

114TH CONGRESS  
1ST SESSION

# S. RES. 116

Providing for free and fair elections in Burma.

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IN THE SENATE OF THE UNITED STATES

MARCH 26, 2015

Mr. GRAHAM (for himself, Mr. MENENDEZ, and Mr. RUBIO) submitted the following resolution; which was referred to the Committee on Foreign Relations

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## RESOLUTION

Providing for free and fair elections in Burma.

Whereas the Union Election Commission of Burma announced that the country will hold general elections in the final quarter of calendar year 2015;

Whereas Burma's history with general elections has been characterized by controversy, conflict, and interference instigated by the military of Burma (the Tatmadaw), including in May 1990 and November 2010, and in the April 2012 by-elections;

Whereas the Tatmadaw refused to transfer power to the National League for Democracy (NLD), an opposition political party led by Daw Aung San Suu Kyi, following the May 1990 elections in which the NLD won 392 of 492 seats, and used the flawed 2008 Constitution of Burma to undermine elections in November 2010;

Whereas stated intentions of the Government of Burma to negotiate a Federal union with ethnic leaders and groups is not matched by the ongoing Tatmadaw offensives in Kachin and Northern Shan States;

Whereas, on March 5, 2015, and March 10, 2015, the Government of Burma responded to peaceful student protests in Rangoon and Letpadan with brutal violence and detained over 120 peaceful protestors;

Whereas the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict stated on January 27, 2015, “I . . . urge the Government to put a final end to impunity for conflict-related sexual violence that is particularly targeting ethnic minority areas.”;

Whereas the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar stated on January 16, 2015, “I remain particularly concerned at the failure of measures to ensure accountability of military officials, including [for] sexual and gender based violence in conflict zones.”;

Whereas the Tatmadaw continues to wield unchecked political and economic power and influence in Burma, as evidenced by the consumption of over 23 percent of the national budget; the set-aside of one-quarter of the seats in parliament which gives the Tatmadaw veto power over legislative and constitutional reforms; and control of the country’s largest business conglomerates, including in the natural resource sector;

Whereas the 2008 Constitution of Burma preserves and protects the power and influence of the Tatmadaw through Articles 417, 418, 420, and 425, which provide the Presi-

dent of Burma with authority to declare a state of emergency “due to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful or forcible means”; to transfer legislative, executive, and judicial powers to the Commander-in-Chief of the Defense Services “to enable him to carry out the necessary measures to speedily restore its original situation in the Union”; for such Commander to “restrict or suspend as required, one or more fundamental rights of the citizens in the required area”; and for such Commander to extend the state of emergency for two periods of six months each;

Whereas other provisions in the 2008 Constitution of Burma are contrary to democracy and the rule of law, including Article 59(f), which prohibits anyone from being President who has children born outside of Burma; Article 354, which limits certain freedoms that contradict laws “enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality”; and Article 436, which subjects constitutional amendments to a 75-percent vote threshold in parliament (thereby confirming the Tatmadaw’s veto power);

Whereas the NLD Central Executive Committee released a statement on January 13, 2015, expressing concern with the stall of democratic transition and reforms in Burma, and identifying the following conditions as prerequisites for free and fair general elections: constitutional amendments “in line with the desire of the people”; government involvement that is free from bias; fair and credible enforcement of election laws and regulations by the Union Election Commission; and cessation of discrimination and bias by the government to political parties;

Whereas the Commander-in-Chief in Burma General Min Aung Hlaing stated on January 21, 2015, regarding the planned elections in Burma, “When things become really out of control, if the President says the military needs to step in, in that region or state, the military will step in when a state of emergency is declared.”;

Whereas a state of emergency and military administration was declared on February 17, 2015, in Kokang Self-Administered Zone due to renewed armed conflict;

Whereas the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar stated on January 19, 2015, “. . . there are signs that since my last visit, restrictions and harassment on civil society and the media may have worsened . . . If Myanmar is serious about transitioning to democracy, it must be serious about allowing persons affected by its actions to express their frustrations without being punished.”;

Whereas the Government of Burma responded to the various concerns raised by the Special Rapporteur with accusations of interference in Burma’s internal affairs, and pointedly failed to criticize slanderous comments made by a Buddhist nationalist monk who called the Special Rapporteur a “bitch” and “whore”;

Whereas the United States Permanent Representative to the United Nations Samantha Power stated in Louisville, Kentucky, on January 12, 2015, “Burma is still a long way from being a rights-respecting democracy. The civilian government is still subordinate to the military, and the Constitution continues to give the military the broad authority to dismiss Parliament and veto any constitutional amendment.”;

Whereas Ambassador Power further stated, “Attacks against the Rohingya and other Muslim groups have even increased . . . Yet virtually no one has been held accountable, and the humanitarian situation continues to deteriorate.”;

Whereas the Government of Burma, under the direction and leadership of President Thein Sein, submitted draft legislation to parliament that seeks to stigmatize and discriminate against religious minorities in Burma through coercive population control, marriage restrictions, and anti-conversion methods that violate established international human rights norms and instruments to which Burma is a party;

Whereas Ambassador Power reaffirmed, “Our tools include incentivizing continued progress, shining a bright light on the government’s shortcoming, and imposing targeted sanctions on individuals who stand in the way of change.”;

Whereas President Barack Obama stated during his visit to Burma on November 14, 2014, that the United States expects elections in Burma “to take place on time. We do not want to see delays, because it’s time for the voice of the people of Burma to be heard in a fair, free, and transparent manner . . . the constitution amendment process needs to reflect inclusion rather than exclusion, that there are certain provisions in the Burmese constitution that objectively don’t make much sense.”; and

Whereas internationally recognized standards of free and fair elections include: the right of adult citizens to register and vote in elections, without discrimination; equal opportunity for individuals to stand as candidates, form political parties, and conduct campaign and civic education

activities free from interference and intimidation; the fair and impartial conduct of elections, including accountable voter registration processes and transparent resolution of election disputes by independent election commissions and judiciaries; and an electoral environment that is free from fear, intimidation, and violence: Now, therefore, be it

1       *Resolved*, That the Senate—

2               (1) endorses the aforementioned internationally  
3       recognized prerequisites for free and fair general  
4       elections in Burma and finds them consistent with  
5       those articulated by the National League for Democ-  
6       racy in its January 13, 2015, statement;

7               (2) calls upon the President and the Secretary  
8       of State to—

9               (A) publicly support meaningful efforts to  
10       reform the 2008 Constitution of Burma, with  
11       the full and unfettered participation of the peo-  
12       ple of Burma and in a manner that promotes  
13       and protects the democratic development of  
14       Burma and safeguards against arbitrary and  
15       capricious interference by the Tatmadaw;

16              (B) support free and fair elections in  
17       Burma, including by taking bilateral and multi-  
18       lateral steps, as necessary, to ensure that the  
19       Tatmadaw and its affiliates do not influence the  
20       outcome of such elections (including through a

1 declaration of a state of emergency in order to  
2 influence or postpone such polls) and that  
3 President Thein Sein and other ruling govern-  
4 ment officials do not engage in the use of offi-  
5 cial resources (including international assist-  
6 ance) for electioneering; and

7 (C) express solidarity with the United Na-  
8 tions special mechanisms that are investigating  
9 and protesting against violations of human  
10 rights in Burma, and to express concern re-  
11 garding the Government of Burma's refusal to  
12 work cooperatively with such mechanisms;

13 (3) calls upon the United States Government,  
14 in partnership with other international donors, to  
15 ensure that the Government of Burma and the  
16 Union Election Commission function in an inde-  
17 pendent, fair, and impartial manner throughout the  
18 preparation and conduct of elections in Burma, and  
19 that the Tatmadaw publicly affirms in advance that  
20 it will honor the results of such elections;

21 (4) expects the President to delay further steps  
22 toward normalization of relations with Burma, in-  
23 cluding immediately suspending all military-to-mili-  
24 tary engagement with the Tatmadaw, should the  
25 Government of Burma, including the Tatmadaw and

1 any of its affiliates, undermine the prospects for free  
2 and fair elections in Burma;

3 (5) expects the President to take additional ac-  
4 tions to sanction specific individuals within the Gov-  
5 ernment of Burma whom the President determines  
6 undermine free and fair elections in Burma, includ-  
7 ing through the denial of visas and freezing of assets  
8 of such individuals, as appropriate;

9 (6) calls upon the President and the Secretary  
10 of State to take action to ensure that ethnic groups  
11 in Burma are not coerced, in any way or by any  
12 means, into ceasefire agreements with the Govern-  
13 ment of Burma;

14 (7) calls upon the Secretary of State to work  
15 with like-minded regional and international govern-  
16 ments to ensure that the general elections in Burma  
17 meet international standards of free and fair elec-  
18 tions, including by ensuring that international and  
19 domestic monitors have full and unimpeded access to  
20 all aspects of the electoral process; and

21 (8) calls upon the Secretary of State to publicly  
22 and forcefully condemn human rights abuses com-  
23 mitted by the Tatmadaw and to demand credible  
24 and independent investigations and prosecutions of

1 any and all allegations of such abuse, including with  
2 respect to—

3 (A) the January 19, 2015, rape and mur-  
4 der by the Tatmadaw of two Kachin volunteer  
5 schoolteachers in Northern Shan State;

6 (B) the December 22, 2014, murder of  
7 Daw Khin Win, a nonviolent protestor at the  
8 Letpadaung mine site;

9 (C) the November 19, 2014, killing of 23  
10 cadets in Laiza, Kachin State, by the  
11 Tatmadaw's shelling;

12 (D) the October 4, 2014, murder of Ko  
13 Par Gyi in Mon State, a freelance journalist  
14 and former body guard of opposition political  
15 leader Aung San Suu Kyi; and

16 (E) the September 13, 2012, fatal shooting  
17 by the Tatmadaw of 14-year-old Ja Seng Ing in  
18 Hpakant Township, Kachin State.

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