Extreme Measures:
Torture and Ill Treatment in Burma since the 2010 Elections

Printed in Thailand

May, 2012

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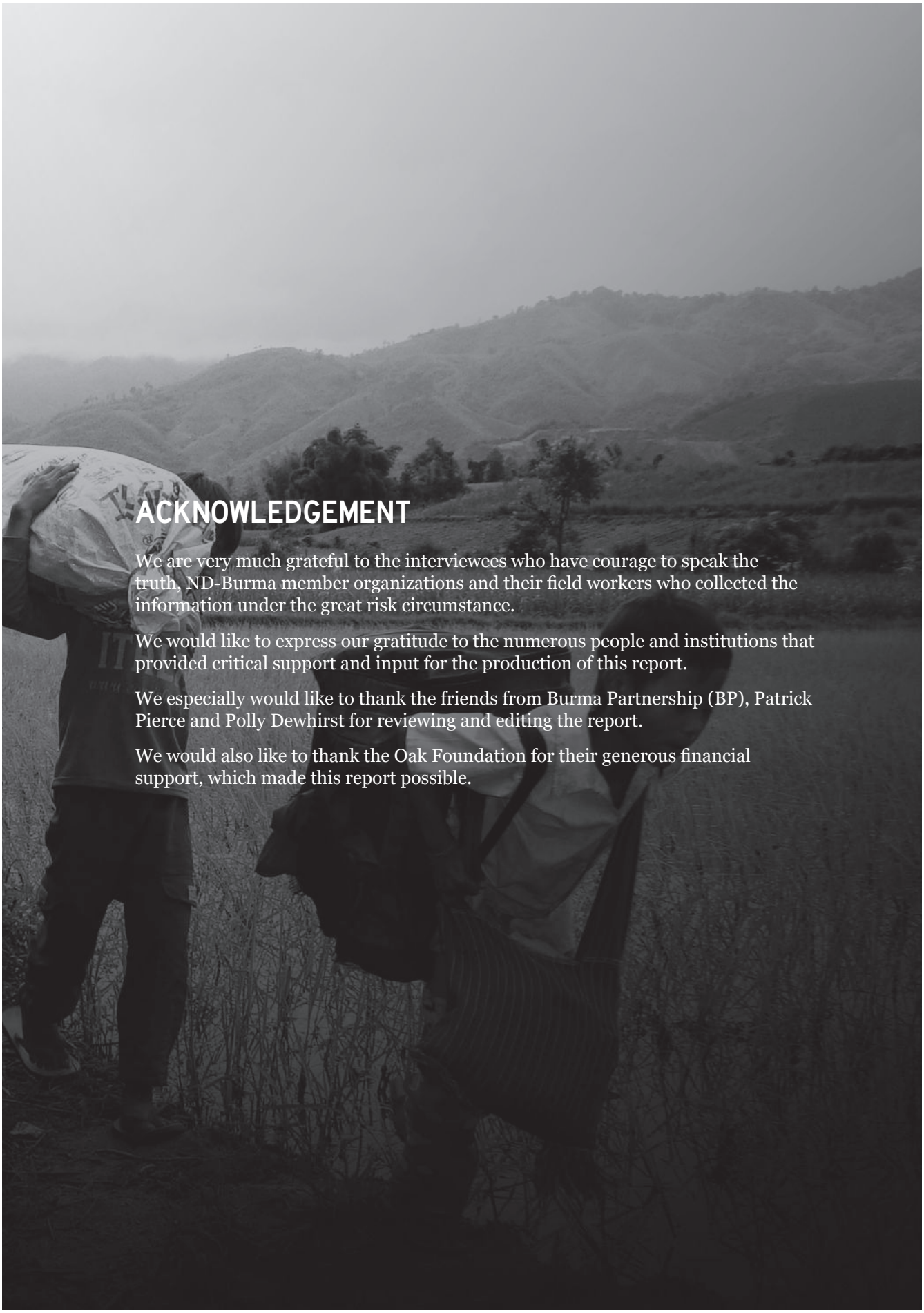
Coverphoto © 2012 Dumhpau Hkunli, A woman, her four children and disabled husband, flee severe human rights abuses by the Burmese army in Kachin State



ACKNOWLEDGEMENT

We are very much grateful to the interviewees who have courage to speak the truth, ND-Burma member organizations and their field workers who collected the information under the great risk circumstance.

We would like to express our gratitude to the numerous people and institutions that provided critical support and input for the production of this report.

We especially would like to thank the friends from Burma Partnership (BP), Patrick Pierce and Polly Dewhirst for reviewing and editing the report.

We would also like to thank the Oak Foundation for their generous financial support, which made this report possible.

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ABOUT US

The Network for Human Rights Documentation – Burma (ND-Burma) consists of thirteen human rights organizations working on a range issues in diverse areas across Burma, including conflict and non-conflict affected areas.

ND-Burma documents and publicizes human rights abuses to serve a critical truth-telling function, as a basis for advocacy to mitigate abuses, and to create a record of crimes committed against the people of Burma that can serve as a basis for efforts to hold those responsible accountable for their crimes.

Since its formation in 2004, ND-Burma has been documenting fifteen categories of human rights violations.

The most common documented abuses are forced labor, torture and ill treatment, and violations of property rights (within the context of land confiscation and displacement).

EXECUTIVE SUMMARY

This report documents the Government of Burma's torture and ill treatment against its own people since the 2010 elections. This report demonstrates that the Burmese government continues to commit these abuses despite being bound to international human rights treaties and norms. Furthermore, the lack of domestic legislation prohibiting torture, the absence of an independent judiciary, and an ineffective Human Rights Commission contribute to a climate where torture and ill treatment are perpetrated with impunity.

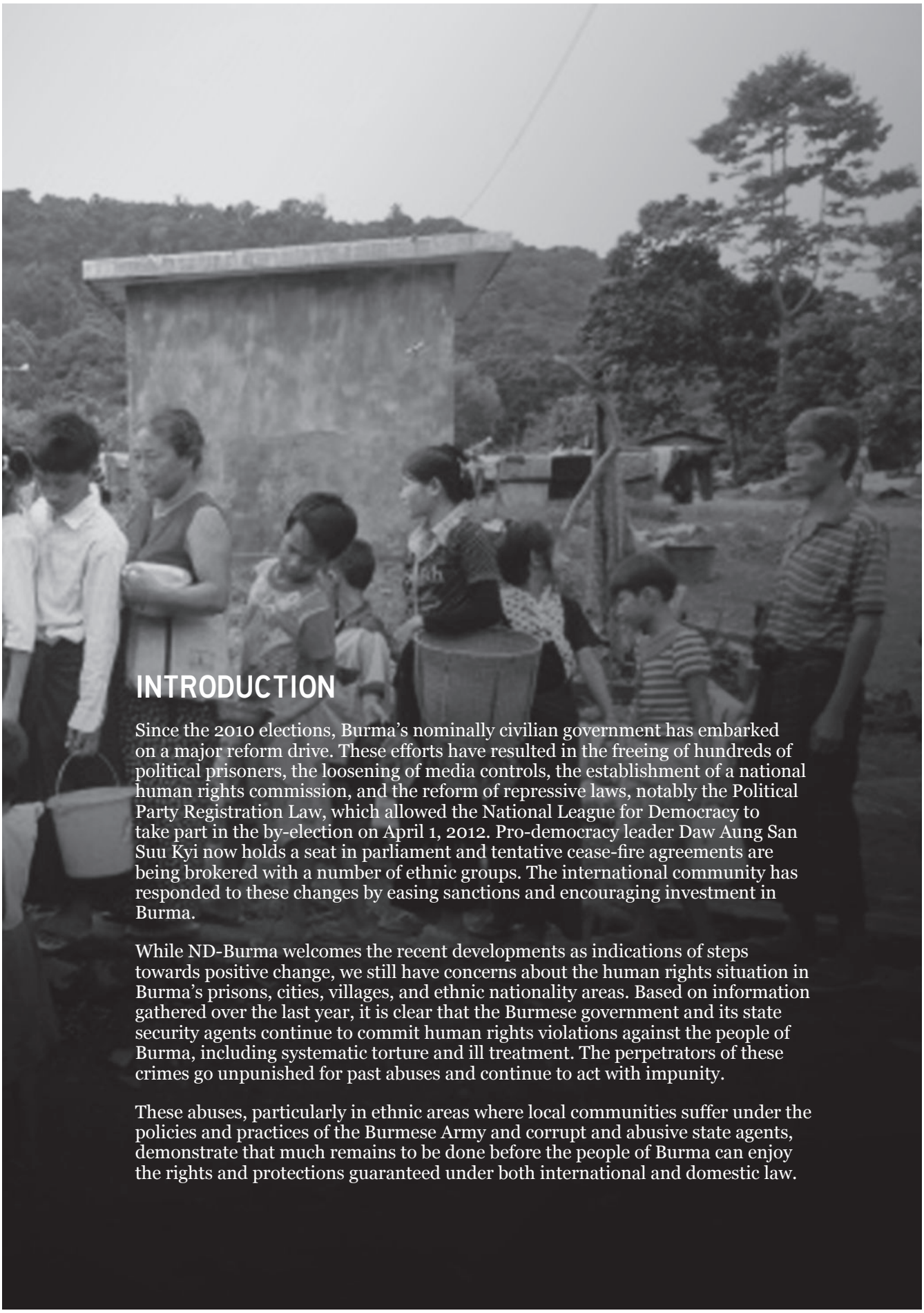
From January to December 2011 alone, ND-Burma's member organizations documented 371 cases of human rights violation across the country of which 83 cases, or 22 percent constitute torture and ill treatment. Torture and ill treatment in Burma takes place in two distinct places: (1) in detention centers where political prisoners are interrogated and held, and (2) in ethnic nationality areas where the Burmese military is present.

Torture of political prisoners generally takes place shortly after an individual is arrested during interrogations. It can, along with ill treatment, continue for years – even decades – while political prisoners serve inordinately long sentences

In ethnic nationality areas torture seldom takes place in formal detention centers but is meted out in military bases or remote rural villages. Shan State and Kachin State are particularly hard hit. Evidence gathered by ND-Burma shows that torture and ill-treatment in ethnic areas often takes place within the context of other human rights violations, including arbitrary arrest, forced labor, forced portering, confiscation of property, restriction of movement, and sexual violence.

The report makes a number of recommendations to the Government of Burma and the international community. Chief among these are calls for the adoption of legislation guaranteeing basic rights for the people of Burma, particularly the internationally recognized right to be free from torture and ill-treatment, and laws that ensure that the perpetrators of these crimes face justice. There are also calls for more education, training and public awareness about torture in order to prevent future violations as well as calls to institute safeguards and programs that guarantee that victims have available, credible, accessible remedies to deal with torture should it take place. This report also raises concerns regarding the new National Human Rights Commission, including its lack of full independence, its inability to investigate crimes committed by the military, and its failure to comply fully with best practices for national human rights commissions as described in the Paris Principles.

Torture and ill treatment have a ripple effect, with potentially long lasting negative consequences for individuals, families and society as a whole. This report serves as a reminder to the Government of Burma and the international community that significant hurdles remain for Burma to emerge as a functioning democracy that respects the Rule of Law and the rights of the people of Burma, particularly ethnic nationalities.



INTRODUCTION

Since the 2010 elections, Burma's nominally civilian government has embarked on a major reform drive. These efforts have resulted in the freeing of hundreds of political prisoners, the loosening of media controls, the establishment of a national human rights commission, and the reform of repressive laws, notably the Political Party Registration Law, which allowed the National League for Democracy to take part in the by-election on April 1, 2012. Pro-democracy leader Daw Aung San Suu Kyi now holds a seat in parliament and tentative cease-fire agreements are being brokered with a number of ethnic groups. The international community has responded to these changes by easing sanctions and encouraging investment in Burma.

While ND-Burma welcomes the recent developments as indications of steps towards positive change, we still have concerns about the human rights situation in Burma's prisons, cities, villages, and ethnic nationality areas. Based on information gathered over the last year, it is clear that the Burmese government and its state security agents continue to commit human rights violations against the people of Burma, including systematic torture and ill treatment. The perpetrators of these crimes go unpunished for past abuses and continue to act with impunity.

These abuses, particularly in ethnic areas where local communities suffer under the policies and practices of the Burmese Army and corrupt and abusive state agents, demonstrate that much remains to be done before the people of Burma can enjoy the rights and protections guaranteed under both international and domestic law.

SECTION 1

Torture, International Law and Burma

Torture, International Law and Burma

Human rights abuses by the Burmese government, including the widespread use of torture, have been well documented by the international community over the course of the past several decades, particularly since the 1988 pro-democracy uprising. A framework of international human rights and humanitarian law exists that prohibits torture and other forms of ill treatment. International law requires that States take affirmative steps to prevent torture, and that they act to provide justice and accountability should torture or ill treatment take place. The international human rights system also provides mechanisms where victims of torture who cannot receive redress from their own government can report instances of torture and seek remedies from the international community. This section of the report clearly defines torture and ill treatment and examines international legal provisions concerning torture and ill treatment, particularly those that are binding on the government of Burma.

Torture as a Violation of International Customary Law

Prohibitions against torture are generally seen as part of customary international law, meaning that States are required to refrain from committing torture, regardless of whether or not they have signed particular international treaties. Customary international law is State practice followed out of a sense of legal obligation. It is established when four factors are present: "(a) concordant practice by a number of States with reference to a type of situation falling within the domain of international relations, (b) continuation or repetition of the practice over a considerable period of time; (c) conception that the practice is required by, or consistent with, prevailing international law; and (d) general acquiescence in the practice by other States."[1] No State is exempt from customary international law obligations, even if that State, like Burma, has not ratified relevant treaties.

United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)

Although not signed by Burma, the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) has been widely accepted as part of customary international law. The convention defines torture as:

> "...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Of particular relevance for Burma is the Convention's explicit requirement that there must be official involvement in, or consent to, the acts of torture in order for a State to be considered to have perpetrated the crime of torture. This requirement may be satisfied if the act is committed by a public official, takes place with State knowledge or consent, is not properly prevented by the State, or is not properly responded to by the authorities. Cases included in this report demonstrate both the perpetration of torture by Burmese state authorities in various circumstances as well as the government's failure to create and implement effective measures to prevent torture and ill treatment and prosecute those who commit such acts, as required by the convention.

CAT further stipulates that the prohibition of torture is absolute: "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture."[2] This clause is particularly important for Burma: political tensions

and ongoing conflict with armed ethnic opposition groups cannot be used as justifications for torture.

CAT also provides separate definitions for ill treatment, which are widely accepted in the international community. According to Articles 16 and 1 of the Convention, ill treatment, unlike torture, does not have to be committed for a specific purpose and involves "significant" (rather than severe) mental or physical pain or suffering. In determining whether the level of pain or suffering is "severe," one must consider the victim's characteristics, such as gender, age, religion, culture, and health, as well as the circumstances of the torture, including duration and type. For instance, examples of torture include brutal beatings that inflict wounds or injuries; being forced into stress positions for prolonged periods; being tied in contorted positions for prolonged periods; being burned with cigarettes or other instruments; electric shock treatment; rape or other sexual violence; near asphyxiation; mock executions or amputations; prolonged denial of basic necessities; solitary confinement; and extremely poor detention conditions.[3] Although it is important to make a distinction between physical and psychological torture, it is important to note that most forms of torture involve both components.

Geneva Conventions

The Geneva Conventions establish international standards for the humanitarian treatment of victims of war. Common article 3 sets minimum standards for cases of non-international armed conflict, in which each Party to the conflict is bound by certain provisions. These provisions include the humane treatment of those taking no active part in hostilities, which prohibits torture and cruel, humiliating or degrading treatment.[4] Given that the ongoing fighting in Eastern Burma likely meets the definition of an "armed conflict not of an international character", as found in common article 3, the Geneva Conventions certainly apply to Burma. Documented cases in this report demonstrate consistent violation of this agreement by Burmese authorities.

Rome Statute

The Rome Statute is the treaty that established the International Criminal Court (ICC), and is considered an authority on questions of crimes against humanity and war crimes. It provides another definition of torture:

> "...the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."

Because the legal principles within this definition of torture have been recognized in previous international treaties, including the four 1949 Geneva Conventions, State parties who are signatories of such prior treaties are obligated to adopt necessary

and corresponding national legislations in conformity with these treaties.[5] As it is a signatory of three of the four 1949 Geneva Conventions, Burma is legally responsible for the creation of legislation that prohibits such occurrences as defined above.

Universal Declaration of Human Rights (UDHR)

While not a treaty, the UDHR forms part of customary international law, and its principles have been used as a foundation for international treaties, including the International Convention on the Elimination of Discrimination Against Women and the United Nations Convention on the Rights of the Child, both of which Burma has signed. Included in the Declaration is Article 5, which states, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Burma voted in favour of the Universal Declaration of Human Rights on December 10, 1948.

ASEAN and AICHR

The founding charter of the Association of South East Asian Nations (ASEAN) lists as one of the body's founding principles "the respect for and protection of human rights and fundamental freedoms." Furthermore, according to its newly drafted Terms of Reference, the purpose of ASEAN's Asian Intergovernmental Commission on Human Rights (AICHR) is "to promote and protect human rights and fundamental freedoms of the peoples of ASEAN" and "to uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity."[6] These purposes are further supported by the aim of AICHR members "to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties."[7] As Burma will be taking on the chairpersonship of ASEAN in 2014, it has clearly committed itself to such a goal and should be required to act in accordance with the principles enshrined within its charter.

Convention on the Rights of the Child

Burma ratified the Convention on the Rights of the Child (CRC) in 1991. According to the CRC, a child is any person under the age of eighteen years. Ratifying states of the CRC are required to respect and ensure the rights of each child, which includes ensuring that no child is subjected to torture or other cruel, inhuman, or degrading treatment or punishment.[8] On-going conflict in Burma, which has lasted for much of the last six decades, has resulted in the consistent recruitment of children by armed forces, both by the government and armed resistance groups. The recent tension in ethnic regions, particularly in Kachin, Shan and Kayin areas, has resulted in the continuation of child recruitment.[9]

Jus Cogens

In addition to being part of customary international law, the prohibition of torture is also recognized as a peremptory norm, known as *jus cogens*. As with customary international law, peremptory norms do not require States to approve such standards in order to be bound by them. However, the key element of norms that are considered *jus cogens* is that they are rules of international law that States are prohibited from abrogating, regardless of circumstance.[10] Thus, because the prohibition of torture is considered *jus cogens, a*t no time can torture be justified: not in a time of war; under threat of war; when facing internal instability; or a state of emergency. Under these international standards, the prohibition of torture is absolute and binding on all nations at all time.

BURMA'S LEGAL SYSTEM: CREATING A CLIMATE OF TORTURE AND ILL TREATMENT

The policies, structures, and practices of Burma's legal system contribute to creating a climate in which torture and ill treatment are able to occur with impunity. The chief reasons for this are a lack of legislation prohibiting torture and the lack of an impartial and independent judiciary. There is a seeming unwillingness to prevent torture and ill treatment and to pursue prosecutions against those responsible.

Legislation

The Burmese government has continuously denied that torture occurs in Burma, including, most recently, in response to the Universal Periodic Review (UPR) in June 2011. The Burmese government has claimed that torture does not take place because it is against domestic law. However, neither Burmese law nor the Burma Constitution explicitly prohibits torture. Articles 330 and 331 of the Burmese Penal Code outlaw 'hurt' and 'grievous hurt' but only during interrogation. Articles 323 and 325 outlaw 'hurt' and 'grievous hurt' outside of interrogation, but these articles only apply to detainees and prisoners. Article 166 more broadly prohibits injury to anyone by public servants.[11] Neither mental torture nor ill treatment is specifically mentioned in Burma's current legal code. This absence of laws that clearly define and unambiguously prohibit torture creates an environment in which torture can more easily occur.

In many cases it is not just the absence of laws explicitly prohibiting torture but the presence of laws that allow for the imprisonment of opponents of the regime, that expose dissidents to situations in which they are more likely to experience torture and ill treatment. Such laws include the Emergency Provisions Act (1950),

the Unlawful Association Act (1908), the Printers and Publishers Registration Law (1962), and the State Protection Law (1975). These vague laws allowing for varying interpretations and are often used to arbitrarily arrest political dissidents. Military Intelligence (MI) often carries out arrests and interrogations without warrant, despite the existence of provisions against improper arrests and detentions in sections 61, 81, 100 and 167 of the Burmese Criminal Procedure Code.

Structure of Judiciary

The lack of domestic legislation prohibiting torture is not the only impediment to protection of Burma's people from torture and ill treatment. The lack of an independent, impartial and effective judiciary also contributes to creating a climate where acts of torture are not punished or prevented.

Despite public commitments to respect the Rule of Law and create an independent and transparent judiciary made by President Thein Sein in inaugural speeches to Parliament on 30 March, to cabinet members and Government officials on 31 March, and to chief ministers of regional and State governments on 6 April, 2011,[12], little seems to have changed in how Burma's judiciary is appointed or operates.

According to the 2008 Constitution, the President selects the justices of Burma's Supreme Court, with parliament restricted to the role of confirming that nominees are constitutionally eligible for such positions. Because the President is chosen by a military dominated parliament, this structure of appointments ensures that members of the judiciary are reliant on the military for their appointments.[13] This process creates a civilian court that is closely linked to the military and likely with little desire to hold military and former military personnel accountable.

Even recent appointments do not appear to reflect any major structural changes within the judiciary since the election of President Thein Sein. The new Chief Justice in Burma's current judiciary, Justice U Tun Tun Oo, was formerly one of the justices of the Supreme Court, and the new Attorney General was previously a Deputy General.[14] The fact that Justice U Tun Tun Oo was one of three judges who affirmed Daw Aung San Suu Kyi's conviction and confinement on orders from Senior General Than Shwe provides little confidence that genuine reform is taking place in Burma's judiciary.

As the people of Burma continue to suffer, officials, including the Chief Justice and other justices of the Supreme Court, continue to deny that any challenges and weaknesses exist in Burma's judicial system. The Special Rapporteur on the situation of human rights in Myanmar Tomás Ojea Quintana, recently stated, "I have previously expressed concerns regarding the judiciary, and I remain concerned with its lack of independence and impartiality. In my meeting with the Chief Justice and other justices of the Supreme Court, there was little acknowledgement of any challenges and gaps, and a lack of willingness to address my previous recommendations."[15]

Furthermore, according to the 2008 Constitution, the civilian courts that these judges preside over do not have jurisdiction for crimes committed by the military.

Instead, these crimes fall under the jurisdiction of a military court system, whose final authority is the Commander-in-Chief of the Defense Services, an unelected general appointed by the President, with "the proposal and approval of the National Defense and Security Council."[16] Consequently, any incidents of torture or ill treatment committed by the military are unlikely to receive impartial judgment from this military court system.

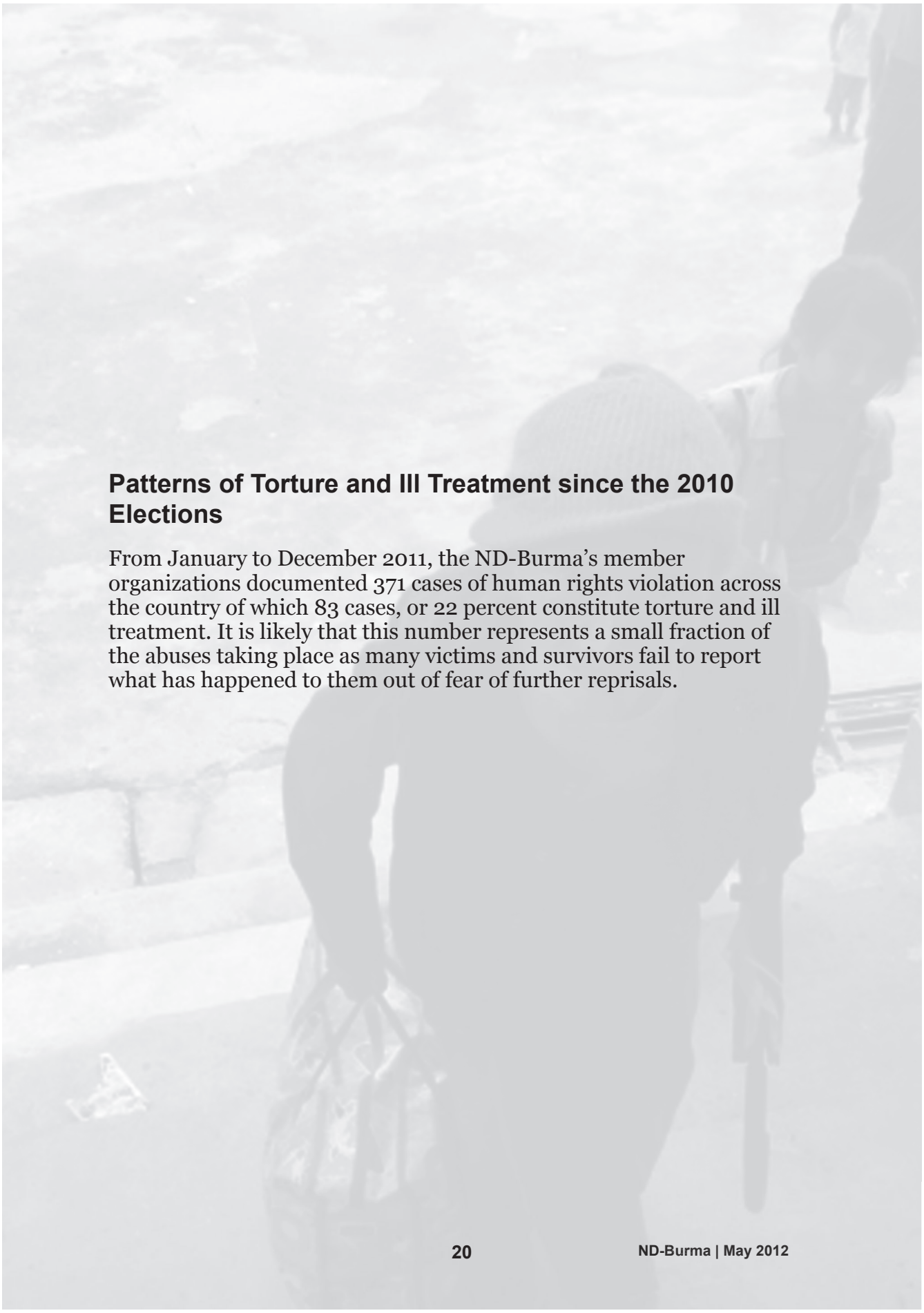
Burma's ineffective judiciary continues to allow for the manipulation of the country's legal code and the perpetuation of unjust trials. Such trials lack the basic rights of due process, including the right of defendants to call and question witnesses, the right to access counsel, the lack of judicial appeal, and the denial of the defendant's right to a public trial. All of these elements place those accused into situations where they are more likely to experience torture and prevent them from seeking redress in the courts.

Human Rights Commission

The Myanmar Human Rights Commission (MHRC) is another government structure that fails to protect citizens from torture and ill treatment. Established by President Thein Sein in September 2011, the MHRC is supposed to investigate human rights violations across the country. Yet it is plagued by many problems. The staffing of the Commission calls its ability to be independent into question. Although the 15-member body includes representatives from ethnic nationalities and academic backgrounds, it also includes a number of civil servants and retired diplomats with ties to the former military government. Min Wra, Chairperson of the MHRC, has denied the existence of human rights violations in Burma during his lifelong career as a diplomat. Perhaps the biggest challenge is that the MHRC lacks a budget to undertake its work. In March 2012 parliament failed to allocate the requested budget to the MHRC on the grounds that its establishment was unconstitutional. Its legal status and official role remains unclear. Although the European Union has pledged some funding to assist with training staff members, the future of the MHRC remains in doubt.[17] While the establishment of the MHRC appears on paper to be a step in the right direction, its current lack of effectiveness and independence renders it unable to prevent ill treatment or prohibit torture.

SECTION 2

Patterns of Torture and Ill Treatment since the 2010 Elections



Patterns of Torture and Ill Treatment since the 2010 Elections

From January to December 2011, the ND-Burma's member organizations documented 371 cases of human rights violation across the country of which 83 cases, or 22 percent constitute torture and ill treatment. It is likely that this number represents a small fraction of the abuses taking place as many victims and survivors fail to report what has happened to them out of fear of further reprisals.

An analysis of ND-Burma cases shows that torture and ill treatment take place in two distinct places and contexts: prisons/formal detention centers and ethnic nationality areas. In prisons and detention centers, political prisoners are the main targets for violations with torture largely taking place during interrogations shortly after arrest. Many of the cases reported to ND-Burma emanate from Rangoon's notorious Insein prison although offenses take place in prisons across the country. The cases documented below illustrate two major trends in torture and ill treatment against political prisoners since the 2010 elections:

(1) the ongoing ill treatment of political prisoners, including the hundreds still detained despite recent amnesties. The long-lasting nature of this ill treatment has resulted in serious health consequences and even death for several political prisoners in 2011 and 2012.

(2) the continuation of the practice of arrest and torture during interrogation of political prisoners detained under President Thein Sein's administration

This section of the report will also detail the patterns and scope of torture and ill treatment in ethnic nationality areas, where torture and ill treatment largely take place outside of formal detention centers in army bases and rural communities where soldiers exert their authority over villagers. The graph below shows the geographical spread of cases of torture and ill treatment reported to ND-Burma in 2011. Kachin, Karen and Shan States appear to be among the hardest hit.

State & Region Vs. Monthly HRVs	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Chin State					1	2	2	1					6
Irrawaddy Region	1		1										2
Kachin State	1					4	4	1	2	3	1	1	17
Karen State	6	1	1			3		5	1				17
Kayha (Karenni) State			1										1
Magwey Region													0
Mandalay Region							1		1				2
Mon State				1		1							2
Pegu Region	1			1	3	1							6
Rakhine (Arakan) State	1						1						2

Rangoon (Yangon) Region	4	1			3		3	1	2	1	1	2	18
Sagaing Region				1	1	1	1						4
Shan State		1		4		5	4		2		2		18
Tenasserim Region					2		2	1					5
Total	14	3	3	7	10	17	18	9	8	4	4	3	100
	20			34			35			11			

Torture and ill treatment in ethnic areas is widespread and occurs in the context of other human rights violations. This section of the report provides graphic accounts of torture and ill treatment taking place in the contexts of:

- Arbitrary arrest
- Forced labor
- Forced portering
- Confiscation of property
- Restricted movement
- Rape and sexual violence

Torture and Ill Treatment of Political Prisoners

For almost the past quarter of a century, political prisoners have been a target of torture and ill treatment by the Burmese government. ND-Burma's member organization, the Assistance Association for Political Prisoners (AAPP), defines political prisoners as a wide range of individuals who have been arrested because of their perceived or real involvement or supporting role in political movements with peaceful or resistant means. According to AAPP, what ties this array of dissidents together is that they engage in activities that the Burmese Junta considers contrary to its policies, and therefore 'anti-government,' 'a security threat,' or even 'terrorism.'[18]

Torture of political prisoners most frequently occurs during the interrogation period after arrest but before sentencing. Due to the lack of adherence to the Rule of Law and the absence of fair trials and recourse to the courts for the accused, this period may last for many months and occasionally years.[19] Confessions and evidence obtained as a result of torture are used to convict detainees. Torture is not only used against political prisoners but common criminals as well.[20]

In the 1993 report of the Special Rapporteur on the situation of human rights in Myanmar, documented methods of physical and psychological torture included

- beatings with rods and chains
- the "iron road" which involves rolling a metal rod up and down the shins

until the skin peels off
- the "motorcycle," during which detainees must bend their knees and hold out their arms as if riding a motorcycle for extended periods of time
- mock execution
- mock suffocation or drowning
- water torture
- sleep deprivation
- water deprivation
- being forced to witness other detainees being tortured
- solitary confinement

In a report released seventeen years later in 2010, the Assistance Association for Political Prisoners (AAPP) found evidence that nearly all these methods of torture were used between 1988 and 2010, demonstrating the Burmese regime's consistent use of such practices.

More recently in a report released on March 7, 2012, Special Rapporteur Tomás Ojea Quintana expressed concern over conditions of detention and the treatment of prisoners, including the torture and ill-treatment of prisoners during interrogation and "the transfer of prisoners to facilities in remote areas where they are unable to receive family visits or packages of essential medicine and supplemental food."[21]

Current Situation of Torture and Ill Treatment Political Prisoners

Despite prisoner releases this past year, at the time of writing, AAPP reports that 439 political prisoners remain in Burma's jails. Torture and ill treatment are ongoing, not only against long-term political prisoners but also against those recently arrested. According to ND-Burma, Nay Myo Zin is believed to be the first political opponent detained, convicted and tortured under Thein Sein's administration. He was charged under the Electronic Transactions Law and sentenced to ten years in prison on the 26th of August 2011. The charges were brought against Nay Myo Zin after Deputy Police Commander, Swe Linn, found a document in his e-mail inbox entitled "National Reconciliation" in early April 2011. During his trial in a closed court inside Insein prison, the family of Nay Myo Zin was barred from proceedings on the 2nd of June 2011. In addition, it appears that Nay Myo Zin suffered a shattered lower vertebrae and a broken rib as a result of being tortured, causing him to attend court on a hospital stretcher. Nay Myo Zin was denied access to external hospitalization during his time in prison.[22] After he was released during a prisoner amnesty on January 13, 2012, Nay Myo Zin soon faced fresh charges concerning illegal items he took into Insein prison while he was an inmate. These items include T-shirts bearing General Aung San's portrait and key ring holders bearing Aung San Suu Kyi's photograph given to him by members of a National League for Democracy blood donation group. Although recently acquitted of these charges, Nay Myo Zin's experience demonstrates a reality very different from that being projected by the Burmese government to the international community.

Another case documented by ND-Burma demonstrates the ongoing physical torture

of political prisoners detained shortly before the 2010 elections. One example is the case of Phyo Wai Aung, who was arrested on August 22, 2010 for taking part in the X20 Pavillion bombings in Rangoon. Phyo Wai Aung alleges that after his arrest, he was interrogated and tortured for nine days. A description of the torture that Phyo Wai Aung faced is found in a complaint letter addressed to the Chairman of State Peace and Development Council written by his brother, Dr. Htet Wai Aung:

> While [being forced to stand with his hands cuffed], he was tortured [in] various inhuman [ways] including kicking, beating, boxing. Sub Inspector Aye Min Naing forced him to sit like [a] jockey and hit and kicked [his] head repeatedly until his leg trembled and then he forced him to stand.... Special Branch officials tortured him straight denying food and water. [He was] forced to kneel with arms raised without clothes and [was burned] on his genitals with lit paper, [had] hot wax [dripped] onto his genitals, [was] boxed simultaneously on both ears, hit with a broom and forced to kneel against stone with blindfolded and forced to sit down and stand up repeatedly for over one hour at time. And Inspector Swe Lin intimidated him [saying], "If you die it's nothing to us."[23]

Psychological abuses, in addition to physical abuses, are visited upon political prisoners and, in many cases, rise to the level of torture. Solitary confinement, in particular, can amount to torture due to the severe effects it can have on a prisoner's mental state. UN Special Rapporteur on Torture Juan E. Méndez recently called on all countries to ban solitary confinement of prisoners (except in very exceptional circumstances) and condemned the practice, stating that it can "amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period."[24] The severity of psychological torture, including solitary confinement and deprivation of basic needs can produce as much mental suffering as physical torture.[25] Although torture methods are often described as either physical or psychological, these methods often overlap.

This overlap is evident in the case of Phyo Wai Aung. Unable to tolerate further torture, Phyo Wai Aung finally agreed to confess. After he confessed, he was placed in solitary confinement for two months at Insein Prison. More recently in February 2011, Phyo Wai Aung was placed in solitary confinement for one month in the prison's dog cells, which are old kennels from British colonial times that are used as punishment cells. Phyo Wai Aung description of the reason for his solitary confinement in the dog cells is found in a letter written on his behalf by his brother Dr. Htet Wai Aung:

> There are ten solitary cells in the dog cellblock and I was put in cell number two.... I was only allowed to leave the cell to bathe. I was told by a jailer that I was being kept in the dog cell as punishment and would be banned from family visit for a month. He said I was only allowed to receive parcels from my family. I was told that the authorities would watch my behavior and listen to what I said and if they didn't like what they saw or heard I would be punished further.[26]

According to the same letter, Phyo Wai Aung was placed in the dog cells as punishment for complaining about prison conditions, particularly the use of criminal prisoners by the authorities to monitor, intimidate, threaten and beat political prisoners. There is no formal mechanism to make complaints in prison, and rather than receiving redress, those who do try to complain are often punished or transferred. Phyo Wai Aung's punishment of solitary confinement in a dog cell as a result of complaining to prison authorities shows consistency with other reports on prison conditions.[27] Despite prisoner amnesties this past year, Phyo Wai remains in prison where he is subject to harsh conditions and further torture and ill treatment while continuing to face an unsubstantiated legal case.

Many former political prisoners have described the mental effects of the torture and ill treatment they faced while imprisoned, including anger, anxiety, depression and feelings of marginalization. Additionally, some former political prisoners have developed mental illnesses while in prison that continue to plague them after their release.[28] The case of U Gambira, leader of the All Burma Monk's Alliance and key figure during the peaceful demonstrations of the 2007 Saffron Revolution, provides further evidence of torture and ill treatment and their mental effect on political prisoners.

In an October 2011 letter appealing for his release and hospitalization, U Gambira's sister Khin Thu Htay, described the torture and ill treatment that her brother suffered in prison from November 2007 to January 2012:

> [While imprisoned in Hkamti prison] he was beaten on the head by prison authorities and guards with a stick that was one inch thick on one end and two inches thick on the other. He was beaten every 15 minutes for the entire month of April 2009.... While he was being beaten, his hands were placed behind his back and handcuffed, and he was forced to wear iron shackles. In addition, he was hooded with a black cloth bag and pieces of cloth were forcefully put in his mouth.... During the month of his torture, he was fed meals with a spoon by prison guards and was told to sit on a chair and urinate or defecate on the chair.... Finally, he was transferred to Kale prison on 12 May 2009 [and] was incarcerated in solitary confinement.

According to Khin Thu Htay, her brother later suffered from bad headaches once or twice a week, causing him to moan in pain. She describes how prison guards and the warden of the jail reacted to U Gambira's state:

> Whenever he moaned, an injection (believed to be a narcotic) was administered to him by prison guards, including the warden of the jail and prison officer. He usually falls asleep for 5 hours after the injection. When he wakes up, he cannot speak well and is in a daze, according to former political prisoners.... Deputy prison officer U Khin Maung Thein submitted a letter to the authorities while he was working in Kale prison. The letter expressed that U Gambira should be transferred to Rangoon for hospitalization since the health care system in Kale was insufficient and there

> were no proper specialists. In addition, the letter said such kind of mistreatment was very dangerous, and… he didn't want to be an in charge for this mistreatment in the future.

This ill treatment of U Gambira continued into 2011 and is consistent with reports of poor health care in Burma's prisons, where lack of treatment and access to proper specialists and use of incorrect or even fake medication by prison authorities to treat prisoners has been well documented. Khin Thu Htay also writes of the overall effect that torture and detention has had on her brother's psychological state:

> [According to a released political prisoner,] sometimes U Gambira punches the wall with his fists out of frustration. He tries to meditate, but he can't and he walks rounds outside the main jail… When we evaluate these statements of political prisoners recently released, it becomes evident that U Gambira is addicted to the narcotic injections that he has regularly subjected to. U Gambira faces a severe condition.

AAPP further reported that on 12 October 2011, that U Gambira had a sort of nervous breakdown, shouted and screamed when he learned that he would not be one of the prisoners being released. He was sedated by injection after which he fell unconscious.[29] Although U Gambira was released as part of a major release of political prisoners on January 13, 2012, his release is conditional, as stipulated by Section 401 of the criminal procedural code, and he can be effectively re-arrested without warrant and made to serve the remainder of his sentence for the slightest offense.[30] Recent charges brought against U Gambira for "squatting" in a monastery that had been sealed off by authorities seem to have been a warning both to U Gambira and other political prisoners who have recently been released under Section 401 that the government can put them back in prison where they may face further torture and ill-treatment.

Torture-related Deaths of Political Prisoners since 2010

Torture and ill treatment have grave consequences for political prisoners in Burma. AAPP has confirmed that at least 152 political prisoners have died since 1988 because of grievous torture and severe ill treatment perpetrated by prison authorities. The families of those who died have received not received any compensation from the responsible authorities, and are left alone to pick up the pieces of their shattered families.

ND-Burma has documented at least two cases of deaths of political prisoners as a result of torture and ill treatment in the post-2010 election period. Zaw Lin Htun, died approximately one month after his December 2011 release due to untreated diseases and being held in sub-human prison conditions that amount to torture.

In a similar case, Thet Nwe, passed away in January 2012, just 9 days after his release from prison. Ko Thet Nwe (aka) Ko Nyein Lu was arrested at the house of his sister Malar Nwe, on December 10, 2002. He and his sister were arrested under

the Unlawful Association Act, Emergency Act, Immigration Act and the Unlawful Association Act and sentenced to decades of imprisonment.

In an account of Ko Thet Nwe's interrogation, Malar Nwe recalls how authorities from Military Intelligence Unit 26 handcuffed her brother behind his back and put very roughly made wooden shackles on him. According to Malar Nwe, "[the authorities] also pushed his face into human excrement to force him to talk." She also reported that his hands and feet were shackled and only one hand freed from time to time to allow him to eat. They used every possible means of torture. They gave him electric shocks when they were not pleased with his answers. Thet Nwe was given a 38-year sentence for his alleged crimes. His sister was given 25 years for aiding and abetting, but was released unconditionally in 2005.

Over his ten-year captivity, Thet Nwe developed tuberculosis, nervous system ailments, mental disorders and liver cancer. During his detention, he was admitted to the Rangoon General Hospital for frequent blackouts and also received treatment at a psychiatric hospital on two occasions. He was confined to a cell in a special ward of the Insein Prison hospital, which Ko Tate Naing, General Secretary of AAPP, reports was used for inmates suffering from everything from mental illness to communicable diseases such as leprosy, tuberculosis and HIV/AIDS.

Ko Thet Nwe at his funeral (Photo - AAPP)

Organizations and individuals, including Marlar Nwe herself, appealed to the current semi-civilian government and its predecessor to release Ko Thet Nwe on humanitarian grounds due to his serious health condition. Yet he wasn't released until the most recent amnesty program on January 13, 2012. At the time of his release, he could barely walk on his swollen feet and hardly recognized his sister, the last of his living family members. Nine days after being released from Insein Prison, Thet Nwe was dead. His sister has stated "My brother walked into the jail with all his youngness and fitness but he was inhumanly tortured both during the interrogation and his 10 year jail time mentally and physically."

Torture and Ill Treatment in Ethnic Nationality Areas

Political prisoners are not the only targets of torture and ill treatment in Burma. Torture and ill treatment are also widespread in ethnic nationality areas, where counterinsurgency efforts have resulted in the continued heavy presence of Burma army soldiers. The unstable situation created by the militarization of ethnic regions, combined with government policy that sees civilians as legitimate military targets, has resulted in the widespread and ongoing perpetration of human rights violations including torture and ill treatment.

ND-Burma has found that civilians in ethnic nationality areas face different patterns and kinds of torture and ill treatment than that used against political prisoners. Unlike political prisoners, who face torture and ill treatment in government facilities, civilians in ethnic regions face these abuses outside the confines of any detention center or police station. Violations often take place in villages, at army camps or in remote rural areas where victims are acting as forced porters or forced labor for the Burmese army.

Torture and ill treatment in ethnic nationality areas does not just take place within the context of arbitrary arrest and interrogations. It also takes place within the context of other human rights violations perpetrated against ethnic nationalities such as forced labor, forced portering, confiscation of property and land, restriction of movement, rape and sexual violence.

Polices, doctors and villagers came to record the situation of victim tortured by Burmese army and local militia (Photo - PWO)

The Burmese regime has perpetuated this systematic practice of torture and ill treatment in ethnic regions through the implementation of two official military strategies: the Border Guard Force (BGF) and "Four Cuts" strategy. These two policies, along with unofficial practices that result from a lack of accountability for abusers, have allowed torture and ill treatment in ethnic regions to continue unchecked.

The Border Guard Force plan arose out of the 2008 Constitution, which called for all armed forces in Burma to be placed under the command of the SPDC.[31] In order to accomplish this, in April 2009 the Burmese government officially proposed

that the ethnic militias that had signed ceasefires with the regime be incorporated into the government's Border Guard Forced (BGF).[32] Although the Burmese government ended its call for armed resistance groups to transform into Border Guard Forces in October 2011, tensions around this process caused war to break out between the Burmese military and ethnic armies in Kachin, Shan, Karen, and Mon states.

Two of the main ethnic areas affected are Kachin State and Shan State. In Kachin State, the Kachin Independence Organization (KIO) had maintained a ceasefire agreement with the Burmese government since 1994. The ceasefire expired in 2010, and following the KIO's refusal to join the BGF, fighting broke out on June 9, 2011.[33] As tensions rose, a prisoner exchange was arranged between the Burma army and Kachin Independence Army (KIA), the armed wing of the KIO; when the KIA received the dead body of *Lance Corporal* Chang Ying, there was evidence of torture. Post-outbreak, cases of rape and other forms of torture by the Burma Army against civilians have been widely documented.

The Shan State Army-North (SSA-N) signed a cease-fire with the Burmese government in 1989 with the SSA-N deadline for joining the BGF expiring on April 22, 2010.[34] On March 13, 2011, following the SSA-N refusal to join the BGF, fighting broke out between the SSA-N and Burma Army. Since then, the Burma Army has moved 3,500 soldiers into north-central Shan State, which has a population of 100,000. Torture, including rape, has been reported in conjunction with the fighting. The Burma army routinely tortures and rapes civilians suspected of supporting the SSA-N. There are reports of gang rape as well as rape resulting in death.[35] Although the Burmese government and the SSA-N signed a ceasefire in January 2012, clashes again erupted in early February between SSA-N and the Burma army, demonstrating the fragile character of the government's ceasefires.

In areas such as Kachin, Shan and Karen States, where the Burma Army has commenced new operations against recalcitrant ethnic armed groups, there has been a reinstitution of the "Four Cuts" policy. This policy, used since 1963, is intended to suppress support for ethnic resistance armies from ethnic nationality communities by cutting off the four main links between the ethnic populations and the militias: food, funds, intelligence, and recruits. The recently renewed "Four Cuts" policy also includes cutting communication lines between allied ethnic armies.[36]

The "Four Cuts" policy operates by terrorizing the civilian populations in zones where ethnic militia operate along the border. Populations are "relocated" away from contested areas by Burmese army units to prevent them from providing support to militias. "Relocation is often accompanied by widespread summary executions, confiscation of land and property, torture, and compulsory contributions to the Burma Army (including arbitrary taxes)."[37] Villagers suspected of supporting ethnic armed groups are often beaten, tortured, and detained by Burma army troops. This abuse is clearly designed to instill fear in the population to prevent the possibility that they will provide material support to the armed groups.

Current Situation of Torture and Ill Treatment in Ethnic Nationality Areas

Documentation this past year indicates a continuation, and in some areas an increase, of torture and ill treatment in ethnic regions despite the creation of reformist laws and promises of policy changes by the new government. Documentation in this report demonstrates that such abuses continue to occur as part of the government's counterinsurgency policies, which have not changed since the 2010 elections and the installation of the Thein Sein administration.

Torture and ill Treatment in the Context of the Arbitrary Arrest

In an attempt to maintain control in ethnic nationality areas, military intelligence officers and militia forces aligned to the Burma army often arrest and interrogate ethnic villagers who are suspected of dissent or of supporting armed resistance groups. In Burma's Criminal Procedural Code of 1898, section 61 stipulates that suspects may be held without charge for only 24 hours, while section 340 protects the right to legal representation. Nonetheless villagers are often held for indefinite periods of time without access to family or legal assistance. Burmese army and militia personnel often use torture during these arrests and interrogations as a way to extract information, intimidate and punish those deemed a threat to the government.

Security forces that carry out arbitrary arrest are sometimes made up of both military intelligence officers and local militias under the control of the military. In another case documented by ND-Burma fieldworkers in Mon State, two villagers from Kawkareik Township were arrested under suspicion of having direct contact with Mon rebels (Rehmonnya Force) on 16 August 2011. In an interview with ND-Burma staff members, the 22-year-old daughter of one of the arrested men described the arrest, detention and torture of her father and their neighbor:

> They questioned my father and [our neighbor] by beating them. They were beaten and punched. My father's face was beaten with the short part of a solid bamboo pole. There was a bruise on his right cheek. After that, his eye couldn't open due to the swelling. His back was also injured from the kicking… My father said after being arrested at 7 pm on August 16, he was beaten and questioned daily until August 23, when they were released. Now my father can't speak comfortably. He has to be in bed and is being treated with traditional medicine now. Because he is younger, [our neighbor] was beaten by them more. He was bombarded with questions besides being beaten. He had more serious injuries. As his injuries were more serious, he had to be sent to the hospital in the country on the other side [Thailand]. Only after excessive beating, they realized that our father and our neighbor were just ordinary villagers…

Those suspected of reporting abuses to international or exiled media or human rights groups are also targeted for arrest. A case documented by ND-Burma in July 2011 illustrates the typical type of torture and ill treatment that takes place within

the context of arbitrary arrest. On 13 July 2011, a young man who attempted to use his MP4 player document the government-backed seizure of his sister's rubber farm was arrested by two navy officers. In a (telephone) interview with ND-Burma fieldworkers, the victim's sister described the treatment the young man received while in detention in the Navy battalion's base and the impact of the incident:

> They threatened us that if I told exiled media or sent a complaint letter to government officials about my rubber farm, which was seized by Navy battalion no.43, I would be forced to leave from my village. My younger brother was beaten. My brother got injuries on his head and right side of [his] forehead. They also beat on the back of my brother. He is taking medical treatment in my village. We are arranging for [him to leave] and work in Thailand after he recovers again. If he continues to live in our village, he may lose his life.

Despite being released by the authorities after his family went to the Navy battalion's base, Navy soldiers confiscated the victim's MP4 player, preventing his documentation of land confiscation from becoming public.

With ongoing fighting in Kachin State and continued military presence in ethnic areas across Burma, it is likely that arbitrary arrests will continue – and with them, torture and ill treatment.

Torture and Ill Treatment in the Context of Forced Labor

Burma's poor human rights record includes widespread use of unpaid forced labor,

Forced porter tortured by government troops with bayonet (Photo - HURFOM)

A porter tortured by the government troops in Karen State (Photo - HURFOM)

which generally takes place in isolated rural areas, especially those in conflict areas, "where the military continues to routinely force civilians into carrying supplies or providing labor for a range of military related duties."[38] The Burma army has also used prison convicts as porters in armed conflict zones, a practice that has been documented by Human Rights Watch, the Karen Human Rights Group, the United Nations, the International Committee of the Red Cross (ICRC), and Amnesty International.[39] In addition, threats, harassment and violence are often employed by authorities that forcibly recruit laborers, often leading to the use of torture and ill treatment to punish those who are disobedient or too weak to fulfill their duties.

Despite being a member of the International Labor Organization (ILO) since 1948 and ratifying the 1930 Forced Labor Convention in 1955, the Burmese government has not fulfilled its responsibilities to prevent forced labor. The Burmese government's failure to uphold its obligations to prevent forced labor is further seen in its failure to implement its own legislation against forced labor, Legislative Order No. 1/99 on the Eradication of Forced Labor.

The continuation of forced labor in Burma since the election of Thein Sein has only perpetuated the occurrence of torture and ill treatment in ethnic nationality areas. In a case reported to ND-Burma, one man from Moe-Gyi Village in Mon State described the use of forced labor, by forces in a Burma navy unit based near eastern Kywe Thone Nyiima village, for the construction of a training field in the Navy base. He also described the punishment he received when taking a break from the strenuous work:

> There was no time to drink water. They [the Navy men] stood and observed…They threatened that those who shirked their

duties must re-do Louq A Pay (forced labor) another day. When I stretched my waist to relax muscle tension, they swore at me. The soldier who swore at me was very young…I had a stomachache just before my lunch at noon…So I dropped my mattock and stopped digging soil for a while. My rest lasted for about three minutes. After that, I heard footsteps from behind and while turning back, the soldier who previously cursed at me in foul language punched me right in the face. "You're a lazy guy. I have been watching you for a long time. If you're lazy, you must understand you'll be punished like that," yelled the soldier. I replied I couldn't work continuously like the others because of my back pain and [stomach ache]. Because of my complaint, he aimed to strike me on the head with the handle of my mattock. But it hit me on my shoulder because I moved out of the way. I fell down in a sitting position, and the pain felt like my collarbone was broken. After that, he kicked my waist. Fortunately, he wasn't wearing combat boots. If he had been wearing them, I would have been in more pain. **(HURFOM Interview)**

Torture and Ill Treatment in the Context of Forced Portering

Civilians in ethnic conflict areas who are forced to serve as porters for the Burma Army are generally at the mercy of troops and subjected to multiple forms of torture, both physical and psychological. One form of torture that causes severe

Prisoners forced to be porters that fled post-election day fighting between DKBA and government troops, Karen State 2010 (Photo - Burma Issues)

mental suffering and, in some cases, severe physical suffering as well, is the use of these porters as human shields and mine sweepers. The porters are forced, often with severe beatings and threats of execution, to walk ahead of moving army troops to draw fire from armed resistance groups or to trip landmines set out by these resistance groups. These individuals have no choice but to risk their lives on a daily basis, for hours at a time, engendering the feelings of helplessness, loss of control, and loss of self-worth that are known to cause psychological damage.

Since the inauguration of the Thein Sein administration, the Burma army has continued its policy of forcibly recruiting local villagers in ethnic nationality areas to serve as porters. Those chosen as porters frequently face torture and beatings for things like asking for a rest, stopping or dropping their loads. In a case reported to ND-Burma, one Karen villager from Apalon Village near Kawkareik Township in Karen State described how he and his fellow villagers were beaten while portering for the Burma army in June 2011:

> [A] Burmese Army column, which came from Myaing Thar Yar and Thet Kel village, arrested me [for portering]…On that day, I was sick…and [was] lying on the bed in my hut when I was arrested… They also arrested people, both women and men, from Myaing Thar Yar. There was total of 15 people…The commander told us [that he would] release all of [us] when we reached the next village. However, we didn't believe what he said. I have been arrested as a porter many times in my life…One soldier ordered me to carry about 40 kilos of ammunition. I felt pain on my shoulders because of the [small] rope, which tied a bamboo-basket. I had to walk like a soldier [and] we had to cover these soldiers. If a gun battle broke out, we would be hurt for sure…Burmese soldiers scolded

A forced porter receives medical treatment after being tortured by government troops (Photo - HURFOM)

> the villagers who walked slowly. They pushed us to walk faster. I could not suffer the pain on my shoulders. I felt the weight of loaded things was getting heavier. My health was not good. Finally, I took off my outer shirt and attempted to put [it] between my shoulders and ropes. I [was wearing] two shirts. The outer shirt was a blue color shirt. The undershirt (inner shirt) was a dirty old camouflage shirt…When they saw my dirty shirt, they stopped walking and interrogated me. They asked, 'Are you a former Karen soldier or active Karen soldier? Are you from the KNLA's battalion no. 16, under Brigade no. 6?' I answered, 'I [am] a farmer and live in Apalon village.' They were very angry with me. They beat me on my head, my face and my back. They also kicked me on my back. Blood bled from my nose. I also cried and requested them not to beat me. I also explained [that] even though I wore the camouflage shirt, I was not a Karen soldier. They repeatedly kicked me on my back…[A man from my village] and his son also requested Burmese soldiers not to beat me. The commander of the column said, 'All of you are relatives of rebels. All of you made instability of this area.' The soldiers also kicked [the man from my village] and his son. The commander ordered his troops to keep going…They left me [and] kept going with other porters…If people don't want to face this kind of abuse, they should go to work in Thailand. **(HURFOM Interview)**

ND-Burma documented a similar case from Kachin State. Several months into the conflict between the Burma Army and the Kachin Independence Army, on the evening of 17 October 2011, Ah Phon was stopped by a group of approximately ten Burma Army soldiers and police in Myitkyina, Kachin State. He, along with a number of other Kachin civilians were taken by the soldiers to serve as forced porters for the army. Ah Phon described the experience saying:

> I realized that we were 20 people who had been arrested including 2 girls. We were taken to a hill. When we reached to the hill, we were asked to take off our clothes. The man at the front in our group asked the solider "why, sir?"; with the response from the soldiers being just harsh slaps and punches. After the beating he was unable to open his eyes because they were so swollen. We all were scared due to this brutal treatment. We took off our pants. Then a soldier saw my tattoo, which is a Kachin Flag, and said to me "I see you have a tattoo and you must be related with KIO. Tell me who is your father." I replied that my parents are just farmers and poor. "You damn liar" he said and kicked me on my left ribs. I fell to the ground. **(KWAT Interview)**

The torture and ill treatment that is often associated with forced portering has greatly increased the fear of becoming a porter for the Burma army. The fear of torture and ill-treatment as a porter or other forced laborer under the Burma army has caused many local villagers to leave their communities and flee to neighboring countries, especially Thailand, in search of a securer livelihood.

Torture and Ill Treatment in the Context of Confiscation of Property

In ethnic nationality areas Burma army soldiers often confiscate property, including

land, to support themselves or prevent villagers from supplying resources or shelter to local armed resistance groups The Burma government has perpetuated a policy of self-reliance in the army by withholding rations and paying inadequate salaries to its soldiers, therefore compelling troops to extort food and confiscate fields from local villagers.[40] Soldiers often take livestock, rice and other supplies from ethnic nationality villagers and threaten and beat villagers if they refuse or are unable to provide such items. The confiscation of property and the torture and ill treatment that often take place in relation to this practice destabilizes civilian livelihoods.

A case documented by ND-Burma from a Lahu villager living near Tarlay town in Shan State highlights the use of violence by Burma army soldiers when they demand supplies from a couple in his village:

> [The soldiers] ordered villagers to deliver 3 chickens, 5 Kilos of rice and 10,000 Kyat (about $US 13). [The couple] replied they couldn't give these things. Then, [the captain] said, 'our army has been protecting people with their lives. You don't have any sympathy for us.' Then, [the captain] and his company beat and kicked the couple. [The wife's] wrist was broken. [The husband] fought back when he saw his wife get injured. [The captain] hit [the husband] with a pistol butt. Then the captain threatened to kill him if he fought back. The couple was silent and bowed down as they were beaten…The authorities didn't take any action on this abusive matter. **(LWO Interview)**

The Burma army also confiscates property because of suspicions that armed resistance groups use it. In particular, the army destroys huts that it suspects are used to shelter members of armed resistance groups and burns fields that it suspects may be feeding members of armed resistance groups. If local residents fail to comply with orders to destroy certain parts of their property, the Burma army often punishes them.

A Karen farmer, also from a village near Kyauk-Kyi Township in Pegu Division, described the Burma army's destruction of his hut and torture of his son, who remained seriously injured and unable to work for more than two months, as he continued to experience extreme pain in his ribs after the incident:

> A soldier, aged over 30, […] gave orders and threatened me and [my] Uncle's hut must be destroyed [because] no building should be built outside the village…[The soldier said,] 'If [you do] not obey [as we order], you will see us.' At the time, my middle son… went to ask them not to destroy the hut. Right there, one soldier… kicked my son in the back with his army boot. My son fell down right on the ground. At the place, 3-4 soldiers came to step on [his] chest and neck with their army boots. And, stepping on [his] neck, the [soldier] said, 'You want to make fun of our order. Remember this. Next time, when we come back and if your hut is still like this, you all are dead. Then, he left the place…My son's front teeth were almost broken [and] his mouth was also bleeding. And, as his chest was stamped on many times with the soldier boots, he could not rise. **(Burma Issues Interview)**

In many situations soldiers will use the torture and ill treatment of some villagers to

coerce other villagers into giving up their property. This ND-Burma case from Pegu Division illustrates this common scenario. A Karen man from a village near Kyauk-Kyi Township describes how his neighbor was beaten and the impact it had on him during the confiscation and destruction of his hut:

> For me, being told to burn down my hut, I took my belongings and placed them right in front of them [the troops] and burnt the hut down. I was told that [our neighbor], who apologized [to the troops] so [that they would] not burn down his uncle's paddy-field hut, which is as far as a yell-and-hear [or a bit further] from my hut, was beaten by the battalion officer and his men with their gun-butts. And, they, the soldiers, took away their chicken from under the hut as well. Then, the Burmese soldiers themselves burnt down the hut. What they the government troops said was that because there were huts built on the farms outside the village, the Karen armed groups from the jungle can come to hide there and can cook and have meals there. And they can get information. So, that's why they ordered the destruction of the huts. Here, we have contacts with no armed groups. The armed groups have never come here either. This is just an unfair use of power ordering us to destroy the huts. **(Burma Issues Interview)**

Torture and Ill Treatment in the Context of Restricted Movement

The Burma army, as well as local police forces, frequently establishes and enforces arbitrary restrictions on the movement and activities of villagers in ethnic nationality areas. The unlawful nature of these restrictions combined with the arbitrary way in which they are enforced and the impunity with which security forces are permitted to abuse civilians creates an environment where torture and ill treatment frequently occur.

In some instances, security forces require villagers to show their national identity card and often demand money when villagers pass through checkpoints on main roads. When villagers do not, or cannot, comply with these requests, or simply question them, they are often beaten or threatened. In a case reported to ND-Burma, one man described his experience while being stopped by police and immigration officers on the Tavoy highway in Paukpinkwin Village:

> Getting off the truck, the passengers who did not have their ID cards with them were told to stand in one place…For me, without worrying, I showed my ID card. A policeman to me that [since I was] holding an ID card [identifying me] as a Pa-an resident, I [also] had to have a recommendation letter from the local police station or ward administration office or I had to a responsibility letter from the family that I was going to visit. And, I replied to him that I thought I could travel wherever I wanted as I am a Myanmar national holding my Myanmar national identification, Myanmar Citizen status. My face would have been punched immediately because I responded to him in that way; yet, my right shoulder was punched instead because I avoided his punch. Then, I was

> threatened by another guy…who said that because I did not accept being inspected honestly and respectfully, I would be put on trial. After inspecting all the passengers, another Mon woman, originally from Ye Township, and I were left there. And, finally, they came to negotiate with me, saying that if I wanted to keep going on my trip, they would let me take another truck, and they would write a traveling permission letter if I gave them 10,000 Kyat as a security fee…Since I had to keep traveling, I gave them 10,000 Kyat right away without saying anything. **(HURFOM Interview)**

The Burma army also enforces restrictions on movement in ethnic nationality areas where they believe armed resistance groups operate. It is apparent from interviews conducted with villagers in ethnic nationality areas that such restrictions interfere with their ability to carry out their daily activities, and therefore endangers their livelihoods. Restrictions on movement place villagers in the impossible position of risking torture at the hands of the army if they attempt to travel to their farms or starvation for their families if they do not. A farmer from the town of Yebyu in Tanintharyi Division explained to ND-Burma why soldiers beat him:

> Twelve soldiers…saw me when I was secretly taking latex on my rubber farm. They could see me because I used a [light] bulb (with battery) on my forehead. Then they shot at me…The bullets [flew] over my head. I laid my body down on the ground. Then they surrounded us. One soldier kicked the latex container. Then they scolded us. They used very strong rude words…The platoon leader ordered me to sit on the ground and kicked my face…I fell down. My hind head [hit against] a trunk of rubber tree. My hind head cut open for one and half inches. I requested them to stop beating me. However, one soldier took a branch of rubber plant and hit my back, my elbow and my forehand. I felt a lot of pain. I repeatedly requested them to stop hitting me…They brutally beat me…When I arrived to my village, my wife and children cried. I had to take medical treatment for one week. After that, I left my village and have been looking for a job in Thailand. **(HURFOM Interview)**

Torture, Ill Treatment and Sexual Violence

Rape and sexual assault are, in and of themselves, considered human rights abuses that may rise to the level of war crimes and crimes against humanity. They have also been deemed acts, which constitute torture under a number of international treaties. The International Criminal Tribunal for the former Yugoslavia stated that the "severe physical or mental pain or suffering required for a finding of torture is satisfied per se by the act of rape…Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterization as torture."[41] Additionally, as the Convention Against Torture requires that the pain or suffering be inflicted for a particular purpose, it is worth noting that international bodies have found the aim of 'humiliation' to meet this requirement. As the Inter-American Commission noted, the objective of rape, "in many cases, is not just to humiliate the victim but also her family or community."[42]

The Special Rapporteur on Torture points to the difficulty in overcoming torture by using sexual abuse as an example, in saying "rape and other sexual forms of abuse are intended to violate the dignity of the victim in a very specific manner. Beyond the actual physical pain, sexual violence results in severe psychological suffering."[43]

Sumlut Roi Ja was taken by Burmese soldiers (#321) suspected of sexual abuse in Mubum military camp (Photo - KWAT)

Ah Phon, an ethnic Karen man from Myitkyina, described the experience of the two girls who were abducted by the Burma army with him. He states that on the first night the group after the group was taken to the army camp:

> The girls were raped for the whole night by one soldier after another. I saw girls could hardly walk the next morning: one girl cried and came out from the army barrack and another girl looked very weak and had to lean against tree. The next morning, the Captain took the first girl and forced her to take a bath with him. I know he was from the Meiktila based battalion because of his unit insignia. All the porters were asked to collect water for his bath. He bathed naked, and forced the girl to clean his whole body. She also had to rub him with a towel. After that, he forced the girl to take get naked and take a bath. He was threatening that he would kill her, if she didn't so she had to do what she was told. The captain asked one of his soldiers to bathe her. She had to take a bath in open space where everyone could see. **(KWAT Interview)**

Ah Phon recalled that the first girl "since that first night, was forced to take a public bath and raped every night by the captain". He also described an incident where:

> One morning the second girl rushed out from one of the army officers' huts. While she was crying and saying her prayers on her knees, a soldier slapped her on her head and told "Don't you pray! It is not for such thing. Where is your God?? You think he can do anything. So where is he now?" Then he slapped her on her face again and I saw that she lost one of her teeth and her face was swollen. During lunchtime, when we could have time all together, the girls told us that the officers took methamphetamine and raped them like animals. **(KWAT Interview)**

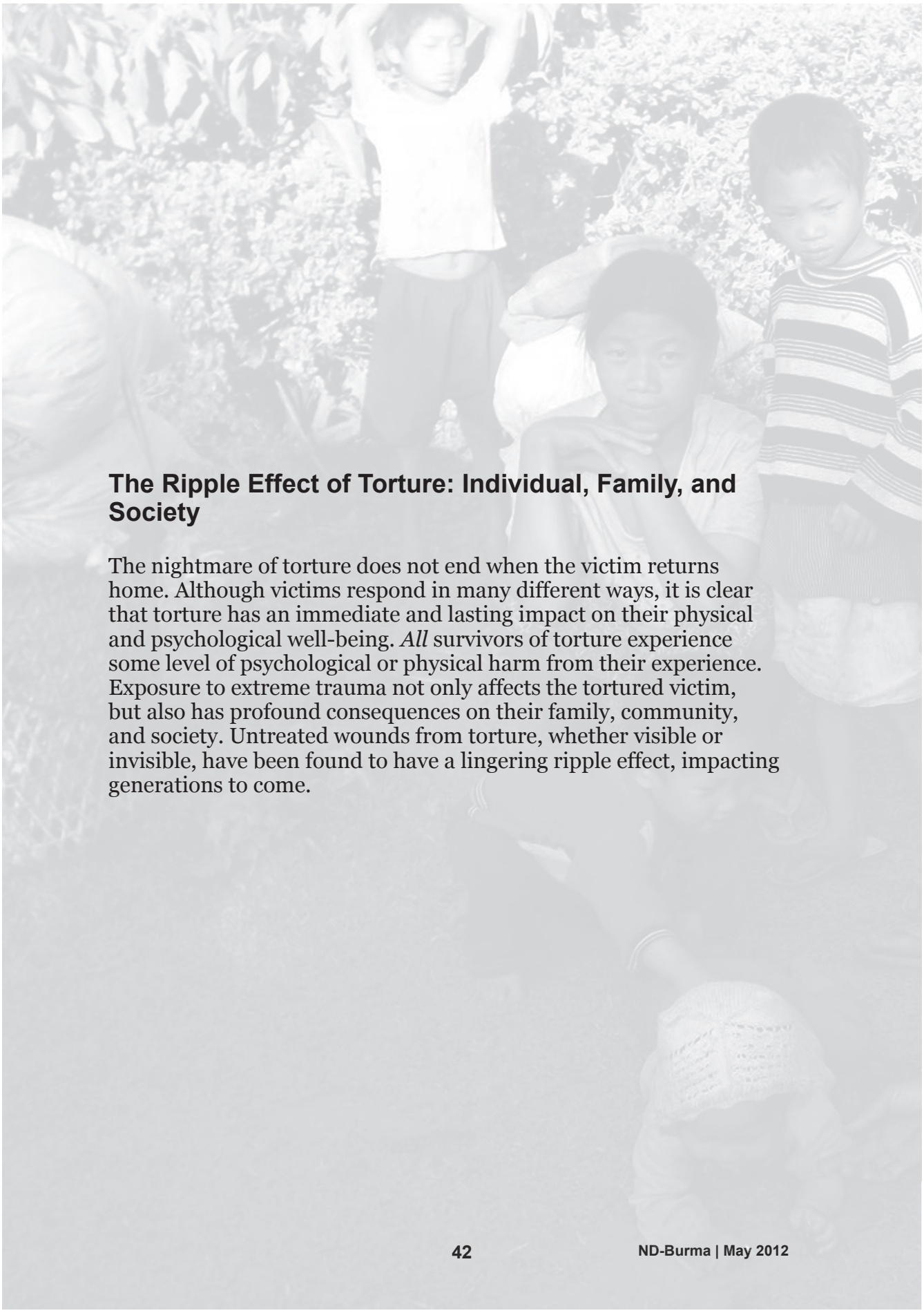
Ah Phon, along with several other men, was able to escape the army camp when the soldiers were distracted and returned to Myitkyina on November 4, 2011. The two

girls were unable to escape with Ah Phon and it is presumed that they continue to be held as virtual sex slaves for the Burma army.

While rape and sexual assault are primarily perpetrated against women and girls in ethnic areas, it must be noted that these forms of torture are also be perpetrated against men and are used against political prisoners as well. This type of abuse can take many forms, including harassment and molestation, beating or burning of the genitals, threats of rape, and rape. There is one documented case of sexual abuse of a male political prisoner where prison guards forced a dog to penetrate him. This survivor said "*I can forgive my torturers everything but the sexual abuse. No religion permits such an act. It has destroyed my self esteem, my dignity*." This torture victim's connection to religion and self of sense has been shattered as a result.

SECTION 3

The Ripple Effect of Torture: Individual, Family, and Society



The Ripple Effect of Torture: Individual, Family, and Society

The nightmare of torture does not end when the victim returns home. Although victims respond in many different ways, it is clear that torture has an immediate and lasting impact on their physical and psychological well-being. *All* survivors of torture experience some level of psychological or physical harm from their experience. Exposure to extreme trauma not only affects the tortured victim, but also has profound consequences on their family, community, and society. Untreated wounds from torture, whether visible or invisible, have been found to have a lingering ripple effect, impacting generations to come.

Impact on the Victim

The underlying principle of what makes torture so traumatic, regardless of what forms it takes, is the loss of control that comes with it. Torture is designed to break both the body and mind of the victim. This is achieved by employing methods specifically designed to prolong the fear and suffering of the tortured person for as long as possible without inducing death. The feelings of helplessness and loss of control engendered by torture and other forms of ill treatment may impair the victim's ability to function as a productive member of society and to form meaningful interpersonal relationships.

Torture can be either physical or psychological and, in many cases, is some combination of the two. Both forms of torture have profound impacts on a victim's mental state, and are often indistinguishable in their long-term impact on psychological health. The common perception that psychological torture is more benign than the infliction of direct physical pain is flawed. A number of independent studies have shown that physical and psychological torture are similar in the fear, feelings of helplessness, loss of control, and anxiety they create[44]. In particular, mock executions, waterboarding and similar methods that may not leave visible scars are clearly designed to engender such a feeling of loss of control that the victim truly feels his or her life is in the hands of the torturer. Additionally, in many cases, psychological torture involves threats to a victim's family members, which compounds the feelings of fear and helplessness.

The torture victim is in essence de-humanized, stripped of their dignity, self-worth and sense of free agency. This "de-humanization" can take various forms and includes sexual humiliation, desecration (especially religious), and feral treatment (such as forcing the victim to act as an animal). For example, Muslim torture victims are often forced to eat pork, women are subject to extreme sexual harassment, and Buddhists are beaten repeatedly on their heads, a particularly sacred part of the body. In short, the torturer aims to destroy the ability of the tortured person to function normally and maintain control over his or her life.

The physical impacts of torture are clearly visible and serve as a grim reminder of the devastating consequences of dissent. These include damage to internal organs, vision and hearing loss, gynecological problems, head trauma, bone fractures, neurological damage, and skin damage. Almost all detainees who are viewed with suspicion by the Burmese military regime, such as ethnic nationalities or political activists, are subject to physical torture during the initial interrogation period. For ethnic nationalities, torture often takes place in secret places in remote areas, far from the reach of the law.

In addition to the physical injuries that may last for decades, the invisible scars of psychological torture often remain for a lifetime. A high percentage of torture survivors suffer from depression and anxiety, which can manifest in different ways. This can include panic attacks, feelings of hopelessness and despair, feelings of isolation, damaged self-concept, mistrust/paranoia, sleep disturbances, impaired memory, and a breakdown in family and personal relationships. One psychiatrist from Harvard University, Stuart Grassian, found that prisoners who have been held in prolonged solitary confinement become loners, and that even years after their release, they are still "hyper vigilant, jumpy, fearful, and chronically tense[45]."

Post-traumatic stress disorder (PTSD), which can emerge after exposure to a traumatic event, has been found to be prevalent in victims of torture and is likely a

result of mental torture as well as physical torture.[46] The defining characteristic of a traumatic event is its capacity to provoke a feeling of fear, horror, and helplessness in response to a threat of injury or death. As the threat or anticipation of pain is often worse than the pain itself, it is not surprising that a high level of trauma can result from psychological torture.

It is not hard to imagine how an episode of torture can have devastating consequences for an individual trying to reintegrate into society. Survivors of torture often speak about being broken and refer to their lives as before and after the torture happened. The feelings of low self-esteem and isolation make it difficult for them to resume their lives. Many victims feel a profound sense of regret and guilt for merely surviving torture when they have friends and colleagues that died as a result of torture. Also, victims may feel immense guilt and distress if, under duress, they revealed names of friends or family members to the authorities or provided information that was used to interrupt political or resistance activities.

Finding employment, pursuing educational opportunities, or reconnecting with former friends and family members can be a major obstacle when battling the constellation of negative emotional feelings, only made worse if one is physically handicapped as a result of torture. Trying to rebuild a sense of self, which is integral to functioning as a human, is similarly difficult.

Impact of Torture on Families and Society

The negative effects of torture are not limited to the individual. Family members of the tortured victim must also deal with their loved one's traumatic experience and often feel resentment and mistrust of the authorities responsible. They may also

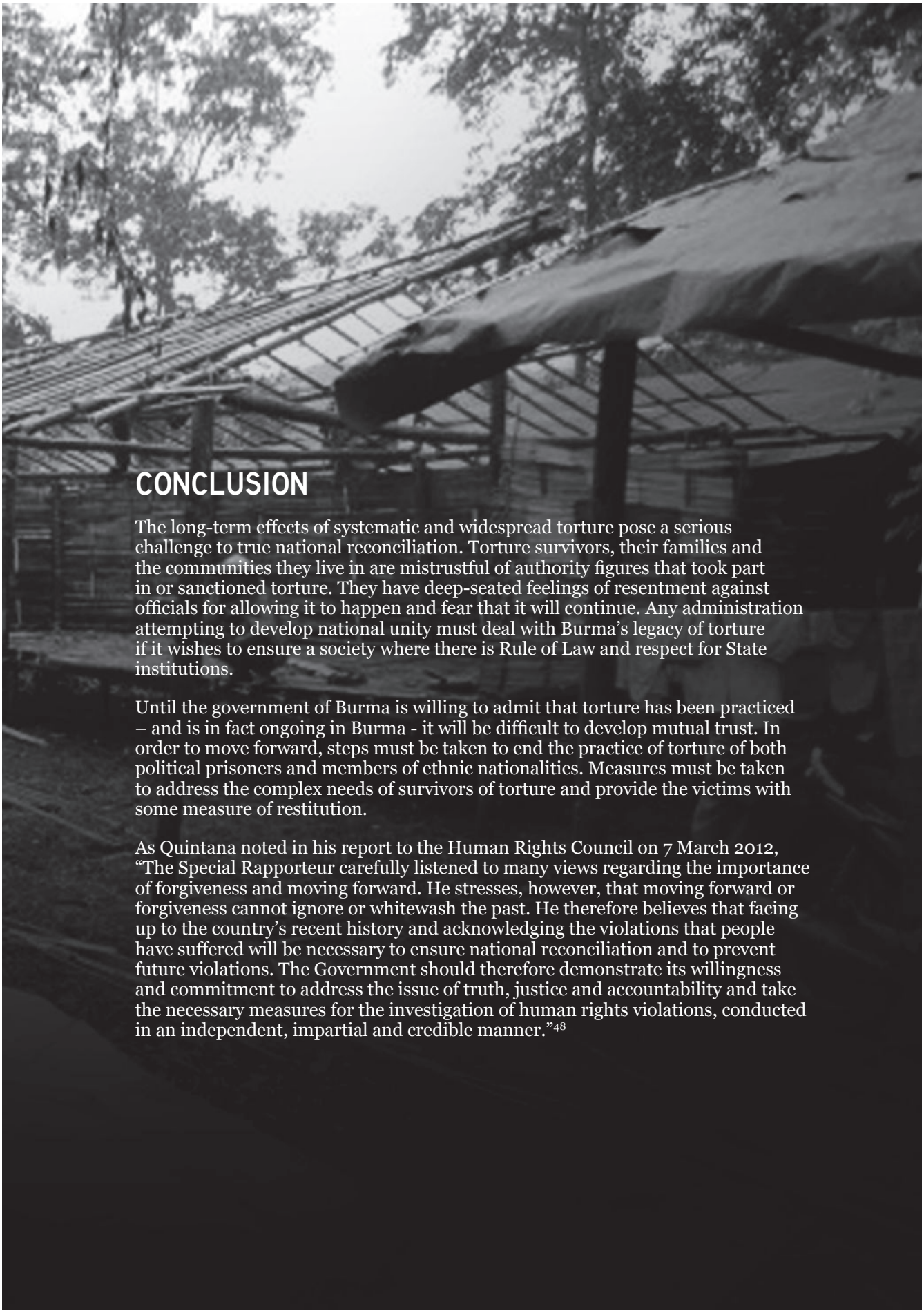
Shan man tortured and killed by Burmese army in Nam San Yang village (Photo - KWAT)

experience feelings of guilt and helplessness for being unable to protect or arrange for the release of their family member. These feelings of resentment can affect multiple generations of family members[47], who may try to cope with this sense of loss of control through self-defeating means such as substance abuse.

In Burma, torture is generally carried out with three main goals: to extract information, to punish and to instill fear. In employing torture in order to instill fear, government officials and members of the military are targeting not only the torture victim but also broader society. The aim is to intimidate the population and prevent people from even attempting to oppose the government or resist its demands. By torturing one democracy activist severely, the regime seeks to dissuade others from protesting. The use of torture to intimidate the community is even more of an issue in ethnic areas where the torture of civilians is part of a wider and deliberate strategy to keep the population so beaten down that they are unable to resist the government or provide support to ethnic armed opposition groups.

Torture in ethnic areas occurs primarily outside of formal detention and generally occurs in areas where conflict with ethnic armed groups is ongoing. Because torture is used by the Burma Army to intimidate ethnic civilians and prevent them from providing material support to armed resistance groups it is, by intent, directed at entire communities rather specific individuals. While civilians are often tortured based upon suspicion of supporting ethnic armed groups, such suspicion may be based upon seemingly benign activities such as traveling away from one's home village for livelihood purposes. Traveling outside of one's village, even if only to nearby fields, also puts individuals at increased risk of other human rights abuses at the hands of the Burma army including rape and sexual assault. This creates de facto restrictions on movement that, over time, depresses economic development, reduces educational opportunities, and prevents access to health services. Additionally, fear of torture often contributes to decisions by families to flee their homes, creating thousands of refugees and internally displaced persons.

Torture is also used to divide communities and create distrust and suspicion among neighbors. Where fear of being 'informed upon' is present, people must always be on guard, making it difficult to for them to form meaningful trusting relationships. In many cases, in ethnic areas, village headmen are singled out for torture and other abuses if the army believes the village is harboring or supporting members of armed resistance groups. It is difficult for villages to find individuals willing to serve as headmen, leading to a further breakdown in social structure.



CONCLUSION

The long-term effects of systematic and widespread torture pose a serious challenge to true national reconciliation. Torture survivors, their families and the communities they live in are mistrustful of authority figures that took part in or sanctioned torture. They have deep-seated feelings of resentment against officials for allowing it to happen and fear that it will continue. Any administration attempting to develop national unity must deal with Burma's legacy of torture if it wishes to ensure a society where there is Rule of Law and respect for State institutions.

Until the government of Burma is willing to admit that torture has been practiced – and is in fact ongoing in Burma - it will be difficult to develop mutual trust. In order to move forward, steps must be taken to end the practice of torture of both political prisoners and members of ethnic nationalities. Measures must be taken to address the complex needs of survivors of torture and provide the victims with some measure of restitution.

As Quintana noted in his report to the Human Rights Council on 7 March 2012, "The Special Rapporteur carefully listened to many views regarding the importance of forgiveness and moving forward. He stresses, however, that moving forward or forgiveness cannot ignore or whitewash the past. He therefore believes that facing up to the country's recent history and acknowledging the violations that people have suffered will be necessary to ensure national reconciliation and to prevent future violations. The Government should therefore demonstrate its willingness and commitment to address the issue of truth, justice and accountability and take the necessary measures for the investigation of human rights violations, conducted in an independent, impartial and credible manner."[48]

RECOMMENDATIONS

Government of Burma

- Publicly acknowledge the practice and specific occurrences of torture during interrogation of political prisoners as well as the commission of torture by Burma Army soldiers in ethnic areas

- Extend an invitation to the Special Rapporteur on Torture to visit Burma

- Cease all military offenses against the Kachin and other ethnic nationalities that continue to lead to severe human rights abuses, including torture and ill treatment, and withdraw all Burma Army troops from ethnic conflict areas

- Sign and ratify the International Convention Against Torture (CAT) and formulate domestic laws in accord with the obligations under the CAT to prevent torture and ill treatment

- Establish a system of accountability for perpetrators of torture, including an independent judiciary

- Guarantee fundamental human rights consistent with the Constitution and with international human rights standards

- Provide human rights training to all soldiers, police and other government officials on international standards prohibiting torture and ill-treatment

- Release all remaining prisoners of conscience without conditions and without delay

- Suspend all natural resource and large-scale development projects that are associated with or create an unreasonably high likelihood of severe human rights impacts, including torture and ill treatment

- Once adopted, clarify and provide training to all state agents regarding the government's policies prohibiting torture and ill treatment

- Hold local government officials, police officers, and other agents under state control accountable for torture and ill treatment

People of Burma

- Raise awareness of the prevalence of torture, using the media and other means, to document the extent of human rights violations they have suffered

- To share information with one another about how to document human rights abuses as well as how to report these to the relevant government bodies

- To submit formal complaints of human rights violations to the NHRC and Members of Parliament

International Community

- Encourage the Government of Burma to sign and ratify the International Convention Against Torture
- Continue to speak honestly and forcefully for the people of Burma regarding ongoing violations of international law including torture and ill treatment committed by state agents
- Call on the Government of Burma to withdraw troops from ethnic areas and amend key pieces of legislation, including the Electronics Act and the Unlawful Association Act, as a benchmark for a review of currently suspended economic sanctions
- Publicly support visits from the UN Special Rapporteur on Torture, Juan Mendez, in addition to further visits from UN Special Rapporteur on the Situation of Human Rights in Burma, Tomas Ojea Quintana

Asia Regional Governments

- Acknowledge the continuing serious human rights situation in Burma, including state sanctioned torture and ill treatment
- Support an investigation from the ASEAN Intergovernmental Commission on Human Rights into the situation of human rights in Burma, including the practice of torture and ill treatment
- Insist the Government of Burma adopt policies and practices that put an end to torture and ill treatment prior to assuming the ASEAN chairmanship in 2014 such that, as leader of the regional group, Burma's practices are in line with the ASEAN Charter

National Human Rights Commission of Burma

- Act independently from the Government of Burma and in compliance with the Paris Principles
- Be accessible to victims of torture and ill treatment, including cases against military personnel
- Urge the Government of Burma to ratify the International Convention Against Torture
- Review laws and recommend appropriate amendments for all laws to comply with international human rights standards and in particular the International Convention Against Torture
- Fully and regularly engage and consult with independent civil society

Members of the Upper and Lower Houses of Burma's Parliament

- Ensure Parliament debates and adopts policies that promote and protect the people of Burma, including guarantees of basic human rights

- Publicly discuss and debate the issue of torture and ill treatment and call responsible state agents to Parliament to discuss the policies and practices that leading to continued human rights violations

International Financial Institutions

- Ensure that any lending, technical assistance, or consultations with the Government of Burma are conducted in a transparent and accountable manner so the people of Burma and the international community are fully aware of the activities

- Prioritize support for the people of Burma through actions and projects that advance responsible governance, accountability mechanisms and protection and promotion of human rights

- Engage in participatory consultation processes with the people of Burma, civil society and community-based organizations in identifying development policies and projects that reflect the needs and priorities of the people of Burma

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