



NETWORK FOR HUMAN RIGHTS DOCUMENTATION - BURMA

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Report on the Human Rights Situation in Burma

January - July 2010

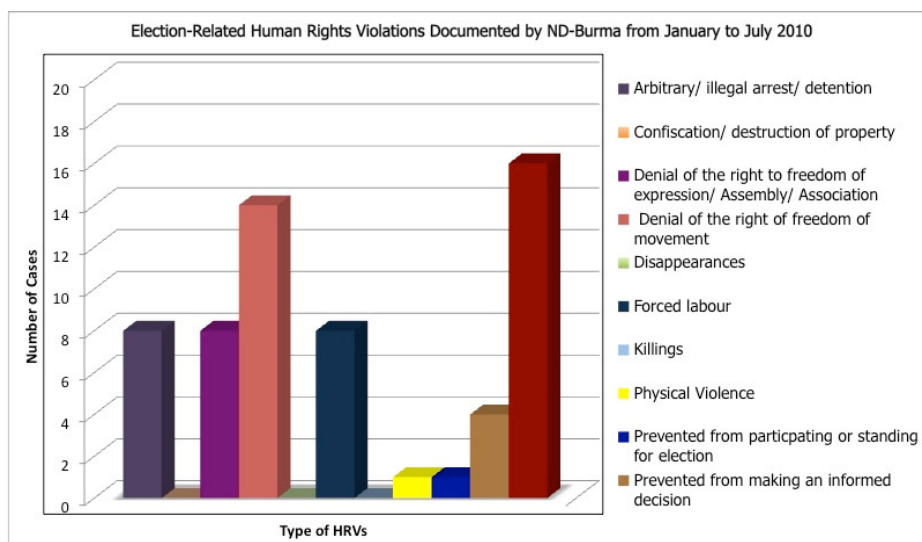
The Network for Human Rights Documentation - Burma (ND-Burma) includes 13 member organizations collectively using the truth of what communities in Burma have endured to challenge the regime's impunity for human rights violations (HRVs) through advocacy and to prepare for a peaceful democratic transition. ND-Burma monitors HRVs against a variety of vulnerable groups in Burma including political prisoners, ethnic minorities and women. ND-Burma fieldworkers put themselves at great risk to gather the stories of people who have suffered HRVs. Because this monitoring cannot take place openly, a comprehensive representation of all HRVs that happen in Burma is not possible. However, ND-Burma's reports feature information from a wide range of areas of Burma and cover 16 categories of human rights violations. This report provides up-to date information on HRVs and highlights pressing issues and trends within the country including election-related HRVs in the pre-election period. ND-Burma will continue to monitor election-related violations through and following voting day on November 7 and will publish a comprehensive report on the subject.

Election-Related Human Rights Violations (HRVs) Documented by ND-Burma January - July 2010

In the pre-election period from January-July 2010, ND- Burma has documented 60 cases of election-related rights violations committed by the regime and its supporters.

The following violations were recorded:

- Arbitrary arrest and detention (8 cases)
- Denial of the right to freedom of expression, assembly, and association (8 cases)
- Denial of the right to freedom of movement (14 cases)
- Forced labor (8 cases)
- Physical Violence (1 cases)
- Prevented from making an informed decision (4 cases)
- Prevented from participating or standing for an election (1 cases)
- Threats of violence, intimidation, or other forms of coercion (16 cases)



Burma's upcoming 2010 elections are unlikely to bring democracy, security, or national reconciliation to the country. The NLD and many ethnic groups have already decided that they cannot participate in these elections, which are based on the flawed 2008 Constitution and unfair and discriminatory election laws. If held under the current condition, the elections will not meet international standards for free and fair elections due to the highly repressive practices of the regime. During the reporting period there were many restrictions on freedom of movement, expression and association and unacceptable threats of violence and intimidation and arbitrary arrest.

From January to July 2010, ND-Burma has documented 60 cases of election related human rights violations. Of the 60 cases recorded 27% involved various **threats of violence, intimidation, or other forms of coercion**. Included in this category were cases where civilians were forced to attend trainings on the elections and threatened if they did not, and forced to give money and census information to the Union Solidarity and Development Party (USDP), the state backed political party. **Denial of the right to freedom of movement was evident in 23% of the recorded cases**. For example, monks and other influential villagers suspected of organizing in preparation for the elections were closely watched and denied travel documents, restricting their movement. 13% of cases involved the **arbitrary arrest and detention** of individuals publicly denouncing the elections. Similarly, 13% of cases involved **forced labor** where villagers were forced to work as informants for the USDP and related parties. The **denial of the right to freedom of expression, assembly, and association** was the primary violation in 13% of the cases. Under the category **denial of the right to an informed decision**, there were four cases of 'vote buying', where people were offered citizenship cards, repairs to mosques, and other necessities in exchange for their commitment to vote for the USDP.

Human Rights Violations Documented by ND-Burma

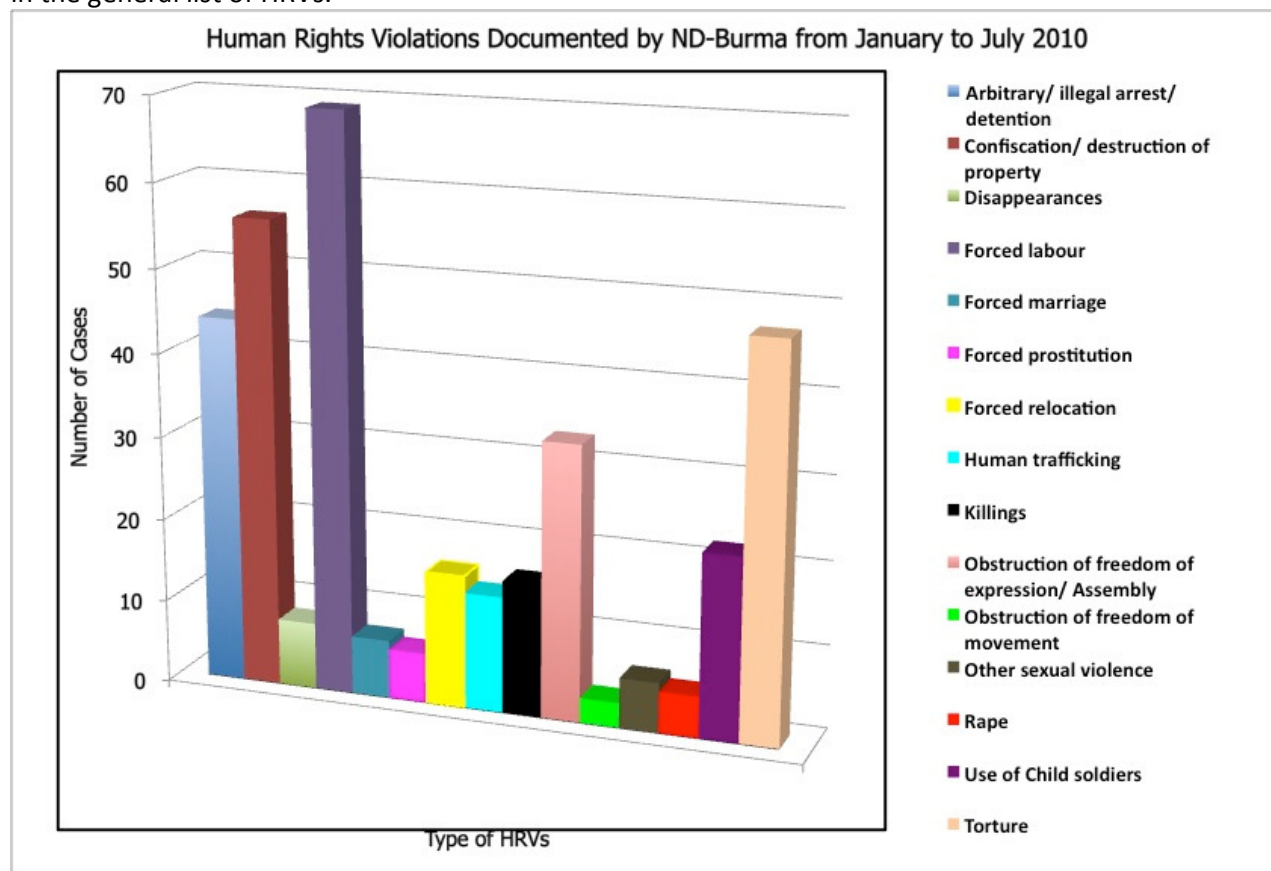
January to July 2010

ND-Burma documented 352 cases of human rights violations committed by the regime and its supporters. The following violations were recorded:

- Arbitrary/ illegal arrest/ detention (44 cases)
- Confiscation/ destruction of property (56 cases)
- Disappearances (8 cases)
- Forced labor (69 cases)
- Forced marriage (7 cases)
- Forced Prostitution (6 cases)
- Forced Relocation (16 cases)
- Human Trafficking (14 cases)
- Killings (16 cases)
- Obstruction of freedom of expression, assembly and association (33 cases)
- Obstruction of freedom of movement (3 cases)
- Other sexual violence (6 cases)
- Rape (5 cases)
- Use of Child Soldiers (22 cases)
- Torture, Inhumane or degrading treatment (47 cases)
- *Arbitrary Taxation (238 cases) see description below*

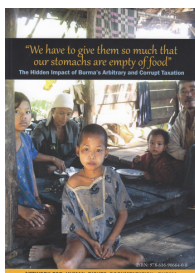
These violations occurred in Rangoon Division, Mandalay Division, Magwe Division, Irrawaddy Division, Pegu Division, Tenasserim Division, Karen State, Kayah (Karenni) State, Kachin State, Rakhaine

(Arakan) State, Mon State, Shan State and Chin State. The election-related HRVs above are also counted in the general list of HRVs.



This report covers 352 HRV cases from January to July 2010. In these 7 months, aside from arbitrary taxation, which was a special focus for ND-Burma during this period (see below), **forced labor** is the most common violation at 20% of all cases. The second largest number of cases (16%) occurred under the category of **confiscation/ destruction of property**, followed by **torture** (13%) and arbitrary arrest (13%). The election section also highlighted the prevalence of the **denial of the right to freedom of movement** and **the denial of the right to freedom of expression, assembly, and association**.

Arbitrary and Corrupt Taxation



In 2010, ND-Burma highlighted 238 cases of **arbitrary taxation** in Burma as part of the research for our first publication, ***We have to give them so much that our stomachs are empty of food: The Hidden Impact of Burma's Arbitrary and Corrupt Taxation*** (available at www.nd-burma.org). The military has transformed taxation from a routine and legitimate function of government into a tool of repression and extortion. The state of Burma is implementing a system of corrupt taxation in violation of international customary law. The system fails to comply with international norms, encourages the diversion of government revenues into private pockets and fails to provide the basic public services expected of a government. The military regime's corrupt and cruel system of taxation is having a devastating impact on the people of Burma. The average subsistence farmer in Burma may be forced to pay more than 50% of his or her livelihood in so-called 'taxes'.

Crimes against Humanity and War Crimes

The violations recorded by ND-Burma were committed by the military regime and their sponsor organizations, and some of the violations are acts that may constitute breaches of international humanitarian law and international human rights law. Article 7 of the Rome Statute defines crimes against humanity as certain acts (including several of the categories of HRVs documented by ND-Burma) when they are committed as part of a widespread or systematic attack directed at a civilian population, with knowledge of the attack. Article 8 of the Rome Statute defines war crimes as serious violations of the laws and customs of war, and Articles 8(2)(c) and (e) set a number of acts applicable as serious violations of the laws and customs of war in the case of armed conflicts “not of an international character” (internal armed conflicts). The HRVs documented by ND-Burma also include acts that may constitute war crimes, if committed in the context of an internal armed conflict as defined alternately in Articles 8(2)(d) and (f) of the Rome Statute. ND-Burma believes that widespread and systematic attacks against civilian populations are being carried out in Burma with the knowledge of the military commanders. While this report does not analyze whether each HRV was part of a widespread or systematic attack, or whether individual acts constitute war crimes, the information contributes to a growing body of evidence that such crimes are taking place. Future publications by ND-Burma will provide more detailed legal analysis demonstrating that crimes against humanity and war crimes are, indeed, being perpetrated by the military regime in Burma. The following analysis, carried out in collaboration with the Burma Lawyers’ Council, designates how each of the categories of human rights violations may constitute crimes against humanity and/or war crimes. For more information, please see the ND-Burma Human Rights Documentation Manual series, available at – www.nd-burma.org/documentation/resources.html

Arbitrary, illegal arrest and detention and the **obstruction of freedom of movement** are concerned with imprisonment or other severe deprivation of physical liberty and may constitute crimes against humanity under Rome Statute Article 7 (1) (e) if they are found to be part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack. They may also constitute **war crimes** under Rome Statute Article 8(2) (c) (iv) if perpetrated within the context of an internal armed conflict as defined under Article 8 (2) (d), and with knowledge of that context.

Disappearance is designated as an act constituting **crimes against humanity** under Rome Statute Article 7 (1) (i) if it is carried out as part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack.

Forced labor and **human trafficking** are enslavement, one of the acts included in the definition of **crimes against humanity** in Rome Statute Article 7 (1) (c), when they are perpetrated as part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack.

Forced prostitution, rape and **other sexual violence** are acts that constitute crimes against humanity under Rome Statute Article 7 (1) (g) when they are perpetrated as part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack. They may also constitute **war crimes** under the definition of the Rome Statute, Article 8 (2) (e) (vi) if perpetrated

within the context of an internal armed conflict as defined under Article 8 (2) (f), and with knowledge of that context.

Forced relocation, according to Rome Statute Article 7 (1) (d) (which uses the term deportation or forcible transfer of population) is an act constituting **crimes against humanity** when it is perpetrated as part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack, and may be a **war crime** under Rome Statute Article 8 (2) (vii) (“Ordering the displacement of the civilian population for reasons related to the conflict”) if perpetrated within the context of an internal armed conflict as defined under Article 8 (2) (f), and with knowledge of that context.

Killing (murder) is an act that constitutes **crimes against humanity** under the Rome Statute Article 7 (1) (a) when it is perpetrated as part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack and may also be a **war crime** under Rome Statute Article 8 (2) (c) (i) if committed within the context of an internal armed conflict as defined under Article 8 (2) (d), and with knowledge of that context.

Torture is listed as an act constituting **crimes against humanity** in Rome Statute Article 7 (1) (f) when it is perpetrated as part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack. Torture may also be a **war crime** under Rome Statute Article 8 (2) (c) (i) if committed within the context of an internal armed conflict as defined under Article 8 (2) (d), and with knowledge of that context.

Inhumane or degrading treatment may qualify as “other inhumane acts,” constituting crimes against humanity under Rome Statute Article 7 (1) (k) when it is perpetrated as part of a widespread or systematic attack against a civilian population and the perpetrators have knowledge of the attack and it may qualify as a **war crime** under Rome Statute Article 8 (2) (c) (i) (“cruel treatment”) or (ii) (“humiliating and degrading treatment”) if perpetrated within the context of an internal armed conflict as defined under Article 8 (2) (d), and with knowledge of that context.

The **recruitment and use of child soldiers** is a war crime under Rome Statute Article 8 (2) (e) (vii).

Arbitrary taxation and confiscation and **destruction of property** may constitute a war crime under Rome Statute Articles 8 (2) (e) (v) (“Pillaging a town or place, even when taken by assault”) and 8 (2) (e) (xii) (“Destroying or seizing the property of an adversary”) if perpetrated within the context of an internal armed conflict as defined under Article 8 (2) (f), and with knowledge of that context.

HRV Case Study: Torture, Inhumane treatment



Journal editor, Nyi Nyi Htun, 47, son of U Tin Soe was arrested on 14 October 2009 and taken to the Rangoon divisional Police Headquarters, Rangoon (Yangon). He was reportedly tortured continuously for six days by 16 officers working in pairs, throughout which time he was not fed and given only a small amount of water.

The police brutally tortured Nyi Nyi Htun by hitting him in the face with shoes, kicking and stomping on his head while his hands were tied with rope behind his back, beating him with

truncheons on his back, chest and feet. He was forced to kneel on gravel for 30 minutes at a time. His fingers were squeezed together with ball point pens between them. He was sexually violated by the interrogators who shoved a police truncheon into his anus. Throughout this time they accused him of planning to bomb a number of prominent locations, although he denied the allegations against him.

After six days, Nyi Nyi Htun was sent to the Special Branch facility at the Aungthapyay interrogation centre, where officials reportedly took an official record of his injuries, including photographs and a medical examination by a doctor. Therefore, evidence of the torture should be available to senior persons in government were they to request it. Nyi Nyi Htun was transferred to Insein Central Prison to face trial. He was wrongly accused of planning to blow up Dahutkyi Reservoir in Rangoon. Min Lwin from Asia Human Rights Organization said "they tortured and inhumanely interrogated him. After they didn't get any information from him, they shifted him to Special Information Force and charged him under the Immigration Act 13/1, Unlawful Association Act 17/1 and Section 505/b".

Although Nyi Nyi Htun's lawyer lodged a complaint with the government in May 2010, there has been no response from the state. The case was documented by ND-Burma member, the Assistance Association for Political Prisoners (Burma), as well as by the Asian Human Rights Commission office, which released a report in an open letter on August 4, 2010.

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