

## MYANMAR AT A CROSSROADS WHAT ABOUT TRANSITIONAL JUSTICE?

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**ABSTRACT:** This paper in a first part shows how 2015 marks an important step in the Myanmar's peace process, with a genuine political settlement for the first time and new elections. The reasons of the contemporary and past difficulties of the political situation in this Country are illustrated, in particular the denial of equal rights to the various minority ethnicities within a country separated in seven autonomous states, some of which enjoy, as a leg of the colonial rule, much more self-governance than the central, Burman-majority areas. Indeed, during the process of independence, there was, in 1947, an attempt to solve these difficulties, but it failed with the assassination of the protagonists of the negotiations which had brought to an agreement with the Kachin, Shan, Karen and Chin ethnic communities. The subsequent armed conflict led to a gradual Burmanization of the Myanmar's society and to a long period of hard repressions, with forced relocation and destruction of entire villages, torture, sexual violence, and shoot-on-sight policies without distinction between civilians and combatants. Finally, in 2010, Myanmar held elections to establish a new government under the 2008 Constitution, but political prisoners were impeded to run for office. Therefore, there was little opposition to the regime-backed Union Solidarity and Development Party (USDP), which emerged victorious in a vote that was widely considered unfair. However, moves toward democratization and economic liberalization paved the way for improved relations with the international community and opened to a transition towards a peace process.

The second part of the paper is focused on transitional justice in Myanmar. The biggest problem is now how to deal with the past, with the dilemma of revenge and/or only criminal justice, or forgiveness, or perhaps a middle path between revenge and

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amnesia, showing government leadership that the transitional justice the victims are advocating for is not a threat. So, acknowledgment and apology have long been the baseline demand for many victims of human rights violations in Myanmar, in view of the national reconciliation. The other big problem is the reparations for the victims of the serious violations. In the Authors' view, there are two groups of victims who have a priority as to reparative measures : displaced persons (IDPs and refugees) and former political prisoners. The Authors acknowledge however that a challenge to providing a remedy for forced displacement is the large number of victims in front of the available resources in Myanmar. Yet the difficulty in identifying and remedying forced displacement does not justify policymakers in avoiding the issue; rather, it requires a creative look at the options for remedies.

**SUMMARY 1.** *Introduction. Section one:* The Political Situation in Myanmar. 2. *Background* - 3. *Nationalism and Fragmentation* - 4. *Recent Developments* - 5. *Peace Agreement Discussions with Ethnic Groups* - 6. *Upcoming Elections* . **Section two:** What Transitional Justice Action is Required in Myanmar. 7. *How to Deal with the Past* - 8. *Acknowledgment and Apology* - 9. *Remedies* - 10. *Reparative Needs for Displaced Persons, in particular in case of Forced Displacements* - 11. *Reparations for the Serious Violations at the Root of Displacement* - 12. *Reparative Needs for former Political Prisoners* - 13. *Inter-Communal Truth-Telling* - 14. *Recent TJ-related developments.* **Section three:** Conclusions. 15. *A Difficult But Possible Peace Process* - 16. *The Role of International Community*

1. *Introduction.*

This year marks an important point in Myanmar's history, as the country stands at a crossroads in its transition. The peace process is about to move forward towards a genuine political settlement for the first time, but many fear that it could instead fall

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short of expectations and amount to just one more cycle in the history of ceasefires and conflict. The November 2015 election that many are eagerly awaiting could symbolize another crucial moment when, for the first time in decades, the elected portion of the government has been freely chosen and seated.

Despite the many limitations and lingering cynicism, there is a general feeling that a better future is possible in Myanmar. However, systems of oppression and the legacy of impunity act as some of the biggest barriers to this future. Their continued influence on the national stage cannot easily be erased or forgotten. For instance, whenever a challenge or mild opposition arises, security forces default to their brutal traditions of violence and repression.

Memories of the 1988 protests and crackdown surfaced during student protests in March 2015, fueling public outrage and fear. Such memories of mass abuses and broken promises contribute to an extreme lack of trust between the parties to the peace process, and between civilians and the government. Fear of retribution for past misdeeds lurked behind the military's refusal to give up control over government, further adding to public outrage. In spite of the existing skepticism and misgivings, a measured and responsible process of dealing with the past could help break the cycle of violence and human rights violations.

### *Section one:* The Political Situation in Myanmar

#### *2. Background*

Many of Myanmar's contemporary and past problems stem from the denial of equal rights to the various minority ethnicities that exist within the country's borders. Ethnic minorities compose an estimated third of the country's population of 54.3 million people,<sup>1</sup> which are mostly concentrated along the western, northern and

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<sup>1</sup> "Myanmar Population 2015", World Population Review, <http://worldpopulationreview.com/countries/myanmar-population>

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eastern borders in the seven states named after the seven largest minority groups Shan, Karenni, Karen, Mon, Chin, Kachin, and Rakhine.<sup>2</sup>

Before colonial rule, there were many sovereign kingdoms within the territory that is now Myanmar. British colonial rule complicated this structure, as some ethnic areas were allowed much more self-governance than the central, Burman-majority areas.

In an attempt to resolve this issue before independence, General Aung San and representatives from the Kachin, Shan and Chin signed the Panglong agreement in 1947. The agreement promised these groups relative autonomy, including resource sharing, in order to present a united front in negotiating independence.<sup>3</sup> The Shan and Karenni groups were given a right to secession in 10 years if the terms of the agreement were not implemented.<sup>4</sup> However, Aung San and other independence leaders were assassinated before independence, and this agreement has failed to be fully implemented to this day. Thus, before independence, the boundaries and administrative structure of what would become Myanmar remained undecided, and the status of the non-Burman ethnic groups stood unresolved.

When Myanmar gained independence in 1948, some ethnic groups, including the Karen, were already in armed rebellion, and a number of Communist armed groups were operating in the north. These conflicts weakened the civilian parliamentary government, and the military took over power in the name of security. The next few decades saw the rise of many more ethnic armed groups who sought more self-governance within Myanmar or even independence, while the successive military

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<sup>2</sup> “*Ethnic Nationalities of Burma*”, Oxford Burma Alliance, <http://oxfordburmaalliance.org/ethnic-groups.html>

<sup>3</sup>Ethnic National Council of Burma, “*Panglong Agreement*,” United Nations Peacemaker, [http://peacemaker.un.org/sites/peacemaker.un.org/files/MM\\_470212\\_Panglong%20Agreement.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/MM_470212_Panglong%20Agreement.pdf)

<sup>4</sup> OO Z. and MIN, W. *Assessing Burma's Ceasefire Accords*, (Washington: East-West Center, 2007), 5.

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governments continued to rule while emphasizing Burmanization<sup>5</sup> and total military defeat of the ethnic armed groups.

Burmanization campaigns and brutal military tactics in conflict areas included forced relocation and destruction of entire villages, torture, sexual violence, and shoot-on-sight policies that did not distinguish between civilians and combatants. The military governments prohibited all political opposition, whose members became punishable by long prison sentences. Political prisoners were particularly vulnerable to torture and prolonged solitary detention, though both were used as routine interrogation and punishment methods on all types of prisoners. Military leaders eventually created a socialist one-party system with harsh repression of dissent and implemented economic plans that resulted in intense poverty and economic collapse.

In 1988, students in Yangon held protests against the government over mounting economic problems and restrictions on personal freedoms. After a cycle of small protests and crackdowns, the movement grew into a countrywide uprising, and was quickly joined by hundreds of thousands of monks, students, housewives, doctors and others. The uprising was brutally put down by the State Law and Order Restoration Council (SLORC), which took power in a *coup d'état* during the protests. It is estimated that the actions of the SLORC resulted in 1,000 thousand deaths. Thousands of others involved in the protests were beaten and arrested, went into hiding, or fled to neighboring countries.<sup>6</sup>

The 1988 uprising, or the '8-8-88' uprising as it is often referred to in Myanmar, received significant media coverage, and the combined international and national pressure, together with an economic crisis, forced the military junta to arrange free elections for the first time in 30 years. In the elections held on the 27<sup>th</sup> of May in 1990, the National League for Democracy (NLD) led by Aung San Suu Kyi (daughter of General Aung San) emerged victorious with 81% of the parliamentary

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<sup>5</sup> The so called efforts of the military powers to eliminate ethnic minority culture and traditions.

<sup>6</sup> "1988 Uprising and 1990 Election", Oxford Burma Alliance, <http://www.oxfordburmaalliance.org/1988-uprising--1990-elections.html>

seats.<sup>7</sup> However, the military junta annulled this victory and placed Aung San Suu Kyi under house arrest, where she stayed for over 15 years.<sup>8</sup>

After the 1990 elections, the SLORC claimed it was staying in power as a transitional authority in order to draft a new constitution and pave the way for a new government. In 1996, the SLORC initiated a constitutional convention, but that convention failed to start until 2004 and only finished its work in 2007. Many opposition groups refused to attend, and those that did, found they were not able to give comments or input.

On the 15<sup>th</sup> of August in 2007, the military junta removed fuel subsidies in an unannounced move. Prompted by the resulting economic crises, citizens took the streets in another round of mass demonstrations against military rule. These were led largely by thousands of monks in their saffron robes. The demonstrations were put down six weeks later, on the 26<sup>th</sup> of September, just as brutally as in 1988, much to the dismay of local and international observers who had hoped the protests would push the regime to initiate a transition.<sup>9</sup> At least a dozen citizens were killed and hundreds more were beaten and arrested.

Adding to the array of existing problems, Cyclone Nargis struck Myanmar on May 2, 2008, resulting in the death of an estimated 140,000 people<sup>10</sup> and displacing or leaving homeless approximately million or more people. The Myanmar government's failure to adequately alert residents of the storm ahead of time, to accept international

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<sup>7</sup> Asean Inter-Parliamentary Myanmar Caucus, "*The 1990 Elections of Myanmar – 15 Years Waiting*", Asean Parliamentarians for Human Rights, <http://www.aseanmp.org/docs/resources/1990%20Elections.pdf>

<sup>8</sup> "*1988 Uprising and 1990 Election*", Oxford Burma Alliance, <http://www.oxfordburmaalliance.org/1988-uprising--1990-elections.html>

<sup>9</sup> "*Saffron Revolution*", Oxford Burma Alliance, <http://www.oxfordburmaalliance.org/saffron-revolution.html>

<sup>10</sup> HEAD J., "Rebuilding Burma's cyclone-hit Irrawaddy Delta," BBC, December 21, 2012, <http://www.bbc.com/news/world-asia-20778768>

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aid or distribute its own aid greatly exacerbated the cyclone's devastating effect, and increased international pressure on the government to reform.

In the aftermath of the cyclone, the *junta* held a referendum on the constitution drafted at the convention, and reported a 99% turnout. The draft constitution was said to have been approved by 92.4% of voters.<sup>11</sup> The referendum is widely believed to have been fraudulent, especially given that large areas of the country were still devastated from the cyclone and people could not access polling stations.<sup>12</sup> Despite the criticism, the constitution was put in place, forming the basis for the civilian government that took power in 2011 and set off a wave of democratic reforms.

### 3. *Nationalism and Fragmentation*

The narrative that claims that Buddhism and Burman identity is under threat has gained increasing influence in national and local politics in Myanmar over the past few years and threatens to get worse in the lead-up to elections. Led by a group of Buddhist monks and allegedly supported by hardliner politicians, this movement has become involved in drafting repressive legislation and waded into electoral politics while distributing hate speech materials through local temples and on social media. The Committee for Protecting Race and Religion (or Ma Ba Tha, as it is known by its Burmese initials) frequently threatens anyone who speaks out against it, and has been instrumental in bringing "insult to religion" charges against people who criticize their methods or objectives. As a result, few dare to speak out against their message and the government has taken few measures to stem the hate speech or the violence it encourages.

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<sup>11</sup> "Burma Defiles the ASEAN Charter," *Issues & Concerns*, vol. 5: 31, <http://www.altsean.org/Docs/PDF%20Format/Issues%20and%20Concerns/Issues%20and%20Concerns%20Vol%205.pdf>

<sup>12</sup> "Burma: Reject Constitutional Referendum: Government's Poor Cyclone Response Shows Need for Democratic Reform", Human Rights Watch, May 17, 2008, <https://www.hrw.org/news/2008/05/17/burma-reject-constitutional-referendum>

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In addition to the real and serious impact that anti-Muslim rhetoric and violence has on its direct victims, the nationalist movement has succeeded in a large part in distracting public attention from human rights, conflict, the economy and other issues that could otherwise be important in election campaigns. Nationalist attacks have thus far not been aimed at the minority groups represented by armed groups and parties to the current peace process, but there is no guarantee that this will stay the case. While all of those groups are recognized as indigenous to Myanmar, many of them are not Buddhist. Defining Myanmar as a Buddhist state would alienate not only Muslims in Rakhine State and other areas, but the Christian Chin, Kachin, Karen and others. Myanmar has seen this pattern before, when post-independence Prime Minister U Nu's attempts to make Buddhism the state religion increased the marginalization of religious minorities and strengthened ethnic armed movements.<sup>13</sup>

There is a risk that ethnic minority communities, both recognized and unrecognized, will respond to increasing Burman Buddhist nationalism by a stronger focus on their own needs and rights, and not on coexistence with other groups. Armed movements, political parties and civil society organizations are still almost exclusively organized by ethnicity. There have been efforts to build solidarity between different ethnic minority groups, some of which have had strong results, but the generally-accepted goals of federalism within ethnic minority groups is still essentially isolation—Kachin control over “Kachin” areas, Karen leadership over “Karen” areas, etc. In reality, however, there are few places where borders could be clearly drawn, and down to the village level there is mixing and fluidity. There has been little effort to promote a real dialogue about what it means to be a citizen of Myanmar, beyond membership in

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<sup>13</sup> HAYNES J., “Buddhism and Politics in Southeast Asia in Religion” in *Global Politics* (1998), 21; MCCARTHY S., “Losing My Religion? Protest and Political Legitimacy in Burma,” Griffith Asia Institute Regional Outlook, 2008, [https://www.griffith.edu.au/\\_data/assets/pdf\\_file/0003/90939/Stephen-McCarthy-Regional-Outlook-18.pdf](https://www.griffith.edu.au/_data/assets/pdf_file/0003/90939/Stephen-McCarthy-Regional-Outlook-18.pdf)



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one of the officially recognized ethnic groups. While it is crucial to recognize the rights of self-governance, resource control, culture, religion and other related rights, a focus on ethnicity is potentially dangerous.

### *4. Recent Developments*

In 2010, Myanmar held elections to establish a new government under the 2008 Constitution, the first elections since the annulled 1990 vote. Though many hoped that the next government would usher in some reforms, few believed that the election would start a true transition to democracy.

The Political Parties Registration Law made it illegal for Suu Kyi and other political prisoners to run for office. Therefore, there was little opposition to the regime-backed Union Solidarity and Development Party (USDP), which emerged victorious in a vote that was widely considered unfree and unfair.<sup>14</sup>

The State Peace and Development Council formally dissolved the junta in 2011, giving way to a civilian government led by former junta member Thein Sein. The new government was still dominated by military personnel, and the Constitution reserved 25% of seats in Parliament for the military. However, moves toward democratization and economic liberalization paved the way for improved relations with the international community.<sup>15</sup>

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<sup>14</sup> There were widespread allegations of fraud, particularly in regards to advance votes, which were counted after precinct votes were cast and often resulted in swings in favor of USDP candidates from initial tallies favoring opposition parties. Members of the military, civil servants and others not able to vote in their place of residence were allowed to cast advance ballots, and observers reported that the township civil servants responsible for administering advance votes and the electoral process generally were instructed to ensure that they could provide sufficient votes for the USDP. Observers reported high levels of coercion in casting advance ballots in ethnic areas. In some places, advance votes were reported as 100% in favor of the USDP. See “2010 Myanmar General Elections: Learning and Sharing for the Future”, Centre for Peace and Conflict Studies (2011): 67-72, <http://www.centrepeaceconflictstudies.org/wp-content/uploads/2010-Myanmar-Observer-report.pdf>

<sup>15</sup> TUN A.H., “Myanmar junta makes way for civilian government,” Reuters, March 30, 2011, <http://www.reuters.com/article/2011/03/30/us-myanmar-politics-idUSTRE72T2O720110330>

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Following Suu Kyi's release in 2010, 200 political prisoners were released in 2011, the most notable including comedian and activist Zarganar, labor rights activist Su Su Nway, and 2007 Saffron Revolution demonstrator Zaw Htet Ko Ko.<sup>16</sup> That same year, President Thein Sein signed a law allowing for peaceful demonstrations for the first time in decades.<sup>17</sup> In light of the relative improvements in democratic measures and some economic reforms, many Western countries began to increase diplomatic relations with Myanmar and provisionally lift some sanctions.<sup>18</sup>

In 2012, the Political Parties Registration Law was amended, allowing Suu Kyi and the candidates of the National League for Democracy to compete in by-elections.<sup>19</sup> The NLD registered shortly after and won 43 of 44 seats it contested.<sup>20</sup> The 43 winning MPs, including Suu Kyi, joined Parliament in 2012 and have participated actively, although their proposals have often been blocked by the USDP and military MPs.

The NLD and many other opposition parties plan to compete in the 2015 general election, which many expect, and hope, to be significantly more free and fair.

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<sup>16</sup>“Prison doors open in Burma,” Amnesty International, October 19, 2011, <http://www.amnesty.org.au/iar/comments/27048>

<sup>17</sup> “The Right to Peaceful Assembly and Peaceful Procession Act,” Burma Library, [http://www.burmalibrary.org/docs15/2011-Peaceful\\_Assembly\\_and\\_Procession\\_Act-en.pdf](http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf)

<sup>18</sup> “Myanmar profile–Timeline,” *BBC*, June 19, 2015, <http://www.bbc.com/news/world-asia-pacific-12992883>

<sup>19</sup> “The Political Parties Registration Law,” *Network Myanmar*, <http://www.networkmyanmar.org/images/stories/PDF3/12b.pdf>. Also see 2011 law amending the Political Party Registration Law: “Unofficial translation of law amending the Political Party Registration Law,” Burma Library, <http://www.burmalibrary.org/docs12/PYIDH-Law11-NLM2011-11-09.pdf>. For discussion of amendments, see Associated Press, “Myanmar eases limits on political parties,” *CBS News*, November 5, 2011, <http://www.cbsnews.com/news/myanmar-eases-limits-on-political-parties>

<sup>20</sup> DUPONT S. ET AL., *Elections and Political Transition in Myanmar*, Princeton University, February 2015, <http://www.princeton.edu/sites/default/files/content/Princeton%20-%20Burma%20-%20FINAL.pdf>

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### *5. Peace Agreement Discussions with Ethnic Groups*

Since 2008, many of the ceasefire agreements that were signed in the early 1990s with ethnic armed groups broke down, leading to a resumption of violence. The government under President Thein Sein has taken a renewed approach to negotiations, including allowing for previously taboo topics, like federalism, to be raised and promising to address the political demands of ethnic armed groups during a dialogue process that would follow the signing of a nationwide ceasefire. This has resulted in incremental progress, though a sustainable settlement is likely a long way off.

In 2011 and 2012, the government negotiated ceasefires with a number of ethnic armed groups, including its first-ever formal ceasefire with the Karen National Union. However, in 2011 the Myanmar military launched attacks against the Kachin Independence Organization (KIO), breaking the 1994 ceasefire and igniting some of the worst fighting the Kachin areas had ever seen. While President Thein Sein ordered the military to stop fighting, clashes continued with the KIO and other groups.

These bilateral negotiations propelled efforts to draw up a single ceasefire that included all armed groups, and in late March 2015 negotiators signed a draft Nationwide Ceasefire Agreement between 16 armed groups and the government.<sup>21</sup> A final draft is likely to be signed in late September or early October 2015, setting the state for discussion and implementation of a framework for the political dialogue process to come to a political resolution to the conflict.

The last major challenge before a final Nationwide Ceasefire Agreement can be signed revolves around the issue of inclusivity. The government has failed to include certain groups in the process, like the Kokang ethnic group from northern Shan State, the Arakan Army (AA) and the Ta'ang National Liberation Army (TNLA). In early 2015, the Myanmar military and the Kokang engaged in some of the most serious fighting in Myanmar in many years, and military leaders have continually stated that they will not negotiate with the Kokang, preferring a military settlement. The TNLA

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<sup>21</sup> Associated Press, "Burmese government signs draft ceasefire deal with rebel groups," *The Guardian*, March 31, 2015, <http://www.theguardian.com/world/2015/mar/31/burmese-government-draft-ceasefire-rebel-groups>

and AA are represented on the National Ceasefire Coordination Team that has been negotiating with the government for the past year, but their forces have been involved in recent clashes with the military including in support of the Kokang.<sup>22</sup> However, all three organizations have indicated a willingness to conduct bilateral ceasefire talks so that they can be included in the NCA. The government's reluctance to include them has raised doubts among the ethnic armed groups about whether the government can be trusted.

A summit of leaders of ethnic armed groups met in June 2015 and agreed to seek amendments to the draft Nationwide Ceasefire Agreement. They elected a new high-level negotiation team to engage with the government team, called the Special Delegation, which met a number of times with the Union Peace-Making Work Committee in late July. Though negotiations were suspended between July 24 and the first week of August, at the time of writing negotiators on both sides were confident that they could reach an agreement on a final nationwide ceasefire by mid-October, before the November 8 election. If they are unsuccessful, the peace process will have to stay on hold until a new government takes power following elections, leaving the conflict areas in a compromised security and governance situation.

Despite these challenges, there is optimism on all sides that there will eventually be a political dialogue process that addresses the substantive issues central to the peace process.<sup>23</sup> At a meeting held in July 2015, for example, a group of major

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<sup>22</sup> The issue of signatories is significant because previous tactics of divide and rule have led armed groups to be concerned that once a ceasefire that is not inclusive is signed, the military will start an all-out attack against those left out.

<sup>23</sup> Under the draft terms of the NCA, a framework for the political dialogue process, setting the structure, participants and agenda, must be agreed to within 60 days of signing the NCA. Then, dialogue itself must begin within 90 days of the NCA. This timeline is likely to be paused by agreement of the parties during the formal election campaign period (September 8-November 8, 2015) and possibly between the election and the inauguration of a new government.

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political parties, armed groups, and local peace process advisors met to discuss a draft Framework for Political Dialogue. Participants noted that the draft framework is almost complete, but can only be agreed to after a final Nationwide Ceasefire Agreement is signed.

The political dialogue process following the signature of the National Ceasefire Agreement will constitute a major opportunity to discuss the past and its impact on the country on a national level. For the past few years, that process has been widely portrayed and considered the first formal opportunity to discuss the substance of many important political issues in Myanmar, including how to address the massive human rights violations of the past.

National reconciliation and transitional justice are agenda items on several dialogue frameworks proposals. Dealing with the violations that occurred during conflict is an essential part of obtaining a sustainable peace, since massive human rights violations are not only effects but also drivers of conflict.

### *6. Upcoming Elections*

New elections, confirmed for November 8 2015, will select 75% of parliamentarians for the House of Representatives and the House of Nationalities. The other 25% will continue to be appointed by the military, as per the 2008 Constitution.<sup>24</sup> The new parliament will then select a new president and two vice-presidents. Elections will also simultaneously take place for regional and state parliaments.<sup>25</sup>

The main political parties which will compete in the election include the USDP, currently counting 212 members in the House of Representatives and 124 in the House of Nationalities; and the NLD, which currently has 37 and 4 members

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<sup>24</sup> Constitution of the Republic of the Union of Myanmar (2008), articles 109 and 141.

<sup>25</sup> The International Crisis Group, “*The Myanmar Elections*”, May 27, 2010, [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/B105%20The%20Myanmar%20Elections.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/B105%20The%20Myanmar%20Elections.ashx)

respectively.<sup>26</sup> Other parties expected to compete include the National Unity Party and the National Democratic Force.

There are dozens of ethnic minority parties with a strong presence in ethnic areas, including the Shan Nationalities League for Democracy. These parties are expected to perform very well in races for state and national parliament. Some observers have noted that, despite its nationwide popularity, the NLD cannot expect an outright majority but will likely have to build a coalition with ethnic parties. In recognition of their popularity, the NLD has already been reaching out to the largest among them and trying to coordinate and build relationships.

It is unclear whether the current president will run for another term, though looking increasingly probable. Originally it was considered unlikely; however, in a recent interview during a state visit to Japan, Thein Sein indicated that he might seek another term.<sup>27</sup> Shwe Mann, the speaker of the House of Representatives and former member of the junta, has been discussed as a likely successor. However, he was removed from leadership of the USDP in July by Thein Sein and his allies with the cooperation of security forces, clearing the way for Thein Sein or an ally to seek the nomination. The NLD has confirmed that it will field a presidential candidate, despite Aung San Suu Kyi's constitutional ineligibility (given the dual citizenship of her children). It is unclear yet who that candidate will be. The NLD came under fire during the process of registering candidates, as the party ultimately rejected applications from

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<sup>26</sup> "Seeking a balance: As the process of shaping a new political and economic landscape continues, significant challenges remain", Oxford Business Group, <http://www.oxfordbusinessgroup.com/overview/seeking-balance-process-shaping-new-political-and-economic-landscape-continues-significant>

<sup>27</sup> TUN W.M. ET AL., "Thein Sein May Stand For Myanmar's Presidency For a Second Term," *Radio Free Asia*, July 14, 2014, <http://www.rfa.org/english/news/myanmar/thein-sein-may-stand-for-myanmars-presidency-for-a-second-term-07142015162614.html>

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prominent activists and some candidates who were recommended by the township offices in their constituencies.

The November election, the inauguration of a new government, and the move toward substantive political discussions in the peace process provide an opportunity for leaders from all sides to make their positions and policies clear to the public. Political candidates have an interest in demonstrating that they are different from past governments—that they are the true reformers, the true representatives of the people. However, campaigning rules prohibit criticism of the government and anything that could damage the reputation of the military, so it is unlikely that parties and candidates will directly refer to human rights violations of the past during campaigns. Instead, the process of seating a new Parliament and voting on presidential candidates could present an opportunity for some MPs to raise issues of the past. Meanwhile, parties to the peace process may try to increase their perceived legitimacy and public support—and thus bargaining power—by appearing as champions of the people.

Regardless of whether political dialogue gets started within the next year, the 2015 elections are seen internationally and domestically as a key moment in Myanmar's transition. Whatever its composition, the new government and the new Parliament will have the opportunity to set the tone for the next phase in the transition.

Meanwhile, the confluence of the peace process and elections means that many peoples' expectations are rising to levels that could be dangerous if progress is not made. The government has defended increasing repression and censorship of the past year by saying it is necessary to ensure stability for the election and the peace process. The fear of retribution and concern for upsetting the election or peace process have caused people to hold back but there will be no reason for any further restraints once these two hurdles have been cleared and the dust settles.

### ***Section two:*** What Transitional Justice Action is Required in Myanmar

#### *7. How to Deal with the Past*

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There is common misunderstanding among Myanmar's political elites that transitional justice means revenge, and/or only criminal justice. While that view is evolving in some cases, there is still a significant lack of understanding about the range of options available for dealing with the past. Local civil society organizations have started to advance proposals that fall between the perceived dichotomy of revenge and forgiveness. The most common of these proposals is that the government acknowledge and apologize for abuses committed in the past. In addition, there is much emerging advocacy and activity around reparations and truth-telling on a societal level, in order to build solidarity and understanding between different ethnic and religious groups.

Despite the various changes over the past five years, many have questioned whether they constitute a "transition," pointing out that there is not much difference between current and past governments. Some of this skepticism stems from the lack of action on priority issues, such as raising the standard of living, ending armed conflict, and amending the constitution.<sup>28</sup> There is also a sense that the old authoritarian mentality continues to pervade government, with officials more concerned with maintaining power than serving citizens and improving conditions in the country.<sup>29</sup> While those in government do have varying levels of commitment to reform, those who profess to be reformists have done little to distinguish themselves from past leaders.

Despite a constitutional amnesty for members of current and previous governments covering any acts committed in office, top leaders appear to worry about retribution. This fear for personal security, finances and well-being is part of the reason that the military is intent on holding their power and preventing any discussion of past human rights violations. Unless the military refrains from blocking measures to address

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<sup>28</sup> ICTJ Interviews 1, 2, 4, 5, 6, 7, 11, Yangon, Chiang Mai and Mae Sot, Dec. 2013 – Jan. 2014.

<sup>29</sup> ICTJ Interviews 3, 6, 7, and 12, Yangon, Chiang Mai and Mae Sot, Dec. 2013 – Jan. 2014.



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the past and perhaps even actively decides to support them, governments will continue to be restrained in what they can accomplish.

However, on the other hand, retribution against perpetrators is far from the minds of most civil society activists and politicians who are interested in addressing the past. They are quite careful to stress that they do not want revenge and do not want to punish. They do recognize that some victims may be angry and may want revenge. To them, this demonstrates the importance of finding a middle path between revenge and amnesia.

Local organizations working on transitional justice have started to take up the task of breaching the gap and showing government leadership that the transitional justice they are advocating for is not a threat. They intend to show that addressing the past can help build trust, consolidate democratic institutions, and demonstrate commitment to the rights and the dignity of the people.

After all, there is a risk that, if the government does not engage with victims' and civil society's offers of compromise, positions will become more extreme and the government will have lost the opportunity for a productive, meaningful process of dealing with the past that can contribute to reconciliation.<sup>30</sup> Continuing to deny the truth that about a past that is slowly becoming more accessible and internationally known, will prevent the government from building much-needed trust and legitimacy and risks polarizing politics right when national reconciliation is a high priority.

### *8. Acknowledgment and Apology*

Acknowledgment and Apology and have long been the baseline demand for many victims of human rights violations in Myanmar. These actions are often phrased as necessary for national reconciliation.<sup>31</sup> For instance, monks who were beaten and arrested during the Saffron Revolution have called for an apology, linking it

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<sup>30</sup> This process of increasing polarization can be seen in land confiscation cases where victims first try to seek a remedy through existing institutions but, when they are ignored, take their demands to protests, sit-ins and even self-immolation.

<sup>31</sup> ICTJ Interviews 2, 8, 12, 16, 17, 18, Yangon and Mae Sot, Dec. 2013 – March 2014.

to showing respect for the people.<sup>32</sup> Student groups have also publicly called for an apology for the 1988 crackdown on peaceful protests.<sup>33</sup> The parents of a young girl killed during the 1988 protests have said that they feel ready to forgive the perpetrators if they were to apologize.<sup>34</sup> Similarly, victims of violations in ethnic areas have often asked for an apology and acknowledgement, in addition to other remedial actions.<sup>35</sup>

Meanwhile, official government responses have often reiterated the same denials or offered the same justifications that were given by the former military regime. When asked whether he would apologize for his past misdeeds, which include the oversight of the arrest and torture of hundreds of political activists, former director of military intelligence Khin Nyunt famously responded with the question, “To whom should I apologize?”<sup>36</sup> Such comments provoke much anger among victims, many of

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<sup>32</sup> THU, K. “Myanmar Monks Demand Official Apology for Saffron Revolution Crackdown,” *Radio Free Asia*, Sept. 18, 2013, <http://www.rfa.org/english/news/myanmar/monks-09182013183020.html?searchterm:utf8:ustring=Myanmar+Monks+Demand+>

<sup>33</sup> KYAW N.R., “Myanmar Students' Group Demands Apology for Brutal 1988 Crackdown,” *Radio Free Asia*, August 17, 2013, <http://www.rfa.org/english/news/myanmar/students-08072013215834.html>

<sup>34</sup> WENG L., “Thein Sein Makes Rare Comments on 1988 Uprising,” *The Irrawaddy*, Sept. 2, 2013, <http://www.irrawaddy.org/burma/thein-sein-makes-rare-comments-on-1988-uprising.html>

<sup>35</sup> ICTJ Interviews 2, 16; *See also* ZAW J. and TOE T., “Balancing Reconciliation and Justice in Myanmar,” UCA News, August 19, 2013, <http://ucanews.com/news/balancing-reconciliation-and-justice-in-myanmar/6904>. To quote Bo Kyi, joint-secretary of the Assistance Association for Political Prisoners: “If [the former military rulers] reveal the truth and admit their wrongdoing in the past, I believe Myanmar people will forgive them. Only then can we carry out trust-building and move toward the goal of reconciliation.”; *See also* MICHAELS S., “Burma Support Withheld on UN Pledge to End Sexual Violence,” *The Irrawaddy*, September 26, 2013, <http://irrawaddy.org/women-gender/burma-support-withheld-un-pledge-end-sexual-violence.html>; Shwe Yee Saw Myint, “Women Call for Justice Over Sexual Violence,” *Myanmar Times*, October 7, 2013, <http://www.mmtimes.com/index.php/national-news/8394-women-call-for-justice-over-sexual-violence.html>

<sup>36</sup> MANN Z., “The Political Prisoners Were Guilty: Khin Nyunt,” *The Irrawaddy*, November 29, 2013, <http://www.irrawaddy.org/burma/political-prisoners-guilty-khin-nyunt.html>

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whom are trying to find a way to reconcile. Similarly, Commander-in-Chief Min Aung Hlaing regularly denies allegations of wrongdoing by his troops.

The few exceptions to the refusal to discuss the past stand out as isolated cases. Local police officials apologized for the violent crackdown on protesters of the Letpadaung copper mine in 2012, and Thein Sein commented on the 2013 anniversary of the '88 crackdown that the student movement was an important part of the country's history. However, in the latter case, he stopped short of acknowledging or apologizing for the brutal violence committed by the military against the protesters and did not mention his own role, which has been the subject of much speculation.<sup>37</sup>

Many believe that the next President needs to acknowledge and apologize on behalf of the state for the human rights violations committed by previous governments in order to truly demonstrate a break from past rulers. Despite professing its commitment to human rights, the current government leadership has ignored or denied past human rights violations. Tending to repeat old justifications even for those violations that are closely covered by the media, the government looks increasingly out of touch and desperate.<sup>38</sup>

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<sup>37</sup> A leaked US embassy diplomatic cable from 20<sup>th</sup> October 2004 indicates that Thein Sein, then-commander of Light Infantry Division-55, "distinguished himself" during the crackdown on the 1988 uprising. (See Amnesty International, "Myanmar: Four Years On, Impunity is the Kachin Conflict's Hallmark," Burma Partnerships, June 9, 2015, <http://www.burmapartnership.org/2015/06/myanmar-four-years-onimpunity-is-the-kachin-conflicts-hallmark>.)

<sup>38</sup> When Thein Sein became President in 2011, he defended the crackdown on student protesters in 1988, claiming the military's action had "saved the nation." (See New Light of Myanmar, "President U Thein Sein Delivers Inaugural Address to Pyidaungsu Hluttaw,," March 31, 2011, <http://www.burmanet.org/news/2011/03/31/the-new-light-of-myanmar-president-u-thein-sein-delivers-inaugural-address-to-pyi-daungsu-hluttaw>). Though he later acknowledged the importance of the student movement that led to the 1988 protests, he stopped short of acknowledging or condemning violence against them. (See LAWI WENG, "Thein Sein Makes Rare Comments on 1988 Uprising," *The Irrawaddy*, September 2, 2013, <http://www.irrawaddy.org/burma/thein-sein-makes-rare-comments-on-1988-uprising.html>.) When current Home Affairs Minister Lt. Gen. Ko Ko and two other high-ranking officers were accused in 2014 of war crimes during their time overseeing troops in Karen State, U Zaw Htay, a director in President Thein Sein's office, said "We must not play the blame game. In civil war, both the Tatmadaw and ethnic armed

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An official apology for specific events of mass violence and for the widespread violations committed during the various ethnic conflicts would help recognize the victims as rights-bearing citizens and help build trust in the government. It would also clearly demonstrate that the government stands on the side of the victims and not on the side of their abusers. The unwillingness to admit the truth in the face of evidence harkens back to the military governments' attempts to be the sole source of information, a similarity that does not go unnoticed. By denying the truth about the past, the government continues to disrespect the victims, their families and the general public opinion, bringing back memories of previous brutal regimes.

Fortunately, there are already civil society organizations providing much-needed material and psychosocial support to victims of human rights violations. One crucial step in cooperating with these organizations to provide a remedy would be for the government to allow those organizations to do their work without interference. Human rights defenders who are helping victims seek remedies whether informally or through the legal system face harassment and restrictions on their work. Trauma centers and those offering counseling services face similar restrictions on their operations and movements, as well as experience difficulties registering and securing property. In addition, events held to support survivors are often denied permission to use public spaces. Accepting the legitimacy of these organizations and their activities would go a long way towards building trust with the dedicated and active citizens who run these organizations.

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groups might have violated human rights.” (See THOMAS FULLER, “Report Cites Evidence of War Crimes in Myanmar,” *New York Times*, November 5, 2014, <http://www.nytimes.com/2014/11/06/world/asia/report-calls-for-war-crime-prosecutions-in-myanmar.html>). These tactics, arguing that the military saved the country from disintegrating in 1988 and at other times—shifting blame to ethnic armed groups for human rights violations in conflict—have been common responses to allegations of serious human rights violations throughout military rule and continue in the current administration.

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While this would not necessarily fully discharge the government's obligations to provide a complete remedy, these steps would help build trust on both sides and demonstrate that addressing the past does not need to be threatening or economically destabilizing.

Dealing with the impact of the past by addressing the urgent needs of victims is crucial for the government to build trust not only with victims but communities affected by conflict and human rights violations. Apology and acknowledgement, while important, would have much less impact without concrete measures to demonstrate the government's sincerity. In the short term, both the government and civil society need to work together to build the confidence in the fact that addressing the past does not need to be dangerous or violent. Moreover, in the future there will need to be a more open, honest and informed national conversation about the past, its impact, and how to address it in order to create meaningful reparative and other transitional justice measures.

Furthermore, ethnic armed groups have strong claims to legitimacy as representatives of ethnic minorities, particularly of the populations in the areas they control. They have based their claims to representation in part on their role as protectors of the community, and are thus seen by some parts of ethnic civil society as natural advocates for seeking a remedy for past violations. Many ethnic armed groups have also been accused of human rights violations, including forced recruitment, the use of child soldiers and arbitrary taxation, though almost always to a lesser extent than the government military.<sup>39</sup> In some cases, these violations are allegedly targeted at or at least disproportionately affecting ethnic groups that are the minority in the armed group's territory, for instance Shan and Palaung in the Kachin-dominated areas controlled by the Kachin Independence Organization. Other cases apply to all civilians (for instance arbitrary taxation), or to the ethnic group identified with the armed group, particularly in cases of forced recruitment. Therefore, they also have a role to play in

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<sup>39</sup> Internal Displacement Monitoring Centre, "MYANMAR (BURMA): No end in sight for internal displacement crisis," Internal Displacement, February 14, 2008, <http://www.internal-displacement.org/assets/library/Asia/Myanmar/pdf/Myanmar-Burma-February-2008.pdf>

acknowledgment, apology and providing a remedy to victims. One armed group (albeit not ethnic-based), the All-Burma Students Democratic Front, has taken steps toward fulfilling its obligation to the victims of a particularly serious set of human rights violations it committed in the early 1990's by officially apologizing to victims and establishing a Truth and Justice Committee that investigated the events, including interviewing victims and their families, and published a report in early 2015.<sup>40</sup>

### 9. Remedies

There has been much debate on what really comprises an apology; victims do not just need a sincere apology, but rather require concrete measures to provide a sustainable remedy. While other aspects of transitional justice are focused on the perpetrators, government institutions and society as a whole, reparations are intended to address and repair—to the extent possible and feasible—the harm suffered by the victims. Reparations help address the most pressing impacts of the past, while avoiding some of the concerns in demanding other transitional justice mechanisms at this point in the political shift.

The general belief carrying out reparations is that it requires the immediate design and implementation of a thoroughly comprehensive reparations program. However, the government could also choose to take small steps toward reparative justice by working with civil society to assist victims and recognizing its own responsibility and role in causing pain.

Humanitarian and development responses to displacement center around finding “durable solutions,” defined by UNHCR as including voluntary repatriation, local integration or third-locations resettlement.<sup>41</sup> In the past, humanitarian and

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<sup>40</sup> All-Burma Students Democratic Front, “*Dignity: Report of the Truth and Justice Committee*”, (March 2015).

<sup>41</sup> “Rethinking Durable Solutions,” UNHCR, <http://www.unhcr.org/4444afcc0.pdf>

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development actors responding to displacement have been wary of incorporating transitional justice into their programming, due to concerns that it will compromise their neutrality and could provoke government resistance.<sup>42</sup> However, ensuring that a transitional justice approach is not only about criminal justice, but includes reparations, truth-telling and institutional reform could address some of these concerns.<sup>43</sup> When carried out in coordination with humanitarian and development actors, transitional justice approaches could make a valuable contribution to durable solutions.

A further and equally important step involves promoting cooperation between state services and civil society organizations, or ensuring that survivors have access to adequate state services. Victims with serious medical needs, including disabled survivors of torture, face barriers in accessing medical care. This includes the hesitation of medical care providers to deal with former political prisoners due to a perceived security risk. Children of displaced communities cannot access public education, and their private education is not recognized when they seek to re-enter the formal system, making the process even more tedious and unnecessarily difficult. Ensuring equal access to state services for victims of human rights violations, including addressing the unique challenges they face, would help demonstrate the state's commitment to treating all citizens equally and would be a step toward taking responsibility for the violations.

Myanmar urgently needs to implement reparations that focus on those harms that still exert a major impact on the lives of victims. This includes addressing the physical and mental health needs of former political prisoners, civilians in conflict areas and many other survivors of human rights violations that prevent them from leading a normal life. It also includes the restoration of citizenship, its accompanying rights and professional licenses to former political prisoners, political exiles and refugees, while also providing access to education for the displaced and recognizing the education they received from non-government sources during displacement. As many as 810,000

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<sup>42</sup> DUTHIE R., "Contributing to Durable Solutions: Transitional Justice and the Reintegration of Displaced Persons," in *Transitional Justice and Displacement* (Roger Duthie, ed., International Center for Transitional Justice and Brookings-LSE Project on Internal Displacement, 2012).

<sup>43</sup> *Ibidem*.

persons are stateless and present additional challenges if they are to be integrated into Myanmar society.<sup>44</sup>

Yet there are two groups of victims who are priority targets for reparative measures from the government: displaced persons (both IDPs and refugees) and former political prisoners. Both categories of victims are emblematic of the effects that conflict and repressive rule have had and continue to have on civilians, and thus hold important positions in specific communities and in the society as a whole. Furthermore, many of these individuals experience the continuing impact of the violations, preventing them from fully participating in social, economic, cultural and political life.

10. *Reparative Needs for Displaced Persons, in particular in case of Forced Displacements*

Some displacement can be expected in any armed conflict; however, the vast scale of these movements throughout Myanmar and the involvement in them of governmental institutions has caused great concern: ethnic and religious conflicts have resulted in an estimated 1.1 million civilians displaced internally and across international borders.<sup>45</sup> The causes and impacts of their displacement are diverse.

Some have been displaced for a prolonged period; others for only a short time. Many fled the violence of war or inter-communal violence and may be able to return home if stability returns.

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<sup>44</sup> “2015 UNHCR country operations profile – Myanmar,” UNHCR, <http://www.unhcr.org/pages/49e4877d6.html>

<sup>45</sup> “Myanmar IDP Figure Analysis,” Internal Displacement Monitoring Centre, <http://www.internal-displacement.org/south-and-south-east-asia/myanmar/figures-analysis>. “An estimated 146,500 were in Rakhine State, 98,400 in Kachin and northern Shan states, 3,300 in Mandalay region and up to 398,000 in the south-east. In addition to this, more than 16,250 individuals were newly displaced in Kachin and northern Shan within the first three months of 2015. To add to this figure, there are around 479,706 refugees, mainly hosted along the Thai-Myanmar border. See “UNHCR Global Appeal 2015 Update: Myanmar”, UNHCR, <http://www.unhcr.org/5461e60bc.html>



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Return and resettlement of IDPs and refugees is one of the few priorities for a post-ceasefire environment common to most stakeholders, including the government. Indeed, international standards provide that governments have the obligation to provide compensation or restitution for property loss during displacement. Article 29 of the Guiding Principles on Internal Displacement states that

“Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”<sup>46</sup>

In other post-conflict contexts, transitional justice approaches have been integrated with return and resettlement policies in order to promote security by preventing recurrence; to increase economic integration by providing compensation or restitution for confiscated property; to support political integration by increasing civic trust and recognizing returnees as rights-bearing citizens; and to increase trust and prevent conflict between returnees and local communities by promoting coexistence and mutual understanding.<sup>47</sup>

However, Myanmar has no policy or legislation on internal displacement, and the government response has been generally insufficient.<sup>48</sup> Indeed, the lack of acknowledgement from the government has made it very difficult for displaced persons

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<sup>46</sup> United Nations, “*Guiding Principles on Internal Displacement*”, UNHCR, <http://www.unhcr.org/43ce1cff2.html>

<sup>47</sup> DUTHIE R., “Contributing to Durable Solutions: Transitional Justice and the Reintegration of Displaced Persons,” in *Transitional Justice and Displacement* (Roger Duthie, ed., International Center for Transitional Justice and Brookings-LSE Project on Internal Displacement, 2012).

<sup>48</sup> GLATZ A.-K., “Myanmar: Comprehensive solutions needed for recent and long-term IDPs alike,” Internal Displacement Monitoring Centre, July 1, 2014, <http://www.internal-displacement.org/south-and-south-east-asia/myanmar/2014/myanmar-comprehensive-solutions-needed-for-recent-and-long-term-idps-alike>

to receive any form of compensation or reparative justice, resulting in much resentment.

In any case, even if some timid steps are underway to facilitate the goals expressed in the “Guiding Principles”, many displaced persons do not trust the government or the peace process enough to agree to return. They do not see a substantial difference between this process and previous ceasefires, which broke and put them once more in the crossfire.<sup>49</sup> Without increased trust and meaningful guarantees of security, few displaced persons will willingly return to their original communities. They would rather settle in host communities or in third locations, whether inside or outside of Myanmar, which has been a cause for concern in neighboring countries such as Thailand. Those that do return, or settle in new places in Myanmar, face challenges integrating into host communities.

Furthermore, the majority of displacements in Myanmar were forced. Indeed, many civilians from ethnic areas were systematically targeted and forcibly displaced, bearing the brunt of the ethnic conflict. Others were dispossessed as a result of land grabs by the military or faced forced evictions in support of business and may have nothing left to go back to. The legacy of these policies, and the fact that they have not been admitted or repudiated by the military, causes much reluctance among the displaced to return.<sup>50</sup>

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<sup>49</sup> Burma Partnership and Burma Link, “*Voices of Refugees: Situation of Burma’s Refugees Along the Thailand-Burma Border*”, Burma Partnership, April 2015, <http://www.burmapartnership.org/wp-content/uploads/2015/04/27.04.05-Voices-of-Refugees-Along-Thailand-Burma-Border-FINAL.pdf>; “Displaced in Burma,” Burma Link, <http://www.burmalink.org/background/thailand-burma-border/displaced-in-burma>

<sup>50</sup> Burma Partnership and Burma Link, “*Voices of Refugees: Situation of Burma’s Refugees Along the Thailand-Burma Border*”, Burma Partnership, April 2015, <http://www.burmapartnership.org/wp-content/uploads/2015/04/27.04.05-Voices-of-Refugees-Along-Thailand-Burma-Border-FINAL.pdf>; Burma Link, “*Displaced in Burma*”, <http://www.burmalink.org/background/thailand-burma-border/displaced-in-burma>

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There is also evidence of a military policy to resettle entire villages into government-controlled areas and of tactics designed to scatter the civilian population. In areas of ethnic armed conflict, the military has historically designated “brown” and “black” areas—the former in disputed areas, the latter in ethnic armed groups’ areas of control. The military would often forcibly resettle communities in brown areas, moving them closer to military bases to provide a source of labor and to deprive ethnic armed groups of support. In black areas, the military would raid and burn entire villages, including crops and plantations, forcing the civilian population to flee.<sup>51</sup>

More recently, in response to violence in Rakhine State, the government has forcibly relocated communities in an attempt to physically separate members of different religious and ethnic groups. In these cases, return is not an option as the segregation is strictly enforced, with religious minority Muslims often confined to camps.

A challenge to providing a remedy for forced displacement is the large number of victims in comparison to the availability of resources in most post-conflict countries. Though Myanmar is rich in mineral wealth, its history of misguided economic policies and conflict has made it poor and unable to provide for basic needs.<sup>52</sup> Furthermore, in Myanmar like in many conflict contexts, it has proven hard to distinguish between people who fled the proximity of conflict, those who were forcibly displaced and those who fled the effects of conflict, including economic marginalization

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<sup>51</sup> Norwegian Refugee Council, “Profile of Internal Displacement: Myanmar (Burma),” Global IDP Database, June 27, 2005, <http://www.internal-displacement.org/assets/library/Asia/Myanmar/pdf/Myanmar-Burma-June-2005.pdf>;

MOE, W. “Naypyidaw Orders New ‘Four Cut’ Campaign”, *The Irrawaddy*, March 4, 2011, [http://www2.irrawaddy.org/article.php?art\\_id=20880](http://www2.irrawaddy.org/article.php?art_id=20880); Burma Ethnic Research Group and Friedrich Naumann Foundation, “*Forgotten Victims of a Hidden War: Internally Displaced Karen in Burma*”, Burma Library, April 1998, [http://www.burmalibrary.org/docs3/Berg-Forgotten\\_Victims.pdf](http://www.burmalibrary.org/docs3/Berg-Forgotten_Victims.pdf); SMITH M., “Ethnic Groups in Burma: Development, Democracy and Human Rights,” *Anti-Slavery International*, 1994, [http://ibiblio.org/obl/docs3/Ethnic\\_Groups\\_in\\_Burma-ocr.pdf](http://ibiblio.org/obl/docs3/Ethnic_Groups_in_Burma-ocr.pdf); “UNHCR Global Appeal 2015 Update: Myanmar,” UNHCR, <http://www.unhcr.org/5461e60bc.html>

<sup>52</sup> IFAD, “*Rural poverty in the Republic of the Union of Myanmar*”, Rural Poverty Portal, <http://www.ruralpovertyportal.org/country/home/tags/myanmar>

and stagnation in conflict areas. In reality, most displacement was likely caused by a combination of the above factors. An artificial distinction affecting eligibility for reparations could cause a number of negative consequences.

However, the difficulty surrounding identifying and remedying forced displacement need not cause policymakers to avoid the issue. Rather, it requires a creative look at the options available for remedies. These options include communal reparations to displaced communities, as well as symbolic reparations for the harm caused to the cultural values of the targeted groups and individuals affected by displacement.

One such symbolic measure could be restoring the previous local-language names of displaced communities' places of origin. In many ethnic areas in Myanmar, renaming places from local, ethnic-minority language names to Burman names was part of an attempt to impose a Burman identity on those areas.<sup>53</sup> Using old names has been an act of defiance among ethnic communities, as well as an act of reclamation. Restoring historic names could be a meaningful way of admitting that coercing minorities into accepting a national identity was wrong.

#### 11. *Reparations for the Serious Violations at the Root of Displacement*

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<sup>53</sup> CALLAHAN M.P. and BROWN M.E., ed., *Language Policy in Modern Burma*, in *Fighting Words Language Policy and Ethnic Relations in Asia* (Cambridge: MIT, 2003), 169-171. TADAYUKI KUBO, "Karenni and Kayah: The Nature of Burma's Ethnic Problem Over Two Names and the Path to Resolution," Asia Peacebuilding Initiatives, <http://peacebuilding.asia/burmas-ethnic-problem-over-two-names-and-the-path-to-resolution>; THANG V.B., "Burma Must Stop Distorting and Start "Righting" Ethnic Names," *Chinland Guardian*, Jan. 16, 2014, <http://www.chinlandguardian.com/index.php/commentary-opinion/item/2072-burma-must-stop-distorting-and-start-righting-ethnic-names>.; ZAW A., "New Hurdles for an Already Hobbled Press," *The Irrawaddy*, March 9, 2014, <http://www.irrawaddy.org/commentary/new-hurdles-already-hobbled-press.html>

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One major principle of a transitional justice approach to displacement is addressing the various violations that contribute to displacement. In addition to direct forcible displacement, the Myanmar military carried out a campaign of human rights violations against ethnic civilians that forced populations to move out. Tactics of sexual violence, torture and forced labor (including portering and mine-sweeping for the military) have led directly to displacement. Direct victims often fled their home villages after the violations, and other civilians fled from areas close to military bases or in conflict zones after hearing of the violations suffered by their neighbors.

The failure to acknowledge and provide redress for these serious violations contributes to mistrust and the hesitancy to return. Addressing these violations would signal to displaced communities that the government is taking civilian security seriously and that this peace process is different from those in the past.

Reparations for serious crimes such as sexual violence, torture and forced labor could involve a number of measures, from health care for the injuries and illness caused by the violations, psychosocial counseling programs, livelihood training, education and other rehabilitative measures to direct monetary compensation.

### *12. Reparative Needs for former Political Prisoners*

The arrest and torture of political activists is perhaps the most serious example of a government that accepted no criticism or opposition and that sacrificed its citizens to stay in power. The most famous former political prisoners, including Aung San Suu Kyi and '88 Generation activists like Ko Ko Gyi and Min Ko Naing, are known and revered nationwide, even among the less-politically active. The NLD, many of whose members were imprisoned for much of the past few decades, is central to a common narrative of resistance against an oppressive government that has survived across the country despite the rulers' efforts to deny its importance. However, the government defamation campaign has led family members, neighbors and former associates of political prisoners see them in a negative light—as troublemakers, criminals, and subversives.

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Since 2011, hundreds of political prisoners have been released, a move that was both welcomed and criticized for being selective.<sup>54</sup> However, releases have been conditional and those who have been released continue to face restrictions on their activities and limitations on their political and civil rights. These restrictions include the monitoring of their activities, withholding passports and other official documentation and failing to return professional licenses that were confiscated at the time of imprisonment.<sup>55</sup> Taking steps toward restoring their full citizenship and professional status is crucial to building trust with the pro-democracy movement. A first step toward providing reparations for those who have experienced political detention, torture and other inhumane treatment would be to officially recognize and define the category of “political prisoner.” The Joint Political Prisoners Scrutiny Committee, established by the President in 2013, worked on a case-by-case basis to identify political prisoners for release without a guiding definition. This has led to many cases of disagreement and to the de-legitimization of the Committee since its members have failed to come to an agreement on the remaining cases. Recognizing political prisoners as such, and developing programs to provide reparations will require a carefully considered definition that can provide guidance for determining what could be thousands of cases.

Some political prisoner organizations, including the Assistance Association for Political Prisoners and the Former Political Prisoners Society, have come up with a draft

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<sup>54</sup> The significance of the releases should not be understated. Releases resulted in the freeing of hundreds of activists, many of who currently play important roles in politics, civil society, the press, the arts, and other aspects of Myanmar life. Release of political prisoners was one of the major international conditions for re-engagement, and was a major factor in lifting sanctions, increased aid and investment, and improved diplomatic relations with the international community. Perhaps most importantly, the release acknowledged, albeit tacitly, that the prisoners should not have been imprisoned and that their participation was important for national reconciliation.

<sup>55</sup> “*World Report 2013: Burma*”, Human Rights Watch, <https://www.hrw.org/world-report/2013/country-chapters/burma>

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definition in consultation with political parties, human rights organizations, legal experts and others, but have gotten little traction with the government on discussing or adopting it. In July 2015, these efforts were set back by the announcement from the Deputy Minister for Home Affairs that the use of the term “political prisoner” is unconstitutional because it would “create inequality within the correctional system” and deny prisoners “equal rights and protection under the law.”<sup>56</sup>

Once released, political prisoners have urgent rehabilitation needs that the government has the responsibility to address. Many former political prisoners were tortured in ways that continue to damage their health, or have developed other illnesses or conditions that were poorly treated during detention and have inadequate or no medical care. There are also severe psychosocial needs stemming from detention (often solitary), torture and the isolation and blame from family and friends on release. Finally, many activists were arrested before completing their education, and their applications to continue their studies have often been rejected. They have been out of the workforce for many years and face physical and psychosocial challenges to maintaining employment. Employers are also hesitant to hire former political prisoners, since the employer often wants to avoid political risk. For all of these reasons, former political prisoners have serious livelihood needs that need to be addressed with a combination of education/vocational training, financial support and employment opportunities.

### 13. *Inter-Communal Truth-Telling*

Transitional justice in Myanmar is not only relevant for addressing the relationship between the state and its citizens. There is a great need for effective truth-telling between various ethnic and religious groups, starting from civil society and eventually backed by the government. The government, and to a lesser extent many NSAGs, have spread their conflicting narratives of the causes and impact

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<sup>56</sup> HTOO T. and PHYO P.T., “Home affairs ministry defiant on political prisoner definition,” *Myanmar Times*, July 22, 2015, <http://www.mmtimes.com/index.php/national-news/15609-home-affairs-ministry-defiant-on-political-prisoner-definition.html>

of conflict through propaganda in education, the media and public events.<sup>57</sup> The strict state control over media and other information-sharing over the past decades, combined with the inaccessibility of information in conflict areas, means that people in one part of the country are rarely aware of the conflict and the human rights violations that have taken place in other regions.

People who work with victims in remote, conflict-affected areas say that victims often blame all Burmans for their suffering, and therefore direct a lot of anger and mistrust towards them.<sup>58</sup> Similarly, the average resident of central Myanmar knows little about ethnic minorities and the civil war aside from the minimal, often-biased media coverage and unverified social media content.<sup>59</sup> In areas where various ethnic minority groups live in close proximity, there are also deep divisions and grievances that have been generally suppressed in the name of ethnic unity against the central Burma state. With ceasefires and increased mobility in some areas, there will be increased contact between different kinds of people whose lack of knowledge and understanding could lead to serious social conflict, while old grievances are likely to resurface.

Sharing experiences with people outside victims' ethnic groups can help build trust and break down misperceptions. In recent years, many Burman democracy activists have traveled to conflict areas for the first time, and the resulting informal exchanges of their experiences under the military government have contributed to

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<sup>57</sup> WALTON M.J., "The "Wages of Burman-ness:" Ethnicity and Burman Privilege in Contemporary Myanmar," *Journal of Contemporary Asia* ( 2012); Kivimaki, Timo and Paul Pasch, "The Dynamics of Ethnic Conflict in the Multiethnic Union of Myanmar," *Friedrich Ebert Stiftung* (October 2009), 37-38.

<sup>58</sup> ICTJ Interviews 8, 9 and 20, Chiang Mai and Mae Sot, January – March, 2014.

<sup>59</sup> For instance, in a recent survey by The Asia Foundation, only 55% of respondents nationwide were aware that there is on-going armed conflict in the country. See "Myanmar 2014: Civic Knowledge and Values in a Changing Society", The Asia Foundation, 2014, <http://asiafoundation.org/resources/pdfs/MyanmarSurvey20141.pdf>; ICTJ Interview 20, Chiang Mai, March, 2014.



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increased trust on an individual level.<sup>60</sup> Similar exchanges also built trust between Burmans and ethnic minorities in exile along the border when they interacted out of necessity.<sup>61</sup>

Acknowledging and accepting varying experiences of the conflict is necessary to establish a basic level of trust and understanding before deeper reconciliation can begin. This may require a process of truth telling whereby all groups are exposed to the experiences, perspectives and historical narratives of other groups that they may not necessarily agree with but can witness and learn to empathize with.

In the short to mid-term, civil society can start to spread knowledge by scaling up truth-telling activities to cover new areas of the country and creating a network to promote inter-community truth-telling. Civil society documentation can also help preserve testimonies so future generations can learn lessons from the conflicts and human rights violations of the past, something that is crucial for the youth of any country. Research should also be done with victims to determine what they want to express, what they want others to know about their experiences, and what they hope to learn about through theirs or others' experiences.

### 14. *Recent TJ-related developments*

With recent policy developments in Myanmar, spaces have opened up for political activity and increased freedom of the press. Space has slowly opened for discussing previously forbidden topics. As a result civil society and victims of human rights violations have become more emboldened to discuss the past and seek remedies, usually on a case by-case basis. However, these efforts continue to be met with silence or threats, as government officials attempt to keep a tight lid on discussions of the past.<sup>62</sup>

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<sup>60</sup> ICTJ Interview 8, Mae Sot, January 27, 2014.

<sup>61</sup> ICTJ Interview 9, Mae Sot, January 28, 2014.

<sup>62</sup> MYINT S.Y.M., "Women Call for Justice over Sexual Violence," *Myanmar Times*, October 7, 2013, <http://www.mmimes.com/index.php/national-news/8394-women-call-for-justice-over-sexual-violence.html>; FULLER T., "A Myanmar in Transition That Says Little of Past Abuses," *New York Times*,

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Victims of human rights violations and their families, religious and community leaders, and civil society organizations are not waiting for a formal dialogue process, or for governmental approval or leadership, to discuss the past or its impact. Instead, local initiatives to raise awareness about, and seek redress for, past and recent human rights violations have risen from the grassroots across the country. These efforts, which can be called “civil society truth initiatives,” seek to provide a platform for victims to speak out about the abuses they have suffered, challenge the government’s narrative, and advocate for the government to provide a remedy and prevent the recurrence of violence.

Civil society truth initiatives include a range of activities, from community events to *ad hoc* committees investigating recent violations to coordinated campaigns for justice for specific violations. They include public commemorations of anniversaries of specific events, the most well known being the 2013 25th anniversary of the 1988 uprising. Initiatives that have been conducted in Myanmar also include public discussions that invite victims and their families to speak out about their experiences.

A particularly active organization that has been pushing the transitional justice agenda forward is the Network for Human Rights Documentation (ND Burma). On

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June 14, 2013, [http://www.nytimes.com/2013/06/15/world/asia/a-myanmar-in-transition-says-little-of-past-abuses.html?\\_r=0](http://www.nytimes.com/2013/06/15/world/asia/a-myanmar-in-transition-says-little-of-past-abuses.html?_r=0); HINDSTROM H., “Homophobic War Crimes Boast Betrays the Arrogance of Burma’s Junta Leaders,” *Asian Correspondent*, June 29, 2015, <http://asiancorrespondent.com/133860/homophobic-war-crimes-boast-betrays-the-arrogance-of-burmas-junta-leaders>; DVB TVonline, DVB, video, June 22, 2015, <http://tv.dvb.no/videos/220162015khinnyunt>; Amnesty International, “*Four Years On, Impunity is the Kachin Conflict’s Hallmark*”, Amnesty International, June 8, 2015, <https://www.amnesty.org/en/documents/asa16/1832/2015/en>; Burma Partnership’s Progressive Voice Policy Research Project and the Assistance Association of Political Prisoners, “*How to Defend the Defenders?*”, Burma Partnership, July 2015, <http://www.burmapartnership.org/wp-content/uploads/2015/07/HRD-Report.pdf>

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June 11, 2015, it released its documentation report, “To Recognize and Repair: Unofficial Truth Projects and the Need for Justice in Burma,” which focuses on three categories of abuse: extrajudicial killings, torture, and land confiscation. It calls on the government to reform the constitution, reduce military presence in conflict and ethnic areas, and establish reparations, rehabilitation, and reintegration programs and a truth-seeking process.<sup>63</sup> Over the next two years, it intends to focus its efforts, in particular, on the vetting of political candidates and memorialization initiatives.

Another organization, the Assistance Association for Political Prisoners, has been assessing the needs of former political prisoners in preparation to advocate for reparative measures. In addition, other victims’ support organizations have held public events for victims to speak out and engage in a community-healing process.

### *Section three: Conclusions*

#### *15. A Difficult But Possible Peace Process*

Myanmar is at a crossroads in its quest for sustainable peace and democracy. While all actors must navigate within the limited confines set forth by the Constitution and military influence, decisions made in the next few months will have a great impact on the direction of the country. Patterns of conflict, discrimination and massive human rights violations could slowly begin to break down, or they could continue just as they have in the past. A new government could provide moral leadership and take steps toward fulfilling the dreams of the Burmese people, or it could continue the legacy of past governments and be, as many observers describe the

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<sup>63</sup> ND Burma, “*To Recognize and Repair: Unofficial Truth Projects and the Need for Justice in Burma*”, Network for Human Rights Documentation-Burma, June 8, 2015, <http://nd-burma.org/reports/to-recognize-and-repair>; HINDSTORM H., “Homophobic war crimes boast betrays the arrogance of Burma’s junta leaders,” *Asian Correspondent*, June 29, 2015, <http://asiancorrespondent.com/133860/homophobic-war-crimes-boast-betrays-the-arrogance-of-burmas-junta-leaders/>; DVB TVonline, *DVB*, video, June 22, 2015, <http://tv.dvb.no/videos/220162015khinnyunt>

current administration, the old regime in new clothes. How a new government responds to the demands to acknowledge and address the past will be a key metric in whether or not it is a true transition.

It comes as no surprise that there are challenges to raising issues of the past - as there are in all transitional countries - but in Myanmar in particular authoritarianism has been the norm for so long that it has become engrained in many aspects of society. The most prominent challenge is continued military control of Parliament and key government ministries, and the refusal of the military to entertain discussion of the past. Other challenges include continuing conflict and repression, including the well-known repression against the Rohingya, and related rising nationalism.

To some people, it makes little sense to focus on past violations while similar violations are ongoing. Support for former political prisoners seems less important when there are recently arrested political prisoners in detention facing serious health problems, unfair trials and isolation from their families. Similarly, many question how one can talk about return of displaced persons when hundreds of villagers are displaced each month during on-going armed clashes. Though these questions do exist, other human rights and humanitarian emergencies like the situation of the Rohingya rightly dominate many efforts around protection and remedy.

Dealing with the past or dealing with ongoing violations should not be seen as a progression or an either-or proposition. The idea that it is preferable to wait until the human rights situation has improved in order to talk about the past belies the influence that the past has on the present and the contribution that dealing with the past, in conjunction with other measures, could have on on-going violations. The risk of further polarizing and isolating communities often seems to be forgotten in this dialogue.

16. *The Role of International Community*

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The international community has a major role to play in Myanmar in ensuring that international norms and victims' rights are fully understood and implemented. Since 2010, many countries have improved relations with Myanmar—in many cases lifting sanctions imposed due to human rights concerns—but they appear to have focused more on economic and military relations than human rights and accountability.

While Myanmar has made some progress with accession to international treaties (most recently the International Covenant on Economic, Social and Cultural Rights)<sup>64</sup> the UN Convention Against Torture<sup>65</sup> is still pending the ratification from the President after Parliament passed a law authorizing it last year. The ratification is apparently delayed because the President's Office is considering whether the treaty may prejudice national interests.<sup>65</sup> International actors working with the President's Office have the obligation to press them to explain their hesitancy, and to complete the accession process as soon as possible.

There is also a role for international actors, including international NGOs, in supporting initiatives that work to bring civil society and government agencies together to address the needs of victims of human rights violations. For instance, Dignity Institute of Denmark is working with the Myanmar General Practitioners' Society, in cooperation with the local Assistance Association for Political Prisoners, to train general practitioners on the treatment of former political prisoners.<sup>66</sup> This can help build the capacity of medical professionals to provide public services to victims and build trust and confidence between state service providers and NGOs/victims' organizations, which could lead to even stronger partnerships in the future.

International involvement in support of the peace process is particularly important to facilitating a coordinated and informed approach to addressing the

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<sup>64</sup> "Chapter IV: Human Rights," United Nations Treaty Collection, July 29, 2015, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

<sup>65</sup> Regrettably, the use of torture and abuse of detainees by law enforcement is a common and widespread practice. Police reportedly tend to rely on abuse and intimidation to secure evidence.

<sup>66</sup> MYINT S.Y.S., "Doctors to Treat Former Political Prisoners," *Myanmar Times*, April 29, 2015, <http://www.mmtimes.com/index.php/national-news/14165-doctors-to-treat-former-political-risoners.html>

past. Some international actors involved in supporting the peace process have steered clear of mentioning the past in order to refrain from threatening the fragile ceasefire and to help maintain relationships with government officials to enable work on other topics. While this is understandable, it reinforces the government's impression that dealing with the past is threatening. Excluding transitional justice from the topics of technical assistance and capacity building suggests to the government and other stakeholders that addressing the past is not necessary for a sustainable peace. In the post-ceasefire period, addressing the past should not be seen to be off-limits, particularly as stakeholders in the peace process have identified it to be an important topic for political dialogue. In order to minimize the risks faced by emerging civil society work on the past and to facilitate better cooperation, those with access to government leaders should take the opportunity to delicately introduce the idea that transitional justice could benefit them and is not necessarily about revenge and retribution.

Given Myanmar's traumatic past, there is much at stake for future negotiations and government actions. The massive human rights violations of the past will remain a part of the country's legacy, affecting the culture and daily life of individuals unless something is done to address this. The question is not whether Myanmar will progress and work through the past, but whether authorities will be willing to work with civil society groups, NGO's and the general public to address the memories of the past and give redress to those affected. Unless there are effective measures that contribute to national reconciliation, there can be no real development within the country to remedy the numerous cycles of violence that have occurred, and more are bound to follow.

Myanmar needs an open, honest discussion about what happened in the past. That discussion can be managed and conducted in stages, but it cannot be ignored and should start soon. Leaders from all aspects of Myanmar political life—those in government, in the opposition, in civil society and those who provide political leadership for ethnic armed groups—should take steps to engage each other and the

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public in this conversation. International actors should support this process by helping to facilitate trust-building and dispelling the idea that dealing with the past is dangerous.





