



UPR Submission Myanmar - 10th session - February 2011

Summary

1. The Alternative Asean Network on Burma (ALTSEAN-Burma) and the International Federation for Human Rights (FIDH) submission focuses on the Myanmar military regime's use of forced labor, the forced recruitment of child soldiers, the forced displacement of civilian populations, and rape and sexual violence committed by members of the *Tatmadaw* (Armed Forces). These widespread and systematic abuses amounting to crimes against humanity and war crimes, as defined by Article 7 and 8 of the Rome Statute, have been documented by numerous UN mechanisms and Rapporteurs.
2. In May 2008, Myanmar's ruling junta, the State Peace and Development Council (SPDC) adopted the country's new Constitution. The drafting and approval of this document was the culmination of a highly controlled and undemocratic process that stretched over 15 years. The Constitution will come into force when the newly elected members of Parliament will convene following the planned 2010 general elections, the first in 20 years.
3. With the current Constitution, the SPDC ensured its own protection for prior crimes. The Article 445 of the Constitution provides that no legal action can be taken against SPDC members who officially carried out their duties "*according to their responsibilities.*" The Charter effectively provides the SPDC with blanket immunity for the gross violations of human rights, including crimes against humanity and war crimes that it has committed over the past decades.
4. In March 2009, the UN Special Rapporteur on the situation of human rights in Myanmar Professor Tomás Ojea Quintana stated that the ongoing human rights abuses in the country were "*the result of a state policy.*" Due to the junta's lack of accountability for those abuses, the Special Rapporteur made the unprecedented recommendation that the UN consider establishing a Commission of Inquiry into war

crimes and crimes against humanity committed by the SPDC, a requests that ALTSEAN-Burma and FIDH fully support.

Forced Labor

5. Myanmar has ratified the International Labor Organization (ILO) Forced Labor Convention (Convention 29). SPDC Order 1/99 officially outlawed forced labor in the country. In addition, Article 359 of the 2008 Constitution “prohibits forced labor.”
6. Despite its international and domestic legal obligations, the SPDC has engaged in widespread and systematic forced labor abuses. The ILO has periodically discussed and documented Myanmar’s military regime’s pervasive forced labor violations.
7. While every Myanmar citizen is at risk of being subjected to forced labor, the SPDC has particularly targeted civilian populations in ethnic minority areas. Civilians are forced to serve as military porters, act as land-mine detectors/sweepers, and work on the construction of roads, railroads, bridges, fences, and military barracks with little or no pay.
8. Energy and infrastructure projects in such areas have also fueled forced labor practices. Forced labor has been associated with the building of the Yadana and Yetagun gas pipelines in Southern Mon State and Tenasserim Division and it continues to be used in connection with the construction of the Akyab-Kunming gas pipeline project in Arakan State. Forced labor involving sentry/patrol duty has also been reported along the Kanbauk-Myaingkalay gas pipeline in Southern Mon State.
9. Reporting such practices has resulted in the persecution, arrest, and the imprisonment of complainants. In November 2003, activists Aye Myint, Shwe Mann, and Min Kyi were convicted of high treason and sentenced to death for filing forced labor reports with the ILO. In October 2005, activist Su Su Nway was sentenced to 18 months in jail after she successfully brought charges against local regime officials for forced labor practices. In November 2005, nine individuals received prison sentences ranging from 8 to 25 years because they contacted the ILO regarding forced labor issues. In September 2008, activist Thet Wei was sentenced to two years in prison with hard labor for possessing documents on SPDC ordered forced labor incidents.
10. While ILO pressure and intervention has led to the release of some of the imprisoned activists, many other complainants remain under detention. In addition, the SPDC has continued to subject complainants to judicial retaliation, including the filing of criminal charges.
11. In 2007, the SPDC signed an agreement with the ILO on the reporting and processing of forced labor complaints. In February 2010, the ILO and SPDC renewed the agreement for the third time. Despite official commitments by the SPDC to eradicate such practices, reports of the regime’s use of forced labor have continued to surface. According to a 2009 report by the ILO Liaison Officer in Rangoon, there

were 71 forced labor complaints filed from 16 May to 28 October 2009, a 129% increase from the same period in 2008.

12. Recommendations to the Government:

- Fulfill its obligations as a State party to the Forced Labor Convention 1930 (No. 29) and to the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the ILO;
- Implement the ILO's recommendations to cease Forced Labor and implement labor reforms; and
- Investigate and prosecute offences for forced labor committed by government agents in all circumstances.

Recruitment of child soldiers

13. Myanmar has ratified the UN Convention on the Rights of the Child, which prohibits military recruitment of children aged under 15 years. In addition, Myanmar has signed, but not yet ratified, the Optional protocol to the Convention on the Rights of the Child, which raised the minimum age to 18. Myanmar's 'Regulation for the Persons Subject to the Defense Services Act' establishes the minimum age at 18 for the recruitment into Myanmar's armed forces.

14. Despite the regime's laws and pledge to respect the UN Treaty, it is estimated that the Army has approximately 70,000 child soldiers, the largest number in the world. With almost 400,000 soldiers, nearly one in five soldiers in the Myanmar Army is under the age of 18. The military recruits boys as young as 12 years old. The military targets children in order to meet unrelenting demands for new recruits due to continued army expansion, high desertion rates, and a lack of volunteers.

15. In 2004, the SPDC established the High-Level Committee for the Prevention of Military Recruitment of Under-age Children. In 2007, a working group for the monitoring and reporting mechanism on the prevention of military recruitment of underage children was established. However, these bodies have clearly failed to tackle efficiently the recruitment of child soldiers. Recent UN reports on child soldiers have showed that the SPDC has not met its obligations under international and domestic law to end child recruitment in its military.

16. The November 2007 Report of the UN Secretary-General on children and armed conflict in Myanmar confirmed the SPDC's failure to eliminate the continued recruitment of child soldiers. The 2010 Annual Report of the UN Secretary-General's Special Representative for Children and Armed Conflict lists the Myanmar military as one of the actors that have recruited or used child soldiers for at least the past five years.

17. The ILO said it received 80 child soldier cases in Myanmar in 2009. Between January and May 2010, it had already received 70 child soldier cases. Reports in June

2010 indicate that the number of incidents is increasing. The ILO said that the measures taken by the SPDC to address child recruitment remained “totally inadequate.”

18. Recommendations to the Government:

- Release immediately all children present in its military ranks, and criminally prosecute those responsible of their recruitment; and
- Ratify without delay the Optional Protocol to the Convention on the Rights of the Child.

Forced Displacement

19. Myanmar has one of the world’s worst displacement situations. Civilians have been the target of the SPDC’s ongoing campaign to fight ethnic armed opposition groups, particularly in Eastern Myanmar. The junta forcibly relocates villagers from contested zones into the regime’s controlled areas as part of its so-called “Four Cuts” policy, which aims at undermining the armed opposition's access to recruits, information, supplies, and finances.

20. Since 1996, the military has destroyed or forcibly relocated over 3,500 villages in Eastern Myanmar which has caused at least 470,000 people to be displaced. However, the SPDC does not recognize the existence of internally displaced persons (IDPs) and the authorities have consistently refused to grant international aid organizations access to IDP in conflict areas to carry out relief operations. Displaced persons face a heightened vulnerability to disease and ill-health, violence, trafficking, forced labor, and reduced access to health services, education, and employment.

21. Since 1998, 11 UN General Assembly resolutions and 9 UN Commission on Human Rights/UN Human Rights Council resolutions have called on the SPDC to end the forced displacement of persons.

22. Exploitation of natural resources and the implementation of hydro-power projects have also contributed to the forced displacement of civilians in ethnic areas. Dam projects have already displaced tens of thousands villagers in Myanmar’s Kachin, Shan, Karenni, and Karen States. In most cases, displaced villagers have received little or no compensation.

23. Recommendations to the Government:

- Implement recommendations formulated by relevant United Nations’ bodies, notably the Special Rapporteur on the situation of human rights in Myanmar, urging the Government to ensure the protection of civilians and to stop without any delay the displacement of villagers.

Rape and sexual violence

24. Myanmar is a party to the 4th Geneva Convention, which prohibits the waging of war against civilian populations, including using rape as a weapon of war. Myanmar has ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, it has not ratified the Optional Protocol, which allows the Committee on the Elimination of Discrimination against Women to hear complaints from individuals or inquire into “grave or systematic violations” of women’s rights. Myanmar domestic law also recognizes the rights of women and prohibits gender-based violence.
25. The government’s structure is exclusively male. There are no women in ministerial or other key positions. A number of spouses of Myanmar leaders are considered to wield informal influence through government-sponsored groups such as the Myanmar Women’s Affairs Federation (MWAFF). These groups participate in the CEDAW, but they repudiate the documentation of gender-based abuses as they specifically pertain to Myanmar.
26. Every UN Special Rapporteur on the situation of human rights in Myanmar has documented that the junta uses rape and sexual violence against women in ethnic areas, in full impunity and as part of a state policy aiming at the “Burmanization” and subjugation of ethnic areas.
27. In 2008, CEDAW voiced its concern over the high prevalence of sexual and other forms of violence, including rape, perpetrated by Myanmar military against rural ethnic women, including Shan, Mon, Karen, Palaung, and Chin. The Committee also expressed concern that the trafficking and sexual exploitation of women and girls in Myanmar had continued unabated.
28. In response to the concerns of the international community and to the numerous reports, the authorities told the CEDAW that violations against women are “*investigated and prosecuted in accordance with the existing laws.*” However, the CEDAW was not provided with any details on the magnitude of the problem of violence against women, or any legislative measures to combat this phenomenon.
29. Recommendations to the Government:
- Implement all recommendations made by the Committee on CEDAW at its 42nd Session to the Government of Myanmar;
 - Establish and enforce strict legislation criminalizing rape in every context, including by the military; and
 - Put an end to the impunity of the perpetrators of sexual violence by investigating, prosecuting and punishing those responsible for rape and sexual violence.