

## Analysis of EU Conclusions on Burma

On 23rd January 2012 the Foreign Affairs Council of the European Union met and adopted conclusions about the current situation in Burma, including suspending implementation of part of the visa ban. The visa ban suspension was a proportional response to changes in Burma.

The conclusions, however, present an overly optimistic and selective summary of the current situation. They appear to be designed to prepare the ground for a further significant relaxation of sanctions when they are due for renewal in April.

However, given that EU benchmarks have not been met, and that there are significant remaining problems that would make it difficult to justify lifting all sanctions, the Council conclusions highlight positives and ignore negatives.

The European Union should have learnt from experience to be much more cautious with regards to events in Burma. There have been too many false dawns in the past. Undoubtedly there is unprecedented cause for optimism, and changes must be positively encouraged. But there are also many reasons for caution, and these are not getting the attention they deserve.

### Council conclusions on Burma/Myanmar

3142th FOREIGN AFFAIRS Council meeting, Brussels, 23 January 2012

[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/127430.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/127430.pdf)

The Council adopted the following conclusions:

**1.** *"The Council welcomes the remarkable programme of political reform undertaken by the Government and Parliament in Burma/ Myanmar, together with its commitment to economic and social development. These changes are opening up important new prospects for developing the relationship between the European Union and Burma/ Myanmar. The EU stands ready to respond accordingly."*

**BCUK: Here is the first use of the word commitment, this time in relation to economic and social development. Their Sein made a speech in March 2011 which promises change in these areas, and was widely welcomed. These reforms have not yet taken place, but almost a year later the EU is still welcoming the same promises.**

**The Conclusions repeatedly refer to government promises, not actual steps taken. Given the track record of previous governments in lying to the international community, the EU could be expected to be more cautious. Most of the current government ministers were also ministers in the previous government.**

**2.** *The EU considers that the recent release of a substantial number of political prisoners marks a crucial step forward and clearly shows the determination of the Government to continue on the path of reform.*

*The Council also welcomes the Government's efforts to seek peace with ethnic groups; the legislation permitting trade union activity,*

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*establishing freedom of assembly and loosening censorship of the media; as well as the creation of a Human Rights Commission. These elements are essential steps towards establishing a democratic state under the rule of law.*

**BCUK:** The recent release of a significant number of political prisoners should of course be welcomed. No mention is made however of the EU condition that these prisoners should have been released unconditionally. There were not, their sentences were only suspended. It should also be noted that in the recent release more ex-military and ex-government prisoners were released than pro-democracy activists.

The Council welcomes efforts to seek peace with ethnic groups. Here again is a promise, referring to efforts, not an actual action, as ceasefires have not been agreed with all organisations. Again the focus is solely on the positive, when it should not be forgotten that the increased conflict in the past year is a direct result of the military-backed government breaking three ceasefire agreements since elections held in November 2010.

The Council welcomes legislation on trade union activity. However, there remain concerns about how the legislation would be implemented in practice, and the fact that it appears that as the President has not promulgated the law, it is not actually in force yet. The first trade union to apply had their application turned down.

The Council welcomes legislation on freedom of assembly despite this law being extremely restrictive. If such a law were proposed in an EU member state, the member would likely face condemnation. There are numerous conditions, including on where demonstrations can take place, and numbers of people, and permissions needing to be sought by various authorities. Any increase in rights is welcome but within this law are many caveats, and other security laws still in place to override this

law and allow the government to ban any protests it doesn't like on security grounds. At the end of the day, the situation is still that no legal protest will go ahead without government approval. If protests such as those in 2007 took place again, this law wouldn't protect them, they could still be arrested just as the Monks were in 2007.

The Council welcomes relaxation of censorship, but while censorship has been relaxed, Burma's media is still highly restricted. Most importantly, censorship laws have not been repealed. In a recent interview with the Washington Post, President Thein Sein refused to give guarantees on media freedom, and when asked if he would repeal censorship laws instead said; 'The media needs to take responsibility and proper actions. Media freedom will be based on the accountability they have.'

The Council welcomes the creation of a Human Rights Commission. This is of course a welcome step, but again there are reasons to be cautious. Many authoritarian governments use such bodies as cover for their abuses. Than Shwe, the previous dictator of Burma, also established a human rights council. It is still too early to judge the Human Rights Commission but some early indications are not positive. The Commission recently issued a report on conditions in Insein Jail that was clearly not credible.

The Council is right to state that: "These elements are essential steps towards establishing a democratic state under the rule of law." However, none of these steps are being fully implemented in accordance with international standards. None involve the military or government relinquishing any power.

**3.** *The Council welcomes the dialogue between President U Thein Sein and Daw Aung San Suu Kyi and the changes to the Electoral Law adopted by the Parliament. The Council is pleased by the NLD's decision to register as a*

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*political party and, together with other parties, contest the by-elections on 1 April. The EU attaches particular importance to the free and fair conduct of these elections.*

**BCUK:** It is right to welcome these measures, but also important to acknowledge potential problems as well. The electoral law was only partially reformed. There are still many conditions which can make it very difficult for political parties to register and field candidates, and to be able to afford to take part. EU members have previously expressed concerns about these rules, but choose to ignore them now.

The Council states it attaches particular importance to free and fair conduct in the by elections, when it is fully aware that this is not possible under current laws in Burma. Censorship has been slightly relaxed but remains in place. There are limits on what media can report. There are limits on what political parties can publish. Many political prisoners remain in jail, unable to take part in elections should they wish to.

These problems are privately acknowledged, but not mentioned in the official conclusions. The EU appears willing to accept these problems, hoping that as in 1990, the overwhelming support for NLD will mean they win anyway as long as the counting is not interfered with. However, smaller political parties do not have this advantage, and so will be marginalised.

**4.** *The EU welcomes the resolve by the Government to engage with ethnic groups through an inclusive political process, thus bringing to an end the armed conflicts in the country, including the recently concluded ceasefire with the Karen National Union. The Council underlines the need for all actors concerned to establish a credible and sustained process for handling the difficult issues involved in securing long-term peace and national reconciliation. It stresses the importance of improved humanitarian access, especially to areas affected by ethnic conflicts.*

**BCUK:** Again the EU welcomes a promise, this time calling it 'resolve', without any action actually being taken. The military backed government has not engaged with ethnic groups in an inclusive political process. To the contrary, it first broke three ceasefires, at a time when all the organisations it broke the ceasefires with were asking for political dialogue.

The EU made no comment when the ceasefires were broken, and still refuses to acknowledge that as a result of the ceasefires being broken, human rights abuses by the Burmese Army have actually increased in the past year.

Following increased international pressure, the military-backed government is now engaged in dialogue regarding ceasefires, but has so far refused to engage in dialogue about the political root causes of the conflict, instead deferring discussions to a later date.

Reference to improved humanitarian access is welcome but the EU still refuses to fund cross-border aid to reach the conflict areas where the military-backed government refuses access. If the EU is serious about their welfare it would fund this kind of aid until such time as the military-backed government does allow access. The price of EU inaction in this areas costs lives.

**5.** *The Council notes the commitment by the Government to continue and complete these reforms, notably by the unconditional release of the remaining political prisoners within the next few months and by the free and fair conduct of the by-elections. The Council also welcomes the Government's continued commitment to credibly addressing the ethnic conflicts through an inclusive political process. The Council confirms that the ongoing reform process has already led to improved relations between the EU and Burma/Myanmar and that this, together with meeting the above mentioned expectations, would lead to the further easing or lifting of the restrictive measures, in the Council's Decision by the end of April. The Council decides, as a first step, that restrictive*

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*measures (visa ban) concerning the President, the vice-Presidents, cabinet members and the Speakers of the two Houses of Parliament should be suspended and mandates relevant working groups to implement it, and to consider further steps. A further review of the Council's Decision imposing restrictive measures is ongoing.*

**BCUK: Two more commitments, rather than actions, are welcomed here.**

**Reference is made to the unconditional release of political prisoners, but given the fact that the military-backed government is variously disputing that it has any political prisoners, or how many it has, it is worrying that the EU fails to call for independent international monitors be allowed into Burma's jails.**

**The suspension of the visa ban on some government officials is a proportional response to changes that have taken place so far. The EU must show that it is willing to respond positively to changes when they do take place, but at the same time must start to be more realistic about the real scale and nature of what is taking place. None of the changes they refer to involve the military and military backed government relinquishing any power or control.**

**6. *The European Union wishes to assist Burma/Myanmar in advancing reforms. It will promote economic development through increases in assistance to reduce poverty and build capacity, and through strengthened sectoral dialogue with the Government. The EU invites progressive engagement by the World Bank and the International Monetary Fund to support Burma/Myanmar in developing its strategy. The EU stands ready to back the peace processes with the ethnic groups, for example through financial assistance for the process of the reintegration of returnees. The Council looks forward to a visit by the High Representative to the country. It also reaffirms its full support for her decision to open an EU Office in Yangon and looks forward to its early opening.***

**BCUK: It is welcome that the EU is finally paying more attention to ethnic issues, but talking about financial assistance for returnees is highly premature. Even the ceasefires that have been agreed are tentative, and ceasefires have frequently been broken by the Burmese Army in the past. With the military-backed government still not engaging in an inclusive political dialogue to address the root causes of the conflict, it is likely to be some time before most refugees feel safe to return.**

**In fact, rather than provide support, the EU has been cutting financial support for refugees on the Thailand Burma border, resulting in ration cuts.**

### **In Summary**

To focus on positives and opportunities as a way of encouraging further change is understandable, but the Council has decided to focus almost exclusively on positives, to the point where it glosses over and ignores serious problems that remain. Member states and especially the External Action service seem to be getting carried away, and need to be more cautious.

The Council Conclusions appear to be preparing the ground for more significant sanctions to be lifted, and inconvenient truths are ignored. More caution is needed by the European Union.

The dramatic and welcome changes in Burma must be welcomed and encouraged, but it is still early days, and the real motivations for what is taking place are still not known.

What is known is that almost all changes that have taken place are in effect 'gifts' from the military-backed government. They are steps that can easily be reversed at the stroke of a pen. There are yet to be any fundamental reforms which constitutionally and legally reduce the power and control of the military and the government. There is not yet an inclusive dialogue process that will lead to real reform and reconciliation.

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Aung San Suu Kyi has repeatedly talked about the need for a democratic society and the rule of law. These are not yet in place, or enshrined in law. The EU must focus on these areas more clearly.

In recent months EU members have spoken about three key benchmarks, the release of all political prisoners, the end of conflict, and free and fair elections. None of these benchmarks have been met.

Political prisoners have been released, but by no means all. Exact figures are disputed but range as high as over 1,000. That would mean most political prisoners are still in jail. This benchmark has not been met. Independent international monitors must be allowed into Burma's jails to make a proper assessment.

Having increased conflict, steps are now being taken to agree ceasefire agreements, but conflict remains. This benchmark has not been met.

Free and fair elections under Burma's laws are not possible. For the NLD with its high profile and strong support this can be overcome as long as ballot counting is not rigged. However, other smaller political parties remain disadvantaged. This is a benchmark which cannot be met, but the EU seems willing to ignore this as long as the NLD wins seats. In any case, the military-backed government wants the NLD in Parliament, to give it more credibility. This makes widespread ballot rigging unlikely.

Given that these benchmarks are not being met, it would be premature to make a significant relaxation of EU sanctions when they are renewed in April.

However, there is perhaps a deeper problem with these benchmarks, as they do not address the political system, only some of the worst human rights abuses which are symptoms of the political problem. This opens the possibility of international sanctions being lifted without any irreversible legal and constitutional democratic reforms actually taking place.

It has been argued that failing to lift sanctions could undermine further change, that the west must be seen to be responding positively. Burma Campaign UK agrees with this, but relaxation of sanctions must be proportional and based on a more realistic assessment of the facts on the ground in Burma than many in the EU seem to have.

Implicit in the argument that sanctions must be relaxed to encourage further change is an acceptance that an important motivation for changes taking place is to get sanctions lifted, rather than the military-backed government having a genuine desire to see a democratic transition. The EU does not have the broad scale and depth of sanctions which the USA has. To give away too many sanctions too soon removes what little leverage the EU has. This will more likely discourage further change, rather than encourage it, and the EU will be sidelined in its influence. The EU has flexibility to change its sanctions regime at any time, not just in April when the annual renewal takes place. There is no need for a premature rush to remove all or most sanctions in April.

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