



# IN PURSUIT OF JUSTICE

REFLECTIONS ON THE PAST AND HOPES FOR THE FUTURE OF BURMA



A REPORT BY

THE HUMAN RIGHTS FOUNDATION OF MONLAND - BURMA

JULY 2014



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## ACRONYMS AND ABBREVIATIONS

<b>SPDC</b>	State Peace and Development Council
<b>HURFOM</b>	Human Rights Foundation of Monland - Burma
<b>SLORC</b>	State Law and Order Restoration Council
<b>BSPP</b>	Burma Socialist Programme Party
<b>NLD</b>	National League for Democracy
<b>NMSP</b>	News Mon State Party
<b>MNLA</b>	Mon National Liberation Army
<b>SHRF</b>	Shan Human Rights Foundation
<b>SWAN</b>	Shan Women's Action Network
<b>FDI</b>	Foreign Direct Investment
<b>LUC</b>	Land Use Certificate
<b>ILO</b>	International Labor Organization
<b>ICTJ</b>	International Center for Transitional Justice
<b>WLB</b>	Women's League of Burma
<b>TRC</b>	Truth Recovery Commissions
<b>ICC</b>	International Criminal Court
<b>ASEAN</b>	Association of Southeast Asian Nations



## A. INTRODUCTION

Since 2011, Burma has begun to emerge from 50 dark years of dictatorship. Now, under President Thein Sein's nominally civilian government the possibility has arisen for Burma to begin rebuilding and reconciling divided segments of the nation, and to provide justice to victims for decades of human rights abuses.

Burma's minority ethnic communities have experienced grave human rights abuse at the hands of the SPDC regime and its strong arm of the Burmese military, or Tatmadaw. In order to transition successfully towards true democracy and national reconciliation, the Burmese government must address, and act upon, the specific needs expressed by victims of past abuse, documented and expounded herein, in order to move away from the abusive culture of the past towards a united future.

Within this report you will find a detailed history of Burma's ethnic conflict, how that conflict has been sewn into the very fabric of the SPDC regime's ideology and governing strategy, and ways in which the Tatmadaw has implemented the regime's strategy by crippling livelihoods, physically and mentally abusing, and destroying the security of Burma's minority ethnic communities.

The purpose of this report is to guide the Burmese government in the implementation of mechanisms of transitional justice in Burma. To achieve this goal, this report looks at Burma's history of human rights violations and analyzes how to repair the relationship between the government and the citizens.

The government has committed, and continues to commit, vast numbers of human rights abuses against its minority ethnic communities, violations including land confiscation; forced labor and forced portering; physical abuse, torture, and murder; and rape and sexual abuse. In order for the Burmese government to employ appropriate mechanisms of justice, this report identifies the effects such violations have had on the

victims, and what the victims require from the government to provide adequate justice and reparations for such violations. Through this report, HURFOM hopes to hold a megaphone to the voices of Burma's ethnic people regarding past human rights abuses.

This report addresses victims' expectations of the government for a future democratic Burma. Of utmost importance to building peace in Burma are three key elements of trust-building, national reconciliation, and transitional justice. The government must implement appropriate mechanisms to fulfill these three objectives in order to create sustainable peace throughout the country.

Central to achieving these goals is the de-structuring of the SPDC's pervasive culture of impunity surrounding human rights violations against its citizens. While impunity, unaccountability, extortion, and corruption continue to exist, there can be no repair of trust or unity within the society. Without eliminating all impunity, there will be no reconciliation in Burma.

Minority ethnic communities in Burma have been traumatized by decades of abuse and exploitation. It is HURFOM's hope that this report will push the government to provide healing to the victims from such trauma with realistic solutions and reparations. HURFOM also hopes to attract the world's attention and urge international agencies and Non-Government Organizations (NGOs) to support reparations in Burma.

## B. METHODOLOGY

In this report, HURFOM addresses widespread, systematic human rights violations committed by the Burmese military against ethnic communities throughout the country. This report concentrates on the field of Transitional Justice, and various strategies and mechanisms therein, to facilitate lasting peace and national reconciliation in war-torn Burma.

HURFOM contends that, due to the specific, complex factors surrounding the ethnic conflict in Burma, the most successful path through Transitional Justice will come from a holistic approach, applying both retributive and restorative justice in order for the nation to collectively come to terms with past abuse.

Since 1995, HURFOM has been engaged in documenting the voices of Mon populations with research methodology developed over 18 years of experience. Since its inception, HURFOM has been cataloguing the voices of local civilians and documenting human rights violations committed by the previous military regime, the army, and its supporters. Some facts in this report may have already been published in HURFOM's print issues of the Mon Forum or online.

Research for this report was conducted from February to May 2014. During this period, four field reporters visited villages throughout Ye and Yebyu Townships in Mon State. HURFOM focused its fact-finding mission in Ye Township and Yebyu Township because ethnic communities in these areas have experienced high rates of human rights abuse surrounding large-scale development projects, increased militarization and camp expansion. Residents in these areas have suffered decades of violations and abuses by the SLORC, SPDC, and local authorities; violations including forced labor, intensified security presence, mobility restrictions, physical and sexual abuse, and loss of livelihood.

Human rights violations are rife in Ye and Yebyu Townships because the army is extremely active in those areas.

Interviews were conducted in person whenever possible and by phone when transport or security issues prevented in-person interviews. Field reporters shared interview transcripts and field notes with HURFOM via satellite phone and online communication.

This report relies primarily on oral testimonies and interviews conducted with Burmese refugees who have crossed the border into Thailand, or sending field reporters into Burma's IDP and cease-fire areas. HURFOM field reporters collected testimonies directly from the victims and witnesses in order to obtain firsthand information; this method of collecting oral information as legitimate facts is referred to as "fact finding" and "witness interviews".

This report is based on primary research consisting of original interviews, and supplemented by secondary research which draws upon the growing number of news articles and research documents available surrounding the areas of transitional justice, women's rights and international human rights and humanitarian law. In addition to new materials collected, this report includes information, testimonies, and images from HURFOM's extensive archives.

As far as possible, HURFOM aims to analyze research collected in Mon regions in the context of the wider issues of gaining justice and creating a unified, peaceful Burmese society.

In total, 20 interviews were conducted throughout twenty villages in Mon State; 14 local residents were interviewed in Ye Township and 6 were interviewed in Yebyu Township. In some cases, the names of sources have been changed or their nicknames used for their protection but, whenever possible, HURFOM uses real names with permission from the individuals.

With this report, it is HURFOM's hope to contribute to the democratic change in Burma, and through the application of these testimonies initiate transitional justice mechanisms in Burma.

This report's primary aim is to amplify the voices of Burma's citizens and to guide the government in peace-building and reconciliation activities to create a united, healed Burmese society. With this aim, HURFOM maintains that it is imperative to promote full transparency in every stage of the process.

## 1. Challenges and Difficulties

Throughout the fact-finding process, HURFOM field reporters were faced with many challenges in obtaining thorough information regarding abuse in Burma. It has been found to be difficult, for a myriad of reasons, to find people who are willing to tell their stories of past abuse at the hands of the SPDC regime.

The following obstacles represent substantial challenges to HURFOM's investigations as it pursues comprehensive and accurate data collection.

### i. Security issues

HURFOM is an unregistered human rights organization, and as such, it creates many security issues for our field reporters entering Burma. The government allows official registration for media and press groups, but there is no opportunity to register human rights organizations or documentation fact finding groups. Human rights abuses are connected to the past government; the SPDC knows what they have done to their citizens and do not want to unearth the past. For this reason, the current government will not allow groups to legally register to collect information on such violations.



Due to this restriction, HURFOM must work illegally, underground, with no security for its field reporters who enter Burma on fact-finding missions. Field reporters must memorize all interview questions so that if someone from the regime were to find them, they will not have any written evidence of their work on their person. If a member of the

military suspects someone of working with a human rights organization, they will follow that person and try to interrupt the fact-finding mission. The SPDC also tries to interrupt this work by applying restrictions on movement and travel inside Burma.

Due to such restrictions, everything is operating informally on the ground, and this makes it difficult to create a safe, secure space to bring informants to talk about past violations.

Beyond security issues for the field reporters, there are security issues for victims of past abuse as well. A majority of the interviews for this report were conducted along the Thai-Burma border, with many interviews conducted with illegal migrant workers inside Thailand. For the victims living inside Burma, perpetrators are still active in the area where abuses were committed, so informants have to avoid the danger of retaliation from the army for speaking out about abuse. In particular, Light Infantry Battalion (LIB) Nos. 282, 586, 343, 273 and Infantry Battalion (IB) No. 31 are all still operating in areas where abuses occurred, especially in Ye Township. For interviews taking place within Thailand, the security of these informants are precarious, as they are living illegally inside Thailand. If attention is drawn to them they may be arrested by Thai police.

## ii. Lack of Education

As a society which has lived under an oppressive dictatorship for over 50 years, the concepts of transition and justice are very new to the people of Burma. HURFOM's field reporters found that the majority of victims interviewed have never been exposed to the idea of reparations for past abuse, or the reparation process in general, and HURFOM believes that the government is ignorant to these concepts as well.

Due to lack of education and the lack of public awareness surrounding the topics of justice and reparations, field reporters must explain these concepts in the villagers' native tongue, often explaining in both Mon and Burmese languages.

Often, when field reporters would ask the victims questions as to how they would like to see the government address the



A local resident going to collect harvest from his farm in Han-Gan village, Ye Township

issues of justice and reparations responses from the victims would not match the question put forth, so the field reporters had to explain these concepts to them. This posed a great challenge due to field reporters' time and resource constraints.

### **iii. Trauma**

HURFOM field reporters report that victims are living with trauma resulting from abuses experienced in Burma. This trauma makes it difficult to gather information on the ground because people do not want to talk about past violations, as they often feel they are reliving the experience of their abuse. Field reporters found that people only want to retell happy stories, not sad, bitter, or painful stories; if they speak about it many victims experience the pain of abuse coming back to them. Field reporters experienced great difficulty in documenting sensitive issues such as murder, as family and friends have difficulty talking about loved ones they have lost. In many cases people that have lost family members refuse to talk to field reporters about the crimes.

### **iv. Fear**

Fear is another large obstacle field reporters must tackle in efforts to gather information of past abuse. The people are afraid of threat or harm coming from the government if they speak about violations committed by the regime. Victims believe that the government is still active in their areas. In many areas military bases are still around, but the perpetrators have been moved or relocated from the area. Victims are silenced by feelings of uncertainty and fear that bringing up the past will only provoke retaliation from their perpetrators who still hold significant power. Although the current government is taking steps to transition to a democratic and just society, people's mindsets have not changed.

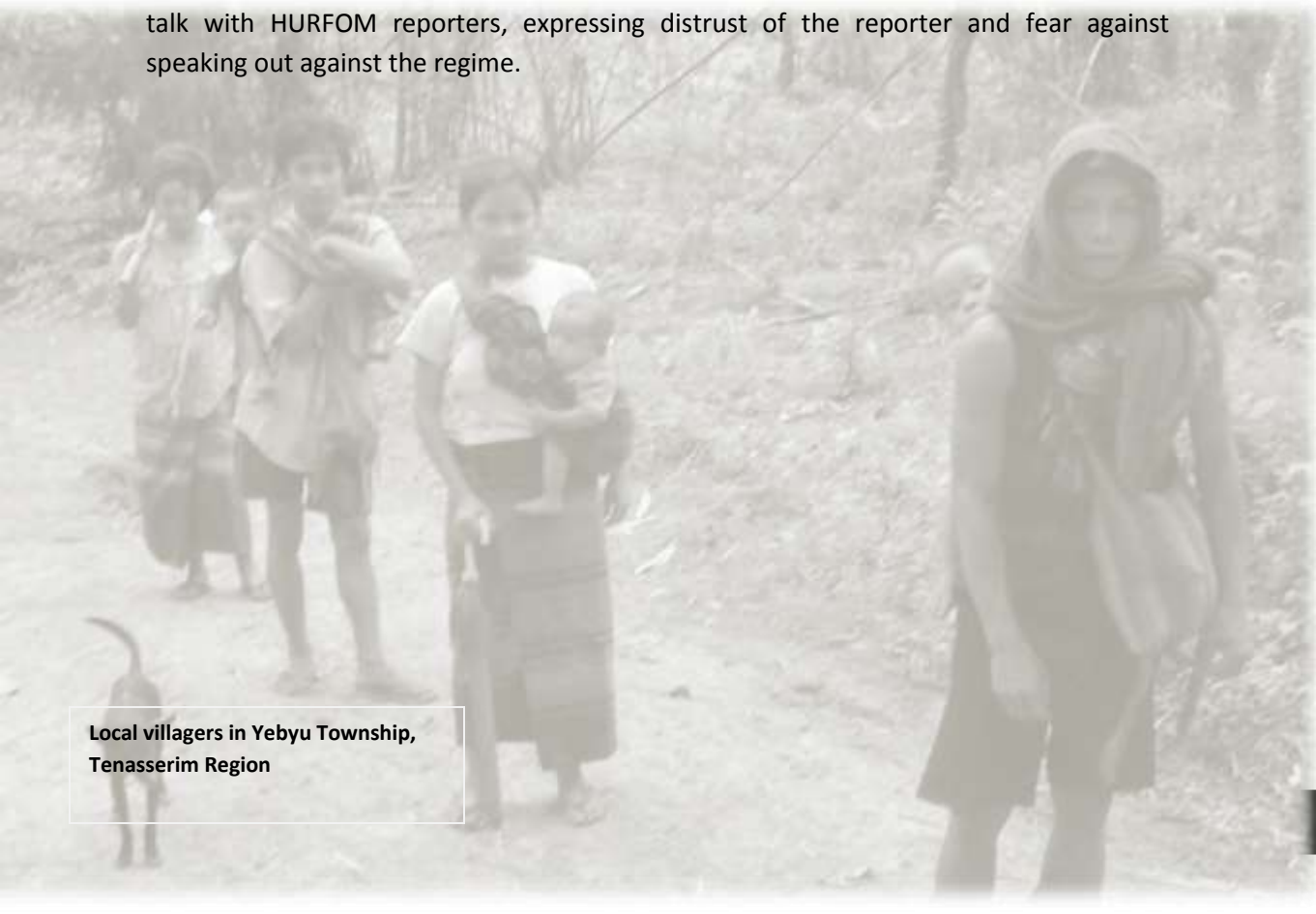
### **v. Lack of trust**

Fear and trauma make it very difficult for HURFOM reporters to receive information and collect data because the victims do not trust the reporters. Due to government restrictions, HURFOM cannot work openly within the community, which impedes the field reporters' abilities to build trust within the community. HURFOM field reporters

cannot wear badges to identify themselves and the organization they are with; so many victims do not trust them.

Under years of dictatorship, Burma has been governed by a divide and rule policy. Now there is a civilian government, but even at the village level village administrators continue to try to divide the villagers. For those that the village administrators favor, they do not make them pay taxes, but villagers that they do not like, or do not have a relationship with are forced to pay taxes. This strategy has led to great distrust between villagers and administration. When field reporters enter a village, victims often affiliate them with the administration and thus do not trust them.

Reporters explain that due to security measures as an unregistered human rights organization, they must talk to villagers in private. Villagers do not know the reporters very well, so reporters must spend time to build a relationship with the informants, so to get to know each other personally. Due to time and resource constraints, it was not possible for field reporters to stay in one village for a long period of time, and it is quite difficult to build trust in a short time-period. Sometimes field reporters had to visit multiple times with the same informant, and in total field reporters spent seven months trying to get interviews. Over the course of this research, various persons declined to talk with HURFOM reporters, expressing distrust of the reporter and fear against speaking out against the regime.



**Local villagers in Yebyu Township,  
Tenasserim Region**



## C. HISTORICAL CONTEXT OF BURMA'S CIVIL WAR AND THE COUNTRY'S ROAD TO DEMOCRACY

### 1. Burma's Ethnic Kingdoms and British colonialism:

**P**rior to British colonization, Burma, as it is known today, did not exist. Rather, the region consisted of independent kingdoms; Burman, Mon, Shan, Rakhine, Manipuri, Thai, Lao and Khmer kingdoms were located throughout the region, and were engaged in constant conflict.

In 1886, while expanding its colonization of Indochina, Britain established colonial rule in Burma. During this period, the colonial powers pitted many ethnic groups against one another, showing favor to some ethnic groups over others, in order to cement deep-seeded divisions within the society.

By the 1930s, the British had separated the region into two distinct territories, Burma proper (home to a majority of the ethnic Burmans) and the Frontier Areas (home to a majority of the ethnic minority populations). Burma Proper, which included the fertile area of the Irrawaddy basin, was placed under direct British rule, while the Frontier Areas were placed under indirect rule. Consequently, Burma Proper, and the ethnic Burmans living there, experienced development and modernization, while the Frontier Areas and its ethnic minority populations, were systematically neglected.

### 2. Panglong Accord

After 60 years of colonial rule, Burma gained independence from Britain in 1948. On the eve of independence, Burma's



ethnic minority leaders joined together at the Panglong Conference in Shan State to discuss the future of an independent Burma. The leaders reached a unanimous agreement that the independent nation of Burma would provide political freedom for all peoples, and this foundation would be implemented by the interim government that would carry Burma through its transition to independence.

The Panglong Accords, signed in 1947 by U Aung San and representatives from ethnic nationalities throughout Burma, highlighted the concept of equality between ethnic nationalities, and served as the building blocks for Burma’s independence from Britain.

In 1948, Burma gained its independence and was immediately faced with the challenge of uniting the territories of Burma Proper and the Frontier Areas, which had been effectively divided in both organization and economic opportunity, into one Union of Burma.

### 3. Post-Independence Burma

Since achieving independence in 1948, Burma has experienced near constant internal conflict, as the new nation’s democratic government was continually attacked by communist and ethnic groups who did not feel they were sufficiently represented in the 1948 constitution. As Mon and Karen leaders determined to take up arms and fight the central government, the government intensified offensives in ethnic areas. The Burmese Army was unable to suppress the rebellions, and the civil war grew.<sup>1</sup>

In 1962, General Ne Win staged a coup which abolished the 1948 constitution, installed a new “transitional” government dominated by military personnel, and solidified his position as Burma’s military dictator. Under Ne Win’s “Burmese Way to Socialism<sup>2</sup>”, all political parties were banned, save his own Burma Socialist Program Party (BSPP), and national corporations, run by



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<sup>1</sup> HURFOM, Destination unknown pg. 16

<sup>2</sup> <http://www.oxfordburmaalliance.org/1962-coup--ne-win-regime.html>

the military, “controlled every aspect of Burmese life, including the economy and the press”<sup>3</sup>.

One of the most infamous strategies employed against ethnic communities by Ne Win and his armed forces was the “four cuts campaign”, which aimed to cut off support for ethnic rebel groups thought to be flowing through Mon civilian communities. The “four cuts” refer to the targeted interruption of information, recruits, food supplies, and funds in order to undermine insurgent forces. By use of the ‘four cuts’ policy, the Burmese military effectively devastated many minority ethnic communities.<sup>4</sup>

#### 4. 1988 Popular Uprisings:

In 1988, after 26 years of military rule, students in Rangoon, fed up with Ne Win’s dictatorship and the disastrous state of the economy, began leading protests calling for democracy. Culminating in a nationwide protest on August 8, 1988, millions of citizens demonstrated for an end to Ne Win’s oppressive regime. The military responded to the non-violent demonstrations with crowd massacres, extra judicial killings, and the

suppression of civil, and political rights.

Six weeks later, in September 1988, the army staged a coup; the BSPP was dissolved and Ne Win established the State Law and Order Restoration Council (SLORC), which changed nominally in 1997 to the State Peace and Development Council (SP-DC). Throughout its oppressive regime, the



Students protesting in Rangoon during 1988 uprising

<sup>3</sup> EarthRights International, School of Rape, pg. 9

<sup>4</sup> HURFOM, Destination unknown pg. 16-17

SPDC has successfully increased the role of its military, placing Burma under authoritarian military rule.

The army's crackdown against the student-led democratic uprising of 1988 resulted in widespread warfare between the government and ethnic groups, through which the SLORC caused thousands of deaths, steady gains in the destruction of minority ethnic cultures, and grave human rights violations.

With the promise of bringing democracy to the people, and the misguided confidence that it had sufficient support of the people, the SLORC called for multi-party elections to be held on May 27, 1990. Over 90 political parties were formed, including the current main opposition party, the National League for Democracy (NLD). Though the people elected the NLD by an overwhelming majority, the SLORC disregarded democracy, refused to relinquish its power, and established a military dictatorship.



Co-leader of SLORC Gen. Saw Maung

When the SLORC came to power in 1988, foreign corporate interests were granted permission to invest capital in Burma's natural resource industries, such as timber, gems, fishing, oil, and natural gas. Hundreds of villages across Mon State and southern Burma were directly impacted by these large-scale development projects

In 1994, construction began on the Yadana gas pipeline and the 110 mile Ye-Tavoy Railway, with the military imposing widespread forced labor and portage of the ethnic communities in Yebyu Township and northern Tenasserim Region. Thousands of Mon, Karen, and Tavoyan were forced to work for no pay under brutal labor conditions.

Refugee camps began to spring up along the Thai-Burma border in order to shelter the thousands of ethnic minorities fleeing from civil war, torture, forced porter duty, forced labor conscription, sexual harassment and abuse, and arbitrary extortion inside Burma.

## 5. New Mon State Party Ceasefire



Rebel activities threatened the investment climate, and in an attempt to soothe investors and safeguard the lucrative gas project, Thai and border authorities increased their pressure on Mon leaders to engage in peace talks with the SLORC. After a year of armed struggle, the New Mon State Party (NMSP) and its armed wing, the Mon National Liberation Army (MNLA), signed a ceasefire with the SLORC regime on June 29, 1995.

When the two groups reached a ceasefire, the areas formerly under NMSP control were turned over to government administration, and the government immediately began increasing its number of troops in this newly accessible territory. Before the ceasefire, there were three Burmese army battalions stationed in NMSP-controlled areas, and by 2000 there were more than 20. Instead of stopping the violence, the ceasefire “initiated a period of severe human rights abuses and the continuation of the military’s four cuts campaign strategies in rural villages.”<sup>5</sup>

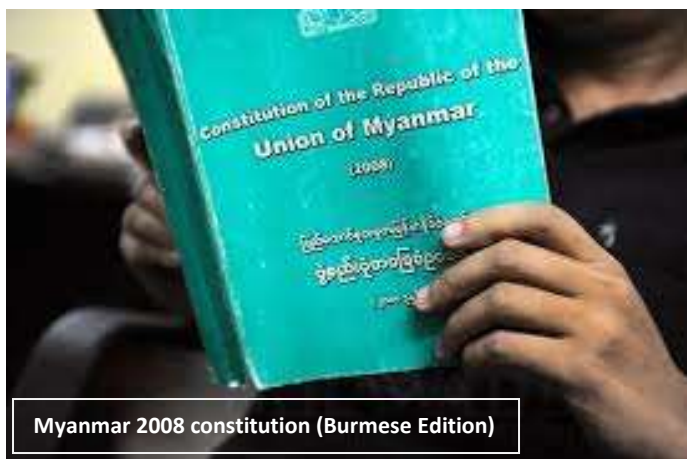
## 6. 2008 Constitution

In 2007, the rise in fuel costs and subsequent increase in the price of commodities prompted mass demonstrations, led by Buddhist monks, calling for economic reform and national reconciliation. These peaceful protests were, once again, met with the military’s brutal force. In response to international criticism over the brutality of their reaction, the SPDC announced a National Convention for a referendum on a new constitution to be held on May 10, 2008, with elections to follow in 2010.

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<sup>5</sup> HURFOM, Destination unknown, pg. 22

A week before the referendum was to be put to a vote, Cyclone Nargis ripped its way through Burma, devastating the country. In the wake of the disaster, with more than 130,000 people killed, or listed as missing, the UN Secretary-General and various civil society groups urged the regime to postpone the referendum so the country could concentrate on healing from the disaster. The SPDC ignored such requests, and held the referendum.



Myanmar 2008 constitution (Burmese Edition)

According to the regime, a key objective of the National Convention was to ensure “the participation of the [armed forces] in the national political leadership role of the State in the future”<sup>6</sup> and ensured their objective throughout the referendum process, by continually rejecting input from representatives of various ethnic groups.



Local resident voting for 2008 constitution referendum

Official referendum results “claimed that 92.4 percent of voters approved of the new constitution and that, despite the humanitarian emergency, 26 out of 27 million eligible voters cast ballots”<sup>7</sup> With such impossible figures, the international community unanimously dismissed the process as a mockery of democracy

In efforts to guarantee that the SPDC regime retains control of Burma’s politics, economy, and the daily lives of its citizens, the new constitution reserves 25 percent of the seats in both houses of parliament for members of the military, and stipulates that “a number of the most important ministries be led by military personnel”<sup>8</sup>. Thus, any proposed amendment must be supported by more than 75 percent of the parliament, which, with the military holding 25 percent of the seats, demands that “at

<sup>6</sup> Impunity Prolonged, pg. 7

<sup>7</sup> Impunity Prolonged, pg. 9

<sup>8</sup> Impunity prolonged, pg. 3

least one member of the armed forces vote for a proposed amendment to limit military dominance”<sup>9</sup>. The 2008 Constitution further entrenches the military within the government, effectively rendering a functioning democracy virtually impossible.

## 7. Transition towards Democracy

In March 2011, President Thein Sein took office to lead a nominally civilian government. Now, state power has diffused from a dictatorship, and “transformations across Burma’s social and political landscape, ranging from slight policy adjustments to administrative overhauls, have altered the way many people look at the country and imagine its future”<sup>10</sup>.



In a wave of reforms in August 2011, President Thein Sein deregulated the media, freed many political prisoners, and halted a large, controversial hydro-power project; but such reforms are not what they may appear. Thein Sein’s reforms are largely built around systematic military participation in the government, as has been enshrined in the 2008 Constitution, and have no intentions of reforming that policy. Rather, Thein Sein’s objectives may lie in improving Burma’s reputation within the international community, which has proved successful in lifting international sanctions and attracting foreign investment in Burma’s natural resources.

Burma’s handover of government from a military dictatorship to what ultimately amounts to “indirect military rule” shows that Burma has not approached true transition towards democracy. Although the international community should help Burma rise from its crippling poverty, it must also usher the country through the transformation from its system of impunity, towards true accountability, justice, and reform.

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<sup>9</sup> Impunity prolonged pg. 4

<sup>10</sup> HURFOM, Destination unknown, Pg. 14

## D. MILITARY IDEOLOGY AND STRATEGY

### 1. Tatmadaw Strategy Against Burma's Ethnic Communities

Under General Ne Win's rule, the SPDC regime's nation building efforts were based on a specific vision of nationhood which held the belief that, since the 11<sup>th</sup> century, ethnic Burmans had built an empire through conquer and defeat of the region's other ethnic kingdoms. Guided by this vision, the Ne Win regime adopted policies and practices to bond the nation by a strong central state and the creation of unity through forced assimilation, or "Burmanization". The regime viewed ethnic and cultural diversity as dangerous and divisive, and was determined that the "solidarity of the Union had to be maintained and safeguarded by the armed forces."<sup>11</sup>



Current Tatmadaw Senior General Min Aung Hlaing addressing his troops

Tasked with enforcing the SPDC's policy of forced assimilation, the military effectively created a situation where the non-Burman segments of Burma's population were alienated from the protection and safe guards of the state, and as such, ethnic minority communities came to fear the state, and view state institutions, most especially the

military, as harmful to their welfare<sup>12</sup>. Under the Ne Win regime, this bigoted, authoritarian vision of nationhood became entrenched within the military's ideology

<sup>11</sup> Burma and National Reconciliation: Ethnic Conflict and State-Society Dysfunction, pg. 6-7

<sup>12</sup> Burma and National Reconciliation: Ethnic Conflict and State-Society Dysfunction pg. 9



and the strategies of terror and censorship it employed against the ethnic communities.<sup>13</sup>

A legitimate political institution must gain, and maintain, its power from the support of its people. The SPDC, however, governs without the consent of the people, relying, rather, on violence and threat, and uses the military as a tool to achieve these ends. The army, often referred to by its Burmese name of Tatmadaw, is the most powerful institution in Burma, controlling the political, economic and daily lives of its citizens. Within this militarized society, severe human rights abuses have been, and continue to be perpetrated at the hands of the military.

Inherent to the ideology ingrained throughout the Burmese military is the idea that power equals violence, and in order to gain power over the people, the military must first gain power over its soldiers. Through policies of deprivation and brutality, the Burmese army is able to ensure the obedience of its soldiers. The military efficiently deprives its soldiers of connections with the outside world, family and other support systems, so as to isolate them from ideas of justice found outside this ideology of power and violence which the army has indoctrinated in them.<sup>14</sup>

As the military isolates and indoctrinates its soldiers, an environment is created which supports serious violation of human rights. The strategies applied which create such an environment are twofold. First, by fostering the belief among its soldiers that retention of power demands the violent control over its vulnerable peoples, and secondly, reinforcing that belief by institutionalizing a policy of denial and impunity towards severe abuse of human rights.<sup>15</sup>



Government soldiers presence in a village

<sup>13</sup> Burma and National Reconciliation: Ethnic Conflict and State-Society Dysfunction” pg. 8

<sup>14</sup> School for Rape, pg\_54

<sup>15</sup> School for Rape pg. 50-51

Specific characteristics of the Burmese Army, such as the age and educational level of its soldiers, predict that the violation of human rights will be committed on a grand scale. Many soldiers are under the age of 17 and such young men lack the maturity, moral development, and emotional strength to resist the indoctrination and brainwashing of the army. Most soldiers lack a basic education and are illiterate. These factors combined create “a corps of armed men and boys ruled by ignorance”<sup>16</sup>

The army is able to continually expand its ranks not only because SPDC’s propaganda has enshrined the job of a soldier as noble, or because the army often kidnaps and forcibly conscript its soldiers, but also because there are so few alternative jobs in Burma. As such, the military is able to continually expand its ranks, which expands human rights abuses. The soldiers’ experience of trauma and isolation has been linked to inducing and expanding extreme behavior<sup>17</sup>

Kyaw, from Kaw Hlaing Village relates his experience with the military:

“I used to be a soldier in the past, it was not my dream but I had no choice because they Burmese soldiers forced us to porter. I decided to enlist, as I thought we were going to die one day from acting as porters, whether we were a normal person, or a soldier.



Army Captain addressing his troops before an operation in LIB No.106 compound

“After getting married, I resigned from being a soldier. The soldier’s life is complicated, when upper ones were good to us, the middle ones were bad. It was no good to be a junior soldier. We, the juniors, were always forced to be in the frontlines, so we were the ones to die first, but the senior soldiers got all the benefits, when there were benefits.

“When we got to a Mon village, the senior soldiers took anything, whether the owners allowed it or

<sup>16</sup> School for Rape, pg. 5

<sup>17</sup> School for Rape, pg. 57

not, but we junior soldiers got nothing; that's why I got out. The reason I ran away was because I was having conflict with a senior who was drunk and mistreated villagers, and I asked him to calm down and sleep. He accused me of being on the villagers' side. I returned all of my belongings and soldier materials, and I stopped serving as a soldier."<sup>18</sup>

The SPDC rules Burma with an oppositional mentality which categorizes every member of society as either 'us', those aligned with the regime, or 'them', the ethnic insurgents<sup>19</sup>, and "soldiers are often indoctrinated to view ethnic minority groups in Burma as inferior to ethnic Burmans"<sup>20</sup>. As such, the military wages war against anyone it views as a member of the ethnic insurgency, men, women, and children alike.

As of 1995, the SPDC had signed cease-fire agreements with fifteen ethnic groups, but just two years later in 1997, the regime launched increased waves of violence against Burma's ethnic minorities. Troops have attacked hundreds of villages, enslaved thousands of villagers as porters and forced laborers, and destroyed ethnic communities; serious human rights violations continue to be committed by the military in Burma's ethnic minority areas

Ah Mae village in Yebyu Township experienced extreme violence from Burmese military bases in the area. As Mi Khin May Win, 47, attests, "Our village, Ah Mae, was established by people who opposed the government, in an effort to eliminate injustice. When Ne Win came to power and the military government got a seat, the government labeled Ah Mae a black area.



Designated as a black area, along with the extension of military bases, Yebu Township found itself in a dangerous position...to sever connections between villagers and Mon

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<sup>18</sup> HURFOM Case No. 8

<sup>19</sup> School of Rape, pg. 17

<sup>20</sup> School for Rape, pg. 5

armed groups, the Burmese military implemented the ‘four-cuts’ method. We faced hardships from the ‘four-cuts’ campaign for several months; there was almost no food for the children because we did not have any money. We could not even afford rice juice because we could not afford to buy any rice to cook.”<sup>21</sup>

## Displacement

The military’s strategy aims to undermine the armed opposition by forcibly relocating communities from contested areas, to government controlled areas; “Civilians who do not comply with the orders are considered sympathetic to the rebels, and subsequently targeted”<sup>22</sup>.



The destruction of ethnic culture and forced displacement of ethnic civilians have been a “cornerstone of the Tatmadaw’s counter-insurgency strategy for decades”<sup>23</sup> Today, nearly 130,000 people have been displaced to refugee camps along the Thai-Burma border, with another 2-3 million internally and externally displaced.

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<sup>21</sup> HURFOM Case No. 2

<sup>22</sup> Displacement and Poverty, pg. 16

<sup>23</sup> Displacement and Poverty, pg. 16

## 2. Culture of Impunity

Burma's civil war and its history of severe human rights abuses are compounded by the SPDC's deep-rooted culture of impunity. Members of the Burmese military are responsible for committing widespread, systematic violations of human rights against any civilian perceived to oppose the SPDC regime, most especially those of Burma's ethnic minority populations, and such violations are committed with almost total impunity and unaccountability.

The military's violations of human rights continue throughout the country due to its perceived liberty to commit such acts, a constitution which cements the military's power and its ability to manipulate Burmese law, as well as the cultivation of an overwhelming fear in the people of opposing the regime. Impunity is reinforced by attacking those who complain or search for justice.

This system of impunity is embedded within the 2008 constitution, and recent reforms have actually maintained the status quo. Under the current constitution, victims of the government's violations of basic human rights are denied their right to seek justice and the regime's perpetrators of such abuses remain free from punishment.

In particular, Article 445 of the Constitution, also known as the Immunity Clause, grants the government amnesty for crimes committed during the SLORC reign from 1988 to 1997, stating that "No proceeding shall be instituted against the said [previously-ruling] Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties"<sup>24</sup>.

Further, Article 319 of the Constitution stipulates that only Courts-martial can "adjudicate Defense Services personnel"<sup>25</sup>, thus ensuring that members of the military never have to appear before civilian courts, or answer to the people for their crimes.

The military has perpetrated grave human rights abuses as a direct result of military policy and license to subjugate minority ethnic groups. Example of such policy can be found in the "Four Cuts" policy, implemented in the 1970s with the aim of destabilizing ethnic armed groups by cutting off access to food, funds, communication, and recruits.

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<sup>24</sup> Revealing Burma's System of Impunity: A Briefer for the Commission of Inquiry Campaign., pg.

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<sup>25</sup> Revealing Burma's System of Impunity: A Briefer for the Commission of Inquiry Campaign., pg.

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To maintain this policy, the army forced many ethnic communities into displacement, destroyed crops, and terrorized communities in order to cut off any support to the armed groups.

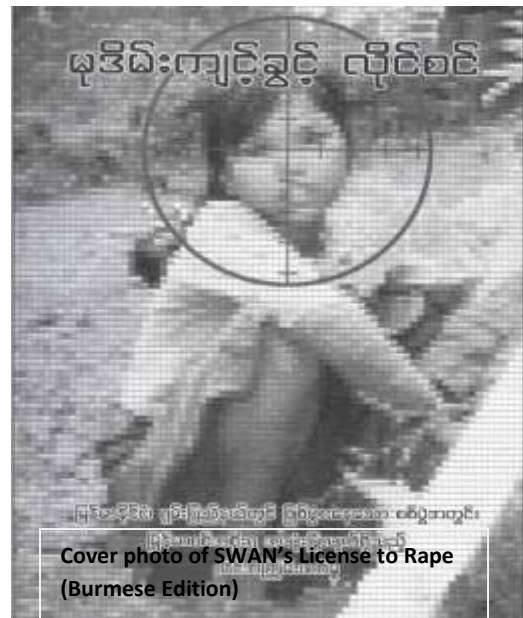
Beyond policy, the SPDC regime has filled most of Burma’s parliamentary seats with members of its own party and military loyalists. Under current constitutional provisions, it is nearly impossible to eradicate this system of impunity without approval from the military itself.

Critical to the SPDC’s system of impunity is the judicial system’s lack of independence from the military’s influence. In the current judicial system, the president, who is handpicked by ruling generals of the SPDC regime, in turn handpicks the judges who serve the country’s Supreme Court. As a result, judges serving the Supreme Court, as well as regional courts, are obliged to the will of the military regime in order to ensure job security.<sup>26</sup>

Burmese law includes various domestic laws against rape which can be punishable by death, including the Defense Services Act, Defense Services Rules, the Myanmar Penal Code, and the Civil and Criminal Procedures, but the mere existence of these laws does not ensure that they are enforced, which they most certainly are not within the SPDC’s ubiquitous culture of impunity.<sup>27</sup>

Notably, when allegations of rape are brought against the military, time and again the army denies having committed such crimes and, in advancing their strategy against ethnic insurgents, often blame ethnic groups in opposition to the government as the true perpetrators.

In 2002, the SPDC came under intense international pressure to address the issue of sexual violence, when the Shan Human Rights Foundation (SHRF) and the Shan Women’s Action Network (SWAN) published *License to Rape*, a ground-breaking report which identified 173 incidents of rape and other forms of



<sup>26</sup> Revealing Burma’s System of Impunity: A briefer for the Commission of Inquiry Campaign, Pg. 2

<sup>27</sup> Impunity Prolonged, pg. 15

sexual violence committed by the Burmese military, in which 83% of the perpetrators were high-ranking officials<sup>28</sup>. The official response from the regime consisted of denials and accusations that such allegations were politically motivated by ethnic groups opposed to the regime and were, therefore, unreliable. Such a response clearly illustrates the principle of impunity the regime affords its officers and soldiers.

Patterns of the Burmese army's culture of impunity are easily identifiable. The military applies impunity most prevalently for abuses committed against ethnic communities with whom they are engaged in armed conflict, and actively discourages justice-seeking by retaliating against victims who do seek legal action with the use of aggressive punishment and inciting fear of further abuse. This culture of impunity inhibits any meaningful progress to be made in the arenas of truth-seeking and reforming institutions responsible for the SPDC's mass violations of human rights.

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<sup>28</sup> License to Rape: [http://www.burmacampaign.org.uk/reports/License\\_to\\_rape.pdf](http://www.burmacampaign.org.uk/reports/License_to_rape.pdf)

## E. HUMAN RIGHTS VIOLATIONS IN BURMA:

The Burmese army perpetrates severe, widespread, and systematic human rights abuses, primarily against Burma's ethnic minority communities; crimes which are supported by the military's ideology, politics, and practices. Human rights violations have occurred throughout Burma, but have been found to be most severe in



IDP families find refuge in NMSP controlled areas in south-eastern Ye Township, Mon State

rural ethnic areas, which are directly related to the military's campaign of attacking civilians they see as supporting armed opposition<sup>29</sup>.

Abuses are widespread and systematically perpetrated with state involvement. After years of land confiscation and

other human rights abuses by the Burmese military, vast numbers of Burma's minority ethnic communities have been driven into poverty or forced to flee the area, creating large numbers of Internally Displaced People (IDP).

This report will focus on violations committed by the Burmese military against ethnic civilian populations surrounding land confiscation, extortion, and restriction of mobility; forced labor and forced portage; physical abuse, torture and murder; and rape and sexual abuse.

Reflecting on decades of violence and abuse from the Burmese military, 80 year-old Saw Ka Bel Kyaw, from Mi Kyaung Hlaung Village, Yebyu Township, explains;

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<sup>29</sup> Impunity Prolonged, pg. 28



“We’re born here, have grown up here, and have lived through the Japanese Era. The Burmese military is worse than the Japanese’s. It’s difficult to recognize Burmese soldiers as humans. As I remember, I was tortured and wrongly arrested. We had to give financial support to the military, even if we had nothing. We couldn’t count the number of people involved in forced labor; we had to guard the pipeline and were forced to porter. We had to do all of these things for free; we didn’t get any money. We never forget those things.”<sup>30</sup>

## 1. Land Confiscation

Illegal land confiscation is a leading problem that, for decades, has plagued Burma’s rural ethnic communities, and is one that continues to this day. Due to increased militarization, increased foreign investment, the liberalization of the economy, and a general lack of the rule of law, land confiscation has run rampant through rural Burma.

The right to live and work in dignity is a fundamental human right, which the SPDC does not afford its rural ethnic communities. Domestic laws meant to combat land confiscation are severely flawed, and most often work to aid further violations. Activists calling for the respect of citizens’ land rights have been physically assaulted, harassed,



“ARMY LAND” – Confiscated rubber plants in Yebyu Township, Tenasserim Region

detained and imprisoned.

Burma has enjoyed a period of economic growth since the mid-2000s, growth which has drawn largely from the regime's exploitation of Burma's natural resources and its ethnic communities. Consequently, violations of illegal land confiscation have been committed in Ye and Yebyu Township due to the SPDC's strategy of increased military presence and foreign investment in minority ethnic areas.

### **i. Effects from Base Expansions**

After the SPDC signed a ceasefire agreement with the NMSP in 1995, the regime immediately increased their presence in Ye and Yebyu Townships, increasing violations against ethnic communities. The Tatmadaw increased land confiscation for their barracks and bases, continued forcing villagers to work with no compensation, seized plantations to grow subsistence crops to feed the army, as well as cash crops to cover operating costs.

In 1999 and 2000, Light Infantry Battalion No. 299, 343 and 61 who cooperate under No. 19 Military Operation Command (MOC) confiscated 1000-acres of land owned by Mon residents in order to construct new artillery and infantry battalions. The confiscated land is located in Southern Ye and consisted of rubber, betel nut and cashew nut plantations<sup>31</sup>

In 2003, the LIB No. 282 and 409 gas pipeline guarding forces confiscated Saw Ka Bel Kyaw's land, claiming that his land was included in the designated project area for the TOTAL oil and natural gas company.<sup>32</sup>

"I was 70 at the time my land was confiscated, and all my effort was lost like pouring water in the sand. There is no other job in this region, except for farming plantations, and I have been in trouble ever since my land was confiscated. Sometime after I lost my land, I moved to my native Mi Kyaung Hlaung and farmed fruits and seasonal plants on a 2-acre plot of land, which I shared with relatives, and made my livelihood fishing in the stream. I have never gotten a well-paid job. In this village, there have been 20 or 30 victims of land

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<sup>31</sup> HURFOM Case No.17

<sup>32</sup> HURFOM Case No. 13

confiscation by TOTAL gas pipeline guarding forces. Like me, the other victims did not receive any compensation. Now our land is fenced by the military; the betel nut plants have been displaced by the military training fields and buildings.”<sup>33</sup>

As Burma emerges from decades of economic isolation, Foreign Direct Investors (FDI) are increasingly interested in investing in Burma’s vast natural resources of fertile land, oil, natural gas, and timber.<sup>34</sup> With such interest and the possibility for economic gains, rural Burma is experiencing increasing rates of land grabs at the expense of ethnic



Section of LIB No.408 base built on confiscated land in Yebyu Township, Tenasserim Region

communities. Land grabs, along with expanding militarization in ethnic areas, are pushing people off their land, and forcing them into poverty and displacement.

Along with land confiscation by army battalions for military expansion, the military works closely

with business partners and foreign investors to confiscate land from local villagers for commercial purposes and large-scale development projects.<sup>35</sup> As a result, studies show upwards of 50% of farmers in areas of rural Burma who are now landless.<sup>36</sup>

In 1995, preparations began in Mon State to build the 182-mile gas pipeline that linked Rangoon to the Yadana gas project. This Kanbauk to Myaint Kalay gas pipeline led to the seizure of more than 2,400 acres of land from local villages, and extensive forced labor.<sup>37</sup>

<sup>33</sup> HURFOM Case No. 13

<sup>34</sup> Briefing-8-8-Burma, pg. 140

<sup>35</sup> Brief #8 of 8: Union of Myanmar; National updates on Agro business Large Scale Land Acquisitions in Southeast Asia, pg. 143

<sup>36</sup> Briefing-8-8-Burma, pg. 144

<sup>37</sup> HURFOM: Destination Unknown, pg. 23

Within 10 years, Saw Kyaw Khaw Goz, 52, from Mi Kyaung Hlaung Village, Yebyu Township, Tenasserim Division, lost all of his 20-acre land to the Burmese army, without receiving any compensation. Warrant Officer Aung Sint and Captain Kyaw Swar confiscated Saw Kyaw Khaw Goz's land, which is now designated as land belonging to Burmese army Battalion No. 282.<sup>38</sup>

“My 20-acre land is included in the land which is now owned by Battalion No. 282. My family farmed 400 betel nut plants and had 12 productive mango trees, as well as some lime plants and other plants on our 20-acre land. We have been farming that land since the time of my parents. Ten years ago, Light Infantry Battalion (LIB) No. 282, which is a guarding force of the TOTAL Natural Gas Pipeline, came to my land and marked it with a red flag, which is used to denote land that is labeled for a certain purpose. First, 5-acres of my land were confiscated, then another 7-acres, and finally all of my 20-acre land was unfairly confiscated. I lost all of my property, and consequently had no mood or energy to do anything. Now I have no land. I'm struggling for my livelihood, and trying to overcome daily hardship... I want to get my 20-acre land back. That land is our lives.”<sup>39</sup>

In 2013, recognizing that its land laws were inadequate the Burmese government enacted the Farm Land Law and the Vacant, Fallow, and Virgin Land Law. The Farm Land Law allows landowners to register for Land Use Certificates (LUCs), but LUCs do not provide adequate guarantee of land ownership, especially in light of the 2008 Constitutional provision which states that the government ultimately owns the land and citizens are allowed only the right to farm the land.

Neither of these laws proved to be sufficient in stopping land confiscation, and do not protect farmers' land rights. In fact they do quite the contrary, “on the whole, they benefit



Victim of land confiscation for gas development project

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<sup>38</sup> HURFOM Case No.10

<sup>39</sup> HURFOM Case No.10

large-scale industrial farming at the expense of the more than 70% of the population that lives in rural area, the majority of which subsists off small-scale farming<sup>40</sup>”.

## ii. Threats to Livelihoods

Land is essential to the lives and livelihoods of Burma’s rural ethnic communities, as “nearly three quarters of Burma’s population (40 million people) live in rural areas and depend directly on farmland and forests for their livelihoods.”<sup>41</sup> As is evident when Saw Kyaw Khaw Goz (52) says, “This land is our lives”<sup>42</sup>.

As ethnic villagers’ traditional livelihood is that of farmer, when plantations and farms are confiscated, it is virtually impossible for them to find other areas of substantial employment without professional training<sup>43</sup>, resulting in extreme poverty and displacement.

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<sup>40</sup> Brief #8 of 8: Union of Myanmar; National updates on Agro business Large Scale Land Acquisitions in Southeast Asia, pg. 141

<sup>41</sup> Briefing-8-8-Burma, pg. 143

<sup>42</sup> HURFOM case No. 10

<sup>43</sup> Gaining Ground, Earthrights, pg. 112

## a) Extortion

Along with base expansion and land confiscation, comes the opportunity for the Tatmadaw to exert its force against ethnic villagers by engaging in extortion and corruption. With large numbers of investment in Burma's natural resources flowing into ethnic areas, coupled with poor regulations and poor governance, the environment is ripe for extortion to take hold. Such crimes compound issues of poverty that arise when villagers lose their land and sole source of income.

As a result of extensive extortion at the hands of the military, Kon Blai, 40, from Chan Gu, Southern Ye Township was thrust into poverty, "My family earned just 5,000 kyat in total, but we had to pay [the Burmese troops] 3,000 kyat and were only allowed to keep 2,000 kyat of our livelihood, so we could not cover our living expenses."<sup>44</sup>

In March 2014, Nai Win Aung, 50, from Ye Township was accused by Infantry Battalion (IB) No. 31 of having allowed his buffalos to feed on the battalion camp's grass. In order to get his buffalo back, Major Zaw Myo Htew informed Nai Win Aung that he must pay the soldiers.

"They accused me because they want to extort money from us. They sometimes create problems to extort money from the locals. It was really abuse and torture. I informed the upper [military personnel] and [IB No. 31's] colonel, but I got no response. There were a lot of situations the same as mine, but [the other victims] kept silent because they did not dare speak out about it." – Nai Win Aung<sup>45</sup>



## b) Restricted Mobility

Along with extortion, another negative effect from land confiscation is found in the military's forced restriction of villagers' mobility. Land confiscation takes form in various ways. In some instances, the military will seize farmers' land and force them into

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<sup>44</sup> HURFOM case No. 9

<sup>45</sup> HURFOM case No. 15

displacement, never allowing them to return to their land. In other cases the military will seize land and displace the farmers, but allow them to return during the day-light hours to rent and work the land. In this situation, villagers are restricted as to when they can travel to and from their plantations.

San Win explains,

“Residents had to sign a document with the village administrator that they would go to their plantations during the day, and then come back in the evening. Residents had to sign this document every day, and pay 20 kyat per day to the village administrator, Nai KaTam Htaw (Golden Crab); some residents signed and paid for a week, if their plantations were far from Chan Gu village.”<sup>46</sup>

Kyaw explains how restricted mobility affected his income levels,

“The Burmese military restricted us from traveling, which created problems for us because we did not have any plantation or farmland... We only earned 4,000 or 5,000 kyat per day in the village, which does not cover our daily expenses”<sup>47</sup>

### **iii. Impacts of Land Confiscation and Subsequent Poverty on Victim**

Land confiscation has direct effects on many of the victim’s basic human rights, such as “the ability to live and work in dignity, the availability to adequate food and water, and the right to an adequate livelihood.”<sup>48</sup>

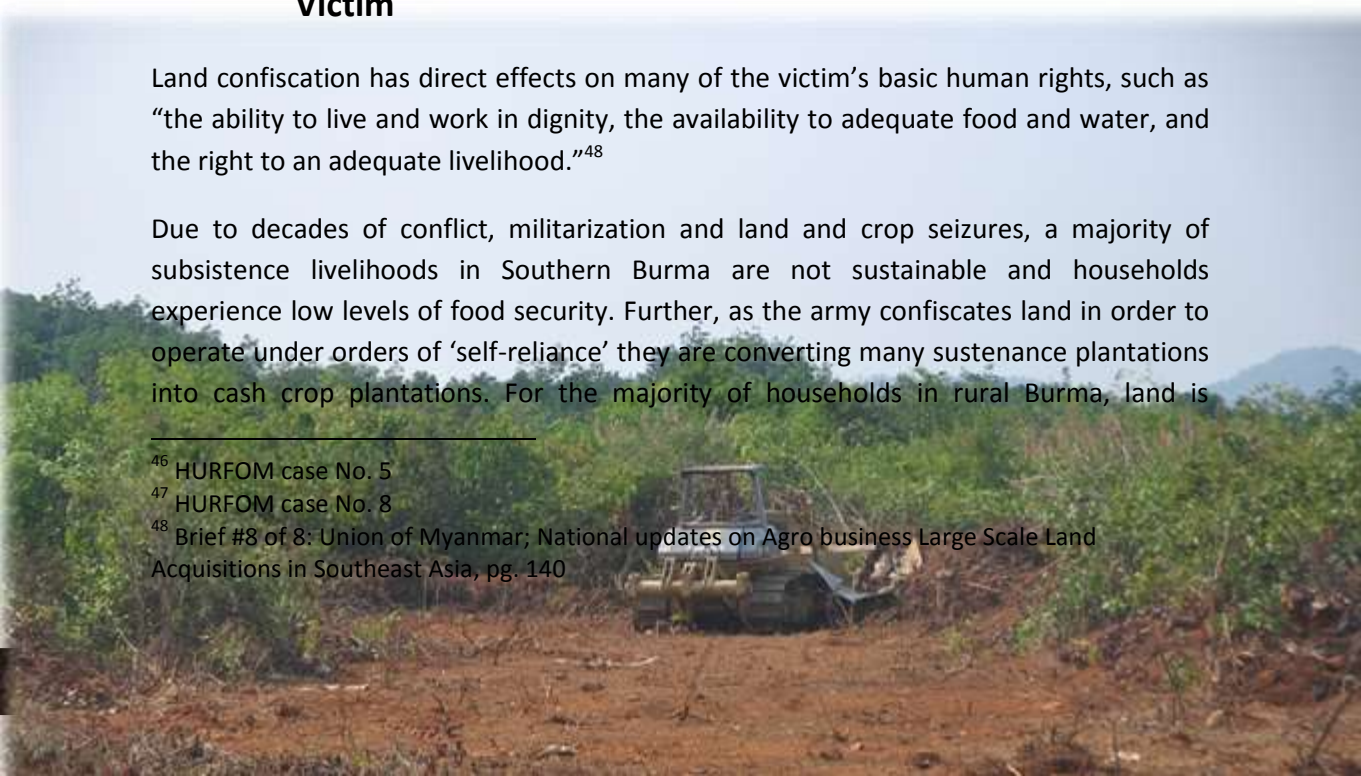
Due to decades of conflict, militarization and land and crop seizures, a majority of subsistence livelihoods in Southern Burma are not sustainable and households experience low levels of food security. Further, as the army confiscates land in order to operate under orders of ‘self-reliance’ they are converting many sustenance plantations into cash crop plantations. For the majority of households in rural Burma, land is

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<sup>46</sup> HURFOM case No. 5

<sup>47</sup> HURFOM case No. 8

<sup>48</sup> Brief #8 of 8: Union of Myanmar; National updates on Agro business Large Scale Land Acquisitions in Southeast Asia, pg. 140



essential to their livelihoods and food security. Traditionally, parents pass their farm land on to their children, thus confiscation effects multiple generations of ethnic communities and plunges multiple generations into poverty.

As rural ethnic villagers have their lands and crops illegally confiscated, they often find themselves thrust into poverty. Such poverty forces ethnic families to make difficult decisions. Many who find themselves in this situation abandon their farms and, in some cases family members, in order to find a way to survive elsewhere, becoming displaced within Burma. Many families experience separation as various members leave for migrant work in Thailand, sending back what money they can to help alleviate the financial burden at home.

### **a. Effects on Education**

Poverty also has a direct effect on the educational opportunities for children of rural ethnic communities. Many families are in such financial strains that they can no longer afford to send their children to school. Other families remove their children from school and put them in the workforce to help earn enough to cover the family's daily expenses, as well as contribute to paying off family debts.

Six years ago Saw Khu Buu, 55, from Yebyu Township, lost 5 acres of his betel nut plantation to the military, without receiving any compensation. Saw Khu Buu explains his income became so low that, "My children went to work in Thailand, I was really in trouble [financially]"<sup>49</sup>

Saw Pha Doe, 54, from Yebyu Township, had his land confiscated by LIB No. 282 in mid-2006, and he lost more than 600 betel nut plants in the confiscation. Moreover, Saw Pha Doe had borrowed 350,000 kyat from a relative in order to invest in his plantation, and all of that money was lost when his land was confiscated.

"When my betel nut plantation becomes productive, I planned to use the profits to support my children's education and as regular income when my wife and I get old... When the plantation was confiscated, we became in debt because we borrowed money in order to farm the

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<sup>49</sup> HURFOM case No. 11



plantation. My children were forced to leave their schooling and go to Thailand to work to pay off our debt.”- Saw Pha Doe<sup>50</sup>

## b. Psychological impacts from Land Confiscation



Land is very often considered to be the life-blood for Burma’s rural ethnic communities. When this integral part of their livelihood and identity is taken from them, many find themselves experiencing psychological impacts from the loss. Many villagers experience depression and loss of hope. In some instances such mental states lead to the breakdown of the family unit.

Nai Pha Luu, from Chapon village, explains that if the military troops had never come to the area “our village would not be desolate like it is now and our future would not be short of hope.”<sup>51</sup>

When HURFOM reporters met with Nai Hmine, he had difficulty talking about his land, “I’m too disappointed to retell the event...our lives reached rock bottom. I had inherited this 7-acre land from my father before his death and he farmed betel nut plants and other perennials such as mangosteen, durian and orange plants. (He always said) If this land existed, our family didn’t need to worry about anything. Now we have to start our lives from zero (nothing). I was too disappointed to walk in front of my land. After confiscation, our family fell apart and had to go to Thailand for work”<sup>52</sup>

## c. Displacement

As land is confiscated, many villagers face job shortages, and are forced to relocate in search of work. In many rural communities there are no other jobs in the region other than farming; “as threats to livelihoods in native villages increase, incomes become so

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<sup>50</sup> HURFOM case No. 12

<sup>51</sup> HURFOM case No. 14

<sup>52</sup> HURFOM case No. 17

low, and food security so dire, people have no choice but to leave their homes<sup>53</sup>.” Destitute, with no source of income, many minority ethnic villagers become displaced within Burma, with others illegally migrating to Thailand to find work.

In 1997 Mi Khin May Win, 47, lost her home and plantation, and was forced to flee her life in militarized Ah Mae Village, Yebu Township.<sup>54</sup> Many from the Ah Mae community are now living in an area controlled by the New Mon State Party; they have no native home, and land that was once theirs is no longer in their possession. Villagers find that the area they have relocated to is better in some respects than their native Ah Mae village, because they can speak and work freely and enjoy safe surroundings, but many have found it difficult to find work in their new location.<sup>55</sup>

As Mi Khin May Win’s account demonstrates, even when villagers relocate, they may escape the domination of military activity, but many of their problems, such as job insecurity and poverty, follow them.

Khon Blai, 40, left his home village to find work in Thailand. At first, he left to Thailand by himself, sending his family what money he could, but it was not enough so his family eventually left Burma to join him in Thailand. For Khon Blai, life in Thailand is a little better than it was in his native village, but he and his family constantly think of the life and home they left behind; “We never forget our hometown. We miss our village every day and want to go back, but I can’t afford to go back. We came here because we did not have enough money to cover our daily expenses in the village.”<sup>56</sup>



Victim of land confiscation sharing her story

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<sup>53</sup> Paulo Sergio Pinheiro, 7 March 2008, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, pg. 17 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/115/16/PDF/G0811516.pdf?OpenElement>

<sup>54</sup> HURFOM case No. 2

<sup>55</sup> HURFOM case No. 2

<sup>56</sup> HURFOM case No. 9

#### **iv. Lack of Transparency**

As the stream of foreign investors flow into Burma's ethnic regions, the government deals solely with the foreign companies, paying little regard to the local people. It has become evident that FDI in these areas has substantially interfered with trust building, which is a vital ingredient in Burma's path to reconciliation.

As the SPDC signs contracts with foreign investment companies, there is no communication afforded to the local people. Villagers find themselves out of the loop, and do not know the policy of the military and the government. In southern Karen and Mon States, residents feel that the government does not care about its citizens, but only care about investment. While engaging in FDI, the SPDC does not respect the opinion of the local villagers in their decision making, which is increasingly eroding the trust between the government and villagers.

Thailand's industrial conglomerate, the Siam Cement Group (SCG) is currently collaborating with the Pacific Link Cement Industries Ltd in the construction of a 12.4 billion baht cement plant in Kyaikmayaw Township, Mon State. Throughout project planning and implementation, residents of Pyar Taung Village, located on the eastern bank of the Attaran River, which bisects Kyaikmayaw, have been excluded from communication about the project and subject to rampant unjust land acquisition.

Trust is continually eroded as SCG and Pacific Link company representatives make false promises concerning the value and benefits of the project to the local community. In an October 2013 meeting between company representatives and local residents, the representatives concluded the meeting by asking attendants to sign a document without describing its significance.

Local resident Nai Maung Ngo explains that the community has not been provided with any clear plans or explanations for the cement project. "The worst thing", Nai Maung Ngo says, "is that the government is protecting the companies, so local people do not know who can speak out against the companies. The residents [have lived] in fear of the military for many years, so the companies and authorities can easily abuse them<sup>57</sup>."

There have been no reports conducted in regards to environmental damage produced from the project, and residents feel great pressure on their traditional means of income.

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<sup>57</sup> <http://rehmonnya.org/archives/3000>

Residents report that Pacific Link has regularly taken advantage of local landowners by offering low compensation for plots of land and threatening families who hesitate to accept the deals.

In one case, company assistants and land record administrators surveyed Nai Ah Nyain's plantation and offered to buy the land at an offensively low price; Nai Ah Nyain refused to sell. "There are seven acres of my rubber plantation that connect to the project area in Pauk Taw Village", says Nai Ah Nyain, "and all the rubber trees on my plantation are ready for tapping. In the past, Pacific Link Cement threatened me to get me to sell the land, saying that if the government confiscated it instead, I would not be paid at all, so I should accept the small price they offered. Even though I do not know about the law, I thought I would not sign due to threats because my land would belong to them if I did. I do not like the way they threaten me to sell my land...I will not sign just because I am scared of their intimidation<sup>58</sup>."

Most recently, SCG and Pacific Link have constructed an approximately two-mile cement tunnel connecting the Attaran River with the cement plant project site. Residents were never consulted on its construction, and feel their rights have been disrespected. The local people have been forced to abandon their farmlands with no information or assurances as to the time-span or trajectory of the project. The investment companies are exploiting traditional farming lands and are not compensating the people adequately.



<http://shmonywa.org/archives/3030>

Pacific Link cement projects site on land confiscated through exploitation of local land owners in Kaw Pa Naw village, eastern Kyaikmayaw Township, Mon State.

A former NMSP township administrator from Yebyu Township who spoke on condition of anonymity said, “It is sad to hear about abuses like the ones in the past occurring now in this transitional period. These [land confiscation] violations are caused by the military and relate directly to business activities, and the local government and the [armed] ethnic groups do nothing to solve the problem.”<sup>59</sup>

### **a. Revenue Transparency**

Burma earns billions of dollars a year in revenue from large-scale extraction projects in its natural resources. However, local communities do not enjoy benefits from these development deals, as profits go directly to the military. Moreover, ethnic states such as Kachin, Shan, Karen, Kayah, and Mon States have never been compensated for social or environmental damages resulting from such projects. Unfair sharing of resource benefits amongst the Burmese populace has contributed to conflict between the government and Burma’s ethnic peoples.

There is a serious lack of revenue transparency in development projects, which allows for revenue mismanagement and corruption. The responsibility falls on investment companies and the Burmese authorities to provide complete transparency of all revenue gained from resource extraction projects in Burma. Investment companies should publish detailed information about their revenue payments to the Burmese authorities, including taxes, fees, royalties, bonuses, and social benefits, as well as the disclosure of all support provided for socio-economic projects in local areas surrounding project sites, including the amount and flow of payments<sup>60</sup>. Burmese authorities must disclose all revenues received from extractive projects, in order to stop corruption and misappropriation of the state’s revenues.

Full revenue transparency in Burma will contribute to a more positive presence of FDI in Burma, and will highlight any mismanagement of revenues generated for Burmese authorities. Revenue transparency will aid in promoting good governance and responsible management in Burma, as well as building trust between Burmese authorities and ethnic communities.

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<sup>59</sup> HURFOM case No. 14

<sup>60</sup> <http://asiancorrespondent.com/114427/analysis-burmas-natural-resources-curse/>.

## **v. Requirements from the Victims**

In order to rebuild trust between local villagers and the government, many victims of land confiscation are in favor of certain reparation mechanisms. Many victims would like their land returned to them either fully, or partially, or would like to receive compensation at market price for land and crops seized by the military.

Another requirement many victims voiced is the removal of all army bases from their native areas. Victims require that the army remove all military bases and military camps from southern Ye Township and Yebyu Township. As one victim states, “we will not return unless the military bases are withdrawn from our areas”<sup>61</sup>

Other victims do not request any form of reparations from the government, as they believe the violation has already been committed, and the past is the past. Rather, these villagers demand assurance from the government that these types of abuses will not continue in the future. Specifically, victims of land confiscation and restriction of mobility want their freedom restored, “Everyone wants to return to his or her home if there is the freedom to work, live, and travel”<sup>62</sup> Overall, victims want the opportunity to rebuild their livelihoods, in an environment where they will be able to live and work in freedom.

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<sup>61</sup> HURFOM case No. 2

<sup>62</sup> HURFOM case No. 8

## 2. Forced Labor and Forced Portering

Ethnic communities across rural Burma have a long, violent history of forced labor at the hands of the Burmese Army. Expansion of military bases in ethnic areas has increased in recent years in response to rebel activity and government protection of large-scale development projects. With increased militarization brings the increase of human right violations, and forced labor is among the most widespread violations committed against rural ethnic communities.

The Burmese military forcibly conscripts villagers for forced labor and forced porter duty for military operations; construction and maintenance of infrastructure, including roads and military facilities; cultivation of subsistence and cash crops, as well as other income generating projects; and for construction of development projects, including gas pipelines, railway lines, and hydroelectric dams.

The government has officially outlawed the practice of forced labor in Section 374 of the penal code, “yet the authorities apply Section 374 selectively, and the military continues to use forced labor to support basic functions”<sup>63</sup>. The Burmese government also signed the International Labor Organization (ILO) convention No. 29, which prohibits all forms of forced or compulsory labor. Despite this fact, the SPDC still forcs villagers to act as forced labor and forced porters.



The SPDC often conscripts local village men to move its supplies, such as rations and ammunition, either during military operations, or from one camp base to another.

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<sup>63</sup> Impunity Prolonged, pg. 18

During military operations, porters are routinely forced to carry 30-50 kilogram loads on their backs for long distances, and allowed very little food and water to sustain them.

Conscription as a porter is dangerous, as porters are often sent in front of the soldiers to act as mine sweeps and human shields. If they are slow in their work, porters are often abused by the soldiers, with reports of victims being kicked, beaten, and insulted.

Whenever a new battalion moves into an area, villagers are conscripted to move supplies between base camps, and forced to provide building material for the camp. Due to reduced defense budgets coupled with increased militarization, there is not enough support, so the military has instituted a 'self-reliance policy' where battalions conscript villagers to supply labor to support the soldiers and cover operating costs. In such cases, villagers must provide labor for building infrastructure, portering, as well as supplying food for the troops.

At least one person from each household is required to perform forced labor for the troops, work that includes building barracks and digging trenches. If troops are unable to conscript men in a certain village, women and children are often forced to take the place a man would. The use of female porters is especially concentrated in Burma's isolated, rural areas. Villagers are taken from their work and families, and often beaten with the risk of being killed.

## **i. Impact on Victims**

Forced labor and forced portering impacts the lives of rural villagers tremendously. Men, women, and children alike experience the effects as they are exposed to extortion, physical abuse, and degradation by the Burmese military.

Villagers, including young children are forced to do grueling physical work. When Nai Rot Sa, from Ye Township, was a boy of just 12 years old he was conscripted to labor for the Ye-Tavoy railway. Not only was he forced to work as a child, but he and his family faced extortion from the military if he did not work for them, "If we did not go", Nai Rot Sa remembers, "we would be punished and told to pay. I cannot remember how many days I spent laboring"<sup>64</sup>

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<sup>64</sup> HURFOM Case No. 1



When children are conscripted for forced labor it affects their lives in damaging ways. Children are robbed of their childhood and their education. As they are forced to work during the day or forced to pay the military, children are faced with the immense responsibility of abandoning their studies and fulfill the military's orders as forced labor, so their families do not have to have to bear the overwhelming burden of paying the extortion fees.



Karen villager sharing his experience of forced portering for the Burmese Army

Beyond these responsibilities, children are forced to labor in the same jobs as grown men, carrying heavy loads with the sustenance of minimal food and water. Such tremendous physical work has long-term negative effects on the child's physical health as he or she grows.

As villagers are fulfilling their mandatory labor duties, they are often met with physical and mental abuse by the soldiers presiding over them. Mi Khin May Win

reports that her husband was forced to porter for the military and they would "abuse him and other porters, and treat them like animals."

The military also used degrading tactics to abuse the villagers, "If the soldiers saw or heard [the porters] using Mon language", Mi Khin May Win says, "They would beat and kick the porters, and insult the Mons by saying they were a rebel generation who destroyed the country"<sup>65</sup>

As villagers are conscripted to labor for the military with no compensation, it negatively affects their livelihood. Villagers cannot generate income from their farm as they are forced to spend their working hours laboring for the military without pay. Along with forced labor, each household in a government-controlled area is forced to pay monthly fees, which supplement the military's conscripted labor. If a household cannot provide a member to work for the military, they must spend money to hire someone to fill that household's quota.

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<sup>65</sup> HURFOM Case No. 2

Many villagers are conscripted as forced labor multiple times and experience multiple forms of human rights violations. In one such case, Saw Ka Bel Kyaw, 80, from Mi Kyaung Hlaung Village, Yebyu Township, was a victim of the Nay Win government and the SLORC's four cuts policy, and he has been forcibly involved in portering more than 20 times by the TOTAL pipeline guarding forces of LIB No. 408 and 409.<sup>66</sup>

### **3. Physical Abuse, Torture and Murder**

Burmese Military troops aim to intimidate and retaliate against, by way of threat, violence, and torture, any person they suspect of supporting an ethnic rebel group – whether their suspicion is well-founded or not.

According to Nai Thein Tun, a 35 year-old villager, “Burmese soldiers torture and abuse local residents almost every month.... Even [within] this term of government, torture and abuse is still ongoing”<sup>67</sup>.

Often, the slightest whiff of suspicion that someone is in contact with, or providing support for an ethnic rebel group leads to the physical abuse and often summary killings of many innocent villagers by the Burmese army. “I think that my village experienced the highest rates of innocent villagers to be killed by the military”, says Mi Khin May Win, “My uncle, Nai Phoe Lay, 56, and his friend, Nai Myint Naing, also 56, were beaten to death by soldiers from LIB No. 273.”<sup>68</sup>

In one disturbing case from 2007, the Burmese military accused Nai Mae from Chan Gu village, Ye Township of supporting a local Mon armed group and supplying them with food. The troop arrested him, brought him to a cemetery, and gave him tools to dig a hole, ostensibly to be used for his own grave. The soldiers ordered Nai Mae to get into the hole and proceeded to threaten him and beat him with a gun. Nai Mae was not able to give the troop any answers because he was, in fact, innocent and had not given food to the armed group.

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<sup>66</sup> HURFOM Case No. 13

<sup>67</sup> HURFOM Case No. 15

<sup>68</sup> HURFOM Case No. 2

In many cases, villagers are caught in the middle between ethnic rebel groups and the Burmese army, experiencing extortion and abuse by both sides. It can be quite common for ethnic rebel groups to enter a village and demand payments from the villagers. If the Burmese army finds out about this, they believe the villagers are supporting the insurgent groups, and punish the villagers.

One such case involves Aung Thein, a former village administrator from Kawza Sub-Township, Ye Township. One day the Ah Pin armed group ordered Aung Thein to meet with them. During the meeting, the armed group ordered Aung Thein to collect money from the residents and deposit the money to them, but Aung Thein refused.

LIB No. 31, the military troop based in the village, heard about Aung Thein's meeting with the armed group and suspected him, and another village administrator, of aiding the rebel group. General Han Win Kyaw from LIB No. 31 ordered the two village administrators to the military barracks, and soldiers began attacking the men. The soldiers beat the men, covered their heads and turned them face-down on the floor. After they finished beating the men, the soldiers warned them that they could be arrested on the charge of contacting rebel armed groups, threatening that they could be put in jail or killed as a result.<sup>69</sup>



When new military bases enter ethnic areas, villagers are exposed to abuse and exploitation. Fear from such actions cause many people to flee their native villages. When a new military troop arrived in Tu Myoung, Ye Township, Ktaw Mon, 28, recalls that they began to indiscriminately "[abuse] everyone by beating residents for no reason, as well as taking rations and animals in the village; the residents did not dare stay in the village. Since General Hla Khaing controlled the village, he committed many

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<sup>69</sup> HURFOM Case No. 3

violations such as burning residents' houses, and taking residents' properties after destroying their homes... Many people from my village moved to other villages".<sup>70</sup>

Many villagers reported that they could not withstand the abuse anymore and decided to flee. Such acts of violent aggression forces many ethnic villagers to flee their homes, becoming one more of the thousands of displaced people throughout Burma and Thailand. Mi Khin May Win, her family, and many other villagers were forced to flee their hometown when the Light Infantry Battalion (LIB) No. 273, No 282, and Infantry Battalion (IB) No. 31, which are all under the control of the Military Operation and Management Command No. 18, applied various methods of abuse on the community<sup>71</sup>.

According to Nai Thein Tun, "Burmese soldiers torture and abuse local residents almost every month. We wanted upper level [military personnel] to know, and wanted them to seek justice for us. Young people should not keep silent, but [must] help each other, and raise awareness of the public. Even [within] this term of government, torture and abuse is still ongoing, so everyone should participate in finding a solution and seeking justice."<sup>72</sup>

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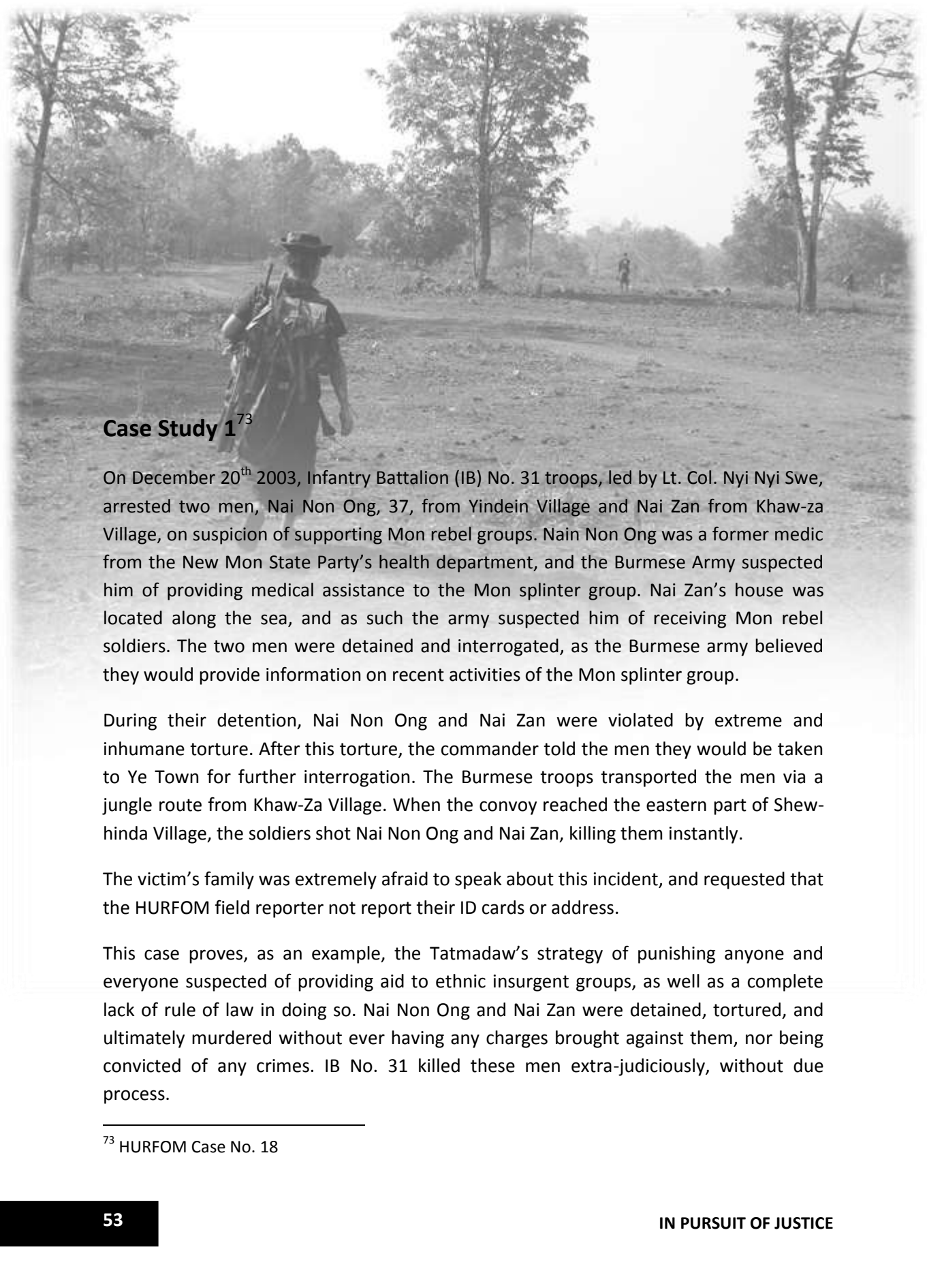
<sup>70</sup> HURFOM Case No. 4

<sup>71</sup> HURFOM Case No. 2

<sup>72</sup> HURFOM Case No. 15



**Army Commander oversees villagers performing forced labor in Anankwin village, Kyainnseiky Township**



## Case Study 1<sup>73</sup>

On December 20<sup>th</sup> 2003, Infantry Battalion (IB) No. 31 troops, led by Lt. Col. Nyi Nyi Swe, arrested two men, Nai Non Ong, 37, from Yindein Village and Nai Zan from Khaw-za Village, on suspicion of supporting Mon rebel groups. Nai Non Ong was a former medic from the New Mon State Party's health department, and the Burmese Army suspected him of providing medical assistance to the Mon splinter group. Nai Zan's house was located along the sea, and as such the army suspected him of receiving Mon rebel soldiers. The two men were detained and interrogated, as the Burmese army believed they would provide information on recent activities of the Mon splinter group.

During their detention, Nai Non Ong and Nai Zan were violated by extreme and inhumane torture. After this torture, the commander told the men they would be taken to Ye Town for further interrogation. The Burmese troops transported the men via a jungle route from Khaw-Za Village. When the convoy reached the eastern part of Shew-hinda Village, the soldiers shot Nai Non Ong and Nai Zan, killing them instantly.

The victim's family was extremely afraid to speak about this incident, and requested that the HURFOM field reporter not report their ID cards or address.

This case proves, as an example, the Tatmadaw's strategy of punishing anyone and everyone suspected of providing aid to ethnic insurgent groups, as well as a complete lack of rule of law in doing so. Nai Non Ong and Nai Zan were detained, tortured, and ultimately murdered without ever having any charges brought against them, nor being convicted of any crimes. IB No. 31 killed these men extra-judiciously, without due process.

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<sup>73</sup> HURFOM Case No. 18

## **a. Trauma**

The torture and murder of Nai Non Ong and Nai Zan took place over December 20-23 2003. Lt. Col. Nyi Nyi Sew led troops from IB No. 31, which is under control of the Military Operation and Management Command, in the brutal torture and murder of the two men due to suspicion that they were providing assistance to Mon rebel forces.

However, interviews conducted by HURFOM's field reporters in March 2013, Nai Non Ong's sister, Mi Ngew Tin, 40, claims that her brother is still alive; her family does not want to think that he was killed and awaits his return home. Mi Ngew Tin provides insight into the tremendous impact of trauma from such violence and the loss of a loved one. Mi Ngew Tin's brother was killed eleven years ago, but the thought of her brother's death is too painful to bare, so she refuses to acknowledge this fact, and refers to him as 'disappeared' since 2003.

"We have been investigating [Nai Non Ong's whereabouts] by ourselves for a long time. We heard that they are dead", Mi Ngew Tin says, "but we think they just disappeared because we did not see their corpses. We want to accept that they will return to us one day."<sup>74</sup>

Although the murder took place over ten years ago, Nai Non Ong's family has not been able to heal because they have received no justice for their loss, nor proof or acknowledgement of Nai Non Ong's murder. If the truth is not exposed, there is no way the traumatized family members will be able to accept the facts and begin to heal from their loss. Their hope is strong, but it is based on delusion.

## **b. Effects of Increased Militarization - Fear and Impunity**

The torture and murder of Nai Non Ong and Nai Zan was a direct result of increased militarization in the area. As Mi Ngwe Tin tellingly states, "If there was no Burmese troop, our area would be peaceful".<sup>75</sup>

When a troop is stationed in an ethnic area, every household of the village is affected. Mi Ngwe Tin explains that soldiers committed various violations against the villagers in Yindein Village. Villagers were conscripted as forced labor to work patrol when the

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<sup>74</sup> HURFOM Case No. 18


<sup>75</sup> HURFOM Case No. 18

soldiers build their camp, troops extorted hundreds of thousands of kyat from each household in the area, and along with Nai Non Ong and Nai Zan, other men from the area were often tortured by the troops.

Mi Ngwe Tin told HURFOM reporters that her family will be satisfied if the troops bring her brother back alive. “We are satisfied enough if they can send my brother back alive”, she says, “We do not want to take revenge for what Burmese soldiers have done to us”. In fact, Nai Non Ong’s family does not dare exact revenge.

In terms of justice, Nai Non Ong’s family does not even dare to seek revenge or prosecution of violations committed against Nai Non Ong. Mi Ngwe Tin’s sentiments illustrate the level of fear the Tatmadaw creates and incites in local ethnic people. Villagers know the army is above the law, and fear retaliation from the army if they were to speak out or seek justice for violations committed against them by Tatmadaw soldiers.

The Burmese army’s strategy of inciting fear throughout ethnic communities has been so successful that, even with violations as grave as murder, citizens are too scared to seek justice. Soldiers are allowed to avoid all responsibility and gain the confidence to continue to commit such acts in the future, knowing full well they will not be penalized for any crimes committed.



Burmese soldiers attend morning flag raising ceremony

## Case Study 2<sup>76</sup>

In December 2003, fishing village Khwa-Za Chaung-Wa Village was home to about 50 households until, that is, Light Infantry Battalion (LIB) No. 586 set fire to the village. On December 25<sup>th</sup>, before setting fire to the village, troops from LIB NO. 586 arrested 24 year-old Mi Htay based on the accusation of supporting the Mon rebel group, because her husband was a Mon soldier.

Village residents believed the Burmese soldiers were going to arrest Mi Htay, so when she saw the soldiers she took her baby and ran to the beach. The soldiers caught Mi Htay and began to question her about her husband's connection with the Mon armed group. According to onlookers, the soldiers began to beat and hit her, and then the residents heard gun shots.

The soldiers of LIB No. 586 shot Mi Htay and her one year-old baby and dumped them in the river. According to villagers, they were still alive after being shot, but the soldiers threw them into the river.

Mi Aye Thein, 32, currently works as a casual seller in Ye Township, and is the younger sister of Mi Htay. Mi Aye Thein learned That Soe Lwin was the captain who led LIB No. 586 through Khaw-za Chaung-wa village one month after her sister was killed. The LIB No. 586 troops massacred the town. According to local sources from Khaw-za Chuang-wa village, most corpses were thrown in the river to hide the bodies, while others were discarded into the sea.

HURFOM field reporters visited Khaw-za Chaung-wa village on April 17, 2014 to conduct interviews surrounding the events of December 2003. Field reporters did not have the chance to interview freely because the community was celebrating a monk funeral festival at the time our field reporter met with the victim's family.



Sister of murdered victim

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<sup>76</sup> HURFOM Case No. 19



## **a. Tatmadaw Counterinsurgency Strategy Targets Ethnic Civilians**

The Burmese army routinely targets civilians in its operations against rebel armed groups. The direct targeting of ethnic civilians is central to the Tatmadaw's counterinsurgency strategy, which aims to dismantle rebel groups by any means necessary. Ethnic civilians are in danger of abuse by the army as its strategy relies on the elimination of all opposition and peripheral supporters connected to rebel groups.

Villages in ethnic communities throughout Burma fear any connection with rebel groups within their familial or friendship circles. If the army has any suspicion of a person's connection with a rebel group, they will direct their violence towards that person. Due to the circumstances surrounding Mi Htay's death, her family knows this danger all too well. During interviews, Mi Htay's sister, Mi Aye Thein did not want to speak in detail about her sister, because her sister's death was connected to the Mon armed group. Speaking about any connections to the rebel group could bring danger.

As the military devastates ethnic communities, burning villages to the ground, killing, torturing and beating innocent men, women, and children in revenge against rebel forces, the Tatmadaw is communicating directly with the ethnic armed groups that they will destroy their community by any means necessary. Mi Aye Thein explains that "the Burmese soldiers were not able to arrest [Mi Htay's] husband, [so] they killed his wife and baby."<sup>77</sup>

## **b. Feelings of Powerlessness**

Feelings of powerlessness were a reoccurring, overwhelming feeling amongst many of the victims interviewed for this report, and Mi Htay's family is no exception. Victims feel that there is no viable way to punish their perpetrators or attain justice due to immunity afforded the military, as well as the fact that the military is entrenched within the legal system. In terms of justice, victims are often resigned to the fact that justice is not possible within the current judicial system. As Mi Aye Thein says, "It is not easy to sue [the army]. I think that local people will never be able to win when prosecuting the

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<sup>77</sup> HURFOM Case No. 19

military. I want them to explain why they [killed my sister], and why they used this method to punish. Was there no other way?"<sup>78</sup>

Many civilians feel powerless against the sheer power and violence of the military. Soldiers abuse and kill civilians in ethnic communities without remorse. Mi Aye Thein compares their demeanor while killing her sister and niece "like killing chicken and duck"<sup>79</sup>. Residents feel powerless against the soldiers' power and weapons and feel they cannot do anything within the confines of the law to receive justice.

## **4. Rape and Sexual Assault**

### **a. Rape as a Strategy of War**

There is a clear connection between the SPDC regime and the military's proclivity of sexual violence against Burma's ethnic women. Rape is, above all, an act of violence specifically directed at women. In the context of Burma, rape is used by the military as a strategic and violent weapon to attack Burma's ethnic communities, and to punish ethnic women for allegedly supporting opposition forces.<sup>80</sup>

There is a significant link between increased armed conflict, the increased presence of Tatmadaw battalions in ethnic communities, and sexual violence against ethnic women. Records of violations demonstrate that rape is used as a strategy of the regime to combat and oppress ethnic minorities<sup>81</sup>, and when rape is used in this way it constitutes a criminal act under international law.

All acts of rape perpetrated during internal or international conflicts, whether it be an isolated incident or a systematic pattern of violence, as demonstrated in Burma, violate the four Geneva conventions of 1949<sup>82</sup>, and is prohibited by international human rights and humanitarian law.

Beyond an act of violence, the Burmese military uses rape against Burma's ethnic women as a weapon to spread political terror and pervasive fear, in particular as a tool to exact revenge against ethnic rebel groups. As soldiers and officers rape ethnic

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<sup>78</sup> HURFOM Case No. 19

<sup>79</sup> HURFOM Case No. 19

<sup>80</sup> Impunity prolonged, pg. 17

<sup>81</sup> Impunity Prolonged, pg. 11

<sup>82</sup> (<http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/>)

women, the military is communicating directly with the ethnic armed groups that they will destroy their community any way that they can, and if they can't hurt the men, they will hurt the women. In this way, rape by the Burmese Army is used as "a weapon calculated to harm, kill, or control not only individuals or groups, but entire communities"<sup>83</sup>

Upon reaching the 1995 ceasefire between Mon groups and the government, the areas formerly under NMSP control were turned over to government administration, upon which the government immediately began increasing its number of troops in this newly accessible territory. Before the ceasefire, there were three Burmese army battalions stationed in NMSP-controlled areas, and by 2000 there were more than 20.

With the increasing number of army bases and military presence in rural, ethnic minority communities, comes the increased danger to ethnic women of experiencing rape and/or sexual harassment at the hands of the military officers and soldiers. Congruent with the Burmese army's pervasive culture of impunity, the SPDC uses rape as a strategy of war, and perpetrators enjoy a level of impunity which indicates "institutional support for these practices"<sup>84</sup>.

## **b. Impact on Women**

In spite of the ceasefire agreement, many Mon women have been raped by Burmese soldiers, and these rapes are frequent and brutal<sup>85</sup>. When ethnic women are raped by members of the Burmese army their lives, and the lives of their families and communities, are often destroyed. Many women flee to Thailand to escape the shame, guilt, and stigma of having been raped. In many cases the torture inflicted during the rape, or gang rapes, prove fatal.

Having ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in July 1997, the SPDC is obliged to stop any and all violations against women which are committed by its military. All nations that have ratified CEDAW are

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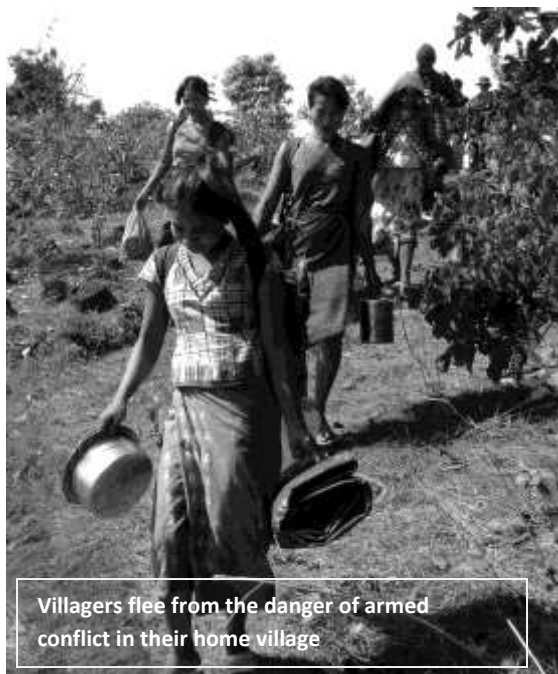
<sup>83</sup> School for Rape, pg. 25

<sup>84</sup> Impunity prolonged, pg. 4

<sup>85</sup> School for Rape, pg. 17

required to “take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise, pursuant to Article 2”.<sup>86</sup>

Notwithstanding President Thein Sien’s civilian government, horrific cases of brutal sexual violence perpetrated by the Burmese army continue to be documented throughout the country. In its January 2014 report *Same Impunity, Same Pattern*, the Women’s League of Burma (WLB) confirmed that the Burmese Army has raped over 100 women since Thein Sein government rose to power in 2010; 47 of these rapes were gang-rapes, and close to a third of the victims were either killed, or died due to injuries inflicted during the rape.<sup>87</sup>



Villagers flee from the danger of armed conflict in their home village

Touching upon the shame felt by many victims, Mi Khin May Win, from Ah Mae Village, Yebyu Township explains, “As I knew, there were about 17 women [from Ah Mae Village], between the ages of 15 and 40, who had been raped by the military. After suffering sexual harassment and assault, most of the victims fled to Thailand, where they tried to hide their past lives”.<sup>88</sup>

Rape, sexual assault, and intimidation continue to be committed throughout Mon territories in which the Tatmadaw has increased their presence. In December 2013, thirteen year old Mi Paroal Mon was abducted from her home in Kyone Kanya Village, Khaw Zar Sub-Township, Ye Township, assaulted and raped by Tatmadaw soldier Than Win of Infantry Battalion No. 31 (IB No. 31). Than Win and three accomplices brought Mi Paroal Mon to a nearby school and assaulted her. The men tied her up, and Than Win raped her.

The military has actively blocked the victim’s efforts to seek justice in order to ensure the soldier’s impunity. Attempts to bring charges against Than Win were continually

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<sup>86</sup> School for Rape, pg. 28

<sup>87</sup> [http://womenofburma.org/wp-content/uploads/2014/01/SameImpunitySamePattern\\_English-final.pdf](http://womenofburma.org/wp-content/uploads/2014/01/SameImpunitySamePattern_English-final.pdf)

<sup>88</sup> HURFOM Case No.2

thwarted as various military personnel threatened and eventually forced the young girl and her parents to sign an agreement denying the incident ever took place.<sup>89</sup>

Military officers allowed Than Win to continue working in the area, forcing Mi Paroal Mon to see her rapist regularly. Soldiers conducted daily visits to the victim's house in efforts to incite fear in the victim, to the effect that the family is now trying to flee to Thailand.<sup>90</sup>

Just four and a half weeks after Mi Paroal Mon's assault, in January 2014 forty-three year old Mi Cho was sexually assaulted and beaten by Second Corporal Ye Min Tun, from Artillery Battalion No. 315, based west of Wae Ka Lee Village, Thanbyuzayat Township, Mon State. Early in the morning of January 26, 2014, Mi Cho was collecting rubber liquid from the rubber plantation located near Artillery Battalion No. 315's camp base, when she was hugged by Second Corporal Ye Min Tun. Ye Min Tun tried to rape her, but Mi Cho struggled and bit his arm, whereupon Ye Min Tun beat her severely. Mi Cho wrestled against her assailant for almost a half an hour, until she finally managed to escape and run away.



Mi Cho was hospitalized for many months in various hospitals due to severe injuries to her eyes, face, chest, head, back, as well as a bit injury to her hand. Mi Cho's husband contacted the NMSP liaison office to report the assault, but refused to press charges against Ye Min Tun because he has to work near the battalion base and was in great fear of retaliation from the military.<sup>91</sup>

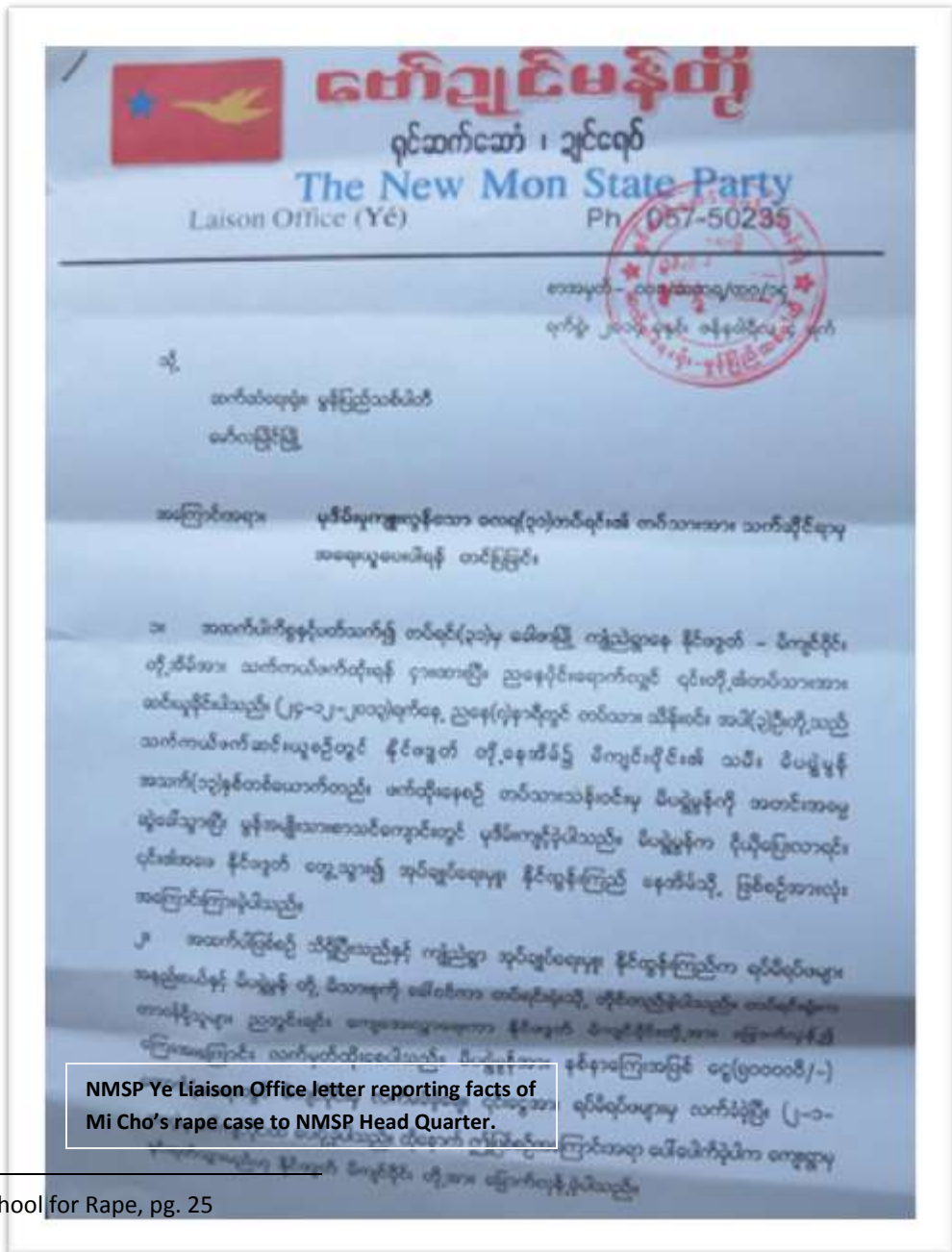
Such savage and violent violations which members of the army impose on their victims, severely traumatize many of the women who have survived rape. The exposure to trauma often produces psychological changes in the victim, such as emotional detachment, and "profound passivity in which the person relinquishes all initiative and

<sup>89</sup> <http://rehmonnya.org/archives/3030>

<sup>90</sup> <http://rehmonnya.org/archives/3053>

<sup>91</sup> <http://rehmonnya.org/archives/3068>

struggle<sup>92</sup>. In other cases, the ordeal of such trauma has driven the victim insane. Ethnic women who have been victims of rape rarely talk about it due to an incredible societal burden of shame, guilt, stigma, and fear, which has created a culture of silence around rape. Such consequences demonstrates that rape serve the Burmese army as a powerful tool to suppress dissent from ethnic communities.



<sup>92</sup> School for Rape, pg. 25

## F. TRANSITIONAL JUSTICE

### 1. Post-Conflict Burma

**T**he heart of Burma's conflict revolves around the strained relationship, steeped in distrust, between the government and the country's ethnic groups. As such, political resolutions to grievances of past abuse are absolutely necessary for Burma to reconcile these opposing groups and build lasting peace.

Although the country has made some positive reforms in its transition towards a true democracy, armed conflict still continues, economic liberalization and the easing of international sanctions has led to rampant land grabs, and grave human rights violations are still being committed throughout Burma; these factors which threaten to undermine Burma's positive developments.

The government must transition from the mentality that conflict between the government and ethnic groups is inevitable, and that the only way to deal with the situation is through force. This mentality removes the obligation of accountability and erodes trust between the government and ethnic groups.

Small steps of governmental reform have buoyed national sentiment that the government cannot completely dismiss public opinion, as it had during decades of military regime. Reforms, instituted since President Thein Sein came to power, give hope for the possibility of Burma applying mechanisms to initiate true transitional justice but, as of yet, the government has not shown any willingness or strategy to truly deal with its history of serious human rights abuses. It is essential that the government initiates a strategy of reparations for past abuse in order for the country to eventually reconcile.

Displaced peoples want to return to their homes in Burma, but can and will not until it is safe for them to do so. Nai Rot Sa, originally from Ka Loh Village, Ye Township, Mon

State, who has been displaced in Thailand since 1998, highlights this sentiment when he explains, “If possible, I wanted to stay in my home country. I did not want to come and work in Thailand. I think everyone wants to stay and work in his or her country.”<sup>93</sup>

## 2. Transitional Justice in Practice



Mon migrant worker located in Thailand share his painful experiences of past human rights abuse.

For a majority of the country’s victims, the issue is not revenge, but the acknowledgement of past abuse; many would prefer to move on from the past and forgive abuse perpetrated against them, with the security that such abuse will not happen again. It is important to recognize the distinction that Burma’s victims want to forgive the regime of past abuses, but they will never forget the pain the SPDC has inflicted on victims and their families.

Among victims of past abuse, there is a broad consensus that transitional justice in Burma must include mechanisms for the protection of human rights, the reintegration and resettlement of refugees, and the recognition and promotion of cultural rights<sup>94</sup>.

“I want to go back to my village, if it is developed with a high school in the village area, a change in the corruption between the troop and rich Mon people, and no abuse occurring in the village. The other reason is that we want to use our Mon language first, then Burmese, when we celebrate something, because we want to control our mother language in our village.”<sup>95</sup>

The concept of Transitional Justice is widely understood as systematic justice that aims to end the culture of impunity and establish the rule of law within the context of democracy, which will ensure accountability and prevent future violations from taking place<sup>96</sup>. Through transitional justice, a divided, broken society can strengthen peace,

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<sup>93</sup> HURFOM Case No. 1

<sup>94</sup> ICTJ Program Report: Burma pg.4

<sup>95</sup> San Win (HURFOM Case No. 5)

<sup>96</sup> Strategies of Transitional Justice Towards a Holistic Approach pg. 1



further human rights and democracy, and come to terms with detrimental effects of past abuses.<sup>97</sup>

Transitional justice strategies must be tailored to the specific context and needs of the society in question, and the exact objectives of transitional justice will be subject to these specific needs. Broadly speaking, objectives of transitional justice include establishing the truth of past abuses, providing victims with a public platform to express their grievances, holding perpetrators accountable, strengthening the rule of law, providing the victims with compensation, institutional reform within the justice system, rehabilitation of the offenders, and promoting national reconciliation.<sup>98</sup>

Societies emerging from civil war, with broken governmental institutions, and a traumatized, divided population must re-establish the rule of law, and come to terms with past abuse. In order to establish peace in the immediate post-conflict period, as well as maintaining peace in the long term, it is essential that victims feel confident that reparation for past abuse can be obtained through legitimate structures of justice

There are various challenges which must be addressed in order for Burma to successfully transition to a democratic society. Challenges include the SPDC's lack of will to reform, the lack of institutional independence from the military within the justice system, the lack of public confidence in the government and continuing distrust of the military, the lack of respect for human rights, and the lack of peace and security.<sup>99</sup>

By integrating multiple approaches to transitional justice, there is a greater chance of addressing the needs of the wide scope of grievances of victims of past abuse. The model of transitional justice to be applied must be based upon the assessment, participation, needs and aspirations of the specific society in transition.

The simultaneous application of various mechanisms which seek to match retributive justice with restorative justice bolsters the peace-building process, as it not only confronts the perpetrators, but addresses the victims' needs, as well as assisting in the process of reconciliation and national transformation.<sup>100</sup>

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<sup>97</sup> Strategies of Transitional Justice Towards a Holistic Approach, pg. 1

<sup>98</sup> Finding Justice amidst the Rubble, pg. 2

<sup>99</sup> The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, pg. 3

<sup>100</sup> Strategies of Transitional Justice Towards a Holistic Approach pg. 2

### 3. Restorative Justice

In order to be most effective in healing a country from past abuses, transitional justice should, by and large, be restorative in nature with aims to right the wrongs of past abuse and uniting the society.

Restorative justice demands accountability in which the perpetrator recognizes the violation and harm committed, and takes responsibility; it provides the space and opportunity for trust-building and societal reconstruction by awarding power to the victims and addressing steps to move forward as a nation through mechanisms of restitution and reconciliation.<sup>101</sup>

A majority of victims from Burma's ethnic communities are practicing Buddhists, and as such, their religion plays a large role in their views towards morality and justice. For instance, the Buddhist belief in karma recognizes the idea that the victim did something bad in a past life, and they are now being punished in this life. Similarly, karma will punish in the next life, those who abuse and bring harm to others in this life. Individuals with such beliefs tend to be more inclined to forgive a person who wronged them, believing that they will get due, inescapable punishment in the next life.

Aung Then, 37, from Kawza Sub-Township explains that, "Recently, I have observed the situation in my village, and it is a bit safe for me to go back again. Now I want to go back home and see my mother. In my opinion, I do not want there to be any response from the troop when I return, because my problem is already finished."<sup>102</sup>

Aung Then's intentions of returning to Burma illustrates that the incident of abuse is in the past, he wants to move on, and does not want to engage in any acts of revenge because in his mind the situation has already passed.

In the context of Burma, where Buddhism occupies an



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<sup>101</sup> Finding Justice amidst the Rubble, pg. 3

<sup>102</sup> HURFOM Case No. 3

integral part in a majority of minority ethnic communities, restorative justice which “seeks to heal the harms of victims, rehabilitate offenders, and reintegrate both of them into community networks of support as a safeguard of justice”<sup>103</sup> is an optimal avenue through which the country can heal from past abuses.

Many displaced victims would like to return to their villages as long as the military stops their abuses. These victims do not mention prosecution or revenge against their perpetrators, but rather the removal of threat and the provision of a safe environment to heal.



Mon migrant worker located in Thailand share his painful experiences of past human rights abuse.

“In my opinion”, says Nai Sein Lwain, “I do not want anything back because the problem was done already, but I want the troop to stop committing these kinds of abuses against the residents.”<sup>104</sup>

Nai Baw, from Ye Township states, “We will not forget the difficult times we lived through. In order to rebuild the village, the residents will return when the troops stop abusing local people and treating them inhumanely, even if the military does not give compensation for what they did. We are waiting for the day that the military stops abusing all people.”<sup>105</sup>

There are three principles of restorative justice which must be upheld in order for a society to transition from a broken, divided nation, to a united, reconciled society. First, there must be acknowledgement of past injustice. Next, there must be a restoration of justice in which the victim is empowered and the perpetrator is held accountable and lastly, future intentions must be addressed by way of restitutions or reparations, and the commitment to prevent future abuse by strengthening the rule of law.<sup>106</sup>

“I think I can forgive and forget anything that happened in the past, but if we are asked to go back to our hometown in the future, I want to have the freedom to work and travel. In the past, we snuck out to work and if we were caught, there would be

<sup>103</sup> Finding Justice amidst the Rubble, pg. 3


<sup>104</sup> HURFOM Case No. 6

<sup>105</sup> HURFOM Case No. 14

<sup>106</sup> Finding Justice amidst the Rubble, pg. 5

no food to eat for those of us who relied on casual work. We don't want this situation to exist anymore; we want freedom. Everyone wants to return to his or her home if there is the freedom to work, live, and travel; no one wants to stay in a foreign country, but want to return to our country.”- Kyaw, 39, Kaw Hlaing Village.<sup>107</sup>

A restorative approach to transitional justice must work to reconstruct a unifying memory of the conflict the society is trying to come to terms with and eventually move past, while establishing a sense of responsibility, public participation, and collective healing. The approach is victim-centered, as it responds to “decades of victim neglect, silencing, and subjugation by repressive violence”<sup>108</sup>; it is responsibility-oriented, community-driven, and compensation-based.



Man traumatized from pass abuse

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<sup>107</sup> HURFOM Case No. 8

<sup>108</sup> Finding Justice amidst the Rubble, pg. 14

## G. MECHANISMS OF TRANSITIONAL JUSTICE

**T**here are five main strategies of transitional justice, which a transitioning society such as Burma can utilize. These strategies include prosecution, truth seeking and truth recovery, institutional reform, reparations, and reconciliation. You will find each strategy detailed below.

### 1. Prosecution

The International Center for Transitional Justice (ICTJ) maintains that the prosecution of crimes that takes place domestically, in the society in which they were committed, are more likely to have an impact on national unification than prosecutions that take place abroad.

Although many victims want to move on from past abuse and forget what happened to them, a number of victims want revenge against their perpetrators, and one way to do this is through prosecution.

When asked how she would like to see justice restored, Mi Eh Hla, from Chan Gu Village, Ye Township explains, “I want to get revenge against the military because I am still in pain...They tortured not only our family, but many other residents in the village as well.”<sup>109</sup>

Transparent, open prosecutions of military perpetrators allow victims to see justice being served and feel their abusers are appropriately penalized for their crimes.

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<sup>109</sup> HURFOM Case No. 7

Beyond the use of the traditional justice mechanism of the court, an important supplemental mechanism for prosecution lies in tribunals. Tribunals are a sort of “hybrid” court which include both domestic and international actors, and have been found of great use in previous post-conflict societies, such as the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). Tribunals supplement the traditional court system of justice by helping strengthen the rule of law and “indicate that such atrocities will not be tolerated again.”<sup>110</sup>

## 2. Truth Recovery

Truth recovery, in relation to the nature and extent of human rights violations, will play a vital role within the process of transitional justice in Burma. Truth seeking and truth recovery will reveal patterns of impunity within the SPDC, and will force the national and international society to face a truth that has hitherto been denied in public narratives. Truth commissions publicly announce abuses and condemn the state for its crimes on a domestic and international scale. The people of Burma will gain confidence when they feel their voices are being heard. Victims will feel supported and, in turn, less fearful of the state.

Through the process of analyzing records, collecting testimonies, and documenting abuses with the aim of analyzing governmental structures and practices which allowed such abuse to happen in the first place, truth recovery can aid in promoting peace, justice, institutional reform, as well as deter future violations.

Truth Recovery Commissions (TRCs) may be used as a valuable tool in the pursuit of justice and reconciliation. TRCs are a victim-centered approach, which help to establish a historical record of abuses perpetrated, and recommend future actions. Further, TRCs can serve as a vital element for restoring public trust in government institutions, which is essential in Burma’s peace-building efforts.

HURFOM is a key member of the Network for Human Rights Documentation-Burma (ND-Burma), which comprises 12 ethnic member organizations united in the common goal to document human rights violations in Burma. ND-Burma provides a way for Burma’s human rights organizations to collaborate on the human rights documentation process,

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<sup>110</sup> Strategies of Transitional Justice Towards a Holistic Approach pg. 4

and member organizations collectively use the truth to challenge the regime's power through advocacy. HURFOM and ND-Burma engage in truth-seeking on the ground level in order to apply victim's voices, hopes, and expectations to justice and accountability measures during Burma's democratic transition.

The ND-Burma has initiated the Unofficial Truth Project (UTP) as a human rights documentation project. The UTP works to challenge the regime's claims to legitimacy by identifying the SPDC's criminal activities and analyzing documentation of abuse in order to highlight major problems that must be addressed for Burma to develop as a society that respects fundamental freedoms and human rights. The UTP was created to collect data which may assist government reparation programs to victims of violations. ND-Burma recognized the urgency for Burma's truth to be uncovered and recorded, and could not wait idly for the creation of an official, government sponsored truth commission. In response to this need, the UTP was created as an 'unofficial' truth-seeking documentation project.

### **3. Institutional Reform**

As Burma transitions to a healthy, united society, it is of utmost importance that there is review and restructure of the public institutions which were responsible for facilitating the conflict, in order to ensure they uphold respect for human rights, maintain the rule of law, and are held accountable to their citizens.<sup>111</sup>

Above all, there needs to be clear separation between the military and the justice system. Currently, the military is completely entrenched in Burma's justice system, which distorts the rule of law and confirms impunity for serious human rights violations committed by members of the military. The justice system must be restructured in such a way that removes the perpetrators from any influence over criminal investigations.

Currently, state power has diffused from a dictatorship, to multiple players vying for power and influence. The leading powers in the current SPDC regime are former military personnel, which creates complicated relations between the regime and the military, in terms of true institutional reform and accountability.

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<sup>111</sup> Strategies of Transitional Justice towards a Holistic Approach, pg.6

In order to be credible, all institutions of justice require independence from the military and other SPDC personnel. The reform of state security and justice institutions of all SPDC involvement will work to provide criminal accountability for past abuses, and develop a transparent system.

#### 4. Reparations

Reparations represent a concrete demonstration of the state's attempts to alleviate abuses suffered by victims, and have the potential to address the needs of the victims more directly than any other strategy of transitional justice. Reparations take many forms, from monetary payments or property restitution, to collective benefits such as memorials and public apologies. Whatever the shape it may take, reparations "seek to alleviate the consequences of an illegal act and to restore the situation to what it would have been like, had the abuse or atrocity not taken place"<sup>112</sup>

Among the most urgent needs of Burma's victims, is the need to alleviate poverty. As has been detailed elsewhere in this report, decades of human rights violations at the hands of the Burmese military, specifically land confiscation and forced labor, has ripped many ethnic communities from their source of livelihoods, catapulting them into deep levels of poverty and displacement within and outside Burma.

Many victims have voiced ambitions of getting their land back, or receiving fair compensation for confiscated land and/or crops, as the only way to create a sustainable livelihood. As is evident from Saw Ka Bel Kyaw's testimony, military abuse has affected generations of livelihoods. "If the military return our land, or provide us compensation," Saw Ka Bel Kyaw says, "I want my two children to receive the payment. As you see, they are struggling to make a livelihood."<sup>113</sup>

Many victims have so little faith and trust in the government and current justice system, that they don't believe they can obtain full compensation and many scale down their hopes for partial restitution, while others hold the view that only 'luck' will get them any form of compensation.

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<sup>112</sup> Strategies of Transitional Justice towards a Holistic Approach, pg. 7

<sup>113</sup> HURFOM Case No. 13



“It would be very good if the military pays back some pieces of my 20-acre land”, says Saw Kyaw Khaw, 52, from Yebyu Township, “We can make our livelihood peacefully only after we get our land back”<sup>114</sup>

As Saw Pha Doe, 54, from Yebyu Township relates, “Now our plantation is in the compound fenced by the LIB No. 282. Some of my betel nut plantation was destroyed as military barracks were constructed, and as many buildings have been constructed on my plantation, it is very difficult for me to get my land back. If I were lucky and received compensation for my plantation, then I would be satisfied”<sup>115</sup>

## 5. Rehabilitation and Reconciliation

Burma’s conflict, this “ethnic conflict”, is fundamentally political, because it centers on ethnic identity and rights, democracy, and state-building. There is a profound disconnect and inequality surrounding access to territory, resources, and nationality. At the crux of this issue, and Burma’s path to peace-building and reconciliation, lies the dysfunction of state-society relations.



Internally displaced Karen community in eastern Tavoy township, Tenasserim Region

For true reconciliation between the government and ethnic groups, national integration is vital; integration which must be achieved between the state and society, as well as between different elements of society. The nation must be unified in its decision as to how the state and governmental structure shall be built, and how the society defines and identifies itself.

Years of shared struggle for democracy have created close interaction between ethnic Burmans and minority ethnic nationalities, which can provide an arena for national dialogue and reconciliation. Due to

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<sup>114</sup> HURFOM Case No. 10

<sup>115</sup> HURFOM Case No. 12

such invasive oppression and dictatorship, “the leaders of the various ethnic nationalities in Burma have participated in the struggle for democracy together with ethnic Burmans on the basis of the principle of equality, national self-determination, and the shared goal of democracy and federalism”<sup>116</sup>. These shared principles and goals are building blocks which can be utilized for national integration and the creation of a peaceful, democratic society in Burma.

As mentioned in this report’s previous section on the military, several characteristics of the Burmese army make human rights violations predictable, and which also prove rehabilitation of these soldiers is needed in order to build national reunification.

The SPDC’s politics are consistent, as “its policies of torture, maltreatment, starvation, forced labor, and isolationism applies equally to the citizens of Burma and the soldiers of the Tatmadaw. A brutalized army perpetuating the abuses against the most vulnerable sectors of the population is a result of this treatment”<sup>117</sup>.

As Burma reunites as one, it must assure that its most vulnerable people are provided everything they need to heal from past abuses, from empowering their voice to reparations and social programs, and rehabilitating Tatmadaw soldiers into this united Burma is an integral part of the process. Many of these soldiers were conscripted against their will, and brainwashed in order to fulfill the SPDC’s strategy. Recognizing that soldiers suffer from trauma does not diminish their responsibility for the perpetration of serious human rights abuses against the ethnic people of Burma, rather amplifies the need that all of Burma’s victims receive the reparations they need in order to create a healthy, united society.

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<sup>116</sup> Burma and National Reconciliation: Ethnic Conflict and State-Society Dysfunction

<sup>117</sup> School for Rape, pg. 4

## H. IMPEDIMENTS TO TRUE TRANSITION

### 1. Culture of Impunity

**T**he principal impediment to true transition in Burma lies in the overwhelming, engrained culture of impunity throughout the SPDC regime, and it is through this culture of impunity which spurs further barriers to transitional justice found in an extreme lack of transparency and security.

Recent reforms provide some indication that Burma is, in fact, transitioning towards democracy, but the SPDC's culture of impunity is so entrenched that it threatens to inhibit the country from true transition. It is only with greater attention focused on the regime's impunity, rights for ethnic minorities, and justice for those violated by the regime's human rights abuses that Burma will be able to achieve peace.

In his 1994 report to the United Nations (UN), Yozo Yokota, the UN Special Rapporteur on the situation of human rights in Burma, recommended that, "Given the magnitude of abuses, official condemnation should be made by the government of all acts by authorities involving human rights violations"<sup>118</sup>. The only way this will ever be achieved is to dismantle the prerogative of impunity which the regime affords its military.

The SPDC's denial of any wrongdoing and refusal to take responsibility for past human rights abuses was made abundantly clear when Burma's Attorney General Dr. Tun Shin, who was handpicked for the position by President Thein Sien, rejected 70 recommendations from the international community<sup>119</sup> while acting as head of the regime's delegation for Burma's Universal Periodic Review.

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<sup>118</sup> Impunity Prolonged, pg. 11

<sup>119</sup> <http://www.fidh.org/en/asia/burma/Government-s-rejection-of-human#nb1>

It is hard to take Burma's commitment to accountability seriously while, at the same time, representatives of the regime reject the international community's call for accountability. Grave crimes against humanity will not cease within Burma as long as the perpetrators believe they can act with impunity and avoid all accountability.

While impunity remains so fixed, Burma cannot achieve advances in terms of truth, justice, victims' rights, or national reconciliation. If the government does not implement accountability mechanisms and institutional reforms to address violations perpetrated against ethnic groups, then larger political reforms will not be sustainable.

## **2. Lack of Transparency**

As the SPDC adheres to the notion that it has the license to do whatever it wants to its civilian population, the regime holds its people's thoughts and opinions in no regard, and as such lie and withhold facts from ethnic communities. As the SPDC negotiates major development deals with Asian neighbors for projects in ethnic areas, there is no consideration to societal and environmental effects and a complete lack of transparency with the local people. This lack of transparency and communication has increased tensions in ethnic communities, and works against the goal of reunification.

Lack of transparency breeds distrust of the government, and trust between the government and civilian population is critical for the advancement of peace and justice. If Burma is to overcome tensions resulting from total disregard of its ethnic populations, the government must treat its citizens with respect and implement transparent mechanisms of communication with its people.

## **3. Security**

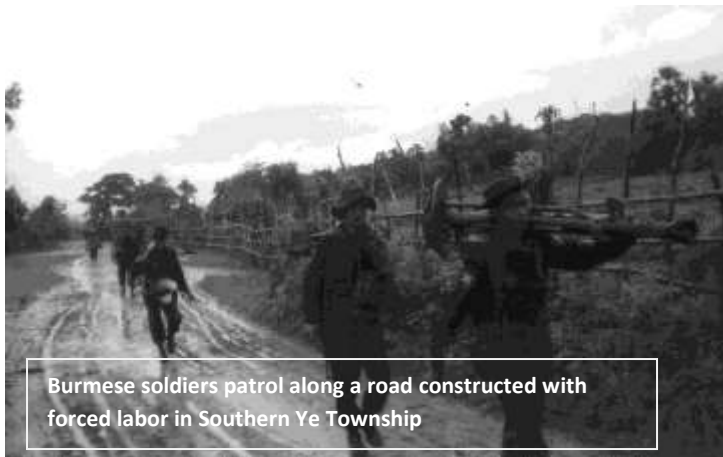
The power of fear is a staple ingredient in the regime's war against Burma's ethnic communities. Inciting fear throughout minority ethnic communities allows the Burmese military to commit human rights abuses with the confidence that victims will not dare

speak out. Such fear is illustrated by Nai Mnine of Koe Mine Village, Ye Township when he says, “We daren’t create any problem for the government”<sup>120</sup>.

The military also uses fear and intimidation to coerce village administrators to act against their own people. As Nai Rot Sa explains, “the standard of living in our village has been improving, but the habits and social situation is still the same as it was in the past...If the village administrator knows he cannot do anything without help of the authority, he always cooperates with them to make the residents more afraid of him”<sup>121</sup>

The constant expansion and presence of military checkpoints and battalion bases throughout ethnic communities, along with the fear of speaking out about abuse due to violent military reaction, contribute to the underreporting of human rights abuses and create major barriers in combating the regime’s impunity.

Further effects of the SPDC’s use of fear and intimidation has been identified in the 1998 International Labor Organization (ILO) Commission of Inquiry concluding observations; “The impunity with which government officials, in particularly the military, treat the civilian population as an unlimited pool of unpaid forced labor and servants at their disposal is a part of a political system built on the use of force and intimidation to deny the people of Myanmar democracy and the rule of law”<sup>122</sup>.



Burmese soldiers patrol along a road constructed with forced labor in Southern Ye Township

Lack of security plays a large part in decisions of the IDP community to return to Burma or not. Some, like Mi Khin May Win, 47, from Ah Mae Village, Yebyu Township, are waiting for the military to remove their bases and overwhelming presence in ethnic communities, while others are relying on ethnic groups, such as the NMSP, to provide adequate protection for them to return. Military presence can be so overwhelming and distressful for the ethnic communities that, with Burmese soldiers patrolling the villages at night, many residents are afraid of leaving their villages, even during the day.


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<sup>120</sup> HURFOM Case No. 17

<sup>121</sup> HURFOM Case No. 1

<sup>122</sup> Impunity Prolonged, pg. 20

Mi Khin May Win states adamantly that she and her family, “will not move back to our villages as long as the military bases are in our area, because they are the ones that completely changed our lives...Whichever government is in power, we will not return unless the military bases are withdrawn from our areas”<sup>123</sup>. While Nai Rot Sa states, “We will move back when the New Mon State Party has all the power to protect us, and when we can believe the NMSP when it says it can completely protect its own people”<sup>124</sup>



IDP woman making a thatched roof in Che Dike resettlement camp, NMSP controlled area, Ye Township.

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<sup>123</sup> HURFOM Case No. 2

<sup>124</sup> HURFOM Case No. 1

## I. INTERNATIONAL OPTIONS FOR JUSTICE

The success of transitional justice in conflict and post-conflict societies depends on a common base of international standards. The SPDC is a member of the United Nations, and as such has an obligation to uphold human rights and humanitarian laws which the international community has agreed upon.

Geneva Conventions are examples of humanitarian laws that are used to regulate the conduct of countries during wartime, whether during internal or international armed conflict (Geneva Conventions IV; Protocol II.) In the context of Burma, human rights abuses committed by the Burmese Army may be characterized as “crimes against humanity”, which are defined as “inhumane acts of a very serious nature, such as willful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds”<sup>125</sup>, and as such, should trigger attention and pressure from the international community.

In Special Rapporteur Paulo Sergio Pinheiro’s 2006 report to the UN General Assembly, he described the military perpetration of human rights violations as “widespread and systematic... [so] as to suggest they are not simply isolated acts of individual misconduct of middle or low rank officers but rather the result of the upholding of a system under which individuals and groups have been allowed to breach the law and violate human rights without being held to account”<sup>126</sup> ..

There is no accountability on the national level, as is further demonstrated with the 2008 Constitution’s immunity clause, which covers acts which military personnel have “done in execution of their respective duties”<sup>127</sup>. Crimes of human rights violations which violate Burmese national laws, treaty obligations and international laws, could not

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<sup>125</sup> School for Rape Pg. 26

<sup>126</sup> UN General Assembly, Report on the situation of human rights in Myanmar, Special Rapporteur, Sept.21, 2006, A/61/369, par. 32

<sup>127</sup> Impunity Prolonged, pg. 37

possibly have been a part of an individual's official duties, and due to SPDC's unaccountability of such crimes, justice will depend heavily on pressure from the international community to uphold international standards of law and justice.

Since Burma has not ratified the International Criminal Court's (ICC) Rome Statute, which establishes crimes against humanity as an international crime, it is critical for the creation of an international commission of inquiry, along with the UN Security Council to refer the situation in Burma to the ICC.

The SPDC's history of impunity, along with the 2008 Constitution's immunity clause would "help meet the ICC's criteria for admitting a case, namely that a country is unwilling or unable to prosecute such crimes itself".<sup>128</sup>

The prospect of the UN Security Council referring the situation to the ICC, along with the threat of action by the ICC to implicate members of Burma's government or military, as well as international advocacy could create sufficient pressure on the SPDC regime to stop committing violations and take action to initiate justice on a national level by prosecuting members of the military for mass human rights abuses.

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<sup>128</sup> Impunity Prolonged, pg. 36-37



## J. CONCLUSION

Over the past 50 years, the SPDC has effectively implemented its brutal strategy to destroy Burma's ethnic minority communities through large-scale violations of land confiscation, rape, murder, torture, and forced labor. Through direct aggression, or by use of fear and intimidation, hundreds of thousands of ethnic minorities have been displaced from their homes and livelihoods throughout Burma and throughout the world.

As it closes the door on authoritarianism and opens its hands to democracy, Burma is met with both challenge and opportunity. The SPDC is not willing to admit guilt or accept accountability in order to embark upon the road towards true reparation and reconciliation. However, with the help and support of the international community, the opportunity is there for Burma to address its many challenges.

In order to heal this divided country, it is essential that trust is established amongst the people and the government, and with that aim Burma must seek to disseminate the truth of its past and eradicate fear. Burma must enshrine its ethnic minority communities under the protection and safe-guarding of the state, and the SPDC's culture of impunity must be dismantled and replaced by the rule of law.

There continues to be a climate of uncertainty and fear amongst the ethnic communities of Burma that is linked to absence of the rule of law; the law is not accessible, clear, or predictable. Due to the absence of a judiciary and rule of law which is independent from military influence, victims are not able to access justice for violations perpetrated against them by the military. An independent, impartial, and effective judiciary is essential for Burma to uphold the rule of law. Burma must implement open, transparent prosecutions of all crimes of human rights abuse committed by the SPDC and the Tatmadaw.

Victims who speak out against the regime risk torture, imprisonment, and various other abuses. In order to protect themselves and their families, the people of Burma are forced to cultivate a culture of silence that constrains their lives. Truth-seeking mechanisms, including victim testimonials and truth commissions, must be utilized in order to bring to light the truth of decades of abuse. Victims deserve to have their stories heard and validated. With support lent to their voices, Burma's victims may begin to heal from abuse and gain courage against their fear of the state.

IDP children in Che Dike resettlement camp



## K. RECOMMENDATIONS

### To the government of Burma:

- In order to combat extortion and corruption:
  - Taxes should be determined and information disseminated in advance of implementation to ensure residents know what they will be taxed and when. Taxation must be applied fairly to all villagers, regardless of personal relationships, so as to avoid corruption and division between community members and authorities.
  - Government must reduce and remove Tatmadaw battalions in Mon territories to reduce violations of human rights
  
- In order to combat rape and sexual assault:
  - The military should employ all necessary measures to uphold its obligation to ensure its soldiers do not commit acts of rape or sexual assault
  - The government must investigate, prosecute, and punish all perpetrators responsible for rape and sexual violence
  - The government must develop safe, anonymous, and accessible reporting mechanisms for victims of rape and sexual assault, as well as strengthening existing mechanisms
  - Government must reduce and remove Tatmadaw battalions in Mon territories to reduce violations of human rights
  
- In order to combat forced labor:
  - Government should supply its military with adequate salary and supplies for its soldiers so they do not have to rely on local communities for labor, food, or financial support

- The government should allow the ILO safe access to non-government controlled areas, and allow victims of forced labor to report violations to the ILO
  - The government should investigate and prosecute all offences of forced labor committed by government and military personnel
  - The government should implement the ILO's recommendation to cease all forms of forced labor and implement labor reforms
  - Villagers should be paid for all labor they have provided the Tatmadaw
  - All labor must be undertaken voluntarily
  - Government must reduce and remove Tatmadaw battalions in Mon territories to reduce violations of human rights
- In order to combat and rectify land confiscations:
- The government should work to ensure that villagers have land titles that are acknowledged by local authorities
  - Land registration should be affordable and accessible for local landowners, including those without identification
  - The 2008 Constitution and 2012 land laws should be reformed allowing civilians to be recognized as owners of their land
  - Villagers' whose land has been seized without due process must be compensated an equal amount of land, or fairly compensated at market price
  - Military bases should be reduced and withdrawn from non-conflict areas so villagers can access their land freely and support their livelihoods
  - Authorities must provide transparent and accessible mechanisms through which villagers may bring forth complaints regarding violations of their rights. Such mechanisms should ensure follow-up procedures and provide adequate protection from retaliation of military personnel for individuals or groups who file complaints.
- In order to safeguard ethnic communities from exploitation due to Foreign Direct Investment
- The government must cease committing human rights abuses against ethnic communities in development areas and throughout Burma

- The government should legally require all large-scale development projects to conduct environmental and social impact assessments which include meaningful consultation with potentially affected communities. Assessments must be communicated transparently to the local community and made accessible in local languages before development projects are initiated.
  - No project should be implemented without the informed consent of potentially affected communities, who have been provided education, who are adequately aware and understand ways in which the proposed project will affect their lives and livelihoods
  - Government and private actors must involve the local people throughout the decision-making process and planning stages of all commercial developments, land and resource management, and infrastructure development which have the potential to impact their lives and livelihoods
  - The government should require all companies involved in development projects to disclose to the public all revenues received to create full transparency
- Decreasing militarization
- Government forces and Ethnic Armed Groups should work together to ensure the sustainability of ceasefires
  - The SPDC must demilitarize all former conflict areas by reducing troops and removing military bases to signify the regime's commitment of Burma's transition to peace. If bases are not reduced in ethnic areas, human rights violations are sure to continue.
  - Tatmadaw must create and uphold a Code of Conduct for all military personnel, which defines the military's operational areas, as well appropriate and acceptable behaviors of soldiers towards civilians, ensuring respect for human rights and humanitarian law. The CoC must be made public throughout Burma so that the people know what standards soldiers must be kept to and what behavior is appropriate
  - The government must ensure that all of its armed forces are responsible to domestic and international humanitarian and human rights laws
- In order to strengthen the rule of law:

- The government must adhere to the rule of law as it is understood and agreed upon by the international community
- The government must initiate constitutional and judiciary reform which remove the Tatmadaw from any criminal investigations
- The government must oblige to international human rights and humanitarian law

### **To the International Community, Organizations and Donors:**

- In order to combat forced labor:
  - The ILO, Burmese government, local organizations, and villagers should continue to monitor and take action against cases of forced labor, especially in rural areas.
  - ILO and other aid agencies should continue to provide training to local communities to ensure they understand their rights and different forms of forced labor
  
- In order to combat land confiscations:
  - The government and other organizations should work to increase capacity-building schemes in areas vulnerable to coercive tactics for the sale of villagers' land
  - Local people must have access to education surrounding land rights and laws in order to improve their awareness
  - There must be international participation in a monitoring system which works to reassure that ethnic armed groups and the Tatmadaw respect all cease-fire agreements and the application of human rights law
  
- In order to combat impunity
  - The UN Security Council should refer the situation of human rights abuses in Burma to the ICC
  - The international community has condemned Burma's history of human rights abuses, and now must apply sufficient pressure on the Burmese government to seek truth and reconciliation
  - In efforts to establish a truth commission, international involvement will be invaluable in providing training, expertise and mediation, as well as financial support

- The international community should be involved in and support investigations conducted against the SPDC regime and its military in order to ensure true justice

### **To the Member Countries of ASEAN**

- Past and ongoing violations in Burma reflect poorly on the ASEAN community; ASEAN member countries should commit to supporting the victims and ethnic minority communities of Burma in the eradication of all human rights violations committed by the SPDC regime and Tatmadaw.
- ASEAN member states should pressure the Burmese government to uphold, as obligated as an ASEAN member country, ASEAN principles of respect for and promotion of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law, and good governance
- ASEAN member states should pressure the Burmese government to uphold its commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Program of Action, and other international human rights instrument to which ASEAN member states are parties
- ASEAN member states should pressure the Burmese government to uphold the ASEAN principle that the rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and
- marginalized groups are an inalienable, integral, and indivisible part of human rights and fundamental freedoms
- ASEAN member states should pressure the Burmese government to
- uphold the ASEAN principle that every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law

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# IN PURSUIT OF JUSTICE

REFLECTIONS ON THE PAST AND HOPES FOR THE FUTURE OF BURMA



A REPORT BY

THE HUMAN RIGHTS FOUNDATION OF MONLAND - BURMA

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