

Upholding the Responsibility to Protect in Burma/Myanmar*

Introduction

The situation in Burma/Myanmar remains grave. With elections scheduled for 7 November 2010 international attention on the country has increased. Such attention, and any policy action taken, must focus not only on the goal of democratic transition, and concerns about the regimes nuclear collaboration with North Korea, but also on the plight of Burma's ethnic minorities who continue to suffer atrocities at the hands of the government. These atrocities may rise to the level of crimes against humanity, war crimes and ethnic cleansing – crimes states committed themselves to protect populations from at the 2005 World Summit, as described in the Global Centre for the Responsibility to Protect policy brief dated 4 March 2010, "Applying the Responsibility to Protect to Burma/Myanmar."

International actors have a responsibility to protect Burma's ethnic minorities from atrocities – atrocities that are often overshadowed by the attention focused on the pro-democracy movement. This brief assesses the current risk of atrocities and identifies measures that can be used to aid in preventing and halting these atrocities. The brief argues that pressure must be placed on the Burmese government to cease the commission of crimes and avoid the resort to violence against groups with which it currently has ceasefires.

Current Risks

Acts that appear to rise to the level of war crimes, crimes against humanity and ethnic cleansing continue to be perpetrated against ethnic minorities – including Karen, Shan and Karenni civilians – in the name of rooting out ethnic armed groups. The upcoming elections and the junta's desire to gain both international and domestic legitimacy have not led to a reduction in the targeting of civilians. Most recently, on 23 July, the Burmese Army, known as the Tatmadaw, reportedly shelled villages in Karen state displacing 900 people.

An additional source of concern over the past year has been related to the risk that armed conflict would break out over the government's demand that current "ceasefire groups" (ethnic armed groups that signed ceasefire agreements with the government in exchange for some level of autonomy to govern their communities) transition into border guard forces under the control of the Tatmadaw. The majority of these ceasefire groups including those representing the Wa, Mon, Kachin and Shan ethnic groups have resisted such demands. Negotiations between the government and the ceasefire groups have largely been unsuccessful at reaching

a compromise. Thus far the government has exercised restraint and appears to have placed such demands on hold until after the elections rather than resorting to an armed attack on the ceasefire groups.

However, there is no guarantee that such restraint will continue. Similarly, there is no indication that the government will halt its attacks on civilians in currently contested areas. There is also a risk that there may be an escalation of systematic attacks on the pro-democracy movement in the period surrounding the election. These attacks may include arbitrary detention, torture and extra judicial killings.

In light of the ongoing risk and the government's manifest failure to protect, the international community must take protective and preventive action. Possible measures that can be enacted in keeping with the responsibility to protect include diplomatic engagement, a commission of inquiry, an arms embargo and economic sanctions. While there is no guarantee, there are grounds to believe that these measures may influence the junta's calculations about the benefits of targeting civilians as well as their ability to perpetrate atrocities.

Diplomatic Engagement

Regional actors, including ASEAN and its members along with China and India, must engage with, and urge the government to exercise its responsibility to protect. China, as one of Burma's staunchest public supporters and biggest investors, has significant leverage. The Chinese government has, as of late, been playing a constructive role behind the scenes. This includes through its efforts to mediate conversations between the Burmese government and major ceasefire groups operating along the Chinese border. China's influence was likely a key factor in the Burmese government's apparent decision to place the issue of the border guard forces on hold until after the election.

Thailand and India should seek to play a similar role and ASEAN itself must move beyond publicly urging "credible and transparent" elections to engaging with the government on issues relating to the prevention of mass atrocities. Such engagement may include placing pressure on the government to permit visits to the country by the Special Rapporteur. Additionally, Thailand and other regional states must not use the election as justification for the forced repatriation of refugees likely to suffer atrocities if returned to Burma.

Governments outside of the region should increase their diplomatic engagement as efforts to isolate the regime have increased the government's insularity and paranoia. Efforts to open the channels of communication are crucial in the wake of elections which, while likely to be neither free nor fair, may provide a small opening for progress. Recent diplomatic visits by the United States are a positive step. Additional efforts, including possibly recognizing the junta's change of the country's name, may help to demonstrate that states are sincere in their efforts to improve relations. Better relations may enhance states' influence over the junta and create an opening to press the government on atrocity prevention. Finally, the UN needs to engage more intensely using mechanisms that potentially could include the appointment of a new Special Advisor on Myanmar and seeking to brief the Security Council.

Commission of Inquiry

In recent years, there have been numerous calls for International Criminal Court (ICC) consideration of the situation. Given that Burma has not ratified the Rome Statute, ICC engagement would likely require authorization by the Security Council, which may not be forthcoming. There have also been suggestions that an international commission of inquiry should be created. In his recent report, the Special Rapporteur on Myanmar stated that human rights violations that "may entail categories of crimes against humanity or war crimes under the terms of the Rome Statute" were taking place and that, as these crimes were committed with impunity, "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." Such a commission could be initiated by the UN Secretary General or the General Assembly and would bring intense scrutiny to the actions of the government, and possibly those of ethnic armed groups, against ethnic minorities and political opponents. The government has shown some level of concern about its international reputation. Increased attention and pressure may cause the government and its armed forces to moderate their behavior to some extent, reducing or preventing the commission of atrocities.

Economic Sanctions

At present economic sanctions, restrictions on aid dispersed through the government, and targeted banking and travel sanctions against individual generals apply to Burma. The broad economic sanctions target the formal economy, which benefits most directly from foreign investment and is dominated by those with ties to the regime. As a result, these sanctions impact more negatively the capacities of the military, individual generals and allies of the regime, than they do civilians who primarily operate in the informal

economy. Some arguments favoring the lifting of sanctions are premised on the idea that doing so would strengthen the middle class who could then challenge the junta's power. Yet the absence of an independent business sector in Burma suggests this is unlikely to happen. Despite the fact that sanctions have not been able to halt atrocities outright, they may have some impact on the military's ability to wage a larger scale war on ethnic minorities.

The current sanctions regime could be strengthened and made more effective by addressing two related issues. The first is that sanctions are not universally applied. Many influential regional actors, in particular, India, China and Thailand, continue to invest in and trade freely with Burma. Additionally, those countries that have enacted sanctions have not done so in a uniform manner. They have allowed numerous exemptions, notably in the energy sector, that in many cases directly benefit military leaders. Better coordination and the universalization of the sanctions regime could help improve their effectiveness. Tying conditions for the lifting of sanctions to a cessation of atrocities against ethnic minorities in Burma, instead of solely to a democratic transition, may also help advance the protection of populations from atrocities.

Arms Embargo

Many UN member states have embargoes restricting the sale of weapons to the junta and to non-state armed groups. However, as in the case of economic sanctions, the ban is not universally enforced. Implementing a global ban on the transfer of arms would contribute significantly to halting the four crimes by making it more difficult for the Tatmadaw to obtain weapons. Yet there are currently obstacles to such a comprehensive approach, in particular China and Russia export arms to Burma and may, based on past precedent, block efforts to have the UN Security Council put Burma on its agenda, and issue a resolution establishing an arms embargo.

Conclusion

The UN, ASEAN and key actors such as China and the US must, in keeping with their own responsibility to protect, place pressure on the Burmese government to take action to prevent and halt mass atrocities. Coordinated regional and international diplomatic engagement, focused on urging the government to cease the commission of atrocities against civilians and avoid a resort to violence with ceasefire groups, should be undertaken. This engagement should be in conjunction with other measures such as the creation of a commission of inquiry.

* The country was officially renamed the Union of Myanmar by the military government in 1989. The use of term Burma in this report is not intended as a political statement.