

In Pursuit of Justice:

REFLECTIONS ON THE PAST AND HOPES FOR THE FUTURE OF BURMA

Briefer of Report

As Burma emerges from fifty years of oppressive and violent military rule, the country is faced with the challenge of addressing past human rights abuses and establishing the rule of law in order to provide justice to victims and foster national reconciliation.

Burma's minority ethnic communities have experienced decades of abuse resulting from the SPDC and its armed forces' violent strategy employed against ethnic civilians to extinguish ethnic insurgency. Burma's ethnic communities have seen their livelihoods crippled and have been thrust into poverty by violations of land confiscation and forced labor. Hundreds of thousands have been displaced from their homes as they seek refuge from violent abuse inflicted by the Burmese military.

As the most powerful institution in Burma, the military has used its power to control the political, economic, and daily lives of the citizens, while specifically subjugating ethnic populations. Inherent in the military's strategy of domination by violent means, is the institutionalized impunity towards human rights abuses committed by Burmese military soldiers and military personnel.

This culture of impunity is directly attributed to the country's lack of rule of law and a justice system which is greatly influenced by the SPDC and its military, the Tatmadaw. Assurance of impunity is cemented by the military's ability to manipulate Burmese law, the 2008 Constitution which allows amnesty for abuses committed by the previous government, as well as the use of violence and intimidation to cultivate fear in people of opposing the regime.

Human Rights Violations in Burma Unjust Land Confiscation

Human rights violations committed by the Burmese military have been found to be most concentrated in rural ethnic areas, relating directly to the regime's campaign of attacking civilians it views as supporters of ethnic opposition. Violations of unjust land confiscation in ethnic areas has persisted throughout the past five decades due to expanding militarization, increased foreign investment, liberalization of Burma's economy, and a general lack of rule of law. Specifically, ethnic farmers in Ye and Yebyu Townships, Mon State, have experienced high rates of illegal land confiscation due to the Tatmadaw's increased military presence and foreign investment in the resource rich ethnic areas.

After the SPDC signed a ceasefire agreement with the New Mon State Party (NMSP) in 1995, the regime immediately began increasing its presence in Ye and Yebyu Townships. The Tatmadaw increased violations of

unjust land confiscation for constructions of military barracks and bases, forced villagers to work for the army with no compensation, seized plantations to grow crops to feed the soldiers, and routinely extorted the villagers.

As Burma emerges from decades of economic isolation, Foreign Direct Investment (FDI) is interested in Burma's vast natural resources now, more than ever. FDI has resulted in increasing rates of land grabs which, along with expanding militarization, are pushing people in ethnic areas off their land and into crippling poverty and internal and external displacement.

Within ten years, Saw Kyaw Khaw Goz, 52, from Yebyu Township lost all of his 20 acre land to base expansion and military protection of large-scale development.

“My 20-acre land is included in the land which is now owned by Battalion No. 282...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... 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... 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.” (Case 10)

Land is essential to the lives and livelihoods of Burma's rural ethnic communities, as is evident when Saw Kyaw Khaw Goz says, “This land is our lives”. The military has not only confiscated great numbers of farmers' land, it has restricted their mobility in traveling to land farmers are still allowed to work on, and farmers are forced pay extortion fees to access their land.

As ethnic villagers' traditional livelihood is that of farmer, when their plantations and farms are confiscated, it is virtually impossible for them to find another form of livelihood without professional training, resulting in extreme poverty and displacement. Beyond the financial devastation caused by land confiscation, many farmers find themselves experiencing psychological impacts from the loss of such an integral part of their life and identity. Many villagers experience depression and loss of hope. In some instances such mental states lead to the breakdown of the family unit

Burmese land laws do not provide adequate protection to farmers' land rights and must be reformed in order to end the exploitation of ethnic farmers. Reforms in land law must be implemented to stop all unjust land confiscation and allow rural ethnic farmers to regain their livelihoods.

Ethnic communities are also extremely disappointed with the lack of transparency the government provides local communities in regards to large-scale development projects. As the SPDC signs contracts with foreign investment companies, there is no communication afforded to the local people. It has become evident that FDI in ethnic areas has substantially interfered with trust building between Burma's government and its people, which is a vital ingredient in Burma's path to reconciliation

Victims of illegal land confiscation have identified that they would like to see justice restored by the government returning confiscated lands or providing fair compensation for lands at market price. Many victims who have been displaced from their homes due to effects surrounding land confiscations refuse to return to their native villages until all military bases are removed from the area and the military puts a stop to all forms of abuse.

Forced Labor

As the military has increased its presence in ethnic areas, violations of forced labor are committed throughout Burma's ethnic regions. The Burmese military forces at least one member of every household, be it man woman or child, to labor for the troops and work as forced porters for military operations.

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 financial 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.

Due to the military's employment of forced labor, minority ethnic families are exposed to violations of extortion, physical abuse, and degradation. When children are forced to labor or porter for the troops they are not only forced to sustain grueling physical work, but are robbed of their education as well. Children conscripted for porter duty must abandon their studies to fulfil military orders, or their families will be forced to pay often debilitating extortion fees.

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. The suspicion that someone is in contact with, or providing support to an ethnic rebel group leads to the physical abuse and often summary killings of many innocent villagers by the Burmese army.

When new military bases enter ethnic areas, villagers are exposed to physical 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." **(Case 4)**

In December 2003, Nai Non Ong and Nai Zan from Ye Township were detained, tortured and subsequently killed due to the military's unsubstantiated suspicion that the men were providing aid to Mon rebel soldiers. The murders produced trauma and profound fear in the victims' loved ones. Nai Non Ong was killed eleven years ago, but his sister, Mi Ngew Tin, is so traumatized by the event that the thought of her brother's death is too painful to bare and refuses to acknowledge this fact, referring to him as 'disappeared' since 2003.

In terms of justice, Nai Non Ong's family does not even dare to seek prosecution of violations committed against Nai Non Ong. 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 confidence to continue to commit such acts in the future, knowing full well they will not be penalized for any crimes committed. Many civilians feel powerless against the sheer power and violence of the military and feel they cannot do anything within the confines of the law to receive justice.

Rape and Sexual Assault

There is a clear connection between the SPDC regime and the military's proclivity of sexual violence against Burma's ethnic women. Records of violations demonstrate that rape is used by the military as a strategic and violent weapon to attack Burma's ethnic communities. Furthermore, 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 the number of army bases in rural ethnic communities increase, the danger to ethnic women of experiencing rape or sexual assault increases proportionately. Additionally, soldiers and army personnel who perpetrate these violations do so with almost complete impunity.

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. Notwithstanding President Thein Sien's nominally civilian government, horrific cases of brutal sexual violence perpetrated by the Burmese army continue to be documented throughout the country.

Transitional Justice in Post-Conflict Burma

The conflict between Burma's government and ethnic groups is steeped in distrust due to the government's lack of transparency, grave human rights abuses, and general lack of rule of law. 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 further erodes trust between the government and ethnic groups.

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.

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. With broken governmental institutions and a traumatized, divided population, it is essential that Burma establish the rule of law; victims must feel confident that reparations for past abuse can be obtained through legitimate structures of justice.

The SPDC must recognize violations and harm committed, and accept responsibility for its actions. SPDC accountability will create the opportunity for trust-building and societal reconstruction, and allow the space for the nation to implement effective mechanisms of restitution and reconciliation. The Burmese government must take stock in the grievances of its people, for the people, and their desires for justice, must guide the government in applying appropriate retributive and restorative mechanisms to heal the divided country and to ensure such violations will not occur in the future.

Transitional justice offers five main strategies which Burma may utilize to achieve justice for its victims and build unity throughout Burmese society.

Prosecution

Open, transparent prosecution of violations of human rights is an important avenue through which victims can see justice being served. Prosecution of offending military personnel allows the opportunity for the state to acknowledge past violations and assure that perpetrators are appropriately penalized for their crimes. Transparent prosecution will help strengthen the rule of law and aid to break-down the SPDC's prevailing culture of impunity. Prosecution of military personnel and regime members will set a precedent throughout Burma that perpetrators of abuse will be held accountable to the law.

Truth Recovery

Truth recovery and truth seeking will play a vital role in revealing 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. 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.

Institutional Reform

In order to acquire true justice for victims, it is necessary for Burma to review and restructure its security and justice institutions which were, and continue to be, instrumental in facilitating the country's decades long conflict. 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. 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.

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 can take many forms, from monetary payments or property restitution, to collective benefits such as memorials and public apologies.

Among the most urgent needs of Burma's victims, is the need to alleviate poverty. 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.

Rehabilitation and Reconciliation

The conflict in Burma centers on ethnic identity and rights, democracy, and state-building. Ethnic minority communities experience a profound inequality in access to territory, resources, and nationality. For true reconciliation between the government and ethnic groups, national integration must be achieved between the state and society.

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.

Impediments to True Transition

Without addressing and overcoming the obstacles of the SPDC's culture of impunity, its lack of transparency, and society's pervasive fear, which stand in the way of any trust building efforts, Burma will never be able to reach true and lasting peace.

The SPDC's denial of any wrongdoing, and refusal to accept responsibility for past human rights abuse has allowed impunity to persist. Grave human rights abuses will not cease as long as the perpetrators believe they can act with impunity and avoid all accountability.

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 there is 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. The government must treat its citizens with respect and implement transparent mechanisms of communication with its people.

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. 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.

The military's use of fear and intimidation has a direct impact on retribution and reconciliation of Burma's displaced peoples, for many people displaced throughout Burma and neighboring countries refuse to return to their homes until all military troops are removed from the area. Only then will ethnic communities be able to live free from fear and be able to begin to heal from their own experiences of abuse, and the country may begin to heal as one.

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 extortion and further 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

- The 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
- The 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.
- Government must reduce and remove Tatmadaw battalions in Mon territories to reduce violations of human rights

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 will demonstrate that the laws will protect the people, not harm them
- The government must oblige to international human rights and humanitarian law
- The government must reform the 2008 Constitution to fully remove the justice system from military influence

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.