

THE STATEMENT ON THE RECENT HUMAN RIGHTS SITUATION IN MYANMER (BURMA)

**— The Violations of Human Rights are Continuing,
and the Resumption of Japan's ODA is Too Soon —**

Human Rights Now

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**1. THE HUMAN RIGHTS SITUATIONS IN MYANMAR AFTER THE GENERAL
ELECTION**

Subsequently to the general election in November 2010, one can notice the emergence of new development concerning human rights protection in Myanmar (hereinafter called Burma.)

Aung San Suu Kyi was released after the election and her freedom to engage in activities has been protected to some extent since her release. Several meetings with governmental officials including the one with President Thein Sein in August 2011 have been set up for her.¹ Also, the new government announced the establishment of a human rights commission on September 5.² And on 13 of the same month, it stressed its active stand towards human rights protection at the United Nations Human Rights Council.³

However, when evaluating whether or not the human rights situations in Burma has changed, we must focus on what actually happens to the people, rather than performances of the leadership or the superficial diplomatic speech by the spokespersons of the government.

Deeply concerned with the still-prevailing grave violations of human rights under the new government, Human Rights Now (HRN), an international human rights NGO based in Japan, demands that the new government immediately terminates the human rights violations and takes concrete measures to radically change its human rights policy. It further requests the international community, including the Japanese government, not to easily change the policy towards Myanmar, such as the resumption of foreign aids to Burma, provided that the violations

¹ New York Times 19 August 2011 at <http://www.nytimes.com/2011/08/20/world/asia/20myanmar.html> retrieved on 17 October 2011.

² BBC NEWS 6 September 2011 at <http://www.bbc.co.uk/news/world-asia-pacific-14807362> retrieved on 17 October 2011.

³ Statement by His Excellency U Wunna Maung Lwin, Union Minister for Foreign Affairs of the Republic of the Union of Myanmar at the Eighteenth Session of the Human Rights Council, Geneva, 13 September 2011 at http://www.burmalibrary.org/docs11/18th_session_of_theHRC-Myanmar_statement-131.09.2011.pdf retrieved on 17 October 2011.

of human rights still continue.

1) The Release of Political Prisoners and the Treatment in the Detention Facilities

The Burmese government announced on 11 October 2011 that it will grant amnesty to 6,359 prisoners, and the further amnesty is also scheduled.⁴

However, according to the Assistance Association for Political Prisoners (Hereinafter, AAPP) which supports the political prisoners in Burma, as of 13 October 2011, only 207 political prisoners have been released. Leaders of democracy activists such as Min Ko Naing, a prominent student leader, were not included.⁵ As of 14 October, only 222 political prisoners were confirmed to be released.⁶ This figure constitutes merely 10% of the prisoners in Burma.⁷

The AAPP said that “the use of amnesties by past regimes has come at times of mounting international pressure and been used as tokens of change, rather than substance of change. This week’s prisoner release does not suggest anything different from earlier amnesties.”⁸

The new government has no plan whatsoever to release all political prisoners. In fact, the Burmese government has never conceded the existence of the political prisoners in Burma.⁹

In reaction to the government’s statement to foreign governments that “Burma has no political prisoners”, a group of Burmese political prisoners staged a hunger strike in order to ask government to withdraw the statement and to develop the conditions in the facilities. The strike failed nevertheless and the political prisoners who participated in the strike were subjected to punishment in the detention facilities.¹⁰

The living conditions in the detention facilities located throughout the country are utterly poor in terms of medical treatment and sanitation. Many pro-democracy activists are neglected

⁴ CNN News 12 October 2011 at <http://edition.cnn.com/2011/10/11/world/asia/myanmar-prisoner-release/index.html> retrieved on 17 October 2011.

⁵ Homepage of the AAPP at http://www.aappb.org/prisoner_release_lack_sincerity_13Oct2011.pdf retrieved on 17 October 2011.

⁶ Tokyo Shimbun 16 October 2011.

⁷ As Human Rights Now confirmed with the representative with the AAPP, in Burma there are 1995 political prisoners held in 42 prisons and 109 forced labour detention facilities.

⁸ Homepage of the AAPP at http://www.aappb.org/prisoner_release_lack_sincerity_13Oct2011.pdf retrieved on 17 October 2011.

⁹ Homepage of the AAPP at http://www.aappb.org/prisoner_release_lack_sincerity_13Oct2011.pdf retrieved on 17 October 2011.

¹⁰ BBC NEWS 23 May 2011 at <http://www.bbc.co.uk/news/world-asia-pacific-13503135> retrieved on 17 October 2011; an article in IRRAWADDY 30 May 2011 at http://www.irrawaddy.org/article.php?art_id=21386 retrieved on 17 October 2011.

without adequate treatment despite their serious medical condition. Grave human rights violations are persisting.

The Burmese government must make official recognition of the existence of political prisoners and release all of them unconditionally. In addition, their freedom of expression and political activities must be protected in such a way that they can participate in political process after being released.

2) Freedom of Expression

Many of the public security legislations upon which the long-term detention of political prisoners are based are yet to be revised under the new Constitution. The 2008 Constitution merely recognises protection of human rights ‘within the scope of legislation’ and legislations that had been the cause of human rights violations are still in effect. A bill to repeal the 1950 Emergency Provisions Act was rejected in the parliament in the late August.¹¹

Even now citizens who peacefully criticised the government or exercised the freedom of expression are being arrested and convicted based on the suppressing legislation.

Furthermore, the parliament under the new government issued a series of notices prohibiting publications and distribution of articles which go against the 2008 Constitution and the nation’s ideology, namely, to refrain from disturbing the harmony, to maintain national solidarity and to perpetuate national sovereignty¹². In particular, the notices prohibit any expression activities that degrade relations between ethnic and religious groups, disturb peace and trigger uprisings, and stimulate insurgences by servicemen. Such prohibitions are a threat to the freedom of expression of the people.

3) The Persecution of Ethnic Minorities

Gross human rights violations have been continuing in Burma. Between January and June of 2011, several human right groups in Burma reported 333 cases of serious human rights violations in the country. The breakdown consists of various crimes including 62 cases of torture, 47 cases of forced labour, 12 murders, 9 rapes, 25 cases of recruitment of child soldiers, 24 arbitrary or unlawful arrests and detentions, 84 cases of destruction or confiscation of assets,

¹¹ at

<http://www.burmanet.org/news/2011/08/31/democratic-voice-of-burma-parliament-rejects-reform-of-emergency-act-%E2%80%93-ahunt-phone-myat/> retrieved on 17 October 2011.

¹² President Thein Sein’s Inaugural Speech on 30 March 2011 at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/601_ebopaper2_/601_ebopaper2_en.pdf retrieved on 17 October 2011.

1 enforced disappearance, 1 forcible marriage, 10 cases of forced relocation, 9 cases of trafficking, 6 violations of rights to freedom of expression and assembly, 19 violations of rights to freedom of political movement and so forth. This list of human rights violations is merely a tip of an iceberg. Human rights abuses resulting from the persecution of ethnic minorities by the national military, in particular, continue to deteriorate.

The national army reinforced its attack and persecution against the minorities. This culminated in the use of brutal tactics such as extrajudicial killings, torture, and rape against female members of the minority groups.

Especially, in Kachin state, Myitsone dam construction, a joint project between Chinese capital and the new government of Burma, entailed human rights abuses and oppression against ethnic minorities. The project was estimated to cause a forcible relocation of over 10,000 people of the Kachin minority and a serious environmental destruction. Despite an attempt by the Kachin people to prevent the project in a peaceful manner, the government went ahead with the construction, bringing about the conflict between the national army and the Kachin minority.

The recently published report from the Kachin women's group, "Burma's Covered Up War: Atrocities Against the Kachin People," addressed that on June 9, 2011, in the course of four months after a 17-year long cease-fire between Kachin Independence Army (KIA) and the Burma government was broken, the deliberate attacks against the ethnic minorities by the government resulted in serious extrajudicial killings, torture, and sexual violence, forcing 25,000 people to evacuate to the border.

Rapes against women are particularly serious. Two months after the outbreak of the conflict, 37 women and girls were raped and 13 were murdered. In a more brutal case, a woman was raped and murdered in the presence of her grandchild. Many other similar cases had been reported.

Although the President Thein Sein declared the freezing of the dam construction on September 30, the massive violations of human rights by the national army had produced numerous victims and the conflict is still ongoing.

4) Human Rights Activists at Risk

Due to the existing public security legislation, organizations promoting the respect for human rights are not recognized as legitimate. The lack of legal status prevents the operation of human rights organizations in Burma. Over 20 lawyers who were disbarred by the Military junta have

not retrieved their qualification.¹³

5) The Dialogue between Ethnic Minorities and the Government

Although the new government showed positive attitudes toward the meeting with Aung San Suu Kyi, the dialogues between the government and ethnic minorities have not been materialized. Ethnic minorities are currently working together to pursue a peace talk with the government.¹⁴ The United Nationalities Federal Council (UNFC) in charge of pulling minority groups together created a group charged with preparing negotiation for a peace talk with the government. ‘This group was established for a dialogue aimed at realizing equal rights for all minority groups. We plan to talk with the new administration about constitutional amendments which will realize the creation of a true federation. Also, we would like to request the regime to stop attacks on minority communities and to declare a cease-fire across the nation. We also plan to invite those who hold a neutral position, including Aung San Suu Kyi, in witness of the government’s pledges,’ said Nai Hang Tha, a UNFC executive officer.¹⁵

However, the government attempts to have an individual dialogue with each ethnic minority instead of engaging with the UNFC. On August 18, the government officially recommended each minority group to have a peace talk with each respective state or province governments as a first step toward a dialogue with the delegation of the federal government.¹⁶

On the other hand, the minority force, having refused to have individual dialogues, requested a resolution of ethnic problems through a comprehensive negotiation between the federal delegation and the UNFC negotiating body.¹⁷

The individual dialogue with each ethnic minority recommended by the government poses a risk of splitting the minority force, which might prevent a fair resolution and national reconciliation. The new regime should respond to a comprehensive dialogue involving all minority groups in order to solve the ongoing gross human rights violations in minority communities.

6) Composition of the Human Rights Commission

¹³ Democratic voice of Burma 24 August 2011 at <http://www.dvb.no/news/lawyers-seek-end-to-persecution/17227> retrieved on 17 October 2011.

¹⁴ IRRAWADDY, 31 August 2011 at http://www.irrawaddy.org/article.php?art_id=21992 retrieved on 17 October 2011.

¹⁵ IRRAWADDY, 31 August 2011 at http://www.irrawaddy.org/article.php?art_id=21992 retrieved on 17 October 2011.

¹⁶ September 2011 Burma Bulletin pp.1-2.

¹⁷ Asia PressNetwork 9 September, 2011. <http://www.asiapress.org/apn/archives/2011/09/01133413.php>, September 2011 Burma Bulletin p.2

The Human Rights Commission established by the new government on September 9, 2011, consists mainly of government officials and military personnel and only three out of fifteen members are university professors. Some pointed out that the members include diplomats who had been denying the existence of human rights violations by the military rule.¹⁸ Also, there was no consultation with the civil society regarding the establishment of the Commission. Thus, it hardly meets the requirement of an independent human rights institution recommended by the Human Rights Committee based upon the Paris Principles.

7) Conclusion

As mentioned above, the current human rights situations in Burma remain severe as the words and actions of the new government officials fail to bring about a practical outcome. Moreover, the ongoing nation-wide human rights violations include massacre, torture, rape, etc. Even if the new government is not, in effect, encouraging such human rights abuses, it is nevertheless a fact that the regime has failed to order an immediate halt of the abuses and has not taken steps to prosecute, punish those responsible for the abuses. Given such background, one can say that tolerance toward human rights violations is equal to implicit encouragement of such violations.

Human Rights Now, therefore, concludes that in order to materialize respect for human rights, the new government must achieve the followings;

- i. To immediately release all of the political prisoners;
- ii. To issue an order to immediately terminate human rights violations by the national military and police force in minority communities;
- iii. To prosecute and punish all military personnel and state officials who have participated in human rights violations, especially the massacre of civilians, torture and rape;
- iv. To terminate arrests, oppression, torture and other inhumane treatments of pro-democracy activists and to immediately repeal the suppressing legislation;
- v. To engage in the peaceful dialogues towards resolution of all conflicts with pro-democracy forces, human rights groups and ethnic minorities without resorting to the use of force or oppression;
- vi. To guarantee the independency of the Human Rights Commission

2. JAPANESE GOVERNMENT'S POLICY TOWARDS BURMA

¹⁸At <http://www.altsean.org/Research/Regime%20Watch/Judicial/Human%20Rights%20Commission.php> retrieved on 17 October 2011.

At the general election in 2010, the Japanese government released the statement saying that it “has repeatedly urged the Government of Myanmar to hold free, fair and open elections” and that it is “deeply disappointed that such expectation was not fulfilled up to the elections in spite of these efforts.”¹⁹

The government has apparently changed the ODA and diplomacy policy towards Burma. Regarding the ODA policy, the vice-minister Makiko Kikuta visited Myanmar and revealed at the meeting with the government officials that Japan would resume the aid. The Ministry of Foreign Affairs announced that ‘with regard to economic cooperation, while closely following the progress of democratization and improvement of human rights situations in Myanmar, Japan will consider and implement on a case-by-case basis projects centring on basic human needs.’²⁰

According to the press, in 21 October 2011, the Ministry of Foreign Affairs further revealed a plan to resume the ODA and begin a survey in this year.²¹

However, notwithstanding the beautiful words of the new Burmese government, grave violations of human rights such as massacre, torture and rape still persist in Burma.

Given that there has been no radical improvement of the circumstances which sustain a systematic violations of human rights, the ODA should not be resumed.

As long as the transparency of the aid given by the Japanese government as the basic needs is not ensured, one cannot guarantee that the aid will be utilized actually for that purpose. Moreover, if the basic needs of the people for which the government should be responsible is provided by the Japanese government, Burmese government can use the national budget for military purpose, which would indirectly further human rights violations. The current conflicts in Kachin evidently show that the development-related plan is linked with the persecution of the residential minorities and can worsen the violations of human rights and conflicts. Furthermore, if the ODA is permitted in earnest, the government could send the wrong message to the ASEAN countries including the new Myanmar government.

Human Rights Now is of the view that the Japanese government should not resume the ODA

¹⁹ At http://www.mofa.go.jp/announce/announce/2010/11/1107_01.html retrieved on 17 October 2011.

²⁰ At http://www.mofa.go.jp/region/asia-paci/myanmar/visit_kikuta1106.html retrieved on 17 October 2011.

²¹ Asahi Shimubun 15 May 2011 at <http://www.asahi.com/international/update/1014/TKY201110140705.html> retrieved on 17 October 2011.

where the Myanmar government does not fulfil the following requirements;

- i. To immediately release all of the political prisoners;
- ii. To issue an order to terminate all of violations of human rights in minorities regions by the military and the police;
- iii. To immediately stop arresting, suppressing, torturing and inhumanly treating the pro- democracy activists and abolish the suppressing legislation;
- iv. To have dialogue with the democracy activists, the human rights groups and the minorities, and reconcile the conflicts by the dialogue, not suppressing use of force;
- v. To assure the transparency of the ODA

Human Rights Now further requests the Japanese government to conduct a prior consultation with Myanmar democratic groups and Japan's civil society organisations upon the policy determining process and each plan.

3. THE INTERNATIONAL COMMUNITY

The international community should support and encourage the new Burmese government to promote the protection of human rights. Such a response as superficial diplomatic speech, however, does not lead to the actual support of protection of human rights. It only encourages the violations.

As we all have witnessed, the diplomacy focusing upon human rights of the new government is merely the superficial words and deeds. The grave violations of human rights are still being repeated in Burma.

The international community must continuously monitor what actually occurs in Burma. It must deliver a message urging the termination of all form of human rights through, for instance, the resolution of the General Assembly.

Moreover, the most effective measure to stop the grave violations of human rights in the minority regions is to dispatch the U.N. independent Commission of Inquiry.

In order to cut the chain of the long-persisting impunity and to really eradicate all human rights violations, HRN calls the General Assembly to adopt the resolution which includes the dispatch of the Commission of Inquiry.