



(A.4)

DISENFRANCHISED DEMOGRAPHICS: MIGRANT WORKERS, REFUGEES, INTERNALLY DISPLACED PERSONS, AND POLITICAL PRISONERS

The question of “equal voting power for all citizens” is very controversial in Burma’s situation. Burma is and has been a nation in crisis for nearly fifty years. Harsh military rule has resulted in a scattered population due to either economic or security reasons. Thus, disenfranchised populations exist both outside and inside of Burma. Though a registration was compiled for the 1990 election, the worst internal fighting occurred after that, necessitating an updated registration roll.

The right to vote is guaranteed in Article 25 of the ICCPR. Furthermore, in General Comment 25, the Human Rights Committee (HRC) applied the principle of non-discrimination stating that “the right to vote must be recognized and protected for all citizens, with no distinctions, restrictions or impairments permitted on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹ Finally, the HRC imposes a positive obligation on the State to facilitate the right to vote, mandating it to “adopt specific measures to ensure that obstacles to voting and participation, such as poverty, illiteracy, restrictions to freedom of movement and homelessness, are overcome” and that “voters should be able to form opinions independently, *free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.*” (emphasis added)² The following groups of people are disenfranchised under the SPDC’s current policies.

A. MIGRANT WORKERS

The 1962 coup d’état and subsequent economic failure under General Ne Win impoverished Burma. The lack of economic liberalization, along with political instability, led to decreased investment in the country and a soaring unemployment rate. Citizens soon began crossing international borders (most notably into Thailand) to earn wages doing manual labor. Many workers are undocumented, and even the ones with documents cannot easily return home to vote without forfeiting their jobs.





The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families underscores the “right to participation in public affairs of their State of origin and to vote and to be elected at elections of that State”.³ Even though Burma has not ratified this specific convention, the right to vote is still an internationally recognized norm.⁴ The practice of out-of-country voting (OCV) has been implemented in many countries around the world including the Philippines, Malaysia, Indonesia, Thailand, and Lao.⁵ The Filipino Overseas Absentee Voting Act of 2003 allows migrant workers to register at consulates or embassies in countries of residence, and apply to vote in absentia.⁶ 65 percent of the 359,297 registered overseas voters participated in the 2004 election,⁷ which was comparable to the in-country turnout. Thus, it is possible for a developing country to facilitate OCV. More importantly, it is a clear violation of the right to vote if the SPDC does not implement measures to vote in absentia.⁸ The lack of such a policy would deny up to three million Burmese migrant workers in Thailand⁹ from their right to vote.



Earlier this year, the SPDC began a partnership with the Thai government to issue temporary passports without forcing migrants to return to Burma. This has helped provide national verification and documentation for migrant workers. In the same vein, the regime is obligated to create a voter registration process that will allow workers to cast votes without having to return to Burma.

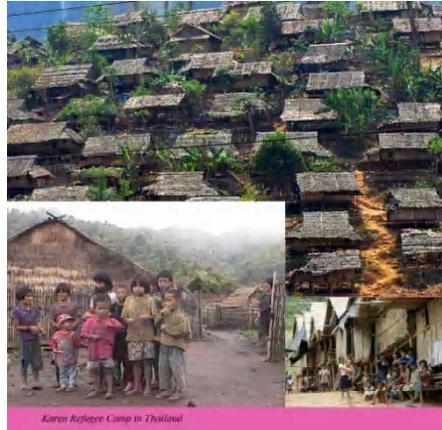
B. REFUGEES AND INTERNALLY DISPLACED PERSONS

When fighting intensified among the ethnic groups, which are situated in the North and West along Burma’s border, countless villages were destroyed and people were forcibly displaced. Many asylum seekers crossed international borders and are trapped in Thai refugee camps without status as belonging to any nation. According to Refugees International, there are an estimated 3.5 million displaced Burmese.¹⁰ Asylum seekers and refugees are in situations of persecution, which makes it unsafe for them to return to Burma. Even if their safety could be guaranteed inside the country, many are currently residing in



camp, which they are prohibited from leaving. Internally, people forced from villages, but unable to cross the border, have set up new residences in safe locations. However, internally displaced persons would not be able to return to their original homes without jeopardizing their physical security.

* File contains invalid data | In-line.JPG *Again, an out-of-country voting (OCV) or absentee system should be instituted to enfranchise rightful citizens. This is particularly crucial in Burma's case because internally and externally displaced communities contain a disproportionately high percentage of ethnic minorities. Participation of minority groups is internationally recognized as necessary to change existing conditions in governments that result in discriminatory practices.¹¹ However, political change cannot occur when ethnic minorities cannot even exercise their right to political participation. Displacement, especially in combination with ethnicity, provides particular conditions of vulnerability. As a result, special attention and provisions must be implemented to ensure safe political participation for this demographic.



C. POLITICAL PRISONERS

Article 392 of the constitution prohibits the right to vote from “persons serving prison terms”.¹² The Assistance Association of Political Prisoners (AAPP) estimates over 2,100 political prisoners are currently being held in detention without trial.¹³ Prisoners, as a result of breaking the social contract of the law, have historically been denied the right to vote. This practice, however, has proved increasingly illogical. Participation in civil society through democratic norms and an understanding of larger societal structures is an important way to re-engage those who may have committed crimes.¹⁴ While states may choose to restrict the right to vote, the HRC emphasizes that such measures must be “objective, reasonable, and proportionate”.¹⁵ Few crimes have warranted sufficient reason or proportionality to deny the right to vote. In the case of Burmese political prisoners, the denial of the right to vote is especially inappropriate, as the vast majority has not been tried by a competent court.

After meeting with UN Secretary General Ban Ki-moon in July 2009, the junta has pledged to release political prisoners via amnesty in time for next



year's elections.¹⁶ While AAPP reports the release of three political prisoners in October, an additional 41 were arrested.¹⁷ Clearly, the SPDC still has a long way to go before fulfilling this promise. Interestingly enough, Section 401 of the Code of Criminal Procedure stipulates that only the President may grant pardons.¹⁸ Though not the president, General Than Shwe has taken on the powers of the Presidential office, which is a concern within itself. In regards to such pardons, however, the action has been used as a tool to physically separate activists who are considered a threat to the regime.¹⁹ For example, pardon has been granted to some members of political organizations and not to others in order to facilitate a "divide and conquer" approach to dissidents.²⁰ Though the SPDC may release all political prisoners before the election, timing is also a factor. It is not enough to grant them freedom immediately before the vote. Rather, the military regime should ensure ample time for political prisoners to organize and campaign for the 2010 elections as legal participants on equal footing with every other political party.

(Endnotes)

¹ UNCHR 'General Comment 25' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I).

² *Id.*

³ UNGA 'International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families' UN GAOR 45th Session Supp No 49A UN Doc A/45/49 (1990).

⁴ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 21. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 25.

⁵ 'Voting from Abroad: Handbook on external voting' *International IDEA and IFE* (2007) <http://www.idea.int/publications/voting_from_abroad/> accessed 19 November 2009.

⁶ The Overseas Absentee Voting Act of 2003 (Republic Act No. 9189), Section 6 and Section 11.

⁷ 'The Philippines: The First Experience of External Voting' *ACE Electoral Knowledge Network* <<http://aceproject.org/ace-en/topics/va/country-case-studies/the-philippines-the-first-experience-of-external>> accessed 19 November 2009.

⁸ Alexander Kirshner, 'The International Status of the Right to Vote' *Democracy Coalition Project* (2003) <www.demcoalition.org> accessed on 2 November 2009.

⁹ 'UN Report Speaks Up for Migrant Workers' *Irrawaddy* (7 October 2009) <http://www.irrawaddy.org/article.php?art_id=16944> accessed on 9 November 2009.

¹⁰ 'Burma' *Refugees International* <<http://www.refintl.org/where-we-work/asia/burma>> accessed on 2 November 2009.

¹¹ 'The Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Note' *Organization for Security and Cooperation in Europe* (September 1999) <<http://www.ecmiserver.de/polpart/resources/>> accessed on 2 November 2009.

¹² Constitution of the Republic of the Union of Myanmar

(2008), Article 392.

¹³ Assistance Association for Political Prisoners (3 October 2009) <<http://www.aappb.org/>> accessed on 2 November 2009.



¹⁴ Philip Lynch, 'The Human Right to Vote and Participate in Public Affairs' *Human Rights Law Resource Centre* (March 2006) <<http://www.hrlrc.org.au/content/topics/prisoners/prisoners-right-to-vote/>> accessed on 4 November 2009.

¹⁵ UNCHR 'General Comment 25' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I).

¹⁶ Laura Trevelyan, 'Burma junta "to free dissidents"' *BBC News* (13 July 2009) <<http://news.bbc.co.uk/2/hi/8148850.stm>> accessed on 4 November 2009.

¹⁷ 'Monthly Chronology- October 2009' *Assistance Association for Political Prisoners* (October 2009) <http://aappb.org/Chronology_Oct_2009_Eng.pdf> accessed on 10 November 2009.

¹⁸ The Code of Criminal Procedure (1898), Section 401.

¹⁹ Interview with U Nyi Nyi Hlaing, Defense Lawyer, Mae Sot (12 November 2009).

²⁰ *Id.*

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