

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

Kenneth Roth, *Executive Director*

DEPUTY EXECUTIVE DIRECTORS

Michele Alexander, *Development and Global Initiatives*
Carroll Bogert, *External Relations*
Iain Levine, *Program*
Chuck Lustig, *Operations*

Dinah PoKempner, *General Counsel*
James Ross, *Legal and Policy Director*

DIVISION AND PROGRAM DIRECTORS

Brad Adams, *Asia*
Daniel Bekele, *Africa*
Alison Parker, *United States*
José Miguel Vivanco, *Americas*
Sarah Leah Whitson, *Middle East and North Africa*
Hugh Williamson, *Europe and Central Asia*

Joseph Amon, *Health and Human Rights*
Shantha Rau Barriga, *Disability Rights*
Peter Bouckaert, *Emergencies*
Zama Coursen-Neff, *Children's Rights*
Richard Dicker, *International Justice*
Bill Frelick, *Refugees' Rights*
Arvind Ganesan, *Business and Human Rights*
Liesl Gertholtz, *Women's Rights*
Steve Goose, *Arms*
Graeme Reid, *Lesbian, Gay, Bisexual, and Transgender Rights*

ADVOCACY DIRECTORS

Philippe Boloipon, *United Nations, New York*
Maria Laura Canineu, *Brazil*
Kanae Doi, *Japan*
Jean-Marie Fardeau, *France*
Meenakshi Ganguly, *South Asia*
Tiseke Kasambala, *Southern Africa*
Lotte Leicht, *European Union*
Sarah Margon, *Washington DC, Acting*
David Mepham, *United Kingdom*
Wenzel Michalski, *Germany*
Elaine Pearson, *Australia*
Juliette de Rivero, *United Nations, Geneva*

BOARD OF DIRECTORS

Hassan Elmasry, *Co-Chair*
Joel Motley, *Co-Chair*
Wendy Keys, *Vice-Chair*
Susan Manilow, *Vice-Chair*
Jean-Louis Servan-Schreiber, *Vice-Chair*
Sid Sheinberg, *Vice-Chair*
John J. Studzinski, *Vice-Chair*
Michael G. Fisch, *Treasurer*
Bruce Rabb, *Secretary*
Karen Ackman
Jorge Castañeda
Tony Elliott
Michael E. Gellert
Hina Jilani
Betsy Karel
Robert Kissane
Kimberly Marteau Emerson
Oki Matsumoto
Barry Meyer
Aoife O'Brien
Joan R. Platt
Amy Rao
Neil Rimer
Victoria Riskin
Graham Robeson
Shelley Rubin
Kevin P. Ryan
Ambassador Robin Sanders
Javier Solana
Siri Stolt-Nielsen
Darian W. Swig
John R. Taylor
Amy Towers
Marie Warburg
Catherine Zennström

July 28, 2014

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, DC 20500

Re: United States Policy Towards Burma

Dear President Obama,

The once promising democratic transition in Burma is in trouble. As you know, important developments have occurred over the last few years: thousands of political prisoners released, media censorship eased, civil society groups have flourished, government dialogues with ethnic armed groups have expanded, and an historic election saw members of Aung San Suu Kyi's long-repressed National League for Democracy (NLD) win seats in parliament. Yet, the momentum on reform has been lost.

The main hopes that came with the Burma military's embrace of reform—that the military would retire itself from political life; rights-repressive laws from past military governments would be revoked or revised; activists would no longer be imprisoned for political reasons; constitutional reform would bring an end to the military's control over civilian governance; and in 2015 a genuinely free and fair national election would occur—are all now in doubt.

During your historic visit to Burma in November 2012, Burmese President U Thein Sein made 11 pledges to you and the international community on rights and democratic reforms. The government implemented several of the pledges, including permitting the International Committee of the Red Cross (ICRC) access to prisons and allowing blacklisted people to enter and leave the country. The vast majority of political prisoners then in custody were released. On other pledges, there was continued cooperation with the United States, such as combating human trafficking, but with little progress on the ground. However, in several key areas that are central to ensuring Burma becomes a rights-respecting state, there has been either no progress or backsliding.

HUMAN
RIGHTS
WATCH

HRW.org

In demonstrating how far the reform process has stalled, and in some cases, shifted into reverse, we seek action by the United States and other concerned governments to put human rights and democratic reform in Burma back on track. In particular, we ask that you instruct Secretary of State John Kerry, during his forthcoming visit to Burma for meetings with ASEAN foreign ministers, to deliver strong public and private messages about the issues outlined in this letter. The United States should communicate to the Burmese government leadership that if these concerns are not meaningfully addressed soon, improved diplomatic relations, increased aid, and encouragement of foreign investment will be reconsidered. We recommend that you task Secretary Kerry to state that you will address these issues publicly during the ASEAN and EAS summits in November if the situation does not improve markedly between now and then.

Reform of the 2008 Constitution

The 2008 Constitution contains numerous provisions that are undemocratic and violate fundamental human rights. Efforts to reform the constitution have made no progress.

Key issues are removing limits on the ability of Aung San Suu Kyi to stand for the presidency because of the nationality of her children, ending the military's control over the civilian government, and removing the military quota of parliamentary seats. Discussions about the qualifications for the presidency are stalled, with ruling party leaders saying that this will not be changed before the parliamentary elections. We urge you not to accept the notion put forward by some diplomats that pressure to change this can wait until after the elections, as it is likely to be too late to garner the necessary external consensus to effectively pressure the military to accept the need for an amendment.

Just as important is the removal of constitutional provisions that give the military 1) widespread powers to dismiss parliament and—through the National Security and Defense Council—overrule any civilian legislation; 2) the right to appoint 25 percent of the parliament; and 3) an effective veto over any constitutional amendment by requiring the vote of more than 75 percent of the parliament.

The National League for Democracy's recent petition drive to demand changes to the constitution, which has garnered the signatures of over one million Burmese citizens, prompted threats from the government-controlled Union Electoral Commission to take action against the NLD's party registration.

In sum, hopes that the military would permit constitutional reforms that would reduce the military's role and allow the 2015 national elections to be free and fair were misplaced. We recommend that you communicate to President Thein Sein and other senior members of the Burma government, as soon as possible, that constitutional reform must begin before,

not after, the 2015 parliamentary election, and that if the parliament cannot choose a president from among all Burmese people on a non-discriminatory basis then the reform process will not be considered democratic or legitimate.

Establish an office of the United Nations High Commissioner for Human Rights

The establishment of a permanent office of UN High Commissioner for Human Rights (OHCHR) with a full mandate to monitor and report on human rights conditions and provide technical capacity-building was a core pledge by Thein Sein to you that has not been fulfilled. While several OHCHR staff members are based in Burma and other staff enter and work with official permission, this falls far short of what is needed. An OHCHR presence with regional offices and a clear and strong mandate is urgently needed for various reasons, such as to monitor and report on military abuses in ethnic areas, including the situation of the Rohingya, attacks on religious minorities, and politically motivated arrests; work with government officials and parliamentarians involved in legislative reform; provide training to civil society organizations, media, and development agencies; and assist the government in its reporting to UN treaty bodies.

While key ministries in the Burmese government have resisted the conclusion of an agreement with OHCHR, President Thein Sein can make the decision to keep his promise to you at any time. He should be told by Secretary Kerry that this is non-negotiable.

Initiate a process to assess the cases of remaining political prisoners

The release of political prisoners has long been seen as one of the main yardsticks of human rights progress in Burma. At the start of reforms in 2012, Burma had an estimated 2,100 political prisoners, and ensuing amnesties by Thein Sein reduced this figure considerably. On July 15, 2013, Thein Sein pledged to release all political prisoners by the end of 2013. A committee to review political prisoner releases and assess cases was established in early 2013, comprising members of former political prisoners groups, political parties, bureaucrats, and a senior member of the president's office.

Most political prisoners were released, but many remain, and new ones are being created by the application of vague and overbroad laws. The committee has been consumed by disagreements between government officials and civil society members. Because of unreleased prisoners and new prosecutions, the number of documented political prisoners has grown from the previous lows to approximately 65, including many peaceful protesters. More than 100 people face trial and are in custody on politically motivated charges, many stemming from peaceful marches over political and land rights issues. Five Burmese journalists from the *Unity Journal* were sentenced to 10 years hard labor in July for reporting on an alleged military program to make chemical weapons.

End military abuses and create sustainable political solutions with ethnic minorities

The central government and the Kachin Independence Organization (KIO) reached a tentative ceasefire after your November 2012 visit. However, sporadic fighting between the government and the KIO has continued and spread into areas of northern Shan State. An estimated 180,000 primarily ethnic minority people are still internally displaced, and there are reports that the Burmese military, or *Tatmadaw*, has engaged in torture and ill-treatment, targeted attacks on civilians, and sexual violence.

In August, there will be another round of negotiations for a nationwide ceasefire agreement between the government and ethnic minority groups, some of whom have been engaged in armed conflict for over six decades. Improved dialogue between the government and ethnic groups is impeded by land grabbing by the military, government officials, and favored business interests; continued abuses by government forces and armed ethnic groups; proliferation of landmines; and restrictions on humanitarian aid to ethnic areas most affected by the fighting.

The US government should urge that any ceasefire or peace agreement between the government and ethnic minority groups contain mechanisms with civil society participation as appropriate to promote and protect the affected civilian population from further rights abuses.

Decisive action in Arakan State

The Thein Sein government's most glaring failure on human rights has been the ongoing, deplorable situation in Burma's western Arakan State. The repression of the Rohingya Muslim minority, long the target of government abuse, continues on a massive scale. Since sectarian violence flared in June 2012, an estimated 140,000 mostly Rohingya displaced persons have been in camps around Arakan State; another 40,000 are in isolated non-camp communities receiving little assistance. The government has failed to arrest or prosecute those responsible for the violence against the Rohingya, particularly the coordinated "ethnic cleansing" of Rohingya communities in October 2012 that Human Rights Watch found rose to the level of crimes against humanity.

Rohingya, who have effectively been denied Burmese citizenship, were excluded from the March-April 2014 nationwide census, and continue to face tight restrictions on freedom of movement, employment, livelihoods, access to health, and freedom of religion. Conditions in the displaced person camps are desperate and are evolving into long-term internment where Rohingya communities are not permitted outside of camp zones.

In February, the national government suspended the operations of the humanitarian aid organization Medecins Sans Frontieres (MSF), the primary healthcare provider for Rohingya

communities, causing increased suffering of the population. In March, before the census, attacks on UN and international nongovernmental organization offices in the state capital, Sittwe, necessitated the withdrawal of over 300 aid workers. While operations have been partially resumed, there remain unnecessary restrictions on the operations of aid and development workers, exacerbating an already desperate situation. It is clear that the Rohingya have not been accorded the dignity and respect you called for in your speech in November 2012—a stark failure of the central authorities. We urge you to communicate to the government that if their inaction in Arakan continues, it will lead to serious diplomatic consequences.

Anti-Muslim violence

The rise in anti-Muslim violence and incitement throughout Burma since 2012 has also been alarming. Attacks took place in a number of towns in central Burma in 2013 and in Mandalay last month. The government has been ineffectual in preventing attacks, which are linked to rising Buddhist ultra-nationalism and often led by prominent Buddhist monks.

The government has worsened matters by seeking to enact laws— being pressed by Buddhist ultra-nationalists— that would restrict inter-faith marriage and require government permission for persons to change their religious faith. These laws, similar to now abandoned miscegenation laws in the US, are aimed at Muslims and other religious minorities. If approved, they would significantly deepen sectarian hostility.

Anti-Muslim violence in Burma is reaching a critical point. The US should be pressing the Burmese government to take action to deter further sectarian violence, including by renewing the call against anti-Muslim discrimination made in your November 2012 Rangoon University speech. The government should end its direct or tacit support for discriminatory laws, and announce its principled public opposition to them.

Humanitarian access to conflict areas

Despite some advances in granting access for humanitarian assistance to conflict areas, the Burmese government continues to unnecessarily restrict international humanitarian organizations from providing needed assistance in parts of northern Kachin State, northern Shan State, and all areas of eastern Burma where shaky ceasefires are being maintained. There are frequent reports of aid convoys being blocked or delayed and international aid workers not being granted travel authorization. Conditions have not improved to enable more than 350,000 internally displaced persons in eastern Burma to return to their homes, nor is there any current likelihood of return in safety and dignity of more than 130,000 refugees on the Thailand-Burma border. The UN High Commissioner for Refugees office in Thailand has stated explicitly that conditions are not currently conducive for refugees to

return to Burma. The continued presence of the *Tatmadaw* in areas to which the refugees would return is a key stumbling block, but so is the denial of access by humanitarian agencies to all parts of eastern Burma to adequately prepare for a return. We urge you to press the government to undertake renewed efforts on negotiations and remove remaining restrictions on aid delivery.

More open and accountable government

There is little doubt that Burma's national parliament has proved a more robust forum for debate and policy formulation than many observers initially thought possible. But the legislative process and Burma's governance system is still cloaked in the opacity, secrecy, and repressive policy and practice that existed under military rule. Parliament often hurriedly passes laws with inadequate debate, while draft laws are often either deemed official secrets or not shared with the media, civil society, or the public in advance of consideration. Members of parliament have told Human Rights Watch that they often do not have any idea which draft of a particular law is being considered for passage or when it will come up for debate. MPs have almost no time or capacity to confer with the Burmese public before voting on a bill. Always hovering in the background is the military quota in the parliament that, at times, has acted to shutdown debate on issues it deems sensitive, such as the *Tatmadaw's* extensive role in illegal land grabbing. The United States should press for an open and participatory legislative and legal reform process.

Human Rights Watch is concerned that reform efforts to build a rights-respecting and democratic Burma, to which the United States has provided considerable political support and generous economic assistance, are now very much in doubt. We urge you to task Secretary of State Kerry, during his forthcoming visit to Burma for ASEAN-related meetings, to deliver a strong message to the Burmese government on these issues and demand that past pledges for reforms are met. The US should be clear that the burgeoning US-Burma bilateral relationship is dependent on respecting human rights, building a tolerant multi-cultural and multi-faith country, and ensuring that all of Burma's communities and civil society are free to participate in the country's governance and public life.

Yours sincerely,



Kenneth Roth
Executive Director
Human Rights Watch