*, March 25, 2015. <http://kachinlandnews.com/?p=25566> (accessed September 15, 2015).

¹¹ Richard Potter, “Myanmar: New Front in an Old War,” *The Diplomat*, July 22, 2015.

<http://thediplomat.com/2015/07/myanmar-new-front-in-an-old-war/> (accessed September 15, 2015).

¹² Ye Mon, “Rakhine IDPs call for international aid,” *The Myanmar Times*, January 15, 2016.

<http://www.mmtimes.com/index.php/national-news/18478-rakhine-idps-call-for-international-aid.html> (accessed February 2016)

¹³ “Myanmar Peace Monitor,” <http://mmpeacemonitor.org/>

¹⁴ “Asian Highway Project Undermines Peace in Karen State,” *Karen Peace Support Network*, July 10, 2015.

<http://www.burmapartnership.org/2015/07/asian-highway-project-undermines-peace-in-karen-state-2/> (accessed September 15, 2015).

¹⁵ Internal Displacement Monitoring Centre. <http://www.internal-displacement.org/south-and-south-east-asia/myanmar/> (accessed October 1, 2015).

¹⁶ “Refugee and IDP Camp Populations: December 2015,” *The Border Consortium*.

<http://www.theborderconsortium.org/media/65465/2015-12-dec-map-tbc-unhcr.pdf> (accessed February 2, 2016).

A worrying development since the signing of the NCA has been the increased division between signatory and non-signatory EAOs, a situation that is worryingly familiar given the long history of ‘divide-and rule’ tactics employed by Burma’s successive military regimes when dealing with EAOs. This is manifest in the reported clashes between the NCA signatory, the RCSS, alongside Burma Army troops, and the non-signatory, the TNLA, in northern Shan State.¹⁷

2. Peace for Whom? Exclusion of Women

The lack of full and meaningful participation of women in the peace process throughout the ceasefire negotiations and the subsequent UPC is a major stumbling block to the progression of a sustainable peace process. Full and meaningful participation of women necessitates a minimum quota of at least 30% of women representing diverse and marginalized communities working with and from conflict affected areas, and the inclusion of the perspectives and recommendations by women in the formulation and implementation of all policy aspects of conflict prevention, management and resolution as well as peace-building and rehabilitation. It is vital that women’s voices are included and become an integral part to any peace process. A research report published by UN Women to mark 15 years since the passing of UNSC Resolution 1325 on women, peace and security, “comprehensively demonstrates that the participation of women at all levels is key to the operational effectiveness, success and sustainability of peace processes and peacebuilding efforts.”¹⁸ Yet the token inclusion of women in the process thus far has been merely window dressing to disguise the woeful reality.

One example is the draft of the NCA. After efforts made by the Women’s League of Burma (WLB), a 13-member coalition of ethnic women organizations, at the summit of EAOs in June 2015 in Law Khee Lar, Karen State, the WLB successfully advocated for the leaders of EAOs to support adding a point to the draft NCA that ensured the political dialogue contain at least 30% women’s representation. After the next round of negotiations, and at the Burma Government’s behest, this was changed to “a reasonable number.” This was justified as women not having the capacity and ability to always ensure that they can provide 30% of representatives.¹⁹ Such broad and ambiguous definition of the term, ‘reasonable,’ can provide ample opportunity for women’s participation to be marginalized by a process still led mostly by men.

The above example fits into the overwhelming pattern in Burma’s peace process – the marginalization of women. In a report by the Alliance for Gender Inclusion in the Peace Process, the representation of women in various bodies, negotiating teams or committees that have functioned throughout the process has been

¹⁷ Win Naung Toe, Kyaw Htun Naing, and Kyaw Thu, “Myanmar Military, Shan Army Launch Offensive Against Ta’ang Rebels,” *Radio Free Asia*, January 12, 2016. <http://www.rfa.org/english/news/myanmar/offensive-12012015151415.html> (accessed January 29, 2016).

¹⁸ “Preventing Conflict, Transforming Justice, Securing the Peace,” *UN Women*, 2015. <http://wps.unwomen.org/~media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf> (accessed January 29, 2016).

¹⁹ Various attendees of the Law Khee Lar EAO Summit, interviews with the author, September 2015 (location undisclosed).

minimal, from both the Government and EAO's side.²⁰ For example, in the EAO's Nationwide Ceasefire Coordination Team, only one out of 16 members was a woman, while on the Government's side, only two of the 52-member Union Peacemaking Working Committee were women. This pattern continued at the UPC, in which women comprised only 7% of over 700 attendees. It is not just representation that is lacking, the points and comments that were made by women at the UPC were omitted from the official notes and allocated time for presentations particularly pertinent to women such as judicial remedy for rape cases was minimal.²¹

It is vital that women's participation in the peace process is ensured through the creation and formalization of specific mechanisms based on official political decisions from all parties involved in negotiations. Their experiences of conflict differ from men, including the abuses, burdens, and responsibilities that many women from conflict affected areas face. Unless their voices are included in the peace process, women will continue to be marginalized, and the concerns they have will remain unaddressed, paving the way for those decades-long abuses to continue, and thus the communities will never experience a genuine peace even if a peace agreement is signed.

UNSC Resolution 1325 obligates member states, including Burma, to ensure actors include, "measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements."²² Furthermore, the strength and capacity of women's networks and independent rights-based CSOs, especially from armed conflict affected ethnic communities, will add depth and expertise to the peace process, enabling a more inclusive, comprehensive, just and sound agreement to be reached. As outlined by a member of a Kachin women's organization, "*It is very important to include women who really understand the issues and speak out in discussions.*"²³

3. Continued Abuses

Human rights violations committed by the Burma Army continued in ethnic areas throughout the NCA discussions, such as Karen and Shan States where groups have bilateral ceasefires with the Government, as well as in non-ceasefire areas such as Kachin State. In June 2015 the Burma Army used jets to bomb villages in Kachin State, having already used aerial firepower in a major offensive in late 2012/early 2013, displacing thousands. There are now 120,000 IDPs as a result of the war against the Kachin. Human rights violations against civilians documented include torture, rape and sexual violence, forced labor, and extrajudicial

²⁰ "Women, Peace and Security Policymaking in Myanmar," *Alliance for Gender Inclusion in the Peace Process*, December 2015.

<https://www.dropbox.com/sh/u8m4ei4r93idz4e/AAB3HQ6P30TER8WLCym5godXa/AGIPP%20Policy%20brief%201%20%28Eng%29.pdf?dl=0> (Accessed February 10, 2016).

²¹ Yen Snaing, "Women's Alliance Breaks Down Gender Disparity in Peace Process," *The Irrawaddy*, January 22, 2016. <http://www.irrawaddy.com/burma/womens-alliance-breaks-down-gender-disparity-in-peace-process.html> (accessed January 29, 2016).

²² United Nations Security Council Resolution 1325, October 31, 2000, <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20SRES1325%20.pdf> (accessed September 15, 2015).

²³ Kachin Women's Association – Thailand, interview with Burma Partnership, January 2016.

killing. The WLB has documented over 70 cases of rape of Kachin women by the Burma Army between June 2011 and January 2015 since the 17 year-ceasefire between the Kachin Independence Organization and the Burma Government ended.²⁴ Another human rights organization, Fortify Rights, has documented over 60 cases of torture used against Kachin civilians between June 2011 and April 2014 by the Burma security services including the military, police, and intelligence services that “may constitute war crimes and crimes against humanity under international law.”²⁵

The offensives against the TNLA in Palaung areas in northern Shan State have also led to extensive human rights violations, as succinctly pointed out by a local community based organization, the Palaung Women’s Organization, “conflict happens every single day. Therefore those areas are not safe for the Ta’ang people and they worry all the time.”²⁶ Reports of human rights violations in the Kokang area of Shan State were widespread during a massive offensive launched by Burma Army against the MNDAA in February and March 2015, in which up to 100,000 civilians had to flee. In April 2015, the authorities ordered thousands of displaced people sheltering near the border with China to return to Government-organized IDP shelters in Laukkai, the main Kokang town. They were threatened with death if they did not return. In fear, they fled across the border to China, after which the Burma Army launched a shelling campaign in Kokang areas, causing more to flee. Furthermore, the villagers were in fear of returning after multiple accounts of extrajudicial killings and even beheadings had been reported.²⁷

The impunity that these violations are committed with is demonstrated in the case of Ja Seng In in Kachin State. In September 2012, Burma Army soldiers entered the village where Ja Seng In lived and started shooting indiscriminately, killing the 14 year-old girl. Brang Shawng, Ja Seng In’s father, wrote a letter to the President, to the Myanmar National Human Rights Commission (MNHRC), and to the Burma Army calling for an independent investigation to find justice for his murdered daughter. In response, a Burma Army officer filed a complaint against him in court for ‘making false charges.’ After 45 court appearances, Brang Shawng was convicted in February 2015 and had to pay either a fine of 50,000 kyats (\$45 USD) or face six months in prison.²⁸ This not only demonstrates the lack of protection for civilians in armed conflict, but also of the impunity reserved for the Burma Army.

In September 2014, freelance journalist Ko Par Gyi was covering an outbreak of fighting between the Burma Army and the DKBA. He was arrested and taken into military custody and accused of being part of the political wing of the DKBA. He was tortured and killed whilst in detention by two Burma Army soldiers. The

²⁴ “Ongoing Sexual Violence Highlights Urgent Need for Burma Army to stop Offensives and Pull Back Troops from Kachin Areas,” *Women’s League of Burma*, January 22, 2015, <http://womenofburma.org/wp-content/uploads/2015/01/WLB-statement-Kachin-murders-English.pdf> (accessed February 1, 2016).

²⁵ “I thought they would Kill Me,” *Fortify Rights*, June 9, 2014, http://www.fortifyrights.org/downloads/Fortify%20Rights_Myanmar_9_June_2014.pdf (accessed September 15, 2015).

²⁶ “Ta’ang people suffering due to conflict,” *Palaung Women’s Organization*, November 21, 2014, <http://en.palaungwomen.com/index.php/news/89-ta-ang-people-suffering-due-to-conflict> (accessed September 15, 2015).

²⁷ “Killing, beheading and disappearance of villages instil fear among Kokang refugees,” *Shan Human Rights Foundation*, May 11, 2015, <http://www.shanhumanrights.org/index.php/news-updates/212-killing-beheading-and-disappearance-of-villagers-instill-fear-of-return-among-kokang-refugees> (accessed September 15, 2015).

²⁸ “Myanmar: Overturn Wrongful Conviction of Brang Shawng,” *Fortify Rights*, February 18, 2015, <http://www.fortifyrights.org/publication-20150218.html> (accessed September 15, 2015).

two soldiers were acquitted in a closed door military court, and the MNHRC, despite conducting an investigation, once again proved ineffective by not addressing the key human rights aspects of the case, such as the evidence of torture, as well as producing a report that was filled with inaccuracies and contradictions.²⁹

The ceasefires also do not afford protection of civilians, as demonstrated by the indiscriminate shelling by the Burma Army on villages in Shan State during its offensives against the SSPP in October and November 2015 in the lead up to the elections. In fact, on election day, 8 November, 2015, the Burma Army entered a village in Mong Nawng, Shan State, shooting indiscriminately at farmers returning from harvesting their fields, seriously injuring a 15 year old boy and a 55 year old woman.³⁰

These cases highlight the lack of protection of civilians in ceasefire and armed conflict areas, as well as the total impunity that the Burma Army enjoys. Such incidents are not isolated and are documented on a regular basis by both local and international human rights organizations.

3.1 Sexual Violence in Armed Conflict

The use of sexual violence and rape as a weapon of war by the Burma Army has been documented and evidenced by numerous human rights organizations over the course of the past decade, including for the duration of the peace process since the President Thein Sein Government came to power. The WLB documented 104 cases of sexual violence committed by Burma Army soldiers against ethnic minority women in armed conflict areas since the 2010 elections in a report published in January 2014.³¹ This, they stated, is believed to be a small fraction of the total number. In November 2014, in a follow up report by the WLB, 14 more cases had been documented. As the report states, “It is clear from the number and geographic scope of these crimes that terrorising civilian populations in ethnic states with sexual violence remains an institutionalised practice of the Burma Army.”³²

The impunity that the Burma Army enjoys, as enshrined in the 2008 Constitution, ensures that the perpetrators are never held accountable. One salient example is of two Kachin schoolteachers who were volunteering at a local Baptist church in northern Shan State under the administration of the Kachin Baptist Convention. They were found on the morning of 20 January, 2015, with strong evidence that they were brutally tortured, gang-raped and killed by Burma Army soldiers on the night of their arrival in the village

²⁹ “Burma: All Shook Up,” *By Burma Partnership, Equality Myanmar and Smile Education and Development Foundation*, in “2015 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia,” by Asian NGO Network on National Human Rights Institutions, September 18, 2015, <http://www.burmapartnership.org/2015/09/2015-anni-report-on-the-performance-and-establishment-of-national-human-rights-institutions-in-asia/> (accessed October 1, 2015).

³⁰ “Burma Army troops shoot at farmers in central Shan State on election day, seriously injuring a woman and a boy,” *Shan Human Rights Foundation*, November 11, 2015. <http://www.shanhumanrights.org/index.php/news-updates/234-burma-army-troops-shoot-at-farmers-in-central-shan-state-on-election-day-seriously-injuring-a-woman-and-boy> (accessed January 29, 2016).

³¹ “Same Impunity, Same Patterns,” *The Women’s League of Burma*, January 2014. <http://www.burmapartnership.org/2014/01/same-impunity-same-pattern/> (accessed February 8, 2016).

³² “If they had hope, they would speak,” *Women’s League of Burma*, November 2014, http://womenofburma.org/wp-content/uploads/2014/11/VAW_Iftheyhadhope_TheywouldSpeak_English.pdf (accessed September 15, 2015).

during military operations against the KIA.³³ The Shan Human Rights Foundation documented eight more cases of sexual violence committed by the Burma Army between April and November of the same year.³⁴ So far, no Burma Army officers or soldiers have been brought to justice in any of these rape and murder cases.

3.2 International Obligations

In June 2014, Burma signed the Declaration of Commitment to End Sexual Violence in Conflict, an international initiative led by the UK that contains 12 steps to end sexual violence in conflict areas. One year later, a UK based human rights campaign group, Burma Campaign UK, found that of the 12 steps the Burma Government,

is taking no significant action on any of these commitments, and is actively violating all nine of the commitments which relate to action they should be taking domestically, including on assistance and care to survivors, investigations, police and army doctrine in accordance with international law, and supporting and protecting civil society, women's groups and human rights defenders.³⁵

The continued use of sexual violence by the Burma Army, the continued impunity provided for and enjoyed by the perpetrators, and the lack of action from the Burma Government during the past five years of reform amount to serious violations of The Rome Statute of the International Criminal Court which deems sexual violence such as rape in armed conflict as "crimes against humanity" and "war crimes." Further international weight is included in the Beijing Platform for Action, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and UNSC Resolution 1325. While Burma is a signatory to CEDAW, and is thus bound to fulfill its obligations, as well as UNSC Resolution 1325, the lack of mechanisms to enforce such frameworks are a major hurdle to ensuring the protection of women in armed conflict situations and the promotion of women's participation in the peace process in Burma.³⁶

Within the NCA there is a conspicuous absence of language referencing international obligations regarding both sexual violence and the protection of civilians in armed conflict. In an earlier draft of the NCA by EAOs, explicit mention of the Geneva Conventions was included, but just as the 30% inclusion of women in the political dialogue was omitted, this was a clause that the Burma Army pushed to exclude. While there is a section in the NCA regarding the protection of civilians, the fact that the Burma Army did not want the Geneva Conventions specified in this section casts doubt on their commitment to protect civilians and also ensure accountability.

³³ "Justice Denied, Justice Delayed: Seeking Truth about Sexual Violence and War Crime Case in Burma," *Legal Aid Network and Kachin Women's Association – Thailand*, January 2016, <http://www.burmapartnership.org/2016/01/justice-delayed-justice-denied/> (accessed January 29, 2016).

³⁴ "Sexual violence by Burmese government troops continues despite ceasefires in Shan State," *Shan Human Rights Foundation*, 25 November, 2015, <http://www.shanhumanrights.org/index.php/news-updates/236-sexual-violence-by-burmese-government-troops-continues-despite-ceasefires-in-shan-state> (accessed February 01, 2016).

³⁵ "One Year on From Burma Signing Sexual Violence Declaration – No Steps Taken on Implementation," *Burma Campaign – UK*, June 5, 2015, Burma Briefing No. 39, http://burmacampaign.org.uk/burma_briefing/one-year-on-from-burma-signing-sexual-violence-declaration-no-steps-taken-on-implementation/ (accessed January 29, 2016).

³⁶ "No Women, No Peace: Gender Equality, Conflict and Peace in Myanmar," *Transnational Institute*, January 2016, Myanmar Policy Briefing 18. <http://www.burmapartnership.org/2016/01/no-women-no-peace-gender-equality-conflict-and-peace-in-myanmar/> (accessed January 29, 2016).

Furthermore it is the state itself as the main institutionalized perpetrator of atrocities in armed conflict areas and thus it will make enforcement of the NCA extremely difficult. In such circumstances, the international community must bear some responsibility, especially given the huge amount of funding it has provided to the peace process through the Myanmar Peace Center. It must pressure the Burma Government to comply with its international obligations, and make further funding conditional on its compliance with such obligations. The international community must also make concrete efforts to ensure accountability for victims and survivors of human rights abuses, including sexual violence, and ensure meaningful and full participation of women in all stages of the peace process, especially in decision-making.

3.3 Militarization

Militarization in ceasefire areas by the Burma Army has continued since bilateral ceasefires were signed in early 2012. Burma Army posts are now no longer made of bamboo but made of concrete. Supplies, reinforcements and ammunition have been restocked, while troop movements have become much easier as road access opens up. In addition, the ceasefires have sparked a land grab endemic, as private businesses, often in conjunction with the Burma Army, local authorities or ceasefire EAOs, have been taking land from villagers for their own profit, or in the Burma Army's case, for military and economic purposes.³⁷ As one representative who works with grassroots communities stated, "*the military's mindset is territorial control while talking peace.*"³⁸ The existing legal framework in Burma is especially inadequate to protect rural communities from this spate of land grabs.

3.4 Humanitarian Aid

As regards delivery of humanitarian aid to the IDPs in Kachin and northern Shan States, the Burma Government restricts the movement of aid, which is in strict violation of UNSC Resolution 1674. Section 22 of Resolution 1674 outlines the importance, "to allow full unimpeded access by humanitarian personnel to civilians in need of assistance in situations of armed conflict." Yet according to a statement by 56 civil society organizations in June 2015; "access to IDPs in KIA controlled areas rests largely on travel authorization granted by the Burma/Myanmar Government, which continues to restrict the movement of international humanitarian organizations."³⁹

³⁷ "Truce or Transition? Rend in human rights abuse and local response in Southeast Myanmar since the 2012 ceasefire," *Karen Human Rights Group*, May 2014. <http://khr.org/2014/05/truce-or-transition-trends-human-rights-abuse-and-local-response> (Accessed February 10, 2016)

³⁸ Community-based organization, interview with Burma Partnership, January 2016.

³⁹ "56 Solidarity Groups Worldwide Call for an Immediate End to Offensives in Northern Burma/Myanmar and for the Provision of Unhindered Humanitarian Assistance to the IDPs," *56 Solidarity Groups Worldwide*, June 8, 2015, <http://www.burmapartnership.org/2015/06/56-solidarity-groups-worldwide-call-for-an-immediate-end-to-offensives-in-northern-burmamyanmar-and-for-the-provision-of-unhindered-humanitarian-assistance-to-the-idps/> (accessed September 15, 2015).

Conclusion

The peace process so far has not been able to address the root causes of the decades-long armed conflict due to a lack of political will and good faith by the Burma Government and Burma Army. Armed conflict since the beginning of 2015, right up until the UPC in January 2016, has seen more casualties and displacement than for many years. As a representative from a Kachin political organization states, “*We, ethnic people, don’t see any good results from this peace process.*”⁴⁰ Furthermore, the Government’s peace process has been significantly rejected by both EAOs and civil society.

While there have been much focus and attention by the Burma Government on the signing of the NCA, the protection of civilians, and in particular of women and children, has not taken center stage as it should. For decades it has been local ethnic communities that have faced the worst effects of the armed conflict. Displacement, loss of livelihoods, human rights violations, and lack of human security and accountability have not been addressed properly in the peace process of the past five years. Thus, it is not just the Burma Government that needs to be listened to in this peace process. It is vital that the international community, especially peace donors, listens and acts upon the concerns, testimonies, perspectives and needs of these conflict-affected communities, particularly those of women, as these are the most important voices that reflect the reality on the ground. These voices must have a more prominent role in the peace process, including monitoring ceasefires, and while the Burma Government continues to sideline ethnic civil society and women, the international community must work to ensure their participation.

Furthermore, with the continuing targeting of civilians, usually with allegations of association with EAOs, the human rights violations it inflicts on civilians, including rape and sexual violence, extra-judicial killing, torture and forced displacement, and its denial of humanitarian assistance to IDPs, Burma falls drastically short of complying with its obligations under international humanitarian law, international human rights law, including the Geneva Conventions, as well as UNSC Resolutions such as 1325 and 1674. Thus the international community has a responsibility to take action against the perpetrators of such violations of international law. The UN Secretary-General, Ban Ki Moon, in a 2015 report to the UNSC stated that in Burma there is “a high level of impunity for conflict-related sexual violence perpetrated by State actors.”⁴¹ The international community, and particularly the UN, has an obligation to take responsibility and conduct an independent investigation into the crimes that the Burma Army continues to commit.

Despite the promises made to the international community, as well as to the people of Burma by the President Thein Sein Government, the Burma Army remains unreformed, unremorseful, unaccountable, and abusive. Ethnic communities continue to suffer at the hands of this institution without available means for justice and redress. The MNHRC has proved itself either unable or unwilling to investigate serious cases of human rights violations committed by the Burma Army, while the judicial system is not independent,

⁴⁰ Kachin political organization, interview with Burma Partnership, January 2016.

⁴¹ “UN Secretary-General Ban Ki-moon 2015 Report to Security Council Calls for Legal Action Against Conflict Related Rapists,” *Karen News*, May 1, 2015. <http://karennews.org/2015/05/un-secretary-general-ban-ki-moon-2015-report-to-security-council-calls-for-legal-action-against-conflict-related-rapists.html/> (accessed September 23, 2015).

lacks transparency, and is politically pliant. The Burma Army must be reformed, to rein in its political power and place it under civilian control, to hold perpetrators of gross human rights violations accountable, and in the long term, an inclusive process of genuine national reconciliation that also seeks justice for the countless victims and survivors of this decades-long conflict must begin. This is the biggest challenge that the incoming NLD Government will face, and it remains to be seen whether the Burma Army will cooperate with them on this issue, especially as the NLD is institutionally constrained as a political party without real political power to control the judiciary or the bureaucratic machinery. As one CSO representative that works closely with grassroots communities posited, *“The NLD has influence, but the question is will they have the power?”*⁴²

Recommendations

To the International Community and Peace Donors in particular:

- To call on the Burma Government to halt armed conflict throughout the country;
- To take necessary steps and measures that pressure all armed actors, particularly the Burma Army who are in violation of all UNSC Resolutions to comply, in particular, with Resolutions 1325 and 1674;
- To call on the Burma Government to ensure women’s meaningful and full participation in all negotiations and peace-building processes through specific mechanisms or measures including developing a National Action Plan, particularly in consultation with ethnic women organizations from armed conflict affected areas to implement UNSC Resolution 1325;
- To call on the Burma Government and all armed parties involved in the process to commit to the participation of independent civil society, and especially to ensure the meaningful and full participation of women from conflict affected communities in the peace process;
- To demand the Burma Government to put an end to human rights violations and to develop effective accountability mechanisms for the victims and survivors;
- To support the establishment of an international investigation into rape and sexual violence in both conflict and ceasefire areas;
- To pressure the Burma Government to include international human rights and humanitarian law into all ceasefire agreements;
- To continue the support and aid for refugees along the Thailand-Burma border until a safe and dignified return to Burma can be guaranteed;
- To call on the Burma Government to allow humanitarian access to IDPs camps;
- To hold meaningful and substantial consultations with all relevant actors, in particular with ethnic civil society organizations based in conflict affected areas and along the border areas;
- To publicly disclose any strategy before pledging funding and/or engaging in the peace process;
- To support the efforts of ethnic nationalities of Burma in their struggle for equality and self-determination; and
- To provide direct political and financial assistance to EAOs and the Government in equal measure.

⁴² Community-based organization, interview with Burma Partnership, January 2016.

To the Incoming NLD Government

- To amend the current format of the political dialogue process to be all-inclusive;
- To establish a minimum 30% quota for women's representation in any form of a political dialogue and peace negotiations at all levels and to develop mechanisms that ensure participation of women in decision-making rather than merely a representation;
- To commit to civil society's meaningful and full participation and their role in the peace process, including monitoring the implementation of ceasefire agreements;
To allocate adequate, long-term funding from the national budget to finance the peace process; and
- To be transparent and disclose relevant information around peace talks.

To the Burma Army:

- To immediately halt all offensives in Kachin State, Shan State, Rakhine State, and Karen State;
- To commit and take action in complying with international human rights and humanitarian law, as well as the Geneva Conventions that Burma has signed and all relevant UNSC Resolutions, especially Resolutions 1325 and 1674, thus ending human rights abuses and holding perpetrators accountable. This involves developing a National Action Plan on Resolution 1325 with the participation of ethnic women's organizations from armed conflict affected areas;
- To cease the resupplying and reinforcement of troops and the building and establishment of new military infrastructure in ethnic areas;
- To amend the current format of the political dialogue process to be all-inclusive;
- To support the establishment of a minimum 30% quota for women's representation in any form of a political dialogue and peace negotiations at all levels and to develop mechanisms that ensure participation of women in decision-making;
- To commit to civil society's meaningful and full participation and their role in the peace process, including monitoring the implementation of ceasefire agreements; and
and
- To publicly commit to the amendment of the 2008 Constitution to be in compliance with international democratic principles and human rights standards and accepting a federal system of governance.
- To be transparent and disclose relevant information around peace talks;

To Ethnic Armed Organizations:

- To put aside individual differences and work together as one for the establishment of democratic federal union;
- To push for the inclusion of international human rights and humanitarian law to be included in all agreements with the Burma Government;
- To prioritize the protection and livelihood of the communities on the ground in all talks with the Burma Government and Burma Army;

- To be transparent and disclose relevant information around peace talks;
- To amend the current format of the political dialogue process to be all-inclusive;
- To support the establishment of a minimum 30% quota for women's representation in any form of a political dialogue and peace negotiations at all levels and to develop mechanisms; and
- To commit to civil society's meaningful and full participation and their role in the peace process, including monitoring the implementation of ceasefire agreements.

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