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Crimes against humanity in eastern Myanmar



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Crimes against humanity in eastern Myanmar

“We lost whatever remained of our peace”¹

1 Introduction

In August and September 2007, the largest demonstrations in nearly 20 years took place across Myanmar. Protests against sharp increases in the price of fuel amidst considerable and widespread economic hardship gradually evolved into pro-democracy demonstrations led by Buddhist monks. The government of Myanmar responded in late September by violently cracking down on free speech and assembly, killing at least 31 people - and likely more than 100 - and detaining thousands. Following this crackdown, the international community united in expressing immediate outrage at the situation. Recommendations included stepping up United Nations (UN) efforts toward ending the crackdown, addressing some of the underlying human rights violations, and accelerating the government's efforts at adopting democracy through a process of national reconciliation.

On 2 and 3 May 2008, Cyclone Nargis struck Myanmar, killing tens of thousands of people and affecting over two million more. Despite the devastating consequences of the cyclone, the government of Myanmar proceeded to hold a national referendum regarding a new and flawed constitution on 10 May, and for the areas most affected by the storm on 24 May, with plans for national elections in 2010. Even as hundreds of thousands of its people struggled for basic shelter, food and health care, the government prioritized acceptance of a new constitution that undermines respect for human rights and entrenches military rule and impunity.²

Nearly two years prior to these recent crises, however, a military offensive was launched by the Myanmar army, known as the *tatmadaw*, against the Karen civilians of Kayin (Karen) State and Bago (Pegu) Division. More than 140,000 Karen civilians have been killed, tortured, forcibly displaced, sexually violated, forced to work, or otherwise subjected to widespread and systematic violations of international human

¹ Betelnut farmer from Thandaung township (Hpa'an District, Kayin State).

² Amnesty International Press Releases *Myanmar: Cooperate with international community to ensure appropriate aid for victims*, 7 May 2008, <http://www.amnesty.org/en/for-media/press-releases/myanmar-cooperate-international-community-ensure-appropriate-aid-victims>; and *Myanmar: Constitutional referendum flouts human rights*, 9 May 2008, <http://www.amnesty.org/en/for-media/press-releases/myanmar-constitutional-referendum-flouts-human-rights-20080509>.

rights and humanitarian law since November 2005. These violations amount to crimes against humanity, and the continuing offensive against the Karen civilians now barely registers on the international radar screen.

This report focuses on violations of international human rights and humanitarian law committed in Kayin State and Bago Division between 2005 through 2007. It includes information on violations committed in military operations by the *tatmadaw*, in northern Kayin State and surrounding areas, and on *tatmadaw* policy and practices that have targeted civilians and denied individuals their human rights. The *tatmadaw* has been waging counter-insurgency campaigns against the Karen National Union (KNU) and its armed wing (the Karen National Liberation Army, KNLA) for nearly 60 years. It is far from clear, however, that the current offensive is being fought in the counter-insurgency context at all, as civilians have been the offensive's primary targets - rather than just collateral damage - while the KNLA has often been overtly avoided by the *tatmadaw*.

The following human rights violations have all taken place on a widespread and systematic basis during the military offensive: unlawful killings; torture and other ill-treatment of detainees and prisoners; enforced disappearances and arbitrary arrests; the imposition of forced labour, portering, and displacement; and the destruction or confiscation of crops and food-stocks and other forms of collective punishment. These violations, targeting civilians or carried out indiscriminately, have been preceded or accompanied by consistent threats and warnings by the *tatmadaw* that such would occur, and by statements by Myanmar government officials. Amnesty International is concerned that these practices have been the result of official government and *tatmadaw* policy, and amount to crimes against humanity.³

Amnesty International is further concerned that the State Peace and Development Council (SPDC, Myanmar's military government) has not met its obligations under international law to protect civilians from widespread human rights abuses in the context of the armed conflict. The organization is concerned that the *tatmadaw* apparently enjoys impunity for violations committed against Karen civilians, and that there is a lack of avenues for redress.

This report draws on the testimonies of more than 50 persons from Kayin State and Bago Division, who fled the current offensive and arrived in Thailand or in a camp of internally displaced persons (IDPs) in Kayin State between late 2005 and October 2007. This first-hand information was recorded by Amnesty International researchers in July 2006 in refugee camps in Thailand and in November 2007 in the IDP camp, and through other sources. An estimated 147,800 persons are reported to

³ See Art. 7 of the Rome Statute of the International Criminal Court, which was adopted on 17 July 1998 and entered into force 1 July 2002 (A/CONF.183/9). For text see: <http://www.icc-cpi.int/about.html>.

have been, and remain, internally displaced in Kayin State and eastern Bago Division as a result of the continuous offensive and its attendant human rights violations.⁴ People who fled the conflict described an increase in the frequency and intensity of human rights violations with the growth of military activities and an increased military presence in Hpa'an and Papun Districts in Kayin State, and Nyaunglebin District in Bago Division.⁵

Civilian villagers told Amnesty International that they were living in fear for their lives, dignity, and property, and that dozens of cases of torture, extrajudicial executions, and enforced disappearances had taken place in their communities.⁶ According to villagers, these violations either were in apparent retribution for military activities of the KNLA, were purposely directed at civilians, or were simply on account of their Karen ethnicity or location in Karen majority areas. Villagers also said that the *tatmadaw* told villagers that they were accountable for the military's safety. Villages were attacked and destroyed by the *tatmadaw*, and villagers were ordered to relocate. The *tatmadaw* also reportedly destroyed crops and food stores. In other villages it prevented farmers from cultivating their land or purchasing food supplies, announcing in some areas a shoot-to-kill policy for those found outside their villages. Villagers were forced to porter for the *tatmadaw*, and to carry out other forced unpaid labour duties - in some cases twice as often as they had previously been required. The use of landmines by the *tatmadaw* and also by the KNLA, including in fields and on roads, increased significantly during the offensive. Persons fleeing violations by the military, or breaking regulations in order to farm or purchase food, risked being killed. The increased military presence led to a significantly greater drain on villagers' resources, including through *tatmadaw* demands for unpaid forced labour and food. Two and a half years after the commencement of the offensive, these violations continue to take place.

Amnesty International did not have direct access to the areas in which the human rights abuses and violations of international humanitarian law described in this report occurred. Nevertheless the descriptions that the organization heard were

⁴ Thailand Burma Border Consortium (TBBC), *Internal Displacement in Eastern Burma*, 2007 Survey, October 2007, p. 25. The total number of IDPs in Myanmar at the end of 2007 was estimated by TBBC at 503,000.

⁵ The KNU demarcates territory differently from the SPDC. Administrative areas bordering Kayin State are demarcated by the KNU as part of Kayin State, rather than Bago Division. The KNU also refers to both Thandaung township in Hpa'an District, Kayin State and Tantabin township in Nyaunglebin District, Bago Division, as being in "Taungoo District", Kayin State. For consistency with United Nations designations, the SPDC's demarcations are used throughout this report. Further, "Kayin" is used throughout to indicate the state, while "Karen" is used to denote the people (and their ethnicity) living there and elsewhere as indicated.

⁶ All persons described in this report as "villagers" are to be considered civilians, and all "villages" inhabited only by civilians.

consistent with a well-documented and long-standing pattern of violations of international human rights and humanitarian law carried out in previous military operations either against the armed opposition or directly targeting civilians.⁷ In order to protect individuals from reprisals, the names of individuals, and sometimes villages, are not used in this report.

The current military offensive, which began in November 2005, follows other attempts by the *tatmadaw* to gain control of the northern hills of Kayin State and surrounding territories, where the KNU/KNLA has a stronger presence than in other areas of the State and where many Karen civilians live. The current operation is the largest in a decade and is unique in that, unlike previous seasonal operations that have generally ended at the start of the yearly rains between May and October, this offensive has continued through two consecutive rainy seasons and shows no signs of stopping as a third season is underway.

In April 2006, Myanmar's Minister for Information, Brigadier-General Kyaw Hsan, claimed at a press conference that the SPDC had taken "security measures" against the KNU, and that places where "destructive elements" could hide were being "cleared".⁸ The Minister further clarified at a press conference in May 2006 that the *tatmadaw* had launched an offensive "to protect the rural people" from KNLA abuses, and had "combed the areas for security purposes and protected lives and properties of the people".⁹ He alleged that the mass displacement of civilians in Kayin State was a result of a ploy by the KNU to prevent its members from resigning, and to garner international support for measures to place the human rights situation in Myanmar on

⁷ See for instance Human Rights Watch, *"They Came and Destroyed Our Village Again": The Plight of Internally Displaced Persons in Karen State*, HRW Index Number C1704, June 2005, <http://www.hrw.org/reports/2005/burma0605/>; Thailand Burma Border Consortium (TBBC), *Internal Displacement in Eastern Burma*, 2006 Survey, November 2006, <http://www.tbtc.org/idps/report-2006-idp-english.pdf>; Karen Human Rights Group (KHRG), *One Year On: Continuing abuses in Toungoo District*, KHRG #2006-06, November 2006, <http://www.khrg.org/khrg2006/khrg0606a.html>; Free Burma Rangers (FBR), *Over 1,000 Villagers Displaced as Burma Army Launches New Attacks in Papun District and Mon Township*, March 2007, <http://www.freeburmarangers.org/Reports/2007/20070324.html>; TBBC, *Internal Displacement in Eastern Burma*, 2007 Survey, October 2007, <http://www.tbtc.org/idps/report-2007-idp-english.pdf>; FBR, *People struggle to survive attacks in northern Karen State as villagers are captured and killed in central Karen State*, Burma, January 2008, <http://www.freeburmarangers.org/Reports/2008/20080129.html>; and KHRC, *Oppressed twice over: SPDC and DKBA exploitation and violence against villagers in Thaton District*, KHRG #2008-F4, March 2008, <http://www.khrg.org/khrg2008/khrg08f4.html>; Reports of the UN Special Rapporteur on the situation of human rights in Myanmar of 12 February 2007 (A/HRC/4/14), and of 7 March 2008 (A/HRC/7/18).

⁸ Press conference 3/2006, 9 April 2006, www.mrtv3.net.mm.

⁹ Press conference, 14 May 2006, www.myanmar.com.

the agenda of the UN Security Council. He also noted the KNU's alleged involvement in laying anti-personnel mines and burning houses.

In contrast, however, Amnesty International's findings point to widespread and systematic violations of international law by the *tatmadaw*, and to a lesser extent, by government-allied paramilitary forces, as the primary cause of the displacement of thousands of civilians. The Democratic Karen Buddhist Army (DKBA), which split from the KNU in 1994, is the main paramilitary group in alliance with the *tatmadaw*. Further, the organization is concerned that the offensive is not a security or counter-insurgency measure against the KNLA, but rather an operation primarily targeted at civilians. Individuals have been forced out of their homes as a direct result of the *tatmadaw's* decades-old "Four Cuts" strategy, designed to break down armed opposition groups' links to food, financial support, recruits, and information, or have been forced to leave after repeated demands by the *tatmadaw*. These demands, including forced labour and excessive food requisitioning, have made it extremely difficult for civilian villagers to survive. As a 48 year-old farmer who left his village in Tantabin township (Nyaunglebin District, Bago Division) to seek refuge in Thailand in March 2006 told Amnesty International: "We are used to suffering. We've suffered since 1995. If we could have survived there, we wouldn't have come here".

Testimonies and other information gathered by Amnesty International, as well as information from other sources, raise serious concerns that the violations of international human rights and humanitarian law against the Karen described in this report have been part of a widespread and systematic pattern of crimes committed over the past decade and a half. The weight of evidence suggests that some of these violations constitute crimes against humanity and that the impunity prevailing in the country for such crimes has contributed to further human rights crises, notably the government crackdown on demonstrators in September 2007.

Crimes against humanity are certain acts that, irrespective of whether they are committed in times of war or peace, form part of a widespread or systematic attack directed against a civilian population. Isolated acts do not amount to crimes against humanity, but even a person committing a single act that is part of the attack may be guilty of such a crime.

Article 7 of the Rome Statute of the International Criminal Court defines the jurisdictional threshold for crimes against humanity as "any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack ...". The acts then listed include, among others, murder, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, persecution, enforced disappearance,

and other inhumane acts.¹⁰ Although Myanmar is not a party to the Rome Statute, the definition in this Statute of crimes against humanity reflects rules of customary international law binding on all states, regardless of whether or not they are parties to the Statute.

Amnesty International therefore urges the SPDC to immediately stop and prevent all violations of international human rights and humanitarian law in Kayin State and Bago Division, and to ensure that all such violations are subject to prompt, independent, and impartial investigation. Suspected perpetrators, regardless of rank and status, should be brought to justice in accordance with international standards of fairness, and victims should be provided with access to justice and reparation in accordance with international standards.

Given the government of Myanmar's persistent lack of effective cooperation with UN bodies, and the continuation of the offensive in Kayin State and Bago Division, Amnesty International urges the UN, and in particular the UN Security Council, to keep the situation in eastern Myanmar under close review. The Security Council should take further action to ensure that acts constituting crimes against humanity and all other violations of international law are halted immediately, and should ensure that suspected perpetrators of such crimes are brought to justice and victims provided with reparations.

2 Background

2.1 The Karen

The Karen, an ethnic group of Sino-Tibetan origin, is the second largest of the 135 ethnic groups that represent more than one-third of the population in Myanmar. Members of these groups mainly live in the seven states around the central Myanmar plain, each named after the ethnic group that predominates its population. However members of these ethnic groups are also resident in the other seven divisions, populated mainly by people of the majority Burman ethnicity, that make up Myanmar. According to official statistics, nearly 3,500,000 Karen live in Myanmar, with more than 830,000 residing in Kayin State.¹¹ Among the Karen are practising Buddhists, Christians and animists. The focus of this report is northern Kayin State and neighbouring areas in Bago Division. The area is mountainous and densely forested, populated mainly by hill farmers who cultivate rice for their livelihood. Some also have coffee, betelnut, or cardamom plantations, or else plant other cash crops including bananas and sugar cane. As their fields are often located far from their

¹⁰ For text of the Rome Statute, see <http://www.icc-cpi.int>.

¹¹ Myanmar TV3, 31 May 2006, www.mrtv3.net.mm.

villages, farmers spend considerable time away from their homes to tend their crops, either sleeping in their fields or in shelters constructed from bamboo and leaves.

2.2 Karen armed opposition

Since Myanmar's independence from the United Kingdom in 1948, armed opposition groups from different ethnic minorities have fought against the central government for independence or greater autonomy. The KNU and its armed wing, the KNLA, were formed in 1949 with the aim of independence or greater autonomy for the Karen.

While the majority of other ethnic armed groups has reached cease-fire arrangements with the SPDC, which has granted them certain administrative powers over their territories, the KNU has continued to fight for a political settlement. Having lost several of its key bases, the majority of the KNLA's activities against the *tatmadaw* in recent years has been small-scale attacks. The human rights situation in both *tatmadaw*-controlled villages in territory previously controlled by the KNU and in areas that are not under full government control is covered in this report.

In January 2004 a provisional cease-fire was agreed between the KNU and the SPDC. However, low-level skirmishes continued and civilians were displaced by military operations against the KNU, particularly in northern Hpa'an District, Kayin State and Nyaunglebin District, Bago Division. KNU leaders reported that, following a visit to Yangon in October 2006, nearly a year after the *tatmadaw*'s offensive against the Karen commenced, the ceasefire was formally cancelled. The SPDC stated that they were not prepared to discuss a political settlement. In December 2006, the KNU's leader, General Saw Bo Mya, died.

In January 2007, the commander of the KNLA 7th Brigade, Brigadier-General Htain Maung, announced the formation of a separate group, the Karen National Union/Karen National Liberation Army Peace Council (KNU/KNLAPC). This followed his reported negotiations with the SPDC, that did not have the sanction of the KNU leadership - which subsequently dismissed him. In February 2007 the SPDC announced that it had arranged a peace agreement with this group, which numbered some 300 fighters. In April 2007 the KNU/KNLAPC took part in joint operations with the DKBA and the *tatmadaw*, and attacked KNLA forces close to the Myanmar-Thailand border.

In January 2008, Brigadier-General Htain Maung's son-in-law, Colonel Ler Moo, was killed in a bomb attack near the KNU/KNLAPC's headquarters. In February 2008, Mahn Sha, General Secretary of the KNU, was shot to death at his home in Mae Sot, Thailand. He had been part of the previous cease-fire talks with the SPDC and was reportedly being groomed to take over the leadership of the KNU. Responsibility for these killings has not been established to date.

3 Grave violations in eastern Myanmar

3.1 Extrajudicial executions and other unlawful killings

Villagers have told Amnesty International of incidents in which over 25 Karen civilians are believed to have been unlawfully killed by the *tatmadaw* or DKBA between July 2005 and July 2007, in Thandaung township in Hpa'an District and parts of Papun District, both in Kayin State, and in Tantabin township and other areas in Nyaunglebin District, Bago Division. The majority of these cases are outlined in the following three sections below.

Laws of international human rights apply at all times. Some human rights, including the right to life - of which extrajudicial executions are a violation - freedom from slavery, and freedom from torture and other cruel, inhuman or degrading treatment or punishment, may not be derogated from even during war. Other rights may be derogated from only to the extent necessitated by the situation.

International humanitarian law (the laws of war) governs the conduct of parties to armed conflicts. It seeks to protect civilians, others not participating in hostilities, civilian objects (all objects that are not military objectives), and in some contexts combatants, from harm. States and armed opposition groups are bound by a number of rules and principles of international humanitarian law which are contained in common Article 3 of the four 1949 Geneva Conventions and other rules of customary international law. Common Article 3 provides that those taking no active part in hostilities "shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria". Other principles and rules specific to the conduct of hostilities have been accepted by the international community as binding on all parties to international and non-international armed conflicts.

The circumstances of the killings reported to Amnesty International by villagers suggest that civilian individuals were extrajudicially executed. These killings followed a pattern that has become unfortunately familiar in *tatmadaw* operations in Kayin State and in other areas. Such killings violate international human rights and humanitarian law. Under international humanitarian law governing non-international armed conflicts such as the one in eastern Myanmar, "violence to life and person, in particular murder of all kinds" is prohibited and those not taking active part in the hostilities must not be the target of attacks. Amnesty International remains strongly concerned that the SPDC has violated this basic norm.

A fundamental principle of international humanitarian law is that parties to an armed conflict must at all times distinguish between non-combatants (civilians, prisoners of war, the wounded and sick, and others) and combatants, and between civilian objects and military objectives. It is never permitted to target civilians, other non-combatants, or civilian objects for attack. This principle, known as the principle of distinction, is codified in the four Geneva Conventions and their two Additional Protocols. It is also a rule of customary international humanitarian law, binding on all parties to armed conflicts, whether international or non-international.

3.1.1 Killings of detainees

Refugees in Thailand and internally displaced persons in Papun District, Kayin State, told Amnesty International about the deaths of fellow villagers who had been detained by the *tatmadaw*, either within their villages, on their farms, or at military barracks. Their corpses were discovered outside their villages often several weeks after they had been detained. In many cases individuals had apparently been detained as suspected members of the KNU, or under suspicion of having information about KNLA activities. Villagers also reported cases of people being shot at outside their villages.

A villager told Amnesty International of the death during the late summer of 2005 of Pa Thoo Koo, a rice farmer working on his field in Dweh Loh township (Papun District, Kayin State). According to the villager, Pa Thoo Koo was detained by the *tatmadaw* after they found him working on his rice field. They beat him to extract information on where a nearby KNLA hiding place was located. After he showed it to them they shot him dead. A farmer from Hpa'an District, Kayin State told Amnesty International that while portering for the *tatmadaw* in July 2005, he "saw one detainee being killed by the soldiers. He was so weak, so a soldier stabbed him in the left side of his chest. Then they dropped him down the mountain slope, just like an animal".

In February 2006, four farmers from western Tantabin township (Nyaunglebin District, Bago Division) were reportedly detained in surprise raids by members of Light Infantry Battalion (LIB) 48. Saw Ko Ko, 36 years old, from Shan Si Bo village, Saw Blu Say, age unknown, Wa Leh Htoo, 25, and Wen Leh Se, 38, from Ye Shan village were believed by villagers to have been taken to LIB 48 barracks. Soldiers reportedly informed those who subsequently inquired about the farmers' whereabouts, that they were "resting in peace" - meaning that they were dead. Their bodies were found near their villages several weeks later with their hands tied behind their backs. The bodies were too decomposed for the villagers to assess the cause of death.

It was also reported to Amnesty International that in February 2006, villagers from Tantabin township (Nyaunglebin District, Bago Division) who were travelling back from a nearby town were detained by members of the *tatmadaw*. They were reportedly beaten, and later found stabbed to death. Also in Tantabin township, in March 2006,

a former KNLA soldier was apprehended by the *tatmadaw* while working in his paddy field. He was accused of being a member of the KNU, interrogated, and then shot dead.

After her village in Thandaung township (Hpa'an District, Kayin State) was burned down in 1997, a woman said that she was detained by *tatmadaw* personnel with her two daughters, her son, and her husband. She continued:

"They separated us, and they took my husband and three year-old son away and killed them. I didn't see the body - my cousin did, and told me that his legs and hands had been cut off. Our son was still on his back. The tatmadaw said that the KNU had killed him, not them."

3.1.2 Shooting on sight

"If they found us they would kill us, because for the Burmese army the Karen and the KNU are one".

35 year-old farmer, Thandaung township (Hpa'an District, Kayin State)

Villagers informed Amnesty International that the *tatmadaw* on several occasions warned that they would shoot on sight all people found outside their villages during periods of village closure or when the KNLA was in the area. They also recounted instances during 2006 and 2007 when persons both within and outside their villages - farmers grazing livestock or individuals foraging for food, for example - were shot and wounded or killed by the *tatmadaw* without any warning.

When the village of Ka Lay Hta in Tantabin township (Nyaunglebin District, Bago Division) was attacked by the *tatmadaw* in October 2006, one villager who fled the surprise attack later told Amnesty International that he had seen people shot on sight. His brother was killed. He also stated that in nearby Baw Ka Li Gyi village, also in Tantabin township, the *tatmadaw* blocked the food supply and threatened to shoot on sight anyone trying to circumvent this restriction.

Two other villagers told Amnesty International that it was the shoot on sight killings of fellow villagers in May 2007 that caused them to flee. One lived in Sho Kho village, Thandaung township (Hpa'an District, Kayin State), where soldiers came one day and began shooting villagers on sight. The other lived in Saw Tay Der village, Tantabin township (Nyaunglebin District, Bago Division), where a fellow villager was shot while walking back to the farm from which he had been forcibly relocated.

The 32 year-old son, Saw Wah Wah, and two nephews of another villager who spoke to Amnesty International were shot on sight in July 2007 in the jungle near Si

Khe Der village in Tantabin township. They were part of a larger group fleeing the *tatmadaw* in the area.

3.1.3 Killings as collective punishment

“The Burmese army say to us that we, the villagers, are no different to the KNU and that they survive because of us villagers. They say ‘You are no different - you are just the same’.”

35 year-old widow, Tantabin township (Nyaunglebin District, Bago Division)

Amnesty International was told about *tatmadaw* actions taken against the civilian population, apparently or expressly in retaliation for KNLA activities. The circumstances under which civilian deaths took place provide further proof. In addition to being violations of the right to life and of the protections afforded to civilians under international humanitarian law, these killings amount to unlawful collective punishment. Collective punishment, namely punitive action taken against individuals, families, groups, or populations for the alleged acts of others, is a violation of international humanitarian law.¹²

Villagers from Thandaung (Hpa’an District, Kayin State) and Tantabin (Nyaunglebin District, Bago Division) townships said that the *tatmadaw* penalized villagers, whom they had forced to act as their guides and porters, if they encountered KNLA forces. They reported the killing by the *tatmadaw* of a 40 year-old married man from Play Hsa Loh village, Tantabin township (Nyaunglebin District, Bago Division) in late 2005 or early 2006. He was accused of leading the *tatmadaw* deliberately into an ambush after they came across KNLA forces while he was guiding them. One leg and both of his hands were cut off, causing him to bleed to death.

At a village meeting in southern Thandaung township (Hpa’an District, Kayin State) in February 2006, *tatmadaw* from LID 66 reportedly told villagers “to report on the KNU, or if not there would be consequences for us. They said that there would be eye-for-eye, and ear-for-ear retribution. So if one soldier was killed, then they would

¹² Collective punishment is expressly prohibited for instance in the 4th Geneva Convention, Art. 33; Optional Protocol I, Art. 75(2)(d); and Optional Protocol II, Art.4(2)(d). The ICRC considers this provision to be a rule of customary international law applicable also to both international and non-international armed conflict. See The International Committee of the Red Cross (Jean-Marie Henckaerts and Louise Doswald-Beck, eds.), *Customary International Humanitarian Law, Volume I: Rules* (Cambridge: Cambridge University Press, 2005), pp. 374-5. See also Human Rights Committee, General comment no. 29: States of emergency (Article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

kill one villager. They told us that we would have to take responsibility, and if we failed to do so, there would be punishment.” A villager from Kaw Mi Kho village in Thandaung township (Hpa’an District, Kayin State), whose husband was forced to porter for the *tatmadaw*, said that if a soldier was killed, then a Karen porter would also be killed.

Several villagers told Amnesty International about the killing of the headman and four other villagers from Ko Der Ker village in Thandaung township (Hpa’an District, Kayin State) in February 2006, in apparent retaliation for five military casualties from an improvised explosive device thought to have been placed by the KNLA:

“On 25 or 26 February, LIB 66 gathered us together - us villagers - and asked us if the village could guarantee their safety if they advanced any further. Then several soldiers were killed by landmines to the east of the village, which we think were put there by the KNU. They came back to the village that afternoon and picked up some villagers who were working on their coffee plantation. They arrested the village head, Saw Nu, when the explosion was reported, and took him to the military compound. They separated the younger and older people they rounded up at the plantation. There were five bodies in all that were found two weeks later in the stream by our village. Two of the bodies were tied together. The bodies of Saw Nu, our village head, aged 52, Abo Tee, aged 35, Saw Koo Koo, Saw Da, and Saw Ni Ke Min were found. We asked the military about what happened to those they had rounded up, and they said that they were working somewhere else.”

Other sources reported that the village headman, Saw Nu, was castigated by the *tatmadaw* before he was arrested for not informing them of the presence of the explosive.

Similarly, in another village in central Thandaung township (Hpa’an District, Kayin State) the *tatmadaw* orally instructed the villagers in March 2006 that if they did not provide information about any landmines that had been laid, they would be killed.

3.2 Torture

“They tend to torture people when the KNLA are active - but they do this to villagers”.

58 year-old widow, Thandaung township (Hpa'an District, Kayin State)

“In 2005 a tatmadaw soldier said to me - he was a captain - that they would torture us until we could not walk anymore”.

26 year-old woman, Dweh Loh township (Papun District, Kayin State)

International law, including human rights and humanitarian law, absolutely prohibits torture and other cruel, inhuman or degrading treatment or punishment. This prohibition is a peremptory norm of international law, such that it is binding on all nations, and does not allow for derogation.

Torture has for many years been widely used by the *tatmadaw* to elicit information about the identity and movements of members of the KNLA, to punish and control the local population for perceived support of, or for not disclosing information about, the KNLA, and to intimidate and deter future support for the armed opposition. The *tatmadaw* also use torture and other cruel, inhuman and degrading acts as a punishment and a means of enforcing orders pertaining, for example, to curfews, food requisitioning, and forced labour. Individuals reported having personally experienced or witnessed torture carried out by the *tatmadaw* and the DKBA at military camps, as well as in unofficial places of detention, including in fields, by rivers outside settlements, and in public places inside villages. In many of the cases the individuals tortured were subsequently killed.

3.2.1 Torture during interrogation

A rice farmer from Dweh Loh township (Papun District, Kayin State) said that the DKBA would frequently interrogate individuals by the river outside her village. She reported one incident from April 2005, when DKBA forces accused a man she did not know and a villager she believed to have no links to the KNLA of membership in the armed group. She told Amnesty International:

“They hooded them and took them out of the village to the river, where they held their heads under water again and again while they asked them questions. Some people went from the village and saw this happening. This went on for a whole day and they held their heads for a long time under water. The troops took them, and I don't know what really

happened to them. They came back to the village weeks later, one was paralysed and very thin. There were marks of torture on their bodies, and I didn't ask what happened to them."

In August 2005, the 50 year-old village head of Pyinmabin Seit village (Thaton District, Mon State) was reportedly taken to a local military barracks for questioning. He had been released from military detention two days previously, where he had been questioned about the movements and activities of KNLA soldiers. He told villagers that the *tatmadaw* had treated him well, and had questioned him politely. Five *tatmadaw* soldiers then detained him a second time, and took him to a local military barracks where eyewitnesses reported that they saw him tied with rope and tortured during interrogation. Interrogating soldiers seemed displeased with the way in which he answered questions. They punched and kicked him, and strafed his shins with a rough metal bar, removing the skin and pressing the bar against the bone. His dead body was found a fortnight later in a pond near the military encampment, with stab wounds to the lower body.

Amnesty International was also told of the torture and killing of two men from Ma Lay Ler village tract (Nyaunglebin District, Bago Division), during their detention by *tatmadaw* soldiers in the summer of 2005. Soldiers from an unidentified *tatmadaw* unit that did not usually visit the village accused the two civilian farmers of membership in the KNU, which the village head denied. They were interrogated under a tree in the middle of the village and their interrogators scalded them with boiling water. The pair was taken to the village's burial ground, where their bodies were subsequently found with slit throats.

A man arrested with 15 other civilians from his village in September 2005, by *tatmadaw* soldiers who were investigating KNLA activities on the border of Thaton District in Mon State and Hpa'an District in Kayin State, told Amnesty International:

"They interrogated us one by one. Not everyone was tortured, but I was beaten with a bamboo cane and lost two of my front teeth. I was also beaten heavily on my back. My interrogation lasted about two hours. As a result, my back still aches to this day, and the movement of my left arm is limited. It was really frightening - they could have killed me. The main torturer was a captain. He was very short-tempered and angry. He wasn't getting the information he wanted. Sometimes I still wake up at night with that image of what happened, then I can't get back to sleep. Other villagers came back with broken ribs and bruises."

Another villager, from Papun District, Kayin State, told Amnesty International that in late 2005 a joint force comprised of soldiers from *tatmadaw* LID 44, and DKBA 999, detained and interrogated a man from his village over the period of one week. His arms were continuously tied behind his back, and he was forced to drink large amounts of water, beaten, and burned with cigarettes. Some of his interrogation

took place in public in the village, including when he was suspended upside-down in a well and his head was repeatedly submerged under water. He was questioned about the movements and activities of the KNLA, about which he reportedly had no knowledge.

In December 2005, Tu Tu, a 22 year-old farmer, was returning to his village in the early evening from his farm in Nyaunglebin District, Bago Division. *Tatmadaw* soldiers detained and accused him of communicating with the KNU or of being a KNLA soldier, on the basis that he was returning to his village at 7:00 PM. The *tatmadaw* beat and stabbed him as they interrogated him near his farm. His dead body was later discovered nearby, with his throat slit and mouth and teeth burned.

In 2006, the elderly father of a 46 year-old villager from Thit Cha Seik village in Tantabin township (Nyaunglebin District, Bago Division) was reportedly beaten by *tatmadaw* soldiers when he did not know the answer to a question they asked him.

3.2.2 Torture and other ill-treatment to enforce *tatmadaw* orders

Individuals reported being beaten when found outside of their villages, particularly when breaking curfews. Villagers in Papun District, Kayin State told Amnesty International that the *tatmadaw* also punished them with beatings when they had insufficient supplies of rice to meet the *tatmadaw*'s demands. In Nyaunglebin District, Bago Division, personnel from LID 66 beat a man until he was unconscious, reportedly because he was too slow in obeying *tatmadaw* orders to get down from his roof when the army entered his village.

A man from Ohn Bin Kyaung village, Tantabin township (Nyaunglebin District, Bago Division), said that in early 2006 soldiers found two civilians living outside the village, which was not permitted. They cut off their lips and then killed them. In mid-2006, according to a woman living in a neighboring village, four persons who were sleeping just outside Ma La Gon village, also in Tantabin township, were beaten - one child to death - by *tatmadaw* soldiers. It was apparently against *tatmadaw* orders to sleep outside of one's village.

Before fleeing Kaw Mi Kho village, Thandaung township (Hpa'an District, Kayin State) in late 2006, a 55 year-old woman was beaten by two soldiers in her house for having a flashlight, an item prohibited by the *tatmadaw*. She told Amnesty International that it took her a week to recover and that she still has a scar on her buttocks from the coffee tree branch that the soldiers used.

3.2.3 Torture and other ill-treatment of forced military porters

Civilian villagers who were required to take part in unpaid forced labour including portering, for the *tatmadaw* told Amnesty International that they were beaten if they failed to comply with orders. Porters would be kicked and struck with rifle-butts if, for

example, they were unable to walk faster. One man from Papun District, Kayin State said that he and fellow villagers received such severe beatings that they had to rest at home for several weeks to recover from their injuries.

He and others said that criminal convicts forced to porter for the military were subjected to significantly worse treatment. They were held in even worse conditions, with inadequate food and medical treatment. They were required to carry heavier loads, and were beaten and kicked more frequently and severely than other porters. Those caught attempting to escape were more often killed.

A man forced to porter in Bilin township (Thaton District, Mon State) in June 2005 said that he was beaten in retaliation for a firefight with the KNLA; soldiers accused him of misleading them about KNLA presence in the area:

"There was some fighting with the KNU a day after I was taken. I heard gunfire. Then the soldiers said to me: 'You told us there were no KNU in this area'. It wasn't true - I think that just because I am a Karen, and they couldn't find the KNU, they tortured me. While they did this, they didn't ask any questions. An officer burned me with a cigarette four times and beat me on the head with a rifle butt. When I fell he kicked me in my chest with his heavy boots. My whole face was bleeding. My whole body was shaking. I thought I was going to die."

A 50 year-old rice farmer from Lu Thaw township (Papun District, Kayin State) told Amnesty International about the habitual beatings he received when portering:

"Sometimes the tatmadaw make us guide for them. They beat us with bamboo sticks and sometimes kick us. If you are porters, they will beat you if you are ill and cannot do the work. If you speak out at all or ask questions, they will beat you too. They also ask you so many questions if they find you outside the village and beat you if you tell them you have portered for any of the armed opposition groups."

A man caught carrying rice to KNLA forces outside his village in April 2006 told Amnesty International that two soldiers from LID 66 beat him for half an hour with bamboo canes, after questioning him at gunpoint. He suffered lasting damage to his lower back, and said that the soldiers threatened that they would kill him next time.

3.2.4 Torture and other ill-treatment as collective punishment

Civilian villagers also informed Amnesty International of acts constituting torture and other ill-treatment that were used to collectively punish villagers for the acts of a few, or of others.

A woman said that in March 2005, she and all others from her village in Hpa'an District, Kayin State were required to gather at the village headman's house,

after the explosion of an improvised explosive device outside their village. She recounted:

“They made all villagers stand up and sit down again and again in public. People were made to go to the village headman’s house, and there men, women and children were made to do this, and were also beaten with big bamboo canes. There were no broken bones but lots of painful bruises and swelling. It was humiliating. The tatmadaw said no one was allowed to leave the camp. Everyone in the village was involved. The army accused us civilian villagers of having relations with the KNU.”

A farmer told Amnesty International that he had fled his village in Lu Thaw township (Papun District, Kayin State) following the detention of his village headman in April 2006. The *tatmadaw* was reported to have given instructions that villagers in four villages had to bring any guns within the villages to them within four hours, or else their headmen would be killed. The villagers reportedly ran away, and it was not known what happened to the headmen.

Also in March 2005, while acting as a porter for the *tatmadaw*, a villager from Ye Da Gon, Tantabin township (Nyaunglebin District, Bago Division), lost two teeth when soldiers struck him in the face after another soldier was killed by a mine. They threatened to kill him if it happened a second time.

A villager from Thandaung township (Hpa’an District, Kayin State) told Amnesty International that his village headman was detained in February 2006 and subjected to ill-treatment, including being kicked and beaten by the *tatmadaw*. His offence was not reporting “satisfactorily” on KNU activities.

3.3 Enforced disappearances and arbitrary arrests

"My son often asks about his father. I tell him I don't know where he is. My daughter, who is older, doesn't ask - she knows the soldiers took him".

Wife of man believed to have been disappeared in July 2006

Enforced disappearance is defined as:

"...the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."¹³

Acts of enforced disappearances violate a range of human rights, including freedom from arbitrary detention, the right to recognition as a person before the law, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.¹⁴ International human rights bodies have held that enforced disappearances themselves constitute ill-treatment or torture, in view of the considerable suffering experienced by people detained without contact with the outside world, and without knowing when or even if they will ever be freed or allowed to see their families again.¹⁵ The same is true for the suffering caused to family members of disappeared persons. In a number of cases, international human rights bodies have held that the authorities' denial of their right to know what has happened to their relatives has violated the prohibition of torture and other ill-treatment.¹⁶ In addition, enforced disappearance is explicitly prohibited in several international instruments, and may in certain circumstances constitute crimes against humanity.

¹³ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly Res. 61/177, 20 December 2006, Art. 2. This Convention is not yet in force, but the definition contains generally agreed-upon elements as used in previous documents and jurisprudence. For a definition of enforced disappearance as a crime against humanity under the Rome Statute of the International Criminal Court, see Article 7(2)(i).

¹⁴ See for instance reports of the Committee against Torture, e.g. UN Doc. A/52/44 (concerning Namibia), para. 247; UN Doc. A/57/44 (2001-2), para. 93(a) (concerning the Russian Federation); UN Doc. A/59/44 (2003-4), para. 56(l) (concerning Chile); and UN Doc. A/61/44 (2005-6), paras. 29(24) (concerning Nepal) and 30(12) (concerning Sri Lanka).

¹⁵ See for instance Human Rights Committee, *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990, UN Doc. CCPR/C/50/D/440/1990 (1994); *Rafael Mojica v. Dominican Republic*, Communication No. 449/1991, UN Doc. CCPR/C/51/D/449/1991 (1994).

¹⁶ See for instance the Human Rights Committee in *El-Megreisi*, *ibid.*

Amnesty International was told of instances of enforced disappearance after the individuals had been detained by the *tatmadaw*. Due to restrictions on the organisation's access to Kayin State, it has not been possible to establish whether the enforced disappearance of the individuals below continues.

In July or August 2005, two women, Ma Aye Yee, aged 17, and Naw Ba Leh, aged 20, were walking outside of their village in Nyaunglebin District, Bago Division, when they were approached by *tatmadaw* soldiers who forced them to accompany the troops to an unknown location. The women failed to return to their village. When inquiries were made on their behalf, the troops stationed in the locality said that they could do nothing, as the unit involved in the incident had been transferred.

Kyaw Mu Shay, a farmer, was reported to have been taken into custody by the *tatmadaw* at his rice farm in Bilin township (Thaton District, Mon State), close to Papun District, Kayin State, in December 2005 or January 2006. He was arrested during the night and no reason was given for his detention, although he was detained after soldiers from the *tatmadaw* had reportedly burned down his rice crop. Immediately before detaining him, they had also surrounded and started shooting at a nearby farm, which they believed belonged to sympathizers or members of the KNU. After inquiries were made, including at the nearby army camp, the army reportedly said that they had no knowledge of which military unit may have detained him. Following a later request in May 2006, the *tatmadaw* personnel based at another village communicated by radio with the unit that is reported to have detained him. They responded that he was alive, but did not reveal his whereabouts, the legal basis for his detention, or when he would be released. The identity of the unit was also unknown.

In March 2006, two students were apprehended outside of their village after shots had been fired between the *tatmadaw* and the KNLA in central Hpa'an District, Kayin State. The students, Then Nu and Kar Bar, aged 18 and 20 respectively, had reportedly been caught in the crossfire outside the village. Four months later, at the time Amnesty International spoke with the villagers, they had not been seen or heard from. A villager who witnessed their arrest said that "The soldiers arrested them and accused them of being KNU, because they had soft hands and not rough ones like the farmers. The villagers tried to persuade the soldiers that they had soft hands because they were students. Nothing was heard of them since. I think that they were killed in the military camp in Leke".

In April 2006, a 74 year-old villager told Amnesty International that two of his nephews and his grandson were taken one day by *tatmadaw* soldiers from his home in Ye Sha village, Tantabin township (Nyaunglebin District, Bago Division). He assumed that they were being taken for forced labour or forced portering, but his friend later saw the soldiers digging holes nearby. When the troops were rotated out a few months later, the villager dug up the holes and found the clothing of one of his nephews. He

then asked the new *tatmadaw* soldiers about his relatives' whereabouts, but they denied any knowledge of their fate, saying instead that they had been moved to another area. Fearing for his own life for having made his suspicion known to the troops, the villager fled.

Amnesty International considers the lack of protection from arbitrary detention throughout Myanmar to be a key factor in facilitating violations such as enforced disappearances (as well as forced labour, torture and extrajudicial killing). It has created a situation in which individuals lack access to formal procedures to establish the fate and whereabouts of 'disappeared' relatives. The authorities in Myanmar frequently fail to respect basic rights in arrest and detention procedures; in fact, it is often the case that no arrest or detention procedures are observed whatsoever. State agents frequently arrest individuals without warrants and without providing grounds, hold individuals incommunicado after arrest, and do not routinely disclose the whereabouts of detention to family members or lawyers. If there is considered to be a security dimension to their arrest, it is more likely that detainees are held in unofficial or unacknowledged places of detention during interrogation. Many political prisoners have no access to family or to legal counsel until trial hearings. Detainees also have no effective means to challenge the legality of their detention.

Individuals in Kayin State reported to Amnesty International many cases of persons held for questioning in unofficial places of detention, or detained in *tatmadaw* camps for lengthy periods with no recourse to judicial procedures. Reports indicate that the *tatmadaw* also arbitrarily detained persons for forced labour and portering, with no clear end date.

3.4 Forced labour and portering

"I ran away because the forced labour just became too much. At least one person has to go from the family - for example the wife goes if the husband is not there. Sometimes they ask for two people, in which case children have to do it too. During 2005 and 2006, we have had to work every single day. There has been no time to grow our own food, because almost everyone has to go. We have really been facing starvation."

30 year-old woman, Papun District, Kayin State

Unpaid forced labour contravenes the International Labour Organization's (ILO) Convention concerning Forced or Compulsory Labour, 1930 (No. 29), which the government of Myanmar ratified in 1955. According to Article 1 of this Convention, states parties must "suppress the use of forced or compulsory labour in all its forms within the shortest possible period". While Article 2(2)(d) allows for the imposition of forced labour in cases of emergency, including war, an ILO Commission of Inquiry,

appointed specially to investigate reports of forced labour in Myanmar, concluded as early as 1998 that:

“There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks, none of which comes under any of the exceptions listed in Article 2(2) of the Convention.”¹⁷

It found that the “burden of forced labour also appears to be particularly great for non-Burman ethnic groups, especially in areas where there is a strong military presence”,¹⁸ and warned the Myanmar government that:

“A state which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and engages its responsibility for the violation of a peremptory norm in international law. Whatever may be the position in national law with regard to the exaction of forced or compulsory labour and the punishment of those responsible for it, any person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity.”¹⁹

The Commission of Inquiry called on the government of Myanmar to act “without delay” to end this policy. In 1999 the SPDC, in response to the ILO and the international community’s concerns, issued Order No 1/99 and Order Supplementing 1/99, which made the practice illegal and provided for punishments for both military and civilian officials found responsible.

During the *tatmadaw*’s current offensive, however, the SPDC has signally failed to enforce this order in Kayin State and Bago Division. If civilians cannot or will not perform forced labour, they, their families, and their communities run the risk of reprisals or collective punishment at the hands of the *tatmadaw*. In addition, the manner and conditions in which forced labour is carried out often constitutes ill-treatment, and as described above, forced labourers are at times tortured to death or summarily executed. In some areas villagers reported that demands for forced labour

¹⁷ ILO: *Forced labour in Myanmar (Burma)*, Commission of Inquiry, Official Bulletin, Vol. LXXXI, Series B, special supplement, 1998, para. 528.

¹⁸ *Ibid.*, para. 535.

¹⁹ *Ibid.*, para. 538.

in 2006 were so onerous that their own ability to cultivate sufficient food for survival was seriously undermined.

In November 2006, in the midst of the offensive and seven years after the Commission of Inquiry's report, the ILO Governing Body (GB) expressed frustration that the Myanmar authorities had not been able to agree with it on a mechanism to deal with complaints of forced labour. Following the GB recommendations, the ILO Director-General brought the relevant documentation of forced labour in Myanmar to the attention of the UN Security Council, and made it available to the Prosecutor of the International Criminal Court for any appropriate action. The ILO then announced that it would consider further measures at its March 2007 meeting to be taken to secure Myanmar's compliance with the 1998 recommendations of the Commission of Inquiry. These included consideration of other legal options, including requesting an advisory opinion from the International Court of Justice (ICJ), on whether Myanmar, by threatening prosecution of individuals making allegedly false allegations of forced labour, was violating Convention No. 29 on Forced Labour.

In late February 2007, the ILO reached a formal Supplementary Understanding with the government of Myanmar on a mechanism to enable victims of forced labour to seek redress. Pursuant to this Understanding, individuals alleging forced labour are allowed to submit complaints to the ILO Liaison Officer in Yangon. The Liaison Officer then makes a confidential preliminary assessment as to whether the case involves forced labour. In the event of a positive determination, the case can then be investigated by the Myanmar authorities and appropriate action taken against the perpetrators, without threat of recrimination against the complainant(s).

Following conclusion of the Understanding, the GB was advised by the International Labour Office that there was no longer reason to submit a request to the ICJ for an advisory opinion on the matter. The GB was further advised however, that should it conclude in the future that the Myanmar authorities were not cooperating or making progress implementing the recommendations of the ILO Commission of Inquiry, particularly with respect to the joint mechanism for investigation and the Supplementary Understanding, the ILO could resubmit the matter to the ICJ. In February 2008, the Supplementary Understanding, originally agreed on a one-year trial basis, was renewed for an additional year.

The ILO has received no official complaints of forced labour from Kayin State, primarily, according to the ILO, because most people in the area are likely not aware of the Supplementary Understanding and their right to complain, or because they are afraid to do so. Further, the ILO has noted the difficulty for people living in Kayin State to physically lodge a complaint with the ILO's office in Yangon, which is required by the Understanding.²⁰

²⁰ Email from the ILO to Amnesty International, 11 April 2008.

Refugees and IDPs reported to Amnesty International that they were regularly forced by the *tatmadaw* to work and to act as porters during 2006 and 2007. They were also sometimes forced to porter for the DKBA, and occasionally for the KNA (the armed wing of the Karenni National People's Party, another ethnic party) and Karenni ceasefire groups operating separately or jointly with the *tatmadaw*. Their tasks included carrying munitions, food, water, and firewood, and acting as minesweepers, sentries, or military guides. Villagers claimed that they were sometimes forced to carry loads of up to 40 kilos. The frequency of demands for forced labour or portering varied from a minimum of once a month to a maximum of almost daily, with an average frequency of between once or twice a week. Many claimed that whenever the soldiers came to their villages, all the men would run away to avoid having to take part in forced labour.

Not only were civilians regularly required to act as porters, but villagers also reported the use of prisoner convicts as *tatmadaw* porters in the operations in northern Kayin State and Nyaunglebin District, Bago Division. Convict porters were reportedly treated even worse than civilians. Those in ill health were often left behind by troops, and a number of them reportedly died. The threat of being sent to work as a porter for the *tatmadaw* was sometimes used by prison authorities as a means of extracting bribes from prisoners, resulting in those sent to work being the poorest prisoners who could not afford the bribes.

Villagers forced to work for one day a week in northern Thandaung township (Hpa'an District, Kayin State) and Papun District, Kayin State, were reportedly offered the possibility of paying the *tatmadaw* 1,000 kyat (USD\$160) instead of carrying out the unpaid labour. They told Amnesty International that they could rarely afford this sum. Also in Papun District, if not enough men were provided by the local village headman - or in times of 'emergency' - the army seized men from houses at random.

The former village headman from Ya Da Gon, Tantabin township (Nyaunglebin District, Bago Division) told Amnesty International that he had to recruit and organize villagers to work and porter for the *tatmadaw*, and that since his appointment had their consent, he could not refuse their demands. While villagers could pay money in lieu of working, the former headman said that he would also be "in trouble" if money or porters were not forthcoming. A villager from southeastern Tantabin township, however, reported that there was no alternative to providing labour, and that villagers were threatened with their villages being burned down if they did not provide labour. Men would habitually run away in order to avoid such demands.

International humanitarian law prohibits forcing civilians to engage in unhealthy or dangerous work. In particular, civilians must not be forced to do work which would entail their “taking part in military operations”.²¹ Forcing Karen civilians to work as porters, scouts and guards in areas where hostilities take place clearly breaches this prohibition. Of particular concern to Amnesty International is the use of Karen civilians as minesweepers and human shields. This is clearly a violation of the human right to life, as well as of international humanitarian law,²² and constitutes a war crime, as it violates the prohibition on violence to life and person and the principle of distinction between combatants and those taking no active part in the hostilities.²³

A woman from Tantabin township said that she and other porters were forced to act as minesweepers, and that some had stepped on mines. Another woman from Tantabin recounted having to work as a sentry to look out for KNLA troops in her own village. Other civilian villagers in Nyaunglebin District reported being used as human shields, made to walk ahead of the soldiers if a KNLA attack was anticipated or when fighting broke out. Men in some villages were regularly forced to act as guides for the *tatmadaw*, and porters were forced to carry ammunition supplies during conflict, as well as to transport food. They were frequently beaten. One man from Ye Sha village, also in Tantabin township, told Amnesty International that because the *tatmadaw* had essentially commandeered part of their village as their own camp, forced labour was frequent and abuses increased in 2006.

During 2006, new military bases were built in Thandaung township (Hpa'an District, Kayin State), Papun District, Kayin State, and in Tantabin township (Nyaunglebin District, Bago Division). The bases were often placed next to existing villages or new relocation sites, and villagers were regularly required to contribute unpaid forced labour to the resident *tatmadaw* soldiers. Civilians from these areas told Amnesty International they were forced to assist in the construction of new *tatmadaw* outposts in their villages. In northeast Thandaung township (Hpa'an District, Kayin State) they were forced to build military barracks, including by gathering materials such as bamboo and leaves for the roofs. In the first three months of 2006, people from one village were required to do this up to twice a week, leaving them little time to work in their fields.

In central Thandaung township, villagers reported that forced labour and portering demands doubled in 2006 to twice a week per household. One 55 year-old villager from Kaw Mi Kho village in Thandaung township claimed that once the

²¹ Art. 40 of the Fourth Geneva Convention, which applies to international armed conflict only. However, this rule applies, as a matter of customary international law, to non-international armed conflict as well. See for instance Henckaerts and Doswald-Beck, *op cit*, pp. 330-2.

²² See for instance Henckaerts and Doswald-Beck, *op cit*, pp. 337-40.

²³ See for instance Art. 8(c)(1) of the Rome Statute, and Art. 8(c) generally.

tatmadaw controlled her village, people were forced to work three days each week. While she was too weak herself to work, her husband, 20 year-old son, and 18 year-old daughter had to help build the *tatmadaw*'s base nearby and carry food there both day and night.

A man from Papun District, Kayin State told Amnesty International that he was required to work every day at the local military camp, carrying materials for the troops. A widower from Papun District claimed that daily labour was demanded from mid-2005 through 2006 in southern Lu Thaw township, Papun District, including breaking stones, and military portering. He reported that sometimes they were required to carry several heavy loads, and that women would also be forced to cook for the soldiers as well as carry things. Almost everyone, with the exception only of the very young and very old, was required to participate. However, there was a strict requirement that at least one, and sometimes two, persons from each household were required to work, meaning that on occasion children were also forced to engage in unpaid labour. Other civilians in Papun District were made to cut bamboo, provide timber, or carry ammunition for the *tatmadaw* between three to five times a month. The problem reportedly became so severe that only women and children remained in one particular village, the men all fleeing to escape the forced labour.

Likewise, villagers told Amnesty International that in southwest Tantabin township (Nyaunglebin District, Bago Division) they were forced to build barracks for a new *tatmadaw* outpost of between 30 and 40 soldiers of LIB 48 and 73, as well as to carry food supplies between the existing base and the new outpost. One villager from Thit Cha Seik, Tantabin, claimed that this work increased to three days each week after the offensive began and that at least one member from each household had to participate. The base in question was far from her home. Another villager from Tantabin noted that while carrying food to the base, porters sometimes encountered fighting.

Villagers also recounted that during 2006 the *tatmadaw* forced them to work on infrastructure projects in Thandaung (Hpa'an District, Kayin State) and Tantabin (Nyaunglebin District, Bago Division) townships. In central Thandaung, villagers reported having to build fences, while other individuals from Hpa'an District reported being made by both the *tatmadaw* and the DKBA to porter and mend roads. Villagers in Tantabin also told Amnesty International that they were forced by the *tatmadaw* to build a fence to prevent villagers from leaving the village in March 2006, and to provide four men to guard the perimeter. In another village in Tantabin, each household was required to provide one person one day a week to rebuild a road.

In at least one case, a woman who fled her village in Thandaung township (Hpa'an District, Kayin State) in 2006, had been forced into domestic labour by the *tatmadaw*. She said that she had not seen her daughter since 1997, when they were separated and forced into domestic servitude in separate *tatmadaw* households for two

years: “They just told me to go with them and to work for them”. She told Amnesty International:

“When we reached Yangon, they said to me that they were going to take my seven year-old daughter shopping and show her the view. They split us up, and took me to the house of one of the army officers who captured me ... I met with the wife there, and she talked nastily to me, and made me work for their family, cooking and cleaning the house. I got sick. The wife would shout at me. I asked the tatmadaw officers if I could see my daughter, and they let me once, but separated us almost immediately again. I stayed for a year, and was thinking of killing myself.”

Civilian villagers from Hpa'an and Papun Districts in Kayin State and Nyaunglebin District in Bago Division told Amnesty International that the DKBA also forced people to work on fields that were privately owned by their members. Every family had to do forced labour about twice a month. Men were the usual workers, but when they were not available women, usually given lighter work than men, had to participate.

3.5 Forcible Displacement

“As Myanmar is not a country in armed conflict, we reject the assertion of the presence of a large number of internally displaced persons. Since its independence almost five decades ago, the country for the first time is enjoying peace and tranquillity due to the return to the legal fold of 17 out of 18 armed groups. Since clashes with small and splintered insurgent groups are in the border areas only, such skirmishes cannot result in IDPs in the magnitude portrayed in the report.”

U Nyunt Maung Shein, Permanent Representative to Geneva, UN Human Rights Council, 27 September 2006

The *tatmadaw* has forcibly relocated Karen civilians in Papun District in Kayin State and Nyaunglebin District in Bago Division since the 1970s. Since at least the early 1980s, villages in ethnic minority areas in Myanmar have been relocated to fenced settlements known as relocation sites. Villagers are characteristically given short notice periods prior to relocation, and villages are often burned down and mined in order to prevent return. The *tatmadaw* has in many cases operated a shoot-on-sight policy for persons found in their villages after the expiry of the notice period for relocation. Villagers have been told that they would be killed if they failed to comply with relocation orders, and that any persons who remained would be taken to be supporters of armed opposition groups and therefore a legitimate military target during counter-insurgency operations or combat.

In the period between 1996 and 2006, when forcible relocations on a massive scale were initiated by the *tatmadaw* in Kayin, Shan, and Kayah States, the population of more than 3,000 villages in ethnic minority states is believed to have been displaced. This occurred because the villages had been burned forcing inhabitants to flee, or because they had been abandoned by inhabitants fearful for their safety and security, or because their inhabitants had been forcibly relocated by the *tatmadaw*. In 2007 alone, at least 167 entire villages were displaced,²⁴ including in Thandaung township (Hpa'an District, Kayin State), where an estimated 5,000 people were displaced.²⁵ Some villagers have endured repeated cycles of displacement, often in trying to evade military attacks on their villages, or demands for forced labour. Kayin State has the second highest number of displaced persons among the states of Myanmar.

Under international humanitarian law, civilians may only be evicted from their homes temporarily in order to ensure their safety, or for imperative military reasons.²⁶ Under the Rome Statute of the International Criminal Court, it is a war crime to order, in a non-international armed conflict, "the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand."²⁷ The *tatmadaw's* forcible displacement policy also violates the human rights of the individuals concerned, including the right to an adequate standard of living and the right to choose one's residence.

Furthermore, displaced persons in Myanmar are not being granted access to the rights and protections provided for under the UN Guiding Principles on Internal Displacement.²⁸ The Guiding Principles are a set of widely-endorsed and authoritative, but non-binding, standards which apply to the protection of IDPs. They reflect and are consistent with international human rights law and standards and international humanitarian law. Amnesty International is concerned that the *tatmadaw* has failed to respect the standards set out in the Guiding Principles to respect and protect the human rights of IDPs, including the fundamental right to protection from arbitrary displacement. Other principles that have not been respected in relation to IDPs include freedom from discrimination, providing protection and humanitarian assistance, carrying out displacement in a manner that does not violate the rights to

²⁴ Thailand Burma Border Consortium, *Internal Displacement in Eastern Burma*, 2007 Survey, October 2007. p.3.

²⁵ Thailand Burma Border Consortium, *Internal Displacement in Eastern Burma*, 2006 Survey, December 2006, p. 36.

²⁶ See Art. 17 of Protocol II Additional to the Four Geneva Conventions. Myanmar has not ratified this Protocol. However, this rule applies, as a matter of customary international law, to both international and non-international armed conflict as well. See for instance Henckaerts and Doswald-Beck, *op cit*, pp. 459-60.

²⁷ Art. 8(2)(e)(viii).

²⁸ UN Doc. E/CN.4/1998/53/Add.2 (1998).

life, dignity, liberty and security of those affected, protecting IDPs from attacks, rape, murder, torture and other violence; freedom of movement, freedom from forced resettlement, the right to an adequate standard of living, and the right to education. The authorities have also failed to establish conditions, as well as provide the means, which would allow IDPs to return voluntarily, in safety and with dignity, to their homes or voluntarily resettle elsewhere.

Amnesty International urges the SPDC to enable those who choose voluntarily to return to their homes to do so in conditions of safety and dignity, and to benefit from non-discriminatory reintegration including property restitution or compensation. Those who are unable or unwilling to return to their homes should be enabled to resettle voluntarily in another part of the country. IDPs should be meaningfully consulted on plans for their resettlement or reintegration. The organization calls on the SPDC to thoroughly investigate violations of international human rights and humanitarian law perpetrated against IDPs, and to prosecute those responsible for their commission. Furthermore, as the military offensive against the Karen civilians continues, Amnesty International calls for an immediate halt to further forcible displacement.

Where, for reasons related to the armed conflict, relocation of civilians is unavoidable for the security of the civilians concerned or for imperative military reasons, it should be only for so long as the conditions warranting it exist, and those relocated should be able to exercise their right to return to their homes once those reasons no longer apply. Conflict in the area cannot justify the indefinite removal of persons from their homes, villages, and farms. IDPs must be provided with reparations, including means to rebuild their homes and farms.

In the majority of cases reported to Amnesty International, heads of villages under some form of state control were alerted to troop plans to relocate villagers to official relocation sites. Karen refugees and IDPs told Amnesty International that in some instances individuals and civilian village populations were warned, either orally or in written notices, that the *tatmadaw* would operate a shoot-on-sight policy against anyone who refused to leave or attempted to return to their village. Villagers in Ma Lay Ler village tract in Nyaunglebin District (Bago Division) were reportedly informed in early 2006 by the *tatmadaw* of plans to keep relocating villages until there was no more fighting with the KNLA. One villager reported that “the troops said to the village head that as they go from place to place they want to make a situation in which there is no more place for the KNU to stay, and that they will relocate us until that happens.” On 14 May 2006, according to the village headman, the *tatmadaw* came to Ye Da Gon village in Tantabin township (Nyaunglebin District, Bago Division) and gave 120 households, including his own, one day to relocate. The villagers were not told where to go, only that they must leave.

Another man from Nyaunglebin District, whose village was burned down in March 2006, reported to Amnesty International that government troops had warned the village headman of their intention, who then told villagers that he could not guarantee their protection. Troops came to the village, demanded rice, and beat individuals who were unable to provide it, hitting one man with a gun butt. Soldiers then looted and burned down the 70 houses in the village, stealing cooking pots and other belongings, which they ordered the displaced residents to carry for them.

However, sometimes villagers chose or were advised by their village heads to flee when an attack took place or seemed imminent. Villagers told Amnesty International that the *tatmadaw* burned down houses and even whole villages. The *tatmadaw* also used the threat of burning to force people to relocate, and required villagers to themselves disassemble their houses before being forcibly relocated.

Villagers also reported attacks by the *tatmadaw* on their villages without warning, and which resulted in villagers simply fleeing into the jungle to save themselves. In no way could this be described as a formal relocation with attendant safeguards as provided for in international law and standards. One villager recounted that at about 1:00 PM on 28 April 2006, the *tatmadaw* entered her village of Kaw Mi Kho in Thandaung without warning and burned it down, forcing everyone to flee. Amnesty International was also told by a villager from Sho Kho, also in Thandaung, that in mid-May 2007 the *tatmadaw* destroyed and emptied the village.

In June 2006, before forcibly relocating Saw Tay Der village in Tantabin township (Nyaunglebin District, Bago Division), the *tatmadaw* reportedly indiscriminately shelled the village from afar. After entering and displacing the villagers, soldiers then made it impossible for them to return by laying landmines. They positioned themselves above the abandoned village. Whenever a landmine went off, indicating movement, they shelled the village.

Villages in Tantabin township (Nyaunglebin District, Bago Division) were also burned down between November 2005 through 2007 without warning. A hill farmer from Tantabin township, described how her whole village was burned down after the *tatmadaw* found ammunition hidden outside the village:

"There were 24 families in my village, all Christian. I left because the tatmadaw came at the beginning of 2006 and burned down all the houses in our village. They had discovered some ammunition outside the village. We all ran away just before the troops entered the village. After they left we went back, spent one night there and left for Thailand. Rice, fish-paste, pots, pans, personal items - nothing was left. I was so upset that I didn't eat anything for three days. The kids were crying. The whole village left together and came here. The journey lasted three days. Villagers fed us along the way. I was really sad to leave my village ... The army burned

everything. I had some jewellery, gold and silver that I hid at home. Everything is gone with the fire. There is nothing I can do now."

Another female rice farmer from Tantabin township told Amnesty International of an incident in early 2006 in which the *tatmadaw* came to her village and burned 20 of the 30 houses there:

"The troops came when almost all of us were out farming in the fields and hills - only children and the elderly were left. I heard four mortar shells being fired. It later became clear that they were fired in the direction of the village. One shell hit the centre of the village, another fell in the outskirts, and two others outside of the village. No one was hurt but whoever was left in the village ran away. Then the soldiers came. They were accompanied by a ceasefire Karenni group, the KNSO, and later I heard that they were guided by five villagers who they had arrested from another village and forced to show the way to our village. They burned 20 houses randomly. I have no idea why. As for the five villagers, I heard that they released four of them afterwards but the fifth disappeared. People assumed that the soldiers killed him. Before the soldiers left the village, they planted landmines, one of them in front of the church. An old man, maybe 70 years-old, stepped on a landmine and was killed ... I lost everything - kitchen, furniture, rice stocks - not a single piece of paper was left. The same happened to the other 19 families whose houses were burned.

Two other farmers from villages in Tantabin township, Po Mu Der and Ka Lay Hta respectively, reported that the *tatmadaw* attacked and burned their villages. The soldiers burned 17 houses, including that of the villager who spoke with Amnesty, in Po Mu Der on 28 May 2006. They fired warning shots as they entered the village. In October 2006, Ka Lay Hta village was also attacked by the *tatmadaw* without any warning and was entirely burned down.

3.5.1 Conditions in relocation sites

As noted, villagers forcibly displaced during the military offensive are sometimes obliged by the *tatmadaw* to move to designated relocation sites. Here too villagers reported that forced labour and portering by men, women, and children was common. Porters were forced to accompany soldiers on military operations, to carry ammunition or provisions, and in some cases to take an active part in the operation, sometimes by walking in front of soldiers as human shields.

Movement from and within these sites was severely restricted, as they were surrounded by fences and had a constant *tatmadaw* presence. Other restrictions included having to obtain a pass to leave the site, having some areas declared off-limits for cultivation, and placing limits on the possessions and food stocks

individuals could bring with them or keep inside the sites. While in some cases villagers were able to purchase passes from the military to leave, they were not always granted adequate time to cultivate their fields.

3.5.2 Destruction of hiding sites by patrolling troops

"There were no offers of relocation sites - they just came and burned everything. The suffering will never end".

Displaced villager, Thandaung township (Hpa'an District, Kayin State)

Thousands of civilians who have fled from the *tatmadaw* live in temporary structures in the jungle. Many were forced to flee attacks on their villages that often resulted in their total destruction. Others decided to leave when attacks seemed imminent, or when the *tatmadaw's* demands for forced labour, food, or money became overwhelming. Even for those who chose the time and place of their relocation, conditions were extremely difficult, as food was scarce, shelter was rudimentary, and people could not bring or accumulate many possessions. However, villagers told Amnesty International that fear was their most serious concern, as these hiding sites were effectively free-fire areas in which the displaced could be shot on sight or shelled from afar. Landmines were also placed around their abandoned villages and/or in the jungle areas to which the villagers had relocated, hindering them from moving freely and being able to cultivate land, as well as signalling their location when triggered. As one displaced villager from Thandaung township (Hpa'an District, Kayin State) told Amnesty International, "We have been living in temporary settlements, and whenever they come to them we find that they have taken our livestock - pigs and chickens, as well as our rice, and they have burned down our huts".

Another villager from Thandaung township said that she spent only 10 days in the jungle after her village was burned in April 2006, before moving again to a second village, Kaw Law Ka, when the food ran out. She remained there for about seven months, but as it was "controlled by the *tatmadaw*", she finally took herself and her nine children to the IDP camp near the Thai border in mid-December of that year, assisted by the KNLA. A third villager from Thandaung told Amnesty International that after she and her eight children fled an attack on their village in May 2007, the *tatmadaw* fired artillery shells at them in the jungle whenever they saw smoke from their cooking fires. When their food and nerve ran out after 24 days, they fled again to the same IDP camp. The journey took 10 full days and was very dangerous; when crossing roads, "even the children knew to be quiet", she said.

Similarly, in Tantabin township (Nyaunglebin District, Bago Division) two families from separate villages fled to the jungle and endured shelling, but left for the IDP camp near the Thai border with the help of the KNLA when there was no more

food. The head of one family - which stayed in the jungle for over two months - said that people had stored food in the jungle in the event of a *tatmadaw* attack. Also in Tantabin township, three men told Amnesty International that they had lived in the jungle since 1975, when they were displaced from their village of Saw Tay Der, but had been able to return to their farms enough to support their families for over 30 years. The *tatmadaw* had built bases about two hours apart on either side of the village, and shelled the jungle between them intermittently, but the families had been able to survive. In late 2006, however, the *tatmadaw* increased its shelling and sent troops to live in the former village, very close to the jungle settlement. When they could no longer safely farm their land, they all left for the same IDP camp between June and October 2007.

3.6 Crop and food-stock confiscation and destruction

Amnesty International is concerned by the systematic destruction, looting, and excessive confiscation of crops, livestock, agricultural areas, water supplies, and personal possessions by the *tatmadaw* during and as part of its offensive against the Karen, in violation of customary international law applicable to all types of armed conflict. Although the authorities claim that the *tatmadaw*'s actions are taken to stop food supplies from reaching the KNU and KNLA, reports indicate that civilians are directly targeted and affected.

International humanitarian law prohibits pillaging and any other form of arbitrary deprivation of civilians' property.²⁹ Attacking, destroying or rendering useless objects indispensable to the survival of the population, including those pillaged or destroyed by the tatmadaw, such as food-stocks, agricultural areas producing food-stocks and livestock, are prohibited under international humanitarian law³⁰ and constitute war crimes.³¹

²⁹ See for instance Art. 4(2)(g) of Additional Protocol II. This prohibition is considered a rule of customary international law. See for instance Henckaerts and Doswald-Beck, *op cit*, pp. 183-5. Such acts may also constitute a war crime. See for instance the Rome Statute, Arts. 8(2)(e)(v) and 8(2)(e)(xii).

³⁰ See for instance Henckaerts and Doswald-Beck, *op cit*, pp.189-193, esp. pp. 191-2. Both international humanitarian law and international criminal law allow exceptions to this rule, when such destruction or rendering is required by imperative military necessity. Amnesty International has seen no evidence that this has been the case in *tatmadaw* pillaging and destruction operations.

³¹ In contrast to the situation in regard to international armed conflict, there are no international rules specifically criminalising such acts. However, they would clearly fall under more general prohibitions applicable to non-international armed conflicts, such as the prohibition on directing attacks against the civilian population as such.

This excessive requisitioning and destruction occurred throughout Thandaung township (Hpa'an District, Kayin State) with increased frequency during 2006 and 2007, and sometimes took place at the hands of the KNLA. Villagers from northern Thandaung, who had been living in temporary structures since 2003 near their original village, burned in 1996, told Amnesty International that *tatmadaw* incursions from a base in Pa Do Ku village increased in their areas to twice or three times a month in 2006. The *tatmadaw* stole or destroyed their food-stocks and kitchen utensils; "What they didn't take, they would destroy", according to one villager. Another told Amnesty International that *tatmadaw* soldiers officially informed him in January 2006 that he was not to cultivate sugar cane anymore, because his land was too close to areas where the KNLA was active. They then proceeded to destroy his crop, "which was my main source of income" and offered no compensation. Yet another villager from Thandaung claimed that *tatmadaw* soldiers who had already been provided with food by villagers who supplied the main base, took all the rice from her village in April 2006. In Kaw Law Ka village in Thandaung, the *tatmadaw* controlled the supply of food altogether, deciding on a case-by-case basis whether to allow food in, as well as the amount, for a designated number of people.

Similarly, a villager from Papun District, Kayin State reported that the rice fields he cultivated had been burned down six or seven times since 1999, and that in October 2005 the *tatmadaw* took his livestock and rice and burned down his stores. Other farmers in an area bordering Papun District claimed that soldiers would visit their villages often, sometimes several times in a single day, and would "demand everything ... take the most expensive pig away with them ... come and steal from shops and houses". Another farmer in Papun reported the regular looting and destruction of property by LIB 73, while a villager from Lu Thaw township in Papun District said that in December 2005, 12 villages in the township were officially required to provide one basket of rice per household to Brigade 777 of the DKBA.

The *tatmadaw* also reportedly committed these violations in Tantabin township (Nyaunglebin District, Bago Division) from 2004 onwards, including in 2006 and 2007. One villager reported that his rice field and hut had been destroyed in 2004, and that since May 2006 troops had destroyed crops in other fields around his village. One of the 20 rice barns in a village attacked in southern Tantabin township was reportedly burned down during 2006, after all the rice was taken. Another villager said that, beginning in mid-2006, the soldiers began demanding cooked food from his village of Ye Sha, rather than just rice. In Ye Da Gon, the 'rules' governing food confiscation by the *tatmadaw* changed with every troop rotation in 2006.

Villagers from jungle sites in northern Nyaunglebin District told Amnesty International that the *tatmadaw* would regularly occupy their settlement for periods of up to one month, and would eat their food and destroy their property, including clothing, rice, and cooking pots that had been hidden. Sometimes the soldiers

actively searched for such goods. A farmer from eastern Nyaunglebin reported that the *tatmadaw* burned down 10 percent of the rice barns in and around his village in June 2006. A man from a jungle settlement near Mone township, also in Nyaunglebin District, reported that after October 2005, when fighting increased, the *tatmadaw* constantly destroyed crops of pineapple, betelnut, and green vegetables throughout the settlement, which was spread over an extended area.

3.7 Curfews, closures and other restrictions on movement

“Our village has recently become like a prison—soldiers prohibited us from going out to the fields. In April [2006] they declared a closure for 6 months - nobody was allowed to leave. Even cows. This was announced publicly at a meeting that they called. They said they wanted to starve both us and the KNU”.

45 year-old farmer (Hpa'an District, Kayin State)

Amnesty International is concerned at the wide use of arbitrary curfews, closures, and other violations of the right to freedom of movement used collectively against the civilian population during the offensive against the Karen. The organisation notes that the right to freedom of movement can be subject to restrictions, including on the grounds of national security. However, the collective and arbitrary nature of many of the restrictions during the offensive belies this reasoning, as is evident from the cases below.

Farmers reported that from January 2006 onwards, the *tatmadaw* explicitly prohibited them from leaving their villages, including to cultivate their fields. Such measures adversely affected those who absolutely depended on cultivation for their food security, and left them with the stark choice of either obeying the order restricting movement and risking starvation, or disobeying it and risking being killed. Such policies are in violation of the right to life in international human rights law, and constitute “violence to life and person” under international humanitarian law.³² They also amount to collective punishment, which, as noted, is prohibited under international humanitarian law and as rule of customary international law.

Villagers told Amnesty International that the *tatmadaw* in Thandaung (Hpa'an District, Kayin State) and Tantabin (Nyaunglebin District, Bago Division) townships announced that people were not allowed to leave their villages in May 2006, and would be shot if found outside them, including if they were found in their fields. A villager from Dweh Lo township (Papun District, Kayin State) recounted that the *tatmadaw* informed his village that violators would be subjected to fines of 6,000 kyat,

³² Art. 3(1) Common to the four Geneva Conventions.

and that those caught running away from soldiers would be shot. Previous to such announcements, the *tatmadaw* had been shooting people seen outside their villages without any verbal warnings.

Villagers in Tantabin township reported at least three deaths in the first half of 2006 of farmers grazing livestock, who were shot on sight by soldiers. A rice farmer described the effects of the restriction order:

"Before I decided to come to Thailand, the village was fenced in May 2006. Nobody was allowed outside and we could not buy food. They told us at a village meeting that villagers had to build a fence, and that we had to provide four guards for security. We were not allowed out to look after our fields, and they would shoot us if we did. I did not want to come, but I had to, because food was so hard to come by. We were not allowed to travel or to bring in food from outside. There are 300 houses in my village, and there is a new battalion camp one hill away from my village. In March 2006 they warned us that they would shoot villagers if they were found outside the village. There were also more landmines placed outside my village."

3.8 Anti-personnel mines

"Landmines have been planted around my field; the road is destroyed. There is no possibility of continuing to live in this way."

24 year-old farmer, Thandaung township (Hpa'an District, Kayin State)

"Our lives are under threat from the landmines. There is no security for us civilians and our lives. This is getting worse, as there are more landmine explosions around our village. Even if you have money, you still cannot survive."

51 year-old widow, Thandaung township (Hpa'an District, Kayin State)

"On Burmese radio, the KNU are portrayed as terrorists and killers, but it was the Burmese army that planted the mine which blew up my leg. It was the Burmese army that burned my house down. It was the Burmese army that turned me into a refugee".

35 year-old woman, Tantabin township (Hpa'an District, Kayin State)

During the military campaign in Kayin State and Bago Division, there has been a sharp increase in the use by both the *tatmadaw* and the KNLA of anti-personnel landmines. The large quantity of mines remains a threat to the lives of Karen civilians.

The government of Myanmar condemned the use of landmines by the KNLA during a “study tour” for journalists to Mone Township (Nyaunglebin District, Bago Division) in 2006, and attributed the loss of life and livelihood to mines allegedly planted by the KNU: “It is the KNU that plant mines to harm the local people in order to threaten them not to work or earn livelihood freely under the protection of the *tatmadaw*. Caused by trap mines of KNU, a large number of rural people lose lives and limbs”.³³ There was no acknowledgement of the effect of landmines planted by the *tatmadaw* on the civilian population.

Amnesty International opposes the manufacture and planting of anti-personnel mines as indiscriminate weapons, and has called on all states, including Myanmar, to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. The organization has similarly called on all armed groups, including those in Myanmar, to refrain from the use or manufacture of anti-personnel mines.

Myanmar was one of 17 nations that abstained from voting on UN General Assembly Resolution 60/80 on 8 December 2005, which called for universalisation and full implementation of the Mine Ban treaty. However, the Myanmar representative stated that his government is opposed to “the indiscriminate use of anti-personnel mines, which causes death and injury to the innocent people all over the world. These tragedies occur due to the easy availability of landmines”.³⁴ The representative also said that the SPDC was in principle in favour of a ban on the export, transfer, and indiscriminate use of anti-personnel mines.

The use of landmines, including on roads used by the local populace and near farms and water sources, sharply increased in Hpa’an and Papun Districts in Kayin State and in Nyaunglebin District in Bago Division in 2006. Villagers told Amnesty International that while the *tatmadaw* warned persons in ‘peaceful’ villages that they had mined certain areas, they rarely told them of the exact locations of the mines. The KNLA reportedly more frequently informed civilians of the presence and location of landmines and Improvised Explosive Devices (IEDs), and generally announced that they would plant them when the *tatmadaw* was active in the area.

It was reported to Amnesty International that throughout Thandaung (Hpa’an District, Kayin State) and Tantabin (Nyaunglebin District, Bago Division) townships,

³³ Myanmar TV 3, 15 May 2006, www.mrtv3.mmm/open/150506p.html.

³⁴ Myanmar delegation to the UN General Assembly, explanation of vote on draft resolution regarding “Implementation of the Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction”, UN Doc. A.C.1/60/L.56, 28 October 2005.

there was an increased use of landmines by the *tatmadaw* on routes to rice fields cultivated by both those in villages and those in hiding, on roads to towns used to obtain food and sell goods, and near rivers used for washing and bathing. Villagers reported that the increased laying of landmines near their fields prevented them from cultivating their crops and led to a dramatic reduction in their overall security. In the area controlled by LIB 66 in particular, the planting of landmines significantly increased the deaths and maiming of civilians.

A village in northern Hpa'an District was reportedly mined after a movement restriction order was placed on it in January 2006, causing many livestock and other animals drinking water from the stream to be killed in explosions. In another incident reported to Amnesty International, two brothers stepped on a landmine in Thandaung township in Hpa'an District in February 2006 on the road to their fields. One of them died, and the other lost a leg. In southern Thandaung, at least one civilian died of injuries incurred by a landmine while foraging for food in the jungle, while a villager told Amnesty International that his brother was killed by a mine laid by *tatmadaw* soldiers who stayed in their area for only one night. He claimed that it was their policy to plant mines wherever they had to sleep, no matter for how short a period. Also in Thandaung township in early 2006, a 47 year-old man lost his leg after stepping on a landmine placed near the village church. People from this area reported that they received no warning from the *tatmadaw* that they had mined the area. At least three civilian deaths were reported in another village in Hpa'an District in March 2006.

In at least two settlements in Papun District in northern Kayin State, the *tatmadaw* issued instructions to the headmen that, beginning in May 2006, residents of their villages would not be able to work on their farms because the *tatmadaw* had planted landmines around the village.

Two men from separate villages in Tantabin township (Nyaunglebin District, Bago Division), one of whom was injured by a mine in 2003, told Amnesty International that the *tatmadaw* planted mines in their former villages after burning them. They would shell the villages if a mine went off. Another civilian villager said that, after Ye Da Gon village in Tantabin was forcibly relocated in 2006, his son and brother-in-law tried to return but stepped on mines; his son was blinded in one eye, his brother-in-law was killed.

A man claimed that increased landmines around his jungle settlement in Tantabin in 2006 was one of two main reasons he left for the IDP camp near the Thai border the following year. Another jungle settler displaced from the same village reported that his son lost part of a leg to a mine explosion in 2006 at a water source.

3.9 Arbitrary levies and fines

“If you failed to pay the tax they threatened to take you as a porter or forced labourer for one week, so people would take loans and do anything to pay and avoid this”.

Villager, Papun District, Kayin State

Amnesty International has documented the arbitrary confiscation of property and extortion of money by the *tatmadaw* from the rural population in Kayin State and Bago Division. During their military offensive, these practices - the results of a self-sufficiency policy for troops - have been a strong contributory factor in denying people the right to an adequate standard of living. This has been the case in both relatively peaceful areas and in areas of counter-insurgency.

Villagers in northern Kayin State and eastern Nyaunglebin Division provided Amnesty International with numerous examples of property confiscation and extortion by the *tatmadaw* that made their lives difficult and even unsustainable. Some had to borrow money to pay arbitrary levies, and to buy rice to give to the *tatmadaw*. A villager from Thandaung township (Hpa'an District, Kayin State) said that the *tatmadaw* “are really abusing their power. If we buy rice from outside the village then they accuse us of KNU links. They also threaten that if we don't give them money - say 3,000 or 4,000 kyat - then they will arrest and kill us”. Similarly, a villager from Tantabin township (Nyaunglebin District, Bago Division) said that the *tatmadaw* would both raid her village directly for money and collect taxes through the village headman.

The populace in areas of Hpa'an and Papun Districts were also regularly subjected to levies and ‘fines’ by the DKBA. Villagers from Hpa'an District told Amnesty International that they would be subjected to fines if they were absent from their village - particularly if required for forced labour - during a time when movement restrictions were in place. A villager claimed that he and two other men who had been absent during the period of a movement restriction order returned to their village in March 2006 and were fined 1,500 kyat each by the DKBA. He said that they were also caned “for two hours” and that their village was then required to provide two persons for forced unpaid labour. Villagers from Shwe U, also in Hpa'an District, claimed that a monthly levy of 10,000 kyat (for families) and 5,000 kyat (for widows) was imposed on the village by the DKBA, as well as by the *tatmadaw*. The villagers believed that this money was used mostly for the personal spending of DKBA members, while failure to pay resulted in portering or other forced labour for up to an entire month.

Likewise in Papun District, Kayin State, villagers said that they were required to pay 500 kyat each to the DKBA for a permit to leave their village to farm. A villager from Lu Thaw township in Papun told Amnesty International that his village was collectively fined 300,000 kyat by the DKBA in 2006. He suspected this was

because KNLA troops had caused DKBA casualties during the previous year. According to other sources, a DKBA commander imposed fines of between 200,000 and 300,000 kyat on at least six villages in the area in March 2006, expressly because of fighting between KNLA and DKBA. The commander also threatened that if the villagers did not pay the fine, he would burn their villages.

4 Lack of cooperation with the United Nations and other international organizations

“Cooperation with the United Nations is a cornerstone of Myanmar’s foreign policy. In this spirit, Myanmar has consistently cooperated with the United Nations in various fields, including in the area of human rights”.³⁵

4.1 UN Human Rights Council

Following the violent government crackdown on demonstrations in September 2007, the Human Rights Council held a Special Session which requested that the then UN Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, urgently visit the country to assess the human rights situation, and urged the SPDC to cooperate with the Special Rapporteur.³⁶ Despite repeated requests, the Special Rapporteur had been denied access to Myanmar since November 2003, and very few of his recommendations before or during that period - including in relation to the offensive against the Karen - had been implemented by the SPDC. Following heightened international pressure in response to the crackdown, including by the Security Council,³⁷ the government finally granted the Special Rapporteur a short and restricted visit to the country in November 2007. He presented his preliminary findings to the Human Rights Council in December 2007, which then passed a resolution requesting that he conduct a follow-up mission to Myanmar to monitor the implementation of a range of human rights issues addressed in the resolution.³⁸ The Human Rights Council also urged the SPDC to cooperate fully with the Special Rapporteur; however, the SPDC failed to provide access to the Special Rapporteur for another visit.

³⁵ Memorandum on the Situation of Human Rights in the Union of Myanmar, 5 November 2007, submitted to the UN Secretary-General, A/C.3/62/7, pg. 19.

³⁶ Human Rights Council resolution S-5/1 on the “Situation of human rights in Myanmar”, adopted by consensus on 2 October 2007.

³⁷ The Security Council President issued a Statement on 11 October 2007 (S/PRST/2007/37) supporting Human Rights Council resolution S-5/1.

³⁸ Human Rights Council resolution 6/33 on the “Follow-up to the report of the Special Rapporteur on the situation of human rights in Myanmar”, adopted 14 December 2007.

In March 2008, Paulo Sérgio Pinheiro presented his final comprehensive report to the Human Rights Council before the expiry of his term as Special Rapporteur.³⁹ He reiterated concern about “recent reports of human rights violations in Kayin State, which include extrajudicial killings, attacks on civilians and forced displacement”, and concluded by pressing the international community, including the UN, to ensure “an adequate response to the situation of conflict in eastern Myanmar”.⁴⁰ The Special Rapporteur also deplored the fact that:

*“The recommendations formulated by the General Assembly (the latest being resolution 62/222), the Security Council, the Human Rights Council (notably resolutions S-5/1 of the special session of 2 October 2007 and 6/33), the Commission on Human Rights, the Secretary-General and his Special Adviser, the thematic special procedures mandate-holders, as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies have regrettably not been implemented.”*⁴¹

The Human Rights Council responded with a resolution calling on the Myanmar authorities to take urgent measures to end violations of human rights and humanitarian law.⁴² The SPDC, however, “totally and categorically” rejected the resolution, stating that it “fails to reflect the positive aspects of political development in Myanmar ... [and] amounts to dictate the government of Myanmar in matters which fall within the domestic jurisdiction of Myanmar”.⁴³ At the same session, the Human Rights Council also adopted a resolution renewing the mandate of the Special Rapporteur for one year and urging the government of Myanmar “to cooperate fully with the Special Rapporteur and to respond favourably to his requests to visit the country and to provide him with all information and access to relevant bodies and institutions necessary to enable him to fulfil his mandate effectively”.⁴⁴ Mission requests by other Special Procedures of the Human Rights Council, namely the Representative of the Secretary-General on the human rights of internally displaced

³⁹ The Human Rights Council resolution renewing the mandate of the Special Rapporteur on the situation of human rights in Myanmar was adopted by consensus on 28 March 2008 (A/HRC/7/L.37).

⁴⁰ Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, 7 March 2008, A/HRC/7/18, pg. 80 and 101(c).

⁴¹ *Ibid.* pg. 89.

⁴² Human Rights Council resolution 7/31 on the “Situation of human rights in Myanmar”, adopted by consensus on 28 March 2008.

⁴³ “Statement by U Wunna Maung Lwin, Ambassador/Permanent Representative of the Union of Myanmar, before adoption of draft resolution (A/HRC/7/L.36) at the Human Rights Council, 28 March 2008,

http://mission.itu.ch/MISSIONS/Myanmar/pressrelease_PMGeV/HRC%20statement%20L%2036.htm.

⁴⁴ Human Rights Council Resolution 7/32 on the “Mandate of the Special Rapporteur on the situation of human rights in Myanmar”, was adopted by consensus on 28 March 2008. At its seventh session, the Human Rights Council appointed Tomas Ojea Quintana as the new Special Rapporteur.

persons, the Special Rapporteurs on the right to food, on freedom of religion or belief, and on extrajudicial, summary, or arbitrary executions, have also gone unfulfilled.

Despite any official claims to the contrary, the SPDC's actions demonstrate its lack of effective cooperation with the UN in the area of human rights.

4.2 UN Secretary-General

In May and November 2006, under the 'good offices' mandate entrusted to the Secretary-General by the General Assembly, the Secretary-General's Special Advisor Ibrahim Gambari undertook two official visits to Myanmar.⁴⁵ As a result of these visits, the Secretary-General expected the authorities to take "tangible steps forward on central issues such as human rights, democratic reform and national reconciliation".⁴⁶ Among other requests, the Special Advisor called for an end to hostilities, particularly in Kayin State. However, aside from a small number of political prisoners being released, his two visits have failed to result in notable improvements in the human rights situation generally or in Kayin State.

In the wake of the crackdown, the Special Advisor returned to Myanmar in September 2007 and again in November to continue encouraging the SPDC to make tangible progress in five key areas: the release of all political prisoners, an all-inclusive national reconciliation process, humanitarian access, cooperation with the ILO, and the cessation of hostilities in conflict areas including Kayin State.⁴⁷ Except for limited cooperation with the ILO, however, no genuine progress has been achieved.

Moreover, the SPDC's surprise announcement in February 2008 that a referendum would be held on its newly-completed constitution in early 2008, with elections scheduled for 2010, and the subsequent catastrophe wreaked by Cyclone Nargis, have diverted much-needed international attention from the ongoing human rights crisis, including in eastern Myanmar. The referendum process, for example, was the primary focus of the Special Advisor's visit in March 2008, however, his efforts there once again yielded "no immediate tangible outcome".⁴⁸

The Secretary-General established a Group of Friends on Myanmar in December 2007 to support implementation of his good offices mandate and the Special Advisor's efforts.⁴⁹ The group, comprising key donors, ASEAN countries, and

⁴⁵ UN News: SG/SM/10464, 16 May 2006; and SG/SM/10721, 7 November 2006.

⁴⁶ "Annan stresses need for human rights progress in Myanmar as top political officer to visit", UN News Centre, 7 November 2006.

⁴⁷ Briefing of the Security Council by Ibrahim Gambari, Special Advisor to the Secretary-General, 5 October 2007. Record of Security Council 5753rd Meeting (SC/9136).

⁴⁸ Record of Security Council 5854th Meeting, 18 March 2008 (SC/9278).

⁴⁹ The Group comprises Australia, China, France, India, Indonesia, Japan, Norway, Russia, Singapore, Thailand, the UK, the USA, Viet Nam and currently Slovenia (as holder of EU Presidency).

the five permanent members of the Security Council, has met only infrequently and with no clear signs of progress, despite reportedly frank discussions.

In addition, the Special Representative of the Secretary-General for Children and Armed Conflict has expressed concern that both the *tatmadaw* and armed groups continue to be implicated in grave child rights violations.⁵⁰ According to her report to the Security Council of November 2007, an effective mechanism for preventing the recruitment of child soldiers is still lacking, and ongoing procedures for demobilization, rehabilitation, and reintegration of former child soldiers need to be developed and successfully implemented.

4.3 UN General Assembly

The General Assembly, comprising all 192 UN member states, has repeatedly expressed grave concern at the systematic violations of international human rights and humanitarian law in Kayah State, including attacks by military forces on civilians leading to extensive forced displacement.⁵¹

In 2006, the General Assembly strongly urged the government:

*“To take urgent measures to put an end to the military operations targeting civilians in ethnic areas and the associated violations of human rights and humanitarian law against persons belonging to ethnic nationalities, including widespread rape and other forms of sexual violence persistently carried out by members of the armed forces, and to facilitate a fact-finding mission comprising representatives of relevant United Nations agencies to help to identify measures to alleviate the humanitarian and human rights consequences of the conflict in Karen State ...”*⁵²

There is no indication that the SPDC has ever initiated an investigation as requested by the General Assembly. Moreover, the General Assembly’s repeated demands in 2006 and 2007 for the *tatmadaw* to end military operations targeting civilians in ethnic areas, and to end the systematic forced displacement of large numbers of persons and other causes of refugee flows to neighbouring countries, have gone unheeded.

“Secretary-General convenes meeting of ‘Group of Friends’ on Myanmar”, UN News Centre, 19 December 2007.

⁵⁰ Report of the Secretary-General on children and armed conflict in Myanmar, S/2007/666, 16 November 2007. The report covers the period from July 2005 to September 2007.

⁵¹ Resolution 60/233 adopted 23 December 2005; Resolution 61/232 adopted 22 December 2006; Resolution 62/222 adopted 22 December 2007.

⁵² Resolution 61/232, pg. 3(b).

4.4 UN Security Council

The situation in Myanmar was placed on the agenda of the Security Council on 15 September 2006, after three briefings in December 2005, May 2006, and June 2006, which covered among other concerns, the military operations in Kayin State. In January 2007 the United Kingdom and the United States introduced a draft resolution on the situation in Myanmar, which included a call on the government to cease military attacks against civilians in ethnic minority regions, and in particular to end human rights and humanitarian law violations against persons belonging to ethnic minorities.⁵³ The Representative of Myanmar rejected reports of attacks on ethnic minority regions and civilians, with particular reference to Kayin State, asserting that such reports were a “complete falsehood”.⁵⁴

The draft resolution was not adopted by the Security Council, as it was vetoed by China and the Russian Federation, with South Africa also voting against, on grounds that these states did not consider that the situation in Myanmar constituted a threat to international peace and security.⁵⁵ Security Council members opposing or abstaining from the resolution also justified their positions on the basis that the General Assembly, the Human Rights Council, and the good offices of the Secretary-General were already engaged on Myanmar.

Most states nevertheless acknowledged the gravity of the human rights challenges in Myanmar, including the situation of IDPs and refugees from the country, and the need for the SPDC to consider seriously the recommendations made by the international community. China explained that “[n]o one would dispute the fact that Myanmar is, indeed, faced with a series of grave challenges such as refugees, child labour, HIV/AIDS, [and] human rights”. Indonesia, which abstained from the vote, recognised that “as a member of ASEAN, as a neighbouring country, and as a member of [the] Council ...the issue of Myanmar is no longer just a bilateral or regional issue, but an international one” and that “Myanmar must respond to the imperative of restoring democracy and respect for human rights”.

Since these Security Council deliberations in January 2007, the human rights crisis in Myanmar has not abated, and indeed appears to have worsened in light of the continuing attacks by the *tatmadaw* on civilians in Kayin State and Bago Division, the

⁵³ United Kingdom of Great Britain and Northern Ireland and United States of America, Draft resolution, 12 January 2007 (S/2007/14).

⁵⁴ Record of Security Council 5619th Meeting, 12 January 2007 (SC/8939).

⁵⁵ *Ibid.* Security Council decisions on substantive matters require nine votes, including the concurring votes of all five permanent members (China, France, Russian Federation, UK, and USA). The result of the vote on the draft was nine in favour (Belgium, France, Ghana, Italy, Panama, Peru, Slovakia, UK and USA) to three against (Congo, Indonesia, Qatar). In January 2008, Congo, Ghana, Peru, Slovakia and Qatar were replaced by Burkina Faso, Costa Rica, Croatia, Libya and Viet Nam.

violent crackdown on demonstrators in September 2007, and the flawed constitutional drafting and referendum process. On 11 October 2007, the Security Council responded to the growing crisis with its first-ever statement on Myanmar, strongly deploring the use of violence against peaceful demonstrations, welcoming the findings and recommendations of the Human Rights Council, emphasising the need for the early release of all political prisoners and remaining detainees, and calling on the government to create the necessary conditions for genuine dialogue with all concerned parties and ethnic groups.⁵⁶ There is however growing evidence that the SPDC is refusing to effectively cooperate with the Security Council in carrying out these requirements.⁵⁷

4.5 The Association of Southeast Asian Nations (ASEAN)

In November 2007, the summit of the Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Charter.⁵⁸ The Charter will become a legally binding regional treaty once all member states have ratified it. So far, six of ASEAN's ten member states have ratified the Charter; Myanmar is not among them. It appears that the human rights situation in Myanmar is behind the problems some states may be having in ratifying the Charter.⁵⁹

The ASEAN Charter contains several provisions that either directly or indirectly address the issue of human rights. One of the "purposes of ASEAN", as stated in the Charter, is "to promote and protect human rights and fundamental freedoms" (Article 1). ASEAN states would also commit to acting in accordance with the principle of "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice", as well as to "upholding the United Nations Charter and international law" (Article 2). Article 14 provides for the establishment of an ASEAN "human rights body". ASEAN's foreign ministers have agreed to establish a "high level task-force" to draft the human rights body's terms of reference. The task force is to report back to the foreign ministers in July 2008.

While Amnesty International welcomed the inclusion of a commitment within the ASEAN Charter to promote, protect, and respect human rights and to establish a

⁵⁶ Security Council Presidential Statement, (S/PRST/2007/37), 11 October 2007.

⁵⁷ See Security Council Press Statements on Myanmar of 15 November 2007 (SC/9171) and 17 January 2008 (SC/922); Record of Security Council 5854th Meeting, 18 March 2008 (SC/9278); and Security Council Presidential Statement (S/PRST/2008/13), 2 May 2008.

⁵⁸ Charter of the Association of Southeast Asian Nations, signed 20 November 2007, <http://www.aseansec.org/21069.pdf>.

⁵⁹ See for instance Jeremy Au Yong, "Countries slow to ratify shouldn't hold back Asean Charter," *The Strait Times*, 21 January 2008, http://singapuraneews.multiply.com/journal/item/901/ST-Countries_slow_to_ratify_shouldnt_hold_back_Asean_Charter; and "Brunei, Laos, Malaysia ratify Asean charter", *The Manila Times*, 22 February 2008, <http://www.manilatimes.net/national/2008/feb/22/yehey/world/20080222wor1.html>.

regional human rights body, the organization expressed serious concerns about ongoing human rights violations in the ASEAN region in general, and in Myanmar in particular. The organization stated:

It is unclear to Amnesty International how the military government of this state [Myanmar] was able - or indeed was allowed - to sign the ASEAN Charter, when that government is clearly already in what the Charter ... calls "a serious breach" of its human rights provisions. Amnesty International is concerned that the ASEAN Charter may have lost credibility right from the beginning. Amnesty International is encouraged by reports that some ASEAN leaders share these concerns.⁶⁰

Amnesty International nevertheless hopes that the ASEAN Charter can become a key tool in addressing human rights violations in Myanmar and elsewhere in the region as long as the human rights commitments within it are taken seriously and implemented rigorously. In particular, the organization believes that it is vital that the human rights body provided for in the Charter is strong, professional, representative, and applies international standards. States violating human rights must be held to account. Widespread and systematic violations such as in Myanmar must trigger a serious and telling response, as they constitute a material breach of the ASEAN Charter, thus calling into question the very commitment of the state concerned to the Charter.

4.6 The International Committee of the Red Cross (ICRC)

In June 2007 the ICRC issued a rare public statement on the situation in Myanmar, describing abuses against detainees and civilians, especially "communities affected by armed conflict along the Thai-Myanmar border." Describing several of the violations which are the subject of this report, including unlawful killings, portering, forcing civilians to leave their homes, the destruction of food-stock and means of production on a large scale, forcing villagers to support military operations, and severe restrictions on freedom of movement, the ICRC concluded that "the repeated abuses committed against men, women and children living along the Thai-Myanmar border violate many provisions of international humanitarian law".⁶¹ The ICRC has had limited access to Myanmar since December 2005, when restrictions placed upon it by the government, preventing it from carrying out its core mandate activities, caused the organization to significantly scale down its operations.

⁶⁰ Amnesty International, *ASEAN: Human rights in the Charter and beyond*, AI Index: ASA 01/009/2007, 21 November 2007.

⁶¹ "Myanmar: ICRC denounces major and repeated violations of international humanitarian law", ICRC press release 82/07, 29 June 2007, <http://www.icrc.org/web/eng/siteeng0.nsf/html/myanmar-news-290607>.

5 Lack of redress for violations of international human rights and humanitarian law

When Myanmar Armed Forces launched military operations to ensure peace and stability and the rule of law, these armed groups fled into Thailand. Their families are also living there under the pretext of refuge. These armed groups fabricate allegations and accusations to discredit the government of Myanmar. They are encouraged by certain organizations which are opposing Myanmar, and the insurgents and their families at the refugee camps convey fabrications to the international community through various means.

U Nyunt Maung Shein, Permanent Representative of Myanmar to the UN in Geneva, at the Human Rights Council, 27 September 2006

States have the duty to prevent gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law. They also have the duty to investigate such violations effectively, promptly, thoroughly, and impartially, and where appropriate, to take action against those allegedly responsible in accordance with domestic and international law. They must provide victims with access to justice and effective remedies, including reparation.⁶²

Responding to reports of widespread rape of Shan ethnic minority women in 2002, the SPDC said that “[t]he Myanmar *tatmadaw* has never practised the policies of torturing the national races. It will never practise such policies in the future either”.⁶³ The SPDC has also asserted that “there is no policy or order to burn villages, kill civilians and commit other atrocities” in eastern Myanmar, and that “we have a military code and anyone who commits these crimes will be punished”.⁶⁴

The authorities have not publicly disclosed whether they have initiated any investigations into reports of violations of international human rights and humanitarian law in military operations in Kayin State and Bago Division. Many villagers who suffered the effects of violations also displayed no confidence in the authorities’

⁶² In 2005, the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which codify the obligations of states under international law to respond to serious crimes under international law when they are committed, by implementing the rights of victims. General Assembly Resolution A/RES/60/147, 16 December 2005.

⁶³ “The disciplined Tatmadaw”, *The New Light of Myanmar*, 30 July 2002.

⁶⁴ Ye Hut of the SPDC Ministry of Information, as quoted in “Myanmar wages offensive against Karen”, Associated Press, 24 November 2006.

willingness or ability to provide any formal redress. When asked about the possibility of redress, many of those who spoke to Amnesty International simply laughed. They also expressed fear of recrimination if they tried to seek redress for, or investigation of, the human rights violations they had experienced or witnessed. While Karen refugees and IDPs reported that some military commanders were prepared to privately and informally act on enquiries about the whereabouts of individuals, there appeared to be no formal mechanism in operation requiring the army to notify relatives of those they arrested of the grounds for arrest, or the fate and whereabouts of detained persons. Nor is there any domestic mechanism to initiate investigations into allegations of human rights violations.

Amnesty International is seriously concerned by the lack of investigations into allegations of violations of international human rights and humanitarian law, and by the lack of remedy in Myanmar for the victims of such violations.

6 Conclusions

Testimonies and other information gathered by Amnesty International, as well as information from other sources, raise grave concerns that the violations of international human rights and humanitarian law against the Karen described in this report have been part of a widespread and systematic pattern of crimes committed over the past decade and a half. The weight of evidence therefore suggests that some of these violations constitute crimes against humanity and that the impunity prevailing in the country for such crimes has contributed to further human rights crises, notably the government crackdown on demonstrators in September 2007.

As stated, the Rome Statute of the International Criminal Court defines crimes against humanity in Article 7(1)⁶⁵: “For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack ...”. The term ‘Attack directed against any civilian population’ is defined in Article 7 as “... a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack”. Article 7 lists 11 crimes, many of which have been committed against the Karen, as demonstrated in this report. They include:

- (a) Murder; [...]
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;

⁶⁵ For text of the Rome Statute see: <http://www.icc-cpi.int>.

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture; [...]

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons; [...]

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The definition of crimes against humanity in the Rome Statute reflects rules of customary international law binding on all states, including Myanmar, regardless of whether or not a state is party to the Statute.

Amnesty International is alarmed by the reported “multiple commission” of deportation and forcible displacement, severe deprivation of physical liberty, and of persecution in violation of fundamental rules of international law in Myanmar, including:

- the destruction or confiscation of crops and food-stocks;
- the burning of houses and sometimes whole villages, forcing inhabitants to relocate;
- the imposition of forced labour;
- long-term village closures and other forms of collective punishment.

These acts have reportedly been carried out for years, with long-term consequences. Some persons, for instance, reported to Amnesty International that they were forced out of their villages, which were then burned or mined, as long ago as the mid-1970s through the mid-1990s. They lived as IDPs for years or even decades, before being forced to flee into Thailand or IDP camps by further attacks between 2005 through 2007. In addition, grave human rights violations such as torture, murder, and enforced disappearances have been frequently carried out. These acts have all targeted a civilian population resident in northern Kayin State and eastern Bago Division. They have reportedly been committed by the *tatmadaw* and militias affiliated with it as part of both a “widespread” and “systematic” attack on the civilian Karen population, pursuant to government policy, and amount, on either basis, to crimes against humanity as described in this report.

The significance of this conclusion lies in the fact that crimes against humanity are exactly what the term suggests - crimes so serious that they are the concern not only of their victims, survivors, or the state in question, but of humanity as a whole.⁶⁶ Such crimes are the subject of universal jurisdiction;⁶⁷ any state may, under customary international law, undertake one of the following actions against suspected perpetrators of crimes against humanity, even where the suspects are neither nationals nor residents of the state concerned, and the crime(s) did not take place in its territory: (1) bring such persons before its own courts, (2) extradite such persons to any state party willing to do so, or (3) surrender such persons to an international criminal court with jurisdiction to try persons for these crimes. In the case of torture, states parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are actually obliged by that treaty to exercise universal jurisdiction over any suspect found in territory subject to their jurisdiction.⁶⁸

Moreover, there is growing support for the view that states may not harbour persons suspected of crimes against humanity, but instead must either exercise jurisdiction over persons in their territory suspected of crimes against humanity, no matter where such crimes took place, extradite those persons to states able and willing to do so, or surrender them to an international criminal court with jurisdiction over the crimes and the suspects. To the extent that this rule may not yet be fully recognized as customary international law with respect to crimes against humanity, Amnesty International believes that general principles of law, logic, and morality dictate that states should implement the rule.

Amnesty International's report shows that the SPDC has failed to demonstrate any genuine commitment to the protection of civilians in armed conflict by allowing effective independent investigations into extensive and persistent reports of violations of international human rights and humanitarian law. The SPDC has also failed to implement the UN General Assembly's recommendation in 2006 to facilitate a UN fact-finding mission to help "identify measures to alleviate the humanitarian and human rights consequences of the conflict in Karen State",⁶⁹ and has taken an obstructive position toward other UN resolutions and recommendations.

⁶⁶ On crimes against humanity in the context of universal jurisdiction, see Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation*, Amnesty International Index: IOR 53/008/2001, 1 September 2001, Chapter Five.

⁶⁷ See *ibid.* and Amnesty International, *United Kingdom: Universal jurisdiction and absence of immunity for crimes against humanity*, Amnesty International Index: EUR 45/001/1999, 1 January 1999, sec. B.

⁶⁸ See Art. 5 of that Convention. Similarly, states which have ratified the four Geneva Conventions of 1949 and those which have ratified its Additional Protocol I of 1977 are obliged to exercise universal jurisdiction regarding persons suspected of committing "grave breaches" of these treaties.

⁶⁹ Resolution 61/232 at 3 (b), and Resolution 62/222 at 4 (h).

In light of the SPDC's persistent lack of cooperation with international organizations, including the UN General Assembly and the Human Rights Council, Amnesty International urges the UN Security Council to keep the human rights and humanitarian situation in eastern Myanmar under close review, and to take further action to ensure that acts constituting crimes against humanity and all other violations of international law in the country are halted immediately. Amnesty International also calls on the Security Council and the international community to help ensure that the suspected perpetrators are brought to justice in accordance with international law and standards, and that those who have been subjected to such violations are provided with full reparation.

7 Recommendations

7.1 To the State Peace and Development Council

- Put an immediate halt to all violations of international human rights and humanitarian law by government forces and aligned militias, including the targeting of civilians and civilian objects for attack, indiscriminate attacks, extrajudicial executions and other unlawful killings, enforced disappearances, torture and other ill-treatment, forced labour and the destruction of homes, fields, and crops, and arbitrary confiscation of property;
- Ensure that all acts violating international human rights and humanitarian law are subject to prompt, independent, and impartial investigations, and that suspected perpetrators, including those suspected of ordering these acts, regardless of rank, are brought to justice in proceedings which meet international standards of fairness, and without the imposition of the death penalty;
- Ensure that those who have been subjected to violations of international human rights and humanitarian law are provided with full reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- Ensure that those suspected of violations of international human rights and humanitarian law are suspended from active duty during investigations;
- Ensure that the *tatmadaw*, police and prison staff, and members of aligned militias comply with the provisions of international human rights and humanitarian law. This should be done through appropriate reforms in law, policy, and practice; extensive training programs for all these forces' personnel; and unequivocal declarations by the government and those in charge of each of these forces that violations will not be tolerated;
- Ensure that all military officials involved in the arrest and custody of detainees and prisoners, and all officials authorized to use lethal force, are instructed that they have the right and duty to refuse to obey any order to participate in violations of international human rights and humanitarian law;
- Develop policies to raise awareness among the civilian population that acts violating international human rights and humanitarian law, as detailed above, are crimes; to inform victims of their legal rights and how to obtain remedies; and to ensure through laws, policy, and practice, that individuals alleging

violations of their human rights are able to report them without fear of retribution, and that measures are taken to protect victims, witnesses, and their families;

- Seek international technical assistance with a view to establishing an independent and impartial judiciary and law enforcement agencies consistent with international law and standards;
- Initiate reforms to the law that ensure that allegations of human rights violations committed by the *tatmadaw* soldiers, whether on active service or not, are investigated by civilian bodies and tried in civilian courts;
- Ensure full cooperation with and meaningful access by humanitarian organizations to the country, including Kayin State and Bago Division, and allow the ICRC free access to prisons and detention centres.

The SPDC must guarantee that:

- The family of any person arrested is immediately informed of his or her arrest and place of detention; no one should be held in unofficial or secret places of detention;
- All detainees have immediate confidential access to lawyers, regular access to relatives, and access to medical attention as required;
- All detainees are released unless promptly charged with recognizably criminal offences and remanded in custody by an independent court;
- All detainees have the right to promptly challenge the lawfulness of their detention before a court, and to be released if their detention is found to be illegal;
- All suspects are tried in proceedings which meet international standards of fairness, including the right to legal counsel, the right to a presumption of innocence, the right to a public trial, the right to defend oneself, the right to adequate time and resources to prepare a defence, and the right to appeal.

The SPDC must also:

- Implement fully the recommendations of the ILO Commission of Inquiry on forced labour in Myanmar;
- Enforce Order 1/99 and Order Supplementing 1/99, which make the practice of forced labour of civilians by both civilian and military officials illegal;
- Prosecute civilian and military officials suspected of requiring individuals to take part in forced labour;

- Treat internally displaced persons in accordance with the provisions of the UN Guiding Principles on Internal Displacement;
- Refrain from ordering civilians to leave their homes or property unless it is unavoidable for the security of the civilians concerned or for imperative military reasons, and only for so long as those conditions warranting it exist. The SPDC must refrain from evicting people for other reasons without due process, including by ensuring that there are no feasible alternatives, by providing full information to the population affected, by seeking their free and informed consent, by including them in the planning and implementation, by providing them with proper accommodation, and by respecting the right to an effective remedy;
- Stop using anti-personnel landmines; ban the use, production, stockpiling, sale, transfer, or export of anti-personnel landmines; sign, ratify, implement, and monitor the 1997 Mine Ban Treaty; and provide resources for community-based de-mining and mine awareness programs and assisting the victims of landmines;
- Cooperate fully with the UN, including by implementing the recommendations of the Special Rapporteur on the situation of human rights in Myanmar, the (former) Commission on Human Rights, the Human Rights Council, the General Assembly, and the Security Council; and ensure full and unhindered access for UN officials, including the Secretary-General's Special Advisor on Myanmar, the Special Rapporteur on the Situation of Human Rights in Myanmar and the other Special Procedures of the Human Rights Council, in conformity with the *Terms of Reference for Fact-finding missions by Special Procedures*;
- Ratify and effectively implement international human rights treaties, including the International Covenant on Civil and Political Rights and its Optional Protocols; the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the UN Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Rome Statute of the International Criminal Court.

7.2 To armed opposition groups

- Armed opposition groups should publicly undertake to observe the provisions of Common Article 3 of the Geneva Conventions and other provisions of international humanitarian law applicable to non-international armed conflicts;
- Leaders of such groups should inform their members of their responsibilities under international humanitarian law and take effective steps to prevent

breaches of this law. They should issue clear orders to their forces prohibiting, among other things, the targeting of civilians or other persons taking no active part in hostilities, indiscriminate attacks, the taking of hostages, torture, cruel treatment, and outrages upon personal dignity;

- Any members suspected of abuses must be removed from positions and situations where they might continue to perpetrate abuses;
- The use of anti-personnel landmines must cease immediately;
- Under no circumstances should alleged informers or collaborators be tortured, otherwise ill-treated, or executed.

7.3 To the UN Security Council

- The Security Council should demand that the SPDC immediately halt all violations of international human rights and humanitarian law by government forces and aligned militias, including the ongoing offensive directed at the civilian population in eastern Myanmar;
- The Security Council should consider visiting the country, including eastern Myanmar, to obtain first hand information on the situation on the ground;
- The Security Council should request the Secretary-General to provide a specific report on the situation in eastern Myanmar, in light of the continuing violations of international human rights and humanitarian law in Kayin State and Bago Division since November 2005, which Amnesty International believes amount to crimes against humanity;
- The Security Council should request information on the current human rights and humanitarian situation in Kayin State and Bago Division during all regular briefings it receives on the situation in Myanmar;
- The Security Council should continue to press the SPDC to cooperate fully with the UN, including implementation of its own recommendations, the resolutions of the General Assembly and the Human Rights Council, the recommendations of the Secretary-General and his Special Advisor, and those of the Special Rapporteur on the situation of human rights in Myanmar;
- The Security Council should impose a comprehensive mandatory arms embargo on Myanmar, which should cover the direct and indirect supply of military and security equipment and munitions and expertise, including transfers claimed to be 'non-lethal'.

7.4 To other UN bodies and to member states

- The **Secretary-General** should continue to closely monitor and regularly report on the human rights and humanitarian situation in Myanmar, and use his 'good offices' mandate to further encourage the SPDC to halt all violations of international human rights and humanitarian law by government forces and aligned militias in Kayin State and Bago Division, to end impunity for such violations, and to ensure safe and unhindered access for humanitarian organizations;
- The **General Assembly** should follow up on its recommendation in Resolution 61/232 (2006) that the SPDC "take urgent measures to put an end to the military operations targeting civilians in ethnic areas and the associated violations of human rights and humanitarian law against persons belonging to ethnic nationalities, including widespread rape and other forms of sexual violence persistently carried out by members of the armed forces, and to facilitate a fact-finding mission comprising representatives of relevant United Nations agencies to help to identify measures to alleviate the humanitarian and human rights consequences of the conflict in Karen State";
- The **Human Rights Council** should include in its deliberations and actions on the situation in Myanmar, a specific focus on the human rights and humanitarian situation in Kayin State and Bago Division. The Human Rights Council should also continue to urge the SPDC to cooperate fully with and implement the recommendations of the Special Rapporteur on the situation of human rights in Myanmar and other UN bodies;
- The **Human Rights Council and its members** should continue to give the Special Rapporteur on the situation of human rights in Myanmar the support that he needs to be able to continue to closely monitor situation in Kayin State and Bago Division, and to regularly report on the situation there;
- **UN member states** should exercise universal jurisdiction over persons suspected of involvement in crimes against humanity in Myanmar;
- **UN member states** should immediately suspend the supply to Myanmar of all direct and indirect transfers of military and security equipment and munitions and expertise, including transfers claimed to be 'non-lethal'. These cessations should be maintained until the SPDC takes concrete independently-verified steps to improve human rights protection for all. This would include, as a minimum, the cessation of crimes perpetrated against Karen civilians in Kayin State and Bago Division and the unconditional release of all prisoners of conscience;

- **UN member states** should actively support the General Assembly process to establish a global Arms Trade Treaty with strong provisions requiring full respect for international human rights and humanitarian law when considering the transfers of conventional arms, so as to prevent arms transfers from contributing to violations of such laws;

7.5 To the Association of Southeast Asian Nations

- Urge the SPDC, both in the ASEAN framework and as individual member states, to immediately halt all violations of international human rights and humanitarian law in Kayin State and Bago Division, and to comply with their international legal obligations, including as within the spirit of the ASEAN Charter;
- Ensure that the human rights body being created under the ASEAN Charter is granted sufficient powers, as well as independence, resources, and expertise, to effectively deal with the human rights violations committed against the Karen civilian population in Kayin State and Bago Division, and in accordance with international human rights law and standards.