

## Myanmar: Major Reform Underway

### I. OVERVIEW

Six months after the transition to a new, semi-civilian government, major changes are taking place in Myanmar. In the last two months, President Thein Sein has moved rapidly to begin implementing an ambitious reform agenda first set out in his March 2011 inaugural address. He is reaching out to long-time critics of the former regime, proposing that differences be put aside in order to work together for the good of the country. Aung San Suu Kyi has seized the opportunity, meeting the new leader in Naypyitaw and emerging with the conviction that he wants to achieve positive change. The Association of Southeast Asian Nations (ASEAN) seems convinced that Myanmar is heading in the right direction and may soon confer upon it the leadership of the organisation for 2014. This would energise reformers inside the country with real deadlines to work toward as they push for economic and political restructuring. Western policymakers should react to the improved situation and be ready to respond to major steps forward, such as a significant release of political prisoners.

In a speech on 19 August, the president made clear that his goal is to build a modern and developed democratic nation. His initial views on what steps are needed were set out in his wide-ranging and refreshingly honest inaugural speech less than six months ago. Some observers have dismissed such talk as “just words”, but in a context of long-term political and economic stagnation they are much more than that. After 50 years of autocratic rule, they show strong signs of heralding a new kind of political leadership in Myanmar – setting a completely different tone for governance in the country and allowing discussions and initiatives that were unthinkable only a few months ago.

These words are now being put into practice. In recent weeks a series of concrete steps have been taken to begin implementing the president’s reform agenda, aimed at reinvigorating the economy, reforming national politics and improving human rights. The political will appears to exist to bring fundamental change, but success will require much more than a determined leader. Resistance can be expected from hardliners in the power structure and spoilers with a vested interest in the status quo. Weak technical and institutional capacities also impose serious constraints on a country emerging from decades of isolation and authoritarianism. It is urgent that those best

placed to provide the necessary advice and assistance – the West and multilateral institutions – are allowed to step forward to provide it.

Some observers are still urging caution, putting the focus not on how much is changing but on how much has yet to change. To be sure, a successful reform process is far from guaranteed. There are many fundamental steps that still must be taken, including healing deep ethnic divisions and overcoming the legacy of decades of armed conflict – something the government has yet to fully grapple with – together with addressing adequately ongoing allegations of brutality by the armed forces; the release of political prisoners; restoration of basic civil liberties; and the further lifting of media censorship.

Western countries have indicated that they stand ready to respond to positive developments. At a very minimum, this should include a less cautious political stance and the encouragement of multilateral agencies – including the International Financial Institutions and the United Nations Development Programme (UNDP) – to do as much as possible under their existing mandate restrictions. Similarly, member states should support the broadest interpretation of the EU Council decision on Myanmar rather than the most cautious. As Naypyitaw sets its new course, these small political steps would help to facilitate the provision of ideas that could add momentum to the reforms now underway.

There are already indications that key benchmarks many in the West have insisted on may soon be reached. Military legislators have, for example, supported an opposition motion in the lower house calling on the president to grant a general amnesty for political prisoners. If such a dramatic policy shift occurs, it would need to be reciprocated by those who earlier authorised sanctions. Failure to do so, or to shift the goalposts by replacing old demands with new ones, would undermine the credibility of these policies and diminish what little leverage the West holds. Internal progress on human rights and economic reforms that benefit the country’s citizens should be acknowledged and supported by the international community.

Crisis Group has long held the view that sanctions on Myanmar – targeted and non-targeted – are counterproductive, encouraging a siege mentality among its leadership and harming its mostly poor population. The greater the pace of change, the weaker the rationale becomes for continu-

ing them – or adding more. Many problems remain. There is ample evidence that the army continues to employ brutal counter-insurgency strategies, and in the absence of domestic accountability, calls for an international commission will remain. But it is far from clear that such a body, even if one could be established, would be the most effective way to address abuses at this time or whether its impact would rather be to cause retrenchment in Naypyitaw.

## II. A NEW APPROACH TO GOVERNANCE

The new government, which took over on 30 March 2011, includes many members of the previous military regime. The president was the former prime minister and a career military officer. Yet, his administration has taken bold steps to change its relations on three key fronts: with the political opposition, the ethnic minorities and the international community. This could be the beginning of historic change in Myanmar, the potential for which has been evolving slowly in the past few years.<sup>1</sup> The reforms are driven predominantly by domestic considerations, including the need to resolve longstanding economic and political crises. While they cannot be successful without opening up to the outside world, addressing international criticism appears to be very much a secondary concern.

### A. POLITICAL RECONCILIATION

Since the government took office, there has been a change of approach to old political divisions. Across the spectrum, there is a newfound sense of optimism among political actors. Aung San Suu Kyi has said that “from my point of view, I think the president wants to achieve real positive change”.<sup>2</sup> A leading member of a democratic party described “a dramatic change in the political course of this country”.<sup>3</sup> Some exiles and outside observers have dismissed the changes as “window dressing”, pointing out that the government and Aung San Suu Kyi have had talks

in the past which came to nothing. Those who have met with her in recent weeks have found her cogent, engaged and aware she is balancing difficult issues, but also optimistic. One visitor reported her remarking: “People who say there is no change are not here”.<sup>4</sup> Since mid-July 2011, there has been a series of key steps worth noting:

**19 July 2011.** The government facilitated the attendance of Aung San Suu Kyi and some 3,000 members of her party and supporters at Martyrs’ Day, a national day commemorating her late father and colleagues who were assassinated on the eve of the country’s independence. This was the first time in nine years that she had been able to attend.

**25 July.** A meeting was held between Aung San Suu Kyi and Minister Aung Kyi, the first since the new government took office. The two had previously met on nine occasions following Aung Kyi’s appointment as “Minister for Relations with Aung San Suu Kyi” in 2007. But in a clear sign that the tone and content of discussions was very different than in the past, following the meeting a joint statement was issued stating among other things that “the two sides are optimistic about and satisfied with the dialogue”. They also held a joint press briefing for the first time.<sup>5</sup>

**28 July.** Following clashes between the army and a number of ethnic groups, Aung San Suu Kyi wrote an open letter to the president and four armed groups, stating that “the use of force to resolve the conflicts will be harmful to all parties concerned” and “therefore, with the sole purpose of promoting the well-being of all nationalities, I call for immediate ceasefires and the peaceful resolution of the conflicts”. She added that, “for my part, I stand ready to do everything in my power to further the cessation of armed conflicts and the building of peace in the country”.<sup>6</sup> Rather than condemning it, or trying to marginalise it, as would have been the case in the past, the minister spoke positively about it, noting that this was one of the issues under discussion with Aung San Suu Kyi.<sup>7</sup> The previous government had been extremely concerned about any mingling of the democracy and ethnic issues and had responded harshly to the formation of a joint

<sup>1</sup> See Crisis Group Asia Reports N°144, *Burma/Myanmar: After the Crackdown*, 31 January 2008; N°161, *Burma/Myanmar After Nargis: Time to Normalise Aid Relations*, 20 October 2008; N°174, *Myanmar: Towards the Elections*, 20 August 2009; N°177, *China’s Myanmar Dilemma*, 14 September 2009; Crisis Group Asia Briefings N°105, *The Myanmar Elections*, 27 May 2010; N°112, *China’s Myanmar Strategy: Elections, Ethnic Politics and Economics*, 21 September 2010; and N°118, *Myanmar’s Post-Election Landscape*, 7 March 2011.

<sup>2</sup> Aung San Suu Kyi, comments to the press following her meeting with UN Special Rapporteur Tomás Ojea Quintana, Yangon, 24 August 2011.

<sup>3</sup> Crisis Group interview, National Democratic Force leaders, Yangon, August 2011.

<sup>4</sup> Crisis Group interviews, recent visitors to Aung San Suu Kyi, August-September 2011.

<sup>5</sup> The text of the statement and a summary of the questions and answers in the press briefing were carried in the *New Light of Myanmar* the following day, 26 July 2011, pp. 9, 16.

<sup>6</sup> Crisis Group translation of Burmese original. The four armed groups were the Kachin Independence Organisation, the Karen National Union, the New Mon State Party, and the Shan State Army.

<sup>7</sup> Press briefing by Aung Kyi and Aung San Suu Kyi following their second meeting, Yangon, 12 August 2011. A brief summary is provided in *New Light of Myanmar*, 13 August 2011, p. 13.

committee in 1998.<sup>8</sup> In 2010 it had condemned Aung San Suu Kyi's aborted initiative to convene an ethnic conference.<sup>9</sup>

**12 August.** A second meeting between Aung San Suu Kyi and Minister Aung Mye Thazan was again followed by a press briefing. Their joint statement gave a clear indication that some accommodation had been reached: "the two sides will cooperate in pursuing stability of the State and national development", and "the two sides will avoid conflicting views and will cooperate on [a] reciprocal basis".<sup>10</sup>

**13 August.** In her first political trip outside Yangon since being released from house arrest, Aung San Suu Kyi made a one-day visit to the nearby city of Bago.<sup>11</sup> The government offered to provide security for the trip, and she accepted. On the day, the police acted in a professional and non-intrusive manner. Aung San Suu Kyi avoided any confrontational language in her speeches, which were viewed by the government as constructive. The focus was mainly on her as a national figure rather than as a leader of a political party; banners and placards referred to her rather than the National League for Democracy (NLD), and its logos were absent, presumably reflecting an agreement with the government.<sup>12</sup>

**16 August.** Daily propaganda slogans were removed from the state newspapers. Various introduced between 1988 and 2007, these stated the regimes "four political, economic and social objectives", several versions of the "people's desire" (including an exhortation to "crush all internal and external destructive elements as the common enemy") and criticism of foreign and exile radio stations including the BBC and Voice of America ("do not allow ourselves to be swayed by killer broadcasts designed to cause troubles").

**17 August.** President Thein Sein gave a key speech to government, business and non-government organisations, defending the government's record during its first five months in office.<sup>13</sup> He struck a conciliatory note, urging unity for the good of the country. He also urged

exiled Burmese to return home, noting that those who were not under criminal investigation would be welcomed, and those who had committed crimes would be offered "leniency" if they arranged their return in advance. Legislation is being prepared to implement such an offer, which would provide amnesty for offences other than criminal acts against another person.<sup>14</sup> A number of prominent exiles have returned or are in the process of negotiating this.<sup>15</sup>

**19 August.** Aung San Suu Kyi travelled to Naypyitaw and met President Thein Sein. In a scene heavy with symbolism, the two were pictured meeting at Thein Sein's residence, with the president seated under a portrait of her father, the independence hero General Aung San. In the evening, she dined with the president and his wife at her invitation. She later stated publicly that she believed the president "wants to achieve real positive change".<sup>16</sup> While in Naypyitaw, she also attended a national workshop on economic reform convened by the president. During a break in proceedings, she was seated at a "VVIP" table, together with four ministers and the president's chief economic adviser. A number of prominent businessmen and other attendees lined up to greet her.<sup>17</sup>

After her return to Yangon, she briefed other NLD leaders on her trip, saying that she was "happy and satisfied" with her meeting with the president, as well as her meetings with members of his government.<sup>18</sup> On 15 September, she spoke to supporters at an event celebrating the International Day of Democracy, saying that the country was in a situation "where changes are likely to take place".

**September.** Aung San Suu Kyi published her first article in the Myanmar media for 23 years. Her reflections on her private visit to Bagan were published on the front page of the *Pyithu Khit* news weekly. The same edition also carried an article about her father, Aung San, penned by veteran journalist and NLD leader Win Tin, who is a staunch government critic.<sup>19</sup> Another news weekly, *The Messenger*, ran an interview with Aung

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<sup>8</sup> This was known as the Committee Representing People's Parliament and brought together NLD and ethnic minority party legislators elected in 1990.

<sup>9</sup> This has been referred to as a "second Panglong Conference", in reference to the meeting held in 1947 between Aung San (representing the interim government) and several ethnic representatives, to work out the shape of post-independence Burma.

<sup>10</sup> *New Light of Myanmar*, 13 August 2011, pp. 13, 16.

<sup>11</sup> In July, she visited the historic Buddhist site of Bagan with one of her sons, but indicated that this was a private trip.

<sup>12</sup> Crisis Group interviews, ASEAN diplomat, Yangon, August, 2011; Western diplomat, Yangon, August 2011.

<sup>13</sup> Speech reported in full in *New Light of Myanmar*, 18 August 2011, p. 1 ff.

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<sup>14</sup> Crisis Group interview, person with first-hand knowledge of the process, Yangon, August 2011.

<sup>15</sup> For example, members of a banned comedy troupe, established by jailed comedian and activist Zarganar, have recently returned from exile.

<sup>16</sup> Aung San Suu Kyi, comments to the press, op. cit.

<sup>17</sup> Account of Aung San Suu Kyi's visit to Naypyitaw provided to Crisis Group by an individual with first-hand knowledge of events, August 2011.

<sup>18</sup> Crisis Group translation of NLD Central Executive Committee Announcement 15/8, Yangon, 22 August 2011 (in Burmese).

<sup>19</sup> *Pyithu Khit Journal*, vol. 2, no. 59, 5 September 2011.

San Suu Kyi as its cover story.<sup>20</sup> Blocks on foreign news websites were also removed, allowing access in Myanmar to sites such as Reuters and the *Bangkok Post*, as well as dissident publications such as the *Irrawaddy* and the Democratic Voice of Burma.

Taken together, these changes, and the speed with which they have occurred, are remarkable. This completely new character of governance suggests it could be the beginning of a process of fundamental political change. There are three notable aspects.

First, the president appears determined to implement the reform agenda laid out in March in his inaugural address to parliament and initial speech to the government. On those occasions he set a clear policy line for his five-year term – something refreshing in a country ruled so long by decree. Together they provide a domestic standard against which to judge government performance. They are also noteworthy because each contained a candid assessment of many serious problems and a commitment to implement the necessary reforms.<sup>21</sup> Those who have had long meetings and multiple encounters with him in recent weeks paint a picture of a modest and approachable head of state open to advice and new ideas, with no issue “off limits”. They describe the president’s political will to implement reform as “100 per cent”.<sup>22</sup> Aung San Suu Kyi’s own recent comments are consistent with this interpretation. This major change away from leadership by autocracy and fear will allow bad news and good ideas to flow upwards. It has unlocked the long frozen potential for positive change across the spectrum.

Secondly, the president appears to be confident in his authority to move the country in this direction despite the objections of some powerful reactionary figures. He seems to have gained this confidence around mid-July, when the pace of change suddenly picked up. The reason for this shift after an initial 100 days of more cautious moves is not clear. Some interpret the momentum as coming after the president successfully asserted his authority over the reactionary faction, thus opening the way for implementation of his reform package.<sup>23</sup>

Thirdly, the president has shown a willingness to break with Than Shwe’s legacy. There is no powerful symbol of that than the pictures of him meeting in his residence with Aung San Suu Kyi under a portrait of her

father that were widely published in the state press and independent media. The former regime had systematically tried to weaken Aung San’s legacy, out of concern that it strengthened the daughter’s legitimacy: his face was removed from banknotes, annual Martyrs’ Day celebrations were given far less prominence, and his mausoleum was closed except for one day a year. Thein Sein has reversed this, even ordering restoration of a historic house in Pyin-mana, close to the new capital, that Aung San used as the headquarters of his Burma Independence Army during the Second World War. As a confidence-building measure, he sent a photo album of the restorations to Aung San Suu Kyi. This also tends to confirm the view of a number of observers and insiders that Than Shwe has withdrawn from public life. While he is briefed on developments, he plays no active role in decision-making.<sup>24</sup>

One of the key outstanding questions is whether, and when, there will be a significant release of political prisoners. The detente with Aung San Suu Kyi makes such a release much more likely, since it allays government concerns that releasing a large number of activists could fuel political confrontation. While no details of the discussions between Aung San Suu Kyi and the government are available, the plight of political prisoners has always been one of her key concerns. It seems unlikely that she would have cast her meetings in such a positive light without at least some signs of progress in that regard.

## B. ETHNIC CONFLICT

Along with political reconciliation, the other major division in the country that must be healed is the ethnic conflict and the longstanding and serious grievances that drive it. In his inaugural speech, the president addressed this issue, speaking of the “the hell of untold miseries” to which decades of “dogmatism, sectarian strife and racism” had given rise.<sup>25</sup> In a subsequent speech, he stressed the need for national unity, for the government to convince the people from ethnic areas of its goodwill, and for improved government services in border areas.<sup>26</sup>

<sup>20</sup> *The Messenger*, vol. 2, no. 16, 5 September 2011. Also see “Suu Kyi’s first article for 23 years published in Burma”, *The Irrawaddy*, 5 September 2011.

<sup>21</sup> English-language translations of these speeches appeared in the *New Light of Myanmar* on 31 March and 1 April 2011.

<sup>22</sup> Crisis Group interviews, Yangon, August 2011.

<sup>23</sup> Crisis Group interviews with several well-placed individuals in Myanmar in August 2011 lend support to this.

<sup>24</sup> Crisis Group interviews, well-informed Myanmar individuals, Yangon, August 2011. An ASEAN diplomat told Crisis Group that his military sources reported that Than Shwe was meeting only long-retired generals – old colleagues whom he had not been able to meet as head of state – and that former deputy leader Maung Aye was spending most of his time meditating.

<sup>25</sup> President’s inaugural speech on 30 March, reproduced in English in *New Light of Myanmar*, 31 March 2011, p. 1.

<sup>26</sup> President’s speech to the Central Committee for Progress of Border Areas and National Races on 23 April, reported in *New Light of Myanmar*, 24 April 2011, p. 1.

Initial actions did not match the rhetoric. Soon after Thein Sein took office, tensions with two ethnic ceasefire groups – the Kachin Independence Organisation (KIO) and the Shan State Army-North – erupted into armed clashes. The tensions had been building for some time. The previous government had pressured ceasefire groups to agree to its controversial border guard scheme, whereby their forces would be brought under the partial control of the national army. Most of the major ceasefire groups had refused, resulting in their ceasefire agreements being declared void and the groups being branded as “insurgents” in the state media.<sup>27</sup> Independent Kachin parties were refused registration, prompting fears that the Kachin were being politically marginalised.

In early June, tensions with the KIO boiled over. The clashes – the most serious in northern Myanmar since the fighting with the Kokang ceasefire group in 2009 – started when the army ordered KIO troops to withdraw by 11 June from one of their strategic bases near the Chinese border and close to the sites of two large Chinese-built hydroelectric dams. This followed clashes on 9 June during which the KIO captured some government soldiers (who were subsequently released), and the alleged torture and killing by government forces of a KIO liaison official. The KIO refused to withdraw from the base, and further clashes broke out, with fighting spreading to other areas of Kachin State and northern Shan State. The KIO placed all its troops on a war footing and destroyed a number of strategic bridges to hamper reinforcement and resupply of government troops. The deteriorating security situation has caused significant internal displacement, with thousands of villagers living in a precarious situation in informal camps that are largely inaccessible to international agencies.

It appeared that a resumption of full-scale conflict was imminent, but this has so far been averted. While sporadic clashes continue, both sides have taken some steps to de-escalate the situation. There have been several rounds of discussions about a new ceasefire, although there is not yet an agreement.

Beyond the Kachin issue, there is ongoing conflict in several areas, including central Shan State (with the Shan State Army-North former ceasefire group), southern Shan State (with the Shan State Army-South) and Kayin State (with the Karen National Union and the 5th Brigade of the Democratic Kayin Buddhist Army). In these areas, the Myanmar military, the Tatmadaw, continues to employ brutal counter-insurgency strategies as it has in the past.

In two speeches in August, the president dealt with the issue of ethnic conflict, saying he was “holding out an olive branch” and “opening the door to peace” by inviting armed groups to enter into peace talks with their respective region/state governments.<sup>28</sup> This invitation was formalised in an announcement on 17 August that following initial discussions with local governments, the national government would appoint a Peace-Making Committee to conduct peace talks.<sup>29</sup>

Since then, the government has sent intermediaries to encourage a number of groups to enter into discussions, and preliminary agreements have been signed with the United Wa State Army and the National Democratic Alliance Army (Mongla).<sup>30</sup> There are advantages to the first discussions being held with regional administrations, as they understand the local context, and most include representatives of opposition ethnic parties. It is also positive that the offer was extended to all: in the past, the government had refused to enter into discussions with some armed groups. However, it fails to address one of the main concerns of many minority organisations, as they fear the government will, as in the past, use divide-and-rule tactics by negotiating separately with each group.

On 31 August, the upper house approved a proposal calling for the establishment of a “peace committee” to resolve ethnic conflicts and ensure lasting peace. The membership has not yet been determined, but one representative suggested during the debate that Aung San Suu Kyi be included. It is not clear whether this will be possible, given that committees are made up of legislators (commissions may have broader membership). But that such a suggestion could be made on the floor of the house is another example of how much has changed politically in recent months.

On the ground in ethnic areas, much less has changed. Overcoming 60 years of ethnic conflict will not be easy and the government will have to do a great deal to build the trust necessary to move beyond temporary ceasefires to resolve the underlying political issues. Some small but symbolically important steps have recently been taken, but they have done little to alleviate tensions. The teaching of ethnic languages and culture in schools has long been a significant issue for ethnic communities. The president has given a green light, and the way should now be open

<sup>27</sup> For detailed discussion of the border guard forces scheme and the consequent rise in tensions, see Crisis Group Briefing, *The Myanmar Elections*, op. cit., Section 3.B.

<sup>28</sup> President’s speech at Myanmar International Convention Centre, Naypyitaw on 17 August, reproduced in English in the *New Light of Myanmar*, 18 August 2011; and speech to the opening of congress, 22 August, reproduced in English in the *New Light of Myanmar*, 23 August 2011.

<sup>29</sup> Union Government Announcement no. 1/2011, 18 August 2011; and *New Light of Myanmar*, 9 September 2011, p. 5.

<sup>30</sup> Crisis Group interviews, Yangon and Bangkok, August 2011; *New Light of Myanmar*, 9 September 2011, p. 16.

for individual schools to find the best method to implement this, for example through parent-teacher groups.<sup>31</sup> The president mentioned this and other measures in the pipeline in his 22 August speech to the opening of the congress, when he said measures would be taken “for the development of the languages, literatures, arts and cultures of national races”. He also undertook “to create economic and job opportunities in border areas as soon as they see stability and peace”, possibly by creation of Special Economic Zones, a new law for which was recently enacted.<sup>32</sup>

These are welcome statements and initiatives, but the government has so far failed to bring the same degree of subtlety and imagination to the ethnic issue as it has to the economic issue. There remains huge mistrust on the part of ethnic leaders, who do not see tangible change, and fear for the future. Failure to adequately address this key issue at a moment of transition risks prompting a new cycle of war and could undermine the broader reform effort.

The rising tensions over the last years have led to a build-up of troops on both sides in the border areas, and the brutal tactics and behaviour of the Tatmadaw in these areas are mostly unchanged. These systematic abuses will need to be ended as part of any progress on conflict and minority rights, and this will require steps not only by the executive, but also by the military itself. The key is to undermine the sense of impunity felt by soldiers in the field. This requires that they are prosecuted and given adequate punishment, and that publicity is given to such steps. The constitutional and de facto independence of the military means that the armed forces themselves will have to put in place the necessary measures. Doing so decisively would also provide a significant counter-argument to calls for an international commission of inquiry. Ultimately, any comprehensive solution to Myanmar’s human rights problems will require that the military is brought under civilian control.

## C. INTERNATIONAL RELATIONS

The new government has also taken steps to improve its relations with the West and with multilateral institutions. In his inaugural speech, the president pledged “active participation” in international organisations including the UN, and urged “some nations wishing to see democracy flourish ... to cooperate with our new government ... by accepting and recognising Myanmar’s objective conditions and ending their various forms of pressure”. Successive governments have felt unfairly singled out for criticism by the West, and the new government has given clear indica-

tions that it would like to normalise its international relations. Discussions with a wide range of people within the country suggest that this is not the main priority and that the political and economic reform process is being driven by domestic considerations. Nevertheless, while second order in nature, the new government has been engaged on several fronts, bilaterally, regionally and multilaterally.

### 1. The West

Since March 2011, there has been a steady stream of international visitors wanting to assess the new political environment. Naypyitaw has been generally open to such visits, issuing visas even to staunch critics, granting relatively high-level access and not trying to block meetings with Aung San Suu Kyi. These visits have included U.S. Deputy Assistant Secretary of State Joseph Yun (18-21 May); U.S. Senator John McCain (1-3 June); an EU delegation headed by Robert Cooper, the senior adviser to the High Representative for Foreign Affairs (20-23 June); Australian Foreign Minister Kevin Rudd (30 June-2 July); and U.S. Special Representative and Policy Coordinator for Burma Derek Mitchell (9-14 September). The McCain visit was particularly significant as he is known to be a strong supporter of Aung San Suu Kyi and has taken a hard line in the Congress on Myanmar issues, including the co-sponsorship of sanctions legislation. Rudd was the highest-level Australian visitor in a decade.

All these visits involved meetings with a similar set of interlocutors and led to a broadly consistent outcome, which can be summarised as: a recognition that the situation in the country has changed and that the new government has given some welcome commitments on issues of international concern; an indication that concrete action in line with these commitments, including the release of political prisoners, is now required and a stated willingness to review policies toward Myanmar in response to any positive steps. Derek Mitchell, in his press statement at the end of his visit, went further, noting that “among both the international community and the Burmese people, it is clear from my visit that there are heightened expectations and hopes that change, real change, may be on the horizon”.<sup>33</sup> Given that concrete actions are starting to be

<sup>31</sup> Crisis Group interview, individual involved in this initiative, Yangon, August 2011.

<sup>32</sup> The “Myanmar Special Economic Zone Law”, 27 January 2011.

<sup>33</sup> Derek Mitchell, U.S. Special Representative and Policy Coordinator for Burma, remarks at press conference, Yangon, 14 September 2011. He went on to state: “At the same time, I was frank about the many questions the United States – and others – continue to have about implementation and follow-through on these stated goals. I noted that many within the international community remain sceptical about the government’s commitment to genuine reform and reconciliation, and I urged authorities to prove the sceptics wrong. To that end, I raised concerns regarding the detention of approximately 2,000 political prisoners, continued hostilities in ethnic minority areas accompanied

taken, it is time for Western countries to begin formulating appropriate and proportionate responses, as discussed further below.

## 2. The Region

Myanmar has maintained its close relations with the region, particularly with China, which was the first country to meet the new government in Naypyitaw, sending a large delegation on 2 April, led by the fourth-ranking figure in the Communist Party accompanied by more than 100 officials. A high-level military delegation also visited from 12-15 May, led by General Xu Caihou, the vice-chairman of the Central Military Commission. Thein Sein's first state visit was to China, on 26 May.<sup>34</sup>

Myanmar has formally requested ASEAN that it be given the chair of the regional body in 2014. This is the next available slot, as chairs for 2012 and 2013 have been confirmed. Normally, the ASEAN chair is rotated alphabetically among the ten members, with Myanmar next due to hold the position in 2016.<sup>35</sup> Myanmar had earlier decided, under some pressure, not to take up its regular slot in 2006, on the understanding with ASEAN that it would be able to assume the role "whenever it was ready". There is some dispute as to whether the interpretation of the original understanding should be "whenever Myanmar felt ready" (Naypyitaw's position) or "whenever ASEAN considered Myanmar to be ready" (ASEAN's position).<sup>36</sup> At the organisation's Jakarta summit in May 2011, no objection in principle was raised, but neither was any agreement reached. After a meeting in Bali in July, foreign ministers said Myanmar's request had been "considered positively" and been recommended to ASEAN leaders for their consideration.<sup>37</sup> "It's a done deal and Bali makes that clear", a diplomat said.<sup>38</sup>

There is little doubt that ASEAN will agree to Myanmar's request for the 2014 chair.<sup>39</sup> The only uncertainties are when the decision will be made and what quid pro quo may be

sought. The president of Indonesia (the current chair) has proposed that his foreign minister, Marty Natalegawa, visit Myanmar to assess its readiness. This will be awkward for Myanmar, which feels that such an assessment should not be necessary (it is not done for other ASEAN members). It would also be awkward for Indonesia if it were to conclude that Myanmar was not ready. Thus, the real assessment is likely to take place prior to the foreign minister's visit, said to be scheduled for October, as it will be to provide a positive recommendation to the November 2011 Bali summit.<sup>40</sup>

Some people, however, feel that Indonesia may be reluctant to announce a positive decision while President Obama is in Bali, and they therefore think it more likely to be passed on to the next chair, Cambodia, for formal decision.<sup>41</sup> ASEAN members worry whether Myanmar will be up to the task, as it is not just a matter of building airports, roads, and resort hotels but having the right mindset to speak on behalf of the diverse organisation, including dealing with dozens of meetings and hundreds of visiting journalists, some of whom would like to interview Aung San Suu Kyi.<sup>42</sup>

There have been calls for ASEAN to deny Myanmar the chair, particularly in light of its grave human rights situation.<sup>43</sup> A view that has gained some currency is that if ASEAN gives the green light, Myanmar will be "off the hook", and leverage will have been lost. In fact, the opposite may be true. It is clear that Myanmar wants not only the chair but also to demonstrate that it is up to the task, and, in particular, to host a successful East Asia summit, ASEAN Regional Forum and ASEAN summit in 2014. This will not be possible unless it can create an environment in which countries such as the U.S., Australia and Canada, as well as the European Union (EU) will be ready to participate at head of state or foreign minister level, which would require significant progress on many fronts. It is very likely that Myanmar's wish to assume the chair in 2014 is linked to the fact that its next elections are due in 2015 and a calculation that the high-profile role could provide a boost to the incumbent members of government.

Denying Myanmar the chair would risk undermining the pressure for change and could encourage reactionary elements in the administration. It would also take away from reformers in the government, including the president, a

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by reports of serious human rights violations, including against women and children, and the lack of transparency in the government's military relationship with the Democratic People's Republic of Korea".

<sup>34</sup> This was his second overseas visit, the first being to an ASEAN Summit in Indonesia, earlier in May.

<sup>35</sup> Thus, in order to take the chair in 2014, Myanmar would have to swap with Laos, which would otherwise hold the position by alphabetical rotation. Laos has agreed to this arrangement.

<sup>36</sup> Crisis Group interviews, senior Myanmar diplomat involved in the negotiations on the 2006 chairmanship, May 2011; and diplomat from an ASEAN member state, Yangon, August 2011.

<sup>37</sup> See paragraph 104, "Joint Communiqué of the 44th ASEAN Foreign Ministers Meeting", ASEAN, 19 July 2011.

<sup>38</sup> Crisis Group interview, Jakarta, 2 August 2011.

<sup>39</sup> Ibid.

<sup>40</sup> Matthew Pennington, "ASEAN to listen to Suu Kyi as Myanmar seeks chair", Associated Press, 20 September 2011.

<sup>41</sup> Crisis Group interviews, diplomats, Jakarta, September 2011.

<sup>42</sup> Crisis Group interview, Indonesian foreign ministry official, Jakarta, 13 May 2011.

<sup>43</sup> Such calls have been made by a number of organisations, including human rights groups, and several regional and Myanmar exile organisations. See, for example, "People's Forum urges ASEAN not to appoint Burma ASEAN chair", Mizzima, 6 May 2011.

key argument necessary for maintaining the rapid pace of reform. What is important to recognise now is that because the situation has changed both inside the country and in the region, so must the policies and tactics of those trying to use ASEAN as a lever to reform Myanmar.

### 3. The United Nations

The UN Secretary-General's special adviser on Myanmar, Vijay Nambiar, visited 11-13 May. He briefed the Security Council in closed session on his return to New York, welcoming the government's stated commitments, but encouraging it to take "bold and proactive steps" by releasing all remaining political prisoners, actively pursuing national reconciliation, enhancing the credibility of the electoral process and cooperating with UN human rights mechanisms as well as with its humanitarian and development agencies.<sup>44</sup>

In August the UN Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, made a five-day trip to the country, the first time in eighteen months that he was allowed to visit. He met with a range of high-level officials, including the ministers for defence, home affairs, foreign affairs and labour/social welfare, the attorney-general, the chief justice, and the head of the election commission. Detailed and unusually frank accounts were carried in the state media, including of discussion with the home minister about the list of political prisoners compiled by an exiled prisoner rights organisation. The head of the election commission said that there were flaws in the November 2010 polls that would have to be corrected.<sup>45</sup> He also met Aung San Suu Kyi, representatives of civil society and a number of political prisoners in Insein Prison. He was pictured in the state media giving a lecture to officials in Naypyitaw under a banner that read "Ministry of Home Affairs Course on Promotion and Protection of Human Rights".

Only a few months ago, it had seemed that he – like several of his predecessors – might never be allowed to return to the country after angering the previous government by raising the possibility of a Commission of Inquiry to investigate international crimes in Myanmar. The prospects for and advisability of such a body are discussed in Section III.D below.

## III. ANALYSIS OF DEVELOPMENTS

### A. ECONOMIC REFORMS

The new government has made a commitment to economic reform and has taken a number of important steps, outlined below. A major issue has been the rapid rise in the value of the kyat. The focus on macroeconomic issues due to this exchange rate crisis has also been used by some inside and outside government to advocate a process of broader economic reform. Added impetus is provided by the fact that major reforms are required in order to increase competitiveness and prepare the country for its entry into the ASEAN Free Trade Area in 2015 and the elimination of most import tariffs that this requires.

**19 April 2011.** The president appointed three committees to provide him with direct policy advice in economics, political affairs and legal affairs. They are made up of prominent domestic experts outside of government (some are retired officials). U Myint, a respected economist who has also been advising Aung San Suu Kyi, was appointed to head the economic advisory committee.

**20-22 May.** A National Level Workshop on Rural Development and Poverty Alleviation was held in Naypyitaw. The president delivered the opening address, and subsequent presentations gave very candid assessments of a problem that the previous government would not admit to. Approval was subsequently granted for the establishment of an independent and non-political Myanmar Development Resource Institute to provide the necessary academic and technical inputs to poverty-alleviation programs.

**27 June.** A joint government-UN workshop on revitalising Myanmar's rice economy was held. Policy proposals were discussed between government, civil society, local business and local and international experts.

**1 July.** The government announced large pension increases. This will greatly improve the lives of some 840,000 pensioners, and indirectly a couple of million family members reliant on those payments. Pensioners were facing great hardships, as the real value of their entitlements had eroded over the years to the point where they were essentially worthless.

**19-21 August.** A National Workshop on Reforms for Economic Development of Myanmar was held in Naypyitaw, attended by the president, his economic advisers, government ministers, the business community, political parties, and Aung San Suu Kyi. In a speech, the president made clear his view that: "The first five-year period is the most important in building a modern, developed democratic nation. Only if we can take firm,

<sup>44</sup> Crisis Group interview, diplomat present at the briefing, May 2011.

<sup>45</sup> Crisis Group interview, Tomás Ojea Quintana, UN Special Rapporteur on the Situation of Human Rights in Myanmar, Bangkok, August 2011; and *New Light of Myanmar*, 26 August 2011.



right steps in this five-year period, can we see the promising future of the nation". Papers were presented by ministers, as well as experts from inside and outside the administration. Several foreign-based Myanmar academics, some of whom have a record of strongly criticising the government, were invited to present papers. Some ministers and officials reportedly came up with their own very frank assessments of problems and proposed bold steps to address them.<sup>46</sup>

**November.** The government plans to convene a meeting on green growth, geared toward the forthcoming UN Conference on Sustainable Development ("Rio 2012"). Also in November, there are plans for an EU-government meeting on banking, central banking and capital markets.

A key issue facing the administration is the rapid appreciation in the value of the kyat against the dollar – some 30 per cent – during 2011. This has had a major impact on exporters, including manufacturers, and the agricultural sector. And because a strong kyat makes imports cheaper, local products are becoming uncompetitive, threatening the entire productive infrastructure.

The reasons behind the increasing value of the kyat are complex, but they include, in addition to a weakened dollar: (1) *Strong demand for kyat.* This is mainly the result of the recent massive privatisation of government assets (as well as for purchases at government jade and gem auctions). These privatised assets had to be purchased in local currency, but many Myanmar businessmen involved in the transactions reportedly keep most of their assets in foreign currency. (2) *Speculative inflows.* There have reportedly been major inflows of capital from speculators in the region and in the Middle East, to take advantage of the strengthening kyat and very high interest rates on bank deposits (around 12 per cent). (3) *Foreign currency receipts.* Myanmar earns large amounts of foreign currency from its natural gas exports.<sup>47</sup>

The government has been lobbied strongly by the business community on this issue and has taken a number of steps to address it. Long-standing taxes on exports have been reduced from 10 per cent to 2 per cent for most products, which has given partial relief to exporters.<sup>48</sup> The announced

intention to address the kyat's overvaluation has had some psychological impact and helped to weaken the currency.<sup>49</sup> There are plans underway to establish a more independent Central Bank, which would be under the direct authority of the president, rather than the finance ministry, and would be headed by a technocrat.<sup>50</sup> The government has also approached the International Monetary Fund (IMF) for advice in unifying the official and semi-official exchange rates, presumably by allowing the currency to float – and, significantly, has made this request public.

It seems clear that the political will exists to pursue economic reforms, including macroeconomic issues and tackling corruption and poverty. Such determination is indispensable but will not alone be enough to reverse decades of mismanagement. Expert technical advice and other assistance are urgently required. They are probably only available outside the country.

Despite the need and opportunities presented by reform, there remain serious obstacles to such assistance. Western donors who would be the obvious providers remain extremely cautious about the kinds of help they will offer. This also has an impact on multilateral assistance. UNDP is still working under a highly restrictive mandate imposed by its Executive Board – Myanmar is the only country in the world where this is the case – that prevents it from providing the kinds of policy advice and assistance that could be of critical importance at this time. Lifting this restriction, which is controlled by the Obama administration, not the Congress, has been a regular request made to U.S. officials by their counterparts in Naypyitaw.<sup>51</sup> Unfortunately, the opportunity for UNDP's Board to remedy this at its September 2011 meeting has been missed.<sup>52</sup>

The IMF interprets its restricted mandate on Myanmar in a very narrow way. It has limited the scope of assistance that it will provide in response to a recent request – presumably the result of political signals from its board, and in particular the U.S. The World Bank could also have a very important role, for example on poverty reduction and tackling corruption, but similar sensitivities are holding it back. While there are some legal constraints – including in U.S. law – preventing loans and certain forms

<sup>46</sup> Crisis Group interviews, participants in the meeting, August 2011.

<sup>47</sup> Crisis Group interviews, business community and economists, Yangon, August 2011. See also U Myint, "Myanmar Kyat Exchange Rate Issue", Yangon, 25 June 2011 (presented to the National Workshop on Reforms for Economic Development of Myanmar, Naypyitaw, 19-21 August 2011).

<sup>48</sup> The previous 10 per cent rate included an 8 per cent export tax and a 2 per cent commercial tax. For most products, the ex-

port tax has been suspended, leaving only the 2 per cent commercial tax.

<sup>49</sup> See, for example, "Finance and Revenue Ministry plans to fix stable exchange rate", *New Light of Myanmar*, 27 August 2011, p. 8.

<sup>50</sup> Crisis Group interviews, individuals with knowledge of the plans, Yangon, August 2011. Indeed, the IMF Article IV team noted recently to diplomats in Yangon that the new Central Bank building in Naypyitaw was larger than the finance ministry.

<sup>51</sup> Crisis Group interview, U.S. State Department official, Washington DC, 13 July 2011.

<sup>52</sup> Crisis Group interviews, diplomats of countries represented on the Executive Board, Yangon and Bangkok, August 2011.

of technical assistance to Myanmar from the International Financial Institutions, there is nothing to prevent many other forms of advice and assistance. If these institutions are to support reforms that they, and the West, have long called for, and which are now being undertaken, it is essential that board members, particularly the U.S., give the necessary political signals. Failure to do so could be to the lasting detriment of the Myanmar people.

Even with the best international advice and support, there are major domestic hurdles to achieving deep and lasting economic reform. Accurate information needed to effectively set policies is missing on everything from GDP and its structure, to trade balance, balance of payments and beyond. There is resistance from the many officials at all levels that profit from the status quo. There are also problems of bureaucratic inertia, inter-ministerial rivalries and lack of skills to implement reform. Recognising this, the president warned in his opening address to the second session of the congress that “in this transitional period, we are working hard for transition to a new system. So, we will take punitive action against those sticking to (the) red tape system, and those without a sense of democratic spirit”.<sup>53</sup>

## B. POLITICAL AND HUMAN RIGHTS REFORMS

The new government has demonstrated its willingness to tackle political and human rights questions, though much more needs to be done. Major progress on these issues will be seen as a key test, domestically and internationally, of its will and capacity to bring about change. The ongoing detention of some 2,000 political prisoners is incompatible with achieving national reconciliation. While no major release of political prisoners has yet taken place, there are indications one could be imminent.

A first, modest step towards this goal took place on 16 May, when the president announced a “clemency” for prisoners: one year was cut from all prison terms, and all death sentences were commuted to life imprisonment. (Myanmar no longer carries out judicial executions in any case.) This led to the release of 14,600 prisoners, but only around 100 were political prisoners. There are suggestions that a proposal was put forward internally at that time for a more significant release of political detainees, but that major disagreements at a senior level could not be resolved after three days of discussion.<sup>54</sup>

A major concern of the government is that release of many strident critics could create unhelpful tensions and

confrontation. The speaker of the upper house told the UN Special Rapporteur during his August visit that Myanmar “will release [political] inmates when they are certain not to disrupt the nation’s stability and peace”.<sup>55</sup> That moment could be approaching. The improved relationship with Aung San Suu Kyi is a very important factor that gives the government greater confidence a significant release would not fuel anti-government protests or unrest. In recent weeks, the International Committee of the Red Cross (ICRC) was granted access to prisons for the first time in six years, although only to carry out water and sanitation activities, not yet for meetings with detainees.

In another development, the lower house agreed to discuss an opposition motion that the president declare an amnesty for political prisoners. Not only did the motion pass, but it did so with the support of the military bloc – a powerful indication of how much has changed in recent months. The motion read:

Lower House Representatives and Defence Services Personnel in the lower house called for a general amnesty to be issued at the opportune time. Due to the full capacity of farsightedness and high consideration on the part of the President, they firmly hope that he would make an assessment and issue an order of amnesty.<sup>56</sup>

It was clear from the discussion that this referred to political prisoners. The home minister discussed with the UN Special Rapporteur the identities and number of such prisoners based on a list compiled by the exiled Assistance Association for Political Prisoners.<sup>57</sup> Importantly, he did not deny that there were prisoners of conscience, but indicated that more than 100 on the list were guilty of non-political crimes. Many others could not be identified by the authorities, due to a lack of details. This should not be an impediment to an amnesty since “security detainees” are identified as such in prison records, even those charged with non-political crimes.<sup>58</sup>

In addition to indications that some imprisoned activists may soon be released, there have also been efforts to reach out to exiles. In his speech on 17 August, the president invited those living overseas to return home (see Section II.A above). It is unlikely that on the basis of this

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<sup>55</sup> Reported in the *New Light of Myanmar*, 26 August 2011, p. 5.

<sup>56</sup> Reported in the *New Light of Myanmar*, 27 August 2011, p. 7.

<sup>57</sup> This discussion was reported in the *New Light of Myanmar*, 26 August 2011.

<sup>58</sup> This category of prisoners includes political detainees, but also those arrested for violent offences such as members of insurgent organisations caught carrying weapons or explosives. Some of the latter are included in political prisoner lists compiled by opposition groups and may not necessarily be included in a political amnesty, but may possibly be dealt with as part of future peace agreements with armed groups.

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<sup>53</sup> President’s speech to the opening of congress, 22 August, reproduced in English in the *New Light of Myanmar*, 23 August 2011.

<sup>54</sup> Crisis Group interview, ASEAN diplomat, Yangon, August 2011.

plea alone many in the exile community will have the confidence to do so while such a large number of people remain incarcerated for their political views. In order to further test the new climate of openness, the underground All Burma Federation of Student Unions has announced its resumption of open political activity and indicated that it will seek registration as a legal organisation.<sup>59</sup> Significantly, an exiled Myanmar journalist from the Voice of America Burmese Service – an entity that was until recently attacked in daily propaganda slogans in the state media – was permitted to travel to Myanmar with U.S. Special Representative Derek Mitchell to cover his visit.<sup>60</sup>

Just as the detention of political prisoners is incompatible with national reconciliation, so too are abuses of fundamental human rights incompatible with the “government of the people” that the president has pledged.<sup>61</sup> Some action has been taken in this regard. A number of standing committees have been established, and bills submitted, dealing with human rights issues. These are discussed further in the next section. But much remains to be done to address the widespread impunity of government officials and the military, restrictions on basic civil liberties, abusive laws and administrative practices, and brutal actions of the army, particularly in ethnic minority areas.

A potentially significant development is the establishment of the Myanmar National Human Rights Commission. Announced on 5 September, it consists mainly of retired government officials and ex-diplomats, as well as three retired academics.<sup>62</sup> Many appointees are well-respected, and the membership includes ethnic and religious minorities.<sup>63</sup> It remains to be seen how independent a commission made up mostly of retired officials will be; much probably depends on how much political space continues to open, and what high-level political support the commission will enjoy. The composition offers certain advantages, as retired senior officials with extensive experience possess an understanding of the system and access to its key players that those from outside government would not have. The government says the commission is independent and will cooperate with the UN and other international bodies.<sup>64</sup> It should also ensure that the Commission operates in line with the Paris Principles – the best-practice guide-

lines for such institutions, adopted by the UN Human Rights Commission in 1992.<sup>65</sup>

The upcoming by-elections for 48 legislative seats, expected in November, will be another test of how far the government is ready to go on reform. When the Election Commission convened 37 registered political parties in Naypyitaw in July, a ten-member alliance of those represented in parliament, the Group of Democratic Party Friends, presented a paper on irregularities during the previous election, including four main issues: (1) local election commissions failing to correctly implement the laws and regulations; (2) procedures for advance voting; (3) excessive fees charged for parties to obtain copies of the voter roll; and (4) fraudulent votes, including advance votes submitted after midnight on election day. The chairman of the Election Commission accepted these points and undertook to correct the irregularities.<sup>66</sup> There are system issues that go beyond implementation of existing rules; there are also problematic provisions in the laws themselves that must be addressed – including the high cost of registering candidates and restrictive provisions on the management, activities and campaigning of parties.<sup>67</sup>

## C. LEGISLATURES AND LAWMAKING

The second sessions of the two houses of the legislatures, and the first to be held since the transition to the new government, were convened on 22 August. While the previous sessions were closed, only covered by the state media, this time journalists have been permitted to observe debates from the galleries and report on them.

Even the rather bland coverage in the state media has indicated that the debates in both houses have been lively and have covered many topics that would previously have been seen as highly sensitive, such as conflict in ethnic areas, amnesty for political prisoners, reinstating licenses for activist lawyers and ending *in camera* trials at Insein prison. Government ministers have been called to give explanations, which have been often detailed, although not always satisfactory. Also, as was the case with the previous sessions, much time has been taken up with matters that are hardly of national importance: the poor state of a township’s lampposts, or a request for express trains to stop at a particular suburban station. This shows the inexperience of legislators and that there are no other ways to raise such issues.

<sup>59</sup> See “ABFSU to restart political activity in Burma to test new government”, Mizzima, 30 August 2011.

<sup>60</sup> Daniel Schearf, “Burma’s Aung San Suu Kyi still waiting for democracy”, VOA, 13 September 2011.

<sup>61</sup> President’s speech to the opening of congress, 22 August, op. cit.

<sup>62</sup> Union Government Notification 34/2011, 5 September 2011.

<sup>63</sup> To take just three examples: Win Mra, the chair, is Rakhine; Professor Tun Aung Chein is a highly respected Karen academic; U Khin Maung Lay is Muslim.

<sup>64</sup> “Statement of the Myanmar Foreign Minister to the 18th Session of the Human Rights Council”, Geneva, 13 September 2011.

<sup>65</sup> Crisis Group interview, UN Special Rapporteur Tomás Ojea Quintana, Bangkok, August 2011; and *New Light of Myanmar*, 26 August 2011.

<sup>66</sup> Crisis Group interview, a senior party member present at the meeting, Yangon, August 2011.

<sup>67</sup> See Crisis Group Briefing, *The Myanmar Elections*, op. cit.

A large number of bills have been submitted, including on local democracy, labour unions (described by the labour minister as being of “international standard”), micro-finance, environmental conservation and registration of private schools. The majority have been submitted by the executive rather than by legislators. The speaker of the lower house has also indicated that a report on progress in addressing land confiscation cases will be submitted and that the competent legislative committee will monitor the actions of the executive in this regard.<sup>68</sup>

The legislature has also created a number of standing committees. Those that were established in the first sessions dealt mostly with procedural issues, whereas the new ones deal with more substantive issues. They could provide the possibility for more detailed oversight of the executive.<sup>69</sup> In addition, a number of commissions have been established, which include outside experts among their membership, including the Existing Laws Scrutiny Commission, which will review pre-existing legislation with a view to amending outdated or unconstitutional laws or provisions.

These legislative sessions are imperfect, and there is an understandable lack of knowledge and capacity on legislative functioning, including on the part of the speakers of both houses. Working methods will need to be reformed, including on such mundane but important matters as ensuring detailed calendars and agendas for sessions and committees are published well in advance. Democratic nations should step forward to provide expertise and training to help these nascent institutions develop in the right direction. The Russian Duma was the only legislature to invite Thura Shwe Mann, the speaker of the lower house, to come on a study visit following the initial legislative session and the transfer of power to the new government. ASEAN legislatures and its inter-parliamentary bodies should be the first to take up this role.

Despite their deficiencies, the legislatures have shown themselves to be far more independent of the executive, and to have far more energy and substantive debate, than anyone could have imagined. In part, this is due to the influence of Thura Shwe Mann, who was a very senior

member of the old hierarchy. It is not known why Than Shwe decided to give him this key legislative position. It is more likely that it was to check the power of an ambitious individual who had long been tipped for the presidency rather than to ensure a strong, independent lower house. Nevertheless, it may turn out to be fortuitous: certainly, Shwe Mann’s reasons for building the strength and independence of the lower house may have as much to do with consolidating the power base that he has been given, as it does with a genuine commitment to legislative independence. Yet, had a less powerful individual been given the task, the legislature would have been much more easily dominated and sidelined by the executive.

## D. A UN COMMISSION OF INQUIRY?

Serious human rights abuses continue to be committed in Myanmar. Progress in tackling those abuses and creating domestic accountability is only possible with the cooperation of the government and the military, whose personnel are a major part of the problem, and therefore must be a major part of any solution. At a time when the new government is moving ahead with its reform agenda, including on human rights, pursuing the establishment of a UN commission of inquiry is unlikely to achieve anything. At this time, the international community should focus its efforts on ways to support the process of reform and encourage engagement.

### 1. Background

In recent months, Myanmar lobby and exile groups and human rights organisations have stepped up their campaign for a UN commission of inquiry into allegations of international crimes in Myanmar. In a 7 July letter to President Obama, U.S.-based organisations called on him to “launch a vigorous diplomatic effort to win support at the UN for a Commission of Inquiry to investigate war crimes and crimes against humanity in the Burmese military’s campaigns against ethnic minority groups”.<sup>70</sup> On 12 July, Human Rights Watch issued a report on the use of convicts as military porters, which it characterised as war crimes, and stated that “the Burmese government’s long time failure to investigate abuses by its forces should prompt concerned governments to support a United Nations-led commission of inquiry into violations of international humanitarian and human rights law in Burma”.<sup>71</sup> The 70-page report also detailed other abuses against con-

<sup>68</sup> *New Light of Myanmar*, 26 August 2011, p. 5.

<sup>69</sup> For example, committees dealing with the following matters have been set up: Rights of Citizens, Democracy and Human Rights; National Race Affairs and Internal Peace-making; Banks and Monetary Development; Investment and Industrial Development; Resources and Environmental Conservation; Health Promotion; Education Promotion; Reforms and Modernisation Scrutiny; Public Complaints and Appeals; UN, ASEAN, ASEAN Inter-Parliamentary Assembly (AIPA) and International Relations; Farmers and Local and Overseas Workers Affairs; and several others. Many of the legislators who have been appointed to chair these committees are former ministers with related portfolios.

<sup>70</sup> “Burma: Banking Sanctions and Establishment of a United Nations Commission of Inquiry”, letter to President Obama from 22 organisations and one individual, 7 July 2011.

<sup>71</sup> “Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma”, Human Rights Watch and Karen Human Rights Group, July 2011.

vict porters, including summary executions, torture and the use of convicts as human shields.

On 19 August, Burma lobby groups in Europe issued a briefing paper arguing that the EU, which takes the lead in drafting the annual UN General Assembly Myanmar resolution, must ensure that such a commission is in the 2011 draft.<sup>72</sup> The UN Special Rapporteur for Myanmar raised the possibility of a commission of inquiry in a March 2010 report but stopped short of proactively endorsing such a move.<sup>73</sup> He has not reiterated this point, and following his most recent visit to the country, emphasised domestic recourse mechanisms, saying:

I continue to hold the belief that justice and accountability measures, as well as measures to ensure access to the truth, are fundamental for Myanmar to face its past and current human rights challenges, and to move forward towards national reconciliation. I would again encourage the Government to demonstrate its willingness and commitment to address these concerns and to take the necessary measures for investigations of human rights violations to be conducted in an independent, impartial and credible manner, without delay.<sup>74</sup>

Aung San Suu Kyi added her support to the idea of a commission of inquiry in a video address to the U.S. Congress on 22 June 2011, but this predated her recent positive talks with the government.<sup>75</sup>

## 2. Is a commission of inquiry the best approach?

Accountability for human rights abuses is of critical importance. There exists in Myanmar today an internal armed conflict in which all parties are guilty of serious human rights abuses, the majority of which are committed by government forces, and some of which may constitute crimes against humanity or war crimes. The national army

has long used a brutal counter-insurgency strategy that targets the civilian support base of insurgent groups. Use of villagers and prisoners as porters for the military in these operations also continues to be widespread and extremely abusive, as the recent Human Rights Watch report documented. Yet, in the Myanmar context, pressing for an international commission of inquiry is probably not a viable option at this stage.

It is extremely unlikely that calls for the establishment of such a commission will be successful. There are three procedural routes available: the UN Security Council, the UN General Assembly, and the UN Human Rights Council (HRC). In the Security Council, there is insurmountable opposition from two veto-wielding members, China and Russia. The General Assembly has never established such a commission (only commissions on budgetary and procedural matters), and there is strong resistance to creating such a precedent, making this option a non-starter.<sup>76</sup> In the Human Rights Council, there is insufficient support to adopt such a proposal; in particular, there is no support from the Asian member states that would be necessary. Suggestions that the UN Secretary-General acting alone would initiate such an inquiry, or a mere Panel of Experts as he did with Sri Lanka, are unrealistic. They ignore the different context of the two countries, in particular the undertaking that the president of Sri Lanka had given the Secretary-General that domestic accountability measures would be put in place.

Yet, it remains vital to continue pushing the government to address the concerns underlying calls for a commission of inquiry, in particular to ensure that the army ends its abusive tactics and behaviour. It is crucial to maintain a strong human rights agenda, including through continued access to the country by the Special Rapporteur, access to prisoners by the ICRC, continuation of the International Labour Organisation (ILO) complaints procedure on forced labour, and the strengthening of domestic accountability mechanisms such as the newly established Myanmar National Human Rights Commission. It is not yet clear how effective or credible the Myanmar Human Rights Commission will be, but it should be provided with appropriate technical assistance and challenged to deal with the many grave violations that are occurring.

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<sup>72</sup> "European Union Must Include Crimes Inquiry In UN General Assembly Resolution", statement by members of the European Burma Network, 19 August 2011.

<sup>73</sup> "Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar", Human Rights Council document A/HRC/13/48, 10 March 2010. The exact wording used was: "United Nations institutions may consider the possibility to establish a commission of inquiry with a specific fact-finding mandate to address the question of international crimes" (p. 29).

<sup>74</sup> "Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar", Yangon International Airport, Myanmar, 25 August 2011.

<sup>75</sup> She has not made any public remarks on whether she has changed her position on this issue. However, in a recent meeting where the matter was discussed, her focus was reportedly more on finding ways to move the situation forward, rather than on mechanisms to apportion blame. Crisis Group interview, an individual who recently discussed the issue with her, August 2011.

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<sup>76</sup> Crisis Group interviews, diplomats accredited to UN, New York, 18 July 2011; Crisis Group email correspondence, UN official, New York, 14 September 2011.

#### IV. WHAT NEXT?

Rapid and significant change has taken place in Myanmar in recent months. In addition to analysis of the significance of these changes, provided in the preceding sections, it is also important to examine how sustainable they will prove to be. This in turn requires a deeper understanding of the underlying power dynamics.

First, and most importantly, Than Shwe has withdrawn from the political scene. He plays no role in day-to-day decisions, nor is he exercising any discernable influence over events. This has given the president the confidence and space to implement his reform agenda.<sup>77</sup>

Secondly, the president has gained the ascendancy over the “reactionary tendency”. In the first three months in office, he was much more cautious, playing a balancing role between reformists and reactionaries. As of July, he has been more confident in exerting his authority. He is now moving ahead quickly, apparently wanting to build unstoppable momentum behind his reform package while he has the space to do so.

Thirdly, the president enjoys the support of key power-holders, including the commander-in-chief and the speaker of the lower house, according to those with direct knowledge of the situation. There is also clear supporting evidence: ministers in military-controlled portfolios (such as defence and home affairs) are taking positions supportive of the president’s reforms, as are military representatives in the legislatures; and the lower house is being similarly supportive. The home minister – appointed by the commander-in-chief – has been the most outspoken minister on the question of releasing political prisoners, a proposal that is also backed by the military legislators. Similarly, a great deal of discussion has been possible in the lower house on reform issues, much of it initiated by opposition legislators. Such support for the president is critical because the division of powers in the constitution (based on institutions) is incompatible with established decision-making mechanisms (based on personalities and vested interests), and in this early stage of the transition could easily have crippled decision-making.

The commander-in-chief, Min Aung Hlaing, is seen as a professional soldier with a clean record. He has moved quickly to stamp his authority on the military, reshuffling the top ranks and sacking several senior officers. Part of the reason for his support for the president may be that he wants to restore the reputation of the armed forces and considers that the best way of doing so is to focus on building a professional military in a reformed political environment. Some sources suggest that he may have an agreement with the president that he will not interfere in political and administrative matters in return for autonomy in running of the military. He may also have an eye on the presidency itself.

These power dynamics have much to do with jockeying for position in the post-2015 administration. Min Aung Hlaing is due for mandatory retirement by 2016, at age 60. As commander-in-chief, he is well-positioned to be the presidential nominee of the military legislators, since it is he who appoints them.<sup>78</sup> The current military nominee, Vice President Tin Aung Myint Oo, is very unlikely to have a second term. He has little incentive to cultivate his reputation and is more focussed on short-term interests.

The other two presidential nominee positions following the 2015 elections are more contested. Much will depend on the outcome of those elections. It can be expected that the upper house nominee will be an ethnic representative, as now. Thura Shwe Mann would be in a very strong position to be the lower house nominee, especially if President Thein Sein (the current nominee) decides not to take a second term – possible, given his rumoured ill-health.<sup>79</sup>

Provided the president manages to maintain the political momentum, it would not be in the interests of either the commander-in-chief or the lower house speaker to be seen to be undermining vital reforms. Since there are separate indications that these individuals are reform-minded in any case, it seems likely that the president will be able to continue to move ahead with his agenda.

<sup>77</sup> In fact, in all the interviews conducted for this report, the only information to suggest that Than Shwe had been involved in any political issue was a rumour – which may well be apocryphal – that he had summoned the first vice president to his residence in July and told him in no uncertain terms to “stop obstructing the work of the government”.

<sup>78</sup> The presidential election process is as follows. Three persons are nominated, one each by the elected representatives of the lower house, the elected representatives of the upper house, and the military appointees of both houses. An electoral college is then formed, consisting of all legislators from both houses, who vote on the three nominees. The nominee with most votes becomes president, the other two become first and second vice president, respectively.

<sup>79</sup> Similarly, if ill-health were to force Thein Sein to retire during his first term, Shwe Mann would be a shoo-in to replace him. (Under such circumstances, the constitution requires that the lower house choose a new presidential nominee, and a new presidential election is then held between the two incumbents and the new nominee.)

While this is encouraging, the challenges to a successful reform process should not be underestimated. First, the “reactionary tendency” may not have the political strength to challenge the president, but this does not mean its adherents cannot be powerful spoilers. Secondly, as the process moves forward, success will increasingly be determined not simply by political will but also by ability to implement these new policies. Here the picture is very mixed, and a combination of bureaucratic inertia, lack of capacity, weak institutions and lower-level vested interests and corruption could hold back progress.

tive developments, so should begin crafting tangible and timely policy responses. At a time when the political deadlock in Myanmar is being overcome, states must be ready to make major changes to their own policies or risk being overtaken by events.

**Jakarta/Brussels, 22 September 2011**

## **V. CONCLUSION**

Since taking up office less than six months ago, President Thein Sein has moved quickly to begin implementing his ambitious reform agenda. A series of important economic, political and human rights reforms are being made. A release of political detainees remains critical and could be imminent. The president has reached out to government critics, including Aung San Suu Kyi and the ethnic minorities. The evidence suggests that domestic considerations are driving these reforms, but the new government has also been much more engaged internationally. Myanmar is set to take over the rotating chair of ASEAN in 2014.

The president gives every indication of having the political will to put Myanmar on a new path. Yet, success will be neither quick nor straightforward. Experience from elsewhere shows that the challenges of transforming a country emerging from decades of ethnic conflict and authoritarianism are massive, and it is important that this be recognised in the Myanmar context. Powerful spoilers could complicate the process, and weak institutions and lack of capacity could hold back progress. In order to build broad-based public support, the government will need to deliver tangible improvements to ordinary people’s lives. Overcoming deep-seated suspicions of government in ethnic minority areas will take time and great effort and needs both a change in the abusive practices of the army and a new approach to governing the periphery.

With the political process moving ahead quickly, now is not the time for the West to remain disengaged and sceptical. It is critical to grasp this unique opportunity to support a process that not even the most optimistic observers saw coming. This requires a new, pro-active and engaged approach, in line with the positive signals coming from Naypyitaw. It is vital that the necessary advice and technical support is forthcoming now, from the West and from multilateral institutions. While legal obstacles exist to the full engagement of the International Financial Institutions, other forms of assistance from these bodies are blocked only by political caution that could immediately be removed. Beyond this, countries must be prepared for further posi-



## APPENDIX A

### MAP OF MYANMAR





## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

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stan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

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