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HOW TO DEFEND THE DEFENDERS?

A Report on the Situation of Human Rights Defenders in Burma and Appropriate Protection Mechanisms

INTRODUCTION

Testimonies and reports from inside the country have painted a very different picture to the new tolerant and free Burma that the Burma Government wants the world to see. Those who try to defend human rights, or question the power or narrative of the Burma Government – and their military and corporate backers – now seem to be operating in as dangerous an environment as ever.

The immediate objective of the report is to provide a comprehensive picture of the current situation of Human Rights Defenders (“HRDs”) in Burma, including the threats and risks that they face. The report also provides concrete, practical, research-based, solution-oriented policy recommendations for HRDs, the Burma authorities, and any other relevant actors, to enhance HRDs’ access to adequate and realistic protection programs, and to strengthen legislative and judicial protection mechanisms for HRDs in Burma. The medium-term objective is to facilitate the emergence of an enabling environment in which HRDs can operate freely, and carry out their valuable and legitimate human rights work. The long-term objective is to realize an improved human rights situation in Burma, whereby human rights are promoted, respected and protected, particularly those of poor, marginalized and vulnerable groups, including religious, ethnic and social minorities, as well as local grassroots communities.

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When working on human rights issues, we have to set aside our personal issues. There are negative effects on our personal, financial and family situations.

- A human rights defender
in Burma

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SUMMARY OF THE RESEARCH FINDINGS

Judicial and Legislative Harassment

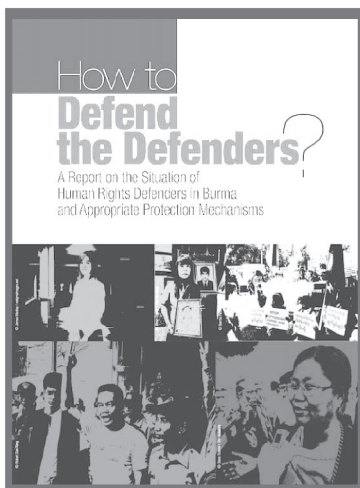
The need for urgent reforms in the judicial and legislative sectors was demonstrated to be of major concern to HRDs working in Burma, with 98 percent of those interviewed saying they had little to no faith in the justice system. The use of judicial and legislative harassment is clearly still central to the oppression and harassment of HRDs in Burma, with the continued application of numerous laws to harass, detain and imprison HRDs. The HRDs interviewed viewed the complete lack of an independent judiciary that was free from corruption and outside influence as a huge factor in the repression of their basic human rights and their personal security when carrying out human rights work. The widespread use of Section 18 of The Peaceful Assembly and Peaceful Procession Act, Section 505 (b) of the Penal Code and the Unlawful Association Act 17 (1) to imprison HRDs demonstrates the lack of protection and rule of law afforded to the people of Burma. Bodies implemented to protect human rights such as the Myanmar National Human Rights Commission (“MNHRC”) are woefully ineffective, operating with no independence at all. The judicial and security sectors are suffering from the same problem. The HRDs interviewed emphatically stated the urgent need for judicial and security sector reforms, and for the reform of the MNHRC to ensure the protection of peoples’ human rights and of the HRDs themselves. Without an actual respected and functioning rule of law in Burma, there can never be a truly safe space in which HRDs can operate.

Legal Aid and Access to Justice

The violation of basic human rights whilst under arrest has been recognized by HRDs as a factor that requires immediate remedy. The denial of legal aid to anyone contravenes their rights to receive minimum fair trial standards. The lack of adequate legal aid is even more troublesome as the lawyers who are willing to undertake human rights cases are subject to the same harassment and abuses other HRDs face. HRDs expressed their lack of trust in the judicial system, with many of the opinion that the courts do not follow any due process or observe fair trial rights. Lawyers interviewed also stated their dissatisfaction with the corrupt judicial system and the lack of rule of law.

“This report on the situation of human rights defenders in Myanmar, thorough in its content, comes out at a suitable timing, as the democratic transition should no longer postpone the essential role that civil society have to play, and the effective mechanisms to protect them. At this point, the international community, to be consistent with its commitment to human rights, should also include the civil society in its agenda of cooperation.”

A Foreword by Tomás Ojea Quintana
Former Special Rapporteur on the situation of
human rights in Burma



Threats to Personal Security: Extrajudicial Killings, Disappearances and Violence

The risk of extrajudicial killings is something that HRDs in Burma have to contend with. Almost all HRDs interviewed highlighted extrajudicial killing, exacerbated by almost total impunity, as a grave risk that is part of a wider strategic attack on HRDs. Deaths, disappearances and violent abuse are all discussed by the HRDs as a very real part of their lives when they try to carry out human rights work. In particular, HRDs working in remote and rural areas and those working on land confiscation issues spoke of their fear of these abuses. HRDs pointed out the prevailing culture of impunity that surrounds perpetrators, bringing up examples of the cases of killings and disappearances that have taken place in recent years. The lack of protection mechanisms or course of action for HRDs ensures they are unable to break this cycle of abuse. It is clear that HRDs in Burma are currently operating in a climate of fear, with such killings intended to strike fear into HRDs and thereby force them into suspending or abandoning their legitimate human rights work, or imposing self-censorship and silence. Despite their best efforts at ensuring their own personal security and the security of their families and colleagues, it is clear that these are short-term measures that do not reform the systems that allow these abuses to continue, and also do little to remove the culture of impunity that surrounds the perpetrators of these violent crimes. There must be recourse for victims of human rights abuses, ways for people to find out the truth of what happened in killings and disappearances of the HRDs or their families and relatives, and for those who have suffered violent physical and mental abuse to see accountability and justice brought to the guilty parties. If these protection mechanisms are not implemented then the killing, kidnapping and violent abuse of HRDs will continue unabated.

Sexual Violence and Gender Discrimination

Around 45 percent of women HRDs – whether working on women's rights specifically or on human rights generally (and happen to be female) – have reported experiences of sexual harassment and intimidation, with some reporting actual sexual or physical abuse. Women HRDs pointed to local communities



If there is a protection mechanism, people will recognize and respect it. Now, have a look at the situation here: Ko Par Gyi is dead, Daw Khin Win is dead, but what can we do? Nothing.

- A human rights defender
in Burma



and authorities, the Burma Army, ethnic armed and political groups as being culprits when it comes to committing abuses and restricting their human rights work. The experiences of women HRDs also brought out the gender discrimination that is entrenched in Burma. The attitude that women should not participate in political and governmental affairs was found to be fairly common, particularly in the rural areas. Women HRDs expressed how this attitude towards women makes it very difficult to report and receive justice for sexual assaults and violent discriminations. The lack of mechanisms in general to protect against human rights abuses means that offences such as rape and sexual assault and gender discrimination are often completely misunderstood and ignored. Education in these issues and the implementation of protection mechanisms and support systems for victims of rape and sexual assault are essential in providing real support and a safer environment for women HRDs. In turn it is essential that the offenders in these cases are held accountable for their actions and brought to justice.

LGBTIQ Discrimination and Violence

LGBTIQ rights defenders reported being subjected to vicious and invasive personal attacks on social media, as well as

highlighting several cases of them being physically and verbally abused. These campaigns of abuse were found to be symptomatic of prejudices that exist within the broader culture in much of Burma, prejudices that are then actively stoked by the authorities so as to harass, intimidate and discredit these HRDs and scare them into submission and silence. Although not a universal position, several spoke of their insecurity within their own communities and even of a lack of support from their families due to the nature of their work. The lack of a cohesive civil society was highlighted as a key failing in providing a support network for LGBTIQ rights defenders, where increased education, awareness raising and capacity building could help to remove some of the issues surrounding community based discrimination. In addition, a lack of laws to protect LGBTIQ rights defenders ensures they are still subject to judicial harassment, with no recourse for the physical and mental harm that these abuses cause.

Religious and Inter Faith Discrimination

HRDs working on inter faith issues described some of the worst difficulties faced when working within local communities. They are forced to confront not only government bodies and local authorities, but also leaders and members of local communities, as well as civil society groups. By using religious leaders and extremist nationalist groups as their proxies, the authorities seem to be actively encouraging prejudice, hostility and aggression against these HRDs, making it very difficult for them to work in safety to establish stronger inter faith networks. Many women's rights defenders expressed the challenges and prejudices they have faced from religious leaders when trying to campaign for women's rights and inter faith issues. They stated how local propaganda and slanderous statements turned local people against them, creating a tense and fearful atmosphere within their communities. The rise of the Buddhist nationalist movement and the development of the Protection of Race and Religion Bills exacerbate the tensions and encourage greater divisions within communities, and in the country as a whole. Many HRDs working on inter faith issues said that they did not fear the authorities but their own communities, influenced by the rhetoric of religious leaders who are causing these deep rifts.

Division and Alienation of Communities

By insisting on keeping close tabs on HRDs' movements, military intelligence and Special Branch Police foster an atmosphere of fear, ensuring that HRDs become increasingly ostracized within their own communities. As above with women and inter faith activists, creating discord within communities is beneficial to those in power against the will of the people, and who are mindful of the dangers of a unified civil society, or even a unified community. Sowing these seeds of mistrust and suspicion ensures communities do not fully engage with the work of HRDs who have been branded by local authorities as troublemakers. Communities are concerned for their own safety if they do support or if they are seen to be supportive of the work of HRDs. The use of these tactics by the Burma Government, local authorities and their collaborators, as well as military intelligence and special branch police officers, greatly restricts the lives of HRDs.

Disruption to Lives and Livelihoods

These community issues also impact greatly on the ability of HRDs to access earning opportunities and maintain their livelihoods. In turn, these difficulties not only harm the life of the individuals but also those of their family members and dependents. Throughout the research process, interviewees continually voiced concerns about the detrimental effect that conducting human rights work has had on both their livelihoods and the lives of their families, especially fear of abuses committed against family members, having no time with their families, establishing a secure family unit, maintaining family businesses, generating sufficient income and having access to education and social welfare. The simple fact is that in carrying out this human rights work, activists are greatly restricting their access to earning opportunities and their ability to provide needs of the families, not to mention the psychological harm these concerns cause.

Surveillance and General Harassment

The Focus Group Discussion ("FGD") involving student activists was particularly revealing as regards to subversive harassment

employed by the Burma Government and their agents. Surveillance was widely seen as a general problem for all HRDs, although the student groups interviewed seemed to suffer particularly intense harassment, both in person and through social media. Furthermore, the majority of HRDs reported facing challenges emanating not only from various levels of government, but also from local administrative bodies in areas controlled by ethnic armed organizations. Several – especially women – HRDs stated that they have no real support in such communities and that, consequently, they do not feel secure working within such communities. For example HRDs interviewed in Shan State, 72 percent of whom work on land rights, have stated that they can only attend training sessions if they take place in Taunggyi, the state capital. This is partly due to the fact that they are unable to hold these sessions in more rural regions due to security concerns. HRDs also described their experiences of being threatened by high level government officials such as by ministers and by the Myanmar Peace Center (“MPC”), and of being barred from attending local authority meetings. They revealed how the trainings they were able to hold were monitored and restricted. Journalists also stated how



There are many [INGOs], but they have so many rules and regulations and they really don't dare disappoint the [Burma] Government, or to work with issues or organizations that the [Burma] Government doesn't like. So the real work is done by local NGOs rather than by the INGOs. They should cooperate with local, grassroots [CSOs], rather than just pay lip service or tick boxes.

- A human rights defender
in Burma



local authorities that did not want them to have contact with the communities ruined their reputations deliberately. The authorities are systematically observing the movements and activities of HRDs, in order to employ tactics that best prevent them from working. This systematic abuse and harassment must be brought to an end and a safe environment be fostered for HRDs, particularly in rural areas, to work in.

Inadequate Civil Society Coordination, Cooperation and Capacity

Many HRDs pointed out that the subsequent disunity amongst civil society is a stumbling block to achieving a real respect for human rights. Although not all HRDs believe there is complete discord amongst civil society, many did state how there is a lack of togetherness and communication between organizations; that with closer cooperation and collaboration they would be able to create a more secure space in which HRDs could operate. HRDs were also of the opinion that capacity building programs that increased the skills and technical knowledge of HRDs would greatly improve organizational effectiveness and cooperation. The opinion of HRDs was that if civil society were able to trust each other and better engage with communities, they would have far greater protection from harassment and abuse.

Ineffective Donor and International Non-Governmental Organization Strategies

The lack of an international presence outside of Rangoon was bemoaned by many HRDs, with the majority stating that they would welcome more input and support from international non-governmental organizations (“INGOs”). A large number of those interviewed highlighted this issue as instrumental to their feelings of fear and intimidation, and said that they believed that building stronger networks and engaging with INGOs would help them gain stronger footholds in rural areas. The development of networks throughout different regions and across ethnic boundaries is important to strengthening civil society in Burma, and ensuring that opportunities are provided outside of Rangoon is a key responsibility of INGOs. The central message was that INGOs should help HRDs to come together, share information – especially ideas for effective protection mechanisms – and

support each other's activities, in order to increase the overall success of their human rights work. It was suggested that the international community could play an important role when an HRD is arrested, by raising awareness of their detention, putting pressure on the Burma Government, and campaigning for their release. A suggestion put forward was that of an HRD forum, a regular consultation between relevant actors so that they can come together and develop protection mechanisms, as well as

sharing knowledge and experience. It was also of key importance that HRDs in rural areas and not just in major cities were also meeting with INGOs so that these INGOs' influence, resources and experience were assisting a wide range of HRDs working on human rights violations across Burma.

CONCLUSION

“When I travel, I let my family and friends know where I go. It's not safe to travel because in our remote areas, anything can happen. We are working on environmental issues and land issues. The businesses are multimillion dollar investments and they only need to use one hundred thousand, perhaps five hundred thousand [kyat] to kill someone. In northern Shan State, someone who monitored land and environmental issues was killed. In southern Shan State, an NLD township Chairperson was killed, but no culprit was found. It is that easy to kill us...”

- A human rights defender
in Burma

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If HRDs were better protected by the Burma Government, and their rights were respected and promoted, then they would be better able to conduct their legitimate and important human rights work, and in turn the overall human rights situation in Burma would improve – to the benefit of all people in Burma. If the Burma Government were to embrace such a vision, and initiate and implement such positive policies and practices, it would soon see the benefits for all. Such an approach would also represent the kind of attitude in the lead-up to the 2015 national elections that the people of Burma want to see.

While not exhaustive, the following recommendations, addressed to various key actors, are drawn primarily from the experiences, opinions, needs and concerns of the HRDs interviewed for the report. It is hoped that the report will assist HRDs and others to make concrete practical changes that will increase their security and therefore the effectiveness of their work. It is also hoped that this report will put real pressure on the Burma Government and other key actors, in the hope of improving the situation of HRDs in Burma and further allowing them to carry out their valuable and legitimate work.

RECOMMENDATIONS

These recommendations are the result of the interviews conducted and reflect the needs of HRDs in Burma. Although this summary does not give the full list of recommendations, those highlighted below are some of the measures that must be taken immediately to ensure better protection for HRDs and a brighter future for the human rights situation in Burma.

Burma Government:

- Immediately cease the targeting, oppressing, stifling, controlling and silencing of HRDs and ensure that fundamental rights to assembly, association and expression are respected, promoted and protected at all times;
- Immediately stop the practice of arbitrary arrest and detention of HRDs, and all other forms of threats, harassment, surveillance and intimidation of HRDs by local or national authorities;
- Release all HRDs and political prisoners unconditionally, and drop all charges against those HRDs facing trial;
- Establish the rule of law in Burma and undertake urgent judicial reforms to ensure the independence, competence, impartiality and accountability of judges, lawyers and prosecutors, so that they are free from any restrictions, improper influences, inducements, pressures, threats or interferences;
- Initiate and conduct full, transparent and independent investigations into all serious human rights abuses including disappearances, extrajudicial killings, torture, instances of physical violence, and instances of sexual violence, abuse, harassment, intimidation and discrimination;
- Reform the MNHRC into a body that fully complies with the United Nations (UN) Paris Principles;
- Facilitate any UN Special Rapporteur visits, as and when requested by the UN;
- Organize and hold training sessions, education programs, workshops and forums for national institutions, local authorities, law enforcement agencies and communities on: basic human rights standards and principles, international human rights laws and practices, including educating them in women's and LGBTIQ rights and discrimination; and sexual violence, abuse, harassment and intimidation;
- Cease the sponsoring of religious and community divisions, and punish all instances of inter faith violence, hate speech, extremist religious rhetoric, and religious or racial discrimination;
- Ensure that all perpetrators of serious human rights abuses are brought to justice and held fully accountable.

Burma Parliament:

- Immediately review, amend or repeal existing repressive laws – including the Assembly Law, the Penal Code, the Unlawful Associations Act, the Association Law, the Official Secrets Act, the media laws, and others;
- Enact a raft of legislation that provides protection from judicial harassment; that actively protects the rights of HRDs and enables them to carry out their work; that is in line with international human rights law and norms; and that is fully and properly implemented and enforced;
- Enact legislation that protects the rights of vulnerable groups, ratify all core international human rights treaties and align domestic laws with the International Covenant on Civil and Political Rights (“ICCPR”) and the Optional Protocols;
- Implement the Declaration, and accede to the UN Convention Against Torture (“UNCAT”) and the ICCPR.

Political Parties:

- Apply appropriate democratic pressure on the Burma Government to immediately abide by all of the recommendations made to the Burma Government above;
- Make public their own human rights policies and party political platforms, and ensure explicit commitments to the protection of HRDs and their work.

UN:

- Take all possible measures to arrange for the UN Special Rapporteur on Protection of Human Rights Defenders and the UN Special Rapporteur on Freedom of Expression and Assembly to undertake a field mission to Burma;
- Maintain a UN General Assembly (“UNGA”) resolution on Burma to highlight the failure of the Burma Government to implement the recommendations from UNGA Resolution 69/248.

International Governments and Embassies:

- Urge the Burma Government both to immediately abide by all of the above recommendations made to them and to ensure that the above recommendations made to the Burma Parliament and the Burma Judiciary are implemented;
- Provide HRDs who are detained and imprisoned for their activities with an international profile, provide social welfare and assistance to their families, and actively campaign for the release of HRDs.

International NGOs and Donors

- Engage properly with grassroots CSOs/NGOs and local/rural communities, foster stronger HRD networks, engage in trust-building initiatives, and commit sustained time and resources to aiding community-building efforts;

- Be more strategic and comprehensive in terms of funding and implementing human rights programs, including: establishing the needs of local CSOs and HRDs; prioritizing security, the dissemination of practical information, advice and support; funding and implementing such programs in the areas that most need them; and supporting HRD forums and training sessions;
- Accurately document the challenges, abuses and harassment that HRDs face, and actively lobby the international community and the Burma Government to protect HRDs working in Burma.

HRDs and Burma Civil Society:

- Aim to accurately understand and assess all realistic threats and risks, take reasonable precautions and preventative measures, observe relevant protocols, and establish effective emergency plans and concrete strategies when carrying out HRD work;
- Establish local, regional and national HRD networks – including LGBTIQ and women’s networks – to share information and contact details, collaborate and support each other, foster strong communication and security techniques, and raise awareness of risks, threats and tactics;
- Organize and participate in any relevant and useful workshops and training sessions on HRD work, risks and challenges, protection mechanisms, and human rights generally.



In midst of the next general elections, we should re-emphasize our ambitions for real and meaningful transformation, because it’s time for democracy, it’s time for politics, it’s time for human rights. And those who defend these values are indispensable.

Tomás Ojea Quintana
Former Special Rapporteur on the situation
of human rights in Burma

