



UPR Submission

**Myanmar (Burma)**

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**Summary**

For more than two decades, Burma's military government, the State Peace and Development Council (SPDC), has demonstrated scant respect for the fundamental human rights of the Burmese people. Widespread and systematic violations of international human rights and humanitarian law continue throughout the country, especially in ethnic minority areas along Burma's borders. The 2008 Constitution and an election scheduled for this year will likely do little to alter the military's continued political dominance, albeit in ostensibly civilian guise, and a repressive state apparatus that will not change significantly.

The culture of impunity in Burma for government officials and military personnel for serious abuses is supported by a judicial system that is neither impartial nor independent. There has been little if any accountability for serious crimes committed by government security forces, including routine use of forced labor, sexual violence against women and girls, recruitment and use of child soldiers, extrajudicial killings of civilians in conflict areas and other violations of international humanitarian law. Some non-state armed groups have also been implicated in serious abuses, including forced labor and the use of child soldiers.

There are systematic restrictions on basic freedoms in Burma, including on the rights to freedom of expression, peaceful assembly, and association. For example, despite Burma having ratified International Labor Organization (ILO) Convention No. 87 on freedom of association, the SPDC continues to refuse to register independent trade unions in the country.

The government of Burma currently incarcerates more than 2,100 political prisoners including political activists, journalists, trade unionists and labor rights advocates, artists and vocal opponents of the SPDC. Many of these prisoners have received harsh sentences – including up to 65 years in prison – on trumped up criminal charges that seek to curtail peaceful political dissent and free expression. Conditions in Burmese prisons do not meet international standards: prisoners are not given adequate health care, face routine ill-treatment and at times torture, and may be transferred to remote facilities in the hinterlands that make visits by family members and UN officials difficult. The government has not granted the International Committee of the Red Cross (ICRC) access to Burmese prisons in accordance with the ICRC's standard procedures since 2006.

**The 2008 Constitution and Election Laws**

The electoral process is part of the SPDC's so-called "Seven-Step Road Map to Democracy," but the process has been replete with repressive measures, including the exclusion of the main political opposition in the drafting of the constitution, and the holding of a May 2008 constitutional referendum that was plagued by official irregularities and deeply flawed. The 2008 Constitution contains several provisions that preserve key powers for the military, including reserving for appointed military officers one-quarter of *Pyithu Hluttaw* (People's Assembly, the lower house) seats and one-third of *Amyotha Hluttaw* (National Assembly, the upper house) seats. Three main ministerial portfolios – defense, home affairs and border affairs – are required to be filled by serving military officers. In section 343 of the Constitution, members of Burma's armed forces are granted effective immunity from civilian prosecution because final say on jurisdiction is decided by the commander in chief of the military.

The SPDC released five electoral laws in March 2010, as well as a series of bylaws to implement the electoral laws. The laws, drawn up without public participation, fall well short of international calls for a free, fair and inclusive political process in Burma. The main military party, the Union Solidarity and Development Party (USDP) was formed by the current Prime Minister Thein Sein and several other senior generals who formally resigned from the army to register as politicians, and will draw on the military controlled mass based social welfare movement the Union Solidarity and Development Association (USDA) with branches in all townships of Burma. More than 42 other political parties have registered and been approved by the military appointed and dominated Electoral Commission. Yet many of these registered parties are either comprised of military supporters, or are small ethnic parties that are only planning on contesting in limited areas where their ethnic group predominates.

However, the main opposition party and landslide winner of the 1990 elections, the National League for Democracy (NLD), was effectively compelled not to register because one of its key leaders, Aung San Suu Kyi, has long been detained under house arrest, and more than 430 of its members are currently in prison. Under the Political Party Registration Law, parties are prohibited from having as members "persons serving a prison term as a result of conviction in a court of law."

The Election Commission Directive No.2/2010, issued on June 21, 2010, contains broad prohibitions on political parties in campaigning if they criticized the Constitution, the military, or "giving talks and publishing and distributing publications with the intention of tarnishing the image of the State." The system of strict censorship in Burma curtails what the media can report on the election process.

Chapter VIII of the 2008 Constitution, "Citizen, Fundamental Rights and Duties of Citizens," contains some provisions that are in line with international standards, but the chapter also contains caveats to basic freedoms that improperly subordinate basic rights to national security concerns, such as suspending basic freedoms or appeals to rights in the Supreme Court in times of 'insurrection' or 'emergency', and compelling 'every citizen to undergo military training.' Burma is not a party to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights, and these constitutional provisions could be used to continue to repress human rights in Burma after the elections.

There is little recourse for Burmese citizens who wish to ensure that their rights are respected. The judiciary in Burma lacks independence and all senior judges are appointed by the SPDC. Courts are used to prosecute political opponents and human rights defenders, and in some cases defense lawyers are prosecuted and imprisoned for representing their clients. A raft of repressive laws are used to silence dissent in Burma, including the 1975 State Protection Law (Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts), the 1996 Law Protecting the Peaceful and Systematic Transfer of State Responsibility, and sections of the Penal Code, as well as other laws used to curtail the right to freedom of expression and media freedom. The fledgling Human Rights Body of Burma, headed by the deputy attorney general, lacks real independence and has done little to investigate human rights violations in the country or promote Burma's compliance with international law beyond perfunctory cooperation with UN agencies.

### **Continued Violations in Ethnic Conflict Areas**

Serious human rights violations continue in conflict zones in eastern Burma and parts of western Burma, including extrajudicial executions, sexual violence against women and girls, forced displacement, and torture. Forced labor continues to be exacted by the Burma military, or *Tatmadaw*, and government officials in violation of ILO Convention No. 29 against forced labor, which Burma has ratified. The SPDC issued a decree in 1999 expressly forbidding the armed forces from using forced labor. In February 2007, the ILO reached a supplementary understanding with the SPDC on reporting cases of forced labor. The ILO states that Section 359 of the 2008 Constitution prohibiting forced labor except for 'hard labor as punishment for crimes' needs to be amended in order to bring the section in line with requirements of Convention No. 29.

Civilians in conflict areas face abuses by government and non-state armed groups. In some conflict areas, the *Tatmadaw* maintains a "shoot on sight" practice that targets civilians. The *Tatmadaw* forcibly displaces and evicts communities, confiscates land for security purposes or commercial activities, and in some places forces communities to live in specially constructed relocation sites close to military camps as a counter-insurgency measure.

The SPDC does not provide adequate oversight of the numerous non-state armed groups and *Pyithu Sit* (People's Militias) that have reached ceasefire agreements with the government since 1989, a process called "returning to the legal fold," which does not place these groups under effective government jurisdiction. Many of these groups, including the United Wa State Army, have been implicated in crimes similar to those committed by state forces, including forced labor, recruitment of child soldiers, and forced displacement of civilians. Ethnic armed groups still fighting the central government, such as the Karen National Union and Shan State Army-South, have also been implicated in violations of international humanitarian law.

Extensive documentation by local and international human rights organizations over the past 10 years has shown that sexual violence committed by the *Tatmadaw* is a widespread practice in ethnic conflict areas, including in Karen, Karenni, Shan, Kachin, and Chin states. Impunity for crimes against women and girls is particularly egregious, with *Tatmadaw* soldiers and other perpetrators rarely brought to justice. Victims have limited or no access to services, such as emergency health care. Burma is a party to the Convention on the Rights of the Child and the

Convention on the Elimination of All Forms of Discrimination against Women. However, the SPDC has taken insufficient steps to protect women and children against violence perpetrated by *Tatmadaw* personnel, or to fully enforce military and civilian justice to curtail abuses. The Myanmar Women's Affairs Federation is a government-controlled body that has done relatively little to practically promote and protect the human rights of women, while non-state local groups and activists working on these issues face harassment and have to work in secrecy.

Many of the non-state armed groups in Burma forcibly recruit and use child soldiers. The United Nations and the ILO investigate recruitment of child soldiers as stipulated by UN Security Council Resolution 1612, and the ILO has investigated and helped demobilize about 100 underage children from the *Tatmadaw*. The SPDC created the Committee to Prevent the Recruitment of Child Soldiers in 2004, yet this body has failed to take effective action to curtail child recruitment and has not adequately punished military officials involved in predatory recruitment practices. In 2010, three junior military officials were sentenced to prison terms, but there has never been any prosecution of senior officers involved in using child soldiers. A UN Action Plan on ending child soldier recruitment that meets international standards has yet to be finalized with the Burmese government. The government has also severely limited efforts by the UN country team to monitor the recruitment and use of child soldiers by non-state armed groups.

There are regular reports of *Tatmadaw* units forcing civilians and convict labor to carry supplies in active conflict zones, assist without pay in constructing military installations, provide sentry duty for strategic roads and facilities in order to deter insurgent attacks, and at times to walk through areas known to contain anti-personnel landmines in a practice termed "atrocious de-mining."

In violation of customary international humanitarian law, the *Tatmadaw* and other parties to the conflict plant anti-personnel landmines and improvised explosive devices (IEDs) around civilian houses and in fields to hamper food production and livelihoods.

The provision of urgently needed humanitarian assistance to civilians living in conflict zones is made difficult by excessive government and military restrictions on access by humanitarian organizations to vulnerable populations. More than 500,000 persons are internally displaced in eastern Burma alone, and the *Tatmadaw* routinely violates international humanitarian law by prohibiting the provision of humanitarian assistance, and forcing communities from their place of residence for nebulous security reasons.

One result of this nearly six-decades-long civil war and continued militarization of border regions in Burma has been major flows of refugees into Thailand, India, Bangladesh and, following fighting in 2009, into China. Routine abuses and lack of livelihoods also compel millions of Burmese citizens to leave the country and work in Thailand, China, India, Bangladesh, Malaysia and Singapore, where they often face abuses and exploitation by the authorities in those countries. Particularly squalid are the refugee camps in Bangladesh where Burmese Rohingya Muslims have lived for nearly two decades. Burma has not acceded to the 1951 Refugee Convention or its 1967 Protocol.

Conditions for ethnic Rohingya Muslims in western Burma are extremely dire. The Rohingya are denied citizenship in Burma, although paradoxically some Rohingya are allegedly being granted

temporary citizenship status ahead of the elections so that they can vote. Rohingya communities face sharp restrictions on freedom of movement, access to basic health care, livelihoods, and education and suffer routine abuses at the hands of *Tatmadaw* units and paramilitary border security forces called *Na Sa Ka*. Thousands of Rohingya have fled Burma into Bangladesh and by sea to Malaysia and Thailand.

### **Commission of Inquiry**

In his report to the Human Rights Council in March 2010, the Special Rapporteur on the situation of human rights in Burma, Tomas Ojea Quintana, stated that according to consistent reports, some of the human rights violations taking place in the country might be crimes against humanity or war crimes. He recommended that "UN institutions may consider the possibility to establish a commission of inquiry with a specific fact finding mandate to address the question of international crimes."

Human Rights Watch believes that an international commission of inquiry instituted through the UN General Assembly in which the government of Burma and other parties to Burma's armed conflicts fully participate will be an important process in ending the country's culture of impunity for serious abuses in conflict areas.

### **Recommendations to the government of Burma**

#### *Constitutional and Electoral Matters*

- Immediately release all political prisoners in Burma and modify the election laws to permit full and unfettered participation by all citizens in the electoral process.
- Form an independent commission to review the 2008 Constitution and amend sections to comply with international standards, particularly in line with the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- Repeal repressive laws used against political opponents and initiate a thorough review of the legal system to ensure independence of the judiciary.
- Grant genuine independence to the Human Rights Body in Burma and permit members of the body to be drawn from civil society; urge the reformed body to investigate human rights violations and promote international human rights standards.

#### *International Cooperation*

- Cooperate with the UN Special Rapporteur on the situation of human rights in Burma and permit the office regular access to Burma to investigate and report on the human rights situation.
- Permit the establishment of a permanent UN High Commissioner on Human Rights presence in Burma through the UN Country Team.
- Finalize the Action Plan to end the recruitment of child soldiers according to UN standards and facilitate effective monitoring and reporting on violations against children in armed conflict by the UN country team, including through access to non-state armed groups.

#### *Ending Impunity in Conflict Areas*

- Ensure compliance with international human rights standards of non-state armed groups that have reached ceasefire agreements with the government.

- Investigate and prosecute military personnel who have committed serious crimes including extrajudicial executions, sexual violence and recruitment of child soldiers.
- Provide crisis and longer-term support services for victims of violence, including health care, confidential reporting mechanisms, and emergency shelter.
- Ban the use of anti-personnel landmines by all parties to the conflict and ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction.
- Immediately end discrimination against ethnic minorities, especially the Rohingya Muslim population, and grant full citizenship rights to all stateless persons living in Burma.