

U4 Expert Answer



Overview of corruption in Burma (Myanmar)

Query

Can you please give us an overview of the corruption status in Burma?

Purpose

We are preparing an analysis of our development cooperation programs in Burma

Content

1. Forms and Extent of Corruption in Burma
2. Anti-Corruption Efforts in Burma
3. Resources

Summary

After more than four decades of military rule, political violence and systematic repression of democratic opposition, Burma held its first general elections in 2010, and is passing through major economic and political reforms. Parliamentary by-elections were held in 2012 with Aung San Suu Kyi party (National League for Democracy) receiving the overwhelmingly majority of votes. Such reforms and the significant and seemingly genuine opening up of the country have encouraged the United States and the European Union to lift trade embargoes against the country. However, the military continues to exercise influence in politics and despite improvements, restriction on media and

civil society organisations, as well as human rights violations continue.

Against this background, Burma continues to face major challenges of endemic corruption, consistently ranking at the bottom of TI'S Corruption Perception Index (CPI). Little is known on the specific forms and patterns of corruption in the country, but the scale of the informal and illicit economy suggests strong links between the ruling elite and organised crime activities. In the absence of sound democratic institutions and an effective system of checks and balance, the legal and institutional frameworks against corruption appear, to date, rudimentary and are likely to be misused for political reasons. On a more positive note, the recent elected government has demonstrated willingness to improve the country's institutional and legal framework as well as the space for political participation.

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U4 is a web-based resource centre for development practitioners who wish to effectively address corruption challenges in their work. Expert Answers are produced by the U4 Helpdesk – operated by Transparency International – as quick responses to operational and policy questions from U4 Partner Agency staff.

1 Forms and extent of corruption in Burma

Background

Burma, officially the Union of Myanmar¹, has known more than four decades of military rule after General Ne Win's coup in 1962. The country remained under the tight control of the military led State Peace and Development Council (SPDC) until when the Junta was dissolved as a result of the 2010 general elections. The former Prime Minister Lieutenant General Thein Sein was appointed as President in 2010. Parliamentary by-elections² took place in June 2012 and despite several irregularities the National League for Democracy party of the Nobel Prize winner and former political prisoner Aung San Suu Kyi received the majority of votes.

The civilian government has announced several economic reforms as well as the release of political prisoners, the right to form trade unions, and an easing in media censorship. Such economic and political reforms are seen by the President as key for Burma's progress, as according to him, years of military misrule had left Burma far behind its neighbours in terms of development (Freedom House, 2012).

A more open dialogue with the popular opposition leader Aung San Suu Kyi, who has been playing an instrumental role in the country's struggle for democracy, was launched, and the President has also called on the government to be more accountable to its people and focus its efforts on improving their daily lives. Nevertheless, there are indications that the military continue to dominate politics (Fund for Peace, 2012), and the country still suffers from restrictive government controls, inefficient economic policies, fiscal instability, corruption, rising inflation, human rights violations, and widespread poverty, especially in rural areas.

¹ The Union of Burma was renamed Union of Myanmar in 1989 by the military junta. The United Nations endorsed the name while other countries such as the United States, the United Kingdom, Australia and Canada still refer to the country as Burma.

² Parliamentary by-elections take place when a seat in the Parliament becomes vacant between general elections.

In the past, the government's crackdown against a pro-democracy uprising, including against thousands of monks, triggered a series of international economic and targeted sanctions. The European Union banned investment and trade in Burmese gems, timber, and precious stones, while the United States tightened existing economic sanctions on the regime leaders, their families and supporters, including asset freezing and travels restrictions against designated individuals responsible for human rights abuses and public corruption.

In the first part of 2012, encouraged by the fall of the regime and recent reforms, the United States and the European Union suspended economic sanctions, which provides for many opportunities for investment and growth, but also for new and ever growing forms of corruption.

Extent of Corruption

Due to the closed nature of the former military dictatorship there are very few independent sources of data on the state of governance and corruption in Burma.

The available sources and observers agree that rampant corruption pervades all levels of the political and administrative systems. The country has consistently ranked among the world's most corrupt countries in **Transparency International Corruption Perceptions Index**. In 2011, the country was ranked 180 out of the 183 assessed countries with a score of 1,5 on a 0 (highly corrupt) to 10 (very clean) scale.

The **World Bank's Worldwide Governance Indicators** confirm the country's poor performance in terms of control of corruption (0,5 on a scale from 0 to 100), regulatory quality (1,4), government effectiveness (2,4), rule of law (4,2) and political stability (13,7) in 2011. Burma has, nevertheless, improved significantly in terms of voice and accountability (from 0.9 in 2010 to 2.3 in 2011) (World Bank, 2011).

Forms of Corruption

There is little evidence of the main forms of corruption in the country. Available reports and country profiles state that corruption in Burma is widespread, affecting different sectors in a variety of forms as discussed below.

Bureaucratic corruption

Burma generally lacks regulatory and legal transparency, and there is a broad consensus that corruption in the country is rampant and endemic (Political Risk, 2011; Heritage Foundation, 2012). The US Department of State's Investment Climate Statement further declares that rent-seeking activities are supported by a complex and "capricious" regulatory environment combined with extremely low government salaries.

According to economists and businesspeople, corruption is one of the most serious barriers to investment and commerce in the country as very little can be accomplished without resorting to illegal payments often referred to locally as 'tea money'. The major areas where investors may face corruption are (i) when seeking permission for investment in the country; (ii) in the taxation process; (iii) when applying for import and export licenses; (iv) when negotiating land and real state leases (Political Risk, 2011; Heritage Foundation, 2012).

Cronyism

Personal relationships seem to play an import role in the country's public sector. As there are no competitive selection processes to enter the public sector, personal connections and bribery are maybe more important than qualifications. For instance, it is common practice to select ministers and high-level civil servants from the military ranks rather than based on expertise (Bertelsmann Foundation, 2012).

The privatisation process which took place in 2009-2010 also shows the close relationship between the government, the military and its close friends. There is evidence that numerous state assets were sold to the military, family members, and associates of senior government officials at fire sale prices (Bertelsmann Foundation, 2012). Several experts have also denounced that privatisation could actually enhance conflict of interest and corruption by creating a new generation of businesses whose control of industries is dependent on government connections and other forms of collusion (Currie, 2012).

Political corruption

The first democratic general elections after almost fifty years of military rule took place in 2010. Burma's political system is composed of a bicameral legislature, which consists of the 440-seat People's Assembly, and the 224-seat Nationalities Assembly, or upper house.

25% of the seats in both houses are reserved for the military and filled through appointment by the commander in chief. The legislature elects the president, though the military members have the right to nominate one of the three candidates, with the other two nominated by the elected members of each chamber (Freedom House, 2012). As a result of the 2010 elections, the former Prime Minister Lieutenant General Thein Sein was appointed as President.

According to several reports, the 2010 elections were, however, marked by fraud and serious restrictions on political participation (Bertelsmann Foundation, 2012; Freedom House, 2012).

In order to guarantee a pro-military government, the regime allegedly made use of advanced votes, which were collected by force in front of the authorities (Freedom House, 2012; Bertelsmann Foundation 2012). Moreover, opposition political parties faced several restrictions³ such as high registration fees, and no access to the state media. Such restrictions made the main opposition party, the National League for Democracy, boycott the elections. Elections monitoring was also restricted, and the government did not allow international organisations to support the process. As a result, the pro-military party USDP (Union Solidarity and Development Party) won almost 80% of the seats up for election (Bertelsmann Foundation, 2012).

The Parliamentary by-election which took place in May 2012 was also marked by fraud and irregularities, in spite of the government efforts to show the international community that democracy was advancing in the country. Independent candidates have reported harassment and several restrictions on their campaign activities. Reports also show irregularities at the polls; many who sought to vote for opposition candidates found that wax coating their ballots prevented them from doing so (Jacobs, 2012). Despite those irregularities, the NLD still overwhelmingly won the by-elections (BBC, 2012).

Sectors most affected by corruption

There is no research and data available on sectors most affected by corruption in Burma, probably due to

³ The Political Party Registration Law, announced in March 2010, gave new political parties only 60 days to register, mandated that existing parties re-register, and required parties to expel members currently serving prison terms, Freedom House, 2012.

the lack of political will for such scrutiny. However, specific forms of corruption derive from the nature of the local economy that suggests strong ties between the current regime and organised crime activities. According to the CIA's World Fact book, official statistics are inaccurate and published statistics on foreign trade greatly understated because of the volume of off-book, the size of the black market, illicit and unrecorded border trade - often estimated to be as large as the official economy (Central Intelligence Agency, 2008).

Burma is a resource-rich country. Agriculture and extractive industries, including natural gas, mining, logging and fishing provide the major portion of national income. The country appears to be plagued by traffic in narcotics, people, wildlife, gems, timber, and other forms of contraband that flow through Burma's permeable borders. Burma's border regions are indeed difficult to control. In some remote regions active in smuggling, continuing ethnic tensions with armed rebel groups hamper government control. Collusion between traffickers and Burma's ruling military junta also allegedly allows organised crime groups to function with virtual impunity (United States Department of State, 2008).

Illegal logging

A major review conducted for the World Bank in 2006 estimates illegal logging as equal or exceeding the legal harvest rates in Burma by 80 % (Illegal Logging Info, website). This has resulted in major deforestation taking place in the country. Although Burma remains one of the most forested countries in the Asia-Pacific region, the amount of land covered by forest in Burma dropped from 47% in 2005 to 24% in 2008, according to Burma's Natural Resources and Environmental Conservation Committee (UPI, 2012).

Large quantities of timber are being smuggled out of the country across the Chinese borders. A logging ban in Thailand has also resulted in Thai loggers crossing illegally through Burma. The sanctions imposed by the EU and US on the Myanmar military regime were extended in 2007 to prohibit the import of all timber products, but teak products from Myanmar are allegedly still being imported to the UK through other countries such as China or Indonesia (Illegal Logging Info, website).

According to a Global Witness report (2009), imports of logs and sawn wood across the land border from Burma fell by 70% between 2005 and 2009 after the

Chinese government sealed the borders⁴ in 2006. Nevertheless, illicit trade continues with local authorities often turning a blind eye to smuggling. Chinese companies interviewed by Global Witness also reported that they usually rely on personal relationships and illegal payments to continue importing illegal wood (Global Witness, 2009).

Oil and gas

Burma is endowed with oil, gas, hydropower and minerals, which are located mainly in the ethnic minority regions that continue to be areas of conflict. There is no publicly available information on who has the rights for exploiting what resources in what areas, what the terms and conditions are, and on how the revenues are being shared and spent (TrustLaw, 2012). According to Human Rights Watch, Burma continues to earn billions of US dollars in natural gas revenues, little of which is directed into social services such as health care and education (Human Rights Watch, 2012).

According to the Withholding Tax Law enacted on January 1, 2011, state-enterprises and military-owned companies are exempt from taxes. The government requires that foreign companies conducting oil and gas exploration be partnered with at least one domestic energy firm, usually with the state-owned energy firm MOGE (Myanmar Oil and Gas Enterprise), which controls significant portions of key oil and gas projects in the country. According to the opposition leader Aung San Suu Kyi, such joint ventures arrangements lack transparency and accountability.

For instance, Burma has granted Chinese state-owned oil firm oil and gas pipeline concessions, but there is no publicly available information on the terms of those contracts. In addition, since the US and the European Union⁵ have suspended the economic sanctions, European and American companies are now also allowed to partner with Burmese oil and gas companies.

⁴ For more information on the agreement between Burma and China please see: [Interim Measures to Manage Timber and Minerals Cooperation between Myanmar and Yunnan Province](#)

⁵ Please see: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130188.pdf

U.S. companies investing in Burma are, however, required by the U.S. government to report on their investment activities including: (i) an overview of operations in Burma; (ii) summary of investment-related human rights, labor rights, anti-corruption, and environmental policies and procedures; (iii) acquisition of property/land, including processes to identify land rights and address resettlement practices, if the property is worth more than US\$ 500,000 or over 30 acres; (iv) payments to the Government of Burma, sub-national authorities, and state-owned enterprises if the aggregate annual amount exceeds US\$10,000; (v) summary of human rights, labor rights, and environmental due diligence conducted by the company (Nolan, 2012).

Recently, Burma's President Thein Sein vowed to join the Extractive Industries Transparency Initiative (EITI), a global standard for governments and companies to voluntarily report how much is paid for extracting natural resources (Extractive Industries Transparency Initiative, 2012). A possible Burmese candidacy to EITI could mean a big push to hold the government to account and increase transparency in the sector.

Land management

Land has been a politically and economically sensitive issue in the country for many decades. All land in Burma is owned by the government, and farmers are given land use or tillage rights. The seizure of land has long been practiced in the country, but in recent years its dynamics have changed, from direct seizure by army units and government departments, to seizure by army-owned companies, joint ventures and other economically and politically powerful operations with connections to the military (Asian Legal Resource Centre, 2012).

According to the Asian Centre and other human rights organisations, cases of land grabbing are becoming increasingly common. Many farmers have been forced to move without receiving proper compensation because of major projects, such as the oil and gas pipelines, or smaller projects of firms linked to the military (Asian Legal Resource Centre, 2012).

The problem is aggravated by the country's lack of rule of law, no protection of property rights, and a weak judiciary, which offer tremendous rent-seeking opportunities for corrupt officials and their business partners (Morrell, 2012).

The new Farmland law enacted in 2012 aimed, among other things, at reducing the prospects of land grabbing. However, the law still opens the door to confiscation of agricultural land on any pretext associated with a state project or the national interest (TrustLaw, 2012).

Drug producing and trafficking

In spite of the government recent steps to tackle money laundering (see section below), Burma remains a country at risk of drug money being funnelled into commercial enterprises and infrastructure due to an underdeveloped financial sector and the large volume of informal trade.

According to the United Nations Office in Drugs and Crime (UNODC), nearly all of the world's illicit opium and heroin production is concentrated in Afghanistan, Burma and Latin America (Mexico and Colombia) (United Nations Office in Drugs and Crime, 2010). Burma is also a primary source of amphetamine-type stimulants in Asia. However, the country's share of opium production on the global market is declining (United Nations Office in Drugs and Crime, 2010), and although the Burmese Government has expanded its counter-narcotics measures in recent years, production and trafficking of narcotics still remain major issues in the country (Yong-an, 2012).

While the Burmese Government has actively pursued mid-level and independent traffickers, it remains reluctant to investigate, arrest, and prosecute high level international traffickers (Central Intelligence Agency, 2008). The CIA considers that the lack of government will to take on major narco-trafficking groups and lack of serious commitment against money laundering continues to hinder the overall antidrug effort (Central Intelligence Agency, 2008).

Human trafficking

The CIA also reports that Burma is a source country for women, children, and men trafficked for the purpose of forced labour and commercial sexual exploitation. Burmese women and children are trafficked to East and Southeast Asia for commercial sexual exploitation, domestic servitude, and forced labour. According to the 2006 US Department of State Human Rights Report, while there are no reliable estimates on the number of Burmese who are trafficked, most observers believe that the number of victims is at least several thousand per year. (United States Department of State, 2007).

Some trafficking victims transit through Burma from Bangladesh to Malaysia, and from China to Thailand

while internal trafficking occurs primarily from villages to urban centres and economic hubs for labour in industrial zones, agricultural estates, and commercial sexual exploitation.

The CIA report further states that Burma does not fully comply with the minimum standards for the elimination of human trafficking as military and civilian officials remain directly involved in significant acts of forced labour and unlawful conscription of child soldiers (Central Intelligence Agency, 2008). The Burmese Government was placed in Tier 3 in the U.S. Department of State's Trafficking in Persons Report (2007) for not fully complying with the Trafficking Victims Protection Act's minimum standards for the elimination of trafficking and not making significant efforts to do so (United States Department of State, 2007).

2 Anti-corruption efforts in Burma

Public Initiatives against corruption

There is no in-depth research and analysis on corruption and anti-corruption efforts in the country and very little is known on the state of the anti-corruption legal and institutional framework in Burma. The following section is based on the information that could be compiled within the time frame of this query. More research and resource would be needed to provide a comprehensive assessment of the corruption situation in Burma.

The legal framework

The country has a set of anti-corruption laws and since as early as 1948, corruption is officially a crime that can carry a jail term. Most relevant laws and legal instruments against corruption related offences include Burma Penal Code Volume 8, Public Property Protection Volume 2, the Money Laundering Law and the Anti-Drug Law (Burma Lawyer's Council, 2005).

There has been hardly any prosecution for office abuse in Burma. However, according to many sources, it was common practice for the ruling generals to misuse anti-corruption laws as a means of ousting political opponents, as when the SPDC arrested then-Prime Minister General Khin Nyunt and many of his colleagues and family members for corruption in 2004 (Bertelsmann Foundation, 2012).

Furthermore, there is no right to information, and public procurement procedures are opaque (Bertelsmann Foundation, 2012). The budget process also lacks transparency, and sources of budget revenues remain undisclosed. In 2012, a budget drafted by the president was submitted for the first time for the approval of the Parliament, as required by the 2008 Constitution, which states: *"The Union Government shall draft the Union Budget Bill based on the annual Union budget, after coordinating with the Financial Commission, and submit it for approval to the Pyidaungsu Hluttaw (Parliament) in accordance with the provisions of the Constitution"*.

On one hand, the President and its cronies still enjoy great budgetary autonomy. Transparency and accountability are further hindered by the fact that there has been no independent auditing of state spending.

On the other hand, significant legislative reforms are being undertaken by the government, including the adoption of the Labour Organizations Law and the Peaceful Demonstration Law, as well as the amendment to the Political Party Registration Law. President Thein Sein is also working with parliamentarians affiliated with the National League for Democracy to fight corruption by requiring all government officials to publicly declare their assets (Morrell, 2012). These changes are encouraging, but it remains to be seen how they will be implemented.

Burma is a party to the UN Convention against Transnational Organized Crime and ratified the UN International Convention for the Suppression of the Financing of Terrorism in August 2006. Burma signed the UN Convention on Corruption in December 2005, but has not yet ratified it.

The Institutional Framework

There is no fully independent anti-corruption institution in Burma. The SPDC power until recently was not balanced by parliament or any other political institution. In fact, until 2011 there was no formal separation of powers. Besides holding the Executive and legislative powers, the SPDC also exercised control over the Judiciary.

The new Constitution formally guarantees the independence of the judiciary and the separation of powers. In practice, however, the judiciary still faces political interference. For instance, the head of the Supreme Court and other members of the Constitutional Court were still nominated by the President without the consent of the Parliament in

2011. A March 2012 United Nations report on human rights in Burma also noted that the country “lacks an independent, impartial and effective judiciary.”

In addition, courts adjudicate cases according to the junta's promulgated decrees. Administrative detention laws allow people to be held without charges, trial or access to legal counsel for up to five years for threatening the state's security or sovereignty. The lack of independence of the judiciary allows officeholders to abuse their position without fear of judicial action. (Bertelsmann Foundation, 2012)

The body in charge of corruption offences is the Bureau of Special Investigations that reports to the Ministry of Home Affairs. It addresses financial crime related cases, including cases involving trading, tax evasion and corruption of government officials (Ministry of Home Affairs, website). However, there is no publicly available information on the number or status of such investigations.

Improvements in the area of Money laundering resulted in the removal of the country from the Financial Action Task Force's list of Non-Cooperative Countries and Territories (NCCT) in October 2006. Burma enacted a “Control of Money Laundering Law” in 2002. It also established the Central Control Board of Money Laundering in 2002 and an investigating Financial Intelligence Unit (FIU) in 2003 whose size was increased to 11 permanent members, plus 20 support staff in 2005. The government also established a Department against Transnational Crime in 2004, staffed by police officers and support personnel from banks, customs, budget, and other relevant government departments.

The 2002 law created reporting requirements to detect suspicious transactions. It set a threshold amount for reporting cash transactions by banks and real estate firms. In 2004, the anti-money laundering regulations were amended to include eleven predicate offenses, including narcotics activities, human trafficking, arms trafficking, cyber-crime, and “offenses committed by acts of terrorism,” among others. Fraud was also added to the list of predicate offenses. Anti-Money Laundering regulations further expanded in 2006, requiring banks, customs officials and the legal and real estate sectors to file suspicious transaction reports (STRs) and impose severe penalties for noncompliance. In 2007, the Burmese Government amended its “Control of Money Laundering Law” to expand the list of predicate

offences to all serious crimes to comport with FATF's recommendations (US Department of State, 2008).

Recently, however, according to the Financial Action Task Force, Burma has not made sufficient progress in implementing its action plan, and important anti-money laundering deficiencies remain. The country has until October 2012 to tackle efficiently these deficiencies, including by (i) adequately criminalising terrorist financing; (ii) establishing and implementing adequate procedures to identify and freeze terrorist assets; (iii) further strengthening the extradition framework in relation to terrorist financing; (iv) ensuring a fully operational and effectively functioning Financial Intelligence Unit; (v) enhancing financial transparency; and (vi) strengthening customer due diligence measures. If such measures are not undertaken, Burma may face countermeasures to be decided by the Financial Action Task Force (Financial Action Task Force, 2012).

A national Human Rights Commission (MHRC) was established in 2011. While it is too early to assess its activities, the international community has urged the Government of Burma to take the necessary steps to ensure the commission's independent, credible and effective functioning (United Nations Human Rights, 2012).

The potential for other anti-corruption Initiatives

During the past decades, the dictatorship nature of the regime provided little opportunities for public participation and for holding government accountable for its actions and decisions. The 2008 Constitution, which came into effect in January 2011, allows freedom of association and assembly, but only as long as the exercise of these rights does not go against existing security and emergency laws. In spite of recent improvements related to voice and accountability mechanisms, both civil society and the media are still controlled and repressed.

Civil society

Civil society development has always been restricted by the absence of civil liberties and very restrictive regulations. In the past five years, political shifts in Burma have created some openings for civil society efforts. As mentioned, freedom of association and assembly is now allowed as long as security and emergency laws are respected.

Nevertheless, civil society in the country does not have strong roots, and many organisations or associations are co-opted by the military (Bertelsmann Foundation, 2012). In addition, in spite of recent improvements, the ability of civil society organisations to monitor the elections was strongly restricted. Local NGOs and a regional monitoring group have to conduct secret monitoring by sending volunteers to voting stations in few cities, but several foreign volunteers from the regional group were caught and deported (Bertelsmann Foundation, 2012).

The space for international civil society groups is also opening up. As of 2011, there were approximately 65 international NGOs (INGOs) operating in the country, often under various framework agreements with the government, such as Memoranda of Understanding (MOU) or Letters of Agreement with a relevant ministry (The Hauser Center, 2011). These INGOs are usually engaged in advocacy activities with the government, aiming to inform and promote dialogue with the government, rather than assess blame (The Hauser Center, 2011).

Media

There have been a number of positive developments with regards to the media in Burma. Government's reforms have included a reduction in the level of censorship of the press, the loosening of restrictions on access to the internet, and the release of political prisoners (Bertelsmann Foundation, 2012).

In 2012, the government stopped censoring private periodicals before publication, but repressive laws, such as the Printers and Publishers Registration Law, which has severely restricted the activities of the press, and the Electronic Transactions Law, which has criminalized the sharing of electronic information deemed threatening to the Union, still offer obstacles for Burmese to express their opinions, as they have been used to arrest, detain and imprison journalists and activists.

Burma ranked 169th out of 179 countries in the Reporters without Borders' Press Freedom Index (2011-2012). A slightly better position than in previous years as a result of recent political changes that have raised hopes but need to be confirmed (Reporters without Borders, 2012).

In spite of recent democratisation reforms, the country continues to face major governance challenges. It

remains to be seen the impact such reforms will have on corruption.

3 Resources

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