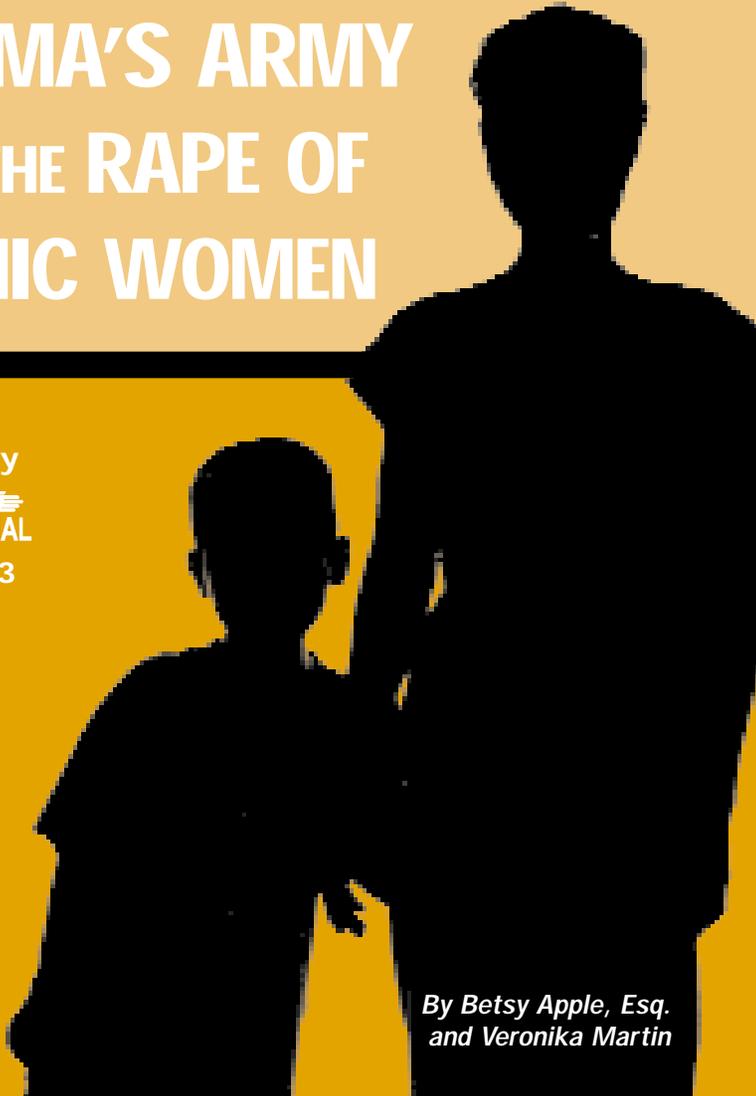


NO SAFE PLACE:

BURMA'S ARMY AND THE RAPE OF ETHNIC WOMEN

A report by
REFUGEES 
INTERNATIONAL
April 2003

*By Betsy Apple, Esq.
and Veronika Martin*





Refugees International generates lifesaving humanitarian assistance and protection for displaced people around the world, and works to end the conditions that create displacement. *RI* takes an uncompromising rights-based approach to advocacy, acting first and foremost as a witness to the suffering of the displaced. *RI* advocates spend weeks in the field interviewing and meeting with war-affected populations, non-governmental organizations (NGOs) and aid agencies. *RI* advocates assess humanitarian problems, identify the most urgent needs, and develop immediate solutions to those needs. *RI* can best describe the impact of their work with a single word—*leverage*. *RI*'s advocacy generates increases in resources and policy changes by governments and UN agencies that improve conditions for refugees and displaced people. *RI* does not accept any government or UN funding. Rather, *RI* leverages donations from individuals, foundations and corporations into hundreds of thousands of dollars of lifesaving assistance and protection.

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I. Executive Summary

According to Burma's ruling military regime, the State Peace and Development Council (SPDC), Burma's army "safeguards national solidarity and peace." According to women from Burma's ethnic minority groups, particularly those living in the ethnic States along Burma's eastern borders, the army does the opposite. Rather than look to the army for protection, ethnic women flee in fear at the sight of a soldier. A recent investigation by *Refugees International* documents the widespread use of rape by Burma's soldiers to brutalize women from five different ethnic nationalities. Although rape by soldiers in Burma has been a well-known, well-documented problem for at least a decade, a recent report by the Shan Women's Action Network (SWAN) and Shan Human Rights Foundation (SHRF), *License to Rape*, inspired an unprecedented level of international interest and outrage. Finally, the tragedy of rape against Shan women in Burma is receiving the attention it deserves. It is, however, but one aspect of the problem. Burma's military (known as the *Tatmadaw*) frequently rapes women from other ethnic minority groups as well.

RI conducted interviews with individuals and focus groups of people living in refugee camps and in villages in Thailand, as well as people still living inside Burma. *RI* interviewed women, men, indigenous nongovernmental organizations (NGOs) and local leaders about sexual violence committed by Burma's armed forces against women from the Karen, Karenni, Mon and Tavoyan ethnicities (in addition to the

Shan). In the course of 26 individual interviews with women and men and two focus groups composed of 45 women, *RI* learned about numerous instances of rape against ethnic women: specifically, 43 cases of rape or attempted rape against women from five different ethnic groups, with 23 of those confirmed through eyewitness testimony or physical evidence. In seven of the confirmed cases, the abuser

"During the time I was in _____ military station, I was raped by [three officers' names].... They ask me many questions, beat _____ and torture me. Then they raped me 2-3 times every night...."

- from a letter written by victim (interview 1)

raped the woman or women on military property, and in eight confirmed cases, he was an officer in Burma's army.

The specific rapes documented in this report are but a fraction of those perpetrated by Burma's army. Every one of the 45 ethnic women who participated in the *RI* focus groups said she had heard about rapes occurring in her area of origin, and a vast majority said they knew someone who had been raped.

It is clear that rape and

increased militarization go hand-in-hand; when more soldiers are sent to an area, typically more rape occurs. Rape sometimes occurs on military property, which is significant because even in those cases where the officer wasn't the one to commit the rape, he knew or should have known about it. Rape typically occurs in conjunction with other human rights abuses, such as forced labor, forced relocation, forced portering, torture, and extrajudicial executions. Furthermore, there is a direct connection between rape and migration. Many women flee Burma either because they have been raped, or because they fear being raped. In addition, rape

sometimes occurs while women are in flight. Widespread rape is committed with impunity, both by officers and lower ranking soldiers. Officers committed the majority of rapes documented here in which the rank of the perpetrator was known. The culture of impunity contributes to the military atmosphere in which rape is permissible. It also leads to the conclusion that the system for protecting civilians is faulty, which in turn suggests the rape is systematic. Due to the well-known impunity for rape, survivors and families are extremely reluctant to complain about rape. In the rare cases where victims or their families actually do complain to military officials, army personnel often respond with violence.



On November 19, 2002, the United Nations General Assembly adopted by consensus a resolution on the human rights situation in Burma, "express[ing] grave concern at... rapes and other forms of sexual violence carried out by members of the armed forces" and the "disproportionate suffering of members of ethnic minorities, women and children from such violations." It is clear these abuses are directly linked to the internal war the SPDC is waging upon its own citizens. Until the violence ceases, and until the SPDC establishes and enforces adequate laws prohibiting rape and ends the culture of impunity for these horrific crimes, freedom from rape for ethnic women from Burma is impossible.



II. Recommendations

Refugees International recommends that:
The United Nations

- The UN Commission on Human Rights condemn rape and other forms of sexual violence against ethnic women and girls by Burma's military in its annual resolution on the situation of human rights in Burma.
- The UN High Commissioner for Human Rights ensure that any investigation of rape and other forms of sexual violence inside Burma conducted by UN officials is done by experts on sexual violence, with guarantees of full access, complete and ongoing security for all witnesses and victims and a follow up mechanism to verify compliance.
- UNHCR assist the Royal Thai Government in providing a safe environment for Burmese fleeing human rights abuses with a special emphasis on women and children.
- The UNHCR insist that women and girls fleeing rape and other forms of sexual violence in Burma qualify for protection and assistance in Thailand.
- The Committee on the Elimination of Discrimination Against Women request a special periodic report from the State Peace and Development Council focusing on the constitutional, legal, administrative, military, and practical measures taken to eliminate rape and other forms of violence against women. The Committee should convene a special session to engage in dialogue with the SPDC about this special periodic report.

The Royal Thai Government (RTG)

- The RTG recognize women and girls fleeing rape in Burma who seek refuge in Thailand as legitimate refugees who have a right to protection and assistance, and not as “illegal migrants.”
- The RTG ensure that Burmese survivors of rape and other forms of sexual violence in Thailand, whether in camps or working as “migrants,” receive critical physical and mental health services, especially focused on gender-based abuses.
- The RTG cease the practice of repatriating or deporting asylum seekers without prior screening to ascertain whether they have valid claims for asylum.
- The RTG adhere to the definition of “refugee” according to the 1951 Convention on the Status relating to Refugees and the 1967 protocol—a definition that has attained the level of customary international law—and should not create a new standard for determining when those seeking refuge are entitled to enter its borders.

The State Peace and Development Council

- The SPDC stop all military buildup and begin demilitarizing the ethnic areas promptly.
- The SPDC fulfill its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which it ratified in 1998. This includes ceasing all practices and policies which discriminate against women, including violence against women.
- The SPDC ratify the Optional Protocol to CEDAW.
- The SPDC fulfill its obligations under the Convention on the Rights of the Child, which it ratified in 1991, which prohibits gender-based violence against children.

Governments

- Governments demand that the SPDC demilitarize ethnic areas.
- Governments maintain economic sanctions and withhold overseas development and loan or debt assistance until significant improvements in the human rights situation, including a decrease in violence against women, is independently verified.
- Governments continue to pressure the SPDC to engage in meaningful, substantive discussions with the National League for Democracy and representatives of ethnic nationalities.

NGOs and International Organizations

- Organizations lend support to the international campaign to stop rape and other forms of sexual violence by the Burmese military through public statements and advocacy.
- International organizations conducting research on rape, other forms of sexual violence and other human rights abuses coordinate with grassroots, indigenous organizations to ensure the comprehensive and safe collection of information.
- Non Governmental Organizations (NGOs) seek to build the capacity of indigenous groups to document abuses perpetrated against their own communities.
- Organizations increase efforts to reach and assist displaced populations with critical needs.



III. Introduction

“I have waited many years to tell you this story,” one Karenni woman lamented as she told of witnessing her thirteen-year-old sister’s rape and then described how the Burmese soldiers beat and attempted to rape her. She is just one of countless women from Burma’s ethnic minority groups, sometimes known as ethnic nationalities, with a chilling tale of abuse at the hands of her country’s army.

In June 2002, the Shan Human Rights Foundation and Shan Women’s Action Network (SWAN) released a report, *License to Rape*, documenting 625 cases of rape and sexual violence. The report began a movement to focus on Burma’s use of rape as a weapon of war, while also highlighting the relentless, ongoing campaign of human rights abuses against Burma’s ethnic minorities. Based on interviews conducted by indigenous women’s and human rights groups, and compiled and written by indigenous women, *License to Rape* provided credible proof of the brutality of the Burmese army, in the voices of those very women affected most by the brutalities.

Following the release of this important report, the international community expressed unprecedented but long overdue outrage. The US State Department declared its indignation at the phenomenon documented in the report and called for an international investigation, while sending its own investigator to the Thai/Burmese border; members of the US Congress and

officials from other governments publicly condemned the Burmese military's actions. Pressure for the United Nations to investigate the prevalence and systematic nature of the rapes grew until the UN Special Rapporteur on Human Rights in Burma

"I heard my sister's cries,
'they are raping me.'"

- interview #7

raised the issue with Burma's military regime, the State Peace and Development Council (SPDC). Various governmental officials, NGOs, and UN personnel began talking about the possibility and

logistics of an independent investigation. Meanwhile, in Thailand, the Royal Thai Government (RTG), concerned that such an outcry would jeopardize its policy of engagement with the SPDC, ordered those NGOs that participated in compiling the report to close their offices indefinitely.

Although *License to Rape* has received a notable amount of attention, the international community, including officials from various governments, suggested to *Refugees International* that additional evidence could assist in generating further action. It is important to ask why. Some suggested that a report about the experience of indigenous women, compiled by indigenous women, could not be objective. Others proposed that the report, written by a small, unknown group, was not credible enough.

The authors of this report reject those propositions. Few are as well-qualified to document and describe rape as those women from the brutalized communities. International advocacy without grassroots knowledge, participation, and decision-making is of extremely limited use. Consequently, the purpose of this report is not to "bolster" the claims contained in *License to Rape*. Rather, the purpose is both to support and build on the movement and activity generated by SWAN, and to expand the scope of

understanding regarding the brutal phenomenon of rape in Burma to include a broader profile of ethnic nationalities. *License to Rape* documented the widespread use of rape against Shan ethnic women. Rape is not confined to Shan State or to Shan women. The Burmese military uses rape against many ethnic nationalities for the express purpose of brutalizing "insurgents," quashing ethnic dissent, and demoralizing and destroying ethnic communities.

Refugees International decided that our approach would be to broaden the scope of the Shan report by investigating the prevalence of the Burmese military's use of rape against other ethnic groups. *RI*'s field mission focused the research on the Karen, Karenni, Mon, and Tavoyan ethnic groups. In applying our expertise in international advocacy on behalf of war-affected populations, *RI* sought to examine the extent of the use of rape against a variety of Burma's ethnic nationalities and determine if the abuses were widespread and/or systematic.

Karen, Karenni, Mon and Tavoyan women and men, as well as several Shan individuals, were courageous in sharing their personal stories and observations. From the 26 individuals interviewed, 43 rapes or attempted rapes were described, 23 of them confirmed by victim or witness testimony or physical evidence. Stories of rapes and other human rights abuses and the resulting mental and physical ailments dominated the interviews. Individuals still in pain from torture and beatings talked about the violations suffered by them and their families and friends. For many, the decision to leave Burma was clearly tied to the rape and other abuses they and their family members had experienced. One survivor spoke for many when she said, "To this day, I cannot sleep at night thinking about what happened." The time is ripe for the international community to hear their voices and take action.



IV. Methodology

This report is based on research conducted by *RI* during a field mission to the Thai/Burmese border for the month of September 2002. During this period, two female *RI* representatives traveled to four separate refugee camps, three border towns, and two cities to interview witnesses and victims. *RI* conducted 26 individual interviews; of these, 25 were with witnesses or victims, and one was with a defector soldier from Burma's army. In addition, *RI* met with representatives of more than 20 local or indigenous organizations, as well as officials from the Royal Thai Government, the United Nations High Commissioner for Refugees (UNHCR) in Bangkok, the UN Commission on Human Rights, and the US Embassy. Finally, *RI* met with more than ten officials from various armed opposition groups or their political branches. In total, *RI* spoke with more than 150 people to prepare this report.

RI focused on gathering information regarding rape perpetrated against non-Shan ethnic minority women, specifically from the Karen, Karenni, Mon, and Tavoyan communities. *RI* also interviewed several Shan people for context, and included the stories in the total statistics developed. The single interview with the defector from the *Tatmadaw* (army of Burma) confirmed the problem of rape against ethnic women, but was insufficient to provide information about the scope of the problem.

The interviews were conducted according to standard witness interviewing techniques. No subjects were paid for their interviews, and all were recruited voluntarily to participate. Interviews ranged from 45 minutes to 2 hours in length, with most of them lasting approximately one hour. Subjects were asked a variety of questions, ranging from general to specific, about their knowledge and exposure to Burma's army, experience with rape as a witness or victim, observations about gender-based discrimination among soldiers and officers, and other related subjects. All interviews were conducted in private, with a guarantee of anonymity for the subjects. Each subject was informed that the information s/he provided may be used in this report. Translators were always women who were usually recruited and hired from the local populations. The translators were trusted by the interviewees as they were members of the local community. In many cases, they were either community leaders (e.g. teachers) or respected members of the local women's organization.

RI assessed the credibility of each witness and each story before deciding to include it in the final statistics. In several informal meetings (other than those included in the official number of 26 interviews), *RI* heard stories about rapes, either single or multiple; however, due to vague information or minimal details, these stories were deemed insufficient for inclusion.

In analyzing whether to declare a rape unconfirmed or confirmed, *RI* considered both the source and the quality of the information. With respect to source, *RI* considered how the witness knew what they alleged: whether the witness was the victim; whether the witness had actually seen or heard the rape while in progress; or whether the witness had seen or heard reliable physical evidence of the rape shortly after its commission, such as the body of the victim or direct testimony from the victim stating that she had been raped, as well as physical evidence of

that rape. In analyzing the quality of the information, *RI* considered whether the story was comprehensive and understandable; whether there were specific details that indicated credibility, such as dates, names, locations, in depth descriptions of events; and whether the story was corroborated by other information. For purposes of the statistics assembled for this report, *RI* determined that any reasonably credible story of a rape was an "unconfirmed" rape, and that any story confirmed by victim or eyewitness testimony, or the testimony of a witness who had either seen conclusive physical evidence or heard clear oral evidence (e.g. the story from the victim herself) in combination with physical evidence would constitute a "confirmed" rape.

In addition to the individual interviews, in an effort to gain a broad context for the stories recounted in the interviews, *RI* representatives held two focus groups with women's organizations inside two refugee camps. These focus groups consisted of a total of approximately 45 women from two different ethnic groups. These women were recruited through the camp-based women's groups. When announcing the meeting in one case, *RI* simply stated either that the purpose of the meeting was to discuss rape by military personnel; in the second case, *RI* simply asked to speak with women, and asked members of the women's local group to organize the

"The next day [after I was raped while being a forced laborer for the army] I felt so angry and I asked to leave....After that, I felt so shy. Because of the rape, this boy [my son] happened. This is the lesson of my life. I decided never to marry. I don't want that experience again—to get another child."

- interview #4

meeting. At the outset of each focus group, the women were asked three questions: 1) Have you ever heard about rape happening in your area of origin? 2) Have you ever known someone who has been raped? 3) Have you ever actually witnessed a rape? The responses in these two focus groups were substantially similar: every woman had heard stories about rape (#1); about 75% of the women knew someone who had been raped (#2); and approximately 15-20% of the participants had witnessed a rape (#3). After further discussing the topic of rape, *RI* asked those women who had witnessed rape to participate in in-depth, one-on-



one interviews, if they felt comfortable. Some of these interviews constitute the total 25 individual interviews conducted with victims and witnesses.

RI was seeking to gain as much specific information as possible about each incident of rape. Consequently, the interviews included detailed questions about the identities of the witnesses, victims, and perpetrators, as well as the location and context for each incident. It is important to note that, in many cases, the interviewees were familiar, if not with the individual perpetrator, then with the battalion or division with which the perpetrator was associated. In some cases, the witness or victim knew the perpetrator by name and rank.

While this level of familiarity between perpetrator and victim may seem strange given the size of the army (400,000+) and the number of people residing in the eastern ethnic areas (several million), it is understandable given the context of military occupation inside Burma. Since 1988, and

in many cases for years and perhaps decades prior, the army has been engaged in a “four-cuts” campaign against Burma’s ethnic nationalities, particularly those engaged in armed struggle with the regime. This four-cuts campaign, in which the army seeks to cut off armed opposition groups’ access to food, finances, communications, and recruits, has caused the army to deploy hundreds of battalions (primarily LIBs, or light infantry battalions) throughout Karen, Karenni, and Mon States, and Tenasserim division. Additionally, in an effort to control civilian populations, curtail opposition activity, and access a ready-made pool of forced labor, the army has forcibly relocated more than 350,000 people from more than 2,500 villages in Karen, Karenni, Mon, Shan, and Tenasserim areas since 1996 alone.¹ Many of those displaced from their homes have been required to enter forced relocation areas, which are patrolled and controlled by military battalions.

One of the consequences of this massive military build-up in the eastern border areas is to place ethnic villagers in close proximity to army personnel. In a majority of the rape cases cited through *RI* interviews, the interview subjects were living either in a village in which the army had located its military encampment, or close enough to have regular exposure to soldiers in a particular LIB. Thus the familiarity with the perpetrators: their names, ranks, and commanding officers.

Some witnesses and victims continue to live or travel in close proximity to SPDC military forces, or have family who continue to live in occupied areas. Fearful for their safety, they agreed to speak on condition that *RI* would not make any identifying information available. To the extent *RI* identifies interview subjects or survivors in this report, their names or initials have been changed. Furthermore, *RI* keeps confidential the dates and locations of the interviews for this same purpose.



VI. Mission Findings

Overview of Findings

RI sought to focus on rape perpetrated by soldiers or officers against women from ethnic groups other than the Shan. Toward that end, *RI* conducted 26 interviews with 27 people from the Tavoyan, Karen, Karenni, Mon, and Shan ethnic groups.² As a general rule, the subjects interviewed knew about rapes or attempted rapes³ perpetrated against women from their own ethnic group.

Two Tavoyan witnesses from Tenasserim division recounted stories about five rapes, all five of them confirmed.

Eleven Karen witnesses from a variety of locations, but primarily from Karen State, told of nine rapes or attempted rapes, six of them confirmed.

Five Karenni witnesses primarily from Karenni or Karen State talked about eight rapes, six of them confirmed.

One defector soldier (Burman), told of seven Karenni women who had been raped, but *RI* was unable to confirm any of those.

Five Mon witnesses told of six rapes against Mon women, five of them confirmed.

Three Shan witnesses discussed eight rapes, one of them confirmed.

Of the 43 rapes and attempted rapes reported here, 39 of the cases were completed rapes, and four were attempts;

all of the attempted rapes were recounted by victims. The vast majority of the cases occurred within the last four years, with the most recent in 2002.⁴ Nine of the 43 reported rapes ended in death, and at least three of them resulted in a victim who survived, but with serious mental illness. Twelve of the 43 were cases of multiple⁵ or gang rape. At least 27 cases involved other human rights abuses, such as forced labor, disappearance, torture, or extrajudicial execution. Every case was described as occurring within an environment in which military oppression and human rights abuses were routine.

In nineteen of the cases described here, the perpetrators were known to the victims or witnesses by rank; of these, nine are confirmed cases. Victims or witnesses in 31 cases knew the battalion with which the perpetrator was connected, and 19 of these are confirmed cases. Fifteen of the rapes were perpetrated by officers, and eight of these are confirmed. In seven cases, the rapes were committed on military property. In only two cases were the perpetrators punished or given the appearance of being punished. In one case the soldiers were arrested and taken away, but according to the victim, who witnessed their removal, “Nothing happened to these men. They were not afraid; their faces were very brave.”⁶ In the vast majority of cases, the victims or their families were too afraid to complain to army personnel. As one witness stated, “When we told the village headman, he said he could not do anything; he dared not say anything [to the battalion commander].”⁷

Migration and Rape

“Please arrange for us to be able to stay here [in the camp]. We don’t want to run away at night again,” said one witness after she talked about the rape, forced labor, and murder

she and her family were repeatedly subjected to until they fled in 1999.⁸

Every refugee interviewed by *RI* for this report said they fled from their homes because they could no longer endure the human rights abuses—rape, torture, fear of summary execution, forced relocation, forced labor, property and crop confiscation—the army inflicted upon them. Several of the women described an atmosphere of pervasive fear, in which the sight of a Burmese army uniform would provoke flight. At least one of the rapes recounted occurred while the victim fled, and six others were perpetrated against internally displaced people (IDPs).

All of the rapes described in this report must be viewed within the broad context of forced migration. In some cases, migration was the cause of the rapes, in that the victims became vulnerable to rape because they had no safe place to go. These include the cases where the rape occurred while the victim was fleeing the soldiers, while the victims were displaced from their homes, or while they were forced to range afar for food and other basic necessities because they had been relocated. In other instances, the rape is a cause of the migration; victims and witnesses decide to flee out of fear that they will experience, or re-experience rape if they stay.

Several of the rapes detailed here occurred while the

“While I was in [military] jail, my baby was in my arms and cried when the soldier beat me; when the baby cried, the soldier threw the baby to the ground. He tried to rape me, but my baby and I both screamed so loudly I think he got tired and went away....”

- interview #6

victims were in their houses. Because the Burmese army is essentially an occupying force in parts of Karen, Karenni, Mon, and Shan States and the Tenasserim division, many villagers live in daily contact with the soldiers. Seven of the

“I saw the soldier rape my sister....After that happened, I carried her home, and she was bleeding from her vagina....”

- interview #16

43 documented rapes occurred while the victims were in their homes. All of those cases resulted either in the death or the flight of the victim and, in several cases, members of the victims’ families. In this way, even stories about abuses occurring in the home become stories about migration.

Rape During Flight

Thay Yu and her family were on their way to Thailand because they could no longer “endure the oppression of the Burmese army.”⁹ While in the jungle, they ran into a battalion of soldiers. Thay Yu hid in a nearby bush with her family when a group of Burmese soldiers caught another family of four traveling with her to seek refuge in Thailand. Thay Yu listened to the screams as the soldiers killed the infant with a swift blow to the back of the neck. The 6-year-old girl ran and hid behind a tree. Before they shot and killed him, the soldiers instructed the husband to stand and watch while they raped the wife and killed her by stabbing her with a bamboo stick through her vagina and abdomen. After the soldiers left, Thay Yu and her family buried the husband, wife, and baby, and collected the six-year-old-daughter, with whom they journeyed to Thailand.¹⁰

There are no accurate statistics as to how many people

from Burma, internally displaced or otherwise, have sought to escape to Thailand unsuccessfully. However, reports of groups of people turned away by the Thai army at the border confirm that this phenomenon does occur.¹¹ Nor do the estimates of IDPs in Burma indicate how many of those are women and girls. Consequently, it is difficult to calculate how many women and girls in flight are subjected to gender-based and other violations by Burma’s military. One fact is clear: there are numerous women and girls inside Burma who undoubtedly experienced rape during flight, but who will never be able to tell their stories.

Rape During Incarceration in Military Camp

It is not unusual for *Tatmadaw* troops to establish “holding cells” or jails in their military encampments, which they use to incarcerate prisoners on a temporary basis before transferring them to more permanent facilities. In every case of rape during incarceration documented in this report, the victims were held in such jails not because they had been convicted of actual crimes, but because of their association or perceived association with ethnic insurgents.



Ma Tin Khaing and her four friends were captured and arrested in the late 1990’s by the army and taken to a military camp where they were imprisoned in a holding area.

The soldiers believed them to be married to members of

armed resistance groups (and in fact, some of their husbands were tortured and killed by the army after being captured), and also thought they belonged to a political women's group that provided aid to the armed insurgents. They were held for a little more than a week in a military camp, during which time the women were repeatedly raped by the soldiers guarding them. According to Ma Tin Khaing, "They asked me many questions, beat and tortured me. Then they raped me two to three times at 9 pm every night [as well as two of my friends]. [My other two friends] were also raped by the soldiers three to four times every night."¹² Two of these five women died while incarcerated.

Naw Paw Wah learned while she was incarcerated in a military jail in 1997 that her husband was killed by the army for communicating with nearby resistance forces. She was held for three months in jail, with her young baby. During that time, she was forced to rely on the food her family was permitted to bring her once each week to survive. While she was incarcerated, the soldiers would frequently beat her. Once she was holding her baby while being beaten; the baby cried, and the soldier threw the baby to the ground. One night, one soldier came to her cell and tried to rape her. She managed to fight him off and scream very loudly; after that, she thinks he did not want to be bothered with her, so he left her alone.¹³

Rape During Forced Labor

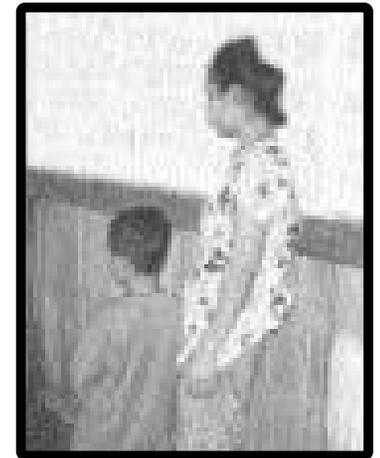
Burma is one of the world's worst offenders with respect to the practice of forced labor, despite the fact that Burma ratified International Labour Organization (ILO) Convention No. 29 on forced labor in 1955. In 1998, the ILO undertook a Commission of Inquiry, which concluded that forced labor in the country was used on a widespread and

systematic basis. In response, the SPDC issued Order 1/99 in March 1999, outlawing forced labor throughout the country. The ILO, upon continued investigation, determined that the regime had failed to eliminate forced labor, and proposed a resolution ratified by the International Labour Conference in June 2000 which sought to compel the regime to implement the Convention. Among the actions required by the resolution, the ILO called upon the Organization's constituents to review their relations with Burma, to ensure that their activities do not contribute to the ongoing practice of forced labor.¹⁴ Such a resolution was unprecedented in the ILO's history.

Despite censure from the ILO and the international community, the SPDC continues to utilize the practice of forced labor in a widespread fashion, particularly in the ethnic States.¹⁵

Forced labor has a number of detrimental impacts. In addition to causing the loss of food security, income, property, and the opportunity to go to school, forced labor and violence often go hand-in-hand. Forced labor in Burma routinely occurs when army personnel require a village to provide a certain number of individuals to work on infrastructure or army projects, or to serve as porters to carry army materials. Frequently, the laborers, including women and children, are required to work for a period of several days or more. At night, the women are vulnerable targets for soldiers.

Thirteen-year-old Htoo Lah Paw's village had been routinely subjected to forced labor for several years. The soldiers were based close to the village and would frequently go there



looking for conscripted labor. The soldiers from a battalion in Karen State commanded Htoo Lah Paw to serve as their guide in the jungle in 1999. After being raped by a major, she tried to escape. While running, the soldiers shot and killed her. They buried her body away from the village.¹⁶

Naw Eh Mu was one of three persons conscripted by the Burmese soldiers to serve as a guide and laborer. They were required to build roadside shelters over a period of two days and two nights. One evening, one of the soldiers ordered her and a friend to start a fire for him. After he did so, he commanded the other laborer to leave, and he subsequently raped Naw Eh Mu. She knew his name and his battalion

“He raped me by force. I did not want him to do it. It was in my house at night. He beat my arms and kicked my legs. It took a long time. After, he threw me to the ground, kicked me, and ran away.”

- Interview #15

number because he had often come to her village. She became pregnant as a result of the rape and bore a son, whom she brought with her to a refugee camp in Thailand. Naw Eh Mu became emotionally disturbed after the rape, and although she is able to care for her son, her mental state has deteriorated over time.¹⁷

Rape While Farming

The lack of food security and gender-based violence against women are directly connected in Burma’s ethnic areas. Civil strife in Burma creates food scarcity in several ways, including through direct attacks on civilians and food, looting and destruction of food and possessions, and displacing people.¹⁸ In turn, food scarcity causes women—often their families’ sole providers—to try to feed their families under unsafe

conditions. Villagers have to farm under conditions of occupation, which sometimes requires them to travel to and from their fields in the presence of soldiers. In many cases, their farmlands have been confiscated or destroyed, so they are forced to travel long distances seeking food, wood, or water; these journeys put them at greater risk of confronting soldiers. Women who are simply trying to feed their families find themselves at risk of attack and abuse.

Mi Kyon was farming with her husband one day when a group of several soldiers entered the field. They ordered her husband to one side of the stream, and took her to the other. While her husband watched, three soldiers raped her. She recognized these men, as they had been stationed in the area for some time. When they were finished, they walked away, and Mi Kyon’s husband half-walked, half-carried her to the village. She sustained internal injuries from which she never fully recovered. In contrast to many victims, Mi Kyon complained to a high-ranking officer who informed her he would punish the soldiers. She learned later that they were sent to another area, but never punished.¹⁹

Nyaing tells the story of her 24-year-old sister, Aye Myint, who was raped while harvesting rubber. After 30-minutes’ walk early in the morning, Aye Myint arrived at the rubber plantation, where she planned to meet her friends. A soldier saw her alone, and after putting his hand over her mouth, he raped her. He hit her on the back and legs with the butt of his rifle, and tore her longyi (long skirt or sarong) off. When her friends found her, she was lying on the ground, wearing only a shirt, surrounded by blood. They immediately ran back to Nyaing’s house to get help. When Nyaing arrived, her sister was still alive, but mortally wounded. Next to her head, they found a note with the name of a soldier, a battalion and township

number, and the words, “If you want to charge me, come to that township to find me.” Aye Myint died immediately after they carried her to her home. Her family was afraid to complain about her rape and death.²⁰

Rape and Impunity

The Burmese Penal Code proscribes rape and requires a sentence of ten years’ imprisonment to

“transportation for life.”²¹ Furthermore, according to the SPDC, “All the *Tatmadaw* Defence Services members know that if a *Tatmadaw* member committed the crime of molesting women, he would be punished not only



by the military laws but also by the civilian laws.”²² *RI* is unaware of a single case of rape punished through military tribunals. Interviews with victims and witnesses indicate that punishment under civil or criminal law is similarly elusive.

Naw Mu Doh saw the soldiers take her sister away from their home and transport her to their camp. She heard her sister’s cries—“they are raping me”—but could do nothing to stop it. A day after she was taken, the soldiers brought her body back for the family to bury. Her wounds indicated clearly that she had been raped, perhaps to death. Despite the fact that the soldiers continued to return to their village after the murder, Naw Mu Doh and her family were too afraid to complain. One

month later, her father was killed by the army.²³

Ma Eh Mie was gathering wood with her sister in the forest when they were confronted by three soldiers pointing guns. Ma Eh Mie and her younger sister were unable to escape. One soldier threw her to the ground and attempted to rape her, but she successfully fought him off (sustaining broken teeth and bloody lips) until a group of elderly women came along. Her younger sister, not as strong as she, was raped by another soldier, who grabbed her breasts and squeezed them until they bruised. The elderly women, armed with a knife, upon arrival threatened the soldiers and told them to cease. In response, one of the soldiers shouted, “Mind your own business; if you want to complain to our leader, go ahead.” Ma Eh Mie’s courageous family complained to the village headman and in response, the commander ordered a line-up of soldiers who he knew were not the perpetrators. Subsequently, Ma Eh Mie learned that the commander himself, who was not present at the line-up, was her sister’s rapist. The sisters later saw this commander in the village and realized he was the perpetrator. When the headman complained again, the commander beat him and told him he could not “solve this case.” After Ma Eh Mie had fled to Thailand, she learned by letter from her mother that a soldier in the battalion of the commander had subsequently killed her sister with a bullet in the back.²⁴

It is more common than not for victims and families, fearful of reprisals, to choose silence over accusation when it comes to rape. Not only have they seen constant evidence of the impunity the soldiers and officers enjoy; in many cases, they also have to live side-by-side with these troops. To avoid retaliation, they seek to bring as little attention as possible to themselves, even if they are victims deserving of redress for the crimes they suffered. In seeking to avoid the vengeance of the resident troops, they all have suffered, through their own painful silence, a double abuse.



VI. The Broader Context: the SPDC and abuses against civilians

The *Tatmadaw*²⁵ was officially formed in 1948, upon Burma's independence from Britain, to counter the double threat of a Communist insurgency and ethnic resistance. The army was seen as instrumental in holding the country together during a period of great internal strife, and consequently gained high status in the eyes of many of Burma's people. In 1962, the *Tatmadaw*, under the control of General Ne Win, became the government as well as the armed forces of Burma through a coup, and has remained so to this day. At that point, the armed forces numbered approximately 100,000; they have more than quadrupled in the past forty years.

"[After accusing her rapist], the soldier said, 'We never did this. We would find a beautiful girl, not mountain people.'"

- interview #16

The *Tatmadaw* and the SPDC are led by the same generals. The twelve regional commanders who preside over military operations throughout the entire country sit on the SPDC's Central Council (in addition to seven other members, most of whom are military as well). The *Tatmadaw* and the SPDC share the primary goal of maintaining civilian control and quashing internal

conflict, and toward that end have turned the armed forces against the civilian population whenever necessary. This has proved to be particularly necessary, in the view of the

generals, against the ethnic populations in the ethnic States.

"I was with two other women and my husband. The soldiers followed us into the woods, and threatened us with a knife and told my husband to go away. One soldier raped me and the other soldiers raped the other women ...After that, my husband wanted to divorce me. He understands now, after the village headman talked to him, but he is unhappy often...."

- interview #13

In 1970, the Burmese regime took extreme measures in trying to win the war with the ethnic resistance groups. One of the measure taken to accomplish this was to institute the "Four Cuts" program mentioned previously. Areas occupied by resistance groups were termed "black areas," which effectively made them free fire zones where soldiers were permitted to kill and abuse with impunity. Human rights abuses in these areas commonly include torture, rape and extrajudicial executions. One Burmese army defector interviewed, described the instructions given to him by his superiors: "In the

village of the ethnic groups is yours—women, domestic animals. You are free to do anything you want-- even if you have a wife at home in your village."²⁶

Common forms of abuse consistently levied against ethnic Burmese are forced relocation and forced labor.

Forced relocation involves the often sudden evacuation or destruction of a village and a forced move of all available villagers to a relocation site overseen by the army. Evacuated areas are considered "free fire zones" where individuals found there may be shot on site. Relocation sites are devoid of basic infrastructure and hold ethnic people hostage to forced labor and abuse. Since 1996, when the government began to implement a stronger counter-insurgency plan, 176 relocations sites have been documented, housing over 350,000 people.²⁷ An additional 300,000, at least, have chosen to live on the run and in hiding, rather than move to these sites.



In total, it is estimated that there are one million internally displaced persons (IDPs) living in eastern Burma. Most are unable to plant and harvest. With practically no access to humanitarian assistance, reports of malnutrition, starvation and death from preventable diseases—to the extent any information is available at all—abound.

The complete lack of security and access to fundamental goods and services, including healthcare and education, as well as the frequent subjection to violent human rights abuses, have caused many ethnic people from Burma to undergo the dangerous journey across militarized and mined areas to enter Thailand. Despite the risk of denial of entry at the border by some Thai authorities—an act in violation of customary international

law—an estimated 2,000-3,000 people per month secretly entered Thailand in 2002, with no abatement in sight. The increase in asylum seekers this year suggests that human rights abuses, if not increasing, are certainly continuing, as the military struggles for total control of



ethnic areas and an end to the guerilla tactics still undertaken by ethnic resistance groups. Only a tiny fraction of those who have entered Thailand since 1984, approximately 120,000 people, is permitted to live in refugee camps. The rest enter Thailand as part of the growing “illegal migrant population.” Their presence marks the largest migration flow in Southeast Asia, burdening neighboring Thailand with an estimated two million

Burmese seeking either a safe haven from human rights abuses and persecution or the opportunity to survive and earn a living.

Life as an illegal migrant often exposes Burmese to abuse and exploitation in Thailand. This is especially true for women who are trafficked or sexually exploited at the hands of Thai authorities. Vulnerable individuals such as single mothers, elderly, handicapped or the ill have little option but to live on construction sites, in fruit orchards, or to work as domestic help with limited or no access to healthcare or education for themselves or their children.

Despite such conditions, many Burmese choose to come to Thailand rather than continue to live under military oppression and endure the consequences of Burma’s

failed economy. The impact of Burma’s worsening economy is increasingly played out by extortion, forced labor, land confiscation, taxation and rice quotas that the Government levies on its people in a desperate attempt keep the economy afloat. With urban and rural inflation on the rise, the situation is expected to reach critical proportions. Further offensives, reportedly planned for 2003, may also generate more so called “illegal migrants,” many of whom are actually fleeing abuses or the well-founded fear of persecution based on their ethnicity and a pattern of systematic abuse by the Burmese military against its people.²⁸



VII. The SPDC and Abuses against Women

The rape of ethnic women by the Burmese military has a history far longer than its documentation by indigenous or international groups. The military's use of rape to control both eastern and western Burma has been documented for at least fifty years.²⁹ Despite the longevity of this brutal practice, talk about rape has never been acceptable. Such discussion among Burma's ethnic women is considered taboo and is usually conducted in hushed tones and with lowered heads. For women to acknowledge that they have been raped is to declare openly that they are "unclean," and to face possible discrimination at the hands of their family and community members who hold them responsible. For men to acknowledge it is to admit they have been unable to protect their wives, mothers and daughters. For communities to discuss it is to confront the pain, shame, and impotence of people under siege by their own country's army.

Despite a long tradition throughout Burmese history of accomplished women, the political situation in Burma is so repressive as to make the realization of most women's potential impossible. In fact, the current regime's well-documented failure to respect basic human rights has led to specific, grievous human rights abuses against women. Such violations include state-sponsored rape (such as rape by military personnel) and sexual assault, forced labor, prostitution and trafficking, unequal access to education

and healthcare, forced relocation, and political oppression. The SPDC's consistent use of military power and violence to maintain control results in widespread human rights abuses against all the people of Burma. However, the women of Burma suffer double burdens—and, in the case of women from the ethnic nationalities, triple—because of their ethnicity.

Since 1988, first State Law and Order Restoration Council (SLORC) and then the SPDC have waged an ongoing war on armed opposition groups, many of whom are associated with particular ethnic nationalities, that is, non-members of the Burman majority. Sexual violence toward women in Burma occurs with alarming frequency as a part of these hostilities. The SPDC often refers to organized groups representing the ethnic nationalities, such as the Karen National Union and the Kachin Independence Organization, as insurgents, insurrectionists, or “destructionists.” Much of the fighting occurs in border areas where ethnic nationalities traditionally have lived. As well, in these resource-rich locales, the SPDC has waged hostilities against some ethnic nationalities in the name of development. In particular, the SPDC has attacked villages and committed myriad human rights abuses as part of its forced relocation program necessary for the construction of infrastructure projects, including railways, pipelines, and dams.³⁰ These projects are invariably calculated to generate revenue for the SPDC and its inner circle. From the perspective of those whose lands are confiscated, livelihoods are destroyed, and families are harmed, the projects are unequivocally harmful.

The negative impact of these hostilities on women, and especially women from ethnic nationalities, is difficult to overstate. As this report documents, women are subjected to rape and other sexual assaults in a variety of contexts: in

their villages and fields; during flight; while they are serving as forced laborers or force porters; and under assorted pretexts in which soldiers abuse women while claiming to be checking their documents. Reports by numerous credible human rights organizations indicate that rape occurs not only as a form of “entertainment” for soldiers, but also as part of a strategy to demoralize and weaken ethnic nationality populations. Some evidence indicates that soldiers use rape to coerce women into marriage and to impregnate them so they will bear “Burman” babies, known as a campaign of “Burmanization.” While rape during armed hostilities is a frequent occurrence in the border regions of Burma, women also suffer sexual violence in urban settings. For example, the rape of incarcerated women and those involved in peaceful protests in Burma's cities has been reported frequently and was documented by *RI* as well.

“They [the soldiers] took my sister away from her house. She was married with one child. They cut her breasts and put a knife in her chest. I saw the body....”

- interview #10

While it is impossible to calculate the number of women and girls who have been sexually assaulted and raped by Burmese soldiers in their villages and while in flight, anecdotal evidence suggests these figures are in the thousands, at the least. These women suffer multiple health problems resulting from the sexual violations, including HIV/ AIDS, physical injuries such as vaginal tearing, and trauma. Women and girls are often required to labor on infrastructure and military projects at the coercion of *Tatmadaw* troops without regard to their physical limitations. Numerous cases of forced labor and rape

during pregnancy have been documented. *RI*, as well as other organizations such as SWAN and SHRF, have documented cases in which victims experienced the ultimate health risk that rape presents: death.

Another significant impediment to Burmese women's equality in the marriage and family context is the practice of forced marriage. One of the ways *Tatmadaw* soldiers undertake Burmanization is by coercing women from non-

Burman ethnicities to marry them.³¹

This is often achieved by forcing women to submit to unwanted physical contact or rape. The shame of such an experience often compels women to submit to marriage under pressure from their families and communities.

Furthermore, either within these forced marriages, or as a consequence of rape, many women are impregnated against their will.

The impact of these forced pregnancies is monumental:

women are traumatized and stigmatized; they often suffer other grave physical injuries if they are subjected to rape; and sometimes they attempt to abort, often resulting in illness and death.

Other consequences of the armed conflict in Burma are dire for women. In many ethnic communities, the men leave their villages to fight, and the women, children, and elderly are left behind to fend for themselves. Women are solely responsible for gathering and preparing food and wood, maintaining the home, caring for the sick and elderly, and keeping the family together in the case of forced relocation.



Women must earn enough money to pay the "labor" or "porter" tax imposed by the military in order to buy their way out of coerced service. If they are unable to afford the tax, they must serve as laborers themselves, even if they are sick, elderly, extremely young, or pregnant. In the case of infrastructure or development projects, the villagers' land is destroyed. This, in addition to environmental degradation, takes a disproportionate toll on women: their search for food and water becomes more difficult, their capacity to maintain a healthy and clean environment is decreased, and their ability to gather food and fuel becomes more time-consuming, laborious, and dangerous as they are forced to walk greater distances to isolated areas.

Over two million people from Burma have fled to Thailand, and an unknown number have fled to India, Bangladesh and Malaysia; as many as 75% of these are women and children. Furthermore, an estimated one million people are internally displaced in the jungles of Eastern Burma with additional IDP populations present on the Western border. It is likely a majority of these people seeking refuge are women. The variety of political, military, and economic reasons the SPDC offers to justify this massive displacement contradicts the reality of refugee women's lives. The many women who experience forced relocation suffer trauma and abuse before, during, and after the relocation. Until the widespread practice of forced relocation ceases, equality for women in Burma is impossible.

The political, economic, and social conditions in Burma make women especially vulnerable. That vulnerability motivates women to escape Burma, during which process they are often revictimized as IDPs or refugees, leading to a seemingly endless cycle of vulnerability, flight, and abuse.



VIII. International Law and Rape in Burma

Rape is prohibited under a host of international multilateral treaties, customary international law, and case law. By engaging in the widespread practice of rape against ethnic minority women, Burma's army, (an arm of the State), is violating both national laws and international obligations under multilateral treaties. Those treaties include the Convention on the Elimination of All Forms of Discrimination Against Women³² and the Convention on the Rights of the Child.³³ Furthermore, the International Covenant on Civil and Political Rights,³⁴ the International Convention on the Elimination of All Forms of Racial Discrimination,³⁵ the Convention Against Torture,³⁶ the Geneva Convention relative to the Protection of Civilian Persons in Times of War³⁷ and its Additional Protocol,³⁸ none of which Burma has ratified but some of whose provisions have become accepted as customary international law, are violated by state-sponsored rape.³⁹

The SPDC ratified the Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW, in July 1997. In doing so, the SPDC agreed not only to ensure that their activities did not contravene the letter or spirit of the treaty; they also agreed to take affirmative steps to realize the commitments enumerated in the treaty. By permitting—either actively or tacitly—Burma's army to rape ethnic women with impunity, the SPDC violates Article 2, which requires "State Parties [to] condemn discrimination against

women in all its forms” through a variety of Constitutional, legislative, logistical, or other actions. Article 14 addresses the particular problems faced by rural women; while it emphasizes economic and community development issues, the Article

“After the soldiers left, I went into her [the victim’s] house. Spit was coming out of her mouth and she couldn’t speak. She had no clothes on. She had bruises on her arms and face, blood from her nose, and liquid on her legs and body. She couldn’t speak, couldn’t move. The medic came and said, ‘I cannot do anything for her.’”

- interview #18

requires States Parties to eliminate discrimination to ensure that rural women can “participate in all community activities” and “enjoy adequate living conditions,” which clearly are made impossible by persistent rape. Article 16 requires States Parties to eliminate discrimination in marriage and family relations. The forced marriage and forced pregnancies which sometimes result from the rape of ethnic women by army personnel clearly violate this Article.

The Declaration on the Elimination of Violence Against Women,⁴⁰ while lacking the legal force of a multilateral treaty, provides a strong statement of international standards regarding sexual violence. The

Declaration urges States to take all possible actions to eliminate sexual violence and thereby ensure equality and non-discrimination for women, including violence “perpetrated or condoned by the State.” Rape perpetrated by Burma’s military forces in such a persistent, widespread, and unpunished fashion clearly fails to meet this standard.

The Convention on the Rights of the Child (CRC), which the

SPDC ratified in July 1991, contains several articles pertinent to the issue of the rape of girls. Article 6 recognizes that each child has an inherent right to life, and requires States Parties to safeguard that life. Article 16 relates to attacks to a child’s “honour and reputation,” and grants children the right to legal protection against such attacks. While rape is far more than an attack on one’s reputation, it is clear that for women and girls from Burma, rape is a shameful act. By failing to punish rape consistently (or at all), the SPDC fails to make the law available to girl children as required in the CRC.

Burma has not ratified the International Covenant on Civil and Political Rights (ICCPR) or its Optional Protocols, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT). The SPDC has ratified only two of twelve important multilateral treaties (CEDAW and the CRC), which raises questions about Burma’s commitment—even symbolic—to eliminating gross human rights abuses. The SPDC’s failure to ratify these treaties does not entitle the regime to flout international community standards.

Customary international law is an organic body of law that is developed out of “a general and consistent practice of states followed by them from a sense of legal obligation.”⁴¹ While customary international law results from countries accepting norms as law, a set of “peremptory” norms exist that do not require states to affirmatively accept them in order to be bound. These peremptory norms, also called *jus cogens* norms, include a prohibition on torture, crimes against humanity, war crimes, genocide, slavery and slave-related practices.⁴² Peremptory norms are non-derogable, meaning

that a state is compelled to follow them even if they disagree or do not actively agree to abide by them. In those cases where rape or other sexual violence constitutes crimes against humanity, torture, or war crimes, the SPDC is required under customary international law to prohibit and avoid these crimes.



The Rome Statute of the International Criminal Court⁴³ authorizes the creation of an international tribunal with authority to hear the most serious crimes, namely, genocide, war crimes, crimes against humanity, and crimes of aggression.⁴⁴ Eighty-nine countries have ratified and 139 countries have signed the Rome Statute;⁴⁵ the SPDC has done neither. The ICC may hear cases regarding crimes committed

after the Court entered into force (July 22, 2002), and can exercise its jurisdiction over States that have become parties to the Rome Statute. Because Burma has not become a party, the ICC does not have jurisdiction at this time to hear cases involving crimes either committed inside Burma or perpetrated by Burmese nationals.

Although application of the Rome Statute to the SPDC is hypothetical at this time, it is instructive to examine the Statute to determine whether crimes being committed in Burma, namely the rape of ethnic women, might qualify for ICC jurisdiction. While widespread rape in Burma may be considered genocide or war crimes, under certain circumstances, the discussion here will focus on crimes against humanity, because that particular crime explicitly includes rape.

Crimes against humanity are any acts of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity,” torture, or similarly grave crimes “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁴⁶ It is important to note that in order for an attack to be considered a crime against humanity, it can be either widespread or systematic, but need not be both. Therefore, in examining the rape of ethnic women in Burma, it is possible that if such rapes were either widespread or systematic against a particular group, they would constitute a crime against humanity.

A widespread attack is one committed “on a large scale, meaning that the acts are directed against a multiplicity of victims.”⁴⁷ These multiple victims might be subject to “the cumulative effect of a series of inhumane acts in the singular effect of an inhumane act of extraordinary magnitude.”⁴⁸ A systematic act is one committed according to a “preconceived plan or policy. The implementation of this plan or policy could result in the repeated or continuous commission of inhumane acts.”⁴⁹ However, a formal or stated policy is not necessary in order for an attack to be systematic.⁵⁰ Only patterns of crimes with non-accidental characteristics—those with a low probability of random occurrence—can be considered as systematic.⁵¹

“They [the soldiers] came and called my cousin. She was single. They raped her and killed her. We found her naked dead body.... I think about this at night to this day and cannot sleep.”

- interview #10

An attack directed against a civilian population “is understood to mean a course of conduct involving the multiple commission of acts referred ... against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”⁵²

“After the rape, my niece was upset all the time. She was ashamed, stopped being a teacher, and went to live with her parents in another village.”

- interview #21

In order for a State to be guilty of having a policy to commit such an attack, the government or organization must “actively promote or encourage such an attack” against civilians.⁵³ Either governmental action or inaction may be used to demonstrate the policy.⁵⁴ The interpretation of “systematic” is under development; the

cases heard in the criminal tribunals for the former Yugoslavia and Rwanda are helping to clarify the definition, upon which the new International Criminal Court will undoubtedly build. Nonetheless, it seems clear that in order for an attack to be deemed systematic, it could not be the “work of isolated individuals alone.”⁵⁵

In the case of the rape of ethnic women from Burma, attacks against each ethnic group must be examined to determine whether they fit the criteria. *RI*'s research, by itself, is not extensive enough to determine whether the rape of Karen, or Karenni, or Mon, or Tavoyan, women, is widespread or systematic; *RI* has not had sufficient time to document enough cases to make this claim. However, taking the entire body of documentation of rapes against any one of these groups strongly suggests that the attacks would meet the criteria. Widespread rapes by

army personnel against a multiplicity of any single group of civilian women have been documented. Furthermore, despite the SPDC's protestations, the regularity and continuous nature of the attacks indicate that these crimes are more than isolated instances perpetrated by rogue soldiers. That the attacks frequently occur on military property, with the knowledge of soldiers other than the perpetrators, reinforces the notion that they are part of a larger pattern of crimes. That the perpetrators are rarely, if ever, punished, and that the SPDC consistently denies the existence of the crimes, is further affirmation that the rapes are pursuant to a policy.



Whether any of the ethnic groups examined in this report might make a case that their abuses constitute crimes against humanity will have to remain an open question for the time being, until and if the SPDC ratifies the Rome Statute, or until an SPDC general or officer travels to another country and is arrested under the principle of universal jurisdiction.⁵⁶ In the meantime, there is no indication that the crimes will cease.



VIII. Conclusion

RI's research on rape against ethnic women indicates that women from ethnic groups along Burma's eastern border experience rape at the hands of Burma's army on a consistent and frequent basis.

According to *RI's* conversations with over 150 people along the Thai/Burmese border over the period of one month, these rapes occur against women from a variety of different ethnic minority groups. Because the SPDC, and by extension, its army, view the ethnic minority groups as "insurgents," their rape of ethnic women is a way of waging war on civilian populations.

Anecdotally, *RI* learned about hundreds of rape cases in one month, and was able to substantiate 23 cases. Other organizations, namely local women's organizations

representing a variety of ethnic groups, have similarly been able to document numerous cases. How many women from various ethnic groups, from all corners of Burma, have been subject to these brutal abuses? It is unlikely that we will

"My house was just across the road [from the victim's]. She cried out and said, 'he is grabbing me, help me!' I went to the house, but the two soldiers were waiting at the door and didn't allow me to enter the house.... I stayed outside and saw soldiers come in and out of the house...."

-interview #18

ever know. But it is imperative that we honor the strength, courage, and suffering of these women by continuing to document the abuses.



The SPDC has denounced the reports about Shan rape, and has conducted their own putative investigation in Shan State

(with the active participation of SPDC general Khin Nyunt's wife) which, unremarkably, has led them to conclude that such reports were fabricated. *RI's* research tells a different story, and leads to the inescapable conclusion that the Burmese military uses rape on a widespread basis against women from many of Burma's ethnic nationalities. These rapes are not a deviation committed by rebel soldiers; they are part of a pattern of brutal abuse designed to

control, terrorize, and harm ethnic nationality populations through their women.

The SPDC has claimed that, "hands joined, the *Tatmadaw* and the people stand steadfastly together." The documentation gathered about the rape of ethnic women indicates that the opposite is true: that in fact, the *Tatmadaw* is the enemy of ethnic women. The SPDC must first acknowledge the epidemic of rape perpetrated by its army before this can change.



APPENDIX A - LETTER FROM SURVIVOR

Refugees International (RI) obtained possession of the original copy of this letter written in Burmese by a rape survivor. *RI* retains the original copy and has redacted this version to protect the identity of the survivors. This letter was written by one of the survivors to her friends, an older couple who fled from Burma to Thailand. The author is referring to her experience of rape and incarceration along with four other women from her village. All five of the victims are known to the recipients of the letter, which is why the writer includes details about their experiences. Two of the five women died in jail.

December 27, 2001

To Mr. xx and Mrs. xx,

I am writing to you and I hope both of you are fine. I wish you all to be in good health. I was in xx jail for four years and now have been released from jail. U xx, U xx and U xx cooperated with the Burmese military IB [Infantry Battalion] yyy and they arrested me. The Burmese military also killed xx. The Burmese military arrested me on yy, 1997 at xx village. Then they sent me to xx military station. During the time I was in xx military station, my friends and I were raped by Lieutenant x1, Lieutenant x2, and Lieutenant x3. They are from IB yyy. They asked me many questions, beat and

tortured me. Then they raped me 2-3 times at 9 pm every night. I was raped by Lieutenant x1, w2 [woman 2] was raped by Lieutenant x2 and w3 [woman 3] was raped by Lieutenant x3. W4 [woman 4] and w5 [woman 5] were also raped by the soldiers 3-4 times every night. We didn't get enough food to eat and no health care. We were very sick and weak in the jail. No one came to visit us in the jail.

I am released from jail and stay now at xx village, but I can't go anywhere, because the village head and militia don't allow me to go anywhere. If I want to go somewhere in the village, I have to ask permission from the village head or militia. I feel very depressed and I want to meet my aunt and uncle [the two people to whom the letter is addressed, who are older and are therefore referred to as "aunt" and "uncle"]. I don't know the way to go or how to meet with you. If possible, can someone bring me there? I also want to join with the xx [women's group] and work together. Right now, I am jobless and have to work for the military. In the village, the Burmese military force the villagers to work for them. If villagers don't want to work, they have to pay money to the military. For me, I don't have money to pay, so I have to work. When the villagers do not go to work, the military threatens the village head. They force villagers to provide security for the village. Many young people from the village go to Thailand to find a job. Just a few people are left in the village. I want to keep in touch with you.

Thanks,

W1 [woman 1]
xx village



APPENDIX B - TABLE OF INTERVIEWS

| # | DATE OF RAPE(S) | ETHNICITY OF VICTIM(S) | # OF RAPES REPORTED | # OF RAPES CONFIRMED | RAPIST /BATTALION KNOWN? | RANK OF RAPIST | NOTES |
|----|-----------------|------------------------|---------------------|----------------------|--------------------------|----------------|---------------------------------------|
| 1 | 1998 | Tavoyan | 5 | 5 | LIB* xx** | Lieutenant 1 | victim documented rapes in a letter |
| 2 | 1999 | Karen | 1 | 0 | LIB 313 | Major | |
| 3 | - | Karen | 0 | 0 | - | - | Rape of witness suspected |
| 4 | 1997 | Karen | 1 | 1 | LIB 339 | Unknown | Victim became mentally ill after rape |
| 5 | - | Karen | 0 | 0 | - | - | |
| 6 | 1997 | Karen | 1 attempt | 1 attempt | LIB 351 | Unknown | Attempted rape in military jail |
| 7 | 1994 | Karen | 1 | 1 | No | Unknown | Rape occurred in military camp |
| 8 | 1995 | Karen | 1 attempt | 1 attempt | LIB 403 | Unknown | Assailant identified as "commander" |
| 9 | 1994 | Karen | 1 | 0 | - | - | |
| 10 | 1999 | Karen | 2 | 1 | No | No | |
| 11 | 1999 | Karen | 1 | 1 | No | Unknown | Found dead body with stick in vagina |
| 12 | - | Karen | 0 | 0 | - | - | |



TABLE OF INTERVIEWS CONTINUED

| # | DATE OF RAPE(S) | ETHNICITY OF VICTIM(S) | # OF RAPES REPORTED | # OF RAPES CONFIRMED | RAPIST /BATTALION KNOWN? | RANK OF RAPIST | NOTES |
|----|-----------------|------------------------|---------------------|----------------------|--------------------------|----------------|---|
| 12 | - | Karen | 0 | 0 | - | - | |
| 13 | 1999 | Karenni | 3 | 3 | LIB 250 | Privates | Victim & eye-witness to 2 rapes |
| 14 | - | Karenni | 0 | 0 | - | - | |
| 15 | 2000 | Karenni | 1 | 1 | No | Unknown | Victim became mentally ill after rape |
| 16 | 1998 | Karenni | 1 + 1 attempt | 1 + 1 attempt | LIB 54 | Unconfirmed | Eyewitness to sister's rape & victim of attempted rape; rapist identified as a "general" |
| 17 | 1998 | Karenni | 2 | 0 | Yes | Unknown | |
| 18 | 2000 | Mon | 1 | 1 | Yes*** | Unknown | Eyewitness to gang rape by 3 soldiers |
| 19 | 1998 | Mon | 1 | 1 | Yes*** | Unknown | Witness to gang rape by 3 soldiers |
| 20 | 2000 | Mon | 1 | 1 | LIB 16 | Major | |
| 21 | 2001/1999 | Mon | 2 | 2 | LIB 31 | Unknown | Witness heard rapes occurring |
| 22 | 1985 | Mon | 1 | 0 | LIB 81 | Unknown | |
| 23 | 2001 | Shan | 1 | 0 | Yes | Unknown | |
| 24 | 1999 | Shan | 1 attempt | 1 attempt | Yes | Unknown | Would-be rapist "famous" for raping |



TABLE OF INTERVIEWS CONTINUED

| # | DATE OF RAPE(S) | ETHNICITY OF VICTIM(S) | # OF RAPES REPORTED | # OF RAPES CONFIRMED | RAPIST /BATTALION KNOWN? | RANK OF RAPIST | NOTES |
|----|-----------------|------------------------|---------------------|----------------------|--------------------------|----------------|--|
| 25 | 2002 | Shan | 6 | 0 | No | Unknown | Wives of ethnic army raped & killed |
| 26 | 1995 | Karenni | 7 | 0 | 250,261,102 | Sergeant | 7 women porters rationed among 3 battalions |
| | | | Total: 43 | Total: 23 | | | |

*LIB = Light Infantry Battalion **LIB concealed to protect victims

***Battalion number unknown, but battalion familiar to interviewee



APPENDIX C - SUMMARY OF FINDINGS

| | |
|--|---|
| General Information | |
| Interviews conducted: | 26 |
| Ethnicities: | Tavoyan, Karen, Karenni, Mon, Shan |
| Time frame: | Most cases occurred within last four years |
| Number and Types of Rapes | |
| Total documented: | 43 (39 completed, 4 attempted) |
| Total confirmed: | 23 |
| Resulted in death: | 9 |
| Resulted in severe mental illness: | 3 |
| Gang rape: | 12 |
| Involved other human rights abuses: | 27 |
| Perpetrators Known to Victims | |
| By rank: | 19 |
| By battalion: | 31 |
| As officers: | 15 |
| Committed on military property: | 7 |
| Total number punished: | 2 (one perpetrator was charged 1,000 kyat, about USD 1, and another was led away in handcuffs). |



APPENDIX D - MAP OF BURMA





APPENDIX E - RESOURCES

Organizations providing information on Burma issues:

| | | | |
|--|----------------------------|---|--------------------------------|
| Amnesty International | www.amnesty.org | Democratic Voice of Burma (radio) | www.communicue.no/dvb |
| AP News | www.apnews.com | EarthRights International | www.earthrights.org |
| Bangkok Post | www.bangkokpost.com | Free Burma | www.freeburma.org |
| British Broadcasting Company World Service | | Free Burma Coalition | www.freeburmacoalition.org |
| (radio/Burmese) | www.bbc.co.uk/worldservice | Human Rights Watch | www.hrw.org |
| Burma Campaign | www.burmacampaign.org.uk | Images Asia | www.imagesasia.org |
| Burma Forum of Los Angeles | www.burmaforumla.org | Irrawady | www.irrawady.org |
| Burma Issues | durham@mozart.inet.co.th | Jubilee Campaign | www.jubileecampaign.org |
| Burma Net | www.burmanet.org | Karen Human Rights Group (KHRG) | www.khr.org |
| Burma Relief Center (BRC) | brccm@loxinfo.co.th | Karen National League (USA) | www.karen.org |
| BurmaNet (news service) | www.burmanet.org | The National Coalition Government of the Union of Burma | www.ncgub.net |
| Christians Concerned for Burma | www.prayforburma.org | Open Society Institute, Burma Project | www.soros.org/burma |
| Christian Solidarity Worldwide | www.csw.org.uk | Partners | www.partnersworld.org |
| | | Radio Free Asia | www.rfa.org |
| | | Refugees International | www.refugeesinternational.org |
| | | Shan Herald Agency for News (SHAN) | www.shanland.org |
| | | State Peace and Development Council Website | www.myanmar.com |
| | | The Nation (Thai newspaper) | www.nationmultimedia.com |
| | | Walk For Burma | www.geocities.com/walkforburma |



ENDNOTES

- ¹ Compiled by the Burma Border Consortium. Burma Border Consortium, *Internally Displaced People and Relocation Sites in Eastern Burma* (Thailand: BBC, September 2002).
- ² One interview was conducted with two subjects at the same time, as they both were privy to the same information regarding the rapes they reported.
- ³ For purposes of this report, both rapes and attempted rapes will be denoted as rapes, unless otherwise indicated.
- ⁴ The dates of the cases are as follows: 2002-6 rapes; 2001-2; 2000-3; 1999-8; 1998-10; 1997-2; 1995-8; 1994-3; 1985-1.
- ⁵ More than one soldier raping a single woman is described as multiple rape.
- ⁶ RI Interview #13, September 2002; on file with RI.
- ⁷ RI Interview #18, September 2002; on file with RI.
- ⁸ RI Interview #10, September 2002; on file with RI.
- ⁹ RI Interview #11, September 2002; interview on file with RI.
- ¹⁰ RI Interview #11, September 2002; interview on file with RI.
- ¹¹ *63 Lives That Do Not Matter* (Thailand: December 2002).
- ¹² RI Interview #1, September 2002; on file with RI.
- ¹³ RI Interview #6, September 2002; on file with RI.
- ¹⁴ See ILO Communication, ILO/00/27, Wednesday June 14, 2000, at www.ilo.org/public/english/bureau/inf/pr/2000/27.htm, accessed January 25, 2003.
- ¹⁵ See EarthRights International, *We Are Not Free to Work For Ourselves: Forced Labor and Other Human Rights Abuses in Burma* (Thailand: ERI, June 2002).
- ¹⁶ RI interview #2; on file with RI.
- ¹⁷ RI Interview #4; on file with RI.
- ¹⁸ People's Tribunal on Food Scarcity and Militarization in Burma, *Voice of the Hungry Nation* (Thailand: Asian Human Rights Commission, October 1999).
- ¹⁹ RI Interview #19, September 2002; on file with RI.
- ²⁰ RI Interview #20, September 2002; on file with RI.
- ²¹ Burmese Penal Code sections 375 & 376 (1860).
- ²² "Slandorous Accusations Designed to put Pressure on Burma," Rangoon Daily, quoted in *New Light of Myanmar*, August 2, 2002.
- ²³ RI Interview #7, September 2002; on file with RI.
- ²⁴ RI Interview #16, September 2002; on file with RI.
- ²⁵ The *Pyithu Tatmadaw*, or people's *Tatmadaw*, encompasses primarily the *Tatmadaw Kyi* (army) and *Tatmadaw Lay* (air force). For purposes of this report, we use the term "*Tatmadaw*" to primarily denote the army's activities with respect to abuses against women.
- ²⁶ RI Interview #26, September 2002; on file with RI.
- ²⁷ Compiled by the Burma Border Consortium. Burma Border Consortium, *Internally Displaced People and Relocation Sites in Eastern Burma* (Thailand: BBC, September 2002).
- ²⁸ See RI report *Pushing Past the Definitions: Migration From Burma to Thailand* (Washington D.C.: Refugees International and Open Society Institute, December 2002).
- ²⁹ Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948* (Thailand: White Lotus, 1995).
- ³⁰ See, e.g., EarthRights International, *Total Denial* (Thailand: ERI, July 1996), and EarthRights International, *Total Denial Continues* (Thailand: ERI, May 2000).
- ³¹ Brenda Belak, *Gathering Strength: Women from Burma on Their Rights* (Thailand: Images Asia, January 2002), pp. 76-78.
- ³² G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.
- ³³ G.A. res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force Sept. 2 1990.
- ³⁴ G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNT.S. 171, entered into force Mar. 23, 1976.
- ³⁵ 660 UNT.S. 195, entered into force Jan. 4, 1969.
- ³⁶ G.A. res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984), entered into force June 26, 1987.
- ³⁷ 75 UNT.S. 287, entered into force Oct. 21, 1950.
- ³⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force Dec. 7, 1978.
- ³⁹ The authors are indebted to Victoria Coakley for her legal research and analysis.
- ⁴⁰ GA res. 48/104, UN Doc A.48/49 (1993).
- ⁴¹ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §102(2) & cmt. C (1987).
- ⁴² See Cherif Bassouni, *Crimes Against Humanity in International Criminal Law*, 2d revised ed., Kluwer International (London: Kluwer, 1999), p.267.
- ⁴³ UN Doc. A/CONF.183/9 (1998), entered into force July 1, 2002.
- ⁴⁴ *Ibid.*, Article 5(1).
- ⁴⁵ *Ibid.*, Article 12.

- 46 Rome Statute of the International Criminal Court, article 7 (1) (g), UN Doc. A/CONF.183/9 (1998), *entered into force* July 1, 2002.
- 47 Report on the International Law Commission to the General Assembly on its work of its 48th session, 51 UN GAOR Supp. (No. 10) at 94, U. N. Doc A/51/10 (1996).
- 48 *Ibid.*.
- 49 *Ibid.* at 93.
- 50 "It appears that such a policy need not be explicitly formulated, nor need it be the policy of a State." *Prosecutor v. Kupresic et al.*, No. IT-95-16, Trial Chamber II, Judgment, 14 January 2000, at para. 551.
- 51 *Prosecutor v. Kunarac*, No. IT-96-23, Judgment, ¶ 430 (Feb. 22, 2001).
- 52 International Criminal Court, Elements of the Crimes, UN Doc. PCNICC/2000/1/Add.2 (2000).
- 53 *Ibid.* at Article 7(3).
- 54 *Op. cit.* 50, p. 9 at footnote 6.
- 55 *Prosecutor v. N ikolic*, Rule 61 Decision, Trial Chamber, 20 Oct. 1995, at para. 26.
- 56 Under this principle, an alleged criminal may be arrested and subjected to the jurisdiction of a foreign court, if that country's courts choose to prosecute him for gross crimes, such as crimes against humanity.



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