

# REPORT ON THE HUMAN RIGHTS SITUATION IN BURMA

January - March 2011



## INTRODUCTION

The periodic report of the Network for Human Rights Documentation – Burma (ND-Burma), documents the human rights situation in Burma during the period January – March 2011. ND-Burma periodic reports provide up-to-date information on human rights violations (HRVs) and highlight pressing issues and trends within the country. The information gathered covers 16 categories of human rights violations

(HRVs)<sup>1</sup>, documented in all 14 states and regions across Burma. In the reporting period, significant political developments have taken place. On 31 January the new Parliament, elected through a fundamentally flawed election held in November last year, convened for the first

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<sup>1</sup> ND-Burma has developed the documentation manual series consisting of 16 violation-specific manuals and a general documentation manual: <http://www.nd-burma.org/documentation/resources.html>

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time. On 30 March, Senior General Than Shwe officially dissolved the State Peace and Development Council (SPDC) to transfer authority to the nominally civilian parliament. However, it is evident from ND-Burma's documentation that despite these structural changes, human rights abuses committed by the military regime continue unabated.

In the past six months, ND-Burma has released two reports that focused on human rights violations and the 7 November 2010 elections. On 8 November 2010, ND-Burma released a report on pre-election conditions entitled "Intimidation, Imprisonment and Repression: the Road to Military Victory in the 2010 Elections."<sup>2</sup> The report documented the

military regime's use of intimidation and coercion and other actions constituting violations of human rights to force votes for the military regime-backed party, the USDP. The human rights situation leading up to and following the elections was reported in ND-Burma's report, "Human Rights Violations in Burma's 2010 Elections,"<sup>3</sup> released on 9 April 2011. The report covered a wide range of election-related HRVs throughout the country, and illustrated that the elections in Burma fell far short of any international standards for free and fair elections.

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<sup>2</sup> Direct link to "Intimidation, Imprisonment and Repression: the Road to Military Victory in the 2010 Elections": <http://www.nd-burma.org/reports/item/55-briefing-paper-intimidation-imprisonment-and-repression-the-road-to-military-victory-in-the-2010-elections.html>.

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<sup>3</sup> Direct link to "Human Rights Violations in Burma's 2010 Elections": <http://www.nd-burma.org/reports/item/60-human-rights-violations-in-burmas-2010-elections.html>.



## METHODOLOGY

ND-Burma has provided training, with assistance from several international human rights NGOs, to fieldworkers of member organizations who collect the information presented in reports. Fieldworkers gather interviews from Burma's 14 states and Regions (see Appendix 1). Due to increased security risks as the government has mounted pressure on local communities, fieldworkers rely largely on networks of individual contacts for information. Many of these contacts within the fieldworkers' networks were responsible for gaining additional contacts and conducting interviews with individuals such as village leaders and government staff members.

ND-Burma members' fieldworkers put themselves at great risk to document human rights violations. Human

rights workers in Burma are routinely targeted by the regime military and face surveillance, intimidation, arrest and imprisonment. Due to security concerns human rights monitoring cannot take place openly, thus a comprehensive survey of all HRVs that take place in Burma is not possible. Individual cases are documented depending on opportunity and external circumstances. The cases presented here constitute first-hand accounts of abuse perpetrated by the military regime during this period. The information supplied by eyewitness observers confirms concerns of widespread government manipulation and violence practiced by Burmese government staff, soldiers, and key government-backed organizations such as the Union Solidarity and Development Party (USDP).

# HUMAN RIGHTS VIOLATIONS DOCUMENTED BY ND-BURMA

JANUARY – MARCH 2011

This report documents the human rights situation in Burma, January to March 2011. An assessment of this period is important, as it follows the elections and includes the convening of the new Parliament. Following the elections the ruling military regime of Burma underwent many surface-level changes. On 31 January 2011 a Parliament convened for the first time in over 20 years. The ruling military junta (SPDC) was officially dissolved and power was handed over to the new 'civilian government' on 30 March 2011. Despite the structural changes that have taken place, power in Burma remains in the hands of its military elite and the cronies they protect. The human rights abuses committed by the military regime have not decreased in response to the changing political situation on the ground. ND-Burma documented 167 cases of human rights violations committed by the regime and its supporters during the period January to March 2011.

The following violations were recorded:

NO	CATEGORY OF HUMAN RIGHTS VIOLATION	FREQUENCY
1	Arbitrary/illegal arrest/detention	11 cases
2	Confiscation/destruction of property	31 cases
3	Disappearances	1 case
4	Forced labor	33 cases
5	Forced relocation/Forced displacement	3 cases
6	Human trafficking	7 cases
7	Killings	4 cases
8	Obstruction of freedom of expression, assembly and association	12 cases
9	Obstruction of freedom of movement	10 cases
10	Rape	7 cases
11	Use of child soldiers	21 cases
12	Torture, inhumane or degrading treatment	19 cases
13	Arbitrary and corrupt taxation/Extortion	8 cases
	<b>TOTAL</b>	<b>167 CASES</b>

## SUBSCRIBE

ND-Burma regularly releases reports on the human rights situation in Burma. Please contact the following address to receive electronic or hard copies of our reports.

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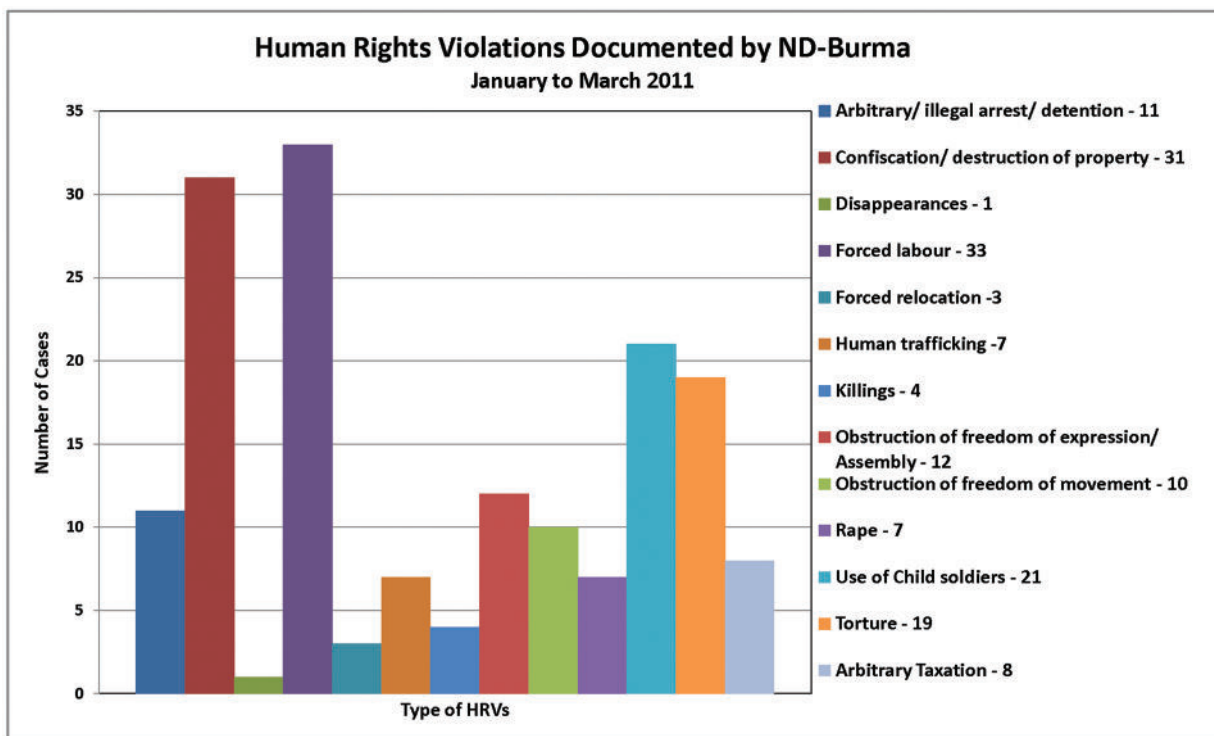
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## DISTRIBUTION OF HUMAN RIGHTS VIOLATIONS BY CATEGORY



The HRVs documented in this period took place in 14 states and regions throughout Burma, Rangoon Region, Mandalay Region, Magwe Region, Irrawaddy Region, Pegu Region, Tenasserim Region, Sagaing Region, Karen State, Karenni State, Kachin State, Arakan State, Mon State, Shan State and Chin State) (see Appendix 1). In this period, the greatest number of violations documented by ND-Burma occurred in Karen State (40 cases), followed by Rangoon Region (28) and Arakan State (27). The high number of HRVs in Karen State during this period is related to violence between the Burmese armed forces and Karen opposition armies (the Karen National Liberation Army and battalions of the Democratic Karen Buddhist Army that have refused to transform into a Burma Army-controlled Border Guard Force). While fighting between the KNLA and the Burma Army has been ongoing for decades, new fighting between the Burma Army and DKBA battalions broke out along the Thai-Burma border following the elections. The conflict caused thousands of Burmese refugees to flee across the border to Thailand, and has led to an increase in the forced labor of prisoners and civilians by army troops, especially to work as porters in the army.

In the reporting period forced labor was the most common violation documented by ND-Burma at 20% of all cases. In one instance of forced labor, reported to ND-Burma, the SPDC's Infantry Battalion-102 ordered 7 villages from Htee Poe K'loe village tract and 7 villages from Daw Ta Ma village tract to cut and supply 200 bamboo timber posts to rebuild the military camp in Deemawso (Demoso) Township, Karenni State.<sup>4</sup> The second largest percentage of cases documented by ND-Burma (19%) involved the confiscation or destruction of property. The Human Rights Foundation of Monland (HURFOM), reports that between January and March, ethnic Mon farmers in the Ni Don area, Kyaikmayaw Township, Mon State, already contending with the threat of land seizure and paltry compensation by Zaykabar Company Ltd., suffered further losses as the nominal compensation previously received was seized by the local headman and other local authorities. ND-Burma member organizations also report the use of child soldiers (13% of documented cases). Burma Issues interviewed a former child soldier, now aged 17, who escaped from the army following the military offensives in Wah Ley Area, Dooplaya District, Karen State on 11 January 2011. He was only 15 years old when he was recruited by Burma army.

<sup>4</sup> Source: Burma Issues

# CASE STUDY

## PRISONER PORTERS

According to the following case we learnt disgracing and ongoing human rights violations committed by state level authorities, it was not only forced labor but also inhumane or degrading treatment against a civilian population and the perpetrators have knowledge of the context. Also ignorance of the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29)<sup>5</sup>, State Level Order (SPDC order) Letter No.04/Na Ya Ka (U) Ma Nya on 1 November 2000 “PROHIBITING REQUISITION OF FORCED LABOUR” from civilian population (see Appendix 2). According to this order’s last paragraph defined “Responsible person including members of the local Authorities, members of the Armed Forces, members of the Police Force and other public service personnel who fail to abide by the said Order No. 1/99 and the Supplementing Order shall be prosecuted under Section 374 of the Penal Code or any other existing laws”. But no one followed their own regulations.

Throughout the reporting period, accounts of prisoners being transferred to the frontline to serve as porters in the army emerged. A number of porters have escaped from the frontline and reported abuse, ill-treatment and torture at the hands of the military. One prisoner porter, who escaped with 17 others on 15 January 2011 from the Min Let Pan area, was interviewed by ND-Burma member organization Burma Issues.

The prisoner, Mg Thaung Htay, was serving a ten years sentence in Taungoo Prison for protected one of the broker’s sexual violation to his disable younger sister in their native and was transferred to the Zin Kyairt Labor Camp, Paung Township, Mon State. On 2 January 2011 he was taken with 75 other prisoners to carry supplies to the frontline for SPDC soldiers. The group was transferred from Zin Kyairt Labor Camp to Hpa-an Prison. During the transfer they had steel shackles around their ankles and were locked together in pairs. On 4 January 2011 Mg Thaung Htay and the others were moved to Myawaddy then to a village at Ta Mart Byuha (Infantry Division’s Operation Base). They began porter work the same day with 59 other porters.



<sup>5</sup>The Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?Co29>



The porters carried heavy weapons, mortar bullets, rice and other rations and water with 20 liter iron buckets from Ta Mart Byuha to a mountain which received heavy fire four or five times a day. The prisoners each carried a load of about 32 kilograms, 82 mm rocket launcher bullets and while on flat land they each carried over 45 kilograms. They usually worked from 5am until 7 or 8 pm. Mg Thaung Htay- said, “The service to carry in frontline, porter, is so worse than Zin Kyairt Labor Camp because we are working in land planted with landmines and sometimes the SPDC commander and privates beat us.”

Mg Thaung Htay reported that on three occasions he was beaten by SPDC soldiers. On one occasion he was exhausted from the arduous work and told the Sergeant, “Saya (master), I would like to take a rest for a few minutes.” The SPDC Sergeant beat Mg Thaung Htay on the back and chest with a bamboo stick and reportedly said, “Do not talk back when you are working.” Mg Thaung Htay- was also beaten by SPDC soldiers on two occasions when he was thirsty and asked for a few minutes’ rest. The second beating was delivered by a corporal and the last time a private beat him.

At the front line, the SPDC soldiers carried guns and walked between the prisoners, five prisoners to a soldier. The soldiers said, “If you would like to escape you can. We won’t follow you but our bullets will follow.” Mg Thaung Htay and the other prisoners worked for the SPDC from 4 January to 15 January 2011, when they decided to escape. According to Mg Thaung Htay, the prisoners heard from the soldiers that the next day they would advance the battlefield, the fighting might be stronger and the land was planted with landmines. The prisoners, afraid of the fighting between the DKBA and the SPDC, decided to escape. Around midnight on 15 January, 27 prisoners went through the trees down to the Thaung Yin River. When they reached the middle of the river the SPDC soldiers opened fire on them, releasing about 20 gunshots and a mortar shot. Mg Thaung Htay was injured in his right arm. When Mg Thaung Htay arrived in Thailand there were only 17 prisoner porters. Mg Thaung Htay does not know exactly what happened to the other prisoners, whether they died in the river or were separated from the group while escaping.



# CRIMES AGAINST HUMANITY AND WAR CRIMES

The rights violations documented by ND-Burma add to the growing body of evidence that rights violations committed by the military regime (until 30 March 2011 officially the SPDC) and its proxies are systematic and widespread and may constitute crimes against humanity. ND-Burma emphasizes the necessity of establishing a United Nations Commission of Inquiry (CoI) in Burma to end the ongoing human rights abuses in the country and to prevent future violations of human rights and international humanitarian law. Some of the violations documented in this report are acts that may constitute breaches of international humanitarian law. Article 7 of the Rome Statute defines crimes against humanity as certain acts (including several of the categories of HRVs documented by ND-Burma) when they are committed as part of a widespread or systematic attack directed at a civilian

population, with knowledge of the attack. Article 8 of the Rome Statute defines war crimes as serious violations of the laws and customs of war, and Articles 8(2) (c) and (e) set a number of acts applicable as serious violations of the laws and customs of war in the case of armed conflicts “not of an international character” (internal armed conflicts). The HRVs documented by ND-Burma also include acts that may constitute war crimes, if committed in the context of an internal armed conflict as defined alternately in Articles 8(2)(d) and (f) of the Rome Statute.

ND-Burma believes that widespread and systematic attacks against civilian populations are being carried out in Burma with the knowledge of the military commanders. While this report does not analyze whether each HRV was part of a widespread or systematic attack, or whether individual

acts constitute war crimes, the information contributes to a growing body of evidence that such crimes are taking place. Future publications by ND-Burma will provide more detailed legal analysis demonstrating that crimes against humanity and war crimes are, indeed, being perpetrated by the military regime in Burma. The Burma Lawyers’ Council and Aegis Trust, a leading British NGO which campaigns to prevent crimes against humanity, war crimes and genocide worldwide (<http://www.aegistrust.org>), have provided analysis which designates how each of the categories of human rights violations in this report may constitute crimes against humanity and/or war crimes. See Annex for this analysis. For more information, please see the ND-Burma Human Rights Documentation Manual series, available at: [www.nd-burma.org/documentation/resources.html](http://www.nd-burma.org/documentation/resources.html)





## ANNEX

The definitions of Crimes against Humanity and of War Crimes are taken from the Rome Statute of the International Criminal Court. Because Burma has not signed the Rome Statute, it is not directly subject to the ICC's jurisdiction. However, it is subject to the prohibition against crimes against humanity and war crimes under customary international law.

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

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

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

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

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







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

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

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

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

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

## APPENDIX 1: HUMAN RIGHTS VIOLATIONS BY CATEGORIES V. STATE & REGION

Sr.	State and Region	Arbitrary/illegal arrest/ detention	Confiscation/destruction	Disappearances	Forced labor	Forced relocation	Human trafficking	Killings	Obstruction of freedom of expression/ assembly	Obstruction of freedom of movement	Rape	Use of child soldiers	Torture	Taxation	Total
1	Chin State				1	1			1			1		1	5
2	Irrawaddy Region											2		1	3
3	Kachin State											1	1		2
4	Karen State	1	3		21	2		1		6			5	1	40
5	Kayah (Karenni) State	1			1								1		3
6	Magwey Region		2						1		1	1			5
7	Mandalay Region	1	1									2			4
8	Mon State		4		3		1		7			1		1	17
9	Pegu Region	1			1		1					6		1	10
10	Rakhine (Arakan) State	1	19		1			1			1		4		27
11	Rangoon (Yangon) Region	6			1		1		3	4		5	5	3	28
12	Sagaing Region											1			1
13	Shan State		2		4		4	2			5	1	3		21
14	Tenasserim Region			1											1
	Total	11	31	1	33	3	7	4	12	10	7	21	19	8	167



## APPENDIX 2: PROHIBITING REQUISITION OF FORCED LABOUR

### **The Union of Myanmar** The State Peace and Development Council

Letter No. 04/Na Ya Ka (U) Ma Nya  
Dated: 1<sup>st</sup> November 2000

To,

Chairman  
All State and Regional Peace and Development Councils

Subject: PROHIBITING REQUISITION OF FORCED LABOUR

1. The Ministry of Home Affairs which administers the Town Act, 1907 and the Village Ace, 1907 issued under the directive of the State Peace and Development Council, Order No. 1/99 on 14<sup>th</sup> May, 1999. The Order directs responsible persons not to exercise powers under certain provision of the said Acts relating to requisition of forced labor and stipulates action that are to be taken against any violation.
2. After the issuance of the Order No.1/99, to be in conformity with the changing situations, the Ministry of Home Affairs under the direction of the State Peace and Development Council issued the Order Supplementing Order No. 1/99 on 27<sup>th</sup> October, 2000. The Supplementing Order renders the requisition of forced labor illegal and stipulates that it is an offence under the existing laws of the Union of Myanmar Responsible persons, including the local Authorities, members of the Armed Forces, members of the Police Force and other public service personnel are also prohibited not to requisition forced labor and are instructed to supervise so that there shall be no forced labor.
3. Therefore, it is hereby directed that the State and Regional Peace and Development Council shall issue necessary instructions to the relevant District and Township Peace and Development Council to strictly abide by the prohibitions contained in Order No. 1/99 and the Supplementing Order of the Ministry of Home Affairs and also to effectively supervise to ensure that shall be no forced labor within their respective jurisdictions.
4. Responsible person including members of the local Authorities, members of the Armed Forces, members of the Police Force and other public service personnel who fail to abide by the said Order No. 1/99 and the Supplementing Order shall be prosecuted under Section 374 of the Penal Code or any other existing laws.

By order,

Sd.(Khin Nyunt)  
Lieutenant – General  
Secretary (1)  
The State Peace and Development Council

Copies to –

- (1) Office of the Chairman of the State Peace and Development Council
- (2) Office of the State Peace and Development Council
- (3) Office of the Government
- (4) Supreme Court
- (5) Office of the Attorney General
- (6) Office of the Auditor General
- (7) Public Services Selection and Training Board: and
- (8) All Ministries

True Translation  
U Kyaw San  
Director  
Legal Drafting Dept  
Attorney General's Office

## ABOUT US

Network for Human Rights Documentation - Burma (ND-Burma) was formed in 2004 in order to provide a way for Burma human rights organizations to collaborate on the human rights documentation process. The 12 ND-Burma member organizations collectively use the truth of what communities in Burma endure to challenge the regime's impunity for HRVs through advocacy and to prepare for a peaceful democratic transition. Member organizations gather direct information on HRVs committed against a variety of vulnerable groups in Burma including

political prisoners, ethnic minorities and women.

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**NETWORK FOR HUMAN RIGHTS DOCUMENTATION - BURMA**