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# Myanmar

**COI Compilation**

**7 October 2011**



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REPUBLIK ÖSTERREICH  
BUNDESMINISTERIUM FÜR INNERES



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Origin & Asylum Research and Documentation

## Myanmar

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7 October 2011 (as of 5 September 2011)

This report serves the specific purpose of collating legally relevant information on conditions in countries of origin pertinent to the assessment of claims for asylum. It is not intended to be a general report on human rights conditions. The report is prepared on the basis of publicly available information, studies and commentaries within a specified time frame. All sources are cited and fully referenced.

This report is not, and does not purport to be, either exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. Every effort has been made to compile information from reliable sources; users should refer to the full text of documents cited and assess the credibility, relevance and timeliness of source material with reference to the specific research concerns arising from individual applications.

Author: Daisuke Yoshimura (ACCORD)

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Austrian Red Cross/ACCORD  
Wiedner Hauptstraße 32  
A- 1040 Vienna, Austria

Phone: +43 1 58 900 – 582

E-Mail: [accord@redcross.at](mailto:accord@redcross.at)

Web: <http://www.redcross.at/accord>



## Table of Contents

1	Political Developments .....	7
1.1	The SPDC Roadmap to Democracy .....	7
1.2	The May 2008 Referendum.....	8
1.3	The new Constitution (2008).....	10
1.3.1	General overview.....	10
1.3.2	The role of the National Defence and Security Council (NDSC).....	15
1.4	The November 2010 general elections.....	18
1.5	The post-election situation.....	24
1.6	New administrative structures at township and village level .....	26
2	Security Situation/Developments .....	29
2.1	Background .....	29
2.2	Human Rights Issues .....	32
2.2.1	Physical violence.....	34
2.2.2	Forced labour and portering.....	35
2.2.3	Extortion, exploitation, land confiscations, arbitrary taxation, forced relocation .....	36
2.2.4	Human trafficking .....	38
2.3	Chin State .....	38
2.4	Kachin State .....	39
2.5	Kayin (Karen) State.....	41
2.6	Kayah (Karenni) State.....	44
2.7	Mon State .....	44
2.8	Rakhine (Arakan) State .....	45
2.9	Shan State.....	46
2.10	Irrawaddy Region (formerly Division).....	46
2.11	Bago (Pegu) Region (formerly Division).....	46
2.12	Magway (Magwe) Region (formerly Division).....	47
2.13	Mandalay Region (formerly Mandalay Division).....	47
2.14	Yangon Division .....	47
2.15	Sagaing Region (formerly Division).....	48
2.16	Tanintharyi (Tenassarim) Region (formerly Division) .....	48
3	Security Forces/Military Service/Armed ethnic minority groups .....	49
3.1	Domestic legal framework.....	49
3.1.1	Legal provisions pertaining to military draft/service .....	49
3.2	Myanmar security forces .....	52
3.2.1	Police.....	52
3.2.2	Armed forces (Tatmadaw).....	52
3.2.3	Other armed government forces: village militia/paramilitary .....	53
3.2.4	Independence of police vis à vis the military .....	55
3.3	Armed opposition groups (Ceasefire and non-ceasefire groups).....	56
3.3.1	Kachin Independence Army (KIA) and New Democratic Army-Kachin (NDA-K)....	56

3.3.2	United Wa State Army (UWSA).....	58
3.3.3	Myanmar National Democratic Alliance Army (Kokang Army).....	59
3.3.4	Shan State Army – North (SSA-N) .....	60
3.3.5	Shan State Army – South (SSA-S) .....	61
3.3.6	Shan State National Army (SSNA) .....	61
3.3.7	Karen National Liberation Army (KNLA).....	61
3.3.8	Karenni Army (KA) .....	62
3.3.9	All Burma Student Democratic Front (ABSDF).....	62
3.3.10	Mon National Liberation Army (MNLA).....	63
3.3.11	Border Guard Forces (BGF) .....	64
3.3.12	United Nationalities Federal Council (UNFC).....	65
3.3.13	Democratic Karen Buddhist Army (DKBA).....	66
3.3.14	Pa-O National Liberation Army (PNLA).....	68
3.3.15	Palaung State Liberation Army (PSLA) .....	68
3.4	Forced recruitment (including of child soldiers).....	68
3.4.1	Forced conscription procedures in armed forces .....	68
3.4.2	Treatment of draft evaders/military deserters.....	69
3.5	Forced labour/portering in conflict and non-conflict areas.....	70
3.5.1	Treatment of persons refusing, evading or escaping forced labour/portering .....	73
3.6	Human rights violations by armed forces, armed opposition groups, militia groups ...	73
4	Ethnicity, Citizenship and Nationality .....	75
4.1	National legal framework and policies .....	75
4.1.1	Citizenship.....	75
4.1.2	Ethnic Minorities .....	77
4.2	Citizenship and identity documentation.....	78
4.2.1	Administrative procedures and obstacles in obtaining CSCs and/or nationality ..	78
4.3	Treatment/situation of:.....	79
4.3.1	Individuals without citizenship/belonging to non-recognized ethnic minorities .....	79
4.3.2	Individuals belonging to recognized ethnic minorities.....	80
4.3.3	Muslims who are unable to obtain citizenship and access related rights .....	81
4.4	Intra-ethnic tension.....	82
5	Freedom of Religion .....	84
5.1	National legal framework (2008 Constitution and legislation).....	84
5.2	Treatment of members of religious groups .....	86
5.2.1	Buddhists.....	86
5.2.2	Christians.....	88
5.2.3	Muslims .....	88
5.2.4	Other religious groups .....	90
6	Freedom of Expression and Association .....	91
6.1	Domestic legal framework.....	91
6.1.1	Freedom of Expression .....	91
6.1.2	Freedom of Association and Assembly .....	95
6.2	Government/Political System .....	96
6.3	Treatment of members and supporters of, and participants in: .....	98
6.3.1	The National League for Democracy (NLD).....	98

6.3.2	The All Burma Student Union/All Burma Federations of Students Union .....	100
6.3.3	88 Generation Students Group .....	101
6.3.4	Alliance of All Burmese Buddhist Monks .....	102
6.3.5	Generation Wave (GW) .....	103
6.3.6	The United Front of Burmese Activists for Democracy .....	103
6.3.7	Youth Social Network For Change .....	103
6.3.8	Human Rights lawyers (Burmese Lawyers' Council) .....	103
6.3.9	Major demonstrations inside Myanmar .....	104
6.3.10	Demonstrations outside Myanmar .....	106
6.4	Treatment of human rights and political activists .....	107
6.4.1	Internet users / bloggers .....	107
6.4.2	Human rights lawyers .....	107
6.4.3	UN and NGO workers .....	109
6.5	Treatment of journalists .....	110
6.6	Treatment of individuals making complaints of land confiscation .....	111
7	Women/Children/Sexual Orientation .....	112
7.1	Domestic legal framework .....	112
7.1.1	Women .....	112
7.1.2	Children .....	113
7.1.3	Sexual orientation .....	114
7.2	Situation of women .....	115
7.2.1	Sexual and Gender-based Violence (SGBV) .....	115
7.3	Situation of children .....	117
7.4	Trafficking in persons .....	119
7.5	Sexual orientation .....	120
8	Freedom of Movement .....	123
8.1	General .....	123
8.2	Travel restrictions for certain groups and in certain areas .....	123
8.3	Registration procedures at village level .....	125
9	Further Human Rights Considerations .....	129
9.1	Exit and return to Myanmar .....	129
9.1.1	Exit and entry procedures .....	129
9.1.2	Illegal departure .....	130
9.1.3	Treatment of persons returning from abroad .....	130
9.2	Administration of justice .....	131
9.2.1	National legal framework (Penal Code and Criminal Procedure) .....	131
9.2.2	Independence of the judiciary .....	131
9.2.3	Due process .....	132
9.2.4	Prison conditions .....	134
9.2.5	Death penalty .....	137
9.3	Food security .....	138
9.4	Internal displacement .....	139
9.5	Housing, land and property rights .....	142
10	Sources .....	144

## **List of Abbreviations**

ABFSU - All Burma Federations of Students Union/  
ABSDF - All Burma Student Democratic Front  
ABSU - All Burma Student Union  
BGF - Border Guard Forces  
BLC - Burma Lawyers' Council  
CNF - Chin National Front  
CSC - Citizenship Scrutiny Card  
DKBA - Democratic Karen Buddhist Army  
GW - Generation Wave  
HGC - Htoo Group of Companies  
KA - Karenni Army  
KIO/KIA - Kachin Independence Organization/Kachin Independence Army  
KNDA - Karenni National Defence Army  
KNPLF - Karenni Nationalities People's Liberation Front  
KNO - Kachin National Organisation  
KNPP - Karenni National Progressive Party  
KNSO - Karenni National Solidarity Organisation  
KNU/KNLA - Karen National Union/Karen National Liberation Army  
KPC - KNU/KNLA Peace Council  
LDU - Lahu Democratic Union  
LIB - Light Infantry Battalion  
MENC - Myanmar Economic Holdings Co. Ltd  
MNDAA - Myanmar National Democratic Alliance Army  
MNLA - Mon National Liberation Army  
NDAA - National Democratic Alliance Army  
NDA-K - New Democratic Army-Kachin  
NDSC - National Defence and Security Council  
NLD - National League for Democracy  
NMSP - New Mon State Party  
NRC - National Registration Card  
NSAG - non-state armed group  
NUPA - National United Party of Arakan  
PNLO - PaO National Liberation Organisation  
PSLA - Palaung State Liberation Army  
PSLF - Palaung State Liberation Front  
PVA - Peoples Vigorous Association (Sorn Arr Shin)  
SLORC - State Law and Order Restoration Council  
SMNC - Sangha Maha Nayaka Committee  
SPDC - State Peace and Development Council  
SSA-N - Shan State Army-North  
SSA-S - Shan State Army-South  
SSC - State Supreme Council  
SSNA - Shan State National Army  
SSPP/SSA - Shan State Progress Party/Shan State Army  
TRC - Temporary Registration Card  
UEC - Union Electoral Commission  
UMEH - Union of Myanmar Economic Holdings  
UNFC-UB - United Nationalities Federal Council (Union of Burma)

USDA -Union Solidarity and Development Association  
USDP - Union Solidarity and Development Party  
UWSA - United Wa State Army  
VPDC - Village Peace and Development Council  
WNO - Wa National Organisation

# 1 Political Developments

## 1.1 The SPDC Roadmap to Democracy

The political process leading up to the announcement of the “Seven Step Roadmap to Disciplined Democracy” by Myanmar’s State Peace and Development Council (SPDC) in 2003 is briefly described by Human Rights Watch (HRW) as follows:

“Since 1990, when the previous democratic elections delivered a clear win to the opposition National League for Democracy (NLD), the military junta had methodically set the stage for an ersatz democratic system. They rejected the 1990 election results and convened a National Convention in 1993 to write a new constitution. This convention met episodically, depending on security exigencies in Burma, prompting many to view it as a marker to buy time for the military to consolidate their rule. It was effectively moribund for years, until the Road Map was released in 2003.” (HRW, 2 May 2010)

On 30 August 2003, Myanmar’s Prime Minister, General Khin Nyunt, announced a seven-step Roadmap to Democracy (CRS, 29 April 2010, p. 2) aiming to end a situation characterised by lack of constitution and to install a civilian administration that should replace the existing military government (SWP, June 2009, p. 4). These steps, as described by General Khin Nyunt, are rendered in the April 2010 report by the US Congressional Research Service (CRS) as follows:

1. Reconvene the National Convention (adjourned in 1996)
2. Step-by-step implementation of the process necessary for the emergence of a genuine and disciplined democratic system
3. Draft a new constitution based on the principles laid out the National Convention
4. Adopt the constitution via a national referendum
5. Hold free and fair elections to constitute a national legislative assembly based in accordance with the new constitution
6. Convene the new national legislative assembly
7. Build a modern, developed, and democratic nation” (CRS, 29 April 2010, p. 2)

The SPDC implemented the first three steps of its Roadmap between 2004 and 2008. The first step provided for the National Convention, which had been adjourned since 1996 as a result of a walkout by the National League for Democracy (NLD) in response to a SPDC crackdown on its political opponents (CRS, 29 April 2010, p. 2), to be reconvened (SWP, June 2009, p. 4).

The declared aim of the National Convention was to draft “fundamental principles” of a constitution on which basis an election should be held in the future. HRW states that the reconvened National Convention was even less representative than the original one. The SPDC expelled the NLD delegates and made up for the decrease in elected delegates by largely

increasing the number of delegates from “National Races” – many representing the ethnic minority groups who had signed ceasefire agreements with the SPDC (HRW, 1 May 2008, p. 20).

In September 2007, the National Convention, despite continued NLD boycott (CRS, 29 April 2010) and amid widespread street demonstrations prompted in late August by the increase in fuel prices<sup>1</sup>, completed the second step of the roadmap – a draft of the process for transforming Burma into a ‘disciplined democracy’ – and defined the ‘fundamental principles’ of the future constitution (HRW, 1 May 2008, p. 21; CRS, 29 April 2010, p. 2; SWP, p. 4).

In the wake of its violent crackdown on peaceful protesters which began on 25 September 2007, the SPDC appointed a 54-member Commission for Drafting the State Constitution in October 2007 (HRW, 1 May 2008, p. 21-22).

As reported by the USDOS in its *Country Report on Human Rights Practices 2008*, the SPDC continued to rule by decree and was not bound by any constitutional provisions providing for fair public trials or other rights. Executive Order 5/96, which provides for the arrest of any person deemed to be a threat to the National Convention and the “Roadmap to Democracy”, effectively stifled open debate among citizens (USDOS, 25 February 2009, Section 1e).

## 1.2 The May 2008 Referendum

The UN Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, reports in June 2008 to the Human Rights Council (HRC) that on 19 February 2008, the finalization of the draft Constitution, the fourth step in the Government’s 7-step road map to democracy, was announced (HRC, 3 June 2008, p. 5).

On 26 February 2008, the SPDC released a new law governing “the approval of the draft constitution” which, as reported by the US Congressional Research Service (CRS), included the following provisions with regard to the constitutional referendum:

“The law barred the following people from voting: members of religious orders; people of unsound mind; persons in prison or convicted of a crime; people illegally abroad; and foreigners. The law also allowed the postponement or dissolution of a vote ‘if [a] free and fair referendum may not be held stably due to natural disaster or situation affecting the security, or any other disaster.’” (CRS, 29 April 2010, p. 3)

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<sup>1</sup> The largest demonstrations in nearly 20 years broke out in cities across the country in August and September 2007, triggered by a 500 percent fuel-price increase. The 88 Generation Students, a group composed of dissidents active in the 1988 protests, were at the forefront of many of the demonstrations. The protest movement expanded to include thousands of Buddhist monks and nuns, who were encouraged by the general populace. Soldiers, riot police, and members of the paramilitary Union Solidarity and Development Association (USDA) and the Swan Arr Shin militia group responded brutally, killing at least 31 people. The crackdown targeted important religious sites and included the public beating, shooting, and arrest of monks, further delegitimizing the regime in the eyes of many Burmese. (FH, 12 Mai 2011)

As observed by the USDOS, the referendum law provided for a secret ballot. Free debate was however not permitted and any activities deemed to be "interfering with the referendum" carried a three-year prison sentence." (USDOS, 3 August 2011).

Further measures taken by the SPDC ahead of the constitutional referendum are reported by the UN Special Rapporteur as follows:

"On 9 April, the SPDC announced that the referendum on the adoption of the new Constitution was scheduled for 10 May 2008, with multiparty democratic elections scheduled by the Government for 2010. The people of Myanmar have not been called to vote since 1990.

Copies of the 457-article draft Constitution were officially made public on 9 April and were reportedly on sale in bookshops at the price of 1,000 kyat (\$1) a copy, a price that was reportedly unaffordable for a significant proportion of the population. The short time frame between the official announcement of the referendum and 10 May, the date of its holding, raised deep concerns locally and internationally with regard to the readiness, preparedness, organization and carrying out of the referendum process. It was widely noted that the schedule fell far short of ensuring a far-reaching publicity campaign, inclusive of information dissemination, public-awareness programmes and free debate to enable members of the electorate to make an informed decision when casting their votes." (HRC, 3 June 2008, p. 5-6)

On 2 May 2008, Cyclone Nargis, a category 3 cyclone, caused widespread damage across much of southern and central Burma. Initial reports estimated the death toll at 351 people, but that number quickly rose to over 22,500, with 41,000 people reported as missing. Official Myanmar figures were later revised to 84,537 dead and 53,836 missing. Despite the widespread destruction caused by Cyclone Nargis, the SPDC decided to not invoke the natural disaster provisions of the referendum law and, on 6 May 2008, announced that the vote on the proposed constitution would proceed as planned in most parts of Myanmar (CRS, 29 April 2010, p. 3-4). Only in the 47 townships (40 in the Yangon division and seven in the Irrawaddy division) badly affected by the cyclone was the vote postponed to May 24, 2008 (HRW, 2 May 2010).

The SPDC's decision to proceed with the referendum as planned was met with strong objection by Burma's leading opposition groups, as well as by the United States and several other countries (CRS, 29 April 2010, p. 4).

There were no domestic or international election monitoring bodies permitted to observe the referendum (HRW, 2 May 2010). In his September 2008 report to the UN General assembly (UNGA), the UN Secretary General provides the following remarks with regard to the officially reported proceedings and outcome of the May 2008 referendum:

"Given the absence of United Nations or other accredited observers, an assessment of the conduct of the referendum is not possible. According to State media reports, the Government had made every effort to ensure a free and fair process, including through

measures such as secret ballot, inviting representatives of foreign embassies in Yangon to follow the proceedings in select locations, and encouraging the highest possible level of participation, while ensuring maximum security conditions. At the same time, independent reports have questioned the credibility of the process, pointing in particular to the circumstances in which the voting was held amid the national tragedy caused by cyclone Nargis, insufficient civic education and public information, the absence of free and open debate, and instances of voter intimidation and harassment. In addition, the national legal framework criminalized any criticism of, or opposition to, the draft constitution, the referendum or the road map process.

The announcement by the Government, on 29 May 2008, that the draft constitution had been officially adopted by a 92.48 per cent approval and 98.12 per cent turnout by voters marked the culmination of its 14-year-long National Convention process to draft the Constitution. [...] At the same time, key stakeholders, including, inter alia, NLD, a group of 92 persons elected as Members of Parliament in the 1990 elections, and the United Nationalities Alliance, as well as other relevant groups, such as the "88 Generation" students' group, the All Burma Monks' Alliance, the All Burma Federation of Student Unions and exile groups with constituencies inside Myanmar, have formally announced their rejection of the new Constitution and the process by which it was adopted, and have reasserted long-standing demands for the release of political prisoners and an all-inclusive national dialogue. Others, including the Ethnic Nationalities Council and individual armed ethnic groups that have returned to the legal fold, have expressed reservations about the constitutional process." (UNGA, 17 September 2008, p. 12)

The US Congressional Research Service (CRS) states that while the SPDC reported a heavy turnout on both dates, with few voting irregularities, opposition groups said that turnout was comparatively light, with many reported cases of voting irregularities, such as pre-marked ballots, voter intimidation, and other techniques to influence the outcome of the referendum (CRS, 29 April 2010). As stated by Human Rights Watch (HRW), few overt cases of intimidation or threats were reported, but many people described the entire organisation of the referendum as coercive (HRW, 2 May 2010).

## **1.3 The new Constitution (2008)**

### *1.3.1 General overview*

Jane's Information Group, a US publishing company with a focus on military issues, provides the following brief overview of the 2008 constitution of Myanmar, its making and coming into effect with the first convening of parliament on 31 January 2011:

"On 10 May 2008 a constitutional referendum ratified a charter that essentially confirms and legitimises the administrative structures that the army established when it assumed power in 1988. [...] The constitution has been nearly 16 years in the making; the constitutional convention, the committee which drafted the charter's basic principles, first met in 1993 following the failure of the now-dissolved opposition National League for Democracy (NLD) to draft a document acceptable to the army after the 1990 elections.

The constitution became effective with the first convening of parliament on 31 January 2011." (Jane's, 22 June 2011)

An English translation of the text of the *2008 Constitution of the Republic of the Union of Myanmar* was published by the Ministry of Information of Myanmar in September 2008 and is available via the following link:

- Constitution of the Republic of the Union of Myanmar (2008), published by the Ministry of Information, September 2008 (available at [burmalibrary.org](http://www.burmalibrary.org))  
[http://www.burmalibrary.org/docs5/Myanmar\\_Constitution-2008-en.pdf](http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf)

The US Congressional Research Service (CRS) provides the following detailed summary of the main provisions as contained in the Constitution of 2008:

"The 2008 constitution [...] establishes the Republic of the Union of Myanmar as a perpetual union of seven states and seven regions under 'a genuine, disciplined multi-party democratic system.' Although 'the Sovereign power of the Union is derived from the citizens,' the constitution also stipulates that one of its objectives is 'enabling the Defence Services to be able to participate in the national political leadership role of the State.'

The 2008 constitution creates three equal branches of the State – the legislative, executive, and judicial branches – under a parliamentary system.

The legislative branch is empowered to consider and approve legislation. It is headed by a national parliament (Pyidaungsu Hluttaw) with two chambers – the Union Assembly (Pyithu Hluttaw), with a maximum of 440 members selected by districts based on population, and the National Assembly (Amyotha Hluttaw), with a maximum of 224 members selected by the regions or states. Members of the Pyidaungsu Hluttaw serve terms of five years. Each chamber is to select a Speaker from amongst its members. The constitution also creates Regional and State Hluttaws. In each of the Hluttaws, a quarter of the seats are to be appointed by the Commander-in-Chief of Burma's Defence Services. Burma's President is the head of the executive branch.

The President's two main powers are to enforce the law and to promulgate ordinances, subject to the approval of the national parliament. The President can also designate Ministries, enter into treaties, and take military action (including declaring war or making peace), subject to the assent of the national parliament. The constitution also provides for two Vice Presidents. The President and two Vice Presidents are selected by the parliament as a whole after each chamber of the parliament separately nominates one candidate, and the members of the national parliament appointed by the Commander-in-Chief of Burma's Defence Services nominate a third candidate. The terms of office for the President and Vice Presidents are five years; they are limited to two terms in office. Within the Executive Branch, the constitution also establishes the 'National Defence and Security Council' (NDSC), consisting of the President; the two Vice Presidents; the Speakers of each chamber of the national parliament; the Commander-in-Chief and Deputy Commander-in-Chief of the Defence Services; and the Ministers of Border Affairs, Defence, Foreign Affairs,

and Home Affairs. According to the constitution, the four Ministers on the NDSC must be active military personnel.

Chapter XI of the constitution gives the President the authority, after coordinating with the NDSC, to declare a state of emergency in all or part of Burma, and transfer all legislative, executive, and judicial authority to the Commander-in-Chief of Defence Services.

Burma's judicial branch is to consist of a Supreme Court, High Courts for each of the 14 states or regions, and lower level courts. Justices of the Supreme Court are nominated by the President and approved by the parliament as a whole. Burma's constitution provides for a separate Constitutional Tribunal of the Union to adjudicate cases interpreting the constitution or determining the constitutionality of laws passed by the parliament.

The 2008 constitution sets a number of conditions on persons holding public office in all three branches of the government. These include age requirements, natural citizenship for any person and both of her/his parents, and minimum residency requirements. It also bars a person who has dual citizenship, or has a close relative who is a foreign national from holding public office, effectively preventing opposition leader Aung San Suu Kyi from running for office because she was married to a British citizen and has two sons who are British nationals. The constitution has additional disqualification conditions for serving in parliament, including serving a prison term; having committed certain types of offenses; being of unsound mind; insolvency; membership in a religious order; and being a civil servant (with an exception for Defense Services personnel).

Under the 2008 constitution, national legislation is to be considered by both chambers of the parliament separately. If and when a common version of a bills [sic] is approved by both chambers, it is sent to the President for approval. The President can either approve the bill or return it to the parliament with comments for reconsideration. If the parliament approves the bill a second time, with or without incorporating the President's comments, it becomes law.

Chapter VIII lists the rights and duties of the citizens of Burma. It provides for and protects a wide variety of human and civil rights, with an occasional qualification. For example, the freedom of religion can be limited in cases where laws are passed 'for the purpose of public welfare or reform.' Another provision of the constitution forbids 'the abuse of religion for political purposes.' The constitution also allows the suspension of certain civil liberties at times of war, foreign invasion, or insurrection.

Chapter IX of the constitution contains provisions governing elections. Suffrage is provided to all Burmese citizens 18 years old or older, regardless of ethnicity with a few notable exceptions. People who are members of religious orders, serving prison sentences, declared of unsound mind, insolvent or otherwise declared ineligible based on election laws are disenfranchised.

Chapter IX also establishes the Union Election Commission, which is responsible for the conducting, supervising and determining the results of parliamentary (hluttaw) elections.

The constitution includes a separate chapter (Chapter X) regarding political parties. In particular, the constitution requires political parties to register with the government, and abide by the constitution and laws of the country. It also prohibits political parties from receiving direct and indirect 'assistance from a foreign government, a religious association, other association or a person from a foreign country.'

To amend the major provisions of the constitution requires the approval of over 75% of the members of the parliament as a whole, which effectively gives the military veto power over constitutional amendments." (CRS, 29 April 2010, p. 4-6)

Jane's Information Group provides a brief analysis regarding the range of civilian legislators' influence on legislation and the power of the president vis à vis the armed forces:

"The constitution's main innovation is that it provides a limited space for civilian political parties to influence legislation via a new bicameral national legislative assembly (Pyihtaungsu Hluttaw) and 14 state or regional single-chamber legislatures. However, the influence of the military will be pervasive. The executive president, to be chosen by the two chambers of the national legislature, will share power with the commander-in-chief of the armed forces. The latter will appoint 25 per cent of the members of the lower Pyithu Hluttaw (People's Assembly) and upper Amyotha Hluttaw (Nationalities Assembly). While civilian legislators could therefore overrule the military representatives given their greater representation, that would require unanimity on their part and remains improbable." (Jane's, 25 March 2011, as cited in UKBA, 17 June 2011)

The UK Foreign and Commonwealth Office (FCO) gives a brief overview on implications of the 2008 constitution with regard to the role of the military:

"The 2008 Constitution is designed to entrench military rule. 25% of seats in the National Assembly are reserved for the military. And a majority of 75% in the National Assembly is needed to make any change to the Constitution. In the event of a perceived threat to national security, the military retains the power to assume direct executive and judicial control. The Constitution also provides immunity from prosecution for SPDC members for any acts committed while in authority." (FCO, 8 August 2011)

The International Center for Transitional Justice (ICTJ), a non-governmental organisation, points out:

"Ratifying any constitutional amendment requires a vote of more than 75 percent in the parliament, effectively giving the military a veto over any proposed amendment since it controls 25 percent of the seats." (ICTJ, September 2009, p. 35)

The legislative provisions of the constitution are further elaborated by the ICTJ as follows:

"The constitution creates seven regions (composed of what are now the seven divisions, consisting largely of ethnic Burmans), seven states, several self-administered areas within regions or states, and a Union territory. It creates a bicameral legislature at the top-most 'Union' level, composed of an upper and lower house. In each one, the commander-in-chief

of the military designates 25 percent of the membership (56 of 224 in the upper house and 110 of 440 in the lower house). At the state, region, and self-administered areas levels, the legislature has one chamber, and the commander-in-chief designates 25 percent of the membership of these bodies as well. Since all military representatives remain members of the armed forces, they are compelled to act on the instructions of the commander-in-chief. This arrangement gives the military a perpetual voting block with significant control over the legislature and the numbers to obstruct any legislation that could threaten the military's power. While the new constitution requires the military to work with other 'elected officials' to pass laws, it is very likely that a large contingency of former military and ex-government officials will become civilians and be elected through political parties." (ICTJ, September 2009, p. 34)

The ICTJ points out the final article in the constitution's chapter on transitory provisions which it describes as effectively providing amnesty for the conduct of the SPDC and its predecessor, the State Law and Order Restoration Council (SLORC). The text of Article 445 in Chapter 14 (referred to by ICTJ as "immunity clause") is quoted as follows:

"All policy guidelines, laws, rules, regulations, notifications and declarations of the State Law and Order Restoration Council and the State Peace and Development Council or actions, rights and responsibilities of the State Law and Order Restoration Council and the State Peace and Development Council shall devolve on the Republic of the Union of Myanmar. No proceeding shall be instituted against the said Councils or any member thereof or any member of the Government, in respect to any act done in the execution of their respective duties." (ICTJ, September 2009, p. 32-33)

The ICTJ comments on this provision:

"The clause does not specify which acts would be covered by the amnesty. It only holds that it applies to "any act done in the execution of their respective duties." This language could be interpreted widely to encompass administrative, civil, and criminal activities. Alternatively, it may be interpreted more restrictively, for example holding that any act done in violation of national or international law must, by definition, have been outside the scope of 'their respective duties.' Such a restrictive interpretation of this immunity clause would permit criminal liability for severe human rights abuses. It is not clear whether the amnesty is intended to apply only to past actions or present and future actions. How these ambiguities are interpreted will likely depend on the new judiciary [...]" (ICTJ, September 2009, p. 33)

The constitutional provisions establishing the new judiciary are addressed by ICTJ as follows:

"The structure of the judiciary consists of ordinary courts, the courts-martial (military courts), and a constitutional tribunal. Within the ordinary courts, the Supreme Court is the highest and the only one at the national level, with a high court in each state and region, and courts at the levels of self-administered area, district, and township. While the various judges are appointed by the president with the approval of the legislature, the constitution attempts to assert the independence of judiciary by requiring that all judges be free from political affiliation. Yet the constitution's provisions relating to the judiciary probably will

not affect the culture of impunity that permeates the military because all cases against the military must be adjudicated in the court-martial. The constitution includes just two articles on those courts. Article 20(b) in Chapter 1 states, 'The Defense Services has the right to independently administer and adjudicate all affairs of the armed forces.' How this is handled is clarified in Article 319: 'The Courts-Martial shall be constituted in accord with the constitution and the other law and shall adjudicate Defense Services personnel.' Under this formulation, major human rights violations including rape, forced labor, and recruiting child soldiers appear to fall under the jurisdiction of the courts-martial, with the commander-in-chief having the final say. Given the history of impunity outlined above and the lack of trust in the armed forces, it is not clear that the military courts can be trusted to provide justice for human rights violations." (ICTJ, September 2009, p. 34-35)

The International Crisis Group (ICG) expands as follows on the military's right to administer and adjudicate all affairs of the armed forces independently:

"Beyond the considerable influence of the commander-in-chief, constitutional and legislative steps have been taken to secure the military's position and autonomy of action in the new context. The constitution provides that the military has the right to administer and adjudicate all affairs of the armed forces independently. This includes judicial affairs, through a system of courts martial that deals with cases relating to military personnel, including those holding civil-service positions, and on which decisions of the commander-in-chief are final and conclusive." (ICG, 7 March 2011, p. 8)

In an analysis of the 2008 constitution published by the International Federation for Human Rights (FIDH), Aung Htoo, the General Secretary of the Burma Lawyers' Council (BLC) addresses implications for human rights and civil society:

"The 2008 Constitution deprives people of their basic human rights by stipulating 'exception clauses' in the chapter of fundamental rights and duties of citizens. Under the Constitution, the effectively draconian laws which strictly prohibit basic freedoms such as freedom of speech, association, and assembly, will continue to exist and more abusive laws will be enacted. The Constitution also lacks a rights protection mechanism. As such, a genuine civil society, which checks the power abuses of the government, will never come into existence under the 2008 Constitution. Consequently, serious violations of human rights and breaches of international norms will not be prevented." (FIDH, October 2010, p. 56)

### *1.3.2 The role of the National Defence and Security Council (NDSC)*

The International Crisis Group (ICG) states that the *National Defence and Security Council (NDSC)* is the most important executive organ provided for in the constitution. ICG describes this body as being de facto controlled by the military with the commander-in-chief effectively controlling six of the eleven positions: in addition to his own vote, he appoints one of the vice presidents, the deputy commander, as well as the ministers for defence, home affairs and border affairs (ICG, 7 March 2011, p. 4-5).

In his analysis published by the International Federation for Human Rights (FIDH), Aung Htoo, General Secretary of the Burma Lawyers' Council (BLC), comments as follows on the NDSC as foreseen in the 2008 constitution:

"The ruling military regime, the State Peace and Development Council (SPDC), will formally transform into the National Defense and Security Council (NDSC) in accordance with the 2008 Constitution. The NDSC will be above the Constitution and will control the government bodies that exercise legislative, executive, and judicial power.

#### Legislative Aspect

The Commander-in-Chief (C-in-C) of the Defense Services and his deputy will lead the NDSC. Both the C-in-C and his deputy have the power to place army representatives into the legislative bodies. Army representatives will make up one fourth of the total number of representatives in each legislative body. The People's Assembly speakers and the National Assembly's speakers will also be included in the formation of the NDSC. Speakers will be controlled by the army officials in the NDSC in all law making processes.

#### Executive Aspect

The NDSC's authority is not limited to the Legislative Branch, but has been included in the Executive Branch as well. It now appears that the NDSC will be above the elected government of the Union of Burma. The Constitution does not prescribe that the executive power of the Union shall be vested in the Union Government but, instead, it states that the executive power shall be vested in the President. In accord with a created presidential election system, which was never applied in any country across the world, an incumbent military official or the one that turned civilian will become the President. The President shall have power to appoint the Union Ministers who are not elected representatives. It connotes that the Constitution authorizes the President to form a Union Government only with the military personnel, who are not elected, if it is necessary to protect the military dictatorship effectively. Even if the President is a military officer or the one that turned civilian in order to enter the Presidential office, the President will still be dominated by the C-in-C as the President shall have to be constituted in the formation of the NDSC. Even out of the eleven NDSC members, six incumbent army officials will be under the direct command of the C-in-C, whereas the remaining five will be under his indirect command. It is because the military officers, that turned civilian, and very few civilians, that are protege of the military dictators, may constitute the remaining five. The armed forces will not be under the control of the Union Government. However, the Union Government will be under the control of the C-in-C seeing as the Union Government's principal ministries, namely, the ministries of Defense, Foreign Affairs, Home Affairs, and Border Affairs, shall have to obey orders given by the C-in-C who will be operating the NDSC.

#### Judicial Aspect

Independence of the judiciary, which is a major component of the Rule of Law, will never become a reality under this Constitution. The President, who is a part of the NDSC military council, has the power to appoint and dismiss the Supreme Court Justices at his own

discretion; thus, judicial tenure is not guaranteed. The existing civilian judicial system, which is totally subservient to the military, will remain in place. [...]

The Constitution has already established permanent military tribunals separated from the oversight of the civilian justice mechanism. The military C-in-C will exercise appellate power over the tribunals.

#### Above the Law

Although there have been cases of both widespread, indiscriminate attacks and systematically directed attacks against civilian populations, the responsible military personnel have never been tried in civilian courts. In the aftermath of the 2010 election, if the separate military tribunals operate, the efforts of civilian victims of crime, who seek justice, will be perennially renounced. The 2008 Constitution guarantees that the military will be above the law and that there will be no state institution in Burma to take action against the military C-in-C for any crime, regardless of whether committed on a national or international level." (FIDH, October 2010, p. 53-55)

As reported by Freedom House (FH), criticism of the constitution is banned by a 1996 order that carries a penalty of 20 years in prison. Furthermore, the military retains the right to administer its own affairs, and members of the outgoing military government receive blanket immunity for all official acts (FH, 12 May 2011).

Jane's Information Group provides details regarding the composition of the NDSC and also reports that in February 2011 a new institution, the eight-member State Supreme Council (SSC) led by Senior General Than Shwe, was formed:

"The 2008 constitution provides that the government consist of the president (who heads the government), two vice-presidents, ministers of the union and the attorney general of the union. [...] Executive functions are also vested in the National Defence and Security Council (NDSC), which is led by the president and also comprises the two vice-presidents, the speakers of the Pyithu Hluttaw and Amyotha Hluttaw, the commander-in-chief and the deputy commander-in-chief of the defence services, as well as the ministers for defence, foreign affairs, home affairs and border affairs.

In February 2011 Myanmar announced the formation of a new eight-member State Supreme Council (SSC) with Senior General Than Shwe at its helm, signifying a further solidification of control by the military over the country's internal affairs. Further prominent members of the council were announced as Vice-Senior General Maung Aye, President Thein Sein, First Vice-President Thiha Thura Tin Aung Myint Oo and Thura Shwe Mann, who occupied the number three in the military's hierarchy before retiring from the military to run as a civilian in the 7 November 2010 election. The new body, slated to become the most powerful in the country, is not legally mandated by the 2008 constitution. While advisory on paper, the SSC and the NDSC are the bodies that can be expected to wield executive power in Myanmar, with parliament likely to play a subordinate role." (Jane's, 22 June 2011)

## 1.4 The November 2010 general elections

The US Department of State (USDOS) in its Country Report on Human Rights Practices on Myanmar of April 2011 provides the following overview of the pre-election period:

"Electoral laws, published on March 8, are based on the flawed 2008 constitution. Under the laws political parties were required to compete under highly restrictive conditions that limited campaign activities, imposed relatively high candidate fees, and gave unusually broad powers to a government-appointed UEC [Union Electoral Commission] to control the activities of political parties and their members.

In early August the UEC announced there would be 330 township-based constituencies of the lower house (People's Parliament), 168 constituencies of the upper house (National Parliament), and 665 constituencies of the regional/state parliaments. One-quarter of all national and regional parliamentary seats were reserved for military appointees. All levels of parliament were scheduled to convene on January 31, 2011. A joint session of the upper and lower houses - the Union Assembly - was to convene within 15 days of that date. In addition the upper and lower houses each were to select a vice president, the military members of both the upper and lower houses would select a third vice president, and the entire bicameral parliament would select the president from among the three vice presidents. The constitution provides for the military to take over the government should the president, who must have a military background, judge the security situation to be unstable.

After announcing the election date, the government gave registered political parties approximately two weeks' notice to submit names of their candidates. Many political parties complained that the government's short notice did not provide them sufficient time to find candidates and identify constituencies in which they would contest seats.

Individual members of some prodemocratic opposition parties used their own money to conduct campaign activities because restrictive laws made it difficult for candidates to raise money legally. The registration fee of 500,000 kyat (\$500) per candidate was well above the means of the average citizen.

The leader of one prodemocracy opposition party resigned in protest because he believed the elections would not be free and fair. Other parties, including the NLD, opted not to participate in the elections from the beginning. Parties accused the UEC of forwarding their party membership lists to SB police, who then visited party members at their homes on instruction from high-level SPDC officials. The SB reportedly requested members' biographies and two passport-size photographs.

The UEC did not approve the registration of three ethnic Kachin political parties, reportedly because of past ties to the Kachin Independence Army cease-fire group, which had refused to integrate into the government army-dominated Border Guard Force. In September the UEC announced elections would not be held in some ethnic areas, reportedly because of tensions over Border Guard Force problems.

The government-backed USDP [Union Solidarity and Development Party], headed by the prime minister, drew upon the resources of the government and government-affiliated businesses and reportedly bribed, coerced, and intimidated citizens into signing up for membership. It fielded candidates in nearly all constituencies. The USDP began its unofficial election campaign in late 2009, earlier than any other parties were permitted to engage in campaign activity. [...]

The government maintained tight control over the operations of political parties and political opponents' rights to organize and publicize their views. Persons who opposed the government were subjected to imprisonment, violence, and harassment, including members of parties campaigning in the elections, despite assurances from the government that the process would be free and fair.

On September 14, the government declared that the NLD and all other parties that did not reregister according to SPDC-issued electoral laws ceased to exist as political entities." (USDOS, 8 April 2011, Section 3)

The UK Foreign and Commonwealth Office (FCO) states that the election laws were criticised by domestic and Western sources mainly due to the following reasons:

- "- The National Election Commission's lack of independence
- Restrictions on parties' financing and campaigning activities
- The barring of political prisoners from founding a political party, from standing as a candidate, or from voting. This effectively excluded Aung San Suu Kyi and the other over 2100 political prisoners from the process
- The laws explicitly annul the 1990 election results" (FCO, 8 August 2011)

The HRW World Report published in January 2011 further elaborates on the election laws and registration of parties:

"In March the SPDC formed the Union Electoral Commission (UEC) and released a series of laws governing the conduct of the elections, which included provisions barring any person serving a prison sentence from party membership. This effectively forced the National League for Democracy (NLD) to decide whether to dismiss Aung San Suu Kyi - who was under house arrest - and more than 430 of its jailed members, in order to re-register with the UEC. The NLD ultimately did not re-register, and the UEC declared it illegal.

Other provisions tightly regulated the campaigning of parties and candidates, warned against public disturbances, and expressly outlawed public criticism of the constitution and the military. The government declared illegal a boycott campaign that some NLD members organized, and warned the public that election boycotters could face one year in prison.

In April Prime Minister Lt. Gen. Thein Sein and 27 SPDC and government cabinet ministers resigned their military commissions and formed the Union Solidarity and Development

Party (USDP). In August the USDP absorbed all the assets and infrastructure of the Union Solidarity and Development Association (USDA), a mass-based social welfare movement formed by the military in 1993 with more than 26 million nominal members. The military conducted its biggest reshuffle in years, with scores of senior officers resigning in order to run as USDP candidates.

The USDP was the only party that fielded candidates for virtually all 1,168 seats open for contest in the national bicameral assembly and 14 regional assemblies. The remaining seats, out of a total of 1,551, are reserved for serving military officers as stipulated in the 2008 constitution.

By November 37 parties had registered and were contesting the elections. Many were small, ethnic-based parties only contesting a limited number of regional seats. Voting was not conducted in parts of 32 townships in ethnic border areas where the government alleged there was armed conflict and instability. Widespread irregularities, such as advance bulk voting by local officials, were reported in some regional areas." (HRW, 24 January 2011)

The USDOS reports on party registration ahead of the November 2010 elections:

"Forty-seven political parties applied for permission to form and register under the government's highly restrictive electoral laws issued in March; the government ultimately granted permission to 37. The government failed to consider the applications of three parties (all ethnic Kachin) and announced the dissolution of 10 parties, including the NLD, which refused on principle to register under the election laws. [...] Authorities and the government's election commission ensured strict control over the activities of newly registered political parties." (USDOS, 8 April 2011, Section 2b)

As reported by the FCO, only two parties were able to put up candidates nationwide: the regime-backed Union Solidarity and Development Party (USDP) and the National Unity Party (NUP). The FCO further provides details with regard to restrictions on pre-election campaigning imposed by the Election Commission:

"In June 2010, the Election Commission published a political party campaign directive prohibiting political parties from marching in procession to designated gathering points or venues while displaying party flags or chanting slogans. The directive also forces political parties to apply in advance to the Election Commission for permission to hold political gatherings and to give speeches. The run up to the elections was heavily controlled by the regime. Tight regulations allowed the authorities to deny registration to some parties without explanation and to restrict campaigning and funding sources." (FCO, 8 August 2011)

As noted in March 2011 by the UN Special Rapporteur on the situation of human rights in Myanmar, the Election Commission announced on 7 December that turnout had been 77 per cent of Myanmar's 29 million eligible voters (HRC, 7 March 2011, p.4). The Economist Intelligence Unit (EIU) remarks that voter turnout appeared to have been low, based on reports noting the lack of queues at the polling booths (EIU, 9 November 2010).

HRW states that the parliamentary elections “took place in an atmosphere of intimidation, coercion, and widespread corruption, with laws and regulations strongly favoring military-controlled parties.” (HRW, 24 January 2011). It further provides the following summary of election day and the results:

“On voting day, November 7, widespread irregularities were reported, including the use of advance voting ballots to swing seats in favor of the USDP during the closing stages of counting ballots. The USDP won more than 77% of the seats in the two national level parliaments and a clear majority in the 14 regional and state based assemblies. The Electoral Commission announced that 22 million of 29 million eligible voters cast ballots, equating to a turn-out of around 75%-80%.” (HRW, 17 May 2011)

The Report of the UN Special Rapporteur further provides a detailed overview regarding Election results, the situation on election day and the vote counting process:

“Prior to the election, the Union Solidarity and Development Association, a mass organization created by the ruling State Peace and Development Council officials, was transformed into the Union Solidarity and Development Party (USDP), with former Prime Minister Thein Sein as head.

USDP won 883 of the 1,154 seats open to the electorate. In the Nationalities Assembly (the upper house), the party took 77 per cent (129) of the elected seats, and in the People’s Assembly (the lower house), it won 79 per cent (259) of the elected seats. With the seats reserved for the military (25 per cent of each legislature), USDP and the military bloc will have an overwhelming legislative majority.

[..] In the 14 regional and state assemblies, however, the results were mixed. While USDP won almost all the seats in most Burman-dominated central regions, in ethnic areas the party won sizeable blocs but has a majority only in Kayah State. In Chin State, USDP won 29 per cent of seats while the Chin Progressive Party and the Chin National Party each won 21 per cent. In Rakhine State, USDP won 30 per cent of seats while the Rakhine Nationalities Development Party won 38 per cent. In theory, special sessions could be convened by these other parties, which might mean that they would have the ability to influence these bodies to positive effect. However, the actual functioning of the regional assemblies, including how often they meet, remains to be seen.

[..] According to observers inside Myanmar, polling on election day itself was generally peaceful and orderly despite some reports of irregularities. There were numerous reports of intimidation of journalists and confiscation and destruction of their property throughout the country. The Press Scrutiny and Registration Division also reportedly informed private media that they were only allowed to carry official news issued by the Union Election Commission.

[..] During the counting process, the phenomenon of advance votes caused upsets in numerous instances. On the evening of 7 November, on the basis of observation of votes counted at the polling stations, opposition candidates and a local Myanmar organization

reported strong support in the constituencies those candidates contested with projections that they might win over 40 per cent of the elected seats at the national level. However, some candidates reported that the vote count was suspended and resumed later without observers, resulting in a change of outcome with the USDP candidate suddenly winning. Some reported that when the USDP candidate was losing, large numbers of advance votes arrived at the last minute to change the balance.

[...] Despite what should have been a relatively tiny margin of votes, these advance voting ballots are estimated to have represented 10 per cent of the vote nationwide. On 18 October 2010, Thein Soe, the Chairman of the Union Election Commission, referring to advance votes, had explained that: 'The categories include those under hospitalization, under detention, military personnel on duty, training and those abroad. These numbers are small.' Almost all advance votes appear to have gone to USDP candidates. The use of advance votes further undermined the credibility of an election process that was seriously flawed from the start. The election laws limited freedom of expression and freedom of assembly and association. Key stakeholders were excluded from the process, while significant barriers to participation hampered candidates and parties from contesting fairly." (HRC, 7 March 2011, p. 4-5).

Manipulation of the vote count and other irregularities that appeared to have marred the November 2010 election are addressed in a report published by the International Crisis Group (ICG) in March 2011:

"The most obvious manipulation occurred with so-called 'advance votes' – votes cast in advance of election day by those who for various reasons (defined in law) were unable to vote on the day. Despite comments shortly before polling day by the chairman of the election commission that the number of advance votes was 'small', Crisis Group analysis of the official results shows that there were around 6 million advance ballots, representing some 10 per cent of all votes cast. Advance votes were collected in a non-transparent way, with allegations of serious irregularities. The distribution of advance votes among candidates varies markedly from the distribution of votes on polling day, giving further credence to such allegations. Manipulation of advance votes alone cannot account for the USDP landslide. These votes only changed the outcome of contests in 64 seats (out of 1,154), almost all in favour of the USDP. There were also allegedly other blatant forms of manipulation. Candidates reported that in some unmonitored polling stations, the votes went overwhelmingly to the USDP. In a couple of cases, it has been claimed that the authorities simply changed the results to ensure that certain high-profile USDP candidates won, and demanded that other candidates sign off on the amended results. In addition, the first-past-the-post system gave a significant inherent advantage to the USDP. This party obtained 58 per cent of the total votes cast for all assemblies (national and regional), which translated into 77 per cent of the seats. The second-largest party, the National Unity Party (NUP), got 23 per cent of the vote, but this translated into only 5 per cent of the seats." (ICG, 7 March 2011, p. 1-2)

The March 2011 report of the UN Special Rapporteur to the Human Rights Council (HRC) states that the following procedures and practices were applied with respect to electoral complaint filing:

"The procedure for filing a complaint about the electoral process as elaborated in the Complaints Procedure for Election Fraud is highly problematic and in fact unprecedented. A non-refundable fee of one million kyat (about \$1,200) is required to formally file a complaint. Given that the average annual salary in Myanmar is \$459, this fee is prohibitively expensive and appears intended to prevent complaints. In contrast, the maximum penalty for an election violation such as 'violence, threat, undue influence, cheating, taking or giving of bribes to prevent a person from exercising the right of voting and the right to stand for election' is 100,000 kyat (\$120) (as well as the possibility of one year of imprisonment). The disproportion between the complaint-filing fee and the penalty for violations is incompatible with a fair electoral process.

[...] In addition to the financial burden of filing a complaint, the Government appears to have issued an implicit threat of further fines and imprisonment for complainants who pursue justice. *The New Light of Myanmar* reported on a letter sent by the Union Election Commission to political parties which stated that some parties had made allegations through foreign radio stations and print media 'on the grounds that their candidates were not elected in the elections', and that such allegations went against article 64 of the respective Election Law. Yet article 64 does not refer to general criticism in the media, rather: anyone 'found guilty of dishonestly and fraudulently lodging any criminal proceedings against any person regarding offences relating to election shall, on conviction, be punishable with imprisonment for a term not exceeding three years or with fine not exceeding three hundred thousand kyats or with both'. In this kind of pronouncement, the intention of the Government appears to be intimidation of candidates from filing complaints." (HRC, 7 March 2011, p. 4-6)

USDOS gives the following overview in its Country Report on Human Rights Practices of April 2011:

"In the November elections, the government-backed USDP, whose candidates included cabinet ministers and other high-ranking government and military officials, won approximately 77 percent of all seats, with a reported 77 percent voter turnout. There were widespread complaints by prodemocratic and ethnic political parties of election fraud, especially around the use of highly suspect 'advance votes' by the USDP. Some ethnic political parties fared well at the regional level. It was unclear what policy role the newly elected parliament would play.

Ethnic cease-fire groups - many of which have agreements with the government - were threatened with military action unless they agreed to come under control of the military through its Border Guard Force and agreed to participate in the elections.

No women were in the senior ranks of political leadership. Members of certain minority groups were denied a role in government and politics. There were no female or ethnic

minority members of the SPDC, cabinet, or Supreme Court." (USDOS, 8 April 2011, Section 3)

## 1.5 The post-election situation

In a March 2011 report, Human Rights Watch (HRW) describes the composition of Myanmar's new legislative bodies since they were convened in January 2011 as follows:

"Since the two national and 14 regional and state assemblies were convened in January 2011, almost all key positions in parliament and the executive have been given to recently retired senior military officers. With a quarter of all seats in national and regional legislatures reserved for serving military officers, and the overwhelming number of USDP candidates, the military has over three-quarters of all seats necessary to enact legislation, marginalizing the small number of genuine opposition or independent members of parliament. 'The November 2010 elections have not changed the nature of authoritarian military rule in Burma or the army's involvement in conflict abuses,' [HRW legal and policy director James] Ross said. 'The Burmese military needs to reverse course by adopting measures that would bring the daily abuses against civilians to an end.'" (HRW, 24 March 2011b)

Likewise, the Economist Intelligence Unit (EIU) reports in its *Viewswire* of February 2011 with regard to the new legislatures, which include the national-level Amyotha Hluttaw (Nationalities Assembly, the upper house) and Pyithu Hluttaw (People's Assembly, the lower house), and the 14 state- and regional-level assemblies:

"In theory, the formation of these bodies on January 31st [2011] represents the dawn of a new political era, but the armed forces and their civilian allies dominate all of the new assemblies." (EIU, 1 February 2011)

As reported by the Transnational Institute (TNI)/ Burma Centre Netherlands (BCN) on 30 March 2011, the SPDC dissolved itself (with Than Shwe retiring) and handed over its power to an elected government:

"On 30 March 2011, Burma/Myanmar's ruling junta, the State Peace and Development Council, dissolved itself and handed over power to an elected, quasi-civilian government. Than Shwe retired, relinquishing his head of state and commander-in chief roles, and even his rank – stating that from now on he would be referred to as 'U Than Shwe' not 'Senior General'." (TNI/BCN, May 2011, p. 1)

In April 2011, the Economist Intelligence Unit (EIU) provides an overview of developments in government since the November 2010 general elections, including the dissolution of the SPDC in March 2011 and the resignation of General Than Shwe as head of the military junta as well as from his post as commander-in chief of the armed forces:

"The establishment of new institutions of government in Myanmar has, in the words of the constitution, created a 'disciplined multiparty democratic system'. A formal handover of power from the State Peace and Development Council (SPDC, the long-standing military junta) to a presidential system operating alongside a partly elected legislature took place

in late March. The president, Thein Sein, and his two vice-presidents, Lieutenant-General Tin Aung Myint Oo and Sai Mauk Kham, were sworn into office on March 30th. At the same time the SPDC, which has ruled the country under various guises for much of the last 50 years, was formally dissolved. State media reported that the order to dissolve the military executive was signed by its chairman, Senior General Than Shwe. Ending some of the speculation surrounding what formal roles General Than Shwe will still play, media reports have cited members of parliament as stating that in addition to no longer heading a military junta, he has also given up his position as commander-in chief of the armed forces. This is a rather surprising move. His successor has been named as General Min Aung Hlaing. The fact that the country's strongman has formally stepped down from this all-powerful role marks an important generational shift, with younger generals now holding the top posts in the armed forces. Nevertheless, it seems likely that General Than Shwe will continue to play an influential role behind the scenes for some time to come. He is reportedly still in regular communication with the Ministry of Defence, and it appears likely that he will be closely consulted by Thein Sein, who is regarded as being a Than Shwe loyalist. It is not clear whether Than Shwe will retain his seat on the newly formed National Defence and Security Council, which appears set to make all important decisions (all but one of its 11 members are either members of the former junta or have recently stepped down from military posts)." (EIU, 21 April 2011)

The report of the UN Special Rapporteur on the situation of human rights in Myanmar of March 2011 notes the following as regards the post-election situation:

"Regrettably, the Special Rapporteur notes that the elections failed to meet international standards, and the implications of this for the legitimacy of the process and outcome will pose further challenges for the transition. Nonetheless, the elections appear to have had some significant positive consequences, including the resumption of legal political activity and discussion in Myanmar. In the view of some observers, this election is the start of a longer transition process with the next legislative elections in 2015 providing more opportunity for the fulfilment of various human rights.

[...] On 13 November 2010, the Government released Daw Aung San Suu Kyi from house arrest at the end of her sentence. The Special Rapporteur notes with appreciation that the Government did not impose restrictions on her liberty. Since her release, Daw Aung San Suu Kyi has been meeting with and speaking to a wide range of interested parties. She has called for dialogue with the military leadership of Myanmar and has pledged to continue to seek national reconciliation in the most constructive way possible. The Special Rapporteur spoke with Daw Aung San Suu Kyi by phone on 11 January 2011.

[...] The new Government is in the process of being constituted at this time. The first parliamentary session took place on 31 January 2011. The 2008 Constitution comes into force at the start of the legislative term. The USDP majority allowed the party to choose two of the three presidential nominees while the military bloc chose the third. On 4 February 2011, the Chairman of USDP, former Prime Minister Thein Sein, was named President. Tin Aung Myint Oo and Sai Mauk Kham, both of USDP, are the Vice-Presidents. The President is expected to appoint his cabinet soon.

[...] The Special Rapporteur is concerned that restrictions have already been imposed on parliamentarians regarding their freedom of expression. On 26 November 2010, laws signed by Senior-General Than Shwe stipulate that parliamentarians will be allowed freedom of expression unless their speeches endanger national security or the unity of the country or violate the Constitution. These are very broad categories that could be used to limit discussion. The laws also provide a two-year prison term for those who stage protests in the parliament compound or physically assault a lawmaker on its premises.

[...] Other indications that the right to freedom of expression continues to be restricted in Myanmar include the suspension of nine private journals by the Press Scrutiny and Registration Division under the Ministry of Information on 21 November 2010. They did not follow official guidelines limiting coverage of Daw Aung San Suu Kyi to one picture and one report and not on the front page. There also appear to have been news blackouts on fighting between the military and armed rebel groups in Myawaddy in the days after the election." (HRC, 7 March 2011, p. 6)

As reported by ICG in March 2011, the new Myanmar government, formed in February 2011, has the following composition:

"On 4 February, the Presidential Electoral College (made up of all members of the combined national legislature) chose Thein Sein, the SPDC prime minister, as president, with 'Thiha Thura' Tin Aung Myint Oo (Secretary-1 of SPDC) becoming vice president 1 and Dr. Mauk Kham becoming vice president 2. All three are elected representatives of the USDP. The constitution stipulates that they must resign from their legislative seats on assuming office and must not take part in party-political activities during their five-year term of office. [...] 34 ministries have been designated by the president, two more than the previous number. The cabinet is made up of 30 ministers, the same as the previous number, with four ministers having dual portfolios. In accordance with the constitution, the ministers in charge of the key security ministries (defence, home affairs and border affairs) are military appointees. The rest of the cabinet is a mixture of new and old faces. About one third of ministers have been reappointed from the previous cabinet, mostly with the same portfolios. A number of technocrats have been appointed to run social service ministries, an encouraging development. The education minister is a former university rector, the health minister is a medical doctor and former medical university rector, the minister for hotels and tourism is a businessman, and the minister for industrial development is a former head of the Myanmar Chambers of Commerce." (ICG, 7 March 2011, p. 3-4)

## **1.6 New administrative structures at township and village level**

The International Crisis Group (ICG) reports in March 2011:

"For the first time, legislative and executive power in Myanmar is being partly decentralised. Each of the fourteen regions/states has its own legislature, together with a local government headed by a chief minister. Six self-administered areas have been delineated for certain ethnic groups (the Danu, Kokang, Naga, Palaung, Pao and Wa), giving them a degree of autonomy within the ethnic states concerned. [...] The impact of

this change will be felt most strongly in some of the ethnic states (Chin, Kayin, Mon, Rakhine and Shan) where ethnic political parties have sizable minorities, and whose representatives will be included as ministers in the local governments.

There will continue to be strong central control. The USDP dominates all the region assemblies and one state assembly (Kayah), and has sizable minorities in all the others – ensuring that, together, the USDP and the military appointees form a majority. All speakers and deputy speakers in these assemblies, and nearly all chief ministers, are USDP representatives. This ensures that the USDP/military will control decision-making on issues of national concern. On local issues the possibilities are more promising as a proportion of USDP representatives at this level are respected local figures. They were pressured to run on a USDP ticket as part of the party’s election strategy and do not necessarily hold the same views as the party.” (ICG, 7 March 2011, p. 6-7)

A report by the Transnational Institute and the Burma Centre Netherlands (TNI/BCN) states that five new Self-Administrated Zones (Naga in Sagaing Region, and Palaung, Kokang, Pao and Danu in Shan State) and one new Self-Administrated Division (Wa in Shan State) have been established and designed “for National races with suitable population”:

“Sagaing Region

Naga Self-Administrated Zone  
Leshi, Lahe and Namyun Townships

Shan State

Palaung Self-Administrated Zone  
Namshan and Manton Townships

Kokang Self-Administrated Zone  
Konkyan and Laukkai Townships

Pao Self-Administrated Zone  
Hopong, Hsihseng and Pinlaung Townships

Danu Self-Administrated Zone  
Ywangan and Pindaya Townships

Wa Self-Administrated Division  
Hopang, Mongmao, Panwai, Pangsang, Naphan, Metman Townships” (TNI/BCN, February 2011, p. 2)

The US Department of State (USDOS) likewise reports in its *Background Note* on Myanmar as at 3 August 2011:

“The country is divided into seven regions (tain) - Irrawaddy, Bago (Pegu), Magway, Mandalay, Yangon (Rangoon), Sagaing, and Tanintharyi (Tenassarim); seven ethnic states

(pyi nay) - Chin State, Kachin State, Kayin (Karen) State, Kayah (Karenni) State, Mon State, Rakhine (Arakan) State, and Shan State; and six self-administered zones/divisions also known as special regions - Naga, Pa Laung, Koka, Pa-O, Danu, Wa; Nay Pyi Taw is administered by the President. Suffrage: Universal suffrage at 18 years of age." (USDOS, 3 August 2011)

The TCD/BCN provides the following analysis of the decentralization of certain legislative and executive powers, as provided for in the 2008 constitution:

"Under the 2008 Constitution, which came into force on 31 January 2011, certain legislative and executive powers were decentralized to the region/state level. Thus, the seven ethnic-minority states (like the seven Burman-majority regions) now have their own state legislatures and state governments. These structures are dominated by the government's Union Solidarity and Development Party (USDP). All of the speakers of the state legislatures are from the USDP, as are the chief ministers, who head up the state executives (with the exception of the Chief Minister for Kayin [Karen] State, who is a military legislator). [...]. The situation is thus very far from the federal autonomy or self-governance demanded by many ethnic leaders. Nevertheless, ethnic political parties will have some limited influence over these structures, in the following ways:

1. Through their seats in the legislatures.

None of the ethnic nationality parties have legislative majorities, but they control sizeable blocs. In three states – Chin, Kayin, Rakhine – the ethnic parties collectively control more seats than the USDP.

2. Through their membership of legislative standing committees.

Standing committees are appointed to carry out certain legislative functions, including during the periods when the legislatures themselves are in recess; they mostly include legislators from ethnic parties. (So far, committees that have been established are the Legislative Committees, the National Races Affairs Committees and the Representatives Vetting Committees.)

3. Through their positions in state governments.

A number of ministerial portfolios in the seven states have been given to legislators from ethnic nationality parties.

Under the constitution, the decentralized powers are rather limited. Nevertheless, they include a number of areas that can have a significant impact on people's lives: land (including allocation of land and agricultural loans), local business (small business loans and some taxation), cultural promotion, and municipal issues." (TNI/BCN, May 2011, p. 3)

## 2 Security Situation/Developments

### 2.1 Background

In a September 2010 report published by the UN General Assembly (UNGA), the UN Special Rapporteur on the situation of human rights in Myanmar reports that areas in eastern Myanmar are either controlled by insurgents, the Government or have a mixed administration with conflict still occurring between Government and non-State armed groups:

“In eastern Myanmar, areas are either insurgent-controlled, Government controlled or mixed administration, where conflict still occurs between Government and non-State armed groups. On 5 March 2010, the Government of Myanmar replied to an earlier allegation of extrajudicial killing of two men, Saw Win Thein and Doung Nyo. The Government noted that those two individuals had been killed during a “skirmish” in Kayin State, explaining that “in Kayin State areas where insurgents still exist are designated as grey areas”. Insurgent-controlled areas – characterized as “free-fire zones” by observers as the military attack with foreknowledge of civilian presence without efforts to distinguish combatants from civilians – are home to substantial numbers of civilians. Various groups have estimated that at least 111,000 people remain in hiding and are at risk of being shot on sight by the military. They will not be able to participate in elections.” (UNGA, 15 September 2010, p. 12)

In a July 2011 report, the Internal Displacement Monitoring Centre (IDMC) provides an overview of fighting between various ethnic non-state armed groups (NSAGs) and government forces (*Tatmadaw*) in Kayin (Karen), Shan and Kachin States since the elections in November 2010, quoting UN, NGO and media sources. Armed groups involved in clashes with government troops are reported as being the Democratic Karen Buddhist Army (DKBA)-5th Brigade and the Karen National Union (KNU)/Karen National Liberation Army (KNLA) in Kayin (Karen) State and the Shan State Progress Party/Shan State Army (SSPP/SSA) and the Shan State Army-South (SSA-S) in southern Shan State. Fighting in both states is reported to be ongoing as of June 2011. IDMC reports that in February 2011 several opposition NSAGs formed a military and political alliance, the United Nationalities Federal Council (Union of Burma) (UNFC-UB). The alliance includes the KNU/KNLA, the KIO/KIA, the NMSP, and the SSPP/SSA, and also groups based in western Myanmar known as the Chin National Front (CNF) and National United Party of Arakan (NUPA) (IDMC, 19 July 2011, p. 6-7).

A December 2010 report by Human Rights Watch (HRW) outlines the political background to the escalation of fighting in Myanmar’s ethnic areas and key events involving ethnic armed groups with whom the central government reached ceasefire agreements between 1989 and 1995 (“ceasefire groups”):

“The escalation of fighting in ethnic areas of Burma, where civil war has persisted for decades in Karen, Karenni, and Shan States, has various causes. More than 17 ethnic armed groups throughout Burma agreed to ceasefires with the central government between 1989 and 1995. Many of these ceasefires are now looking increasingly tenuous

after relations between the groups and the government deteriorated since 2007 over political reforms and the lack of concessions to ethnic nationality aspirations.

In 2008, Burma's ruling State Peace and Development Council (SPDC) announced that all armed groups under ceasefires would have to transform into Border Guard Forces (BGF) under the direct operational control of the Tatmadaw, as stipulated in the 2008 Constitution. To date, only five small militias have agreed to the terms and transformed into BGFs. Large ethnic armed groups such as the United Wa State Army (UWSA), the Kachin Independence Organization (KIO), and the New Mon State Party (NMSP), have refused to join the BGF scheme.

The DKBA, a splinter group from the larger Karen National Union/Karen National Liberation Army, agreed to transform into a Karen State BGF in September 2010. One brigade of the DKBA, under the leadership of Brigadier Nah Kham Wey, refused to sign onto the BGF scheme. It was this unit that occupied the town of Myawaddy on November 7, leading to fighting breaking out the following day in that town and further south at Three Pagoda's Pass. The Tatmadaw have since been hunting down the DKBA faction, sparking sporadic fighting along the border. There are reports that elements of the KNLA are also attacking Burmese military forces as they attempt to move large numbers of troops and supplies into the area.

In 2009, Burmese security forces stormed the ceasefire enclave of the Myanmar National Democratic Alliance Army, which caused over 30,000 refugees to flee into China. The tensions with the ceasefire groups is set to continue in 2011, as fighting has also flared in parts of Shan State against the Shan State Army-North (SSA-N), parts of which have agreed to the BGF scheme." (HRW, 4 December 2010)

The International Crisis Group (ICG) provides details regarding the government's plan to convert the ceasefire groups into Border Guard Forces (BGF) under central military control, the extent of its implementation and reactions to it by ethnic armed groups:

"The Myanmar government first announced in April 2009 its plan to convert certain ethnic group militias into Border Guard Forces (BGF) under central military control. Under the plan, the ceasefire groups would become state-controlled border guards subordinate to the military's regional commanders and would cede the right to manage their day-to-day affairs. Following substantial opposition to the plan, the government extended the deadline four times between December 2009 and April 2010. While some smaller ethnic armies were forced to join, the major ceasefire groups along the border refused, including the United Wa State Army (UWSA), Kachin Independence Organisation (KIO) and National Democratic Alliance Army (NDAA, Shan State-East, Special Region-4). These groups see their weapons as the last source of leverage in their long-running battle for autonomy with the military government. Fearing that Naypyidaw may launch another offensive similar to that in Kokang the major ceasefire groups along the border have been building up their forces. In spring 2010, the Kachin Independence Army (KIA), the military wing of the KIO, ordered soldiers to prepare for military mobilisation and guerrilla warfare. The group positioned its forces defensively and increased recruiting. Many in the KIO civilian

administration were ordered back to the jungle. Soldiers in UWSA-controlled areas and Special Region-4 also stepped up training and dug trenches in territory close to government-held areas. Families of SPDC officials in the area were told to return to the capital while government troop levels increased near ceasefire group-controlled territory." (ICG, 21 September 2010, p. 3)

In November 2010 the Integrated Regional Information Network (IRIN) reports on major government military offensives following ethnic factions' refusal to join the BGF. These occurred in August 2009 in the Kokang region of northern Shan State (involving the Myanmar National Democratic Alliance Army) and in Myawaddy (Kayin/Karen State) in November 2010 involving a breakaway faction of the DKBA which opposed the overall group's decision to join the BGF:

"Under Myanmar's military-drafted 2008 Constitution, all armed forces in the country must be placed under central military command - an ambitious undertaking in a country which has over a dozen armed ethnic groups (all but a handful of which have ceasefire agreements with the military government).

To achieve this, the regime has demanded that all of the ceasefire groups be incorporated into a Border Guard Force (BGF), which would entail disarming them, re-supplying them with government-issued weapons and making their troops subordinate to regional Myanmar military commanders.

To date, however, only two groups have agreed: the Democratic Karen Buddhist Army (DKBA) and the National Democratic Army-Kachin.

In August 2009, the refusal to join the BGF by one of the smallest ethnic factions in the country - the Myanmar National Democratic Alliance Army operating in the Kokang region of northern Shan State - resulted in a military offensive launched by government troops which led to more than 30,000 refugees fleeing over the border to China. [...]

Earlier this month, fighting broke out between government forces and a breakaway faction of the DKBA which opposes the group's decision to join the BGF. On 7 November, the day of Myanmar's general elections, DKBA troops of Brigade 5 stormed the town of Myawaddy on the Burmese-Thai border and took over several key positions. Fighting for control of the town the next day led to some 20,000 people fleeing into Thailand, while clashes further south resulted in some 5,000 more refugees." (IRIN, 29 November 2010)

HRW reports on the clashes starting with the 7/8 November 2010 attack and brief seizure of the town of Myawaddy (Kayin/Karen State) by a brigade of the Democratic Karen Buddhist Army (DKBA) (led by Nah Kham Wey) and ensuing fighting with the Myanmar army in Myawaddy, in the town of Palu as well as at several other points along the border to Thailand since November 2010, and resulting civilian displacement/refugee flows to Thailand (HRW, 4 December 2010).

In a March 2011 report, the UN Special Rapporteur on the situation of human rights in Myanmar states:

"Tensions between the Government and other armed ethnic groups remain high. The Kachin were excluded from the political process. The Wa and Mongla groups refused to participate. There are reports of ceasefire groups re-arming in anticipation of resumption of armed conflict. The Special Rapporteur has also received reports of sporadic fighting in Kachin and Shan States in past months." (HRC, 7 March 2011, p. 10-11)

An article by Ashley South, an independent writer and consultant specialised in humanitarian and political issues in Myanmar, which was published in the journal PacNet (Center for Strategic and International Studies, CSIS) in June 2011, notes:

"The situation in a number of areas is very tense. Units of the main Shan ceasefire group have returned to armed conflict, as has one faction of the main Karen group (the Democratic Karen Buddhist Army). In the past two weeks, more DKBA units have rejected the BGF transformation, and are threatening to return to war. Several skirmishes, and at least one major battle, have also broken out between the government and the Kachin Independence Organization (KIG). The Kachin communities are particularly concerned about Chinese construction of a large hydropower dam in their homeland" (South, 16 June 2011)

The International Committee of the Red Cross (ICRC) Annual Report 2010 states that a low-intensity armed conflict between government forces and various armed groups in Kayin and Shan States and eastern Bago Division is continuously affecting the civilian population:

"The population in areas of Kayin and Shan States and eastern Bago Division continued to suffer the effects of low-intensity armed conflict between government forces and various armed groups. Apart from the Democratic Kayin Buddhist Army (DKBA), the main groups that had accepted a ceasefire continued to reject government ultimatums to transform into a border guard force under army control. A faction that had broken away from the DKBA over the border guard issue clashed with government forces in Kayin State. There were also armed clashes between government troops and the Shan State Army (North)." (ICRC, May 2011, p. 244)

## **2.2 Human Rights Issues**

An IRIN report of 24 May 2011 renders statements by Amnesty International (AI) and the UN Special Rapporteur on the situation of human rights in Myanmar as regards the human rights situation in Myanmar:

"There has been no appreciable change in the human rights situation in Myanmar since the elections,' Benjamin Zawacki, Amnesty International's Myanmar researcher, told IRIN in Bangkok. According to the rights group, some of the worst abuses include the imprisonment of thousands of political opposition members and the military's active targeting of civilians in ethnic areas, particularly in the eastern Shan, Karen and Kayah states. [...] The UN Special Rapporteur, Tomas Ojea Quintana, recently spent a week assessing the human rights situation in Myanmar from Thailand. The militarization and targeting of unarmed civilians in ethnic areas continues to foster violence and human rights abuses, including forced labour, conscription, extrajudicial killings and sexual

violence, Quintana told reporters in Bangkok on 23 May. 'The situation of ethnic minority groups in the border areas presents serious limitations to the government's intention to transition to democracy,' Quintana maintained. The government is increasingly targeting unarmed civilians as part of its counter-insurgency tactic. 'There is an escalation not only in the conflict itself between the military and armed groups, but the military is actively targeting civilians,' Zawacki said." (IRIN, 24 May 2011)

The report of the US Department of State (USDOS) provides an overview of human rights abuses in connection with armed conflict between ethnic armed groups and government forces:

"Ethnic insurgent groups continued to battle the government for autonomy or independence, including the Shan State Army-South; the Karenni National Progressive Party; and the Karen National Union (KNU), through its armed wing, the Karen National Liberation Army (KNLA). Heavy fighting between the government army and a breakaway faction of the Democratic Karen Buddhist Army (DKBA) broke out on the border with Thailand on November 8. In ethnic minority regions, military personnel reportedly killed and raped civilians, shelled villages and burned homes, destroyed food and seized possessions, confiscated land, forced villagers to work on infrastructure projects, and demanded villagers provide food and construction materials for military camps. International NGOs reported similar abuses in Chin State. One NGO also reported that the government restricted humanitarian access to the state and forced farmers to grow jatropha (physic nuts, an inedible castor oil crop) instead of food crops.

The government continued to pressure cease-fire and armed rebel groups to join the government army-dominated Border Guard Force. Tensions remained high, with some cease-fire groups reportedly concerned the army could undertake military action to compel them to join the border force; several small cease-fire groups subsequently agreed to join. [...]

According to the most recent data available, up to 100 persons were killed and 500 injured by land mines during the year." (USDOS, 8 April 2011, Section 1g)

The Human Rights Watch (HRW) World Report 2011 notes:

"The Burmese military continues to direct attacks on civilians in ethnic areas, particularly in Karen, Karenni, and Shan states of eastern Burma, and parts of western Burma in China and Arakan states. [...] Abuses by the Burmese military against civilians in violation of international humanitarian law include the widespread use of anti-personnel landmines, sexual violence against women and girls, extrajudicial killings, forced labor, torture, beatings, targeting of food production and means of civilian livelihood, and confiscation of land and property. All parties to Burma's conflicts continue to actively recruit and use child soldiers, with the Tatmadaw (state military) continuing to use them even as the SPDC cooperates with the International Labour Organization (ILO) on demobilizing child soldiers." (HRW, 24 January 2011)

The Amnesty International (AI) Report 2011 mentions:

"The army committed human rights violations in connection with oil, gas, mining and hydropower development projects, including forced labour, killings, beatings and land confiscation. The authorities continued to target villagers suspected of opposing or questioning the projects." (AI, 13 May 2011)

Human Rights Watch (HRW) notes in a statement of January 2011 a "lack of accountability" for abuses committed by security forces against civilians in conflict zones in eastern and western Myanmar, which include "attacks on civilians, routine use of forced labor, sexual violence against women and girls, recruitment and use of child soldiers, extrajudicial killings of civilians." HRW further notes that "some non-state attacks on civilians, routine use of forced labor, sexual violence against women and girls, recruitment and use of child soldiers, extrajudicial killings of civilians" (HRW, 25 January 2011).

A BBC report of 23 May 2011 quotes the UN Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana, as noting that the government has failed "to address abuses such as confiscation of land from ethnic minorities, forced labour, extrajudicial killings and sexual violence." (BBC, 23 May 2011)

### *2.2.1 Physical violence*

In its Country Report on Human Rights Practices published in April 2011 (covering the year 2010), the US Department of State (USDOS) draws attention to reports on killings committed by government or its agents in connection with the conflict in Karen State, "disappearances" of persons (for periods ranging from several hours to several weeks or more) which mainly involve the detention of individuals by the authorities for questioning without informing their family members as well as government's seizure of persons or transfer of prisoners for portering or labor duties, with their whereabouts often unknown (USDOS, 8 April 2011, Section 1b).

The USDOS further refers to reports of physical abuse, torture, and rape in connection with conflicts in Shan and Karen states, including the use of coercive and abusive recruitment methods by the army to procure porters. The USDOS states that persons forced into portering or other forms of labor were subject to "beatings, rape, lack of food and clean water, and mistreatment that at times resulted in death" (USDOS, 8 April 2011, Section 1c).

The UN Special Rapporteur on the situation of human rights in Myanmar reports on the extrajudicial killing of two children and a woman by soldiers of the 369th Myanmar Light Infantry Battalion (Military Operations Command 10) in March 2010 near Kaw Hta village. The soldiers burned down about 11 houses in the village, part of a pattern of ongoing attacks in that area since January 2010 that has left over 3,000 people displaced as at the time of reporting (UNGA, 15 September 2010, p. 13-14).

The UN Special Rapporteur further addresses the issue of landmines:

"The Special Rapporteur has consistently raised the issue of landmines, which both the Myanmar military and non-State armed groups have been using for many years. While the Special Rapporteur notes that the military's use of landmines may have decreased significantly in eastern Myanmar in 2009 and 2010 as the level of conflict has waned, he is

concerned that previously laid mines remain largely in place. Although fewer non-State armed groups continue to use landmines today, there are reports of renewed use by some groups in the context of increasing tensions around negotiations over border guard force conversion. Civilians continue to constitute the majority of reported mine victims, particularly along the Thai-Myanmar border where displaced people have been returned." (UNGA, 15 September 2010, p. 14-15)

In an article of January 2011, IRIN renders statements by Geneva Call, a Swiss-based humanitarian organisation, and the International Campaign to Ban Landmines (ICBL), an organization that promotes the 1997 Mine Ban Treaty with regard to the use of landmines in Myanmar:

"Recent fighting between government forces and armed ethnic groups in eastern Myanmar has increased the risk of civilian landmine injuries, experts warn. 'With the increase in fighting, mine use will go up, and more actors will be involved,' Katherine Kramer, programme director for Geneva Call, a Swiss-based humanitarian organization campaigning for the ban on landmines, told IRIN in Bangkok.

There are landmines in 10 out of 14 states and divisions along the Burmese border, primarily in Karenni, Karen, and Chin states, and more than 10 percent of all townships in Myanmar are contaminated, a report released by the group on 26 January said.

Since the 7 November elections - the country's first in 20 years - hostilities between armed ethnic groups and government forces have intensified; the former have refused to be incorporated into the country's Border Guard Forces (BGF), a unified umbrella army for the Burmese government. Thousands of people remain displaced as a result.

At the same time, inter-factional conflict between ethnic groups in 2010, especially in Karen state, 'led to both more mine use and more known casualties', Yeshua Moser-Puangsuwan, research coordinator for the International Campaign to Ban Landmines (ICBL), a global organization that promotes the 1997 Mine Ban Treaty, added. [...]

According to ICBL, mine casualty rates in Myanmar are among the highest in the world, surpassed only by Afghanistan and Colombia. The actual number, however, is unknown due to difficulties accessing mine-affected conflict zones and the absence of national statistics. It estimated 2,325 casualties between 1999 and 2008, and 721 in 2008 alone, a figure largely expected to remain the same today. The International Committee of the Red Cross (ICRC) estimates the total number of amputees in the country at 12,000, of whom the majority are probably mine victims. Fifty percent of victims are civilians, including children, according to Geneva Call." (IRIN, 28 January 2011)

### *2.2.2 Forced labour and portering*

The USDOS provides an overview of the issue of forced labour and portering in Myanmar:

"The SPDC Supplementary Order 2004 and Ministry of Home Affairs Order 1/99 prohibit forced or compulsory labor (except as a criminal punishment); however, there were reports that such practices occurred. The law provides for the punishment of persons who

impose forced labor on others. However, government and military use of forced or compulsory labor remained a widespread and serious problem, particularly targeting members of ethnic minority groups. Throughout the country international observers verified that the government routinely forced citizens to work on roads, construction, and other maintenance projects. Citizens also were forced to work in military-owned industrial zones." (USDOS, 8 April 2011, Section 7c)

### *2.2.3 Extortion, exploitation, land confiscations, arbitrary taxation, forced relocation*

The USDOS reports as follows on land confiscations and forced relocations by government:

"The Land Acquisition Act protects the privacy and security of the home and property. [...] The law does not permit private ownership of land; the government can confiscate the land of individuals at any time. Weak private property rights and poor land ownership records facilitated involuntary relocations of persons by the government, especially in rural areas. In early February authorities ordered approximately 270 Rangoon households, whom it claimed were illegal squatters, to move so the houses could be demolished. [...]

On May 30, the local government ordered 1,000 civilians from Myitkyina and Waingmaw townships to move from the vicinity of the Myitsone dam project site in Kachin State. Several protested the forced relocation and then fled to the border with China when the regime threatened to arrest them. There were some reports of forced relocations and demands for forced labor to build infrastructure. While more frequent in rural areas, reports of forced relocation in urban areas also existed. There were numerous reports government troops looted and confiscated property and possessions from forcibly relocated persons or persons who were away from their homes. The practice was more prevalent in Shan, Kayah, and Karen states and in areas of Mon State and Bago Division. The government made no attempts to punish offenders or compensate victims for their losses [...]" (USDOS, 8 April 2011, Section 1f)

Mizzima News reports in August 2011 on land confiscation by the Myanmar Navy in Yebyu Township of Taninthayi Region:

"A unit of the Burmese Navy has confiscated 1,000 acres of land in Yebyu Township to be used as a military training field and for the construction of military barracks and hostels, according to a report delivered by the Human Rights Foundation of Monland (HURFOM). [...] The Navy unit confiscated the land without giving the owners compensation, according to the report. Moreover, the Navy unit has surveyed and marked out another 3,000 acres of land to be confiscated from the residents on the island and in neighbouring villages, the report said. [...] The owners of the confiscated land did not know which department they should complain to and even if they knew, they dare not complain, one of the owners told Mizzima" (Mizzima, 15 August 2011)

The Thailand-based multi-ethnic Network for Human Rights Documentation Burma (ND-Burma) reports in May 2010 on the subject of arbitrary taxation:

"This report will show that the taxation system in Burma does not comply with recognised norms. The system is neither fair, efficient nor flexible, the size and timing of many of the taxes imposed, which have been increasing in recent years, is unpredictable making budgeting and planning impossible. Taxes are commonly not linked to income or the capacity of households and businesses to pay, with the level of taxation imposed on the population in many areas, being much too high relative to income and profit. Most of the taxes and resources taken by the state in Burma are not allocated to services desired by the population but rather there exists long term neglect and poor policy governing the provision of public goods. People are paying large amounts of tax yet are receiving very limited public services and in some areas extremely limited access to health services, electricity and water. Estimations are that less than 5% of Burma's budget is spent on health and welfare. ND-Burma's data shows that additionally, the level of corruption and extortion imposed by government agencies and the army is high, meaning that families are not just devastated by the amounts they are required to pay in taxes but also by a range of other forced payments. Extortion is a common method used by individuals and the state agencies to collect revenue, people are often forced to pay inflated taxes/fees to individuals. Therefore, in this report we additionally look at a range of corrupt acts that occur under the guise of taxation including:

- taking of land, livestock and other assets,
- goods confiscated and not returned until a payment is given,
- Tatmadaw and government officials forcing people to pay arbitrary high payments at checkpoints,
- forced "donations" for calendars, festivals, school buildings and school registration/equipment, the loss of earnings and health occurred or fees in order to avoid forced labour/child soldiers.
- soldiers helping themselves to free supplies from stores,
- farmers being forced to grow certain crops and sell them at lower than market price to the army,
- inflated taxes or fees with the difference lining individual government officials' pockets." (ND-Burma, May 2010, p. 13)

#### IRIN reports in September 2010:

"Myanmar's military government, with soldiers scattered throughout the country, is arbitrarily levying fees from the rural poor, pushing some into hunger and debt, experts say. 'In Burma taxation has become associated with violence and human rights abuses,' said Alison Vicary, researcher for Burma Economic Watch at Macquarie University in Australia. She has just written a report on 'taxation' for the Network for Human Rights Documentation - Burma (ND-Burma). [...] The World Bank estimates 50 percent of the population live in rural areas and ND-Burma says random demands for money, land or property - are taking a serious toll on some of the most vulnerable. People do not know when, how much or what they will be taxed on, which creates an atmosphere of fear, Vicary said. 'In an agricultural setting, people don't have savings or even a bank account,' she said. 'When the tax is levied they can't pay and are forced to borrow money or sell their property and assets.' Fees disguised as 'taxes' are rarely accounted for and very

little of the money ends up in services such as education and health care, ND-Burma says. Furthermore, checkpoints and road and bridge tolls restrict movement, making trade unprofitable, and at times impossible, and the requisitioning of land and labour for government projects such as roads and pipelines is also common, ND-Burma says." (IRIN, 2 September 2010)

#### *2.2.4 Human trafficking*

IRIN reports in June 2011 on the subject of cross-border trafficking in women to China:

"Most cross-border human trafficking in Myanmar involves women tricked into travelling to China to get work, only to find a groom waiting for them on the other side. Thazin was trafficked to China from Yangon and forced into marriage in 2008. [...] According to the UN Inter-Agency Project on Human Trafficking (UNIAP), 70 percent of Myanmar's trafficking cases in 2010 involved stories like Thazin's.

In 2010, the authorities recorded 122 cases of forced marriage, up from 104 in 2009, Myanmar's Ministry of Home Affairs reported. For more than a decade, Burmese women have been trafficked across the 2,000km border to marry men who are unable to afford the dowry required by a Chinese bride, said Ohnmar Ei Ei Chaw, national programme coordinator for UNIAP in the Mekong region. Chinese husbands-to-be pay upwards of US\$8,000 to arrange these marriages, many believing their bride is willing. On the other hand, Burmese parents, looking for a better life for their children and themselves, accept as little as \$1,000 for their daughters, according to UNIAP's 2010 report." (IRIN, 2 June 2011)

### **2.3 Chin State**

A January 2011 report by Physicians for Human Rights (PHR) which is based on a survey of ethnic Chin households throughout Chin State in 2010 documents the overall and local prevalence of forced labour/conscription and physical forms of abuse (arbitrary arrest, killings, rape, and abductions, displacement) as follows:

"Forced labor was by far the most common abuse reported by households. Of the 621 households interviewed, 91.9% reported at least one episode of a family member being forced to porter military supplies, sweep for landmines, be servants or cook at military camps, build roads, and do other hard labor. The Burmese military imposed nearly a third (64.9%) of these forced labor demands. Other government authorities were responsible for most all other demands for forced labor (33.2%). SPDC soldiers torture or beat ethnic Chin (14.8% of households), and kill, rape, and abduct civilians with impunity; all rapes that heads of household reported to our researchers were committed by SPDC soldiers. One out of eight Chin households was forcibly displaced – most to find food, and one-third of all forcible conscriptions were children under 15. Burmese tatmadaw soldiers committed all cases of murder, rape, torture and other inhumane treatment that households reported to our researchers, and nine out of ten reported cases of arbitrary arrest, abduction, forced conscription, and religious or ethnic persecution. Police reportedly committed 4.9%

of these abuses, Village Peace and Development (VPDC) authorities 1.5%, border security forces 0%, and ethnic forces 0%.

These findings quantify the extent to which the Chin ethnic minority in Burma is subjected to multiple human rights violations and indicate the geographical spread of these abuses, with three townships in Southern Chin State comprising 51% of all reported abuses. The prevalence of forced labor is high (91.9%), and although other human rights violations may appear low in comparison (Table 1), we estimate a large number of households across Chin State has been affected. These widespread reports of human rights violations in Chin State in 2009-10 provide strong evidence that crimes against humanity are occurring with impunity." (PHR, January 2011, p. 27)

"Nearly all cases of disappearance (97%) took place in two southern townships in Chin State, Paletwa and Mindat. Government soldiers accounted for 93.1% of all reported abductions, and the police accounted for 6.9%." (PHR, January 2011, p. 42)

"Reports of arbitrary arrest come from five of the nine townships; however, 94% of these abuses that households reported occurred in Chin State's three southern townships of Mindat, Kanpalet, and Paletwa – where all such abuses were carried out by Burmese soldiers against ethnic Chin civilians." (PHR, January 2011, p. 44)

In a December 2010 report, Christian Solidarity Worldwide (CSW) notes the following developments in Chin State:

"Human rights violations in Chin State, as in the rest of Burma, are particularly common and severe in areas with a high military presence. Since 20 November, according to Chin political sources, the Burma Army presence in parts of Chin State has increased significantly. Accurate figures are difficult to obtain, but one source told CSW that in one military post alone, the number of soldiers has doubled, from ten soldiers before 20 November, to 20-30 soldiers today. At least three battalions have moved to the border area. According to another respected Chin source, the number of troops in at least five different existing camps in Falam, Tedim and Tonzang townships have tripled since 12 November, 2010. This increase in troop numbers is likely to result in an increase in human rights violations, as the pattern of violations in Chin State is often directly correlated with the military presence. Forced labour, rape, torture, violations of religious freedom and other serious human rights abuses continue to be perpetrated in Chin State by the Burma Army on a widespread basis. Denial of proper health care and access to education are also serious concerns and are symptomatic of the regime's discrimination and persecution of the Chin people. CSW obtained new testimonial evidence of some of these violations, through many interviews with Chin pastors and community health workers." (CSW, 9 December 2010, p. 10)

## **2.4 Kachin State**

Radio Free Asia (RFA) reports on 16 June 2011:

"Thousands of people have left their homes and villages to avoid deadly clashes between Burmese government troops and rebel fighters in the Kachin region north of the country near the Chinese border, reports say. [...] The clashes have spread in recent days, prompting rebel forces to blow up bridges built by the Burmese government to halt the advance of government forces, which rights groups accuse of carrying out a brutal counter-insurgency campaign in ethnic minority areas involving the rape, torture, and murder of villagers. Local reports said the refugees were fleeing to escape being preyed upon by government forces, rather than because they feared the fighting itself. [...]"

The fighting, which has erupted sporadically over the past week, has been concentrated around a large hydropower project being built on the Ta Pein (Taping) River to provide power to China. A Burmese government official confirmed that some bridges were destroyed in the fighting in Kachin State on Wednesday." (RFA, 16 June 2011)

BBC reports on this conflict on 14 June 2011:

"Burmese troops have been involved in deadly clashes with Kachin rebels near a northern site where China is building a hydro-electric power plant. At least four rebel fighters and a number of government troops have died. A truce between the government and rebels from the Kachin ethnic minority broke down last year when rebels refused to become state border guards. It is among the worst violence reported in Burma since March, when the military handed power to a civilian government. The current fighting began on Thursday. It appears to have started with a government offensive to force rebels belonging to the Kachin Independence Army (KIA) away from an outpost in an area where China is building two dams as part of a hydro-electric power plant." (BBC, 14 June 2011)

As reported by the Kachin Women's Association Thailand (KWAT) in June 2011, at least 18 women were gang-raped and killed by government soldiers in four townships of Bhamo District of Kachin State:

"At least eighteen women and girls have been gang-raped between June 10-18, 2011 during Burma Army advances on KIA strongholds along the China-Burma border. Four of these women were killed after being raped, one in front of her husband, who was tied up and forced to watch. Another woman died from her injuries during rape.

Soldiers from five different battalions (Light Infantry Battalion 437 and Infantry Battalions 237, 141, 142, 139 and 437) committed the rapes, in four townships of Bhamo District. Two particularly brutal incidents took place on June 18. In Dum Bung village, Mo Mauk township of Bhamo, soldiers of LIB 437 caught three families who had not managed to flee in time. 6 women and girls were gang-raped, and 7 small children killed. In Je Sawn village, Man Si township of Bhamo, soldiers of LIB 139 killed a 7-year-old girl and then gang-raped and killed her grandmother.

These incidents are not random acts of violence, said KWAT spokesperson Shirley Seng. The Burma Army is committing gang-rape and killing on a wide scale. It is clear they are acting under orders." (KWAT, 21 June 2011)

Amnesty International (AI) states in its Annual Report 2011 (covering 2010):

"In late May and early June, authorities began forcibly relocating several villages in Kachin state as part of the ongoing Ayerawaddy Myitsone Dam project." (AI, 13 May 2011)

The USDOS reports on the displacement of ethnic villages during the year 2010:

"During the year there were several reports of ethnic villages being displaced for economic development, such as the Myitsone Dam project in Kachin State." (USDOS, 8 April 2011, Section 6)

Radio Free Asia reports in June 2011:

"On Wednesday, explosions occurred outside a police station and an immigration office in Myitkyina, the capital of Kachin State in northern Burma. Police in Myitkyina confirmed the blasts in an interview with the Irrawaddy news agency, but said there were no casualties, adding that members of the Kachin Independence Army (KIA) were believed to have organized the plot. The KIA ended a 17-year ceasefire with the Burmese government earlier this month. On May 18, a train heading from Rangoon to Mandalay exploded near Naypyidaw, leaving two dead and nine injured. The government accused the Karen National Union – the political organization of the ethnic Karen people – but the group denied any involvement." (RFA, 24 June 2011)

## 2.5 Kayin (Karen) State

In March 2011, Human Rights Watch (HRW) reports on the conflict in Kayin (Karen) State and abuses of civilians by government forces:

"Since November 2010, *Tatmadaw* operations have increased in central Karen State of eastern Burma, resulting in tens of thousands of civilians being displaced on both sides of the Burma-Thailand border. Civilians have been forced to carry wounded army personnel through areas containing anti-personnel landmines and improvised explosive devices (IEDs). Large numbers of convicts from several prisons throughout Burma have been forced to be porters for the army during military operations, including walking ahead of troops to trigger landmines in a practice known as 'atrocious de-mining.'" (HRW, 24 March 2011b)

The Irrawaddy news magazine reports on 18 May 2011:

"According to a report from the headquarters of the Karen National Union (KNU), between January and April, a total of 359 clashes have taken place, mostly in southern Karen State, between Burmese government troops and a combined force of the Karen National Liberation Army (KNLA) and renegade fighters from Brigade 5 of the Democratic Karen Buddhist Army (DKBA). [...]"

Sources said that the Karen rebels have become markedly stronger since Brigade 5 led split from government ranks and rejoined its old ally, the KNLA. Karen rebel sources have claimed that there is a great deal of internal conflict within the newly founded BGF units,

which are formed by former members of the DKBA. Some of the Karen BGF members have reportedly deserted and defected to the KNLA and the DKBA.

According to a recent Karen Human Rights Group (KHRG) report, at least three civilians died and eight were injured during battles between April 22-30 in Kya [...] Township in southern Karen State. The firing of mortars by the Burmese army in civilian villages also forced at least 143 villagers from four villages to seek refuge across the Thai border." (Irrawaddy, 18 May 2011)

Human Rights Watch (HRW) reports that in January 2011, the military gathered hundreds of prisoners from prisons and labour camps throughout Myanmar to serve as porters during military operations in Kayin/Karen State and eastern Pegu Region. The report states that many Karen civilians living in the conflict area who would normally be forced to porter for the military had already fled the area:

"In January 2011, the Tatmadaw, in collusion with the Corrections Department and the Burmese police, gathered an estimated 700 prisoners from approximately 12 prisons and labor camps throughout Burma to serve as porters for an ongoing offensive in southern Karen State, in the east of the country. The same month, another 500 prisoners were taken for use as porters during another separate military operation in northern Karen State and eastern Pegu Region, augmenting 500 porters used in the same area in an earlier stage of the operation in the preceding year. The men were a mix of serious and petty offenders, but their crimes or willingness to serve were not taken into consideration: only their ability to carry heavy loads of ammunition, food, and supplies for more than 17 Tatmadaw battalions engaged in operations against ethnic Karen armed groups. Karen civilians living in the combat zone, who would normally be forced to porter for the military under similarly horrendous conditions, had already fled by the thousands to the Thai border." (HRW, 12 July 2011, p. 1-2)

Mizzima News, an exiled news organization covering Myanmar, reports in February 2011 on bombings in Myawaddy Township, where fighting between troops belonging to a DKBA breakaway faction (stationed near Myawaddy) and government forces had broken out in November 2010:

"A bomb blast in a restaurant in Myawaddy Township killed two people and injured two others at about 5 p.m. on Wednesday on the Burmese side of the border with Thailand, witnesses said. [...] Bombings have occasionally occurred in Myawaddy, an important hub for border trade between Burma and Thailand. On August 6, 2010, a bomb blast in Myawaddy killed two people." (Mizzima, 9 February 2011)

The US State Department (USDOS) provides an account of events pertaining to the conflict and human rights situation in Kayin (Karen) State in 2010 (including forced labour/portering):

"In early December government army soldiers reportedly entered a KNU/KNLA Peace Council (KPC) camp near Myawaddy in Karen State, shot one soldier, and took six others as prisoners. On December 8, villagers found the mutilated bodies of the six prisoners and

claimed they had been tortured before being killed. The KPC, which is distinct from the KNU, signed a cease-fire agreement with the government in 2007. [...]

There were reports of disappearances during government army attacks in Shan and Karen states. Observers believed that many persons were killed and others fled to the border. [...]

The Thailand-based Karen Women's Organization documented approximately 4,000 cases of abuse against women in Karen State over the past few years. The abuses included rape, killings, torture, and forced labor in more than 190 villages by government troops from more than 40 army battalions. NGOs and international organizations continued to report numerous sexual assaults by soldiers throughout the rest of the country. [...]

In Shan and Karen states, military forces displaced civilians from their traditional villages - which often were burned to the ground - and moved them into settlements tightly controlled by government troops in strategic areas. In other cases villagers driven from their homes fled into the forest, frequently in heavily mined areas, without adequate food, security, or basic medical care.

Between July 18 and 20, according to a human rights group, more than 1,000 Karen residents from 10 villages were displaced as government troops mounted offensives against the Karen National Liberation Army.

On July 23, the government army attacked with mortars and then burned 50 homes, a school, and a church in Tha Dah Der, a Christian village in northern Karen State. More than 600 villagers fled into the jungle on the border with Thailand; only 350 had returned at year's end. In addition 300 persons from two neighboring villages - Tha Kaw To Baw and Ti Mu Der - also fled. According to observers, all persons from the two latter villages returned to their homes, which were not attacked.

On November 8, fighting between the government army and a breakaway faction of the DKBA near Myawaddy in Karen State forced thousands of civilians to flee their homes. According to some reports, more than 20,000 refugees crossed the border into Thailand, although sources indicated that most returned to their homes shortly thereafter. Fighting continued sporadically through year's end.

Forced relocations generated large migrations to neighboring countries or to parts of the country not controlled by the government (see Section 2.d.)" (USDOS, 8 April 2011, Section 1g)

"On January 2, SPDC soldiers demanded that 30 villagers from Klaw Mi Der in Karen State retrieve rations from an SPDC base. The soldiers forced 10 women and 20 men to make the two-hour round trip journey on foot; they were not compensated for their work. On January 12, government soldiers ordered villagers to porter rations for eight hours, according to the Karen Human Rights Group. On February 9, light infantry battalions forced 30 male villagers to porter rations six hours in Karen State." (USDOS, 8 April 2011, Section 7c)

The Amnesty International Annual Report 2011 (covering events in 2010) states:

"In January, following the establishment of an army camp in northern Kayin state, government troops raided 10 villages, killing four people and causing at least 1,000 more to flee their homes. [...]

In July, around 500 people were forced to flee their homes after troops shelled Dutado village in Hpapun township, Kayin state, in an attack apparently aimed at the KNLA. The army then entered the village and burned to the ground around 70 houses, the village school and a church. [...]

In November, battles between a breakaway faction of the Democratic Karen Buddhist Army (DKBA) and the Myanmar army in Myawaddy, and further attacks by the army against other ethnic minority armed groups near Three Pagodas Pass, resulted in over 20,000 refugees fleeing Myanmar temporarily and thousands more being internally displaced. [...]

Battalions providing security for the Yadana, Yetagun and Kanbauk-Myaing Kalay natural gas pipelines in Tanintharyi Division and Kayin state forced civilians to work on barracks, roads and miscellaneous projects, and committed at least two extrajudicial executions." (AI, 13 May 2011)

Ahead of the November 2010 elections, the Karen National Union (KNU) and Karen communities reported a stepping up in military attacks on villages in eastern Kayin/Karen state (including the torching of homes) as well as a build-up of military and pro-government militia forces near the town of Mae Sot, as reported by Voice of America (VOA) in July 2010. The general-secretary of the KNU is quoted as saying that the attacks may be part of a campaign of intimidation by the military ahead of national elections in November 2010. Analysts said that they may be part of the military's plans to clear the area of local communities ahead of construction of a hydro-electric power plant (VOA, 27 July 2010).

## **2.6 Kayah (Karenni) State**

The USDOS reports on the following 2010 event:

"On April 19, 15 unknown assailants beat to death a Catholic priest in Pekhone Township, Kayah State, reportedly due to tension between the government army and the Catholic Church regarding land confiscated in 2006." (USDOS, 8 April 2011, Section 1g)

## **2.7 Mon State**

Mizzima News states that according to otherwise unconfirmed reports by local residents, government troops forced villagers, including women, to serve as human shields and porters. The article also mentions the killing of a 13-year-old girl in Three Pagodas Pass:

"One day after two people were killed by masked gunmen in Three Pagoda Pass in Mon State on the Thai-Burmese border, Burmese government troops have reportedly forced villagers to serve as human shields and porters, according to local residents.

On June 6, government troops of Infantry Unit No. 373 arrested 10 villagers from Myaingtharyar village located 16 miles (25.75 km) northwest of Three Pagoda Pass, and 24 villagers from Apalone village, forcing some villagers including women to serve as human shields and others to work as porters, according to villagers. 'Some women were put in front of the government troops in order to avoid attack by the KNU (Karen National Union). They used women as human shields', said a member of the Apalone village administrative committee.

An officer in the New Mon State Party who is based in the area said that he had heard reports that some villagers were arrested to serve as porters, but he could not confirm the reports. Mizzima contacted the relevant authorities in the area, but they declined to comment. According to an unconfirmed source close to the KNU, its troops carried out an ambush on a column of government troops, killing an army captain and six soldiers. The source said a female villager, Naw Moe Moe Aye, 32, was forced to serve as a porter, and she sustained an injury to her left arm. On June 5, an attack by masked gunmen on two separate locations in Three Pagoda Pass killed one Burmese soldier and a 13-year-old girl, and injured three people." (Mizzima, 8 June 2011)

## **2.8 Rakhine (Arakan) State**

The USDOS report of April 2011 (covering events of 2010) contains the following references with regard to Rakhine (Arakan) State:

"Government soldiers reportedly killed several individuals in Rakhine State. On February 22, two soldiers beat and killed Aung Cho after a shop owner accused him of stealing. On March 12, seven government soldiers reportedly killed Kyaw Win Maung after a minor street quarrel. On March 21, government soldiers allegedly killed Wai Phyو Aung after he deserted his army battalion two days earlier. Wai Phyو Aung's parents received no compensation, and no investigatory action was reported. In May government troops reportedly killed two Rohingya attempting to cross the Naff River by boat; the two reportedly were fleeing to Bangladesh." (USDOS, 8 April 2011, Section 1a)

"The government continued to resettle groups of ethnic Burmans in various ethnic minority areas. During the year the government reportedly resettled groups of ethnic Burmans in Maungdaw and Butheedaung townships in Rakhine State, giving them farmland confiscated from Rohingya residents." (USDOS, 8 April 2011, Section 6)

"In June there were reports that 40 villagers were forced to act as security for a camp of 180 government soldiers searching for Arakan Liberation Army members and six government army defectors. The villagers also had to carry the soldiers' uniforms, backpacks, ammunition, and other equipment." (USDOS, 8 April 2011, Section 7c)

The Amnesty International (AI) Annual Report 2011 (covering 2010) mentions:

"The authorities confiscated land without compensation and forcibly displaced villagers in Rakhine state as construction of the Shwe gas and oil transport pipelines began." (AI, 13 May 2011)

## **2.9 Shan State**

In April 2011, the Irrawaddy, an exile-run news magazine reporting on Myanmar, notes that government troops fighting the Shan State Army-North (SSA-North) Brigade 1 near Tangyan and Mongshu townships (Shan State) are mainly using local women as human shields and forced porters. According to an editor of the exiled Shan Herald Agency for News, the government troops took 19 people, including 12 women, from a village in Tangyan Township earlier in April 2011. Many of the male porters used by the army are reported to be older than 50 years. Younger men have reportedly fled the area for fear of being coerced into portering. Furthermore, the Shan Human Rights Foundation (SHRF) is quoted as stating that women in the conflict zone are also being targeted for sexual violence, reporting that three women were recently gang-raped in separate incidents in area (Irrawaddy, 25 April 2011).

Irrawaddy also reports that at least three villagers were killed and several others injured in clashes between government troops and the Shan State Army-North (SSA-North) in March 2011 (Irrawaddy, 17 March 2011).

USDOS reports that on 5 August 2010, two leaders of an ethnic militia group in Shan State disappeared after being summoned to Nay Pyi Taw, the capital (USDOS, 8 April 2011, Section 1b)

## **2.10 Irrawaddy Region (formerly Division)**

Among the sources consulted by ACCORD within time constraints no relevant information could be found with regard to the Irrawaddy Region.

## **2.11 Bago (Pegu) Region (formerly Division)**

The USDOS reports on the following 2010 incidents pertaining to Bago (Pegu) Region:

“On January 17, two villagers died when two government soldiers, targeting what they believed to be a Karen National Liberation Army stronghold, allegedly burned 13 houses in eastern Bago Division [...]. On May 16, government army soldiers reportedly killed 15-year-old Tin Min Naing in Bago Division after he fled a group of soldiers when faced with their demand that he join the army.” (USDOS, 8 April 2011, Section 1g)

The above-mentioned July 2011 report by HRW states that 500 prisoners were forced to porter for the military during a campaign in northern Karen State and eastern Pegu Region in January 2011 (HRW, 12 July 2011, p. 1-2). The Democratic Voice of Burma (DVB), a Norway-based non-governmental media source, reports on an incident that occurred in October 2010 ahead of the elections:

“A local authority office in eastern Burma's Bago division being used by Election Commission officials was the target of a bombing on Wednesday night. No casualties were reported following the incident at the Ward Peace and Development Council (WPDC) office in Bago township's Okthar Myothit 8 ward. Locals said that a wall of the office was

blown open by the explosion, which occurred around 9pm on 29 September." (DVB, 1 October 2010)

AI reports on the following February 2010 developments:

"In mid-February, troops in Bago Division burned dozens of houses and a clinic, and forced around 2,000 villagers to flee their homes." (AI, 13 May 2011)

## **2.12 Magway (Magwe) Region (formerly Division)**

In April 2011, the DVB reports on a group of over 130 farmers from Magwe Region who filed a complaint for land confiscation by the military-owned Union of Myanmar Economic Holdings (UMEH) and physical abuse. Now the UMEH is attempting to sue the complainants. Such reversals of accusation are reported by DVB as being common in Myanmar:

"More than 130 farmers in central Burma have filed a complaint directly to President Thein Sein in which they call for action on cases of abuses and land confiscation. The group of farmers, from Sisayan village in Magwe division, claim that five of them had their land confiscated in January by the military-owned Union of Myanmar Economic Holdings (UMEH). One farmer, Than Oo, also recounted an incident on 21 March in which he was beaten by a group of unknown men. Now the UMEH is attempting to sue the five men, alleging they themselves are guilty of physical and verbal assault, and trespassing on the land confiscated from them. The letter, which was also sent to Burma's head attorney and chief justice, describes how their land was seized by the UMEH, as well as Htoo Trading Company, to build a caustic soda factory. One subsequent lawsuit filed by the farmers against the confiscation was rejected by a local Magwe court. [...]

Such reversals of accusations are common in Burma, where farmers have few legal aids to resort to and often become the victim land grabs as the government looks to aggressively expand infrastructural projects. Rampant corruption also allows state-backed enterprises to ignore flimsy laws surrounding land confiscation." (DVB, 7 April 2011)

## **2.13 Mandalay Region (formerly Mandalay Division)**

Radio Free Asia (RFA) reports on a bomb attack in the city of Mandalay in June 2011:

"Simultaneous bomb blasts rocked two Burmese cities on Friday, leaving possibly two dead and several others injured, according to eyewitnesses and police officials. The explosions rattled market areas in Burma's cultural center of Mandalay and capital of Naypyidaw at around noon. No one has claimed responsibility for the bombings." (RFA, 24 June 2011)

## **2.14 Yangon Division**

The USDOS mentions reports on internal trafficking of boys in Yangon Division in 2009 and government forcing villagers to work in road construction in May 2010:

"The ILO [International Labor Organization] reported one complaint in 2009 of internal trafficking of 100 boys ages 13 to 15 for forced labor at a horticultural plantation. The boy

who reported the case was initially abducted in Rangoon Division and taken to the plantation. According to the ILO, the boy escaped the plantation during the year and was home with his family; at year's end the status of the other boys was unknown [...] In May in Rangoon, the government reportedly forced some villagers to work on a road construction project for six days. Each person who refused had to pay a fine of 2,000 kyat (\$2) per day." (USDOS, 8 April 2011, Section 7c)

Radio Free Asia (RFA) reports on bomb attacks in Yangon in April 2010 which killed up to 20 persons:

"Last year, a series of bomb blasts tore through Burma as the country prepared for its first general election in 20 years. [...] The highest-profile explosions occurred April 15 in Rangoon when three bombs killed as many as 20 people and wounded 170 others during the traditional New Year water festival." (RFA, 24 June 2011)

### **2.15 Sagaing Region (formerly Division)**

Among the sources consulted by ACCORD within time constraints no relevant information could be found pertaining to the Sagaing Region.

### **2.16 Tanintharyi (Tenassarim) Region (formerly Division)**

The Amnesty International (AI) Annual Report 2011 (covering the year 2010) states:

"Battalions providing security for the Yadana, Yetagun and Kanbawk-Myaing Kalay natural gas pipelines in Tanintharyi Division and Kayin state forced civilians to work on barracks, roads and miscellaneous projects, and committed at least two extrajudicial executions." (AI, 13 May 2011)

### 3 Security Forces/Military Service/Armed ethnic minority groups

#### 3.1 Domestic legal framework

In a March 2011 report on Myanmar's post-election political landscape, the International Crisis Group (ICG) notes that "[i]t had been clear from the beginning of the constitution drafting process that the military would have a powerful political role: one of the key constitutional principles laid down by the regime in 1992 was the 'participation of the Tatmadaw [military] in the leading role of national politics of the state.'" (ICG, 7 March 2011, p 7)

Chapter VII of the 2008 *Constitution of the Republic of the Union of Myanmar*, which entered into force on 31 January 2011, contains provisions with respect to Myanmar's defence services:

Its articles 337, 338, 339 and 341 contain the following general provisions regarding the Defence Services and their objectives:

"337. The main armed force for the Defence of the Union is the Defence Services.

338. All the armed forces in the Union shall be under the command of the Defence Services.

339. The Defence Services shall lead in safeguarding the Union against all internal and external dangers. [...]

341. The Defence Services shall render assistance when calamities that affects the Union and its citizens occur in the Union." (Constitution, 2008, Chapter VII)

Article 342 provides for the appointment of the Commander-in-Chief of the Defence Services as follows:

"342. The President shall appoint the Commander-in-Chief of the Defence Services with the proposal and approval of the National Defence and Security Council." (Constitution, 2008, Chapter VII)

Article 343 contains the following provisions with regard to the adjudication of military justice:

"343. In the adjudication of Military justice:

(a) the Defence Services personnel may be administered in accord with law collectively or singly;

(b) the decision of the Commander-in-Chief of the Defence Services is final and conclusive." (Constitution, 2008, Chapter VII)

##### 3.1.1 *Legal provisions pertaining to military draft/service*

Article 340 of the Constitution provides that "[w]ith the approval of the National Defence and Security Council, the Defence Services has the authority to administer the participation of the entire people in the Security and Defence of the Union." (Constitution, 2008, Chapter VII)

Furthermore, Articles 385 and 386 in Chapter VIII of the Constitution (“Citizen, Fundamental Rights and Duties of the Citizens”) state:

“385. Every citizen has the duty to safeguard independence, sovereignty and territorial integrity of the Republic of the Union of Myanmar.

386. Every citizen has the duty to undergo military training in accord with the provisions of the law and to serve in the Armed Forces to defend the Union.” (Constitution, 2008, Chapter VIII)

In its analysis of the post-election situation in Myanmar of March 2011, International Crisis Group (ICG) points out that Article 340 of the 2008 Constitution is:

“[...] particularly relevant in the context of a new military law that has been gazetted, but not yet brought into force: the 2010 People’s Militia Act. Similar to a 1959 act with the same name and similar provisions that never took effect, the 2010 act contains a provision stating that it shall come into force when a notification is issued by the chairman of the SPDC; no notification has so far been made. If it does come into force, the act provides that eligible citizens may be called up for two years’ military service (or three years’ for those with technical skills). It envisions not universal military service, but rather the creation of lists of eligible people who may be called up as and when required. The intention is probably to ensure a recruitment stream for the military. For many years the number of voluntary recruits has been less than the number leaving the military, leading to forced recruitment practices that violate domestic and international law, particularly with respect to recruitment of minors. [...]

A second new military law that has been gazetted, the 2010 Myanmar Reserve Forces Act, potentially provides a way to rein in the military top brass. This law provides that members of the military, on retirement, become members of the reserve forces for a period of five years. In that capacity, they may be recalled for active duty at any time, serving at their previous rank (a promotion may also be possible). This means that, in addition to the ability to boost military strength as and when needed by recalling those who have retired from the lower ranks, it is possible to recall members of the top brass that recently retired, to their original rank or a more senior position. This even could apply to Than Shwe himself, allowing him to resume leadership of the military if he felt the need.” (ICG, 7 March 2011, p. 7-8)

The Democratic Voice of Burma (DVB) reports in an article of January 2011 about the provisions of a recently enacted law that is to require men aged between 18 and 45 and women between ages 18 to 35 years to serve in the military for up to three years:

“Men and women over the age of 18 will be required to serve up to three years in the Burmese military or face a lengthy jail term, reports claim. Documents seen by Japanese broadcaster NHK suggest that the legislation was enacted on 17 December last year and requires all able-bodied adults to register with local authorities for the draft. Men between the ages of 18 and 45 are obligated, while for women it is between 18 and 35. Burma

already has a standing army of close to half a million, one of biggest per capita in the world." (DVB, 10 January 2011a)

As noted by the USDOS, the recruitment of children into the army constitutes a criminal offence under section 374 of the Penal Code, which provides for imprisonment for up to one year, or a fine, or both (USDOS, 27 June 2011).

A July 2011 article by the DVB states that the use of minors in the army was declared illegal by the government, quoting Benjamin Zawacki, the Myanmar researcher of Amnesty International (AI), as saying: "[t]he government is ostensibly opposed to child soldiers but we know that happens on a wide scale, so while there is regulation, it's not abided by." According to Zawacki, no decision has yet been made with regard to the government's idea of introducing a military draft requiring men and women over the age of 18 to serve up to three years in the army or face a lengthy jail term. However, parliament is believed to be in the process of reviewing this plan. The AI researcher is further quoted as saying that prior to the idea of a military draft, he has "not been aware of any sort of regulation" governing how troops are recruited (DVB, 21 July 2011).

The Associated Press (AP) news agency reports on the provisions of the military draft law which has been enacted but not yet been made public:

"Military-ruled Myanmar has enacted a law that could draft men and women into the armed forces and mete out prison sentences of up to five years for draft dodgers, according to an official document seen Monday. The country currently has a volunteer army.

The law, dated Nov. 4, 2010, but yet to be made public, will come into force when proclaimed by the ruling military council, said an official gazette with limited circulation. [...]

The law states every male between the age of 18 and 45 and females between 18 and 35 may be drafted to serve for two years, which could be increased to five years in times of national emergencies. Both sexes are required to register at 18.

Those who fail to report for military service could get three years in prison, a fine or both, and those who deliberately inflict injury upon oneself to avoid conscription could be imprisoned for up to five years, fined or both.

In times of national crisis the government can recruit all or some of those eligible for military service.

Civil servants, students, persons serving prison terms or those taking care of elderly parents will enjoy temporary postponement of military service but could be later called to serve. Totally exempt are members of religious orders, married women or divorcees with children and disabled persons." (AP, 10 January 2011)

## 3.2 Myanmar security forces

### 3.2.1 Police

In its *Sentinel Security Assessment on Myanmar*, last updated on 24 June 2011, Jane's Information Group provides an overview of the administrative structure of the police forces:

"Lieutenant General Ko Ko heads the Ministry of Home Affairs, which oversees all police units. These include the riot police (lon htein), the Special Branch, the Bureau of Special Investigation, the Criminal Investigation Department, and regular divisional police forces. The director general of the police is Brigadier General Khin Yi. The Myanmar Police Force is divided into headquarters, state and division police forces, special forces, training centres, reserved units and police battalions. There are 15 state and divisional police forces including the capital Naypyidaw and three additional state police forces. Nine paramilitary police battalions, called lon htein, are assigned primarily to Yangon, Mandalay, and Rakhine State.

Other law enforcement agencies under the Ministry of Home Affairs, but independent of the Myanmar Police Force, include the Bureau of Special Investigation which is concerned with economic crimes and corruption, the Special Branch which is concerned with 'political' crimes and has assumed increasing prominence in the monitoring of political dissidents in the past four years, the Criminal Investigation Department, the Railways Police Department, and the City Development Department. Reserved units are assigned to highway patrol and oil field security and are attached to state and divisional police forces. The Office of the Central Committee for Drug Abuse Control and Drug Eradication Department has 19 anti-narcotic drug suppression units throughout Myanmar." (Jane's, 24 June 2011)

The US Department of State (USDOS) states that both the police force, which falls administratively under the Ministry of Home Affairs, and officers of the Military Security Affairs "were responsible for detaining persons suspected of 'political crimes' perceived to threaten the government". As reported further by the USDOS, security forces maintained tight control of inhabitants through fear imposed by arbitrary detention and threats to individual's livelihoods (e.g. by means of ordering the closure of small businesses). The USDOS further addresses the issue of impunity as follows:

"Impunity was a serious problem. There are no effective legal mechanisms available to investigate security force abuses, and the government took no significant measures to reform the security forces." (USDOS, 8 April 2011, Section 1d)

### 3.2.2 Armed forces (*Tatmadaw*)

In an April 2010 report, Human Rights Watch (HRW) states that between 1988 and the present, the Tatmadaw has been expanded in size from 180,000 troops to over 350,000 (HRW, 28 April 2010). In a July 2011 report, HRW notes that the Myanmar Defence Services count an estimated 300,000 to 400,000 personnel. (HRW, 12 July 2011, p. 15)

Jane's Information Group provides the following summary of the activities of and situation within the armed forces:

"The Myanmar Army has traditionally been structured and deployed primarily for internal security operations – both to quell civil dissent in major population centres and to conduct counter-insurgency operations in rural districts against communist guerrillas, ethnic separatists and the armies of narcotics warlords..." However, since 1989 "... greater emphasis is being given to conventional defence roles, including territorial defence. The army has also given higher priority to participation in civil infrastructure development projects, although its frequent use of forced labour has earned it international notoriety.

Morale is generally poor among the enlisted members of the army and desertions are frequent, despite severe penalties for those who are caught. Although largely limited to enlisted personnel in the past, several recent high profile desertions of officers have embarrassed the military and bolstered claims of a secret nuclear programme. Several other high ranking officers have been arrested for leaking military secrets to exiled opposition groups." (Jane's, 25 March 2011, as cited in UKBA, 17 June 2011)

The Human Rights Watch (HRW) World Report 2011 reports about a large reshuffle of military personnel in the run-up to the November 2010 elections:

"In April [2010] Prime Minister Lt. Gen. Thein Sein and 27 SPDC [State Peace and Development Council] and government cabinet ministers resigned their military commissions and formed the Union Solidarity and Development Party (USDP). [...] The military conducted its biggest reshuffle in years, with scores of senior officers resigning in order to run as USDP candidates." (HRW, 24 January 2011)

HRW reports in April 2010 that "army soldiers posted to isolated regions often use the local population as a resource for food, labor and a source of illicit fundraising." In the light of the armed forces' expansion in size since 1988, "strains on supplies and rations caused the central War Office to instruct field-based units to 'live off the land.' This had the consequence of increasing levels of looting, arbitrary taxation, land confiscations and forced labor by Myanmar military units on the local population, in order for the Tatmadaw units to be more self-sustainable." (HRW, 28 April 2010, p. 32)

The DVB reports in July 2011 that the central War Office sent out a directive to the country's army commanders saying that those battalions who achieve a quota of a minimum of four newly recruited soldiers per month will be rewarded with a bonus of one million kyat (\$US1,300) at the end of each calendar year. Those battalions who fail are to be punished under military law. DVB remarks that "[f]orced recruitment has been a hallmark of military policy". (DVB, 21 July 2011)

### *3.2.3 Other armed government forces: village militia/paramilitary*

#### *People's militia*

HRW states that "[t]he Tatmadaw also controls dozens of small paramilitary forces called Pyithu Sit (People's Militia) that work in cooperation with state security forces" (HRW, 24 March 2011a).

### *Swan Arr Shin*

In a report of September 2009, HRW provides the following information regarding the paramilitary group "Swan Arr Shin":

"Swan Arr Shin: People's Masters of Force, a paramilitary group associated with the USDA, and raised and controlled by local officials to intimidate" (HRW, 22 September 2009, p. 111)

"[T]he Swan Arr Shin are a militia recruited and supported by the government to attack pro-democracy activists." (HRW, 22 September 2009, p. 101, FN 181)

In an article of April 2011, the Irrawaddy states that Swan Arr Shin ("Masters of Force") was "created in the early 2000s by members of the Union Solidarity and Development Association (USDA), the predecessor of the [...] USDP, and quickly became synonymous with organized crime." Irrawaddy notes that the Swan Arr Shin were involved "in several violent incidents", which include "a mass attack on pro-democracy leader Aung San Suu Kyi and her convoy in Depayin in 2003, and nationwide monk-led demonstrations in 2007."

The Irrawaddy reports with reference to sources at the Military Affairs Security (MAS) that there is a plan to transform Swan Arr Shin into a 'People's Security Force' (Irrawaddy, 26 April 2011).

### *Union Solidarity and Development Association (USDA)*

In a HRW report of September 2009, the Union Solidarity and Development Association (USDA) is described as a "mass-based social movement organized and controlled by the SPDC" (HRW, 22 September 2009, p. 69). It was created by the Junta in 1993 (PHR, January 2011, p. 18)

Jane's Information Group states with regard to the USDA:

"The USDP was transformed from the pro-military Union Solidarity and Development Association (USDA), which was the country's largest social organisation with an alleged membership of 24.6 million. Since 1993 the USDA has been recruited and sponsored by the ruling military government, the State Peace and Development Council (SPDC). Its main purpose until now has been to attract civilian support for the military and its policies, especially at times when it has faced opposition." (Jane's, 25 March 2011, as cited in UKBA, 17 June 2011)

The USDA's involvement in the above-mentioned May 2003 "Depayin Massacre" against a convoy of Aung San Suu Kyi is highlighted in a report by Physicians for Human Rights (PHR):

On 30 May 2003, members of the Union Solidarity and Development Association (a mass "social" organization created by the junta in 1993) attacked Aung San Suu Kyi and her convoy in Sagaing Division, leaving at least 70 dead. Aung San Suu Kyi survived the attack, but was taken into custody and returned to house arrest until November 2010. (PHR, January 2011, p. 18)

A March 2011 report published by the Transnational Institute (TNI) and Burma Centre Netherlands (BCN) provides the following information:

"During the SLORC-SPDC era, social control was systematically reinforced by the reformation of local militias and mass organizations, and the indoctrination of civil servants. The police, and even the fire brigade, were brought under military control, and the regime established a number of new 'Government-Organised NGOs' (GONGOs). The most substantial of these new organisations was the Union Solidarity and Development Association (USDA), established in September 1993 along the lines of the pro-military GOLKAR party in Indonesia, with a reported membership of more than 20 million. The USDA's objectives included upholding the regime's 'Three National Causes' (non-disintegration of the union, non-disintegration of national solidarity, and perpetuation of national solidarity), which may be seen as a muscular affirmation of the Tatmadaw's self-appointed state and nation-building role. Indeed, the USDA and the para-military Peoples Vigorous Association (PVA or Sorn Arr Shin) were heavily involved in the suppression of the September 2007 protests. In 2010 the USDA was transformed into the Union Solidarity and Development Party (USDP), which inherited many of the association's funds and networks of influence (see below)." (TNI/BCN, March 2011, p. 24)

Jane's Information Group lists a number of groups and associations as being part of Myanmar's military reserves, including the USDA:

"Military reserves include government personnel village militias, and members of the Myanmar Red Cross and Fire Brigade, who generally all undergo basic military training. Small arms and platoon-level training has also been given to many members of the large pro-government Union Solidarity Development Association (it claims membership of 22.8 million members). The War Veterans Association is also considered part of the national reserve. These forces have not been deployed with regular army units and would probably not add significantly to its fighting capability." (Jane's, 25 March 2011, as cited in UKBA, 17 June 2011)

### *3.2.4 Independence of police vis à vis the military*

In January 2011, DVB reports that five police commanders in several states and divisions in Myanmar have been removed from their posts following corruption charges levelled against them by a police intelligence unit. All of these commanders were the highest ranking police officials in their respective areas. As reported by a source close to the police, one of the accused, an official from Magwe, was given early retirement after investigation. However, authorities "decided to give him an army pension as he was originally an army major." (DVB, 26 January 2011).

Among the sources consulted by ACCORD within time constraints no further information could be found on the independence of police vis à vis the military.

### 3.3 Armed opposition groups (Ceasefire and non-ceasefire groups)

HRW provides a brief overview of groups which have concluded ceasefire agreements with the government, including those which have been transformed into army-controlled 'Border Guard Force' militias:

"There are currently more than 17 non-state armed groups with tentative, verbally agreed ceasefire agreements with the Burmese government, and others that have transformed into "Border Guard Force" militias, under the direct control of the Tatmadaw. These include elements of the Democratic Karen Buddhist Army (DKBA) now called Border Guard Force Battalions 1011-22, the New Democratic Army-Kachin (NDA-K) called BGF-1001-3 and seven others. These forces and ceasefire groups are euphemistically classified as having 'returned to the legal fold' by Burmese state-controlled media, but many of the groups maintain extensive armed wings, and control sizeable areas of territory in a form of ad-hoc, temporary and conditional autonomy. The main groups still in ceasefire are the United Wa State Army (UWSA) with an estimated 20,000-25,000 fighters, the Kachin Independence Organization (KIO) with several thousand regular fighters, and the New Mon State Party (NMSP) with 2,000-4,000 fighters. Many of the other ethnic armed groups are small and confined to isolated parts of Burma's borderlands." (HRW, 24 March 2011a)

Amnesty International (AI) provides the following overview:

"Fighting between various ethnic minority armed groups and the central government has never completely stopped since the country's independence. However, since 1989 and primarily during the late 1990s and early 2000s under General Khin Nyunt's leadership and initiative, 19 ethnic minority armed groups – 16 from the seven largest ethnic minorities – have agreed to ceasefires with the government. Among the Rakhine, there are at least three armed groups, only one of which has agreed to a ceasefire. The Chin National Front (CNF), the main and perhaps only armed group among the Chin, also does not have a ceasefire agreement with the government. In contrast, all four armed groups among the Kachin have agreed to ceasefires with the government. There are at least five armed groups among the Shan, four of which have ceasefires agreed with the government. Similarly, of the five armed groups existing among the Karenni, four have agreed to ceasefires. The Karen National Liberation Army (KNLA), the armed wing of the KNU, has been in armed conflict with the government since 1947; it has not agreed to a ceasefire. However, at least two other Karen forces have done so. The New Mon State Party (NMSP), which controls some territory along the Myanmar-Thailand border, has agreed to a ceasefire with the government." (AI, 16 February 2010, p. 16-17)

#### 3.3.1 *Kachin Independence Army (KIA) and New Democratic Army-Kachin (NDA-K)*

An August 2011 list of the major ethnic armed groups and their respective strength<sup>2</sup> published by South Asia Analysis Group (SAAG), a non-profit think tank, includes the following information regarding the Kachin Independence Army (KIA):

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<sup>2</sup> SAAG states that the strength of armed rebels indicated for each group is an estimate (SAAG, 1 August 2011).

"Kachin Independence Army (KIA) – Troops 10,000, founded in 1961, second largest and considered best organised ethnic group, Kachin Independence Organisation (KIO) is the political wing, one of the parties that signed the Panglong agreement, ceasefire agreement in 1994, has rejected the BGF plan" (SAAG, 1 August 2011)

Jane's Information Group describes the formation and aims/ objectives of the KIA as follows:

"The Kachin Independence Army (KIA) was formed by Second World War veteran Zau Seng on 5 February 1961 in Kachin-inhabited areas of northeastern Shan State. [...]

The KIA seeks autonomy for the Kachin-inhabited areas of northern Myanmar." (Jane's, 21 July 2011)

Reuters news agency gives the following overview of the KIA, described as "one of the larger ethnic minority forces in Myanmar" numbering at least 10,000 fighters:

"The Kachin are a hill people and many of them are Christian. The KIA group was formed in the early 1960s and for years battled the military government for greater autonomy for the Kachin hills along the border with China, which are rich in jade and timber. The group agreed to a ceasefire in 1994 but that fell through last year when the government tried to force all ethnic minority forces to merge with its military-run Border Guard Force. The Kachin were among those who refused on the grounds that a merger with the government force would erode their autonomy. The Kachin force numbers at least 10,000 well-armed and experienced fighters. Ethnic minority rebel armies like the KIA have fought Myanmar's military for decades. Low-level fighting has taken place in the past year; these latest clashes are the most intense. The Kachin, like most of Myanmar's ethnic minority factions, are not fighting to break away from Myanmar but want a federal system with a high degree of autonomy for their regions." (Reuters, 16 June 2011)

Mizzima News provides an overview of the New Democratic Army-Kachin (NDA-K):

"The New Democratic Army - Kachin (NDA-K), based in North-eastern Kachin state along the Sino-Burma border, was founded by former Kachin Independent Organization (KIO) officers Zakhung Tingying and Layawk Zelum in 1989. The pro-Communist NDA-K split from the KIO due to political differences and the faction which included 700 soldiers sided with the regime after agreeing to a ceasefire in 1989. It operated as the regime's "special police" and in return received an operating budget, ration supplies and 600 soldiers were paid by the state. It is one of the first ethnic armed cease-fire groups to exercise its duties as a border guard force in November 2009. Some members have also joined the Kachin State Progressive Party (KSPP) to contest in this year's election.

The NDA-K aims to fight for the security, social, economic and educational development of its people, and have said they believe that their hopes would materialize after the elected government assumes office following the 2010 elections. Sources say that following the ceasefire agreement in 1989, the NDA-K has focused more on business than politics and has not maintained active armed cadres." (Mizzima, 19 June 2010b)

Jane's Information Group provides the following information regarding the NDA-K:

"Originally known as 'War Zone 101' of the Communist Party of Burma (CPB), the group was renamed the NDA-K in April 1989 after the collapse of the CPB. Zakhung Ting Ying and Layawk Zalun (also known as Zelum) formed 'War Zone 101' (and subsequently the NDA-K) after breaking away from the Kachin Independence Army (KIA) in 1968. [...]

The NDA-K's aims and objectives are unclear as the group has never issued any policy declaration or manifesto. Like several former rebel groups in Myanmar, the NDA-K today appears primarily preoccupied with protecting and developing its business interests in its areas of control." (Jane's, 16 December 2010b)

As reported in June 2011 by Burma News International (BNI), a coalition of Burma news groups operating in exile, two former NDA-K leaders were put under house-arrest in Kachin State capital Myitkyina by the government:

"In a stepped up offensive, the Burmese government has placed under house-arrest Zakhung Ting Ying, the National Parliament's representative and former leader of the dissolved New Democratic Army-Kachin (NDA-K) and Waw Lau former Military Chief of Staff, in Kachin State capital Myitkyina, since early this week, said sources close to the two former NDA-K leaders. [...]

The NDA-K was transformed to the Burmese Army-controlled Border Guard Force (BGF) in November, 2009. On the orders of Brig-Gen Zeyar Aung of the Burma Army's Northern Regional Command, the two former NDA-K leaders have been banned from travelling outside, said relatives. Though the NDA-K was dissolved, the two leaders still wield considerable influence over the three BGF battalions transformed from the NDA-K, said sources close to them.

The two leaders came to an understanding with the Central Burmese government that the BGF troops will not be deployed for civil war but only to take on foreign enemies. But, now the government has reneged on the deal. It is sending BGF troops to fight the Kachin Independence Army (KIA) at its Laiza headquarters." (BNI, 15 June 2011)

### *3.3.2 United Wa State Army (UWSA)*

The South Asia Analysis Group (SAAG) states:

"United Wa State Army (UWSA) – Troops 20,000 to 25,000, the largest ethnic armed group in Myanmar, ceasefire agreement in 1989, rejected the BGF proposal." (SAAG, 1 August 2011)

The Democratic Voice of Burma (DVB) states:

"The UWSA is thought to have close to 30,000 troops in several blocks of territory around the edge of Shan state, which also hosts the SSA and several KIA battalions. It is one of the few ethnic armies whose ceasefire with the Burmese government remains intact." (DVB, 20 June 2011)

Jane's describes the aims and objectives of the UWSA as follows:

"The UWSA seeks the establishment of an autonomous Wa State within Myanmar's national borders. Since agreeing to a ceasefire with the military junta in 1989, the group has moved a long way towards achieving this objective on the ground. A long-standing arrangement with the military regime in the capital Naypyidaw allows UWSA commanders to profit from involvement in the narcotics trade while running an essentially autonomous state in its area of control with little interference from the junta. In return, the UWSA acts as a proxy force against other ethnic rebel groups operating in the area who remain militarily opposed to the junta, such as the Shan State Army - South (SSA-S)." (Jane's, 16 December 2010a)

In an August 2011 article, DVB reports about talks held between UWSA representatives and the Myanmar army over the government's Border Guard Force plan:

"The Wa army are yet to give a decision on the Burmese junta's request to transform into a border guard force, despite the deadline expiring last week. Around 100 troops accompanied United Wa State Army (UWSA) leader Bao Youxiang to a meeting last Friday with Burmese military chief Ye Myint, who had sought to pile pressure on the group to transform. Despite several hours of talks, the meeting ended without an agreement being reached. The Burmese government has requested that the UWSA and a number of other ceasefire group change into a border militia and come under the control of Naypyidaw. [...] The deadline for groups to transform expired yesterday, but only two ceasefire armies have so far agreed to the proposal. [...] The 30,000-strong UWSA, Burma's largest ethnic army, took part in the government-led National Convention which drafted the 2008 constitution. The group previously said it agreed in principle with the border guard force plan. Both the Burmese government and the UWSA have turned down a number of meetings proposed by their counterparts in recent months. Sources said the Friday meeting was helped along by China, who sent officials to the talks. The Wa is made up of ethnic Chinese, and Beijing is rumoured to support the UWSA both financially and militarily." (DVB, 17 August 2011)

Transnational Institute (TNI)/ Burma Centre Netherlands (BCN) report in June 2011 that tensions between the government and the United Wa State Army (UWSA) continue (TNI/BCN, June 2011, p. 1).

### *3.3.3 Myanmar National Democratic Alliance Army (Kokang Army)*

SAAG states with regard to the Myanmar National Democratic Alliance Army (MNDAA), also known as Kokang group, that it was attacked in August 2009 by the Myanmar Army and their capital Laogai seized (SAAG, 1 August 2011).

The UN Secretary General states in a report of April 2011 (published by the UN General Assembly):

"The Karen National People's Liberation Front and the Myanmar National Democratic Alliance Army/Kokang Army [...] have now been integrated into the Tatmadaw border guard forces (Border Guard Force 1004 and Border Guard Force 1006, respectively). A

DKBA breakaway faction has also been integrated into the border guard forces." (UNGA, 23 April 2011, p. 25)

Another report by the UN Secretary General states that since the defeat of the Kokang Army in clashes with the army in August 2009, "there are indications that the group has disintegrated". The report mentions that child soldiers were observed manning checkpoints of the Kokang Army during the fighting (UNGA, 13 April 2010, p. 23).

The Transnational Institute (TNI) comments on the August 2009 clashes as follows:

"In August 2009, the Burma army occupied the Kokang region after several days of fighting, ending two decades of cease-fire with the Myanmar National Democratic Alliance Army (MNDAA). Led by Kokang leader Pheung Kya-shin, the MNDAA was the first of over nearly 20 armed opposition groups to conclude a cease-fire agreement with the military government that assumed power in 1988. The recent fighting forced 37,000 people to flee across the border to China." (TNI, September 2009, p. 1)

Mizzima provides details regarding the MNDAA and the 2009 events in Kokang, stating that the MNDAA has been replaced by another ethnic Kokang group which agrees to become a Border Guard Force:

"Myanmar National Democratic Alliance Army (Kokang), formally the Kokang Democracy Party, is a rebel army of Kokang people in northeastern Burma. It signed a ceasefire agreement with government shortly after it split from Communist Party of Burma in 1989. However on 24 August 2009 the group was forced out of its ceasefire zone after the Burmese Army seized its capital of Laogai on 24 August 2009. The Burmese army cited concern about Kokang links to illegal activities, including gambling and drug production for the attack but others see it as part of the government's plan to force all ceasefire groups to transform into a Border Guard Force. MNDAA has been replaced by another Kokang group which agrees to become a Border Guard Force. Kokang and its southern neighbors United Wa State Army (UWSA) and National Democratic Alliance Army-Eastern Shan State (NDAA) are members of Peace and Democracy Front, an alliance formed by former ethnic armed units of the Communist Party of Burma (CPB). The grouping has also reportedly concluded separate military pacts with its most immediate western neighbors: Kachin Independence Army (KIA) and Shan State Army (SSA) ,North."" (Mizzima, 1 August 2010)

### *3.3.4 Shan State Army – North (SSA-N)*

The SAAG gives the following overview:

"Shan State Army (SSA) Troops 6,000 to 10,000, Political wing is the Shan State Progressive Party (SSPP). The two factions Shan State Army-South which did not enter into a ceasefire agreement and the Shan State Army-North which entered into a ceasefire agreement in 1989 have been integrated into a combined force since May 2011. Some units of the SSA-N faction have joined the BGF." (SAAG, 1 August 2011)

An April 2011 report by the Irrawaddy news magazine notes continuous fighting since February 2011 between the Myanmar army and the Shan State Army – North (SSA-N) Brigade 1 in Mongshu, Tangyan and Kyathi townships (Shan State). The SSA-N Brigade 1 is led by Col. Pang Fa and “is estimated to be the strongest of the SSA-North's three brigades (the other being Brigades 3 and 7), with approximately 3,000 troops. Unlike the other two factions of the SSA-N, Brigade 1 “refused to join the regime's Border Guard Force (BGF) plan”. As reported by the Irrawaddy news magazine, SSA-N Brigade 1 controls territories in Kyethi and Monghsu townships (southern Shan State) and Mongyai and Tangyan townships (northern part of Shan State) (Irrawaddy, 25 April 2011).

In July 2010 Mizzima News states that “[t]he objective of the SSA-N is to establish an autonomous Shan State within a federated Union of Myanmar.” (Mizzima, 15 July 2010)

### *3.3.5 Shan State Army – South (SSA-S)*

The Irrawaddy states that “[t]he SSA-South is estimated to have at least 7,000 troops”. It was previously called the Shan United Revolutionary Army (formed by a former member of Khun Sa's Mong Tai Army) (Irrawaddy, 9 December 2010).

In June 2010, Mizzima News states that the Shan State Army – South (SSA-S) “is the faction of the Shan State Army (SSA) continues its armed struggle, whilst the SSA-north has signed a ceasefire with the government (Mizzima, 19 June 2010a).

### *3.3.6 Shan State National Army (SSNA)*

Among the sources consulted by ACCORD within time constraints no relevant information could be found regarding the Shan State National Army (SSNA).

### *3.3.7 Karen National Liberation Army (KNLA)*

SAAG notes that the Karen National Liberation Army (KNLA), with a troop size estimated between 2,000 and 12,000, did not enter into any ceasefire agreement with the government. Its political wing is the Karen National Union (KNU) (SAAG, 1 August 2011).

Jane's Information Group notes the following on tactics and strength of the Karen National Liberation Army (KNLA):

“The KNLA fights a guerrilla war on the ground. [...] The KNLA claims to avoid the targeting of civilians (although almost no group involved in the Myanmar conflict escapes criticism from human rights organisations). It has traditionally aimed to hold territory in Karen dominated areas, but has suffered as more Karens have been forcibly removed by the Myanmar military. [...]

The KNLA's strength is debatable. At their height in the 1950s, Karen rebel forces (then the Kawthoolei Armed Forces, supported by KNDO militias) numbered at least 10,000. Since the early- to mid-1980s however, the KNLA has never fielded more than 5,000 fighters, and many of those are teenagers. Following an offensive by the Myanmar army from 1997 onwards, this number has been further reduced and the KNLA is now thought to retain approximately 2,500 full-time guerrillas and several thousand armed village

militiamen. Support from the Karen population, numbering between three and five million, has always been good. Support on the ground is currently weaker than in previous years as, following the 1997 offensive, more and more Karens have had to flee from their homes." (Jane's, 18 November 2010b)

### *3.3.8 Karenni Army (KA)*

Jane's Information Group notes on the Karenni Army (KA) that in contrast to other similar groups seeking greater autonomy within Myanmar, its objective is to secure the secession/ full independence of Kayah State from the Union of Myanmar (Jane's, 13 December 2010).

Mizzima states that the political wing of the Karenni Army is the Karenni National Progressive Party (KNPP). The KNPP, founded in 1957, is described as being the only armed ethnic Karenni group that still fights the government, as the Karenni Nationalities People's Liberation Front (KNPLF) and the Karenni National Defence Army (KNDA) joined the Border Guard Force. Mizzima reports on the following incidents involving the KA:

"On October 26, a Karenni Army unit raided a 72 Light Infantry Battalion (LIB) outpost, located west of the Nam Pon River, about 8 miles (13 kilometres) east of Loikaw. During the attack, four Burmese Army soldiers were killed. The Karenni militants lost one fighter and three were injured.

A Karenni unit had also raided a 247th Infantry Battalion outpost on October 16." (Mizzima, 2 November 2010)

### *3.3.9 All Burma Student Democratic Front (ABSDF)*

Jane's Information Group states that the All Burma Students Democratic Front (ABSDF) was formed in the wake of the 1988 pro-democracy protests in Myanmar. The ABSDF's members were initially drawn from the All Burma Federation of Student Unions (ABFSU) which played a leading role in the protests. After the military crackdown on protesters, the ABFSU determined to pursue political change on three fronts: "the establishment of semi-underground networks; the formation of a political party; and the waging of an armed struggle, which was to be carried out by the newly established ABSDF." Jane's notes that the ABSDF's stated aim is to replace the current political order with a new and democratic system of governance by "upholding the strategy of armed struggle in combination with political activities". The group has specified four particular objectives to this end: "to liberate the peoples of Myanmar from the oppression of military dictatorship; to achieve democracy and human rights; to attain internal peace; and to bring about the emergence of a federal union in Myanmar." (Jane's, 1 July 2011).

The undated website of the All Burma Students' Democratic Front (ABSDF) describes itself as follows:

"The All Burma Students' Democratic Front (ABSDF) is the largest student and youth organisation on Burma's borders. It was founded on November 1, 1988. The ABSDF is fighting for democracy and human rights in Burma alongside other democratic and ethnic nationality forces.

The ABSDF currently holds seven camps on the Burma-Thailand border, one camp spread over three separate locations on the Burma-India border, and one camp spread over three separate locations on the Burma-China border. [...] The ABSDF is a member organisation of the National Council of the Union of Burma (NCUB), an umbrella organisation of the border-based opposition. The ABSDF elects its leadership democratically. Leaders of the organisation serve for a certain period of time (Three years) in accordance with the ABSDF constitution." (ABSDF, undated)

The Democratic Voice of Burma (DVB) provides the following information regarding the ABSDF:

"The ABSDF has recently been engaged in fighting in eastern Karen state after joining forces with a breakaway faction of the Democratic Karen Buddhist Army (DKBA), which has been battling the Burmese army. At its peak the student army had some 10,000 troops. It has been linked with the Karen struggle ever since its formation in the late 1980s, when thousands of students fled to the jungle and were sheltered by the Karen National Union (KNU) and its armed wing, the Karen National Liberation Army (KNLA)." (DVB, 10 January 2011b)

The DVB outlines the ABSDF's links with Karen groups in a December 2010 article:

"The ABSDF has been linked with the Karen struggle ever since its formation in the late 1980s, when thousands of students fled to the jungle and were sheltered by the Karen National Union (KNU) and its armed wing, the Karen National Liberation Army (KNLA).

When the DKBA split from the KNLA in the mid-1990s and allied itself with the junta, the ABSDF was 'caught in the middle', according to its former foreign affairs spokesperson, Aung Naing Oo. As a result of the new dominance of the pro-junta faction, and due to splits within the ABSDF, its fighting capabilities diminished. But the breakaway faction of the DKBA has given added hope that an inter-ethnic and organisational alliance is possible." (DVB, 6 December 2010)

The Assistance Association for Political Prisoners (AAPP) states that in 2010 it documented the case of seven individuals, who in 2008 were arrested and accused of having ties with the All Burma Students' Democratic Front (ABSDF). In September 2010, each had their sentence extended by 20 years, in addition to their already harsh prison terms of between 20 and 38 years. (AAPP, 14 January 2011).

### *3.3.10 Mon National Liberation Army (MNLA)*

In its Sentinel Country Risk Assessment, Jane's Information Group provides the following brief description of the Mon National Liberation Army (MNLA):

"The Mon National Liberation Army (MNLA), with about 1,000 men, is based on the Thai border in Mon State. It serves as the armed wing of the New Mon State Party (NMSPP), which agreed to a ceasefire in 1995." (Jane's, 25 March 2011, as cited in UKBA, 17 June 2011)

Jane's Information Group states that "[t]he objective of the MNLA is to establish autonomy for the Mon-inhabited areas of southeastern Myanmar." (Jane's, 24 February 2011).

SAAG notes with regard to the New Mon State Party (NMSP) that its troops number 700 and that it has rejected the BGF plan (SAAG, 1 August 2011).

The Transnational Institute (TNI) and the Burma Centre Netherlands (BCN) state in a June 2011 report that "ceasefire of the New Mon State Party (NMSP) in south Burma is under threat." (TNI/BCN, June 2011, p. 1)

The Internal Displacement Monitoring Centre (IDMC) lists the New Mon State Party (NMSP) as one of the armed groups that refused to transform into Border Guard Forces, and whose ceasefires the government considers to have ended (IDMC, 19 July 2011, p. 11).

### *3.3.11 Border Guard Forces (BGF)*

In July 2011, the Internal Displacement Monitoring Centre (IDMC), with reference to other sources, reports on the issue of the Border Guard Forces (BGF) and provides a list of ceasefire groups that refused to transform into Border Guards:

"During the 1990s the Myanmar government agreed ceasefires with most NSAGs [Non-State Armed Groups], enabling them to pursue economic activities and to control territory. Some such NSAGs have reportedly heavily exploited natural resources in areas under their control without benefit to local civilians (TNI, July 2009, pp.9-10; CPCS, June 2010, pp.99-100, 147, 270-271).

Up until 2009, ceasefire areas had been characterised by an absence of fighting, although displacement of civilians was reported to have continued there because of human rights violations by government forces and allied NSAGs such as the DKBA, which forced people to serve as porters and extorted money and goods from them. In April 2009 the Myanmar government ordered all ceasefire NSAGs to transform into *Tatmadaw*-led "border guard forces" (BGF), which was a de facto precondition for their political wings to contest the November 2010 elections. 1 September 2010 was the final deadline for transformation into BGF (Chatham House, September 2010, p.16; TNI and BCN, February 2011, pp.3, 9).

The following ceasefire NSAGs refused to transform:

- United Wa State Army (UWSA),
- National Democratic Alliance Army (NDAA) based in Mongla (eastern Shan State),
- Kachin Independence Organisation (KIO)/Kachin Independence Army (KIA),
- New Mon State Party (NMSP),
- 5th Brigade of the Democratic Kayin Buddhist Army (DKBA) (also known as Golden Drum),
- Kayan New Land Party,
- KNU/KNLA Peace Council,
- Shan State Progress Party/Shan State Army (SSPP/SSA) (a breakaway faction of the Shan State Army-North (SSA-N)).

The Myanmar government therefore considered their ceasefires to have ended (TNI and BCN, February 2011, pp.6, 9; TNI and BCN, 26 May 2011, p.7; Chatham House, September 2010, p.16). [...]

The BGF issue resulted in new tensions and fighting between these NSAGs on the one hand and the *Tatmadaw* and government-allied NSAGs on the other, while non-ceasefire groups, including the KNU/KNLA, also continued their armed opposition against the government (Le Monde diplomatique, November 2009; IRIN, 29 November 2010; TNI and BCN, 26 May 2011, pp.6-7; CPCS, June 2010, p.69). In recent years the *Tatmadaw* created ethnic militias in ceasefire areas to reinforce the government's fighting capacity should ceasefires come to an end. There were more than 50 such militias as of January 2011. Opposition NSAGs, for their part, continued working with their own militia (TNI and BCN, February 2011, pp.5, 10; KHRG, 31 August 2010, pp.84-87)." (IDMC, 19 July 2011, p. 11-12)

In an older report of February 2010, Amnesty International (AI) states:

"While not expressly linked to the 2010 elections, the BGF plan is authorized under the 2008 constitution. Nine groups have agreed, six of which from the largest ethnic minorities: the Lasang Awng Wa Peace Group (Kachin); the New Democratic Army-Kachin (NDA-K); the Kachin Defence Army; Karenni Nationalities People's Liberation Front (KNPLF); the Democratic Karen Buddhist Army (DKBA); and the Karen Peace Front (KPF). Six groups have refused, four of which from the largest ethnic minorities: the National Democratic Alliance Army (NDAA) (Shan); the Shan State Army-North (SSA-N); the Karen National Liberation Army (KNLA); and the Mon National Liberation Front (MNLF). " (AI, 16 February 2010, p. 17)

### *3.3.12 United Nationalities Federal Council (UNFC)*

A March 2011 report by the Transnational Institute (TNI) and the Burma Centre Netherlands (BCN) provides an overview of the formation process and role of the United Nationalities Federal Council (UNFC):

"As frustration over the BGF order and the 2010 elections grew, a new military and political alliance emerged between the KNU and a range of other armed ethnic groups. In November 2010 a Committee for the Emergence of a Federal Union was established, which was succeeded in February 2011 by the United Nationalities Federal Council (UNFC). The 12 UNFC member organisations included the KNU and several smaller ethnic insurgent organisations, plus three ceasefire groups: the KIO, NMSP and Shan State Progress Party/Shan State Army-North (SSPP/SSA). The new alliance was dominated by military commanders, as symbolised by the appointment of KNLA Commander-in Chief Mutu Saepaw as UNFC Chairman; NMSP General Secretary, Nai Hongsa was named General Secretary, demonstrating that some key ceasefire group leaders wished to send a strong signal of discontent to the government. [...]

Ultimately, the new alliance differed little in make-up to the NDF joint front of armed ethnic groups, which had failed to achieve its objectives and had broken up under pressure from the *Tatmadaw* in the 1990s. Given that the NMSP and KIO were unlikely to initiate armed conflict against government forces, the significance of the UNFC was

therefore primarily symbolic. Furthermore, two key armed ethnic groups, the (ceasefire) UWSA and (nonceasefire) Shan State Army-South were not represented in the new alliance." (TNI/BCN, March 2011, p. 44)

IDMC states in July 2011, citing different sources (including above-cited TCI/BCN report):

"In February 2011 several ethnic non-state armed groups (NSAGs) based in eastern Myanmar that refused to transform into BGF formed a military and political alliance, the United Nationalities Federal Council (Union of Burma) (UNFC-UB). The grouping emerged from the Committee for the Emergence of a Federal Union, a smaller alliance created shortly before elections in November 2010. It includes the following ceasefire and non-ceasefire groups [...]:

- Kachin Independence Organisation (KIO)/Kachin Independence Army (KIA),
- Kachin National Organisation (KNO),
- New Mon State Party (NMSP),
- Shan State Progress Party/Shan State Army (SSPP/SSA) (a breakaway faction of the Shan State Army-North (SSA-N)),
- Karen National Union (KNU)/Karen National Liberation Army (KNLA),
- Karenni National Progressive Party (KNPP),
- Chin National Front (CNF),
- National United Party of Arakan (NUPA),
- Palaung State Liberation Front (PSLF),
- PaO National Liberation Organisation (PNLO),
- Wa National Organisation (WNO),
- Lahu Democratic Union (LDU)." (IDMC, 19 July 2011, p. 13-14)

### *3.3.13 Democratic Karen Buddhist Army (DKBA)*

SAAG notes that the Democratic Karen Buddhist Army (DKBA), numbering 6000 troops, split from its parent organisation, the Karen National Union, in 1994. The DKBA's political wing is the Democratic Karen Buddhist Organisation (DKBO). The DKBA was the first ethnic armed group to join the BGF. Since then, however, many defections of DKBA members (including complete units) from the BGF have been reported (SAAG, 1 August 2011).

Jane's Information Group provides the following overview of the DKBA in an assessment of November 2010

"Following the split from the KNLA in 1994, the DKBA made a tacit agreement to align itself with the junta. Since then the group has posed no threat to the state and has taken an active role in counter-terrorism operations. On 18 April 2009, the DKBA became an official Border Guard Force (BGF). However, as part of the agreement the group was allowed to maintain its independence and identity. It was only in August 2010 that the group was fully transformed into an official unit within the BGF. General Kyaw Than said: [...] However, a small faction within the DKBA, known as Brigade 5, retained autonomy." (Jane's, 18 November 2010a)

Jane's further expands as follows on the activities of those DKBA units that cooperate with the government:

"DKBA units are based in their own camps separate from Myanmar army garrisons. They conduct military operations either jointly with regular army units or independently. DKBA fighters have also been used to interact with Karen villagers and identify individuals who might be sympathetic to the KNU/KNLA. In addition, there are persistent allegations from human rights monitors of human rights violations involving the DKBA, including massacres and the use of civilians to clear mine fields without appropriate protection or equipment. In recent years, however, the DKBA has tried to operate more independently to project the image of itself as a genuine Karen political organisation." (Jane's, 18 November 2010a)

Irrawaddy provides details regarding the DKBA Brigade 5 which refused to join the BGF and was involved in the above-mentioned November 2010 clashes with government troops in Myawaddy (Karen State):

"It has been three months since an election-day border clash broke out in Myawaddy between government troops and renegade Brigade 5 of the Democratic Karen Buddhist Army (DKBA) that sent 20,000 refugees temporarily fleeing across the border to Thailand, and the area is still far from quiet. Gunfire and explosions continue to be heard on the border, the latest being a bomb blast in Myawaddy town on Wednesday that killed 2 people and injured six others, with at least some of the victims being civilians. According to sources on the border, the DKBA has changed its military tactics to target urban areas where government offices and buildings are located rather than fighting in the jungle. Maj San Aung of DKBA Brigade 5 said the brigade changed tactics because it has fewer fighters than the regime, so urban guerrilla warfare is a more effective way to hurt the junta. As a result, however, more civilians may be caught up in the fighting and some Myawaddy locals are not happy with the change in tactics. [...]

Brig-Gen Saw Lah Pwe, the commander of DKBA Brigade 5 who is also known as Na Kham Mwe, said the regime is still reinforcing its troops around his controlled areas in southern Karen State and does not seem to be seeking ceasefire talks with him. The previous ceasefire between the junta and DKBA Brigade 5 broke down on Nov 8 after the ethnic Karen armed group refused to join the junta's border guard force (BGF) under Burmese army control. Observers said the regime likely will use a divide-and-rule strategy in an attempt to defeat the strongest ethnic armed groups that have rejected the BGF, such as the United Wa State Army, which has about 30,000 troops, and the Kachin Independence Army, with some 10,000 troops. But with respect to ethnic Karen armed groups such as DKBA Brigade 5 and the Karen National Union (KNU), the observers said the regime will only use military means in its attempt to totally defeat the militias. KNU sources said that the junta is sending troops, ammunition and food supplies to the KNU's stronghold area in Papun District in northern Karen State-raising concern among civilians that war is imminent." (Irrawaddy, 11 February 2011)

### *3.3.14 Pa-O National Liberation Army (PNLA)*

In a September 2009 report, BBC describes the Pa-O National Liberation Army (PNLA) as a 100 men-strong ethnic Pa-o force, led by Khun Thurein, which is fighting the government (BBC, 11 September 2009).

The Irrawaddy states that the "PNLA is the military wing of the Pa-O National Liberation Organization (PNLO). [...] The PNLO split from the ceasefire group known as Shan State Nationalities Peoples' Liberation Organization (SSNPLO) in late 2007." (Irrawaddy, 22 May 2009).

### *3.3.15 Palaung State Liberation Army (PSLA)*

A report by the Economist published in March 2010 mentions that the Palaung State Liberation Army (PSLA), which had signed a ceasefire with the government, surrendered to the Myanmar army in 2005 (Economist, 16 March 2010).

Among the sources consulted by ACCORD within time constraints no further information could be found on the PSLA.

## **3.4 Forced recruitment (including of child soldiers)**

### *3.4.1 Forced conscription procedures in armed forces*

The USDOS Country Report on Human Rights Practices 2010, published in April 2011 (covering the year 2010), reports as follows on military conscription and the recruitment and use of child soldiers in the army and ethnic militias/insurgent groups:

"The government army continued to recruit and use child soldiers. The minimum age of enlistment in the army is 18 years, and the government's official policy is to avoid conscripting child soldiers; however, it did not deny their existence. Informal recruiting targeted vulnerable children. Authorities routinely falsified the enlistment papers of those under age 18. [...] Credible sources indicated the number of child soldiers may have risen to 12,000, although accurate statistics were difficult to obtain.

During the year exile media reported that the military forcibly enlisted children as young as 14 into the army in Mon and Rakhine states and Bago and Irrawaddy divisions. According to media reports, the South East Command paid brokers 200,000 kyat (\$200) for each child soldier they conscripted. Other children were kidnapped.

The ILO [International Labour Organization] and the UN Children's Fund were the only international bodies in the country with a mandate to address the problem of child soldiers. The ILO reported there were 201 complaints of cases of child-soldier recruitment during the year. The government cooperated with the ILO to return 73 underage recruits - 40 from complaints received in the year and 33 from 2009 cases. There were no reports of harassment of persons who complained about child-soldier cases.

By year's end the ILO had received 331 complaints of underage recruitment since it began monitoring the problem in 2007. In response the military discharged 142 underage recruits

and returned them to their families; 120 other cases were in process towards discharge. According to the ILO, commercial brokers or military personnel abducted the majority of recruits. The ILO reported that the Ministry of Home Affairs generally responded favorably once the ILO filed a complaint on behalf of a family member. The government occasionally investigated and at times prosecuted the soldiers and brokers involved. [...] The chances of sanction of any type remained limited if the perpetrator was in the military. The number of child soldiers recruited likely far outnumbered the ones released. There were no reports of prosecutions against identified civilian brokers." (USDOS, 8 April 2011, Section 1g)

The Women and Child Rights Project (WCRP) reports in September 2010 that government is forcibly recruiting local residents into militia units or civilian army (Pyi-Thu-Sit) to fight anti-government groups in southern Mon State and northern Tenasserim Division. As reported by WCRP, the SPDC mandates that every village in Ye township (Mon State) have a militia comprised of villagers. According to WCRP, the SPDC has also been recruiting children into these militias, using them as soldiers, guards, look-outs, porters, spies, messengers, human shields, and minesweepers (WCRP, September 2010, p. 3)

The Democratic Voice of Burma (DVB) reports in August 2011 that according to local residents, children as young as 10 years were ordered to accompany Burmese army units as they carried wounded troops through Kehsi Mensi township, a volatile area of Shan state. Residents in the township said that the army went through villages recruiting people to act as "human shields" (DVB, 19. August 2011).

Among the sources consulted by ACCORD within time constraints no information could be found on forced conscription procedures regarding adults.

### *3.4.2 Treatment of draft evaders/military deserters*

The Irrawaddy states in a February 2011 article that "[a]lthough the Burmese junta formed a committee to investigate child soldier issues in 2004, it has since denied using child soldiers in the army", and reports that child soldiers running away from their military bases back home to their families are "regularly rearrested and imprisoned as punishment for deserting". The article illustrates three such cases:

"Htet Htet Aung, 17, escaped from his training base in Taunggyi, Shan State, but was caught a few days later. He was sentenced to one year in prison. [...] According to his family, he has cerebral malaria and was being treated before his army conscription. His family have informed the ILO. They said Htet Htet Aung's case was accepted by ILO as child soldier case number 236. [...]

Another case is that of Zin Aung, 14, from Taungsoon village, War Township, in Pegu Division. He was arrested and sentenced to three and a half years in prison last December for desertion from the Burmese army.

There is also Kyaw Ye Aung, 15, a child soldier in the Burmese army from Myin Mu village, Amarapura township, Mandalay. He ran away from his base but was rearrested as a deserter. He was put in stocks at Palake police station for two days before he was

transferred to Htee Taw Moe Recruitment Base No. 2 at Madaya, Mandalay Division. His parents were notified on Jan. 27 that they could take him home because he was underage. But they were forced to sign a declaration that they would not report the case or file a complaint with the authorities or any organization." (Irrawaddy, 15 February 2011)

### **3.5 Forced labour/portering in conflict and non-conflict areas**

The US Department of State (USDOS) provides the following general overview with regard to forced labour and portering:

"The government reportedly continued its practice of conscripting members of ethnic minorities for service as military porters in Bago Division and in Chin, Karen, Kachin, Kayah, Rakhine, and Shan states [...]" (USDOS, 8 April 2011, Section 1f)

"Although the government took steps to address forced labor, it remained widespread. In February the government agreed to extend the Supplementary Understanding of 2007 with the ILO, an agreement under which the ILO receives forced-labor complaints, the government investigates such complaints, and the government works with the ILO to engage in awareness-raising activities. The government willingly participated in some joint investigations of forced-labor cases; however, the ILO reported rare instances of persons who had filed complaints later being charged under the Official Secrets Acts." (USDOS, 8 April 2011, Section 7c)

The USDOS 2011 Trafficking in Persons Report, published June 2011, notes:

"Military and civilian officials have for years systematically used men, women, and children for forced labor for the development of infrastructure and state-run agricultural and commercial ventures, as well as forced portering for the military. Government authorities use various forms of coercion, including threats of financial and physical harm, to compel households to provide forced labor. Those living in areas with the highest military presence, including remote border areas populated by ethnic groups, are most at risk for forced labor. The regime's treatment of ethnic minorities makes them particularly vulnerable to trafficking." (USDOS, 27 June 2011)

In a July 2011 report, Human Rights Watch (HRW) provides an overview of forced labour by the military and extensive documentation on the treatment of convict porters used by the army in conflict areas:

"One of the most serious and widespread reported abuses against civilians has been unpaid forced labor. The practice of forced labor has gradually transformed from a common urban problem where civilians were press ganged into work in towns and cities, or taken by force from urban areas and sent to carry supplies in conflict zones in the hinterlands, to one now predominantly, but by no means exclusively, confined to isolated rural areas. Especially targeted have been those living in conflict areas, where the military continues to routinely force civilians into carrying supplies or providing labor for a range of military related duties. [...]"

The Burmese army has long used prison convicts as porters in armed conflict zones with the complicity of both civilian and military officials." (HRW, 12 July 2011, p. 7-8)

"Convict porters continue to be used extensively in multi-unit Tatmadaw operations in northern Karen State and eastern Pegu Region. In northern Karen State and eastern Pegu Region, porters are being used as part of ongoing Tatmadaw operations against the KNLA. In 2010, several hundred porters were used to carry supplies to camps along primitive roads linking Tatmadaw camps in Papun and Nyaunglebin in northern Karen State and eastern Pegu Region. In January 2011, a new group of at least 500 men were congregated at the prison in Toungoo Town and then used to supply Tatmadaw positions to the south and east, in northeastern Pegu Division and into northernmost Karen State.

A major use of convict porters occurred in January 2011, when the military escalated its offensive in Karen State following the November 2010 elections, eventually forcibly drawing an estimated 700 prisoners from more than 12 prisons and labor camps." (HRW, 12 July 2011, p. 15)

"Convict porters used in northern Karen State in 2009-2010 and during the post-election offensive south of Myawaddy in 2011 endured horrific abuses at the hands of the Tatmadaw. These include killings and summary executions, 'atrocious demining' (defined below), torture and beatings, denial of medical assistance, ill-treatment including denial of food and shelter, and abuses while attempting to escape. [...]

Porters told Human Rights Watch and the Karen Human Rights Group about specific incidents they witnessed in which Tatmadaw soldiers or officers summarily executed porters. Soldiers usually killed porters for no longer being able to carry the loads, attempting to escape, or having injuries from landmines or from being beaten that rendered them unable to walk. Most of the porters we interviewed said they were repeatedly threatened that they would be killed if they could no longer carry the loads, if they were injured, or if they tried to escape. Matthew, an ethnic Chin, told the Karen Human Rights Group of his experience with a military unit. He described other porters having their throats cut, being shot, and their bodies being thrown over steep cliffs [...]. Many of the escaped porters described how soldiers executed porters who were wounded by landmines [...]" (HRW, 12 July 2011, p. 32)

"In violation of international humanitarian law prohibitions against 'human shielding', placing civilians at unnecessary risk, and using forced labor in combat areas, porters reported that they were forced to walk with patrols in mined areas. [...]

Many of the convict porters interviewed by Human Rights Watch and the Karen Human Rights Group in 2010-2011 reported landmine deaths and injuries, several of which have already been described in the section above, highlighting the dangers arising from military operations to which porters are routinely exposed." (HRW, 12 July 2011, p. 35-36)

"In addition to their use in 'atrocious demining,' described above, convict porters have also been subject to other forms of 'human shielding,' a violation of international humanitarian law that amounts to a war crime. Porters interviewed by Human Rights Watch and the

Karen Human Right Group described how soldiers deliberately intermingled porters while walking in military columns in frontline areas. Porters related how they were forced to walk ahead of troops to either detonate landmines or draw fire from an ambush. Several porters specifically reported that soldiers forced them to walk before or on either side of them to shield military personnel during hostile fire. They also described other practices that, even when not amounting to shielding, violate the international humanitarian law prohibition on putting civilians at unnecessary risk. Porters described how soldiers did not allow them to seek shelter in the trenches; forced them to stay out in the open during firefights; sent them to areas the army had just vacated under fire in order to retrieve military equipment hastily abandoned; and made them sleep in an unsheltered open area while soldiers slept in trenches or under shelter." (HRW, 12 July 2011, p. 38-39)

"In other cases, military personnel forced porters to pillage civilian houses in the conflict area, a war crime. Ko Kyaw Zwa explained how he and other prisoners were ordered to loot civilian goods for the Tatmadaw [...]" (HRW, 12 July 2011, p. 40)

"Without exception, all porters we interviewed reported violence, physical abuse, or threats of violence against them. Porters said that Tatmadaw soldiers and officers beat them for things such as requesting a rest, slowing down, stopping, speaking to soldiers or with other porters, requesting a lighter load, or being unable to climb either up or down a mountain. Other porters reported that soldiers tortured them when they attempted to escape or failed to stop other prisoners from escaping. They said that soldiers and officers insulted them, punched them, kicked them with military boots, prodded them forward with gun barrels, stabbed them, and beat them with the butts of their weapons." (HRW, 12 July 2011, p. 40-41)

"Many of the porters interviewed by Human Rights Watch and the Karen Human Rights Group said that the military denied porters basic or life-saving medical treatment. This resulted in convict porters dying from treatable injuries and diseases; porters being forced to carry loads while sick or injured; and porters being abandoned when injured, unable to walk, or in any other way incapacitated." (HRW, 12 July 2011, p. 43)

"Almost all of the 58 porters we interviewed reported that the military did not feed them often enough or provide them with enough food to carry out the work required of them on the front line." (HRW, 12 July 2011, p. 44)

The USDOS 2011 Trafficking in Persons Report, published June 2011, notes with regard to forced farming for the military or large private corporations:

"Complainants to the ILO during the year indicated a trend of forced farming accompanied by threats of fines, loss of farmers' land, and imprisonment for those refusing to comply. Beneficiaries of these actions are the Burmese military, defense-owned commercial interests, and large private corporations; these arrangements are facilitated by local government authorities, who maintain that such activities are carried out in line with the law." (USDOS, 27 June 2011)

### *3.5.1 Treatment of persons refusing, evading or escaping forced labour/portering*

The July 2011 HRW report provides the following information regarding experiences of convict porters during their escape from forced labour:

“Human Rights Watch and the Karen Human Rights Group interviewed 20 prisoners who escaped the post-election offensive in Karen State. It is impossible to estimate how many of the large group assembled in Hpa-an and Kawkariek managed to escape, were killed, or remain in service. Porters reported that they chose to escape because they believed they would be forced to porter on the frontline until they were killed or died from malnourishment, exhaustion, or disease. Many porters interviewed by the Karen Human Rights Group reported that after having served one battalion, the army forced them to remain on the front line to serve new battalions that rotated forward. [...]

In addition to the widespread abuses they suffered while portering, HRW states that many porters also reported abuses as they attempted to escape, including being shot at by Tatmadaw troops. Some prisoners were lucky in that they received help from soldiers, non-state armed groups, or villagers, who urged them to escape and in some cases helped them with information or money, food, shelter, and medical support after their escape.” (HRW, 12 July 2011, p. 46)

Among the sources consulted by ACCORD within time constraints no further information could be found on the treatment of persons who were refusing, evading or escaping forced labour/portering.

## **3.6 Human rights violations by armed forces, armed opposition groups, militia groups**

The US Department of State (USDOS) reports on the use of forced labour to maintain civil infrastructure as follows:

“Authorities continued to use forced labor countrywide to maintain existing civil infrastructure, including transportation and irrigation facilities. Authorities often allowed households or persons to substitute money or food for labor for infrastructure projects, but widespread rural poverty forced most households to contribute labor. Parents routinely called upon children to help fulfill their households' forced labor obligations.” (USDOS, 8 April 2011, Section 7c)

The Amnesty International (AI) Report 2011 (covering the year 2010) mentions:

“The army committed human rights violations in connection with oil, gas, mining and hydropower development projects, including forced labour, killings, beatings and land confiscation. The authorities continued to target villagers suspected of opposing or questioning the projects.” (AI, 13 May 2011)

The USDOS notes the following with regard to the use of child soldiers by government forces and ethnic militias/armed insurgent groups:

"Ethnic militias denied the existence of child soldiers in their ranks, although their existence was widely reported. According Human Rights Watch, government forces and various armed insurgent groups continued widespread and systematic forced recruitment of child soldiers." (USDOS, 8 April 2011, Section 1g)

The Internal Displacement Monitoring Centre (IDMC) notes in its July 2011 report the following with regard to the conduct of non-state armed groups (NSAGs):

"NSAGs opposed to the government continued in 2010 to project their image as protectors of minority groups, while relying on the presence of the civilian population in their areas of operation as a source of food, information, and personnel. Civilians provided such goods and services either voluntarily or involuntarily. [...]

All parties to the conflicts, including the KNU/KNLA and other opposition NSAGs, have committed human rights violations, although the majority have reportedly been perpetrated by the *Tatmadaw* and the Democratic Kayin Buddhist Army (DKBA), a government-allied NSAG. There has been no independent monitoring of human rights violations in the conflict areas. However, since the elections in November 2010 there have been reports that some opposition NSAGs' armed actions against government forces have been intended to prevent post-election stability. Civilians have been caught in the cross-fire or targeted directly (TNI and BCN, March 2011, p.15; Chatham House, September 2010, pp.19, 48; IDMC interview, 13 July 2011)." (IDMC, 19 July 2011, p. 5)

## 4 Ethnicity, Citizenship and Nationality

### 4.1 National legal framework and policies

#### 4.1.1 *Citizenship*

The Constitution of the Republic of the Union of Myanmar of 2008 contains provisions with regard to citizenship in Articles 345 and 346 of Chapter VIII ("Citizen, Fundamental Rights and Duties of the Citizens"):

"345. All persons who have either one of the following qualifications are citizens of the Republic of the Union of Myanmar:

(a) person born of parents both of whom are nationals of the Republic of the Union of Myanmar;

(b) person who is already a citizen according to law on the day this Constitution comes into operation.

346. Citizenship, naturalization and revocation of citizenship shall be as prescribed by law." (Constitution, 2008, Chapter VIII, Art. 345 and 346)

The Burma Citizenship Law of 15 October 1982 contains the following provisions regarding access and criteria for citizenship:

"5. Every national and every person born of parents, both of whom are nationals are citizens by birth.

6. A person who is already a citizen on the date this Law comes into force is a citizen. Action, however shall be taken under Section 18 for infringement of the provision of that section.

7. The following persons born in or outside the State are also citizens:

(a) persons born of parents, both of whom are citizens;

(b) persons born of parents, one of whom is a citizen and the other an associate citizen;

(c) persons born of parents, one of whom and the other a naturalized citizen;

(d) persons born of parents one of whom is

(i) a citizen; or

(ii) an associate citizen; or

(iii) a naturalized citizen;

and the other is born of parents, both of whom are associate citizens;

(e) persons born of parents, one of whom is

(i) a citizen; or

(ii) an associate citizen; or

(iii) a naturalized citizen;

and the other is born of parents, both of whom are naturalized citizens;

(f) persons born of parents one of whom is

- (i) a citizen; or
- (ii) an associate citizen; or
- (iii) a naturalized citizen;

and the other is born of parents, one of whom is an associate citizen and the other a naturalized citizen.

8. (a) The Council of State may, in the interest of the State confer on any person citizenship or associate citizenship or naturalized citizenship.

(b) The Council of State may, in the interest of the State revoke the citizenship or associate citizenship or naturalized citizenship of any person except a citizen by birth.

9. A person born in the State shall have his birth registered either by the parent or guardian in the prescribed manner, within year from the date he completes the age of ten years, at the organizations prescribed by the ministry of Home Affairs [...]

10. A person born outside the State shall have his birth registered either by the parent or guardian in the proscribed manner within one year from the date of birth at the Burmese Embassy or Consulate or organizations prescribed by the Ministry of Home Affairs.

[...] 13. A citizen shall not as well acquire the citizenship of another country.

14. A citizen shall have no right to divest himself of his citizenship during any war in which the State is engaged.

15. (a) A citizen shall not automatically lose his citizenship merely by marriage to a foreigner.

(b) A foreigner shall not automatically acquire citizenship merely by marriage to a citizen.

16. A citizen who leaves the State permanently, or who acquires the citizenship of or registers himself as a citizen of another country, or who takes out a passport or a similar certificate of another country ceases to be a citizen.

17. The citizenship of a citizen by birth shall in no case be revoked except in the case of cessation of citizenship due to infringement of the provision of Section 16.

[...] 22. A person whose citizenship has ceased or has been revoked shall have no right to apply again for citizenship or associate citizenship or naturalized citizenship." (Burma Citizenship Law of 15 October 1982)

The US Department of State (USDOS) notes in its Country Report on Human rights Practices 2010, published in April 2011:

"Citizenship is granted to anyone whose parents are both nationals of the country as prescribed by law." (USDOS, 8 April 2011, Section 2d)

The International Crisis Group (ICG) states with regard to "associated citizenship":

"Persons who do not meet the requirements of full citizenship under the 1982 Myanmar Citizenship Law may be granted 'associate citizenship', if they can meet certain other stipulated requirements, or if they had an application for citizenship pending under the (less restrictive) 1948 Union Citizenship Act." (ICG, 27 May 2010, p. 4, footnote 18)

#### 4.1.2 *Ethnic Minorities*

Article 348 in Chapter VIII of the 2008 Constitution stipulates non-discrimination of citizens by the state:

"348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth." (Constitution, 2008, Chapter VIII, Article 348)

The Burma Citizenship Law of October 1982 includes the following provisions regarding the citizenship of certain ethnic groups:

"3. Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens.

4. The Council of State may decide whether any ethnic group is national or not." (Burma Citizenship Law, 15 October 1982, Art. 3 and 4)

The US Department of State (USDOS) reports as follows on access to nationality for stateless persons and on so-called "non-indigenous" groups, including Muslim residents in northern Rakhine State (commonly referred to as "Rohingya"), who are denied full citizenship:

"In practice the government did not implement laws and policies to provide stateless persons the opportunity to gain nationality on a nondiscriminatory basis." (USDOS, 8 April 2011, Section 2d)

"There are 135 officially recognized 'national races' who qualify for citizenship. Some members of native-born but so-called nonindigenous ethnic populations, such as Chinese, Indians, Bengalis, some Eurasians, and the country's Rohingya population, are not included in the list and are denied the full benefits of citizenship based on their nonindigenous ancestry." (USDOS, 8 April 2011, Section 2d)

The USDOS notes with regard to application of citizenship law on Muslim residents in northern Rakhine State:

"The government consistently denied citizenship to most Rohingya on the grounds their ancestors did not reside in the country for one year prior to the start of British colonial rule in 1824, as required by the highly restrictive citizenship law. Only Rohingya who were able to prove long familial links to the country were eligible to apply for naturalization. Rohingya experienced severe legal, economic, and social discrimination. The government required them to receive prior approval for travel outside their village tract of residence, limited their access to higher education, and prohibited them from working as civil

servants, including as doctors, nurses, or teachers. Authorities required Rohingya to obtain official permission for marriages." (USDOS, 8 April 2011, Section 2d)

## 4.2 Citizenship and identity documentation

### 4.2.1 Administrative procedures and obstacles in obtaining CSCs and/or nationality

The UK Border Agency (UKBA) states in its Myanmar *Country of Origin Information (COI) Report* of June 2011 with regard to National Registration Cards (NRC) and Citizenship Scrutiny Cards (CSC):

"In a letter from the British Embassy, Rangoon, dated 15 July 2009, a Foreign and Commonwealth Office (FCO) official responded to a series of questions from the UKBA Country of Origin Information Service regarding the acquisition of a Burmese National Registration Card (NRC)/Citizenship Scrutiny Card (CSC):

**"What are the criteria for obtaining a card?** To obtain a National Registration Card, the applicant's parents and grandparents have to be Burmese citizens.

**"At what age would a citizen apply for a NRC/CSC?** A person aged 10 can start applying to obtain a NRC card. The NRC card issued at the aged of 10 has to be renewed and changed to another card at the aged of 18.

**"What documents must be provided when applying?** Documents required are: Application Form of the Immigration and Population Department to be attached with:

1. Birth certificate
2. Family registration card
3. Ward authorities recommendation
4. Township authorities recommendation
5. Family tree (a diagram drawn up to the great-grandparents of both parents)

**"Where would one apply? Is the procedure official, or, like passport applications, could an agent be used?** One would apply at the township immigration department, where his/her Family Registration Card is registered. Using [an] agent is not recommended because there have been many cases of cheating.

**"Can a card be applied for from abroad, e.g. via the Burmese embassy in UK?** A card can not be applied from abroad.

**"What are the penalties for a) not having a card or possessing a forgery, and b) for obtaining one fraudulently e.g. the holder is not a legal Burmese citizen?** a) A person who does not have a NRC cannot travel inside Burma. b) A person forging a NRC card is liable to 7 years imprisonment. c) Obtaining one fraudulently also brings 7 years imprisonment.

"Remark: The process to obtain a NRC card is tedious and time consuming, it may take up to one year in some cases, especially if one of his/her grandparents holds a foreigner registration card." (UKBA, 17 June 2011, S. 112-113)

The USDOS International Religious Freedom Report 2010 states that “[m]embers of many ethnic and religious minorities faced problems obtaining NRCs, Muslims even more than others.” (USDOS, 17 November 2010, Section 2)

In its April 2011 Country Report on Human Rights Practices, the USDOS reports as follows on the issuance of Temporary Registration Cards (TRCs), National Registration Cards (NRCs) and Citizenship Scrutiny Cards (CSCs) with regard to stateless persons in Rakhine State:

“The government claimed it continued a program originally supported by the UNHCR to issue Temporary Registration Cards (TRCs) to stateless persons in Rakhine State. However, for years the UNHCR has not been able to obtain statistics from the government on the issuance of TRCs in northern Rakhine State, where the majority of Rohingya live. In previous years Rohingya without temporary identification cards did not have the right to vote in the constitutional referendum. However, in late July and August organizers of the progovernment USDP and ward authorities in various parts of the country reportedly offered national registration cards (NRCs) to individuals in exchange for joining the USDP. The government requires citizens over the age of 18 to produce NRCs when they travel, enroll in universities, and vote. There also were reports that Deputy Minister for Home Affairs (MOHA) Brigadier General Phone Swe (retired) went to Rakhine State in July to issue citizenship scrutiny cards (CSCs), which serve a similar role as NRCs in that they prove citizenship and allow access to services, to Muslims who agreed to join the USDP. However, after some Muslims joined the USDP, MOHA reportedly reneged, instead issuing a TRC, which does not serve as proof of citizenship. To get the more useful CSC, authorities reportedly told Muslims they must pay a bribe of up to 250,000 kyat (\$250) to local immigration authorities.” (USDOS, 8 April 2011, Section 2d)

The USDOS International Religious Freedom Report 2010 notes on the Muslim residents in northern Rakhine State:

“Although essentially treated as illegal foreigners, Rohingya were not issued Foreigner Registration Cards (FRCs). Since they also were not generally eligible for NRCs, Rohingya have been commonly referred to as ‘stateless.’” (USDOS, 17 November 2010, Section 2)

The International Crisis Group states in a May 2010 briefing that citizens (including naturalised and associated citizens) and non-citizens who hold Temporary Registration Certificates (TRCs), which includes Muslim residents in northern Rakhine State (referred to as “Rohingya”), have the right to join parties and vote in the 2010 elections. However, only citizens both of whose parents are citizens of Myanmar are permitted to stand for election (ICG, 27 May 2010, p. 4).

### **4.3 Treatment/situation of:**

*4.3.1 Individuals without citizenship/individuals belonging to non-recognized ethnic minorities*  
USDOS International Religious Freedom Report 2010 provides the following account of the situation of Muslims in Myanmar, including “Rohingya” and other Muslims living in Rakhine State:

"Muslims across the country, as well as ethnic Chinese and Indians, often were required to obtain permission from township authorities to leave their hometowns. Authorities generally did not grant permission to Rohingya or other Muslims living in Rakhine to travel for any purpose; however, permission was sometimes obtained through bribery. Muslims in other regions were granted more freedom to travel, but still faced restrictions. Muslims residing in Rangoon could visit beach resort areas in Thandwe, Rakhine state, but could not return to Rangoon without the signature of the Regional Military Commander. Muslims residing outside Rakhine state often were barred from return travel to their homes if they visited parts of Rakhine state." (USDOS, 17 November 2010, Section 2)

Human Rights Watch provides the following overview of the situation of Muslim residents in northern Rakhine State (referred to as "Rohingya") in a report of March 2011:

"In western Burma, the Rohingya Muslim minority group has suffered state persecution for decades and was rendered stateless by discriminatory citizenship laws in 1982. The Rohingya were subject to two wide-scale forced eviction campaigns, in 1978 and 1991, that forced hundreds of thousands into neighboring Bangladesh. An estimated one million Rohingya live in desperate circumstances in western Burma, with widespread restrictions on movement, freedom of religion, access to basic services such as health and education, and curbs on access to employment and livelihoods. Human rights violations against the Rohingya minority are part of a long-evident state policy to force the population to leave Burma." (HRW, 24 March 2011a)

Minority Rights Group International (MRG) states in its *State of the World's Minorities and Indigenous Peoples 2011* report (covering events of 2010), published in July 2011:

"Religious minorities, including Muslim Rohingya, and Chin, Kachin and Karen communities that identify as Christian, continued to face rights abuses. Rohingya, in particular, are subject to very severe forms of discrimination. The regime continued to deny citizenship to Rohingya or grant them Foreigner Registration Cards. This deprives them of access to secondary education in state-run schools." (MRG, 6 July 2011, p. 153-154)

#### 4.3.2 *Individuals belonging to recognized ethnic minorities*

Amnesty International reports on the government's treatment of ethnic Shan who were perceived to be supporters of the Shan State Army-South (SSA-S):

"Amnesty International was able to obtain first-hand accounts of instances when the government had targeted civilians simply because they were believed—mistakenly—to be collaborating with the insurgents. In addition to the testimonies offered below, Amnesty International was able to confirm no fewer than 21 other accounts of human rights violations against Shan people for their imputed support of the SSA-S (or in one case, the Pa-O National Liberation Organization), between August 2007 and May 2009. The soldiers at issue were from Battalions 246 (three times), 516, 287, 248, 247, 561, 286, 524, 520, 569, 287 (twice), 525, 226, 43, 425, and 426. In two incidents, the battalion was not known. There were a total of 60 victims: the soldiers extrajudicially killed 10 persons, tortured six, raped two women, and otherwise illtreated (five individuals were

beaten to the point of losing consciousness) and/or detained the remaining individuals.” (AI, 16 February 2010, p. 41)

“Likewise in Mon State, in June 2008, following a firefight between soldiers and the Monland Restoration Party (MRP), a small armed group, authorities detained three Mon village committee members in southern Ye township, and tortured them until a bribe was paid by their families. They, along with their fellow villagers, were accused of being sympathetic to the MRP. Also in Ye township, Amnesty International was told that in late July or early August 2008, authorities arrested and tortured two boys, aged 12 and 14, on accusations that they had assisted Mon soldiers. Their families then fled to a refugee camp in Thailand.” (AI, 16 February 2010, p. 42)

Freedom House (FH) reports about human rights violations in border regions committed against Muslim residents in northern Rakhine State (referred to as “Rohingya”), Chin and Karen:

“Some of the worst human rights abuses take place in border regions populated by ethnic minorities, who comprise roughly 35 percent of Burma’s population. In these areas the military kills, beats, rapes, and arbitrarily detains civilians, according to human rights groups. The Chin, Karen, and Rohingya minorities are frequent victims. Tens of thousands of ethnic minorities in Shan, Karenni, Karen, and Mon states live in squalid relocation centers set up by the military.” (FH, 12 May 2011)

#### *4.3.3 Muslims who are unable to obtain citizenship and access related rights*

The situation of Muslim residents in northern Rakhine State is described by the USDOS Country Report on Human Rights Practices 2010 as follows:

“Rohingya experienced severe legal, economic, and social discrimination. The government required them to receive prior approval for travel outside their village tract of residence, limited their access to higher education, and prohibited them from working as civil servants, including as doctors, nurses, or teachers. Authorities required Rohingya to obtain official permission for marriages.” (USDOS, 8 April 2011, Section 2d)

The USDOS International Religious Freedom Report 2010 notes in more detail:

“Without citizenship status Rohingyas did not have access to secondary education in state-run schools. Those Muslim students from Rakhine state who completed high school were not permitted to travel outside the state to attend college or university. Authorities continued to bar from graduating Muslim university students who did not possess NRCs. [...] Rohingyas also were unable to obtain employment in any civil service positions. Rohingya couples must also obtain government permission to marry. [...]”

Newcomers who were Muslim were not allowed to buy property or reside in Thandwe, Rakhine State. Authorities did not permit Muslims to live in Gwa or Taungup in the state.” (USDOS, 17 November 2010, Section 2)

In its March 2011 report, the UK Foreign and Commonwealth Office (FCO) also states:

"The treatment of the Rohingya Muslims in Northern Rakhine state in 2010 remained of particular concern. The Rohingya continued to face restrictions on their freedom of movement and related restrictions on finding employment and the right to marry. The authorities continued to refuse to issue birth certificates to Muslim children, denying them citizenship which has led to further discrimination in access to health services, education and employment." (FCO, 31 March 2011, p. 145)

The US Commission on International Religious Freedom (USCIRF) notes in its Annual Report of May 2011:

"The government denies citizenship status to Rohingyas because their ancestors allegedly did not reside in the country at the start of British colonial rule. Approximately 800,000 Rohingya live in Burma, primarily in Rakhine state. Without citizenship status, Rohingyas lack access to secondary education in state-run schools, cannot be issued government identification cards (essential to receive government benefits), and face restrictions on freedoms of religion, association, and movement. Refugees living in Bangladesh report that some Rohingya are prevented from owning property, residing in certain townships, or serving as government officials." (USCIRF, May 2011, p. 36-37)

Among the sources consulted by ACCORD within time constraints no specific information could be found on the treatment of majority groups living in minority conflict areas and treatment of minorities living in non-conflict areas.

#### **4.4 Intra-ethnic tension**

In July 2011, Burma News International (BNI), a coalition of eleven exiled Burma news groups, reports as follows:

"The Burmese government is applying intra-tribal clash tactics during the current offensive against the ethnic Kachin army in northern Burma, according to Kachin political observers. The government is deploying several hundred Kachin soldiers from pro-government militias and its Border Guard Force (BGF), in the civil war against the Kachin Independence Army (KIA) in Kachin State and Northern Shan State, sources from Kachin militias and the BGF said. Sixty militiamen from the Rebellion Resistance Force (RRF), based in Hkawnglanghpu, in Puta-O District, led by Tangu Dang, a.k.a. Ah Dang, have been deployed to KIA strongholds near the China border, in eastern Kachin State, since June, sources close to the militia group said. [...] Sources close to the militia group added the militiamen were brought to the Kachin capital, Myitkyina, for the offensive by order of the Ministry of Defense in the country's capital, Naypyidaw. [...] Moreover, the three KIA splitter groups, which transformed into the Burmese Army-controlled militia groups and Border Guard Force, the Pangwa-based New Democracy Army-Kachin (NDA-K), led by Zakhung Ting Ying, the Kawngka-based Kachin Defense Army (KDA) and the Lawayang-based Lasang AwngWa Peace Group, led by Col. Lasang AwngWa, are also being pressured to send troops to fight against the KIA by Naypyidaw, said the groups' sources. According to sources close to the three groups, at least 60 troops from each group have been deployed to the frontlines around the KIA headquarters at Laiza, in eastern Kachin State, since the beginning of the civil war, in early June. Burmese President, TheinSein, and

his government are creating intra-ethnic clashes among six major Kachin nationals, the Jinghpaw, Rawang, Lisu, Zaiwa, Lashi and Law Waw (Maru), by using Kachin militia groups and the BGF against the KIA, Kachin political observers said. [...] The 17-year ceasefire between the government and the KIO/A ended when government troops attacked the KIA at Sang Gang, in N'mawk (Momauk) Township, Manmaw (Bhamo) District, in eastern Kachin State, on June 9." (BNI, 11 July 2011)

Human Rights Watch (HRW) Myanmar researcher David Mathieson is quoted by the Democratic Voice of Burma (DVB) as saying:

"He added that it was unlikely that the elections this year, even if they were to be free and fair, would transform conditions inside Burma. Karen state in particular is still littered with landmines and people there still have ,no livelihoods, no health and education infrastructures in most areas, and pretty serious issues of land ownership and instability between and within ethnic groups'." (DVB, 29 July 2010)

## 5 Freedom of Religion

In its International Religious Freedom Report 2010, the US Department of State (USDOS) describes the religious demography of Myanmar as follows:

"Buddhism coexists with astrology, numerology, fortune telling, and veneration of indigenous pre-Buddhist era deities called "nats." Buddhist monks, including novices, number more than 400,000 and depend on the laity for their material needs, including clothing and daily donations of food; Buddhist nuns are fewer in number. The principal minority religious groups include Christians (primarily Baptists, Roman Catholics, and Anglicans, along with several small Protestant denominations), Muslims (mostly Sunni), Hindus, and practitioners of traditional Chinese and indigenous religions. According to official statistics, almost 90 percent of the population practices Buddhism, 4 percent Christianity, and 4 percent Islam. These statistics almost certainly underestimated the non-Buddhist proportion of the population. Independent researchers placed the Muslim population at between 6 and 10 percent. A small Jewish community in Rangoon has a synagogue but no resident rabbi." (USDOS, 17 November 2010, Section 1)

### 5.1 National legal framework (2008 Constitution and legislation)

The 2008 Constitution of the Republic of the Union of Myanmar contains several Articles with regard to religious beliefs and faith. Article 34 states that "[e]very citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion subject to public order, morality or health and to the other provisions of this Constitution." Article 360 further constrains the rights mentioned in Article 34: "(a) The freedom of religious right given in Section 34 shall not include any economic, financial, political or other secular activities that may be associated with religious practice. (b) The freedom of religious practice so guaranteed shall not debar the Union from enacting law for the purpose of public welfare and reform." (Constitution, 2008, Articles 34 and 360)

The Constitution stipulates the "special position of Buddhism as the faith professed by the great majority of the citizens of the Union" in Article 361 and "recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union" in Article 362. Article 363 states that "[t]he Union may assist and protect the religions it recognizes to its utmost" and Article 364 forbids "the abuse of religion for political purposes". Article 364 also declares "any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects" as contrary to the Constitution and foresees a law "to punish such activity". (Constitution, 2008, Articles 361 to 364)

Article 392 (a) of the Constitution exempts members of religious orders from the right to vote and Article 121 regulates that persons shall not be entitled to be elected as representatives of the Pyithu Hluttaw (People's Assembly) if the person or an organisation the person is a member of "obtains and utilizes directly or indirectly the support of money, land, housing, building, vehicle, property, so forth, from government or religious organization or other organizations of a foreign country" or if the person or an organisation the person is a member of "abets the act of inciting, giving speech, conversing or issuing declaration to vote or not to

vote based on religion for political purpose". (Constitution, 2008, Articles 392 (a) and 121 (g), (h))

The US Department of State (USDOS) mentions in its 2010 Religious Freedom Report the 1990 Sangha Organisation Law that restricts the activities and expression of the Buddhist clergy:

"The government restricted the activities and expression of the Buddhist clergy (Sangha), although some monks have resisted such control. Based on the 1990 Sangha Organization Law, the government has banned any organization of Buddhist monks other than the nine state-recognized monastic orders. Violations of this ban were punishable by immediate public defrocking and criminal penalties. The nine recognized orders submit to the authority of the State Monk Coordination Committee ('Sangha Maha Nayaka Committee' or SMNC), the members of which were indirectly elected by monks." (USDOS, 17 November 2010, Section 2)

In a report dating from November 2004, the Assistance Association for Political Prisoners (Burma) (AAPP), a Human Rights Organisation, mentions the Sangha Organization Law, Section 5 (j) of the Emergency Provisions Act and Article 295 of the Penal Code as the main legal provisions under which monks (including novices) have been charged:

"Most of the monks, including novices, that were arrested were charged under Section 5 (J) of the Emergency Provisions Act which is a widely worded law that has been used to suppress dissent even in the absence of a proclaimed 'State of Emergency'. Some monks were charged under Article 295 of the Penal Code which describe the charge as 'of offenses relating to religion'. Aside from these Acts, Buddhist monks are vulnerable to arrest and charge under other Acts described in the Penal Code. In October 1990, immediately after the monks boycott of the regime began, the regime created 'The Law Concerning the Sangha Organizations' or Sangha Organization Law, an intrusion of the state in Sangha affairs. Subsequently, more than 200 monks and novices were found to be guilty of contravening these rules and regulations and were stripped of their monkhood that year." (AAPP, November 2004, p. 6)

In its appendix, the report contains the full text of the "Sangha Organization Law", State LORC Law No. 20/90 of 31 October, 1990 (AAPP, November 2004, Appendix 2, p. 35-37). In another AAPP report of March 2010, sections 295, 295(A) and 505(b) of the Penal Code and Section 5(j) of the Emergency Provisions Act are mentioned as grounds for charges against monks and nuns:

"There are currently at least 253 monks and 6 nuns in prison, many of them detained for their roles in the September 2007 'Saffron Revolution'. [footnote removed] Usually after arrest they are forcibly disrobed. Many have been tortured and some have also died in detention. [footnote removed] Monks and nuns are commonly charged with 'insulting religion' [footnote 37: Sections 295 and 295(A) of the Penal Code]; 'inducing a person to commit an offence against the State or public tranquility' [footnote 38: Section 505(b) of the Penal Code] and 'undermining the security of the Union or the restoration of law and order'. [footnote 39: Section 5(j) of the Emergency Provisions Act]" (AAPP, March 2010, p. 46-47)

In a more recent press release by AAPP dating from May 2011, the case of a monk is mentioned who was sentenced to 2 years in prison under the above-mentioned Article 295 (a) of the Penal Code for insulting religion (AAPP, 13 May 2011). A 2008 report jointly published by the Assistance Association for Political Prisoners (Burma) and the United States Campaign for Burma contains original texts of the relevant legislation mentioned above (AAPP/USCB, September 2008, p. 41). The Website of the Burma Lawyers' Council provides the full text of the Penal Code including chapter XV on offences relating to religion (Penal Code, 1860).

## **5.2 Treatment of members of religious groups**

The US Department of State (USDOS) notes in its Country Report on Human Rights Practices 2010 published in April 2011 that the government routinely restricted freedom of religion (USDOS, 8 April 2011, Introduction). According to the 2011 Annual Report of the US Commission on International Religious Freedom (USCIRF), every religious group in Myanmar is affected by religious freedom violations (USCIRF, May 2011, p. 34).

The UK Foreign and Commonwealth Office (FCO) states in its 2010 Report on Human Rights and Democracy published in March 2011:

"Burma is a predominantly Buddhist country and the government promotes Buddhism over other religions. However, restrictions on freedom of expression and assembly imposed limits on the religious activities of all faiths, including Buddhists, Muslims and Christians. [...] Election laws published in March perpetuated previous restrictions barring members from Buddhist, Christian, and Hindu religious orders from voting and joining political parties." (FCO, 31 March 2011, p. 143-144)

In its report *Freedom in the World 2011*, published in May 2011, Freedom House (FH) states:

"At times the government interferes with religious assemblies and discriminates against minority religious groups, attempting to control the Buddhist clergy; refusing to grant permission to religious minorities to celebrate holidays and hold gatherings; and restricting educational activities, proselytizing, and construction of houses of worship. Buddhist temples and monasteries have been kept under close surveillance since the 2007 protests and crackdown." (FH, 12 May 2011)

### *5.2.1 Buddhists*

The UK Foreign and Commonwealth Office (FCO) states in its 2010 Report on Human Rights and Democracy published in March 2011:

"Surveillance of the Burmese Buddhist community and individuals, which began following the involvement of Buddhist monks in the protests against rising fuel and food prices in 2007, the so-called Saffron Revolution, continued in 2010. Many monks who were arrested in 2007 remain in prison." (FCO, 31 March 2011, p. 143-144)

The 2011 Annual Report of the US Commission on International Religious Freedom (USCIRF) states:

"Buddhist monks who participated in the 2007 peaceful demonstrations were killed, beaten, arrested, forced to do hard labor in prison, and defrocked. Buddhist monasteries viewed as epicenters of the demonstrations continue to face severe restrictions on religious practice. Monks suspected of anti-government activities have been detained in the past year." (USCIRF, May 2011, p. 34)

The USCIRF reports the following under the heading "Ongoing Repression of Buddhists":

"While ethnic minority Christians and Muslims have encountered the most long-term difficulties, in the aftermath of peaceful anti-government demonstrations in 2007, the regime also began systematically to repress Burmese Buddhist monks and monasteries viewed as epicenters of the protests and those publicly critical of government policies. Despite this crackdown, the SPDC [State Peace and Development Council] generally promotes Theravada Buddhism, particularly in the ethnic minority areas, sometimes pressuring or offering economic inducements to encourage conversion. Throughout Burma's history, patronage of the Buddhist community was necessary to legitimize a government's hold on power. SPDC leaders have continued this practice, publicly participating in Buddhist rituals. Buddhist doctrine is an optional course taught in all government run schools and daily prayer is required of all students; in some schools, children are reportedly allowed to leave the room during this time if they are not Buddhist, but in others they are compelled to recite the prayer. In addition, the Burmese military builds pagodas and has destroyed religious venues and other structures in Christian and Muslim areas. Government interference in Buddhist affairs predated the 2007 protests. Members of the Buddhist sangha are subject to a strict code of conduct that is reportedly enforced through criminal penalties. Monks are not allowed to preach political sermons, make public statements, or produce literature with views critical of SPDC policies. Monks are also prohibited from associating with or joining political parties. Military commanders retain jurisdiction to try Buddhist monks in military courts. There may be as many as 100 monks and novices in prison for activities that preceded the 2007 public demonstrations. Understanding the importance of Buddhism in Burma's life and culture is critical to understanding the significance of the September 2007 protests and the government's harsh reaction. The monks broadened the scope of the initial protests and began calling for the release of all political prisoners and the initiation of a process leading to democratization in the country. As the protests broadened, the SPDC ordered the military to crack down on the monk-led demonstrations. At least 30 deaths were reported, although some experts say the actual number was much higher. At least 4,000 people, an unknown portion of whom were monks, were arrested during the crackdown, and between 500 and 1,000 were believed to remain in detention months later. Many of the detained reportedly have been mistreated or tortured. Given the lack of transparency in Burma, it is difficult to determine how many people remain in prison or are missing. A recent NGO report claims that 252 monks were still in prison for their roles in the 2007 protests. In addition, since the crackdown, hundreds of Buddhist monks have fled to Thailand seeking asylum. They have reported torture, forced defrocking, hard labor, and other deprivations during detention. In the immediate aftermath of the 2007 protests, the military raided 52 monasteries, detained many monks, and arrested those perceived to be the leaders of the demonstrations. These monks were then tortured, forcibly defrocked,

and forced to return to their villages. Several monasteries remain closed or are functioning in a more limited capacity, including Rangoon's Ngwe Kyar Yan monastery, to which only about 50 of the original 180 monks in residence have been permitted to return. Government authorities continue to monitor closely monasteries viewed as focal points of the protests and have restricted usual religious practices in these areas." (USCIRF, May 2011, p. 35)

### *5.2.2 Christians*

The 2011 Annual Report of the US Commission on International Religious Freedom (USCIRF) states:

"In ethnic minority areas, where low-intensity conflict has been waged for decades, the Burmese military forcibly promotes Buddhism and seeks to control the growth of Protestantism through intimidation and harassment of religious groups. A 2009 law essentially bans independent 'house church' religious venues, and Protestant religious leaders in Rangoon have been pressured to sign pledges to stop meeting." (USCIRF, May 2011, p. 34)

The USCIRF reports the following under the heading "Forced Closure of Protestant House Churches":

"Christian groups in Burma continue regularly to experience difficulties in obtaining permission to build new churches, hold public ceremonies or festivals, and import religious literature. In some areas around Rangoon, police restrict the number of times Burmese Christians can gather to worship or conduct religious training. A government regulation promulgated in early 2008 bans religious meetings in unregistered venues, such as homes, hotels, or restaurants. Burmese Christians claim that 80 percent of the country's religious venues could be closed by the regulation. 'House churches' proliferated in the past decade because the government regularly denied permission to build new churches. In 2009, the SDPC [State Peace and Development Council] took steps to enforce the regulation, ordering 100 churches and religious meeting places in Rangoon to stop holding services and forcing Protestant leaders to sign pledges to that effect. There were additional reports of church closings in Mandalay. Burmese Christians believe that enforcement of the government's ban came in response to humanitarian aid they provided to Cyclone Nargis victims in May 2008. In the aftermath of the cyclone, the SPDC forcibly closed some religious charities providing humanitarian support, particularly those channeling foreign assistance. In addition to restrictions on meeting places and charitable activities, government authorities have started to prohibit Protestants from proselytizing in 38 some areas, particularly in places hardest hit by Cyclone Nargis. In the past year, local authorities sometimes refused residency permits for clergy seeking to move to new towns or villages." (USCIRF, May 2011, p. 37-38)

### *5.2.3 Muslims*

The 2011 Annual Report of the US Commission on International Religious Freedom (USCIRF) states:

"Muslims routinely experience strict controls on a wide range of religious activities, as well as government-sponsored societal violence. The Rohingya minority in particular are subject to pervasive discrimination and a relocation program that has produced thousands of refugees." (USCIRF, May 2011, p. 34)

The USCIRF report contains the following information on Muslims in northern Rakhine State:

"Tensions between the Buddhist and Muslim communities have resulted in outbreaks of societal violence over the past several years, some of it instigated by Burmese security forces. Muslims in Rakhine state, on the western coast, and particularly those of the Rohingya minority group, continued to experience the most severe forms of legal, economic, religious, educational, and social discrimination. The government denies citizenship status to Rohingyas because their ancestors allegedly did not reside in the country at the start of British colonial rule. Approximately 800,000 Rohingya live in Burma, primarily in Rakhine state. Without citizenship status, Rohingyas lack access to secondary education in state-run schools, cannot be issued government identification cards (essential to receive government benefits), and face restrictions on freedoms of religion, association, and movement. Refugees living in Bangladesh report that some Rohingya are prevented from owning property, residing in certain townships, or serving as government officials. Since 1988, the government reportedly has severely restricted Muslim marriage ceremonies in certain villages of Rakhine state. Efforts to lift this restriction have failed. Muslims also report difficulties in obtaining birth certificates for newborns, particularly in the city of Sittwe. Police often restricted the number of Muslims who could gather in one place. In some places, Muslims were only allowed to gather for worship and religious training during major Muslim holidays. Police and border guards also continue inspections of Muslim mosques in Rakhine state; if a mosque cannot show a valid building permit, the venue is ordered closed or destroyed. The government has, in recent years, ordered the destructions of mosques, religious centers, and schools. During the reporting period, the Burmese government maintained a campaign to create 'Muslim Free Areas' in parts of Rakhine state. Military commanders have closed mosques and madrassas, stoked ethnic violence, and built pagodas in areas without a Buddhist presence, often with forced labor. Refugees report that the military continues to entice conversion to Buddhism by offering charity, bribes, or promises of jobs or schooling for Muslim children. As many as ten Muslim community leaders in Rakhine State continue to be detained on unspecified charges. Reports indicate that the group was arrested by the government to forestall a Muslim political organization, though NGOs and international media report that the group was meeting to document human rights and religious freedom abuses among the Rohingya ethnic minority community. An estimated 300,000 Muslim Rohingya live in refugee camps in Bangladesh, Thailand, and other Southeast Asian countries. They often live in squalid conditions and face discrimination, trafficking, and other hardships. They also have faced forced repatriation to Burma from Bangladesh, and Thailand has pushed the boats of Rohingya asylum seekers back out to sea." (USCIRF, May 2011, p. 36-37)

#### *5.2.4 Other religious groups*

In its 2010 Religious Freedom Report, the US Department of State (USDOS) describes the ethnic and religious diversity of Myanmar and mentions Hindus, traditional Chinese religions and indigenous beliefs as other religious groups besides Buddhist, Christian and Muslim groups:

"The country is ethnically diverse, with some correlation between ethnicity and religion. Theravada Buddhism is the dominant religion among the majority Burman ethnic group and also among the Shan, Arakanese, and Mon ethnic minorities. Christianity is dominant among the Kachin, Chin, and Naga ethnic groups. Protestant Christian groups reported recent rapid growth among animist communities in Chin State. Christianity also is practiced widely among the Karen and Karenni ethnic groups, although many Karen and Karenni are Buddhist and some Karen are Muslim. Citizens of Indian origin, who are concentrated in major cities and in the south central region, predominantly practice Hinduism or Islam, although some are Christian. Islam is practiced widely in Rakhine State and in Rangoon, Irrawaddy, Magwe, and Mandalay Divisions, where some Burmese, Indians, and ethnic Bengalis practice the religion. Chinese ethnic minorities generally practice traditional Chinese religions. Traditional indigenous beliefs are practiced widely among smaller ethnic groups in the highland regions. Practices drawn from those indigenous beliefs persist in popular Buddhist rituals, especially in rural areas." (USDOS, 17 November 2010, Section 1)

Among the sources consulted by ACCORD within time constraints no information could be found on the treatment of members of these groups.

## 6 Freedom of Expression and Association

### 6.1 Domestic legal framework

The 2008 *Constitution of the Republic of the Union of Myanmar* grants freedom of expression, peaceful assembly and association in its Article 354 (a-c) provided that the exercise of these rights is “not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality” (Constitution, 2008, Art. 354 (a-c)).

The *Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts* of 1975 (State Protection Law/Pyithu Hluttaw Law No. 3, 1975) contains provisions concerning the restriction of citizens’ fundamental rights in article 7:

“Article 7

The Cabinet is authorized to pass an order, as may be necessary, restricting any fundamental right of any person suspected of having committed or believed to be about to commit, any act which endangers the sovereignty and security of the state or public peace and tranquility.” (State Protection Law, Art. 7)

The 1950 *Emergency Provisions Act* (Burma Act 17, 1950) includes the following provisions in section 5:

“5. Whoever does anything with any of the following intent; that is to say;- [...]

(d) to alarm the people or a group of people in a way that would created panic amongst them; or

(e) to spread false news, knowing, or having reason to believe that it is not true; or [...]

(j) to affect the morality or conduct of the public or a group of people in a way that would undermine the security of the Union or the restoration of law and order; or [...]

(m) to directly or indirectly encourage, incite, prepare or show agreement to arrangements or activities for the purpose of defiance or non-abidance of laws, or to avoid abiding by the law, or to hinder compliance of the judicial process or to the restoration or law and order [...]

shall be punished with an imprisonment for a term which shall extend to 7 years or with fine or with both.” (Emergency Provisions Act, 9 March 1950, section 5)

#### 6.1.1 Freedom of Expression

A September 2010 report which summarizes previous findings of the UN Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, mentions the following domestic laws as having been used to prevent freedom of expression:

“With regard to freedom of opinion and expression, the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science Development Law (1996), the

Electronic Transactions Law (2004) and the Printers and Publishers Registration Act (1962) have been used to prevent freedom of expression." (UNGA, 15 September 2010, p. 6)

The US Department of State (USDOS) notes in its Country report on Human Rights Practices 2010, published April 2011, that:

"The penal code allows the government to render excessive sentences against political activists by allowing government prosecutors to charge detainees with multiple violations of archaic or widely ignored laws, such as violating currency laws, publishing materials likely to cause alarm, or spreading rumors. This practice could result in lengthy cumulative sentences. The regime often prosecuted political prisoners under such measures as the Emergency Provision Act, Law on Safeguarding the State from the Danger of Subversive Elements, Television and Video Act, Unlawful Associations Act, Electronic Transactions Law, and Law Relating to the Forming of Organizations." (USDOS, 8 April 2011, Section 1e)

A report published by Human Rights Watch (HRW) in September 2009 cites the provisions of several laws reported as being "frequently used against political activists", including sections 130 (b), 295 (a) and 505 (b) of the Penal Code that concern freedom of expression:

**"Section 130(b) of the Penal Code:** 'Whoever, by words either spoken or intended to be read, or by signs or by visible representations, publishes anything tending to degrade, revile or to expose to hatred or contempt any Foreign State, Head of State, Ambassador or other dignitary of a Foreign State, with intent to disturb peaceful and friendly relationship between the Union of Burma and that Foreign State, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.'

**Section 295(a) of the Penal Code:** 'Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of persons by words, either [through] spoken or written [means], or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.'

**Section 505(b) of the Penal Code:** 'Whoever makes, publishes or circulates any statement, rumor or report, with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility, shall be punished with imprisonment which may extend to two years, or with fine, or with both.'" (HRW, 16 September 2009, p. 24)

Freedom House (FH) states in its report *Freedom on the Net 2011*, published in April 2011, that three laws have been promulgated by the SLORC/SPDC regime with regard to information and communication technologies (ICTs): the Computer Science Development Law (1996), the Wide Area Network Order (2002), and the Electronic Transactions Law (2004). Furthermore, FH notes that the Printers and Publishers Registration Act (1962) is used for media censorship. According to FH, "[a]ll of this legislation and related regulations are broadly worded and open to arbitrary or selective interpretation and enforcement" (FH, 18 April 2011, p. 84).

The *Electronic Transactions Law* of 2004 contains the following provisions in section 33:

"33. Whoever commits any of the following acts by using electronic transactions technology shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine:

(a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture.

(b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture." (Electronic Transactions Law, 30 April 2004, section 33).

Section 32 of the *Television and Video Law* of 1996 contains in the following provisions and penalties regarding the copying, distribution and hiring and public exhibit of video tapes:

"32. Whoever commits one of the following acts shall, on conviction, be punished with imprisonment for a term which may extend to 3 years or with fine which may extend to kyats 100,000 or with both. In addition, the property which relate directly to the offence shall also be confiscated: [...]

(b) copying, distributing, hiring or exhibiting the video tape that has no video censor certificate and small-sized video censor certificate with the permitted serial number with the exception of cases exempted under this Law;

(c) copying, distributing, hiring or exhibiting the video tape without abiding by the directive of the Video Censor Board to make excision, amend or erase;

(d) exhibiting to the public the video tape imported or brought from a foreign country without video censor certificate (Television and Video Law, 29 July 1996, sections 31-32)

The *Computer Science Development Law*, enacted by the State Law and Order Restoration Council (SLORC) in 1996, includes the following offences and penalties in its sections 31, 32, 34 pertaining to the possession and use of computers:

"31. Whoever imports or keeps in possession or utilizes any type of computer prescribed under sub-section(a) of section 26, without the prior sanction of the Ministry of Communications, Posts and Telegraphs shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine.

32. Whoever sets up a computer network or connects a link inside the computer network, without the prior sanction of the Ministry of Communications, Posts and Telegraphs shall,

on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine.

34. Whoever commits any of the following acts using computer network or any information technology shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years, and may also be liable to a fine:

(a) carrying out any act which undermines State Security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture;

(b) obtaining or sending and distributing any information of State secret relevant to State security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture." (Computer Science Development Law, 20 September 1996)

The Freedom House (FH) report *Freedom of the Press* of September 2011 notes the following on state censorship of printed publications under the 1962 Printers and Publishers Registration Act, as well as on government control with respect to broadcast media:

"Private periodicals are subject to prepublication censorship under the 1962 Printers and Publishers Registration Act, which requires that all content be approved by the authorities. As a result, coverage is limited to a small range of permissible topics, and publications are sometimes required to carry government-produced articles." (FH, 1 September 2011)

The USDOS notes in its report of April 2011 that "[t]he government controlled content in all print publications, and it owned and controlled all domestic radio and television broadcasting facilities." (USDOS, 8 April 2011, Section 2a)

The Freedom House (FH) report *Freedom of the Press*, released in September 2011 states with regard to print and broadcast media:

"The government owns all broadcast media and daily newspapers, and exercises tight control over a growing number of privately owned weekly and monthly publications. The Ministry of Information only issues licenses to private publishers if they print government-approved material exclusively, and the Press Scrutiny Board can suspend licenses of publications that print objectionable material. Authorities also restrict the importation of foreign news periodicals. Although some people have access to international shortwave radio or satellite television, those caught accessing foreign broadcasts can be arrested." (FH, 1 September 2011)

The 2010 UK Foreign and Commonwealth Office (FCO) Annual Report, published March 2011, notes the following with regard to the state's control over media:

"The media in Burma continued to be subject to significant censorship in 2010. All publications are required by law to be submitted to the Press Scrutiny and Registration Board for approval. Journalists continue to exercise self-censorship, aware that they

otherwise risk imprisonment or having their licences revoked or suspended." (FCO, 31 March 2011)

The Freedom House (FH) report *Freedom of the Press*, dated September 2011 states with regard to internet freedom:

"While there are no existing laws relating to monitoring internet communication, the government tracks internet activity and blocks websites, including foreign news sources and foreign-hosted e-mail services. Online chat records and e-mail messages have been used as evidence in court, such as in the trials of comedian and blogger Zarganar, and members of the 88 Generation Students group. The government further increased its control of the internet in the lead-up to the November elections. In September, the websites for Irrawaddy, Mizzima News, and DVB were either blocked or shut down due to cyberattacks. In an effort to further extend control over the internet, some internet cafes started to monitor their visitors in 2010." (FH, 1 September 2011)

The April 2011 report by Freedom House (FH) provides the following account of the government's control of internet usage/content and the enforcement of ICT-related laws:

"Harsh prison terms and the selective enforcement of laws such as the Electronic Transactions Law encourage self-censorship, which is common among most internet users, although expression in online comment features where posters can remain anonymous is relatively free. Negative reporting about top military leaders and their family members, or about China (for instance, the news of a jailed Chinese dissident winning the Nobel Peace Prize), are particularly sensitive topics on which users routinely exercise self-censorship." (FH, 18 April 2011, p. 82)

"The new constitution, drafted by the junta and approved in a flawed 2008 referendum, does not guarantee internet freedom." (FH, 18 April 2011, p. 84)

"According to Amnesty International, the number of political prisoners as of March 2010 was over 2,200, 55 an increase of nearly 80 percent from the period before the 2007 protests. Many of these prisoners – including monks, student activists, bloggers, and online journalists – were charged under ICT-related laws, and sentenced to lengthy prison terms, with some ordered to spend decades behind bars. Sentences for individuals contributing articles or images to exile media are particularly harsh. In 2010, Reporters Without Borders counted at least 15 journalists and two internet activists in detention." (FH, 18 April 2011, p. 85)

### 6.1.2 *Freedom of Association and Assembly*

The September 2010 report which provides a summary of findings of the UN Special Rapporteur on the situation of human rights in Myanmar, lists the following laws as restricting freedom of association and assembly:

"In his previous reports, the Special Rapporteur indicated several domestic laws that restrict the principles of freedom of association and assembly, most importantly, the

Unlawful Association Act (1908), the State Protection Act (1975) and sections 143, 145, 152, 505, 505(b) and 295(A) of the Penal Code." (UNGA, 15 September 2010, p. 5-6)

In September 2009, HRW lists the following laws regarding association and assembly as having been frequently used against political activists:

**"Section 17(1) of the Unlawful Association Act:** 'Whoever is member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term [which shall not be less two years and more than three years and shall also be liable to fine].'

**Section 17(2) of the Unlawful Associations Act:** 'Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term [which shall not be less than three years and more than five years and shall also be liable to fine].'" (HRW, 16 September 2009, p. 24)

In its April 2011 report, the US Department of State (USDOS) notes the following with regard to freedom of assembly and association in Myanmar:

"The law limits freedom of assembly, and the government severely restricted it in practice. A long-standing ordinance officially prohibits unauthorized outdoor assemblies of more than five persons, although it was not enforced consistently. The regime and its supporters routinely used intimidation, violence, and the power of arrest to disrupt peaceful demonstrations and meetings. [...]

The Association Law provides for citizens to form associations and organizations; however, the government restricted freedom of association, particularly for prodemocracy supporters and those who contacted exile groups or individuals thought to be associated with groups in exile. A statute prohibits associating with any organization that the head of state declares to be unlawful.

Freedom of association generally existed only for government-approved organizations, including trade associations, professional bodies, and the USDP. Few secular, nonprofit organizations existed, and those that did took special care to act in accordance with government policy." (USDOS, 8 April 2011, Section 2b)

## 6.2 Government/Political System

A country profile published by the German Foreign Office last updated in March 2011 includes an overview of Myanmar's administrative structure, stating that the country is subdivided into seven States (primarily inhabited by ethnic minorities) and seven Regions (mostly Bamar), each of which is governed by a chief minister and his cabinet and has an assembly of its own. The states/regions are further subdivided into a total of 63 districts, 324 townships, 312 towns and some 65,000 villages (German Foreign Office, March 2011).

A national report submitted by the Government of Myanmar to the UN Human Rights Council (HRC) on 10 November 2010 outlines the country's legislative and executive structures on central, regional/state and local levels as follows:

"C. Legislature [...]

13. Chapter IV of the Constitution of the Republic of the Union of Myanmar stipulates the distribution of legislation of powers among the Pyidaungsu Hluttaws, Region or State Hluttaw and Self-Administered Division and Self-Administered Zone Leading Bodies. Pyidaungsu Hluttaw comprises Pyithu Hluttaw and Amyotha Hluttaw.

D. Executive

14. The Executive Head of the Union is the President. The Executive Power of the Union is distributed among the Union, Regions and States. Self-Administered power is distributed among Self-Administered areas as prescribed by the Constitution.

15. The Union Government is composed of (a) the President, (b) the Vice-Presidents, (c) the Ministers of the Union and (d) the Attorney General of the Union. The Executive Power of the Union extends to administrative matters over which the Pyidaungsu Hluttaw has power to promulgate laws.

16. Subject to the provisions of the Constitution, the Executive Power of the Region or State Government extends to administrative matters over which the Region or State Hluttaw has power to promulgate laws. Besides, it also extends to the matters over which the Region or State Government is permitted to perform in accord with any Union law.

17. Subject to provisions of the Constitution, the Self-Administrative power of the leading bodies of the Self-Administered Divisions or Self-Administered Zones extends to the following matters:

(a) on which the leading bodies of the Self-Administered Divisions or Self-Administered Zones have powers to promulgate laws;

(b) on which the leading bodies of the Self-Administered Divisions or Self-Administered Zones have powers to implement in accord with any law enacted by the Pyidaungsu Hluttaw;

(c) on which the leading bodies of the Self-Administered Divisions or Self-Administered Zones have powers to implement in accord with any law enacted by the Region or State Hluttaw concerned. Nay Pyi Taw is the Union Territory." (HRC, 10 November 2010, p. 3-4)

An article by the Irrawaddy news magazine, published in June 2011, notes that a number of ministries in state and regional governments will shortly fall under direct control of the central government. According to a MP for Yangon region, local government offices such as the Ministry of Security and Border Affairs, the Ministry of Finance and Revenue, and the Ministry of Agriculture and Livestock Breeding, will be administered directly by the (central) Union

Government, stating further that nearly every ministry will be led by members of the Union Solidarity and Development Party (USDP). An MP for Rakhine (Arakan) State also confirmed that some ministries were closing down or being made subject to central government control. The government newspaper *New Light of Myanmar* is reported to have published a list of reshuffled ministries in Kachin State and Sagaing Region (Irrawaddy, 30 June 2011).

As reported by Mizzima News in July 2011, there has been a “recent announcement that such ministries as health, education and religion now fall under the purview of the central government, as opposed to operating under state legislatures.” (Mizzima, 8 July 2011)

An article by independent Myanmar expert Ashley South, published in June 2011 in the journal *PacNet* (Center for Strategic and International Studies, CSIS), reflects on the governance structures established since the formation of the new administration in 2011, and the influence of officials in state/regional administrations who have been co-opted by the USDP or belong to non-government-controlled ethnic parties:

“Following the formation of new administration in 2011, governance structures in Burma are more complex than before. The executive and two national-level assemblies are dominated by the Union Solidarity Development Party which engineered victory in the elections. Nevertheless, there are tensions and conflicts of interest between the new Army leadership and the USDP, which includes newly retired military officers, not all of whom are happy with their new civilian status and may wish to exert a degree of parliamentary authority. Furthermore, the USDP includes many co-opted but relatively independent figures, who enjoy some personal legitimacy, particularly in the decentralized states and regions. These provincial assemblies also include many successful candidates from non-government-controlled ethnic nationality parties, some of whom have been appointed to executive positions in state governments.

Most non-USDP state-level ministers are being cautious, waiting to see what space is available to them. However, some are demonstrating greater confidence in their authority, taking initiatives on locally important issues. At the national level, an alliance of five ethnic nationality parties has positioned itself carefully, adopting positions that promote the interests of minority communities, while not directly challenging the government. For example, the alliance is calling for the use of minority languages in schools in ethnic-populated areas (which the government currently bans), thereby addressing one of the main grievances of ethnic communities. The military retains a strong influence in security matters and across the economy.” (South, 16 June 2011)

### **6.3 Treatment of (actual and perceived) members and supporters of, and participants in:**

#### *6.3.1 The National League for Democracy (NLD)*

In April 2011, the US Department of State (USDOS) reports on the National League of Democracy (NLD)'s refusal to register under the restrictive electoral laws promulgated in March 2010, and the subsequent government-announced dissolution of the party. The NLD

maintained its right to exist as a political party because it was registered under previous electoral legislation, and filed a lawsuit against the government for illegally applying electoral legislation retroactively to deregister the party. In November 2010, the Supreme Court declined to admit the NLD's appeal against its deregistration, after which the NLD stated it would pursue one final level of appeal (USDOS, 8 April 2011, Section 2b).

As reported by the Economist Intelligence Unit (EIU), the Special Appellate Court determined on 28 January 2011 that the NLD would remain an 'unlawful association'. The EIU further notes in its February 2011 report on the situation of the NLD:

"For the time being, the SPDC [State Peace and Development Council] appears to be allowing the NLD to operate as a de facto legal party, as the main NLD office has remained open, and party meetings and gatherings have been taking place. However, the junta holds all the cards, and it can crack down on the party – and if it wishes, detain Aung San Suu Kyi – at any time." (EIU, 2 February 2011)

The USDOS April 2011 report notes the following 2010 events and developments regarding the treatment of NLD members:

"The government released Aung San Suu Kyi--general secretary of the National League for Democracy (NLD)--from house arrest on November 13, the date her sentence (for allegedly having violated the terms of her confinement) expired." (USDOS, 8 April 2011, Introduction)

"The government took no action to investigate or take responsibility for the 2003 attack by government-affiliated forces on an NLD convoy led by party leader Aung San Suu Kyi near the village of Depeyin. As many as 70 persons were killed, and the whereabouts of 31 persons who disappeared remained unknown." (USDOS, 8 April 2011, Section 1a)

"On April 18, authorities arrested and reportedly tortured an NLD member to prevent him from organizing citizens to boycott the November elections; he was freed later that month. [...] On July 30, prison guards placed Myo Kyaw Zin, an NLD member, in solitary confinement for one month following his complaints to prison guards about the treatment of political prisoners held in Putao prison in northern Kachin State. In August there were reports that authorities ruptured the eardrum of NLD member Hyat Aung during interrogation, resulting in hearing loss. He was believed to remain in custody at year's end." (USDOS, 8 April 2011, Section 1c)

"On January 14, three NLD members were sentenced to three years with hard labor under the Unlawful Associations Act for allegedly accepting money from an exile group located on the border with Thailand. [...] On February 13, authorities released NLD Vice Chairman U Tin Oo, imprisoned or under house arrest since the 2003 Depeyin incident." (USDOS, 8 April 2011, Section 1e)

In its Annual Report of January 2011, the Assistance Association for Political Prisoners (Burma) (AAPP) notes:

"There are currently 399 members of the National League for Democracy detained inside Burma's prisons. This represents a decrease of 31 in comparison to the end of 2009, at which time 430 NLD members were detained. Despite a few positive developments, most notably the release of high profile members; party leader, Daw Aung Sun Suu Kyi, in November, U Win Htein, in July and Vice Chairman, U Tin Oo, in February, 2010 witnessed the NLD disband as a result of undemocratic electoral laws. [...]

In the absence of the rule of law, with the lack of an impartial judiciary and with laws that criminalise basic civil and political rights, Daw Aung San Suu Kyi will continue to face the threat of re-arrest. On 15 July U Win Htein, a former army captain and personal aide to Daw Aung San Suu Kyi was released from Katha prison in Sagaing Division after spending more than 14 years in prison. [...]

Throughout the year members of the National League for Democracy were repeatedly subjected to arbitrary arrests, torture, long-term sentencing, prison transfers to remote areas and the denial of substantial and often urgently needed medical care. [...] A number of imprisoned NLD members had their sentences arbitrarily extended in 2010. Former member of the National League for Democracy (Liberated Area) Malaysia Branch, Than Myint Aung, was sentenced to a five year jail term in June because he allegedly entered the country illegally and had made contact with an illegal group. Then in July, while in prison, his sentence was extended by a further 10 years under the Electronics Act, a tool used increasingly by the junta to control dissenting voices." (AAPP, 14 January 2011)

### *6.3.2 The All Burma Student Union (ABSU)/ All Burma Federations of Students Union (ABFSU)*

The Irrawaddy notes in an August 2007 article that Myanmar's (Burma's) first student union, the Rangoon University Students' Union (founded in 1931), was renamed the All Burma Students' Union (ABSU) in 1936 before becoming the All Burma Federations of Students Union (ABFSU) in 1951. As reported by Irrawaddy the ABFSU announced that it has resumed its activities after nearly two decades, during which many of its members were imprisoned or compelled to flee Burma. According to an ABFSU spokesperson, the group is now organizing student unions among university and high school students in Yangon and other major cities and seeks "to fight for freedom, justice and the building of a democratic country". The article further provides the following background information on the ABFSU:

"Following Gen Ne Win's military coup in 1962, the office of the ABFSU in Rangoon was demolished and hundreds of students were killed by the army. During the nationwide pro-democracy uprising in 1988, the ABFSU resurfaced under the leadership of Min Ko Naing and other prominent student leaders. It went underground in 1990 after more of its members were arrested and sentenced to long prison terms." (Irrawaddy, 28 August 2007).

In its September 2010 Annual Report, the Observatory for the Protection of Human Rights Defenders, formed by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT) reports as follows on prison sentences passed against ABFSU members in January and February 2009:

"On January 3, 2009, Mr. Bo Min Yu Ko, aka Phyo Gyi, a member of the Mandalay branch of the All Burma Federation of Student Unions (ABFSU) – the largest national student organisation, outlawed by the regime – was sentenced to a total of 104 years of imprisonment by the Obo Prison Court in Mandalay. He had been arrested on September 18, 2008 and charged under 40 different sections of law, including six charges under Section 13/1 of the Immigration Act. He was not allowed a defence lawyer and his family was not allowed to attend his court hearing. Furthermore, on February 9, 2009, Mr. Kyaw Ko Ko and Mr. Nyan Linn Aung, two leaders of the ABFSU who had been arrested on March 16, 2008 by members of the Burmese Military Intelligence Unit, were sentenced to three years of imprisonment each by Rangoon Mingalar Taung Nyunt Township Court for 'possessing illegal videos' of the 1988 uprising under the Video Act, which regulates uncensored videos. As of the end of 2009, Messrs. Kyaw Ko Ko and Nyan Linn Aung remained detained." (FIDH/OMCT, 13 September 2010, p. 234-235)

### *6.3.3 88 Generation Students Group*

A March 2010 progress report by the UN Special Rapporteur on the situation of human rights in Myanmar states:

"Organized groups such as associations of monks, students and human rights defenders have been harshly suppressed. Currently some 500 monks and students remain imprisoned. The well-known 88 Generation Students group has been punished most severely for advocating peaceful democratic changes. Many of its prominent members have been arrested and sentenced to lengthy prison terms." (HRC, 10 March 2010, p. 11)

An August 2011 report by Irrawaddy provides the following overview of the 88 Generation Students Group:

"The 88 Generation Students group was formed by former student leaders who led the mass uprising against dictator Ne Win's Burmese Socialist Programme Party in the summer of 1988, during which at least 3,000 people were killed by government security forces. Throughout 1988-1991, most of the student leaders were arrested and given long prison sentences. Min Ko Naing was arrested in 1989 and spent 15 years in prison. Ko Ko Gyi was arrested in 1991 and imprisoned and released in 2005. After their release, the former student leaders formed the 88 Generation Students group, which became a prominent dissident movement while Suu Kyi was under house arrest. The group undertook various political activities until its leaders were once again arrested on August 21, 2007 for their involvement in a protest march against fuel price hikes and given matching 65-year sentences." (Irrawaddy, 4 August 2011)

The Economist Intelligence Unit (EIU) notes in a country profile of October 2008 that in 2006 the 88 Generation Group, founded by former student activists involved in the failed 1988 pro-democracy uprising, "emerged as a strong informal source of opposition to the military regime" (EIU, 9 October 2008).

BBC reports in November 2010 that two veteran members of the 88 Generation Students, Nilar Thein and Kyaw Min Yu, each received prison sentences of 65 years for four counts of

illegally using electronic media (15 years each) and for forming an illegal organization (five years) (BBC, 13 November 2010).

In a September 2009 report, Human Rights Watch (HRW) describes the situation of members of the 88 Generation Students as follows:

“The most prominent opponents of military rule in Burma, after internationally known Nobel Peace Prize laureate Aung San Suu Kyi, are a group of former student leaders from the 1988 uprising who spent most of the years from 1989 to 2004 in prison. Soon after their release, they formed a group called the ‘88 Generation Students’ in 2005.

The 88 Generation Students has staged some innovative and effective campaigns emphasizing non-violent resistance, calling for dialogue with the military government, and involving Burmese civil society. The group has staged prayer meetings for the release of Aung San Suu Kyi and all political prisoners called the ‘Sunday White campaign,’ and in 2007 started a letter writing campaign called ‘Open Heart’ to encourage ordinary Burmese to write to President Than Shwe detailing their daily struggles and aspirations. [...]

Thirteen members of the group involved in organizing the peaceful protests in 2007 were arrested on August 22 of that year. Most of the thirteen were held without charge for several months. Another 22 were arrested over the course of the following months.

The authorities tried to convince the total of 26 male and nine female activists in prison to endorse publicly the SPDC’s political reform process in exchange for their release. All declined and remained in prison. In the middle of 2008, the secret trials of many of the group’s members began. By December 2008, all of the 88 Generation Students on trial had each received sentences of 65 years, with still more charges pending against them.” (HRW, 16 September 2009)

#### *6.3.4 Alliance of All Burmese Buddhist Monks*

The Economist Intelligence Unit (EIU) notes in its Myanmar Country Profile of October 2008 that some of the monks who participated in the September 2007 protests (“Saffron Revolution”) belonged to “an activist group calling itself the Alliance of All Burmese Buddhist Monks”. The SPDC detained hundreds of monks following the protests (EIU, 9 October 2008). The 2010 Annual Report of the Assistance Association for Political Prisoners (Burma) (AAPP) states on the situation of Buddhist monks:

“More than three years after ‘Saffron’ 255 monks remain in prison, an increase of four in comparison to last year’s figure. During this anniversary period, the military regime imposed tight restrictions on Buddhist monks in Rangoon in an attempt to prevent any protests. Monks continued to play a key role in the democracy movement throughout 2010 and voiced their dissatisfaction with the ongoing imprisonment of political activists and the undemocratic election process. Throughout the year, monks reported facing tighter travel restrictions and the suspension of passports for some monks. Monks also complained that the government’s passport issuing board in Rangoon was refusing to extend nearly-

expired passports. This was seen as an attempt by the regime to block the influential community from going abroad in the lead up to elections." (AAPP, 14 January 2011)

Mizzima reports in August 2010 that since the Saffron Revolution "many monks have been arrested, forcibly disrobed, imprisoned and placed in labour camps. Others have taken to hiding to avoid similar fates, while still others have fled to neighbouring countries." (Mizzima, 17 August 2010)

#### *6.3.5 Generation Wave (GW)*

A March 2010 article by the Irrawaddy reports on Generation Wave (GW)'s formation, activities and the situation of its members: In the wake of the 2007 street demonstrations, activists used hip-hop and rap to express their political views and to satirize the regime. The government mounted a campaign of intimidation to counter the spread of hip-hop and rap. A number of activists then "formed a group called Generation Wave (GW), which secretly records and distributes anti-government music albums" across Myanmar. Zay Yar Thaw, the co-founder of GW, as well as some 30 other GW members have been imprisoned (Irrawaddy, March 2010).

The Democratic Voice of Burma (DVB) reports in May 2011 that Zayar Thaw, the co-founder of the GW, a group known for distributing "subversive" material in coffee shops around Yangon, has been released after spending three years in Kawthaung prison. 15 members of GW still remain imprisoned (DVB, 18 May 2011).

#### *6.3.6 The United Front of Burmese Activists for Democracy*

Among the sources consulted by ACCORD within time constraints no relevant information could be found.

#### *6.3.7 Youth Social Network For Change*

Among the sources consulted by ACCORD within time constraints no relevant information could be found.

#### *6.3.8 Human Rights lawyers (Burmese Lawyers' Council)*

In a September 2011 e-mail response to ACCORD, Mark Farmaner, Director of Burma Campaign UK, states that the Burma Lawyers' Council (BLC) are closely monitored by the regime and they have been referred to in government press conferences. Members of the BLC who live in Thailand are subject to monitoring by both Myanmar and Thai government officials. BLC members do not have official permission to reside in Thailand on a legal basis and are vulnerable to arrest and deportation at any time. As the BLC is a banned organisation in Myanmar, anyone associated with them who is returned to Myanmar would likely face detention, torture and imprisonment (Farmaner, 2 September 2011).

In a report published by the UN Human Rights Council (HRC) in June 2010, the UN Special Rapporteur on the independence of judges and lawyers notes with regard to the BLC:

"On 30 April 2009, the Government of Myanmar issued Order 1/2009. By this order the Burma Lawyers' Council was declared unlawful, based on the Unlawful Associations Act of

11 December 1908. Moreover, the Burma Lawyers' Council was recently labeled as an 'enemy of the State' by several state-controlled print media. 843. On 4 May 2009, an arrest warrant was issued against Mr. U Aung Htoo, Secretary- General of the Burma Lawyers' Council. This development coincided with a workshop on 'Advancing human rights and ending impunity in Burma' held by the non-governmental organization International Federation for Human Rights jointly with the Burma Lawyers' Council in Bangkok. In the past couple of years, the Burma Lawyers' Council has expressed criticism towards various aspects of the human rights policy implemented by the Government of Myanmar. In addition, the Council has addressed the situation of defense lawyers in the country, in particular cases in which lawyers have been imprisoned for defending their clients. Concern is expressed that the ban on the Burma Lawyers' Council and acts of harassment and intimidation against its members, in particular Mr. U Aung Htoo, may be related to their peaceful activities defending human rights in Myanmar, including in their capacity as lawyers. (HRC, 18 June 2010, p. 125)

### 6.3.9 Major demonstrations inside Myanmar

The Freedom House (FH) report *Freedom in the World 2011* provides the following account of the demonstrations of August and September 2007:

"The largest demonstrations in nearly 20 years broke out in cities across the country in August and September 2007, triggered by a 500 percent fuel-price increase. The 88 Generation Students, a group composed of dissidents active in the 1988 protests, were at the forefront of many of the demonstrations. The protest movement expanded to include thousands of Buddhist monks and nuns, who were encouraged by the general populace. Soldiers, riot police, and members of the paramilitary Union Solidarity and Development Association (USDA) and the Swan Arr Shin militia group responded brutally, killing at least 31 people. The crackdown targeted important religious sites and included the public beating, shooting, and arrest of monks, further delegitimizing the regime in the eyes of many Burmese. [...] Freedoms of association and assembly are restricted. Unauthorized outdoor gatherings of more than five people are banned. Authorities regularly use force to break up or prevent demonstrations and meetings, most notably during the 2007 protests." (FH, 12 May 2011)

A report by Human Rights Watch (HRW) from December 2007 documents the government's treatment of participants in the August/ September protests as follows:

"Since the crackdown, the military regime has brought to bear the full force of its authoritarian apparatus to intimidate all opposition, hunting down protest leaders in night raids and defrocking monks. [...] Human Rights Watch research determined that the security forces shot into crowds using live ammunition and rubber bullets, beat marchers and monks before dragging them onto trucks, and arbitrarily detained thousands of people in official and unofficial places of detention. In addition to monks, many students and other civilians were killed, although without full and independent access to the country it is impossible to determine exact casualty figures. [...] Human Rights Watch found that the crackdown was carried out in part by the Union Solidarity and Development Association (USDA), a 'mass-based social welfare' organization with more than 23 million

members that the Burmese military is grooming to lead a future civilian government. It operated alongside the Swan Arr Shin (Masters of Force) militia, soldiers and riot police in beating and detaining protesters. The report documented the killing of 20 people in Rangoon, but Human Rights Watch believes that the death toll there was much higher, and that hundreds remain in detention. Human Rights Watch was unable to gather information on killings and detentions from other cities and towns where demonstrations took place. At a news conference in the new capital at Naypidaw on December 3, National Police chief Major General Khin Ye stated that, 'Ten people died and 14 were injured during the monk protests from 26 to 30 September. The security members handled the situation in accord with the procedures.' Human Rights Watch has information that Khin Ye personally supervised the brutal arrests, beatings and killings of monks at the Shwedagon Pagoda in Rangoon on September 26. The ruling State and Peace Development Council (SPDC) claims that overall 2,927 people, including 596 monks, were 'interrogated', and almost all have been released. It says that nine people have been sentenced to prison terms, while 59 lay people and 21 monks remain in detention. Human Rights Watch said that hundreds of protesters, including monks and members of the '88 Generation students, who led protests until being arrested in late August, remain unaccounted for." (HRW, 7 December 2007)

A January 2011 report by Physicians for Human Rights (PHR) notes that government forces arrested 6,000 persons in connection with the 2007 Saffron Revolution, including up to 1,400 monks, and many others have disappeared. It states that while the official figure of persons killed in the crackdown was ten, the real number "is estimated to have been well over 100, which included 30-40 monks, many of them killed as a result of torture and ill-treatment while in detention" (PHR, January 2011, p. 18).

A March 2009 report by the UN Special Rapporteur on the situation of human rights in Myanmar states:

"Following the crackdown on the peaceful demonstrations of September 2007, 31 deaths, of which 15 were confirmed by the Government, and 74 cases of disappearance were reported." (HRC, 11 March 2009, p. 13)

In an earlier report published December 2007, the UN Special Rapporteur on the situation of human rights in Myanmar notes:

"From 26 to 29 September, the State and its agents cracked down severely on peaceful demonstrators. Through the lens of the international media, the world witnessed killings, severe beatings and mass arrests of people. During the crackdowns, the security forces comprising police and army or riot police (Lone Htein), as well as members of the Union Solidarity and Development Association (USDA) and the Swan Ah Shin (SAS) militia, used excessive force against civilians, including unnecessary and disproportionate lethal force. [...] Following the crackdowns, several reports of killings, severe beatings and arrests were received as well as allegations of torture, deaths in custody, relatives of people in hiding being taken hostage and lack of access to medical treatment for the wounded.

Allegations were also received that the bodies of some of the people reportedly killed during the crackdown had been burned." (HRC, 7 December 2007, p. 4)

### *6.3.10 Demonstrations outside Myanmar*

The UK Border Agency (UKBA) Country of Origin Information Report of June 2011 refers to the following information obtained from the UK Foreign and Commonwealth Office (FCO) regarding the treatment of persons who attended demonstrations outside the country and then return to Myanmar:

"In a letter dated 4 February 2011, a Foreign and Commonwealth Office (FCO) official at the British Embassy in Rangoon responded to the UK Border Agency's query on Burmese nationals attending demonstrations outside of Burma, which stated '... the Embassy staff are not personally aware of any individuals who have returned to Burma and been arrested for their activism in the UK. Our assessment is that it would be rally leaders or individuals who also have histories inside Burma who would be particularly at risk.' [...]

The FCO letter dated 4 February 2011 continued:

'1) A national's participation in demonstrations outside the Burmese Embassy is very likely to be recorded and we strongly believe these records are sent to the Burmese [sic] immigration authorities [sic] in Burma.

'2) Burmese national[s] who regularly participate in such demonstrations are very likely to have been photographed and identified by the Burmese authorities

'3) If such a person is returned, and there are additional factors that would trigger the attention of the Burmese authorities, there is a real risk of persecution, imprisonment, and possibly ill [sic] treatment on return.'" (UKBA, 17 June 2011, p. 53)

The UKBA reports further quotes an earlier letter from the FCO, updated 26 June 2010 (originally dated 1 August 2008) as saying:

"It is difficult to judge how the authorities react in individual circumstances. But my belief is that an individual would only have a high risk of facing penalties if they had been seen to a) lead/organise the demonstrations or b) be responsible for a particularly extreme act of incitement. Taking part in demonstrations/events attended by a number of people is, in my view, unlikely to merit particular attention. On return to Burma, they may be subject to scrutiny (ie watched, followed and allowed restricted movement) but this is the case for many people in Burma.'" (UKBA, 17 June 2011, p. 53)

A Response to Information Request (RIR) by the Research Directorate of the Immigration and Refugee Board of Canada (IRB), dated August 2007, quotes the Asian Legal Resource Centre (ALRC), an NGO that monitors human rights cases in Myanmar, as saying:

"[The ALRC] is aware, from a number of cases, that the government of Myanmar does certainly monitor the activities of its citizens abroad, particularly those engaged in political activities. However, the extent to which it is able to do so is a matter of conjecture: it is limited in its capacity to monitor by personnel and modern technological resources.

Nonetheless, it uses certain techniques, such as requiring citizens to come to the embassies and consulates to pay tax and renew passports, to maintain a presence among persons abroad who have not obtained residency or citizenship in other countries'." (IRB, 7 August 2007a)

Another RIR of August 2007 provides the following summary of an interview with a programme manager of Inter Pares, a Canadian charity:

"The Program Manager explained that the Myanmar regime has an 'extensive' monitoring system, and that people feel watched, even when they are abroad. Citizens who are not politically active and who illegally cross the border could possibly go unnoticed by the authorities, but the movements of citizens who are politically active would likely be monitored by authorities." (IRB, 7 August 2007b)

## **6.4 Treatment of human rights and political activists**

The US Department of State (USDOS) notes that the government "imprisoned citizens arbitrarily and for political motives" and "detained civic activists indefinitely and without charges". In addition, "regime-sponsored mass-member organizations engaged in harassment and abuse of human rights and prodemocracy activists." (USDOS, 8 April 2011, Introduction)

### *6.4.1 Internet users / bloggers*

The April 2011 report by Freedom House (FH) notes with regard to government surveillance of internet usage and the treatment of critical internet users:

"The government uses a wide range of means to restrict internet freedom, including legal and regulatory barriers, infrastructural and technical constraints, and coercive measures such as intimidation and lengthy prison sentences. Although the authorities lack the capacity to pervasively enforce all restrictions, the impact of sporadic implementation and the ensuing chilling effect is profound." (FH, 18 April 2011, p. 76)

"The government blocks political websites and media sites run by the Burmese exile community that are critical of the regime and its activities." (FH, 18 April 2011, p. 81)

"The record of harsh punishments against critical internet users has fostered selfcensorship and an impression of pervasive surveillance. In reality, however, surveillance is generally spotty due to the limited competence or capacity of the authorities, and corruption on the part of local officials. In many criminal cases, including the trials of members of the 88 Generation Students group and of comedian and blogger Zarganar, the military has used materials such as online chat records and e-mail messages as evidence in court. The authorities either monitor internet activity before arrest, or abuse detainees during interrogation to obtain their passwords and electronic documents." (FH, 18 April 2011, p. 86)

### *6.4.2 Human rights lawyers*

Reporters Without Borders (RSF) states in May 2011 that three months after Thein Sein's election as a civilian president, "heavy jail sentences for journalists, suspension of newspapers

and police raids on Internet cafés show that there has been no let-up in controls and intimidation." As reported by RSF, new measures have tightened control over internet use: The Ministry of Communications, Posts and Telegraphs (MCPT) has just sent a new set of rules to Internet cafés, which include "a ban on the use of portable hard disks, USB flash drives and CDs in Internet cafés, and a ban on the use of Internet telephony (VoIP) services to call abroad." Three "netizens" are still serving long prison sentences for expressing their views online. A further 17 video journalists employed by the exile Democratic Voice of Burma (DVB) remain in prison (RSF, 17 May 2011).

An earlier report by RSF from March 2011 notes with regard to internet users, including bloggers:

"Despite the regime's iron grip on the Internet, the number of bloggers keeps rising: there are now 1,500 of them, 500 of whom blog regularly. When Burmese bloggers based abroad are included, this number totals 3,000. [...] Despite the slow connections and risks incurred, Burmese Internet users are still circumventing censorship, reading the foreign press, networking on Facebook or simply enjoying themselves online. [...] Journalists who collaborate with the exiled Burmese media and bloggers are in the authorities' line of fire, particularly since the 2007 Saffron Revolution and the international outcry which followed the mass circulation of images of the ensuing crackdown" (RSF, 11 March 2011)

The 2010 Annual Report of the Assistance Association for Political Prisoners (Burma) (AAPP) describes the situation of lawyers who provide legal assistance to political dissidents:

"Lawyers, especially those who provide legal assistance to political dissidents, continue to face harassment from the military regime. As of 1 January 2010, there were 11 lawyers detained in Burmese prisons for giving legal assistance to politically active members of Burmese society. This figure did not change throughout 2010. The Junta's continued pressure on defense lawyers in Burma has led to a diminishing number of lawyers advocating on behalf of political prisoners. Defense lawyers for political prisoners subject themselves to financial risk, as the Junta often pressures these lawyers' non-political clients to find legal representation elsewhere, which, coupled with the risk of imprisonment and other forms of harassment, dissuades other lawyers from advocating on behalf of political dissidents. Furthermore, many lawyers are disbarred following imprisonment, further reducing the legal support for political prisoners." (AAPP, 14 January 2011)

The Freedom House (FH) report *Freedom on the Net 2011* notes with regard to lawyers who take on cases relating to free expression:

"Lawyers who take on free expression cases have themselves faced punishment. In late October and early November 2008, two defense lawyers, Nyi Nyi Htwe and Khin Maung Shein, were imprisoned for six and four months, respectively, for contempt of court after taking seemingly innocuous actions on behalf of their clients. Four more defense lawyers – Kyaw Hoe, Maung Maung Latt, Myint Thaug, and Khin Htay Kyew – were barred from representing their clients, including members of the 88 Generation Students group, who were charged under the Electronic Transactions Law and other statutes for their use of the internet and 'unlawful' e-mail correspondence." (FH, 18 April 2011, p. 85)

The US Department of State (USDOS) mentions the case of a lawyer who was “arrested in 2009 for reporting labor rights violations to the International Labor Organization (ILO) on behalf of a group of farmers” and released in January 2011 (USDOS, 8 April 2011, Section 1f).

The Annual Report 2010 of the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT), published in September 2010, notes with regard to the year 2009:

“The year 2009 was characterised by a campaign by Burma’s ruling military junta, the State Peace and Development Council (SPDC), to eradicate all political opposition ahead of the 2010 elections. Hundreds of prominent political activists, Buddhist monks and nuns, journalists, labour activists, bloggers and human right defenders as well as social workers were arrested and sentenced to lengthy jail terms. Even some of the lawyers representing were imprisoned for speaking out against the grossly unfair secret trials held in detention centres or in closed courthouses.” (FIDH/OMCT, 13 September 2010, p. 231)

#### *6.4.3 UN and NGO workers*

As regards the monitoring of activities of domestic and international NGO and UN workers inside Myanmar and citizens’ contacts with foreigners, the USDOS report of April 2011 notes:

“The government did not allow domestic human rights organizations to function independently, and it remained hostile to outside scrutiny of its human rights record. More than 60 nonpolitical, international humanitarian NGOs operated in the country. A few others had a provisional presence while undertaking the protracted negotiations necessary to establish permanent operations in the country. The government maintained travel restrictions on foreign journalists, NGO staff, UN agency staff, and diplomats in most regions. [...]

The government’s monitoring of the movements of foreigners, frequent interrogation of citizens concerning contacts with foreigners, restrictions on the freedom of expression and association of citizens, and practice of arresting citizens who passed information about government human rights abuses to foreigners obstructed efforts to investigate such abuses.” (USDOS, 8 April 2011, Section 5)

An article by the Integrated Regional Information Network (IRIN), dated May 2011, quotes Amnesty International (AI) researcher Benjamin Zawacki as noting a lack of appreciable change in the human rights situation since the November 2010 elections, with some of the worst abuses including the imprisonment of thousands of political opposition members. While 65 prisoners of conscience were released on 17 May 2011, another 2,000 political activists remain in prison (IRIN, 24 May 2011).

The UN Special Rapporteur on the situation of human rights in Myanmar states in his March 2011 progress report that “[d]espite indications that the Government was considering a release of prisoners before the elections, no such release occurred. As of the beginning of January 2011, 2,189 prisoners of conscience remained in detention.” He notes that “in the lead-up to the elections, the number of prisoners of conscience expanded”, with at least 15 people arrested in the pre-election period for opposing the 2010 elections (HRC, 7 March 2011, p. 8).

The UK Foreign and Commonwealth Office (FCO) states in March 2011:

"The Burmese government's relationship with civil society representatives continued to be complex. They viewed some NGOs [non-governmental organisations] as threatening, but worked with others to develop national strategies in certain areas, for example, on women's advancement and HIV/AIDs." (FCO, 31 March 2011)

The Amnesty International (AI) Annual Report 2010, published 13 May 2011, reports on imprisoned political activists as follows:

"The number of political prisoners in Myanmar reached an estimated 2,200 during 2010, and was likely to have been significantly higher on account of ethnic minority prisoners whose names and cases were unknown. Most were prisoners of conscience. At least 64 political activists were sentenced to prison terms. This number included some of the 49 arrested during the year, and 38 were transferred between prisons, including to those in remote areas. Torture and other ill-treatment continued to be reported during pre-trial detention and in prisons." (AI, 13 May 2011)

## **6.5 Treatment of journalists**

The 2010 Annual Report of the Assistance Association for Political Prisoners (Burma) (AAPP), published January 2011, notes on the situation of journalists, bloggers and writers:

"Journalists, bloggers and writers continue to face intense suppression and censorship in Burma. As of 31 December 2010, 42 media activists were detained in Burma's prisons. This represents an increase of 1 since the end of 2009, at which time 41 media activists were imprisoned in Burma." (AAPP, 14 January 2011)

The Committee to Protect Journalists (CPJ) states in its report *Attacks on the Press*, published in February 2011:

"At least 13 journalists remained in jail when CPJ conducted its annual worldwide census of imprisoned journalists on December 1. The junta increasingly used the harsh Electronics Act – which broadly bans unauthorized use of electronic media, including the Internet, to send information outside the country – to suppress and intimidate reporters who worked for foreign or exile-run news organizations. Because Burma's local media operate under strict state censorship, exile-run and other foreign media filled the news gap with critical reporting and comment." (CPJ, 15 February 2011)

The USDOS reports in April 2011 that "[r]eporters were subject to arrest, harassment, intimidation, and violence by the authorities and supporters of the regime", stating that at the end of the year 2010, "approximately 40 journalists were in prison, some serving sentences of up to 35 years." (USDOS, 8 April 2011, Section 2a)

## 6.6 Treatment of individuals making complaints of land confiscation

The US Department of State reports that U Aye Myint, a labor activist from Magwe Region who is active in land-rights cases for farmers, was sentenced in September 2009 to two years' imprisonment for threatening to injure a public servant. He was released from prison in December 2009 (USDOS, 8 April 2011, Section 1d).

The Irrawaddy reports that in March 2011, five farmers were attacked, severely beaten and held overnight by a group of workers from a chemical factory construction site in Kamma Township of Magwe Region which is operated by the Myanmar Economic Holdings Co. Ltd (MEHC), a military-owned corporation, and the Htoo Group of Companies (HGC). After a complaint by the boss of the construction site, the local Kamma Township Court sentenced each of the farmers to prison terms of more than 10 years under charges including the riding of motorcycles without licenses. As stated by the farmers' lawyer, several farmers (including one of those imprisoned) filed a lawsuit at the Kamma Township Court the factory's manager and two other officials for illegally confiscating some 4,000 acres of farmland for the purpose of building a factory, and of destroying their crops. Following other farmers' support for the detained, the factory manager convinced the judge at the Kamma Township Court to transfer the case to Minhla Township Court, which then upheld the sentences. The lawyer appealed the sentence to the district court in Minbu which, surprisingly, reduced the farmers' prison sentences to three months. At the time of reporting, these farmers have been released from prison (Irrawaddy, 8 July 2011)

The Observatory for the Protection of Human Rights Defenders (FIDH/OMCT) states in its Annual Report 2010 that in January 2009, U Phoe Phyu, a lawyer who had assisted farmers whose land had been seized by the army, was arrested and charged under the Unlawful Association Act for alleged "links with illegal organisations" after he represented labour activists detained for reporting the seizure of farmland to the International Labour Organisation (ILO). Magwe Division Court sentenced U Phoe Phyu to four years in prison. His appeal was rejected in May 2009 and, as of the end of 2009, Mr. U Phoe Phyu remained detained. (FIDH/OMCT, 13 September 2010, p. 234)

The Amnesty International (AI) Annual Report 2010, dated May 2011, notes:

"Myint Maung and Thura Aung, imprisoned in 2008 and 2009 for helping farmers file legal cases against illegal confiscation of their land, were released in August after their sentences were reduced on appeal" (AI, 13 May 2011)

As reported by Irrawaddy, in August 2010, a group of 148 farmers in Hpakant township (Kachin State) filed a lawsuit against land seizure by the Yuzana Company. The company persuaded the complainants to drop the case in return for payments of 80,000 kyat (\$80) per acre each to a maximum of 500 evicted farmers. Irrawaddy notes in December 2010 that many farmers are still awaiting compensation. A court in Myitkyina rejected a lawsuit against the company's chairman, but said it would allow a case to be brought against the director of Yuzana. According to farmers, court proceedings drag on, while land seizures continue (Irrawaddy, 14 December 2010).

## 7 Women/Children/Sexual Orientation

### 7.1 Domestic legal framework

#### 7.1.1 Women

The *Constitution of the Republic of the Union of Myanmar* of 2008 contains the following provisions with regard to women:

“350. Women shall be entitled to the same rights and salaries as that received by men in respect of similar work.

351. Mothers, children and expectant women shall enjoy rights as prescribed by law.

352. The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.”  
(Constitution, 2008, art. 350-352)

The constitutional provisions regarding women are discussed by Thin Thin Aung, a presidium board member of the Women’s League of Burma (WLB), an umbrella organization comprising 13 democracy, women’s and human rights groups in an interview with Mizzima News in October 2010. Thin Thin Aung notes that the constitution does not include provisions guaranteeing gender equality and she draws attention to the exception clause with regard to equal rights and salaries for women contained in article 352. Thin Thin Aung further states that as a result of the constitutional stipulation that provides that military personnel must be tried by court martial, women will “face more difficulties in seeking justice in civilian courts when crimes are committed against them by soldiers” (Mizzima, 23 October 2010).

The *Burma Human Rights Yearbook 2008*, published by the exile National Coalition Government of the Union of Burma (NCGUB) in November 2009, provides an overview with regard to the legal status of women:

“Being a signatory of the CEDAW convention since 1997 (even though Burma has not signed the Optional Protocol), Burma has – at least officially - accepted that women are discriminated against and has agreed to address both direct and indirect discrimination. Both the 1947 and 1974 constitutions (albeit now obsolete) reiterate the principle of gender equality, and some recent legislative and policy measures have attempted to meet specific concerns such as maternity leave entitlements, anti-trafficking laws, and increased healthcare services for pregnant women. In reality however, these legislative promises ring hollow. [...]

Women rarely receive equal pay for equal work and are severely underrepresented in the civil service and in other decision-making positions. [...]

Domestic laws regarding specific crimes often committed against women, such as domestic violence and sexual violence, are sorely lacking: there is no law to address domestic

violence and only some sections of the Penal Code dating from 1860 and not changed since, deal with sexual and gender based violence. Recent anti-trafficking laws have been widely criticised for restricting women's freedom of movement, as women under 25 have been prohibited from travelling to neighbouring countries, leaving many vulnerable to relying on traffickers to cross the borders." (NCGUB, November 2009, p. 787)

Section 376 of the Penal Code from 1860, contains the following provision with regard to rape:

"376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." (Penal Code, Section 376, 1860)

The US Department of State (USDOS) reports in April 2011:

"Rape is illegal, but the government did not enforce the law effectively. If the victim is under 14 years of age, the sexual act is considered rape, with or without consent. In such cases the maximum sentence is two years' imprisonment when the victim is between ages 12 and 14, and 10 years' to life imprisonment when the victim is under 12. Spousal rape is not a crime unless the wife is under 14. [...]

There are no laws specifically against domestic violence or spousal abuse (including spousal rape), although there are laws related to committing bodily harm against another person. The related prison terms range from one year to life, in addition to possible fines.

[...] The penal code prohibits sexual harassment and imposes fines or up to one year's imprisonment. There was no information on the prevalence of the problem because these crimes were largely unreported. [...]

By law women enjoy the same legal rights as men, including property and inheritance rights; however, it was not clear if the government enforced the law. Women remained underrepresented in most traditionally male occupations (e.g., mining, forestry, carpentry, masonry, and fishing) and were effectively barred from certain professions, including the military officer corps. Poverty affected women disproportionately." (USDOS, 8 April 2011, Section 6)

### 7.1.2 Children

The NCGUB *Burma Human Rights Yearbook 2008* states with regard to children's rights:

"Despite Burma having ratified the Convention on the Rights of the Child (CRC) in 1991 under the then ruling State Law and Order Restoration Council (SLORC), the rights of children in Burma today remain as tenuous as ever." (NCGUB, November 2009)

The USDOS notes the following legal provisions regarding children and their implementation:

"By law education is compulsory, free, and universal through the fourth standard (approximately age 10). However, the government continued to allocate minimal resources to public education, and schools routinely charged informal fees. Rates of school attendance were low, largely due to economic hardship.

There are laws prohibiting child abuse, but they were neither adequate nor enforced. The government claimed child abuse was not a significant problem. However, accurate statistics were not available, and some international NGOs believed the problem was more widespread than the government acknowledged. The 1993 Child Law contains many provisions to protect children from abuse, sale, and other types of exploitation. The punishment for violators is up to two years' imprisonment or a fine of up to 10,000 kyat (\$10)." (USDOS, 8 April 2011, Section 6)

The June 2011 COI report by the UK Border Agency (UKBA) provides an overview of Myanmar's legal minimum age requirements, based on publicly accessible sources:

- "Under the 1993 Child Law, a child is anyone under the age of 16 and a youth is anyone over 16 years and below 18 years. (Burma Lawyers' Council, The Child Law, 14 July 1993)
- Voting age: 18 years old. (Central Intelligence Agency (CIA) World Factbook, 4 May 2011)
- Minimum age for employment: 13 years old; however the law was not enforced. (US Department of State Country Report on Human Rights Practices 2010 (USSD Report 2010), published 8 April 2011) [7a] (Section 7d)
- Compulsory recruitment age for the military: 18 years old; however children were forcibly recruited into the army. (CIA World Factbook, 4 May 2011)
- Criminal age of responsibility: 7 years old. (Burma Lawyers' Council, The Child Law, 14 July 1993)
- Marriage: no minimum age for boys; girls of 14 years old require parental consent. (Committee on the Rights of the Child – Concluding observations, 30 June 2004)" (UKBA, 17 June 2011, p. 95)

### *7.1.3 Sexual orientation*

The USDOS human rights report of April 2011 states that the penal code contains provisions against "sexually abnormal" behaviour which are applied by authorities both to gay men and lesbians who draw official attention. The maximum sentence is 20 years imprisonment and a fine. Under the penal code, laws against "unnatural offenses" apply equally to both men and women. The USDOS notes that such persons nonetheless had "a certain degree of protection through societal traditions." As reported by the USDOS for the year 2010, "there was no official or social discrimination based on sexual orientation in employment." (USDOS, 8 April 2011, Section 6)

## 7.2 Situation of women

Freedom House (FH) reports in May 2011:

“Burmese women have traditionally enjoyed high social and economic status, but domestic violence and trafficking are growing concerns, and women remain underrepresented in the government and civil service. In the 2010 elections, only 114 out of 3,000 candidates were women.” (FH, 12 May 2011)

The UN Human Rights Council (HRC) mentions in its compilation prepared by the UN Office of the High Commissioner for Human Rights (OHCHR) dating from November 2010:

“CEDAW was concerned at the persistence of adverse cultural norms, practices and traditions regarding the roles of women and men in all spheres of life, especially within some ethnic groups. It noted that legislation and customary laws that discriminate against women remain in force. It also expressed concern at the disadvantaged position of women in rural and remote areas – who form the majority of women in Myanmar – which is characterized by poverty, illiteracy, difficulties in access to health care, education and social services. UNCT noted that discrimination against women and girls, who in some areas are confined to the home, not allowed in public for education, economic activities or the most basic community participation, must be removed to ensure in compliance with CEDAW.” (HRC, 15 November 2010, p. 5-6)

“CEDAW expressed concern at the high prevalence of violence against women and girls, such as widespread domestic violence and sexual violence. Such violence appeared to be socially legitimized and accompanied by a culture of silence and impunity.” (HRC, 15 November 2010, p. 7)

### 7.2.1 Sexual and Gender-based Violence (SGBV)

Freedom House (FH) notes in its report *Freedom in the World 2011* of May 2011 that “domestic violence and trafficking are growing concerns” in Myanmar (FH, 12 May 2011).

Domestic violence is reported on by the USDOS (April 2011) as follows:

“Domestic violence against women, including spousal abuse, remained a problem. Spousal abuse or domestic violence was difficult to measure because the government did not maintain statistics [...]

Police generally were reluctant to act in domestic violence cases; however, in cases where women sustained injuries and filed a report, police generally took action. Punishment for men in these cases typically was a fine but no imprisonment. The government-affiliated Myanmar Women's Affairs Federation (MWAFF) – usually chaired by the wife of the prime minister- sometimes lobbied local authorities, including the police, to investigate domestic violence cases involving spousal abuse. Since the MWAFF was controlled by wives of regime leaders, police usually investigated cases referred to them by the group. (USDOS, 8 April 2011, Section 6)

The UN Committee on the Elimination of Discrimination against Women (CEDAW) notes in its Concluding observations, dated November 2008, a “high prevalence of violence against women and girls, such as widespread domestic violence and sexual violence, including rape”, which “appears to be socially legitimized and accompanied by a culture of silence and impunity, that cases of violence are thus underreported and that those that are reported are settled out of court.” CEDAW states that “geographical areas of particular concern include the Northern Rakhine State and those areas affected by Cyclone Nargis as well as other areas where women and girls are particularly vulnerable and marginalized.” The report also states that as a consequence of a legal obligation for victims of sexual violence to report to the police immediately prior to seeking health care, such victims choose not to seek healthcare, psychological and legal assistance. CEDAW also notes a “the high prevalence of sexual and other forms of violence, including rape, perpetrated by members of the armed forces against rural ethnic women, including, inter alia, the Shan, Mon, Karen, Palaung, and Chin” and an “apparent impunity of the perpetrators of such violence, although a few cases have been prosecuted”. There have been “reports of threats, intimidation and punishment of the victims.” (CEDAW, 7 November 2008, p. 7-8). CEDAW further notes “women’s lack of access to quality sexual and reproductive health services” (CEDAW, 7 November 2008, p. 12).

The USDOS report on government’s responses to rape as follows:

“The regime did not release statistics concerning the number of rape prosecutions and convictions. The police generally opened and investigated reported cases of rape. However, in ethnic areas, when government soldiers committed rape, the army rarely took action to punish those responsible.” (USDOS, 8 April 2011, Section 6)

USDOS further states with regard to abuses against women by government troops in Karen State and other parts of Myanmar:

“The Thailand-based Karen Women’s Organization documented approximately 4,000 cases of abuse against women in Karen State over the past few years. The abuses included rape, killings, torture, and forced labor in more than 190 villages by government troops from more than 40 army battalions.

NGOs and international organizations continued to report numerous sexual assaults by soldiers throughout the rest of the country.” (USDOS, 8 April 2011, Section 1g)

A report published jointly by the Nobel Women’s Initiative (NWI) and the Women’s League of Burma (WLB) in March 2010 states with regard to sexual violence against women:

“Ethnic minority women and girls are particularly subject to widespread and systematic sexual violence by Burmese soldiers, including rape, torture and sexual slavery as a means of terrorizing and subjugating the ethnic minorities.

Many women across Burma experience sexual violence and sexualized torture, including rape, in conjunction with other civil and political violations, such as arbitrary arrest and detention.

Many women are also routinely subject to rape and other sexual violence and torture while being forced by the military to perform compulsory labour, including portering. [...]

Women who are forced to work for the military regime face unique risks. As porters, women must carry unbearably heavy loads without adequate rest or regard for physical conditions including pregnancy. Inadequate shelter at night leaves them vulnerable to insect-borne disease and worse. Women labourers are at constant risk of sexual violence and even death. Women caught trying to escape may be shot on sight. When they successfully escape, soldiers commonly seek retribution, not just on the women themselves, but also their families and communities." (NWI/WLB, 2 March 2010, p. 7)

As reported by Freedom House (FH), the Women's League of Burma (WLB) "has accused the military of systematically using rape and forced marriage as a weapon against ethnic minorities." (FH, 12 May 2011)

In a July 2011 report, Human Rights Watch (HRW) mentions "rape and other sexual violence against women and girls" as part of the counterinsurgency practices Myanmar officials have used against ethnic minority populations since the country's independence in 1948. As regards the use of convict porters by the army, HRW notes:

"Only male prisoners were chosen. There are no credible reports of female prisoners being selected for porter duties, although civilian women and girls are often ordered by the army to engage in forced labor in conflict areas." (HRW, 12 July 2011, p. 21)

The Democratic Voice of Burma (DVB) states in June 2011 that, as reported by the Kachin Women's Association Thailand (KWAT), 18 confirmed cases of gang-rape of ethnic Kachin women by soldiers from five battalions of the Myanmar army occurred in four districts of Bhamo districts between 10 and 18 June 2011 (DVB, 22 June 2011).

### **7.3 Situation of children**

The 2010 UK Foreign and Commonwealth Office (FCO) Report of March 2011 states:

"In 2010, many children in Burma continued to receive inadequate education, health care or social protection. On average, one in 10 children dies before the age of five and few more than 50% finish primary education. The use of child soldiers continued to be a problem in the Burmese military and in some armed ethnic groups. Many children work, largely owing to poverty. This is despite the UN Convention on the Rights of the Child being one of only two UN human rights conventions ratified by Burma. The Burmese authorities continued to allow UNICEF and a number of NGOs, such as Save the Children, to operate large programmes in Burma." (FCO, 31 March 2011)

The US Department of State (USDOS) Country Report on Human Rights Practices 2010 provides the following overview of the situation of children:

"The government did not dedicate significant resources to protecting the rights and welfare of children. Children were at high risk, as deteriorating economic conditions forced destitute parents to take them out of school to work in factories and teashops or to beg.

Many were placed in orphanages. With few or no skills, increasing numbers of children worked in the informal economy or in the street, where they were exposed to drugs and petty crime, risk of arrest, trafficking for sex and labor exploitation, and HIV/AIDS.

The mortality rate of internally displaced children in conflict areas was significantly higher than in the rest of the country. In addition such children had few learning resources.” (USDOS, 8 April 2011, Section 6)

An April 2010 report by the NGOs Partners Relief & Development and Free Burma Rangers (FBR) notes in particular with regard to displaced children:

“Children are witnesses of and subject to arbitrary and extrajudicial killings, torture and mistreatment, arbitrary arrest and detention, rape and sexual violence, forced labor and portering, recruitment as child soldiers, and restrictions on basic and fundamental freedoms. They are inordinately affected by the rampant poverty, inadequate schools, and poor healthcare that exists in Burma. While nearly all children in Burma are affected to some extent by insecurity, poverty, and lack of adequate social services, internally displaced children face particularly extreme and appalling conditions in displacement settings. [...] They find themselves in precariously unstable circumstances, lacking protection from human rights violations committed by the Burma Army and in danger of further displacement with little access to the most basic necessities, including adequate and sustainable food sources, clean drinking water, stable shelters, schools, and healthcare facilities.” (Partners/FBR, April 2010, p. 3)

With regard to child prostitution, the USDOS report further states:

“Children reportedly engaged in prostitution for survival without third-party involvement. The penalty for child prostitution is 10 years' imprisonment. The law prohibits pornography; the penalty is three to five years' imprisonment. The law prohibits statutory rape, punishable by two years to life in prison. In Rangoon and Mandalay, observers noted widespread presence of female prostitutes who appeared to be in their teens. Additionally, some brothels reportedly offered young teenage 'virgins' to their customers for a substantial additional fee. Although there is no law explicitly banning child sex tourism, article 13 of the 1949 Suppression of Prostitution Act and the Prostitution Act prohibit pimping and prostitution, respectively, and the penal code prohibits having sex with a minor.” (USDOS, 8 April 2011, Section 6)

The March 2011 Progress Report by the UN Special Rapporteur on the situation of human rights in Myanmar notes with regard to the availability of schools and participation in primary and secondary education:

“According to official figures, primary education has a 97 per cent intake rate with gender parity. There are currently some 40,000 schools and about 150,000 schoolteachers in Myanmar, as well as 23 teacher training colleges and institutes that produce around 10,000 teachers annually. However, less than 60 per cent of children complete the full cycle of primary education. According to some international figures, 45 per cent of

children in Myanmar initially enrolled in school failed to complete fourth grade, with the highest rate of dropout (19 per cent) at the end of first grade.

Participation rates in secondary school are not available but are estimated to be extremely low, with only 1,099 high schools in the country." (HRC, 7 March 2011, p. 13)

In its November 2008 Concluding Observations, CEDAW notes the existence of "traditional attitudes that in some rural areas constitute obstacles to girls and women's education." (CEDAW, 7 November 2008, p. 13)

The USDOS 2011 Trafficking in Persons Report, published on 27 June 2011, provides the following information regarding children subjected to forced labour and forced conscription:

"Military and civilian officials subject men, women, and children to forced labor, and men and boys as young as 11 years old are forcibly recruited to serve in the Burma army as well as the armed wings of ethnic minority groups through intimidation, coercion, threats, and violence. Some observers estimate that thousands of children are forced to serve in Burma's national army as desertions of men in the army continue. Children of the urban poor are at particular risk of conscription. UN reports indicate that the army has targeted orphans and children on the streets and in railway stations, and young novice monks from monasteries for recruitment. Children are threatened with jail if they do not agree to join the army, and are sometimes physically abused. Subsequent to cyclone Giri in October 2010, there were verified reports of underage recruitment in cyclone-affected areas by the Burmese armed forces. Children are also subjected to forced labor by private individuals and groups, in tea shops, home industries, agricultural plantations, and as beggars. Exploiters subject girls to sex trafficking, particularly in urban areas." (USDOS, 27 June 2011)

## 7.4 Trafficking in persons

The above-mentioned March 2010 report by the Nobel Women's Initiative (NWI) and the Women's League of Burma (WLB) states with regard to trafficking in women and girls:

"Over 200,000 women and girls have been trafficked from Burma to other countries in the region, particularly China, according to the National Coalition Government of the Union of Burma (NCGUB). Generally, women facing extreme poverty, lack of education or economic survival opportunities for themselves and their families are at highest risk of being trafficked." (NWI/WLB, 2 March 2010, p. 7)

The USDOS 2011 Trafficking in Persons Report provides the following overview regarding human trafficking and the government's responses to it, noting that forced labour is widely considered to be the most serious trafficking problem in Myanmar:

"The Government of Burma does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. Authorities continued efforts to address the cross-border sex trafficking of women and girls, but the forced labor of civilians perpetrated by regime officials and the conscription of child

soldiers by military officials remained serious problems. [...] The climate of impunity and repression and the regime's lack of accountability in forced labor and the recruitment of child soldiers represent the top casual factors for Burma's significant trafficking problem.

[...] Burma prohibits sex and labor trafficking through its 2005 Anti-Trafficking in Persons Law, which prescribes criminal penalties that are sufficiently stringent and commensurate with those prescribed for rape. The recruitment of children into the army is a criminal offense under Penal Code Section 374, which could result in imprisonment for up to one year, or a fine, or both. The continued primacy of the Burmese military in the regime significantly limited the ability of civilian police and courts to address the recruitment of child soldiers and military-perpetrated forced labor – the most severe forms of trafficking prevalent in the country. [...] While the military prosecuted several of its uniformed members for complicity in child soldier recruitment during the previous reporting period, it did not report any such prosecutions during the reporting period.

The police focus on cases that are within their authority to pursue, namely cross-border trafficking. While forced labor is widely considered to be the most serious trafficking problem in Burma, authorities reported that most trafficking cases investigated and prosecuted continued to involve women and girls subjected to forced marriage or recruited and transported with the intention to be subjected to forced marriage, typically in China. Some of these cases, however, may have involved Burmese women voluntarily working with brokers to attempt to cross into China with the understanding that they would be married to Chinese men. The Burmese regime reported investigating 173 cases of trafficking, and convicting 234 offenders in 2010; however, these statistics include cases of abduction for adoption, rather than human trafficking. [...]

The regime continued some efforts to assist repatriated victims of cross-border sex trafficking, though it exhibited no discernible efforts to identify and protect victims of internal trafficking and transnational labor trafficking. In forced labor cases, some victims were harassed, detained, or otherwise penalized for making accusations against officials who had forced them into labor. The government did not report the number of victims identified during the year. Authorities reported assisting 348 Burmese victims identified and repatriated by foreign governments in 2010, including 183 from China and 134 from Thailand. Seventy-five of the 348 repatriated to Burma were male victims of trafficking. This represented a decrease from 425 victims repatriated to Burma by foreign authorities in 2009." (USDOS, 27 June 2011)

For further information pertaining to trafficking in persons in Myanmar, see chapters 2, 3.4, 3.5, 7.2 and 7.3 of this compilation.

## **7.5 Sexual orientation**

The USDOS April 2011 Country Report on Human Rights Practices (covering the year 2010) states that the penal code contains provisions against 'sexually abnormal' behaviour which are applied by authorities against homosexual men and women who draw official attention. The maximum sentence provided is 20 years imprisonment and a fine. As noted by the USDOS,

under the Myanmar Penal Code, laws against 'unnatural offenses' apply equally to both men and women. The Report further states that there was no official or social discrimination based on sexual orientation in employment. (USDOS, 8 April 2011, Section 6)

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) website publishes results of its Myanmar country survey regarding the situation of LGBT groups. With regard to laws relevant to sexual orientation and their enforcement, the survey states that male-to-male relationships are not legal according to Penal Code, Act 45/1860 (Revised Edition), section 377 of which contains the following provisions:

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animals shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine."  
(ILGA, undated)

According to the ILGA survey, this law is not often applied. ILGA respondents noted that discrimination and incitement to hatred based on sexual orientation is not prohibited by law. Female-to-female relationships are indicated as being legal, as the provisions under the Penal Code with regard to "carnal intercourse" are understood as not covering female to female activity. There exists no type of legal recognition for same sex relationship in Myanmar (ILGA, undated).

A May 2010 article by the Democratic Voice of Burma (DVB) reports as follows on the situation of LGBT persons in Myanmar:

"Although an archaic law introduced during the British rule of Burma that outlaws homosexual activity is rarely used now, stigmatisation remains. The Burmese government last year marked World AIDS Day with an article in the state-run New Light of Myanmar newspaper linking the disease to 'socially unacceptable behaviour'. [...] When no punitive measures are used against male-to-male sex, homosexuals, bisexuals and transgender individuals are still 'subject to police abuses and are targeted by police for other offences relating to public order, vagrancy, prostitution and obscenity,' the report says." (DVB, 19 May 2010)

The 2010 edition of the Spartacus International Gay Guide, a travel guide for gay males, notes that male homosexual relations are illegal according to the Penal Code, but there have been no reports of any recent prosecutions under this legislation. According to the guide, a social tolerance towards homosexuality prevails (Spartacus International Gay Guide, 2010).

Agence France-Presse (AFP) news agency reports in an April 2011 article that a "mix of totalitarian politics, religious views and reserved social mores" have compelled many gay persons to hide their sexual orientation in public. As noted by AFP, while the provisions of the criminal code, which technically criminalise same-sex relationships, are no longer strictly enforced, activists report that they are still used by authorities to discriminate and extort money. According to the director of the Thailand-based Human Rights Education Institute of Burma (HREIB), there were numerous instances of sexual violence and humiliation of gay

people in public, but many cases are not reported as the victims keep silent out of shame and fear of repercussions. The HREIB director is further quoted as saying that while lesbianism is also largely hidden in Myanmar, it was more acceptable (AFP, 16 April 2011).

## 8 Freedom of Movement

### 8.1 General

The US Department of State (USDOS) writes in its Country Report on Human Rights Practices 2010, published in April 2011:

“There are no laws explicitly protecting freedom of movement within the country, foreign travel, emigration, and repatriation. However, there are regional- and local-level orders, directives, and instructions restricting freedom of movement. [...] Although the government restricted freedom of movement, most citizens were able to travel within the country. However, authorities closely monitored the movements of some opposition party members. Ethnic minority areas previously affected by conflict continued to experience strict controls on personal movement, including frequent military checkpoints and monitoring by military intelligence.” (USDOS, 8 April 2011, Section 2d)

### 8.2 Imposition of travel restrictions for certain groups and in certain areas, documentation needed for internal travel

In its Country Report on Human Rights Practices 2010, the US Department of State (USDOS) mentions travel restrictions for politically active persons:

“Through its intelligence network and administrative procedures, the government systematically monitored the travel of citizens and closely monitored the activities of those known to be active politically. [...] Activists and politicians reported that authorities routinely monitored their movements.” (USDOS, 8 April 2011, Section 1f)

The USDOS also describes travel restrictions for internally displaced persons, refugees, and stateless persons, in particular Muslim residents in northern Rakhine State (commonly referred to as “Rohingya”) and mentions the requirement of travel permissions for ethnic South Asians and Chinese:

“The government restricted the ability of internally displaced persons, refugees, and stateless persons to move. In particular the government tightly controlled the movement of Muslim Rohingya, especially in Buthidaung, Kyauktaw, Maungdaw, and Rathedaung townships along the border with Bangladesh. Muslim youths from Rakhine State accepted for admission to universities and medical schools outside the state were unable to enroll due to travel restrictions imposed on them. The government also required other noncitizens, primarily ethnic South Asians and Chinese, to obtain prior permission to travel internally. Nonetheless, the country's borders with China, Thailand, Bangladesh, and India remained very porous, with significant undocumented migration and commercial travel.” (USDOS, 8 April 2011, Section 2d)

The USDOS report continues to describe the situation of Muslim residents in northern Rakhine State with regard to travelling and documentation as follows:

“Rohingya experienced severe legal, economic, and social discrimination. The government required them to receive prior approval for travel outside their village tract of residence,

limited their access to higher education, and prohibited them from working as civil servants, including as doctors, nurses, or teachers. Authorities required Rohingya to obtain official permission for marriages. The government claimed it continued a program originally supported by the UNHCR to issue Temporary Registration Cards (TRCs) to stateless persons in Rakhine State. [...] In previous years Rohingya without temporary identification cards did not have the right to vote in the constitutional referendum. However, in late July and August organizers of the progovernment USDP and ward authorities in various parts of the country reportedly offered national registration cards (NRCs) to individuals in exchange for joining the USDP." (USDOS, 8 April 2011, Section 2d)

The UNHCR Global Appeal 2011 Update notes an increase in the number of TRCs being issued to Muslim residents in northern Rakhine State (UNHCR, 2011, p. 232).

According to a report on displacement and poverty in eastern Myanmar published by the Thailand Burma Border Consortium (TBBC) in 2010, National Registration Cards are essential for long distance travel:

"National registration cards are essential for proof of identity and long distance travel for all adults in Burma. However, decades of conflict in eastern Burma and discrimination against the Rohingyas in northern Rakhine State have resulted in low levels of legal security. This survey found just 56% of respondents in eastern Burma had proof of citizenship, with a wide variation between the highest rates recorded in Ye and Mong Ton Townships and the lowest rates reported from Papun and Kyaukgyi Townships. A recent survey in northern Rakhine State also found that only 50% of the adult population had either a national registration card or a temporary registration card." (TBBC, 2010, p. 25-26)

The 2010 TBBC report contains some passages on travel restrictions imposed by government actors (SPDC) or actors cooperating with the government (DKBA, KNSO) in some areas of eastern Myanmar:

"Apart from the Burmese Army, ethnic armed forces have also plundered natural resources at the expense of local communities. During the past year, the Democratic Kayin Buddhist Army (DKBA) have confiscated gold mining fields and restricted travel in the surrounding areas of northern Karen / Kayin State." (TBBC, 2010, p. 16)

"There are a number of shocks to livelihoods which are significant causes of poverty in eastern Burma but have not been reported as affecting communities elsewhere. Armed conflict or the deployment of military patrols into rural areas was identified as a major obstacle to livelihoods in Palaw, Pasaung and Ye. This may be understated, as the high rates of pests damaging crops in Papun may also be related to farmers staying away from their fields during military patrols into the vicinity. Restrictions on travel imposed by the SPDC as a counter-insurgency strategy were also a significant barrier for farmers in Kyaukgyi, Pasaung and Ye." (TBBC, 2010, p. 42)

"In previous years, the main livelihood problems for farmers [in southern Shan State] have been the loss of income while doing forced labour, restrictions on travelling to fields, and extortion by various armed groups." (TBBC, 2010, p. 46)

"The Karenni National Solidarity Organisation (KNSO) is not big enough to form a Border Guard Force, but has been operating as a militia group under SPDC command in Pruso and Pasaung. To reconstruct the Mawchit-Taungoo road and secure access to a mining concession, SPDC/KNSO joint patrols have restricted travel, forcibly recruited labourers and threatened eviction in 30 villages." (TBBC, 2010, p. 48)

The USDOS also reports on travel restrictions for foreign journalists, NGO staff, UN agency staff, and diplomats:

"The government maintained travel restrictions on foreign journalists, NGO staff, UN agency staff, and diplomats in most regions. Human rights advocates regularly were denied entry visas unless traveling under the aegis of a sponsor acceptable to the government and for purposes approved by the government. [...]. Authorities often allowed NGO staff to travel "unaccompanied" to areas affected by Cyclone Nargis in 2008 and 2009, although SB police monitored many visits. The work of the Tripartite Core Group--composed of the UN, the Association of South East Asian Nations, and the government--formed to address Cyclone Nargis-related matters, ended in July. In August a senior government official declared the recovery period over, and the government announced more restrictive policies regarding NGO travel and activities in cyclone-affected areas. Some international NGOs and UN agencies were required to have a government representative accompany them on field visits to other areas of the country, at the NGO or UN expense, although this rule was not consistently enforced. Foreign staff often experienced difficulty obtaining permission to travel to project sites outside of the cyclone-affected areas." (USDOS, 8 April 2011, Section 5)

### **8.3 Registration procedures at village level**

The Tripartite Core Group (TCG), comprised of representatives of the Myanmar government, the Association of Southeast Asian Nations and the United Nations, writes in its fourth Post-Nargis Periodic Review, published in July 2010:

"Myanmar legislation contains provisions in two laws to confer civic rights: the household registration document that shows that a household is registered at a certain geographic location, and the National Registration Card (NRC). In Myanmar, these two sets of documents are important in order to access government services. Together, these documents enable persons to access health facilities, send children to school, travel freely and hold land, among other basic rights. All citizens aged 10 and older in Myanmar are obligated to have a NRC. The PR II estimated that 13 per cent of surveyed household members lost their NRCs in Cyclone Nargis, whereas the PR IV questions focused on current rather than past NRC possession." (TCG, July 2010, p. 86)

The Country Report on Human Rights Practices 2010 by the US Department of State (USDOS) states:

"The law requires that persons who intend to spend the night at a place other than their registered domicile must inform local Peace and Development Council authorities in advance. Any household that hosts a person not domiciled there must maintain a guest list and submit it to authorities. Ward-level officials continued unannounced nighttime checks of residences for unregistered visitors. In contrast with 2009, there were no reports that the government required family photographs. Previously, authorities in Rangoon Division sporadically required households to have "family photographs" taken for government agents to use when conducting nighttime checks of residences." (USDOS, 8 April 2011, Section 1.f)

An article published in July 2011 by Mizzima, a News Agency focussing on Myanmar with its Head Office in New Delhi (India), mentions procedures regarding the mandatory registration of households which is required to keep the authorities informed of the whereabouts of citizens. The article describes bribery involved in getting ones household registered:

"One process that ought to be free is house registration. Burmese citizens must keep the authorities informed of their whereabouts and need to be registered. In theory, this process is free. During the new government's first parliamentary session, Minister of Immigration and Manpower Ministry Maung Oo briefed MPs saying application for household registration were being processed without delay if the papers were in order and it would not cost money. According to Maung Oo's briefing, the head of household should come in person and he or she must bring an application letter, Immigration Form 10 issued by the township of his or her last address, residential proof of the old address, the original and copy of ownership certificate of the house of the last address, original and copy of the occupational certificate issued by the city development committee in case of a new flat and apartment, and the rent agreement signed by a landlord for the tenants. But in practice, Mizzima found the real situation is not as straightforward as the minister described and money often has to change hands if the required documentation is to be obtained. Anecdotal evidence offered by a number of people Mizzima talked to offers an insight into the difficulties. On occasions, it would appear, it helps having friends in positions of authority." (Mizzima, 13 July 2011)

In March 2011, Burma News International (BNI) reports on the practice of Myanmar's border security force (Nasaka) of checking household lists among Muslims in northern Rakhine (Arakan) State (commonly referred to as "Rohingya"). The article also mentions group photographs being taken by the Nasaka:

"Maungdaw, Arakan State: Burma's border security force, or Nasaka, began checking household lists in Nasaka Area No. 6 and collecting money by using new tactics among the Rohingya community of northern Arakan State, said a local elder on condition of anonymity. The personnel of Nasaka Area No. 6 of Maungdaw Township started confirming the details of household registration lists and taking group photographs of families in Naribill Village of Maungdaw Township on March 14. [...] The Nasaka started checking and photographing families in said villages, with the Nasaka officers collecting 3,000 kyats per family. The checking and photographing is a process only required for the Rohingya community in Burma. In addition, the Nasaka have been demanding 8,000 kyats

to list newborn babies, and 10,000 kyats for a dead person to be removed from a family list." (BNI, 16 March 2011)

An earlier BNI article from November 2008 mentions that every household in Myanmar is required to have a family list, which contains the names, birth dates and thumbprints of every resident. These family lists had not been updated recently but officials started to update the lists in Mudon Township in November 2008:

"Village Peace and Development Council (PDC) officials in Mudon Township are collecting and updating family lists, say residents. Beginning last week, members of the People's Militia Force in Mudon began telling residents to present their family lists at village PDC offices. Every household in Burma is required to have a family list, which contains the names, birth dates and thumbprints of every resident. IMNA sources report that most residents are bringing their family lists to village PDC officials, who also keep a second copy of the list. [...] According to a villager who went to the village PDC office, the authorities are questioning households and making changes to ensure the family lists are accurate. [...] Until November, most family lists have not been updated recently. According to one resident, villagers update the lists rarely because they doing so requires making a payment, because people do not think the lists are important or because people do not like dealing with PDC authorities. The order is the first of its kind, although family lists were ordered to be displayed outside homes in Mudon Township during the cold season last year. The push to update the list also coincides with an attempt by the department of Immigration and National Registration to make identity cards for villagers in Mudon Township who do not have identification. Village PDC officials are explaining that they need to lists to verify how many people currently reside in Mudon Township. Many residents, however, expressed skepticism to IMNA's field reporter, and surmised that the lists were being updated in preparation for an election, scheduled for 2010. Many people in Burma do not have identity cards, and the regime attempted to make IDs for much of the population before a referendum on a new national constitution was held last May. The cards were free, but did not prove citizenship or permit travel." (BNI, 11 November 2008)

In December 2008, the Democratic Voice of Burma (DVB) also reports on local authorities making lists of family members in some townships:

"Local authorities of Rangoon Thingangyun, Hlaing Thayar, South Okkalapa townships have been making lists of family members of each household and their possessions since November, local residents said. 'In Thingangyun where we live, the authorities asked how many members are there in our family, how many bicycles or motorcycles or cars,' a resident of Thingangyun said. 'They also asked how many members living abroad and if they went there legally or not. [...].' It is not known for certain as to why the authorities have been making the lists. Some people gave the names of their family members who went abroad legally with passports but dared not give the names of those who went to work in Thailand illegally as migrant workers for fear of arrests and prosecutions." (DVB, 24 December 2008)

The latest available *Burma Human Rights Yearbook* for the year 2008, published in November 2009 by the Human Rights Documentation Unit (HRDU), which describes itself as the research

and documentation division of Burma's government in exile, contains a comprehensive chapter dealing with questions of restrictions of movement, travel permits and population registration. (HRDU, November 2009, chapter 14, p. 617-657)

## 9 Further Human Rights Considerations

### 9.1 Exit and return to Myanmar

#### *9.1.1 Exit and entry procedures.*

The US Department of State (USDOS) Country Report on Human Rights Practices 2010, dated April 2011, notes the absence of laws explicitly protecting foreign travel, emigration, and repatriation. The report states that there are no provisions with regard to forced exile or explicit restrictions on emigration, stating that “in general citizens who emigrated legally were allowed to return to visit relatives, and some who lived abroad illegally and acquired foreign citizenship also were able to return.” However, the government often revoked passports for political reasons. (USDOS, 8 April 2011, Section 2d)

The USDOS report further states with regard to exit procedures for Myanmar citizens:

“An ordinary citizen needed a passport from the Ministry of Home Affairs and a departure form from the Ministry of Immigration and Population to travel outside the country. [...]

Although there is no law explicitly restricting the foreign travel of citizens, the government carefully scrutinized prospective travel abroad of all passport holders. Rigorous control of passport and exit visa issuance perpetuated rampant corruption, as applicants were sometimes forced to pay bribes of up to 400,000 kyat (\$400).

The government regularly declined to issue passports to former political prisoners, activists, and some local staff of foreign embassies. College graduates who obtain a passport (except for certain government employees) are required to reimburse the government for the cost of their education. It frequently took several months to receive a passport, particularly if the applicant was unwilling to offer a bribe as incentive for speedier service.” (USDOS, 8 April 2011, Section 2d)

The UK Border Agency (UKBA) COI Report of June 2011 cites a letter obtained from the UK Foreign and Commonwealth Office (FCO), updated February 2010 (originally dated August 2007), which mentions three ways for citizens to legally exit Myanmar: 1) holding a valid passport and valid departure papers (‘D-forms, which state the authorised destination’), 2) exit at legal border crossing points, either with a passport and D-form or with a border crossing card (can be obtained at the border and requires the citizen to return within 24 hours), and 3) by means of a 3-year temporary passport, at the border crossing points Myawaddy and Kawthoung (this information is unconfirmed, as reported by to the FCO). The FCO letter further states that an exit stamp is required for legal exit. This stamp marks the date of departure and the flight number (exit by air) or the name of the border crossing (by land). (UKBA, 17 June 2011, p. 114-115)

The US State Department Country Report on Human Rights Practices mentions that, “[t]o address the problem of trafficking in persons, the government continued to hinder or restrict international travel for women, particularly those less than 25 years of age.” (USDOS, 8 April 2011, section 2d)

### *9.1.2 Illegal departure*

The Burma Immigration (Emergency Provisions) Act of 1947, Section 13 (1) contains the following provisions with regard to illegal entry:

“Whoever enters or attempts to enter the Union of Burma or whoever after legal entry remains or attempts to remain in Union of Burma in contravention of an of the provisions of this Act or the rules made thereunder or any of the conditions set out in any permit or visa shall be punished with imprisonment for a term not exceeding two years, or with fine, or with both.” (Burma Immigration Act, 13 June 1947, Section 13 (1))

In an August 2007 Response to Information Request (RIR), the Immigration and Refugee Board of Canada (IRB) cites an analyst for the Internal Displacement Monitoring Centre (IDMC) mentioning the case of a failed asylum-seeker who was, amongst others, sentenced to five years’ imprisonment under the Burma Immigration Act of 1947, Section 13(1) for illegal entry (IRB, 7 August 2007b).

Among the sources consulted by ACCORD within time constraints no further information could be found regarding this issue.

### *9.1.3 Treatment of persons returning from abroad*

An August 2007 Reponse to Information Request (RIR) by the Research Directorate of the Immigration and Refugee Board of Canada (IRB) cites a project officer of the Asian Legal Resource Centre (ALRC) as stating that they have observed a number of cases in which persons who had engaged in political activities while abroad and were repatriated to Myanmar “were arrested or disappeared from the airport upon arrival.” The ALRC notes the “highly arbitrary” nature of the state, as a result of which “two persons with apparently similar circumstances may be treated completely differently” by the authorities. The IRB further quotes a country analyst for IDMC who stated that “there are cases when people have faced severe repercussions after return”, mentioning the 2004 case of a failed asylum-seeker deported to Myanmar who was detained upon return and sentenced to 19 years in prison under the Burma Emergency Act of 1950, Article 5(J) for undermining the security of the Union and the restoration of law and order (seven years), Penal Code Article 468 (document forgery, 7 years) and under the Burma Immigration Act of 1947, Section 13(1) for illegal entry into the Union (five years). (IRB, 7 August 2007b)

### *Treatment of trafficked women returning illegally and return of people living with HIV/AIDS or trafficked persons perceived to have engaged in prostitution.*

The Women’s League of Burma (WLB) notes in a 2008 shadow report to CEDAW that women trafficked to China can be arrested by the authorities upon their return, mentioning the case of a woman who was detained by the Myanmar Immigration checkpoint at the border. As reported by WLB, the immigration officers demanded that she pays a fine of 60,000 Kyat, or she would be sentenced to four years and four months in prison for leaving Myanmar illegally without a passport (WLB, 2008, p. 27).

Among the sources consulted by ACCORD within time constraints no further information could be found regarding this issue.

#### *Treatment of persons returning without documentation*

The Burma Immigration (Emergency Provisions) Act of 1947, Section 3 (1-2) provides the following with respect to "entry without immigration permit or duly visaed passport":

"(1) No foreigner shall enter the Union of Burma without an immigration permit issued by the Controller or by any Official authorized to issue such permits or a valid passport duly visaed or endorsed by or on behalf of the President;

(2) No citizen of the Union of Burma shall enter the Union without a valid Union of Burma passport, or a certificate in lieu thereof, issued by a competent authority:

Provided that this section shall not apply to a person, who, in proceeding from one place in the Union of Burma to another place in the Union of Burma, traverses in the course of that journey any extra-territorial waters." (Burma Immigration Act, 13 June 1947, Section 3)

Among the sources consulted by ACCORD within time constraints no further information could be found with regard to this issue.

## **9.2 Administration of justice**

### *9.2.1 National legal framework (Penal Code and Criminal Procedure)*

The Penal Code and the Code of Criminal Procedure are made available by the Burma Lawyers' Council via the following links:

- Penal Code (India Act 45), 1860 (published by Burma Lawyers' Council)  
<http://www.blc-burma.org/html/myanmar%20penal%20code/mpc.html>
- Code of Criminal Procedure (India Act 5), 1898  
[http://www.blc-burma.org/html/Criminal%20Procedure%20Code/cpc\\_01-15.html](http://www.blc-burma.org/html/Criminal%20Procedure%20Code/cpc_01-15.html)

The US Department of State (USDOS) notes that the Penal Code allows "government prosecutors to charge detainees with multiple violations of archaic or widely ignored laws, such as violating currency laws, publishing materials likely to cause alarm, or spreading rumors." As reported by the USDOS, this practice can "result in lengthy cumulative sentences." (USDOS, 8 April 2011, Section 1e)

### *9.2.2 Independence of the judiciary*

In its report of April 2011 (covering the year 2010), the USDOS notes with regard to the question of independence of the judiciary of the government:

"The judiciary is not independent of the government. The SPDC appoints justices to the Supreme Court, which in turn appoints lower-court judges with SPDC approval. These courts adjudicate cases under decrees promulgated by the SPDC that effectively have the force of law. The regime frequently directed verdicts in politically sensitive trials of civilians.

Supreme Court justices and senior officials in the Office of the Attorney General allegedly were most often responsible for passing along and enforcing the orders of the military rulers.

The government continued to rule by decree and was not bound by any constitutional provisions providing for fair public trials or any other rights. Although remnants of the British-era legal system remain formally in place, the court system and its operation were seriously flawed, particularly in the handling of political cases. The misuse of blanket laws [...] as well as the manipulation of the courts for political ends continued to stifle peaceful dissent and deprive citizens of the right to a fair trial. [...] Pervasive corruption further served to undermine the impartiality of the justice system." (USDOS, 8 April 2011, Section 1e)

In its Universal Periodic Review (UPR) summary published October 2010, the UN Human Rights Council (HRC) refers to statements received from several NGOs (the Asian Legal Resource Centre (ALRC), several Australian campaign organisations, Article19, the International Center for Transitional Justice (ICTJ) and a number of NGOs operated by exiled Myanmarese) regarding Myanmar's judiciary:

"According to ALRC, the courts are subordinate to the executive and they can neither function in accordance with the laws that they purport to uphold, nor in a manner that can defend human rights. JS1 stated that there was no independent judiciary and laws were applied arbitrarily and no avenue for a free and fair trial. ARTICLE19 stated that the judicial system lacked independence and operated as an enforcer of government policy. ICTJ and JS3 noted similar concerns." (HRC, 18 October 2010, p. 6)

The March 2010 Progress Report of the UN Special Rapporteur on the situation of human rights in Myanmar notes a "lack of independence of the judiciary and weak rule of law." (HRC, 10 March 2010, p. 5).

### *9.2.3 Due process*

In a report published in October 2010, the Assistance Association for Political Prisoners (Burma) (AAPP) provides the following overview with regard to arrest, detention and procedural practices:

"Intelligence search, arrest and interrogate without warrant anyone deemed political, despite provisions in the Burmese Criminal Procedure Code for judicial oversight of arrests and detentions. All former political prisoners interviewed by AAPP were held longer than 48 hours without warrant and without being brought before a judicial authority. Basic rights of due process, including the right to a public trial and to be represented by a defense lawyer, are denied in political cases. In many cases, the accused are kept ignorant of the section of law under which they are charged. There are reported instances where Military Intelligence has passed sentences orally at the time of arrest, before any trial had taken place.

The State Protection Law allows for detention without charge or trial for up to five years and is frequently used to extend an already arbitrary and unjust detention. The judicial

system is controlled by the SPDC without judicial oversight, transparency or independence." (AAPP, 14 October 2010, p. 17-18)

In its April 2011 report (covering the year 2010), the USDOS reports as follows on legal provisions and practices regarding arrest and detention:

"The law does not prohibit arbitrary arrest or detention, and the government routinely employed both practices. The law allows authorities to extend sentences after prisoners have completed their original sentence, and the government regularly used this provision. The 1975 State Protection Law allows authorities to order detention without charge or trial of anyone they believe is performing or might perform any act that endangers the sovereignty and security of the state or public peace and tranquility. [...]

By law warrants for searches and arrests are required; however, the MSA and police have special authority to conduct searches and make arrests at will. The law permits a court to detain persons without charge for up to two weeks, with the possibility of a second two-week extension. However, authorities frequently and arbitrarily extended detentions beyond this period, sometimes up to a year, without bringing the detainees before a judge or informing persons of the charges against them. The government often held persons under the Emergency Act of 1950, which allows for indefinite detention.

Bail was commonly offered in criminal cases but rarely allowed for political prisoners. The government regularly refused detainees the right to consult a lawyer and occasionally imprisoned or detained lawyers.

The government continued to use incommunicado detention and often failed to inform detainees' relatives of detentions until much later." (USDOS, 8 April 2011, Section 1d)

USDOS further notes with respect to fair trial procedures:

"The law provides for the right to a fair trial, but it also grants broad exceptions, in effect allowing the regime to violate these rights at will. In common criminal cases, the court generally respected some basic due process rights, whereas there was a fundamental lack of due process in most politically sensitive cases.

Defendants do not enjoy a presumption of innocence. Juries are not used in trials. Defendants have the right to be present at their trials. In political cases defendants were rarely given timely access to an attorney. By law the government is not obligated to provide an attorney at public expense except in death penalty cases. Defendants and their attorneys were given access to government-held evidence relevant to their cases only after charges were made and when the case was put before the court.

Common criminal cases were open to the public. Defense attorneys in criminal cases generally had 15 days to prepare for trial. However, courts often did not notify defense attorneys in political cases of the trial start date, leaving them little or no time to prepare. Even when lawyers of political activists were allowed the 15 days to prepare their clients' cases, they often were not allowed to present arguments on the day the case was tried in court. Instead, in some instances the court sentenced defendants immediately upon

entering the courtroom, without arguments. Defense attorneys could call witnesses, cross-examine them, and examine evidence. However, their primary function was not to disprove a client's guilt, which was usually a foregone conclusion, but rather to bargain with the judge to obtain the shortest possible sentence for the client.

Political trials normally were not open to family members or the public. NLD members and other prodemocracy activists generally appeared able to retain the counsel of lawyers; however, lawyers were not always given the opportunity to mount a proper defense. They often were denied adequate access to their clients before trial, were not informed when trials would begin, and occasionally were not allowed to attend their clients' trials. Reliable reports indicated senior government authorities dictated verdicts in political cases, regardless of the evidence or the law.

Persons complained they were not informed of the arrests of family members in a timely manner, not told their whereabouts, and often denied the right to see them and attend court hearings." (USDOS, 8 April 2011, Section 1e)

With regard to the sentences passed, the USDOS further reports that "[t]he government routinely extended prison sentences under the *Law Safeguarding the State from the Dangers of Subversive Elements*, and notes that "[t]he minister of home affairs has the right to extend unilaterally a prison sentence by two months on six separate occasions, for a total extension of up to one year." The report also states that the (former) SPDC Chairman, Senior General Than Shwe, could "unilaterally extend or shorten a period of detention" (USDOS, 8 April 2011, Section 1e)

As reported by Amnesty International (AI) in June 2011, "[s]even prisoners, including two Buddhist monks who went on hunger strike at Insein prison in the main city of Yangon, were placed in solitary confinement" between 24 and 26 May 2011 in cells designed for military dogs described as "10 feet in length and seven feet wide, windowless and soundproof" (AI, 3 June 2011)

#### *9.2.4 Prison conditions*

The US Department of State (USDOS) April 2011 provides the following information with regard to the treatment of prisoners (including torture) and prison and labour camp conditions:

"Laws prohibit torture; however, members of the security forces reportedly tortured, beat, and otherwise abused prisoners, detainees, and other citizens. Security forces routinely subjected detainees to harsh interrogation techniques designed to intimidate and disorient. As in previous years, authorities took little or no action to investigate the incidents or punish the perpetrators. [...]

Former political prisoners released in September 2009 claimed the government subjected them to eight different types of torture--ranging from forced squatting for prolonged periods to electric shocks--during interrogation to extract confessions or to intimidate. They also complained of inedible food, beatings, and unsanitary conditions leading to

severe health problems. Many were held in solitary confinement and forced to share an eight-by-eight-foot cell with up to three other prisoners with only a bucket to use as a toilet.

Many monks held since 2007 for participating in the September 2007 prodemocracy protests against the regime were defrocked and forced to eat three meals a day (monks generally do not eat after midday). Authorities beat, sometimes severely, those who resisted. [...]

Prison and labor camp conditions generally were harsh and life threatening. Prison food, clothing, and medical supplies were scarce and of poor quality. Bedding often was inadequate, sometimes consisting of a single mat or wooden platform on the floor. In many cases family members of prisoners, who generally were allowed one or two visits per month, supplemented prisoners' official rations of medicine and basic necessities. According to the Thailand-based Assistance Association for Political Prisoners (Burma) (AAPPB), authorities sent more than 200 political prisoners to remote prisons located hundreds of miles from their families.

The Department of Prisons operated a reported 42 prisons and more than 100 labor camps. According to a human rights activist, there were approximately 63,000 male and 8,900 female prisoners. Pretrial detainees were held together with convicted prisoners, but political prisoners were typically held separately from common criminals. Former prisoners complained of being held in aging physical structures that received no maintenance and were infested with rodents, bacteria, and mold.

The government denied prisoners adequate medical care, although medical services in prisons partially reflected the poor health care services available to the general population. Collective reports from three dozen prisons indicated hepatitis B and amoebas were the most prevalent medical problems. Prisoners also suffered from various diseases, including malaria, heart disease, high blood pressure, and stomach problems--the result of unhygienic conditions and spoiled food. HIV/AIDS infection rates in prisons reportedly were high due to communal use of syringes for medical injections and sexual abuse by infected prisoners. One former political prisoner, who was released in 2009, claimed the annual budget for medical supplies in the prison where he was incarcerated was 50,000 kyat (approximately \$50). There were no medical doctors or trained health-care professionals on staff at several prisons. Prison officials took common criminals to the local hospital for treatment but were required to seek authorization from higher authorities before allowing political prisoners to seek medical assistance outside the prison. Political prisoners waited days to receive medical treatment for life-threatening conditions and several months for treatment of chronic and urgent problems. [...]

Prisoners and detainees did not have the right to manifest their religious beliefs or practices in public. Authorities did not permit prisoners and detainees to submit complaints to judicial authorities without censorship or to request investigation of credible allegations of inhumane conditions. The government did not investigate or monitor prison and detention center conditions.

The government did not permit media or other independent groups to monitor prison conditions. The government continued to deny the International Committee of the Red Cross (ICRC) unfettered access to prisons. As a result the ICRC could not follow the cases of more than 4,000 detainees, including prisoners of conscience, minors, foreigners, and sick and elderly prisoners. The government limited the ICRC's activities to supporting family visits to detainees and providing physical rehabilitation for landmine victims and other persons with disabilities. There was no ombudsman to serve on behalf of prisoners and detainees." (USDOS, 8 April 2011, Section 1c)

The Amnesty International (AI) Annual Report 2011, dated May 2011, states:

"Lack or refusal of adequate medical treatment in prisons continued to be reported, with many prisons having no medical facilities. Many political prisoners, particularly those held in remote prisons where medical treatment was often denied them, suffered from ill-health. These included a group of Shan politicians, all prisoners of conscience, sentenced in 2005 for criticizing the National Convention and denied adequate medical attention in prison" (AI, 13 May 2011)

The AAPP October 2010 report provides the following information regarding the treatment of prisoners/conditions in prisons:

"Individuals in the first phase of arrest and detention, before they have access to a lawyer, are at greatest risk of torture and other forms of ill-treatment. Incommunicado and secret detention are common practice in Burma and often lasts until a confession is obtained, which can take months and occasionally years. It can cause untold mental suffering for the detainee, as well as their family, and in this respect is a form of psychological torture. [...]

Almost all political prisoners are beaten during interrogation. Some are subject to extreme physical assaults resulting in internal bleeding, unconsciousness and sometimes death. Beatings include being punched in the face, kicked in the head, beaten with rifles, sticks and iron bars. [...] Some prisoners are forced to wear shackles for periods as long as one year [...] Deprivation of food, water and sleep is common during interrogation or as a punishment. [...] Solitary confinement is routine, and the practice is not motivated by legitimate penological concerns but a political will to demoralize, punish and marginalize political prisoners. [...]

Other reported torture methods include: electric shock; burning; the 'iron road', rolling an iron rod up and down the shins until the skin peels off; 'the helicopter', being suspended from the ceiling by the arms and spun around while beaten." (AAPP, 14 October 2010, p. 13-15)

"In Burma, torture is not limited to physical assaults and psychological abuse, but further, prison authorities routinely and deliberately aggravate prison conditions and deny medical care to political prisoners, causing a level of suffering, amounting to torture. Malnutrition, poor sanitation and unclean water are serious problems throughout the prison system, posing a major health risk. According to testimonies, political prisoners continue to receive

very low quality food from prison authorities; often the food is rotten, half cooked, with stones and insects, resulting in food poisoning and gastric ailments. Many prisoners face starvation." (AAPP, 14 October 2010, p. 16)

"Tuberculosis, malaria and HIV are a constant and serious threat in Burma's prisons, due to overcrowding, lack of hygiene, lack of adequate medical care and exposure to extreme climates. Insein Prison houses about 9,000 to 10,000 inmates but its capacity is about 6,000. Sick and healthy prisoners are routinely mixed together. Inmates rely on shared razor blades, which promotes the transmission of Hepatitis and HIV. Re-using needles is commonplace, with medical staff using the same needle on a number of different prisoners.

Regardless of their illness, prisoners report receiving the same medication, and are given low grade or sometimes the wrong medication. Prison officials take common criminals to the local hospital for treatment, but are required to seek authorization before allowing political prisoners to seek medical assistance outside the prison, which can result in their waiting for weeks or months to receive treatment for life-threatening problems." (AAPP, 14 October 2010, p. 17)

"There is a clear chain of command leading from the perpetrators of torture to the highest offices of the SPDC. Torture during interrogation is committed primarily by the Military Intelligence Service under the Directorate of Defense Services. Interrogations are also conducted by the Bureau of Special Investigations (BSI) and the Myanmar Police Force, one branch of which is the Special Information Force ('Special Branch'). The BSI and the Myanmar Police Force are accountable to the Minister of Home Affairs.

The abuses carried out in detention facilities, in Burma, are part of a systematic process where torture is not only accepted but also encouraged. Evidence suggests it has become a cultural norm amongst the military, police and security officials for extracting false confessions, creating a climate of fear and as a punishment." (AAPP, 14 October 2010, p. 18-19)

#### *9.2.5 Death penalty*

A National Report submitted by the Myanmar Government to the UN Human Rights Council (HRC) and published in November 2010, states with regard to the death penalty:

"Death penalty is prescribed under the law to be imposed for the most serious crime in accordance with the law in force at the time of the commission of the crime. This penalty can only be carried out pursuant to a final Judgment rendered by a competent court. Myanmar notes that this practice is in line with International standard including article 6(2) of the International Covenant on Civil and Political Rights (ICCPR). Although the death penalty is imposed in accordance with the law, Myanmar never carries out the death penalty since 1988. Persons below the age of 16 years and youth at the time of the commission of the crime for which death penalty was prescribed shall not be sentenced with the death penalty." (HRC, 10 November 2010 p. 6)

The March 2010 Progress Report of the UN Special Rapporteur on the situation of human rights in Myanmar, published by the UN Human Rights Council (HRC), states:

“While the Special Rapporteur again commends the Government for the effective moratorium on the use of death penalty, he regrets that lower courts continue to hand down death sentences. During his last mission, the Special Rapporteur raised this issue with the Attorney General and Chief Justice as a step backwards for Myanmar.” (HRC, 10 March 2010)

Amnesty International (AI) reports in May 2011 that the Myanmar government has commuted all death sentences to life imprisonment (AI, 17 May 2011).

The UK Foreign and Commonwealth Office reports in March 2011:

“Although no one has been executed under state law since 1988, two Burmese officials were sentenced to death in late 2009. The men were reportedly arrested for leaking confidential information. The death sentences imposed were part of a wave of harsh punishments handed down by Burmese courts as the regime cracked down on dissent ahead of the elections in November 2010.” (FCO, 31 March 2011)

As reported by Radio Free Asia (RFA) in January 2010, a court inside Insein Prison handed down death sentences against two prisoners, a government official and a retired army officer, for leaking secret information regarding a secret network of military tunnels and high-level contacts in 2008 between the Myanmar government and North Korea. RFA quotes a lawyer in Myanmar as saying that it is doubtful that the death sentences will be carried out (RFA, 8 January 2010).

### **9.3 Food security**

The Internal Displacement Monitoring Centre (IDMC) states that according to information from the World Food Programme (WFP) dated January 2011, “insecurity was particularly high in 2010 in Northern Rakhine, Chin, Kachin and Shan States and in Magway Region. Almost nine per cent of children under five were acutely malnourished” (IDMC, 19 July 2011, p. 6). The IDMC further provides the following background information with reference to a Chatham House report dated September 2010:

“IDPs in hiding in the south-eastern parts of conflict zones have constantly been moving, making agricultural activity difficult and limiting their access to safe drinking water. Some IDPs have reportedly raised crops on several fields in different locations, to maintain their access to food in case some crops were destroyed or confiscated. There have been reports of authorities confiscating food from IDPs in relocation sites, which was then rationed and distributed among all IDPs in the site (Chatham House, September 2010, pp.34, 36)” (IDMC, 19 July 2011, p. 6)

An IRIN article reports as follows on the current situation of food security in Kachin State, with reference to Kachin human rights and aid groups:

"Aid workers in Myanmar's northern Kachin State have expressed concern over prospects for food security after recent fighting between government forces and the rebel Kachin Independence Army (KIA).

Up to 25,000 people are now believed to have been displaced [...] Thousands of farmers abandoned their crops and livestock at a critical time of year, say aid groups. Farmers in Kachin's highlands traditionally grow their paddy, a staple part of the Burmese diet, in June, while farmers in the lower areas grow theirs in July and August. And while a small number of farmers have remained behind to work their fields, the vast majority have not. [...]

Aid groups now worry that lack of local paddy production will have a serious impact on all of Kachin State, as people from areas such as Myitkyina, Waimaw and Laiza rely on the rice produced in the conflict-affected areas." (IRIN, 19 August 2011)

The Physicians for Human Rights (PHR) reports that "[d]ecades of neglect and widespread abuses have, moreover, devastated the Chin who remain in Burma and rendered them highly food insecure and vulnerable to natural disaster." PHR notes that food crisis still continues in the four southern townships of Chin state continues, with an estimated 114 villages in Kanpalet Township facing acute food shortages as a result of destruction of crops and food stores by an explosion in the rat population and inadequate government responses to the crisis (PHR, January 2011, p 17).

## **9.4 Internal displacement**

The IDMC report of July 2011 provides the following information on the situation of Internally Displaced Persons (IDPs), referring to UNHCR and NGO reports:

"UNHCR used an estimate of 451,000 IDPs in Myanmar as its planning figure for 2010, while the Thailand-Burma Border Consortium (TBBC) estimated that in July 2010 at least 446,000 IDPs were living in the 37 surveyed townships (administrative sub-districts) in southern Shan, Kayah/ Karenni, Kayin/Karen and Mon States and Bago/ Pegu and Tanintharyi/Tenasserim Regions. Of those IDPs, it was believed that 125,000 were living in relocation villages in government-controlled areas, 115,000 dispersed in hiding areas in the jungle, and 206,000 living in areas administered by ceasefire NSAGs. The TBBC also reported that an estimated 73,000 of the IDPs in south-eastern Myanmar were newly displaced between August 2009 and July 2010, including some 26,000 people in northern Karen areas and some 8,000 in southern Mon areas (UNHCR, January 2010; TBBC, 28 October 2010, p.20).

Information on internal displacement resulting from recent fighting was scarce, although available reports indicate that thousands were displaced in Kayin/Karen, Shan and Kachin States and into Thailand and China between November 2010 and June 2011 (IRIN, 29 November 2010; Shan Herald Agency for News, 13 June 2011; ReliefWeb, 17 June 2011). It was believed that more than 500,000 IDPs were living in eastern Myanmar, including in urban areas and mixed administration or 'grey' areas (TBBC, 28 October 2010, p.20). An unknown but significant number of IDPs were believed to be living in other parts of

Myanmar. Estimates of the total number of IDPs in the country – including many long-term IDPs who had not reached a durable solution – went up to several million (RSC, February 2007, pp.5-6).” (IDMC, 19 July 2011, p. 5)

IDMC reports on the living conditions of IDPs as follows:

“People displaced due to conflict in Myanmar lack access to food, clean water, health care, education and livelihoods. Their security is threatened by ongoing fighting, including where conflict parties reportedly target civilians directly. Although the limited access of humanitarians to most conflict-affected areas has hampered the provision of assistance and protection, the Government of Myanmar took a positive step in 2010 by concluding an agreement with the United Nations High Commissioner for Refugees (UNHCR) for the provision of assistance to conflict-affected communities.” (IDMC, 19 July 2011, p. 1)

The US Department of State (USDOS) Country Report on Human Rights Practices 2010, dated April 2011, notes:

“According to the UNHCR, there were at least 451,000 IDPs in the country as of December, although accurate figures were difficult to determine due to poor access to affected areas. According to several international organizations, there were believed to be several million IDPs, but exact estimates were impossible due to lack of international access to certain areas of the country. Most international attention continued to focus on the eastern region, where conflict and repressive government policies displaced hundreds of thousands in the past decade within partial reach of international assistance, according to international relief and monitoring organizations. [...]

The Thai-Burma Border Consortium estimated at least 470,000 IDPs in the east, of whom 231,000 were in temporary settlements in areas administered by ethnic nationalities, 111,000 were in hiding in remote areas, and 128,000 had followed SPDC eviction orders and moved to designated relocation sites.

The Karen, Shan, Rohingya, and Kayah were the most affected groups. The main causes of internal displacement were army offensives against ethnic opposition groups, forced relocation and labor, and recruitment of child soldiers. The government provided little or no protection or assistance to IDPs, many of whom were forcibly resettled under dangerous conditions. Authorities denied humanitarian organizations access to many IDPs in eastern regions along the Thai border on security grounds. IDPs in these areas regularly suffered hardships as a result of fighting between government army and insurgent groups, according to credible observers along the border. In addition both government army and insurgent groups frequently raped female IDPs, according to these observers. Karen IDPs in these areas have remained displaced for a number of years.

According to NGOs, internal conflict in Karen State displaced more than 20,000 persons during the year. Heavy fighting broke out near Myawaddy on November 8 and continued sporadically at year's end. Persons in the area reported that many individuals crossed the border into Thailand daily but returned to their homes at night when fighting calmed down [...].” (USDOS, 8 April 2011, Section 2d)

The Internal Displacement Monitoring Centre (IDMC) states in its *Global Overview of Trends and Developments in 2010* of March 2011:

“There are no accurate figures available on the total number of people displaced within Myanmar by armed conflict or human rights violations. At the end of 2010, it was estimated that 446,000 people were living in internal displacement due to armed conflict in the rural areas of eastern Myanmar. An estimated 125,000 IDPs were gathered in government-run relocation sites, 115,000 were dispersed in hiding areas in the jungle, and 206,000 were living in areas administered by different ethnic non-state armed groups who had concluded a ceasefire with the government. An unknown but significant number of people remained displaced in other parts of the country, including in towns and cities.

In 2010, those IDPs in hiding were the worst off in terms of their access to basic necessities and enjoyment of a range of other rights, and they were most at risk of having to flee again. However, the situation of IDPs also grew more unstable in ceasefire areas where armed conflict resumed, while many IDPs in relocation sites suffered because they had limited access to land, had to give much of their crops to the army, and were vulnerable to diseases due to inadequate sanitation and limited access to clean water.” (IDMC, 23 March 2011)

The IDMC further notes that fighting that followed the government Border Guard Forces (BGF) plan has led to displacement, including in ceasefire areas, where civilians had previously been able to live in relative safety (IDMC, 23 March 2011).

The Amnesty International (AI) Annual Report 2011 (covering the year 2010) states:

“The army continued to forcibly displace residents of entire villages, primarily those populated by ethnic minorities, adding to the country’s roughly 500,000 internally displaced people.” (AI, 13 May 2011)

A July 2011 article by the Integrated Regional Information Network (IRIN) reports on displacement in Kachin State, with reference to information provided by the Kachin Independence Organization (KIO), the political wing of the Kachin Independence Army (KIA) involved in fighting with government troops in the state:

“Since the fighting erupted in the second week of June after failed negotiations, KIO reports that more than 16,000 people have fled to Laiza, while more than 4,000 are hiding in the jungle to avoid Burmese soldiers. Though they are not welcomed by the Chinese government, more than 10,000 people have also fled to China, according to the Kachin Women’s Association Thailand (KWAT), a Chiang Mai-based agency advocating democratic change in Myanmar. Even in areas where fighting has not erupted, people are fleeing, carrying as many belongings as they can, out of fear that the war will come to their area within days.” (IRIN, 1 July 2011)

## 9.5 Housing, land and property rights

The US State Department report of April 2011 reports on land ownership and forced relocations:

“The Land Acquisition Act protects the privacy and security of the home and property. [...]

The law does not permit private ownership of land; the government can confiscate the land of individuals at any time. Weak private property rights and poor land ownership records facilitated involuntary relocations of persons by the government, especially in rural areas.

In early February authorities ordered approximately 270 Rangoon households, whom it claimed were illegal squatters, to move so the houses could be demolished. Police detained U Tun Yi, a resident affected by the removal, who submitted a letter to request that authorities stop the demolition. Police released him at the end of February.

On May 30, the local government ordered 1,000 civilians from Myitkyina and Waingmaw townships to move from the vicinity of the Myitsone dam project site in Kachin State. Several protested the forced relocation and then fled to the border with China when the regime threatened to arrest them.

There were some reports of forced relocations and demands for forced labor to build infrastructure. While more frequent in rural areas, reports of forced relocation in urban areas also existed. There were numerous reports government troops looted and confiscated property and possessions from forcibly relocated persons or persons who were away from their homes. The practice was more prevalent in Shan, Kayah, and Karen states and in areas of Mon State and Bago Division. The government made no attempts to punish offenders or compensate victims for their losses (see also Section 2.d).” (USDOS, 8 April 2011, Section 1f)

Mizzima News states in a report of May 2011 that the numerous reported confiscations of farmer’s land confiscated by the government over the last 10 years (e.g. in Arakan State in May 2009 and Kachin State in December 2010) are in contradiction to domestic law, including the 2008 Constitution which provides in Section 36 that the state ‘shall not nationalize economic enterprises’. The report notes that the *Land Nationalization Act* of 1953, when passed, was intended to provide land to farmers. However, the government has attempted to use the powers conferred on it by this law “to justify confiscations of farmland from small farmers” in order to conclude contracts with foreign companies to increase fiscal revenue.

Mizzima further notes that the government’s active engagement in or enabling of confiscation of farmland represents a violation of the *Law Safeguarding Peasant Rights* of 1963. The report states that this law as well as the 1963 *Tenancy Law* were intended to protect farmers. Section 3 of the *Law Safeguarding Peasant Rights* is quoted as follows:

“[N]otwithstanding anything elsewhere contained in any existing law, a Civil Court shall not make a decree or order for:

(a) a warrant of attachment for or confiscation of agricultural land; neither for employed livestock and implements, harrows and implements, other animate and inanimate implements, nor the produce of agricultural land,

(b) prohibition of work upon or entry into agricultural land,

(c) prohibition of movement or sale in whole or part or use of employed livestock and implements, harrows and implements, other animate and inanimate implements, or the produce of agricultural land and

(d) arrest in detention of a peasant in connection with any matter included in paragraphs (a) (b) and (c)" (Mizzima, 23 May 2011)

The Progress Report by the UN Special Rapporteur on the situation of human rights in Myanmar, published by the UN Human Rights Council (HRC) in March 2011, mentions that complaints have been made to the International Labour Organization with regard to land confiscation (although this falls outside the mandate of the ILO) (HRC, 7 March 2011, p. 17).

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