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President Obama's Burma Visit: An Alert Congress Makes All the Difference

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The context for President Barack Obama's trip to Burma has changed considerably since his historic first visit in 2012. Then, his visit conveyed optimism for democratic reform and the benefits of deepening engagement. His second visit takes place in a climate leavened by considerable doubt. In 2012 a pliant bystander in Burma policy, today's politically emboldened Congress will be following the visit much more carefully.

The bottom line in Burma is that the government has stalled on political reform, and by several accounts, begun to slide backwards. This is quite clear with respect to, among others, three main areas: political prisoner releases, ethnic reconciliation, and constitutional reform.

Broken Promises in Burma

In the summer of 2013, Burma's President Thein Sein promised to release all political prisoners by the end of that year. He has missed his self-imposed deadline. Releases, in fact, have slowed to a trickle. Of the 17 prisoner releases since 2011, encompassing 1,130 individuals, only two have taken place in 2014, accounting for a total of eight people.¹ As of today, Burmese authorities retain 74 political prisoners—

nearly half of them arrested this year. An additional 130 people await trial.² Yet, even in the face of a net increase in the number of political prisoners, the quasi-military government has tabled the idea of disbanding the effort to survey the nation's prisons and identify prisoners of conscience.

Ethnic reconciliation is another elusive goal for the Burmese government. There are two components: (1) continuing, state-imposed misery in Rakhine State, and (2) the continued impasse in efforts to reach a nationwide cease fire with other, armed, ethnic groups.

Violence in Rakhine over the past two years has killed hundreds, sent more than 100,000 minority Rohingya fleeing, and left more than 140,000 internally displaced. Far from addressing the problem, reports indicate that Burmese authorities, including the military and police, are profiting from the desperation by demanding payment to help Rohingya escape. Having fled one hell, the vast majority of these refugees find themselves, according to the reports, "in the custody of abusive human trafficking and smuggling gangs, who detain them in conditions of enslavement and exploitation.... [N]early all endure or witness torture, deprivation of food and water, confinement in extremely close quarters and other abuses throughout their journeys."³

Things are also bad at the official policy level. The government has recently proposed a plan to address the problem that Human Rights Watch calls "nothing less than a blueprint for permanent segregation and statelessness."⁴ The "Rakhine State Action Plan" requires the Rohingya to identify as "Bengali"—a term the government prefers because it implies foreignness—and prove their residency. Such accom-

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modation will win them, according to the plan, naturalized, second-class citizenship.⁵ Those who fail to so identify as Bengali or prove residency status will be detained in “temporary” camps, ultimately to be resettled in third countries.

Regarding the goal of a national cease fire, after six rounds of talks between the government and representatives of 16 geographically diverse ethnic groups, the basic stumbling point remains one of sequencing. The ethnic groups seek to address political issues, such as the practical meaning of “federalism” and related constitutional reforms, before laying down their arms. The government wants the rebel armies to disarm first. Essentially, the government seeks surrender in the context of a constitution that stipulates central government control over the states, locks in the military’s veto margin over constitutional amendments, and dictates central government control over the nation’s resources.⁶ What is more, even in the midst of talks on a national cease fire, conflict and attacks on ethnic areas continue.

Constitutional reform, of course, is not only a matter of concern to the ethnic groups comprising 40 percent of Burma’s population; it is essential to the integrity of its democratic processes. On October 22, a parliamentary joint committee on constitutional reform submitted a comprehensive report rejecting amendments that would level the playing field between presidential candidates from the ruling, military-backed Union Solidarity and Development Party (USDP) and other parties, including the National League for Democracy (NLD). As things

stand, the military’s guaranteed 25 percent of the seats in parliament ensure that the electoral college it comprises will select a USDP candidate for president. The committee also rejected changes that would allow the leader of the NLD, Aung San Suu Kyi, to contest the election under any scenario.

Daniel Sullivan of United to End Genocide has very usefully evaluated the progress in Burma against 11 benchmarks established by the Burmese government itself just before President Obama’s 2012 visit, including granting the Red Cross access to prisons, establishment of a U.N. High Commissioner for Human Rights office, conclusion of a cease fire in Kachin State, and ensuring international access to conflict-affected areas. Sullivan summarizes progress on these promises as one fulfilled, three “virtually ignored,” and “efforts on the rest mixed at best.”⁷ The one that it has honored is the signing of an additional protocol regarding “further access to information and inspections by the IAEA [International Atomic Energy Agency].” Critically, Sullivan scores progress on Burma’s commitment to stop its arms trade with North Korea as “uncertain,” which is being charitable.

An Increasingly Alert and Engaged Congress

Last week, 41 members of the U.S. House of Representatives signed a letter to President Obama “urging him to use his upcoming trip to Burma to insist the Burmese government stop stalling on key democratic reforms, including ending ongoing human rights

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1. *Burma Bulletin*, No. 94, October 2014, <http://www.altsean.org/Docs/PDF%20Format/Burma%20Bulletin/October%202014%20Burma%20Bulletin.pdf> (accessed November 10, 2014).
 2. Assistance Association for Political Prisoners (Burma), “Currently Political Prisoners List in Burma,” October 9, 2014, <http://aappb.org/2014/10/currently-political-prisoners-list-and-in-burma/> (accessed November 10, 2014).
 3. Myin Hlut, “AP Exclusive: Myanmar Profits Off Rohingya Exodus,” ABC News, November 6, 2014, <http://abcnews.go.com/International/wireStory/ap-exclusive-myanmar-aiding-rohingya-trafficking-26726296?singlePage=true> (accessed November 10, 2014).
 4. “Burma: Government Plan Would Segregate Rohingya,” Human Rights Watch, October 3, 2014, <http://www.hrw.org/news/2014/10/03/burma-government-plan-would-segregate-rohingya> (accessed November 10, 2014).
 5. Jane Perlez, “Myanmar Policy’s Message to Muslims: Get Out,” *The New York Times*, November 6, 2014, <http://www.nytimes.com/2014/11/07/world/asia/rohingya-myanmar-rakhine-state-thailand-malaysia.html> (accessed November 10, 2014).
 6. “Developments After the 2014 UNGA Resolution,” Alternative ASEAN Network on Burma, September 19, 2014, http://www.altsean.org/Docs/PDF%20Format/Thematic%20Briefers/Burma_2014_UNGA_briefer.pdf (accessed November 10, 2014).
 7. Daniel Sullivan, “Burma’s Broken Commitments: Thein Sein’s 11 Promises to Obama,” United to End Genocide, November 5, 2014, <http://endgenocide.org/burmas-broken-promises-thein-seins-11-commitments-obama/> (accessed November 10, 2014).
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abuses and ensuring credible, free and fair elections, in order for US–Burma relations to move ahead.”⁸

The chorus of concern in Congress has been growing. And, it is playing out in legislation. Most immediately, attention has focused on military-to-military (mil-to-mil) relations. The issue is currently being addressed in negotiations over the annual National Defense Appropriations Act (NDAA). The Armed Services Committees are considering language to restrict funding for mil-to-mil engagement. The only question is how narrowly to draw exceptions.

The same issues are on the line in debate over another must-pass piece of legislation—annual appropriations for State Department and foreign operations. The House version of the bill explicitly excludes International Military Education and Training and Foreign Military Financing for Burma. The Senate version highlights the need for military reform, and conditions this assistance on the Administration certifying that reform is underway.

Mil-to-mil relations is the most significant remaining area of U.S.–Burma relations still subject to sanctions; all other major areas, from investment to imports to multilateral lending, have been relaxed over the past three years. Congress recognizes that for a policy seeking to reward so-called reformers, military assistance is a tempting target. It also knows that promises that the Administration offers Congress today can easily give way to sincere apologies for having broken them tomorrow.

What the President Should Do

Indications are that President Obama has gotten the message from Congress and others that he must be tougher on Burma’s leadership regarding democratic reform. There is no sign that he intends to offer the regime any new rewards on his visit.⁹ On the contrary, ahead of his departure, he placed calls to Thein Sein and Aung San Suu Kyi in which he emphasized his concern about the human rights abuses and the integrity of the electoral process. He

should follow up vigorously while in Burma. Failure to do so will be viewed as a lack of commitment on his part. President Obama should:

- **Make clear that that underlying legal authorities for America’s 20-year-sanctions regime remain in place**, and if the situation continues to deteriorate, they can be re-imposed.
- **Take a cue from Congress**—place the blame on Congress, if need be—and tell Thein Sein that expanding mil-to-mil relations is impossible unless there is a documented end to human rights abuses, a cessation of military dealings with North Korea, and major, demonstrated reform.
- **Continue to stand by Aung San Suu Kyi.** That she be permitted to contest the election for the next president of Burma is not about holding the relationship hostage to one person. It is about a principle. The constitution of a legitimate democracy cannot single out one leader for disqualification for office, let alone Burma’s only leader whose party has actually won a free and fair national election.
- **Talk about constitutional reform.** Is this interfering in Burma’s internal affairs? Yes—that is what Americans do—and the downtrodden and powerless are thankful for it. The only sectors of Burmese society to complain will be those, like the military, who benefit from the deeply flawed 2008 constitution.

What Congress Can Do

Congress should exercise its constitutional oversight and spending roles by keeping the Administration’s feet to the fire. The President and responsible figures in the executive branch are surely acting in good faith and with the best of intentions. But bureaucracies develop lives of their own. They require clear parameters from Congress. Congress should:

8. News release, “With Progress Stalled and Backtracking in Burma, Crowley, Chabot, Franks, McGovern Call on President Obama to Insist on Democratic Reforms, End to Abuses,” Congressman Joseph Crowley, November 7, 2014, <http://crowley.house.gov/press-release/progress-stalled-and-backtracking-burma-crowley-chabot-franks-mcgovern-call-president> (accessed November 10, 2014).

9. Steve Hirsch, “Obama’s Myanmar Objectives,” *The Diplomat*, November 7, 2014, <http://thediplomat.com/2014/11/obamas-myanmar-objectives/> (accessed November 10, 2014).

- **Enact into law the restrictions currently being considered for inclusion in the NDAA.** Exceptions should be drawn as narrowly as possible. Likewise, congressional appropriators, in their own negotiations to fund America's foreign policy agencies, should bar assistance to the Burmese military.
- **Lead.** Whether the President welcomes it or not, the fact that Congress is active on this issue only strengthens his hand. The President can only hold out the prospect of re-imposition of sanctions if Congress is serious and systematic about its own follow-through. Congress should expand the practice of benchmarks beyond mil-to-mil relations and tie them to selective re-imposition of sanctions.¹⁰

Conclusion

Burma has come a long way since 2011 when a civilian, military-backed and military-staffed government took control of the government. Current trends, however, are very troubling. A mid-course correction of U.S. policy, including a clear presentation to Burmese authorities of expectations and consequences, is urgently required. Unlike two years ago, President Obama can be certain that his constitutional equals in Congress are watching his moves in Burma this week very carefully.

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10. Walter Lohman, "A Reverse Roadmap for Burma Sanctions," Heritage Foundation *Backgrounder* No. 2749, December 12, 2012, <http://www.heritage.org/research/reports/2012/12/a-reverse-road-map-for-burma-sanctions>.