

MYANMAR
Unrepresented Nations and People's Organization (UNPO)
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The Unrepresented Nations and People's Organization (UNPO) is an International, Non-violent and Democratic Membership Organization. Its Members are indigenous peoples, minorities, and unrecognised or occupied territories who aim to protect and promote their human and cultural rights, and to find nonviolent solutions to the conflicts which affect them.

A. Introduction:

Key words: 2008 Constitution, crimes against humanity, war crimes, collective punishment, enforced disappearances, Internally Displaced Persons (IDPs), forced labour, child soldiers, disenfranchisement, freedom of expression, peaceful assembly and/ or association, religious freedom, cultural and linguistic rights, land seizure, environmental degradation.

This Report is structured in the following Sections:

- **Section A:** UNPO Introduces its four Members in Myanmar: The Chin, Karenni, Mon and Nagalim
- **Section B:** UNPO raises the following on Myanmar's Normative and Institutional Framework and International Obligations; the failure of the 2008 Myanmar Constitution to protect the rights of Myanmar's Minorities and the urgency of the SPDC's to fulfil its obligations as signatory to International and Regional Instruments relevant to Minority and Indigenous Rights.
- **Section C:** UNPO explores the failure of the Union of Myanmar to provide equal social, political, economic, cultural, linguistic and religious rights to its Minorities, and instead subjects them to forced labour, arbitrary arrest, unfair imprisonment, torture, rape and extrajudicial executions.
- **Section D:** UNPO lists key recommendations to relevant Governments and Institutions.

Myanmar's Ethnic Minorities are grouped primarily according to Region, rather than linguistic or ethnic affiliation. There are an estimated 130 Minority groups in Myanmar, most of whom live in isolation from the National majority group, the Burmans.

Below are the four UNPO Members (excluding the National Council of the Union of Burma) of Myanmar:

The **CHIN** make up a population of about 1.5 Million who live along the Western border Myanmar shares with India, China and Bangladesh. They are predominantly Christian, and speak up to 49 different dialects. The Chin are Tibeto-Burman, just like their Northern neighbours, the **NAGALIM**. This group of about 4 million (Myanmar and India) make up 16 different tribes that inhabit the mountainous North-Western border areas Myanmar shares with India. They are also predominantly Christian, and speak English as their preferred language, amongst local languages.

The **KARENNI** are a sub-group of the Sino-Tibetan Karen Tribe, and make up a population of about 300,000 who live along the South-Eastern Thai-Myanmar border. They are also known as the 'Red-Karen'. The Karenni speak different dialects, but Kayah is a the most common language. They are also predominantly Christian or animist.

The **MON** peoples were amongst the first to introduce Buddhism into Myanmar. They live along the coastal frontiers in the South of the country, sharing a small border frontier with Thailand. This group make up about 8 Million people. Less than 1 million of these still retain the traditional Mon Cultural and Language; the others, under pressure of assimilation, have been absorbed into Burmese culture and society.

B: Myanmar's Normative and Institutional Framework and International Obligations:

The Constitution:

Myanmar's New Constitution was adopted on May 29th 2008 and came into effect through a National Referendum deemed neither transparent, nor democratic, which was conducted in the immediate aftermath of Cyclone Nargis in which at least 130,000 died.

An analysis of the Constitutional Provisions suggest that these further solidify the Executive Powers of the President and entrench the existing powers of the Military Junta. The ongoing systematic attacks by the Myanmar Military against the people of the Union, and specifically Minorities, constitute crimes against humanity, which refer to those crimes committed as part of a widespread or systematic attack against a civilian population.

Within the Constitution of Myanmar, there is reference to the recognition of different ethnic groups- referred to as 'National Races' (Article 22 a). There are no provisions however specifically tailored to protect these National Races in terms of policies implemented by the Government.

Ethnic groups in Myanmar have been campaigning for the right to basic freedoms since Colonization, and under the current regime these groups have only been further stripped off their human rights and the ability to participate in political processes which affect them.

Additionally, the new Constitution contains several clauses within it which make a legitimate democratic election, as proposed to take place this year (2010) impossible.

Within Chapter XIII of the Constitution, Article 354 States that;

Every Citizen Shall be at liberty in the exercise of the following rights, if not contrary, to the laws enacted for Union Security, prevalence of law and order, community peace and tranquillity, or public order and morality;

a) to express and publish freely their convictions and opinions

b) to assemble peacefully without arms and holding procession

c) to form associations and organizations

d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and other faiths.

There are a number of very obvious contradictions and limitations within this article;

Not only does the State strongly discourage the practice of these rights, '*convictions and opinions, peaceful assembly, association, language, literature, culture and religion*' are in fact often used as the basis upon which the State violates, imprisons and persecutes Myanmar's Minorities.

Inherent contradicts between the reality on the ground and the Union constitution can also be found in Article 22, contains perhaps the only reference to Minorities, or 'National Races', which in the context of the Constitution is not made restrictive under clauses such as '*the relevant National Races having right to vote*' (391 c) or '*National Races with suitable population*' (5).

It in fact actually states that: *The Union shall assist: (a) to develop language, literature, fine arts and culture of the National Races .*

The President of the Union, who also leads the National Defence and Security Council, *takes precedence over all other persons throughout the Republic* (Chapter III, Article 58), therefore he and his Council may determine when an individual or a group act '*contrary to the laws enacted for Union Security, prevalence of law and order, community peace and tranquillity, or public order and morality*', as stated in the Constitution. The lack of provisions to check and balance the powers of the President and the Military, maintain that under no circumstances are the people of Myanmar equal under the eyes of the law, let along those of Minority descent.

A reference to Chapter XI, Article 114, makes it especially clear to what extent the Executive are able, legally according to the Constitution, to abuse the rights of Myanmar's Minorities.

It states that *The President in promulgating an ordinance and declaring a state of emergency;*

b) may, if necessary, restrict or suspend, as required, one or more fundamental rights of the citizens residing in the areas where the state of emergency is in operation...

(418) a) *The President shall declare the transferring of legislative, executive and judicial powers to the Commander in Chief of the Defence Services to enable him to carry out necessary measures to speedily restore order..* (420) (He) *may..restrict or suspend as required, one or more fundamental rights of the citizens*

in the required area.

In this context, in those areas where many Minorities reside, and where they continue to struggle for the right to self- government, the provision of cultural and social rights, freedom from forced labour and impunity, the Union President may declare a State of Emergency as he wishes, and as cited in the Constitution '*restrict or suspend, as required, one or more fundamental rights of the citizens in the required area*'.

The majority of Myanmar's political opposition is made up of Minorities, whose peaceful political movements and activists, are systematically repressed by the authorities. The outcome for Minorities who engage in peaceful political protest include; enforced disappearances, arbitrary arrest, unfair imprisonment, torture and extra judicial executions.

Article X (407) ensures that '*If a political party infringe one of the following stipulations, it shall have no right of continued existence;*

b)direct or indirect contacting or abetting the insurgence group launching armed rebellion against the Union or the associations and persons deemed by the Union to have committed terrorist acts or the association declared to be unlawful association.

Not only does this law ensure that the majority of Minority groups are denied the freedom to form political associations, it also disenfranchises Minorities in Myanmar, again vesting all power to the State in determining who is perceived as having '*direct or indirect*' contact with '*terrorists*'.

Despite this provision in the Constitution, the Chairman of the Delegation of Myanmar to the United Nations, H.E U Nyan Win, made a Statement in the UN General Debate of the 63rd Session, in which he insured that '*All citizens, regardless of political affiliation, will have equal rights to form political parties and conduct election campaigns. The Government will make every effort to ensure that the elections will be free and fair*¹ during the General Elections of 2010

International Agreements affecting the Rights of Minorities:

Myanmar is a signatory of the International Convention on the Prevention and Punishment of Genocide (ICPPG), the Convention on the Elimination of all forms of Discrimination against Women (CEDW) and the Convention of the Rights of the Child (CRC)

Myanmar has also ratified ILO Convention No.29 regarding Forced Labour.

These Conventions should guarantee women, including all women from Minority groups, the rights and freedoms as outlined within International law.

They should also guarantee all children equal access to health care and education and protection by the state from being conscripted as Child-soldiers.

Bound by International Law to protect its citizens from forced labour, Myanmar is obliged to pursue all possible means to eradicate forced labour. In a letter dated October 17th 2008, in an address to the UN General-Secretary, the Permanent Representative of Myanmar to the UN States that '*Myanmar has shown its firm commitment to the eradication of forced labour in the country and explored every avenue for how to cooperate with the ILO*²

Myanmar's constitution contradicts its international obligations as a signatory to the ICPPG.

Chapter XVI, Article 445 ensures immunity from prosecution for '*any member of the government in respect of any act done in the execution of their respective duties*' which excludes all government officials from conviction and punishment for the crime of genocide, or was crimes waged against their own people.

Considering the non-ratification of *ILO Convention 169* concerning Indigenous and Tribal Communities, and the *UN Declaration on the Rights of Indigenous Peoples*, is to the detriment of the treatment of all its citizens, Myanmar's non-ratification of the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights* provides almost no basis of protection, of the Minorities of Myanmar, outside what is written in its own Constitution.

C: Promotion and Protection of Minority Rights on the Ground:

1 http://www.myanmarmissionny.org/component/option,com_docman/task,cat_view/gid,7/Itemid,7/

2 http://www.myanmarmissionny.org/component/option,com_docman/task,cat_view/gid,7/Itemid,7/

There exist huge disparities between the provision and protection of cultural, religious and linguistic rights and political representation, or access to; healthcare, education, housing, employment and resources, between Myanmar's largest population, the Burmans and the Unions Minorities.

Due to the automatic persecution of Minorities, thousands of people within Myanmar are internally displaced, villages are looted and burnt, land and resources are simply taken, and rape, collective punishment and forced labour continue to be widespread and systematic.

Linguistic, Cultural and Religious Rights

Christianity, practised by about 6%³ of the population, including the Nagalim, Chin and Karenni, is recognized, and its practice protected in the Constitution. Christians however, face persecution, pastors are forced to close Churches and sign documents stating they will refrain from their religious activities, and restrictions are placed on the building or opening of new sites without prior permission.

Even holding private religious services in ones home is restricted, as was the case for one Chin evangelist in Rangoon⁴. All religious organizations must register with the State, an exclusionary method through which to maintain control, without which the organization is restricted from buying or selling property, opening bank accounts, or distributing information.

Religious symbols are often destroyed with official permission, as was the case in Chin State, where a Cross was replaced, using forced labour, with a Buddhist pagoda⁵.

The practice of ones traditional language is discouraged, and often punishable. Myanmar Language is the only official language in the Constitution, and newspapers, radio or TV programmes in other languages are prohibited and punishable.

Cultural expression and practices are restricted by assimilation policies. The Chin, Karenni, Mon and Nagalim are struggling to preserve their traditional languages, practice their customs and celebrate their traditions, all of which are increasingly under the threat of disappearing.

Social, Political and Economic Rights

Myanmar's Minorities' social, political or economic rights are neither promoted, nor protected.

Despite the Governments International obligation, backed up by public Statement to the UN in which it said that '*Child protection is part and parcel of our culture and tradition...The Myanmar Armed Forces is an all volunteer army.. a person can not be enlisted until he has attained the age of 18*⁶, Minority children are regularly abducted and forcibly recruited in the army.

On December 15th 2009, Ree Reh, a Karenni boy of 12, was kidnapped by an Army Commander in Deemawso Township, and taken to a military camp whilst he was out grazing the family cattle. The family went to the camp and demanded his release, but the soldiers refused to return him. Reh Reh's parents were told that their son had now been sent to a recruitment centre to become a soldier⁷.

Again, despite its International legal obligations, forced labour is widespread and systematic. In the areas where the army are engaged in armed conflict against its own people, villagers are often forced to work in military camps. Minorities in particular are also forcibly subjected to unpaid hard labour, including the building of highways and other Government infrastructure projects.

Ethnic Minority women and girls are especially vulnerable and victimized by widespread and systematic sexual violence and rape by the Myanmar army. Sexual slavery is used as a means of terrorizing communities. Chin, Naga, Karenni and Mon women and youth girls are all victims of such war crimes.

Political rights of Myanmar's people, and in particular those for people of Minority origin, are neither promoted nor protected by the Constitution of the Union.

Imprisonment of political activists, and punishment for pursuing political representation guarantee that Minorities can not legally form political associations.

For a Nation that spends more than 40% of its GDP on its Military ambitions, and has one of the lowest expenditures on healthcare in the world⁸, the provision of such care to Minorities is almost zero. HIV/AIDS affects many such communities, as do a-lack-of-nourishment related diseases. In particular in instances where they are forced to flee their villages or when their land and possessions are taken by the Military,

3 <http://www.eagleworldnews.com/2007/10/01/us-report-highlights-christian-persecution-in-burma/>

4 <http://www.eagleworldnews.com/2007/10/01/us-report-highlights-christian-persecution-in-burma/>

5 <http://www.christianpost.com/article/20051208/witness-christians-persecuted-in-burma-starvation-abuse-rampant/index.html>

6 http://www.myanmarmissionny.org/component/option.com_docman/task.cat_view/gid.7/Itemid.7/

7 <http://www.karennihomeland.com/articles.php>

8 <http://www.hurights.or.jp/asia-pacific/051/05.html>

many minorities fall hungry. As all social institutions, including hospitals and schools are subject to Military control, the provision of these services is restricted for Minorities.

D: Recommendations:

To the Government of the Union of Myanmar:

- To honour its International Human Rights Obligations, and prosecute those responsible for breaking these.
- To ratify and honour *ILO Convention 169*, the *UN Declaration on the Rights of Indigenous Peoples*, the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights*
- To engage in meaningful and internationally monitored dialogue with the NLD and ethnic Minorities, introduce a nationwide unconditional ceasefire and to release all political prisoners.
- To end all arbitrary arrest, collective punishment, extrajudicial persecution and forced labour of ethnic Minorities, and all peoples in Myanmar
- To create the necessary institutions and seek International guidance through which to guarantee all Minorities freedom from sexual violence and forced recruitment into the army, the right to food, health and education, as well as equal access to the economic market and cultural, religious and political rights.

To the United Nations:

- To establish a Commission of Inquiry into war crimes and crimes against humanity committed by Myanmar towards its own people
- To support a Security Council referral of Myanmar to the International Criminal Court.
- To reject the current proposal for the elections of 2010
- To secure a universal arms embargo on the Myanmar Military regime

To the European Union and the United States:

- To fund cross-border aid to Easter Myanmar
- To maintain existing sanctions and to strengthen targeted sanctions against Generals and their economic ambitions.

To ASEAN and its Member States:

- Thailand: to continue receiving refugees from Myanmar, and to provide them sanctuary in Thailand for as long as they need it.
- For China, India and Thailand: not to invest in Myanmar, and to consider taking Regional action against its Nuclear ambitions.
- For all ASEAN Members to reject the current proposal for the elections of 2010
- For all ASEAN Members to urge the SPDC to engage in meaningful and internationally monitored dialogue with the NLD and ethnic Minorities, introduce a nationwide unconditional ceasefire and to release all political prisoners.

