



Karen Human Rights Group

Documenting the voices of villagers in rural Burma

KHRG Commentary

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Safeguarding human rights in a post-ceasefire eastern Burma

The ongoing ceasefire negotiations between the Government of Myanmar and the Karen National Union present an important opportunity for bringing lasting peace and improved human rights conditions to local people in eastern Burma. If the ceasefire can end fighting between the two parties, it should end human rights abuses associated with armed conflict. Human rights abuses, however, do not stem only from armed conflict but also from ingrained abusive practices and lack of accountability for perpetrators. In the absence of armed conflict, abuses related to extracting labour, money and resources from villagers and consolidating state control can be expected to continue or even worsen, particularly where there is a correlative increase in industrial, business or development initiatives undertaken without opportunities for genuine local input. Given these concerns, this commentary concludes by presenting recommendations for using the ceasefire negotiations to define monitoring processes that can offer new options for communities already attempting to protect their human rights. Analysis for this commentary was developed in workshops held with staff at KHRG's administrative office in Thailand and with villagers working with KHRG to document human rights abuses in Mon and Karen states and Bago and Tenneserim divisions.

Last week's meeting in Pa'an Town between representatives of the Government of Myanmar and the Karen National Union (KNU) resulted in a preliminary ceasefire between the parties¹ and an agreement to negotiate further.² These developments indicate that an unprecedented opportunity exists to bring lasting peace and improved human rights conditions to local people in eastern Burma.

Ceasefires, however, do not automatically create lasting peace, and even peace does not guarantee improved human rights conditions. If the present opportunity is to be realised, negotiations must continue and must not only address the military and political issues identified by both sides, but also develop a concrete ceasefire monitoring framework that expands opportunities for addressing the human rights abuses we believe will continue even where armed conflict subsides.

Before the latest round of negotiations, staff members from our organisation came together to discuss a post-ceasefire future for eastern Burma. We considered how a ceasefire might result in improved human rights conditions, and what recommendations we would make to ensure that it did. We gathered input from our colleagues abroad, those at our Thailand office, and those in

¹ See statement issued by KNU on January 13th 2012, the day after a 19-member KNU delegation, which included military representatives from all KNLA Brigades except 5th Brigade, attended initial ceasefire talks in the Zwegapin Hotel in Pa'an Town. Karen National Union, *Statement on the Initial Agreement between KNU and Burmese Government*, January 13th 2012.

² "Govt, KNU sign ceasefire," *Myanmar Times*, January 16th – 22nd 2012; "KNU, Govt Reach Historic Agreement," *The Irrawaddy*, January 12th 2012.

Bago, Mon and Karen states³ – who are themselves villagers working to document abuses and support their communities' struggles for human rights.⁴

These discussions yielded a clear consensus: an end to armed conflict should significantly reduce human rights abuses that have long been a part of 'counter-insurgency' strategy employed by Burma's state armed forces, the Tatmadaw.⁵ In the last year, this has included attacks on civilians, deliberate destruction of crops and food supplies, forced relocation and movement restrictions, and forced labour in support of military operations.⁶

If the preliminary agreement can end armed hostilities, we hope that the Tatmadaw opts to cease such practices. But in order for this to last, both sides must implement the ceasefire in good faith and come to see the other side not as an enemy, but as a partner in a common future. Without such a change in relationship, even if a ceasefire halts armed conflict, mutual distrust can be expected to result in serious abuses: the laying of landmines, threats to local organisations providing humanitarian and development assistance, and accusations of civilians' allegiance to the KNU and their subsequent arrest, detention and even torture or killing.⁷

In the worst-case scenario, a ceasefire that does not truly transform the relationship between the Tatmadaw and the KNU could instead create a lull in fighting that presages renewed conflict. This is what we saw after the KNU and State Peace and Development Council⁸ reached a 'gentleman's agreement' to stop fighting in December 2003:⁹ while fighting paused, the Tatmadaw expanded networks of military camps and roads¹⁰ that literally cleared the way for the largest offensive in a decade, which ran continuously through the end of 2008.¹¹

³ Note that input could not be gathered from villagers working with KHRG in Tenasserim Division because of logistical and communication barriers.

⁴ KHRG trains and equips villagers to gather testimony and document human rights abuses in their communities. For more information on KHRG research methodology, see *All the information I've given you, I faced it myself: Rural testimony on abuse in eastern Burma since November 2010*, KHRG, December 2011, pp. 9 – 12.

⁵ See Martin Smith, *Burma: Insurgency and the politics of ethnicity*, Dhaka: University Press Ltd. pp. 258 – 262; Maung Aung Myoe, *Building the Tatmadaw: Myanmar armed forces since 1948*, Singapore: Institute of Southeast Asian Studies, 2009, p.26 – 28.

⁶ Between November 2010 and December 2011, villagers in all seven KHRG research areas documented forced labour and movement restrictions; attacks on civilians were documented in all research areas, except Thaton District, and forced relocation was documented in all areas except Nyaunglebin and Tenasserim. For a table showing the geographical spread of 17 types of abuses across KHRG's seven research areas since November 2010, see *All the information I've given you, I faced it myself*, KHRG, December 2011, p. 12.

⁷ Between November 2010 and December 2011, villagers trained by KHRG documented the laying of landmines in all seven research areas; threats to local organisations providing humanitarian and development assistance was documented in all areas except Tenasserim and Dooplaya. Summary execution was documented in all areas except Thaton and Nyaunglebin, while arbitrary arrest, torture and detention were documented in all areas except Thaton, Nyaunglebin and Tenasserim. For a table showing the geographical spread of 17 types of abuses across KHRG's seven research areas since November 2010, see *All the information I've given you, I faced it myself*, KHRG, December 2011, p. 12.

⁸ While many Karen villagers continue to use the phrase *Na Ah Pa* (State Peace and Development Council, or SPDC) to refer to Burma's military or civilian government officials, the SPDC was officially dissolved in March 2011 and replaced by a nominally-civilian government headed by President Thein Sein; see "Mission Accomplished as SPDC 'dissolved'," *Myanmar Times*, April 4-10th 2011. To view the full transcript of President U Thein Sein's inaugural address to the Pyidaungsu Hluttaw, see "We have to strive our utmost to stand as a strong government while conducting changes and amendments in order to catch up with the changing world," *New Light of Myanmar*, March 31st 2011.

⁹ For more on the historical background of the 'gentlemen's agreement', see Ashley South, *Ethnic Politics in Burma: States of conflict*, New York: Routledge, 2009 (2nd Edition), pp. 61 – 65.

¹⁰ For KHRG reports that monitored ongoing abuses during the 'gentlemen's agreement,' see "Eastern Pa'an District: Forced Labour, Food Security and the Consolidation of Control," KHRG, May 2004; "Papun and Nyaunglebin Districts: Continued Oppression During the Ceasefire," KHRG, September 2004; "SPDC Violates the Ceasefire During Karen New Year Celebrations; the Attack on Kah Law Ghaw Village, Dooplaya District," KHRG,

However, viewing the current human rights situation only through the narrow lens of conflict-related abuse distorts the reality of the situation faced by ethnic villagers in rural eastern Burma, and understates the range of serious abuses that restrict or destroy their ability to support themselves, their families and their communities.

Abuses also stem from the presence of large numbers of soldiers, and natural resource extraction, development and state-building endeavours in rural ethnic areas. In other parts of the world, these projects are not inherently negative. But in eastern Burma, they are undertaken in a climate where state officials, soldiers and private entities know that they will not be held accountable if they pursue their objectives with violence, threats of violence or disregard for their consequences for rural communities.¹²

Exciting developments have occurred inside Burma in the last year, and initial steps toward reform have been taken. These reforms have not, however, addressed key root causes of ongoing abuse; existing legal and governance structures fail to ensure accountability for perpetrators of human rights abuses or prevent the unilateral imposition of natural resource extraction and development projects.

While there have been recent victories for communities threatened by high-profile projects such as the Myitsone Dam in Kachin State¹³ and the Tavoy coal-fired power plant in Tenasserim

February 2005; "Dooplaya District: Fighting and Human Rights Abuse Still Continue after Ceasefire," KHRG, February 2005.

¹¹ Between 2005 – 2008, KHRG documented the widespread displacement of villagers in the face of systematic and targeted attacks against villages and livelihoods, primarily in Papun, Nyaunglebin and Toungoo Districts, the three northernmost districts of KNU-delineated Karen State, giving rise to the common name for this period as the Northern Offensive. See "Burma Army attacks and civilian displacement in northern Papun District," KHRG, June 2008; "SPDC Army atrocities in Ler Muh Bplaw village tract in the words of a local resident," September 2007; and "SPDC Attacks on Villages in Nyaunglebin and Papun Districts and the Civilian Response," KHRG, September 2006. Reports by KHRG of the widespread and systematic commission of acts constituting violations of international humanitarian and human rights law, including destruction of houses and crops, enforced disappearances, the laying of landmines, forced labour, torture and extrajudicial killings of civilians, were confirmed by international observers. Widespread commission of such acts prompted the International Committee of the Red Cross (ICRC) to take the unusual step of issuing a public statement to condemn Tatmadaw in violation of "many provisions of international humanitarian law." See, "Myanmar: ICRC denounces major and repeated violations of international humanitarian law," ICRC, June 29th 2007, News Release 82/07. See also *Crimes Against Humanity in Eastern Myanmar*, Amnesty International, June 2008; "Burma: Army Forces Thousands to Flee," Human Rights Watch, November 2006; and "Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sergio Pinheiro," UN Human Rights Council (HRC), February 12th 2007, A/HRC/4/14 paras. 55-6, 58: "The Special Rapporteur has received information concerning a large number of internally displaced persons in northern Kayin State. Allegations about civilians being forcibly used by the military as porters have also been received." Note also that, although the so-called Northern Offensive officially terminated in December 2008, when the frequency and intensity of co-ordinated multi-battalion attacks decreased and soldiers withdrew from 30 camps across Northern Karen State, throughout 2011, KHRG continued to document Tatmadaw military operations that launched sporadic and unpredictable attacks, deliberately targeting civilians and their food resources in areas beyond established or consolidated military control. For background on the Northern Offensive and an update on Tatmadaw operations in Papun district since the withdrawal from forward positions in December 2008, see *Self-protection under strain: Targeting of civilians and local responses in northern Karen State*, KHRG, August 2010. For details of attacks against civilians in 2011, see "Tatmadaw attacks destroy civilian property and displace villagers in northern Papun District," KHRG, April 2011; "Joint Tatmadaw patrol burns field huts and seed stores, displace six villages in Toungoo District," KHRG, June 2011; "Tatmadaw soldiers shell village, attack church and civilian property in Toungoo District," KHRG, November 2011.

¹² For example, between November 2010 and December 2011, villagers trained by KHRG documented the confiscation or attempted confiscation of land attending natural resource extraction, development and state-building endeavours in all seven research areas. See *'All the information I've given you, I faced it myself'*, KHRG, December 2011, pp. 72 – 75.

¹³ "Burmese President Halts Myitsone Dam Project," *The Irrawaddy*, September 2011.

Division,¹⁴ decisions to halt these projects were made unilaterally, voluntarily and on an *ad hoc* basis; nothing obligates state officials to listen to external input or to make similar decisions elsewhere, particularly with regards to projects that receive less publicity but are nonetheless equally destructive.

Over the last year villagers gathering testimony in eastern Burma documented serious non-conflict abuses. These included sexual violence, forced labour, arbitrary taxation and extortion, violence or threats of violence or other forms of coercion to enforce orders, as well as land confiscation, forced relocation, and the pursuit of natural resource extraction, development and state-building projects with destructive impacts on villagers' communities and livelihoods.¹⁵

Political, governance and legal reform that addresses the root causes of these abuses will have to be wide ranging. Systems must be developed to encourage state, military and private entities not to perpetrate abuse in a post-ceasefire environment, and to hold them accountable when abuse does occur. And mechanisms must be developed to guarantee that natural resource extraction, state-building and development projects are implemented with local input, consent, and compensation.

Even in the best case of credible scenarios, such reform will occur via a long and fraught process – with the outcome far from guaranteed. What is guaranteed, however, is that any reform process will reach rural ethnic areas last, where civilian governance is weak or nonexistent and where military and private entities will have an interest in disregarding reforms that challenge their interests. In the short term, the end of armed conflict risks opening space for expanded militarization, resource extraction and externally-imposed development on a breath-taking scale. In the current environment, the expansion of such projects risks consequences more disastrous than war.

The ongoing negotiations between the Myanmar Government and the KNU offer a one-time chance to deflect a post-ceasefire future that is potentially disastrous for human rights. Because any ceasefire agreement needs to be accepted by the principal armed actors, and because continued peace will present strong economic and development incentives, there will be significant constituencies supportive of its maintenance. If its terms include tools that address the potential for renewed conflict and new human rights abuses, a ceasefire agreement itself may function as a stand-in for reforms that are a long way away from being relevant for communities in eastern Burma.

Any ceasefire agreement adopted must include provisions that clearly define a monitoring process; this is necessary to deter violations and, where violations do occur, to enable quick action to ensure that they do not trigger renewed conflict. The terms should firstly define who will conduct monitoring and how it will be undertaken. For monitoring to be effective, it should be conducted by independent third parties, including international monitors agreed upon by both sides.

Crucially, ceasefire monitoring provisions must also explicitly enable community participation in monitoring. Monitoring at the local level would empower communities to promote peace and human rights, while also augmenting international efforts. The success of local ceasefire monitoring efforts in countries such as the Philippines, and our experiences training villagers to

¹⁴ “Dawei Power Plant Cancelled,” *The Irrawaddy*, January 2012.

¹⁵ Between November 2010 and December 2011, villagers in all seven KHRG research areas documented incidents of forced labour and arbitrary taxation, while villagers in all research areas except Nyaunglebin District documented explicit threats of violence. Villagers in Dooplaya District gathered detailed evidence of specific incidents⁴⁶ of rape and sexual violence by Tatmadaw soldiers, while reports needing further confirmation were also received from four other research areas. See *'All the information I've given you, I faced it myself'*, KHRG, December 2011, p. 12.

monitor human rights conditions in their own communities, prove that such efforts are possible, and worthwhile.

For local monitoring to be safe and viable, the terms of the ceasefire must specify that no restrictions be placed on community members and local organisations that wish to conduct monitoring. It should also articulate transparent and accessible procedures for lodging complaints of ceasefire violations. Both parties must agree on a mechanism that can address such complaints and hold violators accountable without endangering the overall peace process. Absent such a mechanism, parties may fear that a complaint or investigation could unravel the entire agreement, leaving violations unaddressed. This could fuel grievances or engender misunderstandings that ultimately lead to renewed armed conflict.¹⁶

The terms of the ceasefire must, for this reason, specifically define the types of conduct that constitute violations of the ceasefire. If these provisions articulate clear requirements regarding the treatment of civilians, then the text of the agreement itself could help address the root causes of abuses in eastern Burma by offering communities an unprecedented and invaluable tool for engaging soldiers and addressing their human rights concerns. KHRG frequently speaks with villagers who describe negotiating with local state and military authorities to reduce or avoid abusive demands. Such attempts are fraught with risks and do not always work, particularly in the case of large projects implemented outside the control of local authorities, but they show that rural communities have the confidence and capacity to claim their rights.

A ceasefire agreement could provide a solid foundation for villagers' engagement with local authorities that typically occurs only on the basis of local relationships and the moral force of individuals, and in the face of grave risks of violence and other abuse.¹⁷ Prohibitions on abuses such as arbitrary detention, ill-treatment, torture or summary execution could help reduce the risks inherent in attempting to negotiate with armed actors. Provisions regarding pursuit of natural resource extraction and development in rural ethnic areas, meanwhile, could address concerns for areas that reforms in Naypyidaw will be slow to reach.

Explicit provisions in the ceasefire agreement could have unique power in civilians' negotiations with armed actors when compared to other domestic laws, because soldiers and lower-ranking officers would have an interest in avoiding actions that might undermine the overall agreement. Respect by both parties for rules regarding treatment of civilians could also encourage the development of new, and better, norms of conduct for armed actors vis-à-vis civilians. Backed by robust ceasefire monitoring mechanism, such provisions would have added power because violations of the agreement might also carry a credible threat of penalties, which are wholly lacking from current military and civilian justice systems.

A ceasefire that defines appropriate conduct and includes a mechanism for monitoring and addressing violations will not be a substitute for sorely-needed systemic reforms. But, if transparent and publicly available, it would offer local communities a powerful tool to wield in their daily struggles to claim human rights. This could alter the course of post-ceasefire history for rural ethnic communities in eastern Burma. Absent such an agreement, the current ceasefire risks creating conditions for a rapid increase in non-conflict human rights abuses, well before any reforms in Naypyidaw are able to prevent them.

¹⁶ For an interpretation of the breakdown of the 'gentlemen's agreement', for example, see Ashley South, *Ethnic Politics in Burma: States of conflict*, New York: Routledge, 2009 (2nd Edition), pp. 61 – 65.

¹⁷ See *Civilian and Military order documents: March 2008 to July 2011*, KHRG, October 2011, p. 9; *Supporting local responses to extractive abuse: Commentary on the ND-Burma report Hidden Impact*, KHRG, September 2010; *Village Agency: Rural rights and resistance in a militarized Karen State*, KHRG, November 2008.