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Panel: Peace processes and human rights

*The peace process in Burma's Chin State:
Better prospects for human rights protection?*

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1. Introduction

The dominant narrative about Burma¹ is of rapid political transition and progress towards peace. The government of Burma has signed bilateral ceasefire agreements with 14 out of 17 major ethnic armed groups (EAGs) in the country, and is in the process of negotiating a Nationwide Ceasefire Agreement (NCA) with the EAGs. In spite of this seemingly positive progress, armed clashes continue in both ceasefire and non-ceasefire areas. The dominant narrative arguably ignores the structural violence at the heart of ongoing human rights violations in the country, including in ceasefire areas.

The history of Burma's long-running ethnic conflicts and myriad of EAGs is very complex. Detailed discussion of the conflicts is beyond the scope of this paper, as is a comparative study of the various bilateral agreements signed by the government and individual EAGs. Instead this paper examines the peace process through the lens of the Chin State context.

In January 2012 EAG the Chin National Front (CNF - formed in March 1988) signed a preliminary ceasefire agreement with the government. Subsequent ceasefire agreements signed by the two parties are some of the most detailed of all the current bilateral agreements, with over 50 points of agreement. The CNF is a key member of the Nationwide Ceasefire Coordinating Team (NCCT), tasked with representing the EAGs in ongoing negotiations with the Union Peacemaking Work Committee (UPWC) representing the government for a Nationwide Ceasefire Agreement and a framework for political dialogue. At the time of writing, the current draft of the NCA is not publicly available, but it is widely understood to draw from the various bilateral agreements, including the detailed CNF agreements. The September 2014 round of negotiations on the NCA ended without agreement.

Thus, this paper presents a human rights analysis of the texts of the CNF-government ceasefire agreements, which are publicly available. It also draws on analysis of patterns of human rights violations documented by the Chin Human Rights Organization (CHRO) since January 2012, when the first ceasefire deal was agreed, until the end of September 2014. Although the overall

¹ Although the official name of the country has been Myanmar since 1989 when the military junta unilaterally changed it, many ethnic minority people view this change as part of a process of "Burmanization", as "Myanmar" refers only to the majority Myanmar or Bamar people. The post-colonial Union of Burma was founded in 1947 by leaders of the pre-colonial independent territories, namely, Chin State, Kachin State, Federated Shan State and Burma Proper or Ministerial Burma. 'Burma' continues to be the preferred term by many ethnic minority peoples, as it is viewed as more inclusive.

prevalence of documented human rights abuses is in gradual decline, CHRO has continued to record grave human rights violations by State actors during the ceasefire period, including sexual violence and torture in 2014.

The paper addresses the question of whether or not the current peace process offers better prospects for human rights protection, in both the short and long term. ASEAN countries host thousands of refugees from Burma, including at least 50,000 Chin. The dominant narrative has given rise to significant pressure on refugees to return home. This paper critically evaluates emerging key issues in the current peace process, which negatively impact not only the prospect of voluntary return of Chin refugees in safety and dignity, but also the prospects of increased protection for human rights and lasting peace for people in Chin State.

2. Unpacking the dominant narrative

Since assuming power in March 2011 following flawed, undemocratic elections in November 2010 [PILPG, 2010], Burma's quasi-civilian government under the leadership of President Thein Sein has been widely lauded for introducing progressive democratic reforms. Such reforms have included at least fifteen presidential amnesties for political prisoners and signing ceasefire agreements with 14 out of 17 major EAGs. These developments have been used to carefully craft the dominant narrative of foreign policy success in Burma. As a result of these positive developments, international sanctions on Burma were eased, suspended, or lifted and foreign investment in the country has risen [Hinshelwood, 2014].

Burma's peace process in particular has won President Thein Sein numerous accolades, including a Nobel Peace Prize nomination [Rogers, 2012] and the International Crisis Group's (ICG) "In Pursuit of Peace Award" in 2013 [ICG, 2012]. This move by the ICG - together with an early report on the peace process, which claimed it would be "foolhardy" for the West to make resolving the conflicts a pre-requisite to easing sanctions, maintaining instead that encouraging the government to find its own way to resolve the conflicts would lead to improvements in meeting key human rights benchmarks [ICG, 2011, pp.ii] - has arguably helped to justify the dominant narrative about democratic progress and peace in Burma.

For the purpose of understanding the Burma context of conflict, a narrow definition of violence or violent conflict can be equated with armed clashes between the Burma army and EAGs. In non-ceasefire areas such as Kachin State and northern Shan State, 127 clashes were reported by the media in 2013 [BNI, 2014, pp.9]. By comparison, over the same period 62 clashes were reported in ceasefire areas [BNI, 2014, pp.10]. Although this is significantly lower than in non-ceasefire areas, nonetheless, in Karen, Mon, and Shan States, even with a narrow definition of violent conflict bilateral ceasefire agreements have not yet resulted in 'negative' peace.

Such developments have largely been set aside by the parties to the conflicts, who have instead prioritized efforts to negotiate and sign a Nationwide Ceasefire Agreement. One possible explanation for this is that, "The difference between the new NCA and previous State and Union level peace agreements with individual groups is that it provides a more comprehensive approach to the ethnic problem that lays out a plan for cementing ceasefires and using political dialogue to ensure a durable peace." [BNI, 2014, pp.34].

Although some questions remain over whether or not the NCA would supersede the bilateral agreements, it seems unlikely that EAGs like the Chin National Front which have already negotiated detailed bilateral agreements would be willing to set aside the terms of those bilateral agreements for the sake of the NCA. In addition, several of the bilateral agreements, including the CNF agreements, contain provisions unique to that particular ethnic state context. BNI notes that the conditions signed in previous Union and State level ceasefires remain in effect, and argues that the developments in some of the agreements (such as military code of conduct, and recognition of ethnic rights) are important contributions to long-term efforts for peace and national reconciliation [BNI, 2014, pp.5].

There have been no armed clashes or violent conflict in Chin State since November 2010, unlike in other ceasefire areas. As noted earlier, the CNF are playing a key role within the NCCT to negotiate the terms of the NCA, and the CNF-government ceasefire agreements are among the most detailed of all the bilateral agreements. Given the absence of violent conflict in Chin State, addressing the question of whether or not the peace process in Chin State constitutes better prospects for human rights protection for Chin people could provide valuable ‘lessons learned’ for the nationwide peace process in Burma.

3. A human rights analysis of the CNF – government ceasefire agreements

This analysis of the CNF-government ceasefire agreements focuses on the text of the three agreements.² The three agreements signed in January, May, and December 2012 are comprised of 51 points in total [Chinland Guardian, 2012abc].

January 2012 agreement

Aside from agreeing to end mutual armed hostilities, the 9-point January agreement between the CNF and the Chin State government mainly focuses on military matters such as the location of liaison offices and army bases for the armed wing of the CNF, the Chin National Army (CNA), and freedom of movement for unarmed members of the CNF/CNA. It also provides for the CNF to hold public consultations. The January agreement was formally witnessed by members of the Chin Peace and Tranquility Committee (CPTC), a group of Chin pastors who have played a key role in mediating between the CNF and government forces since the mid-1990s, when urban guerrilla warfare tactics employed by the CNF were met with harsh retribution against ordinary Chin by the military regime. In particular, this included arbitrary arrest and detention under the 1908 Unlawful Associations Act and torture in custody, on the mere suspicion of any contact with CNF members.

² All analysis draws on international human rights principles and standards, as well as various UN resolutions, principles, and reports which have begun to articulate a specific set of normative standards for peace agreements [IHRP, 2006, pp.18]. These include (but are not limited to) the 2000 UN Security Council Resolution 1325 on the inclusion of women in peace processes and five subsequent UNSC resolutions; the 2004 UN Secretary-General's report on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies; the 2005 UN Updated Principles on Impunity; and the 2005 UN Commission on Human Rights resolution on Human Rights and Transitional Justice; and the 2007 Pinheiro Principles on Housing and Property Restitution for displaced persons.

May 2012 agreement

As well as deepening the terms of agreement on military matters such as troop movements, the 15-point May 2012 agreement contains some human rights provisions. Point 5 refers to the government's "international human rights moral obligations" [Chinland Guardian, 2012b], and Point 13 on basic human rights makes specific reference to freedom of religion or belief, forced labour, slavery, and human trafficking. Forced labour in particular has been a prevalent human rights violation experienced by the Chin under decades of military rule [HRW, 2009; CHRO, 2010; PHR, 2011].

Point 13 even specifically states, "The parties agreed to cooperate in ensuring unconditional and due punishment for anyone for violations of basic human rights in accordance with the law, as well as ensuring that no parties violates [sic] the constitutional basic human rights of the people in the future during the course of the ceasefire agreement." [Chinland Guardian, 2012b]. This provision not only prohibits human rights abuses by either party to the conflict, but can be interpreted as guarding against impunity for human rights violations, at least going forward from the date of signature until such a time as the ceasefire agreement is formally no longer in effect.

By contrast, point 12 appears to be at odds with point 13, as it could be interpreted as providing impunity for past human rights violations by the CNF/CNA. On the face of it, point 12 appears to deal with the ongoing designation of the CNF/CNA as unlawful organizations under existing laws such as the 1908 Unlawful Associations Act. It requires the Union-level peace team to submit a request for a Presidential amnesty for "anyone who has been arrested and imprisoned on account of CNF and CNA since the establishment of the organization, effective the date of the signing of this agreement." However, the wording of the last paragraph of point 12 is very broad: "The parties agreed that there will be complete immunity for any members of CNF and CNA after signing of this CNF-Union-level agreement from retrospective criminal prosecution." [Chinland Guardian, 2012b].

Point 12 would appear to go beyond the Unlawful Associations Act and could be interpreted as an attempt to create a level playing field with Article 445 of Burma's 2008 Constitution, which provides immunity from prosecution for any member of previous or current governments, "in respect of any act done in the execution of their respective duties." [UN, 2014, pp.15]. No party to the conflicts in Burma should enjoy impunity for any serious crimes under international law, including crimes against humanity, or other grave violations of internationally protected human rights committed in the past that are crimes under international law, such as torture, enforced disappearance, extrajudicial execution, and slavery (including forced labour); this is clearly underpinned by the 2005 UN Updated Principles on Impunity [UNCHR, 2005].

Point 14 of the May agreement provides for the formation of a Ceasefire Monitoring Body, to be comprised of members of the Chin Peace and Tranquility Committee and "other legal experts". The provision also states that, "the parties agreed in principle to institute and duly authorize independent and impartial observer groups when such need arises." [Chinland Guardian, 2012b]. The onus is on the Ceasefire Monitoring Body to report any failures to observe any of the points of agreement by named parties (the Union government, Chin State government, Burma army, police force, CNF and CNA) to a Crisis Mediation Body, instituted in point 15. It follows that this includes failures to observe point 13, on violations of basic human rights. Points

13 and 14 of the May agreement are positive developments, and in theory could lead to better prospects for human rights protection under the terms of the ceasefire agreements.

However, the Crisis Mediation Body to whom the Ceasefire Monitoring Body must report is formed under the leadership of the Chin State Border Areas and Security Affairs Minister, currently a Colonel in the Burma Army. It appears to be an ad hoc body to be formed in response to specific incidents, as it would include the relevant point persons from the CNF/CNA and the Burma Army according to the location of a reported incident. There is no provision for any international or independent observers or mediators to participate in the Crisis Mediation Body, and overall its role appears to be geared towards resolving troop movement or other military issues rather than investigating alleged human rights violations by either party to the conflict.

December 2012 agreement

The 28-point December 2012 agreement refers to a three-point peace process, which moves beyond ending armed hostilities to working towards holding Union-level political dialogue and a ‘Union Accord’ between the Union government and all ethnic nationalities. There are a number of important human rights provisions³, including point 23 which provides for the full enjoyment of all tenets of freedom of religion or belief in Chin State. It specifically includes the right to own land for religious purposes; the right to freely construct churches and other religious buildings; and the right to proselytize, all of which have been routinely violated for the Chin over many years [Ling & Mang 2004; CHRO, 2012; CHRO, 2013].

Of particular importance with regard to the possibility of better prospects for human rights protection are points 5 and 23. Point 5 provides for the formation of an independent Chin human rights committee, reporting to the National Human Rights Commission (NHRC), the Chin State government, and the CNF. The terms of reference for the Chin human rights committee are not specified, and the NHRC does not currently operate in line with the Paris Principles [UN, 2014, pp.15]. However, this provision does create an opportunity for civil society to develop and advocate for strong terms of reference for this new human rights body, including redress for past violations.

In short, a human rights analysis shows that on the one hand, the CNF-government ceasefire agreements provide for human rights protections and monitoring mechanisms; but on the other hand they also appear to endorse impunity for past violations.

³ Points 6 and 13 relate to development and the environment, including the implementation of a system by which local people will determine their own development priorities. Points 2, 21, and 22 provide for language and cultural rights [Chinland Guardian, 2012c].

4. Patterns of documented human rights violations in Chin State⁴

In order to address the key question of whether or not the agreements amount to better prospects for human rights protection, it is essential to examine patterns of documented human rights violations perpetrated in Chin State since the preliminary CNF-government ceasefire agreement was signed in January 2012. In addition, it is important to understand such patterns within the broader context of Chin State.

People in Chin State – the vast majority of them ethnically Chin - are officially the poorest in Burma by a wide margin.⁵ Most people in Chin State are subsistence farmers; 73 percent of people in live below the poverty line, compared with a national average of 25 percent, according to UN statistics [UNDP, 2011, pp.12]. Discrimination and poverty are inextricably linked, as emphasized by the UN Special Rapporteur on racism [Chinland Guardian, 2013]. The Chin experience many intersecting forms of State-sanctioned discrimination, based on their ethnicity (Chin), religion (predominantly Christian), language (for most Chin, Burmese is their second or third language), and socio-economic status (the poorest in Burma).

Over the past two decades, State-sanctioned discrimination has manifested as a pattern of pervasive human rights violations perpetrated against the Chin by State actors, which may amount to crimes against humanity [PHR, 2011]. Under military dictatorship, and before President Thein Sein's nominally civilian government assumed power in March 2011, forced labour (including portering for the Burma Army) and violations of freedom of religion or belief were among the most prevalent documented human rights abuses perpetrated against the Chin by State actors [CHRO, 2010; PHR, 2011].⁶

The table below indicates patterns of abuses ongoing in Chin State since the first ceasefire agreement was signed in January 2012, but cannot be considered a comprehensive set of data. It is important to understand the limitations of a quantitative analysis of documented human rights violations in the context of Chin State. Infrastructure in the area is very poor, with no fully paved roads, making access difficult. Many villages in Chin State are still only accessible on foot, via a network of small tracks; it can take three or four days to reach remote villages. As a result, most human rights violations are documented days or weeks after the fact, if at all. In addition, Chin State is heavily militarized. At the time of writing, there are 54 Burma Army camps in the area. Security issues for CHRO's small team of fieldworkers persist, as they are at risk of arrest and detention by the authorities during the course of their work to document the human rights situation in Chin State.

⁴ A small number of the human rights violations documented by CHRO have taken place in other areas where Chin people live, such as Arakan/Rakhine State, Sagaing Region, and Magwe Region. However, the vast majority of documented abuses took place in Chin State.

⁵ Arakan/Rakhine State is the next poorest with 44 percent of people living in poverty.

⁶ A 2011 report by Physicians for Human Rights (PHR), based on an extensive quantitative survey of human rights violations experienced by Chin households between 2009 – 2010, found that almost 92 percent of Chin households surveyed were victims of forced labour within that year, on average three times.

Table of human rights violations documented by CHRO in order of prevalence, since the preliminary CNF-government ceasefire agreement was signed in January 2012⁷

Type of human rights violation	2012	2013	2014 <i>*until end September 2014</i>	Totals by type of HRV
Extortion / arbitrary taxation	24	18	7	49
Freedom of religion or belief	9	10	4	23
Torture / ill-treatment	6	3	9	18
Arbitrary arrest / detention	0	0	18	18
Forced labour	9	4	0	13
Discrimination	3	6	0	9
Land confiscation	3	1	4	8
Freedom of expression and/or assembly	1	1	3	5
Sexual violence	2	1	1	4
Forced relocation	2	2	0	4
Food / property misappropriation or destruction	1	0	1	2
Threats / intimidation	0	0	2	2
Extra-judicial killing	1	0	0	1
Freedom of movement	0	1	0	1
Totals by year	61	47	49	157

One positive trend is that the prevalence of documented forced labour incidents is in decline, which is in part due to the International Labour Organization's efforts to assist the government in meeting a target of eradicating all forms of forced labour by 2015 [DVB, 2012].

A combination of a quantitative and qualitative approach to analyzing CHRO's documentation of human rights abuses over the ceasefire period is perhaps most effective. In the context of abject poverty, the impact of the most prevalent abuse - extortion or arbitrary taxation - should not be underestimated. In one particular case, a mother and her unborn child died when a doctor in a government hospital made repeated demands for money, and delayed surgery until it was too late [CHRO, 2012g]. Violations of freedom of religion or belief continue to be prevalent, and also intersect with other human rights abuses. In October 2013, local government officials threatened to burn down a village in a remote part of southern Chin State if villagers continued to assemble for Christian worship [CHRO, 2013e].

Throughout the ceasefire period CHRO has continued to document grave human rights violations such as extra-judicial killing and sexual violence, especially in remote areas. Sexual violence cases in particular follow the same prevalence and pattern as those documented by CHRO before

⁷ The numbers included in the table represent individual cases documented by CHRO; for example, arbitrary arrest and detention of 18 individuals within 2014. On the thematic issue of freedom of religion or belief, some policy decisions impacting on large numbers of people are counted as one incident. All analysis is drawn from CHRO's documentation publication *Rhododendron News*, published bi-monthly.

the ceasefire period [CHRO, 2010; CHRO, 2012a] they are very violent, and committed with apparent impunity by Burma Army soldiers.⁸

The above table shows that torture or ill-treatment and arbitrary arrest and/or detention are among the most prevalent human rights violations documented by CHRO over the ceasefire period. In fact, there has been an increase in documented cases in 2014. The following two case studies allow for more in-depth qualitative analysis of the current human rights situation in Chin State.

Case Study A fits a long-standing pattern of impunity for sexual violence perpetrated by Burma Army soldiers against Chin women [CHRO, 2012a pp.68-69]. In this case, women human rights defenders from the area put the democratic reforms to the test by organizing demonstrations in response to the incident. Although they sought official permission in advance in accordance with the law, it was not granted. This highlights how freedom of expression and assembly on issues deemed sensitive to the government are effectively curtailed by the 2011 Peaceful Assembly Law. Instead of taking effective action against the alleged perpetrator of sexual violence, the authorities attempted to silence human rights defenders who spoke out about the case.

CASE STUDY A: Sexual violence; freedom of expression & assembly⁹

June & July 2014: On 10 June, a 55 year-old woman from Rezua sub-township in the Matupi township area of Chin State was sexually assaulted and brutally beaten, allegedly by Burma Army soldier Private Myo Thura Kyaw from Light Infantry Battalion No. 269. Local people witnessed the incident, and the perpetrator was initially held in police custody after the incident. Burma Army Tactical Commander Colonel Naing Lin Tun staged a public ceremony in Rezua, during which he presented the victim's husband with 15 packets of noodles and 100,000 kyats. It is unclear what action if any is being taken against the perpetrator.

On 15 June, human rights defenders (HRDs) from the Zotung Women's Organization in Rezua sub-township applied to the Rezua police station for permission to hold a demonstration in protest at the incident, in accordance with the 2011 Peaceful Assembly Law. In response, local officials including the alleged perpetrator's commanding officer threatened the women at a public meeting, and warned them that the area would miss out on development aid if they went ahead with the demonstration.

The HRDs were not granted permission to hold the demonstration, but went ahead with it on 23 June with around 400 people in attendance. In Matupi town, HRDs from the Matupi Women's Organization applied for official permission from their police station to hold a demonstration, but were also refused. Around 200 people demonstrated as planned on 24 June.

Shortly after the demonstrations, four women human rights defenders from Rezua and two women and two men from Matupi were summoned to their local police stations and charged

⁸ Of the four sexual violence incidents documented by CHRO over the ceasefire period, all but one was perpetrated by Burma Army soldiers.

⁹ This case summary is drawn from CHRO's documentation, published in May-June and July-August 2014 editions of *Rhododendron News*.

under Article 18 of the Peaceful Assembly Law for demonstrating without official permission, which carries a maximum penalty of one year in prison. According to officials at Rezua police station, the order to file the charges reportedly came from Chin State Chief Minister Hung Ngai, an ethnic Chin and a former Brigadier-General from the Burma Army.

In spite of a public outcry over the charges, the eight HRDs were put on trial at Matupi township court and found guilty of demonstrating without permission on 23 July. All eight were ordered to pay an on-the-spot fine of 30,000 kyats each, or face up to one month in prison.

Case Study B highlights a total disregard for the terms of the CNF-government ceasefire agreements. It fits a pattern of abuses committed with impunity dating back to the height of the conflict between the CNF and the government at the mid-1990s. For ordinary Chin, the mere suspicion of association with the CNF/CNA resulted in brutal treatment amounting to torture at the hands of Burma Army soldiers. In this case such treatment was meted out by a Major in charge of a battalion, with complicity from his commanding officer.

CASE STUDY B: Arbitrary arrest & detention; ill-treatment amounting to torture¹⁰

August & September 2014: In late August, eight Chin farmers from a remote village in Paletwa township in southern Chin State were arrested and detained for more than a week by Light Infantry Battalion (LIB) 344 Commander Major Tin Htut Oo and soldiers under his command, on accusation of support for the Chin National Front/Chin National Army (CNF/CNA).

While in custody, seven of the farmers were subjected to ill-treatment amounting to torture by Major Tin Htut Oo and soldiers under his command. The farmers were threatened at gunpoint and the soldiers discharged their weapons at close range. At various points during their detention, seven of the men were tied up, kicked and punched, and were also denied food for the duration of their detention. One man was beaten with a wooden pole, resulting in head and neck injuries which required medical treatment. Two other men suffered severe swelling to their faces, to the point where they could not open their eyes.

After being held in custody for more than a week and enduring ill-treatment amounting to torture, the men were forced to sign a statement under duress, admitting contact with the CNF/CNA and agreeing never to do it again. The men were then released, and fled from their village to Paletwa town, where they wrote a complaint letter to Chin State Chief Minister Hung Ngai about their treatment at the hands of the soldiers. One of them also publicly accused the soldiers of torture at a press conference in Rangoon.

While in Paletwa, the farmers were convinced to return to their village by soldiers from LIB 344, who acknowledged wrong-doing and told them they would receive compensation. However, on arrival back to their village – accompanied by the soldiers - they were interrogated again by Major Tin Htut Oo and his commanding officer, and forced to sign a statement retracting the allegations of torture. The farmers fled again and at the time of writing are in hiding.

¹⁰ This case summary is drawn from CHRO's documentation, which will be published in the Sep-Oct 2014 edition of *Rhododendron News*. Information provided by CHRO formed the basis of the Amnesty International Urgent Action, issued 30 September 2014.

The above overview of CHRO's documentation of human rights violations since the signing of the first CNF-government ceasefire agreement in January 2012 and the two case studies show that at the time of writing, the human rights situation in Chin State has not improved over the timeframe of the ceasefire. In fact, courageous efforts in 2014 by ordinary Chin to defend their rights have been met with swift retribution by the Burma Army and the Chin State authorities, while human rights violations perpetrated by State actors appear to go unpunished.

5. Issues with the current peace process

Recent media reports highlighted some of the sticking points in the September 2014 round of negotiations, which ended without signing the NCA. These appeared to relate primarily to military matters, such as army placement, troop recruitment, and a military code of conduct, as well as questions over the concept of 'federalism' to be included in the framework for political dialogue [AFP, 2014]. Emerging key issues within the Chin context are also reflected in the nationwide process.

Robust monitoring mechanisms

In the Chin context, stakeholders and donors to the process have only recently provided the necessary components for implementation of monitoring (such as technical support, financing, and training for the CPTC to enable it to effectively fulfill its role as the Ceasefire Monitoring Body) more than two years after the May 2012 agreement provided for the formation of the body [Nonviolent Peaceforce, 2014].

In a positive indication of the willingness of local actors to fulfill their monitoring role, members of the Paletwa Ceasefire Monitoring Group (a township-level group under the CPTC) recently signaled their intention to raise the torture cases outlined in Case Study B with the Crisis Mediation Body. A spokesperson for the monitoring group noted that CNF/CNA had also violated the terms of the ceasefire by travelling through the village while armed [Snaing, 2014]. Although this can be viewed as a positive development, as noted earlier the Crisis Mediation Body to whom the Ceasefire Monitoring Body must report is solely comprised of representatives of parties to the conflict, with no participation from international or independent mediators. This raises questions as to how justice and redress for the victims of human rights violations committed during the ceasefire period will be achieved, particularly given the substantive issues outlined below.

In both the Chin context and the wider national context, committees or bodies comprising a monitoring mechanism must be independent of the parties to the conflict. In addition, any ceasefire agreement should include human rights protections and outline clear and effective recourse in the event that the terms of the agreement are broken, in line with international human rights standards.

Ending impunity

As noted above, the broad wording of point 12 of the May 2012 CNF-government agreement could be interpreted as an attempt to create a level playing field with Article 445 of Burma's 2008 Constitution. If a similar provision is included in the NCA, it could further entrench

impunity in Burma. The decades-long pattern of human rights violations committed with impunity continues in both the Chin and wider national context [ND-Burma, 2014]. On the issue of sexual violence alone, CHRO has documented four cases committed with impunity over the CNF-government ceasefire period.

A 2014 report by the Women's League of Burma documents sexual violence perpetrated by Burma Army soldiers against more than one hundred women and girls since the flawed November 2010 elections, with most cases linked to the ongoing military offensives in the non-ceasefire areas of Kachin and northern Shan State [WLB, 2014]. As WLB asserts, "Unless and until the military is placed under civilian control through constitutional amendments, we will not see an end to militarized sexual violence." [WLB, 2014, pp.2]

In his final report to the UN Human Rights Council, former Special Rapporteur on the human rights situation in Myanmar [Burma] Mr. Quintana recommended amendment of article 20(b) of the 2008 Constitution to bring the military under civilian control and oversight, as well as amendment to article 445. He also underlined that fulfilling the rights to truth, justice and reparation is an important step towards addressing impunity for human rights violations in Burma [UN, 2014, pp.16]. The provision for the creation of a Chin human rights committee is an important one, although it is unclear if other such State or Region-level bodies will be included in the NCA. Civil society will need to play a key role in developing and advocating for strong terms of reference - which could include redress for past violations as a means of preventing recurrence - for such bodies, as well as continuing to push for amendments to the 2008 Constitution in order to end impunity.

Gender sensitivity and inclusion of women

Burma's wider peace process has been criticized for being top-down and lacking civil society involvement. This in turn has meant the exclusion of women, who remain marginalized within the wider peace process [Khen & Haung Nyo, 2014, pp.16]. Looking at the Chin context, no women were included in the CNF negotiating team at any of the three rounds of talks. In addition, very few women are included in the township-level ceasefire monitoring committees under the leadership of the CPTC [Khen & Haung Nyo, 2014, pp.30]. Attempts to rationalize or justify this by invoking patriarchal cultural norms prevalent within Chin society can easily be refuted by citing the leading role of Chin women human rights defenders in Case Study A.

Such institutionalized gender discrimination is a key factor in militarized sexual violence, and the current peace process does nothing to address this. In the Chin context, both the government and the CNF/CNA have made a public commitment to end sexual violence in conflict, but to date no concrete action has been taken to implement these commitments.¹¹ There is an urgent need for the peace process to incorporate the policy framework set out in six UN Security Council Resolutions, centered on the need to involve women in peace processes to ensure that peace-building is democratic and sustainable. Resolution 2106 specifically urges the inclusion of sexual violence in the definition of acts prohibited by ceasefires and in provisions for ceasefire monitoring [UNSC, 2013].

¹¹ In March 2014, CNF/CNA signed Geneva Call's Deeds of Commitment on child protection and prohibition of sexual violence. In June 2014, the government signed the United Nations Declaration of Commitment to End Sexual Violence in Conflict.

Voluntary return of refugees, asylum-seekers and IDPs in safety and dignity

The dominant narrative has given rise to significant pressure from host countries on refugees to return home. This has been most widely reported in the media in relation to Thailand [Noreen & Dene-Hern, 2014], which hosts some 130,000 refugees from Burma. It is also true in Malaysia and India, which both host large numbers of refugees and displaced persons from Burma.¹²

In the Chin context, ongoing human rights violations committed with impunity are linked to militarization and the ongoing presence of Burma Army soldiers, rather than active conflict. To date, there has been no discussion of Burma Army troop withdrawal from ethnic areas during the peace process. Chin refugees and asylum-seekers have little confidence that the pragmatic ‘reform of the military’ agenda currently being pursued and supported by the US and UK governments will yield any positive results [Regan, 2014; Solomon 2014]. In the words of one Chin refugee, “Why would I want to return to my village when the soldiers who abused me are still there?”¹³

The 2005 *Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons* reaffirm the right to voluntary return in safety and dignity and the intersection with the right to housing, land, and property restitution [OHCHR, 2007, pp.54]. According to the UN Handbook on implementing the principles, “Voluntary repatriation to one’s own country without explicit provisions ensuring that the housing and property restitution dimensions of return are respected has become increasingly difficult to justify and will likely result in unfinished and incomplete displacement solutions.” [OHCHR, 2007, pp.26].

There are no provisions for housing, land, and property restitution for refugees and displaced persons in the CNF-government agreements, although this could be incorporated into the terms of reference for the Chin human rights committee. Civil society can utilize the *Pinheiro Principles* in advocacy efforts to ensure that restitution rights are included alongside the right to voluntary return in safety and dignity, either in the NCA or in the framework for political dialogue.

The need to institutionalize reforms

These emerging key issues with the peace process need to be understood within the wider context of Burma’s reform process. In his first report to the UN General Assembly as mandate-holder in September 2008, the former Special Rapporteur Mr. Quintana specified four core human rights elements for paving the road to democracy in Burma. These were: (1) reform of national legislation in accordance with international obligations; (2) release of prisoners of conscience; (3) reform of the armed forces to ensure respect for human rights; and (4) reform of the judiciary to ensure its independence and impartiality [UN, 2008].

In his final report to the UN Human Rights Council in March 2014, Mr. Quintana noted that the most progress had been made on the release of prisoners of conscience. With regard to the first core human rights element, he noted that out of 16 laws originally identified as in need of

¹² Key informants from refugee community-based organizations in Kuala Lumpur, Malaysia, and New Delhi, India, have reported coming under verbal pressure to return home, from government officials in Malaysia and UNHCR officials in New Delhi.

¹³ Interview with T.T., 18 January 2013, Kuala Lumpur, Malaysia. On file with the author.

reform, only one had been repealed [UN, 2014]. In addition, new laws such as the 2011 Peaceful Assembly Law are being used to criminalize freedom of expression and assembly. With regards to reform of the judiciary, he noted that little progress had been made so far, and urged the government to seek international technical assistance to establish an independent and impartial judiciary that is consistent with international standards and principles [UN, 2014]. According to Mr. Quintana, “[T]he rule of law cannot yet be said to exist in Myanmar [Burma].” [UN, 2014, pp.17].

With regard to reform of the armed forces, Mr. Quintana noted, “[V]iolations of international human rights and humanitarian law continue where military operations are ongoing (see para 34), and there is no progress in tackling the impunity under which the military forces currently operate.” [UN, 2014, pp.16]

Burma’s peace process cannot simply be divorced from these key substantive issues, nor should it be viewed in isolation. In short, there is an urgent need to deepen and institutionalize substantive reforms in Burma - not only to ensure democratic progress, but also to ensure that the peace process is ultimately successful.

6. Better prospects for human rights protection?

Although the CNF-government ceasefire agreements do include some human rights protections, analysis of CHRO’s human rights documentation since the initial ceasefire agreement was signed in January 2012 illustrates that in the short-term the peace process has not yet resulted in better prospects for human rights protection on the ground in Chin State. In fact, in 2014 the human rights situation in Chin State has arguably deteriorated, with swift retribution by the Burma Army and the Chin State authorities against ordinary Chin who have tried to defend their rights.

Key emerging issues in the current peace process include the need for robust monitoring mechanisms; ending impunity; gender sensitivity and inclusion of women; respect for the voluntary return of refugees, asylum-seekers and IDPs in safety and dignity and their restitution rights; and the need to deepen and institutionalize reforms.

Over the medium term, there is arguably potential for the peace process to provide improved prospects for human rights protection in Chin State, if there is political will on all sides. Civil society has a vital role to play in a number of areas. These include supporting ceasefire monitors in Chin State by providing them with documentation of human rights violations, and encouraging them in their efforts to leverage the ceasefire agreements by utilizing the monitoring mechanisms, limited though they may be at present.

Civil society actors – particularly women – will continue to demand a seat at the table. Civil society advocacy efforts should focus on strengthened monitoring mechanisms; the inclusion of human rights protections in the Nationwide Ceasefire Agreement and the framework for political dialogue; strong terms of reference for State-level human rights bodies; and strengthened calls for constitutional and other substantive reforms to bring the military under civilian control and end impunity, and to ensure the rule of law.

Over the long term, unless and until the key emerging issues are addressed comprehensively, they will have a detrimental impact not only on the prospect of voluntary return of refugees in safety and dignity, but also on human rights protection and lasting peace for people in Chin State and Burma as a whole.

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