DYING ALIVE

GUY HORTON

Co-Funded by The Netherlands Ministry for Development Co-Operation
DYING ALIVE

AN INVESTIGATION AND LEGAL ASSESSMENT OF HUMAN RIGHTS VIOLATIONS INFLICTED IN BURMA, WITH PARTICULAR REFERENCE TO THE INTERNALLY DISPLACED, EASTERN PEOPLES

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CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACRONYMS, ABBREVIATION</td>
<td>i</td>
</tr>
<tr>
<td>DEDICATION</td>
<td>v</td>
</tr>
<tr>
<td>EXECUTIVE SUMMARY</td>
<td>1</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>1</td>
<td>PREFACE</td>
</tr>
<tr>
<td>1.1</td>
<td>Background</td>
</tr>
<tr>
<td>1.2</td>
<td>Purpose</td>
</tr>
<tr>
<td>1.3</td>
<td>Premise</td>
</tr>
<tr>
<td>1.4</td>
<td>Scope</td>
</tr>
<tr>
<td>1.5</td>
<td>Target Groups</td>
</tr>
<tr>
<td>1.6</td>
<td>Preliminary Objections</td>
</tr>
<tr>
<td>2</td>
<td>METHODOLOGY</td>
</tr>
<tr>
<td>2.0</td>
<td>Methodology</td>
</tr>
<tr>
<td>3</td>
<td>THE PRINCIPLE OF UNIVERSAL JURISDICTION</td>
</tr>
<tr>
<td>3.1</td>
<td>Genocide</td>
</tr>
<tr>
<td>3.2</td>
<td>Crimes against Humanity</td>
</tr>
<tr>
<td>3.3</td>
<td>The Geneva Conventions</td>
</tr>
<tr>
<td>4</td>
<td>INTRODUCTION: THE CONCEALED NATURE OF THE SUFFERING</td>
</tr>
<tr>
<td>4.1</td>
<td>Burma as a whole</td>
</tr>
<tr>
<td>4.2</td>
<td>Eastern Burma</td>
</tr>
<tr>
<td>4.3</td>
<td>Horizontal breakdown of displaced groups</td>
</tr>
<tr>
<td>4.4</td>
<td>Visual depiction of the situation of the displaced</td>
</tr>
<tr>
<td>4.5</td>
<td>Map of destroyed and abandoned villages</td>
</tr>
<tr>
<td>4.6</td>
<td>Map of forced relocation sites</td>
</tr>
<tr>
<td>4.7</td>
<td>Bar Charts showing multiple displacement</td>
</tr>
<tr>
<td>4.8</td>
<td>External Displacement</td>
</tr>
<tr>
<td>4.9</td>
<td>Conclusion on scale and gravity of the problem</td>
</tr>
<tr>
<td>4.10</td>
<td>Explanation for international ignorance</td>
</tr>
<tr>
<td>4.11</td>
<td>Burma: a silenced country</td>
</tr>
<tr>
<td>5</td>
<td>LANGUAGE AND CONCEPTS</td>
</tr>
<tr>
<td>5.1</td>
<td>Article Three of The Geneva Conventions</td>
</tr>
<tr>
<td>5.2</td>
<td>Border Areas development policy</td>
</tr>
<tr>
<td>5.3</td>
<td>Border Areas Development Policy</td>
</tr>
<tr>
<td>5.4</td>
<td>Buddhistization</td>
</tr>
<tr>
<td>5.5</td>
<td>Burma or Myanmar</td>
</tr>
<tr>
<td>5.6</td>
<td>Burmanisation/Myanamification</td>
</tr>
<tr>
<td>5.7</td>
<td>Crimes against Humanity</td>
</tr>
<tr>
<td>5.8</td>
<td>Defence mechanism: identification with the aggressor</td>
</tr>
<tr>
<td>5.9</td>
<td>Depressive Type</td>
</tr>
<tr>
<td>5.10</td>
<td>Distinct entity</td>
</tr>
<tr>
<td>5.11</td>
<td>Ethnic Cleansing</td>
</tr>
<tr>
<td>5.12</td>
<td>Ethnic minorities/nationalities/ peoples</td>
</tr>
<tr>
<td>5.13</td>
<td>Ethnocratic State</td>
</tr>
<tr>
<td>5.14</td>
<td>Extrajudicial and arbitrary killing</td>
</tr>
<tr>
<td>5.15</td>
<td>Fungibility funds</td>
</tr>
<tr>
<td>5.16</td>
<td>Genocide</td>
</tr>
<tr>
<td>5.17</td>
<td>Human rights abuses</td>
</tr>
<tr>
<td>5.18</td>
<td>Human rights violations</td>
</tr>
<tr>
<td>5.19</td>
<td>Insurgents, Terrorists, Resistance fighters</td>
</tr>
<tr>
<td>5.20</td>
<td>Intention</td>
</tr>
<tr>
<td>5.21</td>
<td>Internally Displaced Persons</td>
</tr>
<tr>
<td>5.22</td>
<td>Karen, or Kayin state</td>
</tr>
<tr>
<td>5.23</td>
<td>Karenni or Kayah state</td>
</tr>
<tr>
<td>5.24</td>
<td>Killing: Selective and Mass</td>
</tr>
<tr>
<td>5.25</td>
<td>Knowledge</td>
</tr>
</tbody>
</table>
5.26 Motive
5.27 Nation Building
5.28 State Peace and Development Council
5.29 Perpetrator
5.30 Policy
5.31 Post Traumatic Stress Disorder
5.32 Splinter groups: Legal status
5.33 Statute of Limitation
5.34 Violence: Negative and Positive
5.35 War Crimes

CHAPTER 6: BACKGROUND
6.1 Ethnic Groups
6.2 States
6.3 Population
6.4 Divergent growth rates
6.5 Issue of Numbers
6.6 Relationship between population and human rights violations
6.7 Relation between population and health
6.8 Population and health: Burman and ethnic internally displaced people
6.9 Population and health: tentative conclusions
6.10 Special status of mother and infant victim groups
6.11 Population in Karenni State
6.12 Relationship between birth rates and policy

CHAPTER 7: HISTORY
7.1 Pre-colonial experience
7.2 Colonial experience
7.3 Second World war
7.4 Independence
7.5 The 1962 coup: political and ethnic motives

CHAPTER 8: CURRENT SITUATION OF EASTERN ETHNIC GROUPS
8.1 Burman policy
8.2 Implementation of policy
8.3 Political and ethnic factions
8.4 Communists
8.5 Karen National Union
8.6 The Democratic Karen Buddhist Army (DKBA)
8.7 The Karen Peace Army
8.8 The Shan
8.9 The Karenni
8.10 Commentary on Professor Ball's analysis
8.11 Conclusion on present state of eastern ethnic groups

CHAPTER 9: ESTABLISHING A MORAL COMPASS
9.1 Constructive Engagement
9.2 International Crisis Group: Aid to the Border Areas
9.3 Assumptions about sanctity of nation State
9.4 Economic opportunism
9.5 Effects of Tourism
9.6 Non Governmental organisations
9.7 Failure to address and identify underlying intent
9.8 Constructive engagement by the UN
CHAPTER 10: UNITED NATIONS REPORTS AND RESOLUTIONS: 116
A MANIFEST, WIDESPREAD, SYSTEMATIC AND CONSISTENT PATTERN OF DESTRUCTION

10.1 Justification for inclusion
10.2 Current Situation: March 2005
10.3 Situation: autumn 2004
10.4 UN Commission on Human Rights, April 2004
10.5 UN General Assembly Resolution Dec. 2003
10.6 Statement by UN Special Rapporteur, November 2002
10.7 General Assembly Resolution 2002
10.8 General Assembly Resolution March 2001
10.9 General Assembly Resolution Feb 2000
10.10 General Assembly Resolution Feb. 1999
10.11 Report by UN Special Rapporteur 1999
10.13 Report by UN Commission on Human Rights, 1996
10.14 Commission on Human Rights Resolution, 1993
10.15 Special Rapporteur on Human Rights, 2001
10.16 Amnesty International: Ethnic Minorities targets of repression, 2001
10.18 Myanmar and Genocide: the 2004 Stockholm Conference on Genocide
10.19 Conclusion

CHAPTER 11: PROJECT AIMS 139
11.1 To analyse the violations in terms of international law
11.2 To establish the Junta’s pariah status
11.3 To establish the legal obligation to protect and assist the internally displaced
11.4 To challenge impunity

CHAPTER 12: APPLICABLE INTERNATIONAL LAW 141
12.0 Introduction
12.1 Legal Status of State violence
12.2 Applicability of international law to internal conflict
12.3 International Conventions applicable to Burma
12.4 International Customary law
12.5 Crimes Against humanity
12.6 Genocide
12.7 War Crimes
12.8 Applicable Case Law from ICTR and ICTY
12.9 Position of the Rome Statute and International Criminal Court
12.10 International Law and State Sovereignty
12.11 Intervention and the Responsibility to Protect
12.12 The Geneva Conventions Article Three
12.13 Burma’s general relationship to Genocide
12.15 Enforcement of genocide
12.16 Burma’s position in relation to The 1948 Convention on Genocide
12.17 The Duty to prevent Genocide
12.18 Definition and understanding of Genocide
12.19 Genocide and Intention
12.20 Genocide and protected groups
12.21 Genocide: Definition of perpetrators and victims
12.22 Meaning of destruction of a group in whole or part
12.23 Meaning of destruction of part: numerical
12.24 Meaning of destruction part: physical
12.25 Specific defining acts of genocide
12.26 Genocide by killing: mass and selective killing
12.27 Genocide: general relationship between selective killing and destruction of wider group
12.28 Genocide: relation between selective killing and destruction of the wider group
12.29 Genocide in Burma: a preliminary hypothesis
12.30 Genocide: indirect, synergistic destruction
12.31 Genocide: causing serious bodily and mental harm
12.32 Genocide: rape and sexual violence
12.33 Genocide: indirect methods of destruction
11.34 Connection between UN Resolutions on Myanmar and Genocide
12.35 Connection between conditions inflicted in parts of eastern Burma and ICTR and ICTY Judgements
12.36 Genocide by preventing births within the group
12.37 Genocide by forcible transfer of population
12.38 Unresolved legal issues
12.39 Issue of cultural genocide and Burmanisation
12.40 Issue of destruction of language
12.41 Issue of ethnic cleansing
12.42 Summary of key points on Genocide
12.43 Genocide and Intent
12.44 Explicit and inferred intent
12.45 Status of victim group
12.46 Relation between individual acts and policy
12.47 Knowledge of perpetrators
12.48 Question of proof of intent
12.49 Summary of judicial interpretations of genocide
12.50 Indictable acts of genocide
12.51 Reluctance to enforce the Genocide Convention
12.52 Crimes against Humanity
12.53 Differences between Genocide and Crimes against Humanity
12.54 Definition of groups protected by Crimes against Humanity
12.55 Summary of distinguishing characteristics of Crimes against Humanity
12.56 Crimes against Humanity as defined by the Rome Statute
12.57 The Crime against Humanity of Extermination
12.58 Crime against Humanity of Persecution
12.59 Relation between Crime against Humanity and Policy
12.60 Relation between Crime against Humanity and Intent
12.61 Crime against Humanity and Knowledge
12.62 Difference between the Crime against Humanity of Persecution and Genocide
12.63 Crimes against Humanity of Torture
12.64 War Crimes
12.65 War Crimes as defined by the Rome Statute
12.66 The Geneva Conventions and the transborder attacks on refugee camps
12.67 Outstanding general legal issues
12.68 Hierarchy of crimes
12.69 Transcultural issues
12.70 Convergence between UN Resolutions, UN Special Rapporteurs’ Reports, Judgements of the ICTR/ICTY Tribunals, applicable law and the situation in Burma

CHAPTER 13: EVIDENCE OF INTENTION TO DESTROY 200
13.1 Historical extent of the suffering
13.2 Explicit intention
13.3 Alleged extermination order
13.4 Background to the order
13.5 Alleged oral expression of genocidal intent
13.6 Alleged biological genocide
13.7 Motives for sexual violence
13.8 Alleged document exhorting biological genocide
13.9 Forced impregnation and its relation to genocide
13.10 Female victims as distinct entities essential to biological sustainability
13.11 Relation between Burmanisation and biological genocide
13.13 1988 Killings
13.12 Junta racism
13.14 Institutionalised racism and national identity
13.15 Destruction and plunder of food
13.16 Incitement to destroy democratic and ethnic opposition
13.17 Policy of Burmanisation
13.18 Evidence of inferred intention

CHAPTER 14: IDEOLOGY
14.1 Totalitarianism
14.2 Internal Racism
14.3 External Racism
14.4 Rewriting History
14.5 Militarisation and Fascism

CHAPTER 15: EVIDENCE OF PHYSICAL DESTRUCTION
15.1 Intercept: State expression of widespread violations and culpability
15.2 The Four Cuts Strategy
15.3 The Four Cuts: a political or ethnic strategy?
15.4 Orders to destroy
15.5 Order to destroy food
15.6 Order to kill
15.7 Destruction by killing
15.8 Numerical requirement
15.9 Arbitrary killing and genocide
15.10 Estimates of numbers killed in eastern Burma
15.11 Estimates of overall numbers killed in Burma
15.12 Case Study: 2002 Dooplaya massacre
15.13 Reasons for choice
15.14 Background to the massacre
15.15 The massacre itself
15.16 General context of massacre
15.17 Conclusions on massacre
15.18 Massacre as a Crime against Humanity
15.19 Massacre as an act of Genocide
15.20 Massacre and the issue of numbers
15.21 Culpability
15.22 Killing: Shan State
15.23 Forced disappearances and death squads
15.24 Killing: forced disappearances and death squads
15.25 Methods of killing
15.26 Analysis of death squads
15.27 Delta massacre
15.28 Reason for choice
15.29 Phase 1 of Delta massacre: initial mass killing
15.30 Phase 2: Torture and selective killing
15.31 Phase 3: Dispersal of survivors throughout Burma
15.32 Phase 4: Infliction of death through starvation and overwork
15.33 Phase 5: Attempted forced relocation
15.34 Phase 6: Long term consequences of Delta massacre
15.35 Wider effects
15.36 Legal conceptualisation of massacre
15.37 Selective killing and genocide in Shan State
15.38 Chemical warfare: Shan State
15.39 Killing democracy activists
15.40 Depayin Massacre: Ambush of Daw Aung San Suu Kyi's convoy
15.41 Depayin ambush: sequence of events
15.42 Legal analysis of Depayin ambush
15.43 Significance of ambush
15.44 Overall conceptualisation of Depayin ambush
15.45 Destruction by inflicting mental and bodily harm
15.46 Rape
15.47 Sexual violence against Shan
15.48 Corroborated by US Government
15.49 Earthrights International Report on rape
15.49 Report on Rape by Refugees International
15.51 Rape: Karen Women Organisation's Report
15.52 Rape: Women League of Burma's experience
15.53 Conclusion on Rape
15.54 Torture
15.55 Torture: Methods
15.56 Torture: Burman and ethnic experiences
15.57 Indirect destruction
15.58 Indirect destruction: the Karenni experience
15.59 Indirect destruction: the Shan experience
15.60 Indirect destruction: the Wa experience
15.61 Indirect destruction: the Karen experience
15.62 Indirect destruction: the Moslem experience
15.63 Indirect destruction: the Mon experience

CHAPTER 16: COMPARISONS AND CONTRASTS: 442
THE LOWLAND BURMAN EXPERIENCE AND ETHNIC GROUPS.
16.1 Introduction
16.2 Lowland Burma
16.3 Economic policies
16.4 Paddy procurement system
16.5 Forced Labour
16.6 Arbitrary taxation
16.7 Health
16.8 Imprisonment and torture
16.9 Murder
16.10 Forced Labour
16.11 Conclusion on lowland experience

CHAPTER 17: COMPARISON AND CONTRASTS ON BURMAN 451
AND ETHNIC EXPERIENCES

17.1 Introduction: the upland ethnic experience
17.2 Example of 6 months destruction in Karen State
17.3 Commentary on Karen destruction
17.4 Systematic destruction of paddy
17.5 Systematic destruction of animals
17.6 Systematic destruction of homes and plunder of contents
17.7 Direct killing
17.8 Sexual violence
17.9 Forced relocation
17.10 Forced labour
17.11 Confiscation of land
17.12 Denial and destruction of health service
17.13 Destruction of Karen health clinics
17.14 Conclusion on legal significance of destruction of health clinics
17.15 Plunder, extortion and robbery
17.16 Imprisonment and deprivation of liberty: Burman and ethnic experiences
17.17 Condition of ethnic prisoners in internally displaced areas
17.18 Conclusion on ethnic and Burman experiences

CHAPTER 18: BIOLOGICAL GENOCIDE 479

18.1 Definition of biological genocide
18.2 Junta's mindset
18.3 Consistent testimonies

CHAPTER 19: GRAVE BREACHES OF THE GENEVA CONVENTIONS 483

19.1 Cross border attacks on refugee camps
19.2 Involvement of Junta and DKB A in the attacks
19.3 Evidence of Incitement to attack
19.4 Definition of victim groups
19.5 Motive and intent underlying the attacks
19.6 Legal conceptualisation of the attacks on refugee camps
19.7 Eyewitness description of attacks on camp
19.9 Significance of attacks on medical workers and equipment

CHAPTER 20: DESTRUCTION OF DAW KAW VILLAGE, KARENNI STATE: 489

CASE STUDY

20.1 Reasons for choice
20.2 Background to attack
20.3 The attack itself
20.4 Legal analysis

CHAPTER 21: WESTERN BURMA 494

21.1 Introduction
21.2 The Case of the Chin
21.3 Religious persecution of Chin
21.4 Selective killing of Chin
21.5 Inflicting mental and bodily harm on Chin
21.6 Inflicting indirect destruction on Chin
21.7 Forcibly transferring Chin children
21.8 Inflicting biological genocide
21.9 Comprehensive persecution and destruction
21.10 Legal analysis  
21.11 The Case of the Rohingyas  
21.12 Rohingyas and institutionalised persecution  
21.13 Methods of Persecution  
21.14 Effects of persecution  
21.15 Economic persecution  
21.16 Inferred biological persecution  
21.17 The Nagas  
21.18 Introduction  
21.19 Forced conscription  
21.20 Infliction of drugs  
21.21 Junta culpability  
21.22 Legal assessment  

CHAPTER 22: CARTOGRAPHICAL CHANGES 506  
22.1 Interpretations of map changes  
22.2 Significance of cartographical change  

CHAPTER 23: ISSUE OF THAI POLICY  
23.1 Evidence of Thai actions  
23.2 Acts of omission  
23.3 Issue of development induced displacement  
23.4 Conclusion  

CHAPTER 24: BURMA: A THREAT TO INTERNATIONAL PEACE AND SECURITY 508  
24.1 Introduction  
24.2 Violations of International law  
24.3 Armed threat  
24.4 International chemical warfare training  
24.5 Threat to Thailand  
24.6 Threat of drugs  

CHAPTER 25: GENERAL OVERALL LEGAL CONCEPTUALISTION 515  
25.1 Review of facts  
25.2 Violation of Article 3 of the Geneva Conventions  
25.3 Crimes against Humanity  
25.4 Genocide  
25.5 Inflicting indirect destruction  
25.6 Conditions in Eastern Burma exceeds qualifying criteria established by the ICTR and Rome Statute  
25.7 Denial and destruction of shelter  
25.8 Denial and destruction of medical services  
25.9 Denial and destruction of food  
25.10 Case study of destruction  
25.11 Issue of survival of ethnic people  
25.12 Existence of an explicit and inferred intention to attempt and commit genocide  

CHAPTER 26: OBJECTIONS TO GENOCIDE 519  
26.1 Counter-insurgency  
26.2 Ethnic cleansing  
26.3 Offers of reparation and punishment  
26.4 Provision of some medical services
26.5 Mixed identity of perpetrators and victims
26.6 Chaos
26.7 Incorrect Information
26.8 Survival of ethnic people outside IDP areas
26.9 Survival of ethnic people in IDP areas
26.10 Genocide: politically and morally unacceptable
26.11 Conclusion: Genocide and/or Crimes against Humanity

CHAPTER 27: FINAL ASSESSMENT ON GENOCIDE
27.1 The case for genocide
27.2 Principal methods inflicted
27.3 Issues of intentionality and survival of ethnic people
27.4 The charges of attempted and committed genocide
27.5 Crimes against Humanity of Extermination and Persecution

CHAPTER 28: FLOW CHART: THE CHRONOLOGY OF DESTRUCTION

CHAPTER 29: LEGAL RESPONSIBILITY
29.1 Violations: “The result of policy”
29.2 Responsibility of commanders
29.3 Culpability of perpetrators
29.4 Definitions of culpability

CHAPTER 30: CHARGES
30.1 Crimes against humanity
30.2 Attempting and/or committing genocide
30.3 Detailed final definition

CHAPTER 31: DEFENCES
31.1 No defence of official position
31.2 Disorientated mind: alcohol and drugs
31.3 Arbitrary, not systematic, actions
31.4 Confusion between victims and perpetrators

CHAPTER 32: ISSUE OF ENFORCEMENT
32.1 Amnesty or Prosecution
32.2 Obligation to prosecute
32.3 International Responsibility to prosecute

CHAPTER 33: ACTION FOR CHANGE
33.1 The ICRC/NGO egg
33.2 Rejection of the model
33.3 The Burmese Egg

CHAPTER 34: RECOMMENDATIONS FOR ACTION
34.1 Hatching democracy
34.2 Freezing assets
34.3 Practical measures to weaken power
34.4 Training in political defiance, advocacy and leadership
34.5 Activating the Responsibility to Protect
34.6 Specific courses of action
34.7 Prosecution by individuals, countries or groups of countries
34.8 Submission of case of genocide to the International Court of Justice
34.9 UN action
34.10 Establishment of an Ad Hoc Tribunal
34.11 Enforcing the Responsibility to Protect
ACRONYMS AND ABBREVIATIONS

ABSDF  All Burma Students Democratic Front
BERG  Burma Ethnic Research Group
DKBA  Democratic Karen Buddhist Army
ICC   International Criminal Court
ICTR  International Criminal Tribunal for Rwanda
ICTY  International Criminal Tribunal for Yugoslavia
ICJ   International Court of Justice
IHL   International Humanitarian Law
ILO   International Labour Organisation
IDP   Internally Displaced People
KNU   Karen National Union
KNPP  Karenni National Progressive Party
KNLP  Kayan New Land Party
KHRG  Karen Human Rights Group
KWO   Karen Women’s Organisation
LNDO  Lahu National Development Organization
MUAC  Mid Upper Arm Circumference
NaSaKa Regional military command
NLD   National League for Democracy
RSICC/C Rome Statute of the International Criminal Court, Commentary
SPDC  State Peace and Development Council
SWAN  Shan Women’s Action Network
SHRG  Shan Human Rights Group
TBBC  Thai Burma Border Consortium formerly Burma Border Consortium
UNHCHR United Nations High Commission for Human Rights
UNHCR  United Nations High Commission for Refugees
UNICEF United Nations Children’s Fund
UNLD  United Nationalities League for Democracy
USDA  Union Solidarity and Development Association
<table>
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<th>Acronym</th>
<th>Full Name</th>
</tr>
</thead>
<tbody>
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<td>United Wa State Army</td>
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<td>World Health Organisation</td>
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<td>WLB</td>
<td>Women's League of Burma</td>
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</table>
This report and accompanying film has been co-funded by The Netherlands Ministry for Development Co-operation to whom I am deeply grateful. However, the analysis of such a
bitter harvest of pain and suffering could only have been carried out with the support of many organizations and individuals carried out over a number of years.

Although it is impossible to identify them all, I would like to thank the following in particular: the Winston Churchill Memorial Trust for enabling me to work in eastern Europe during the transition to democracy and learning about how courage and moral strength can overcome totalitarianism; the Euro-Burma office for its initial help enabling me to begin to understand the situation inside lowland Burma; I hope it will forgive me for achieving so little at the time and will accept this in partial atonement; the Jubilee Ccampaign for having the courage to support an in-depth reconnaissance into the eastern regions; Gordon Roddick and George Monbiot, who provided crucial support on my return, and enabled me to set up a reliable method of information retrieval; the Karen Committees for Internally Displaced People, the Karen Justice Committee and Saw Steve in particular for his generous and intelligent help; the Karen Office for Relief and Development, the Karenni Social Welfare Department, the Mon Relief and Development Committee and the Shan Relief and Development Committee; the Assistance Association of Political Prisoners of Burma, especially for their help in researching what happened after the 1991 Bogalay massacre; the Burma Lawyers Council for their permission to use evidence in connection with the Depayin massacre and for their wise words of caution as to whether to use the term genocide; the internally displaced people themselves for sharing their lives with me and daring to speak out; Dr Cynthia's backpack doctors especially one, who selflessly stayed with me for a week while I was sick; to my courageous guides who must remain nameless; to a young boy who got me out of a hotel in lowland Burma at dawn who had never heard of democracy, but knew the meaning of human values, and to many others whose patience and support enabled me to complete this work.

Other organizations are less easy to praise: the major media company who withdrew their cameraman and then provided me with a camcorder with dirty heads speaks eloquently of the world's attitude to the displaced, ethnic peoples of eastern Burma: the unusable footage of children expressing their hopes for the future, barred out behind blurred lines, in one of the few remaining functioning schools in Karen areas, has an almost poetic, metaphorical quality, symbolic of a strange sustained indifference.

More positively, I would also like to thank other the grass roots human rights organizations like the Karen Human Rights Group, the Shan Human Rights Group, the Shan Women's Action Network, the Karen Women's Organisation, the Women's League of Burma, the Mon Human Rights group, the Lahu National Development Organisation, and independent researchers, who must remain nameless, for allowing me to quote so extensively from their publications and reports. A special debt of thanks is also owed to the Thai Burma Border Consortium, especially for its kind permission allowing me to quote so extensively from their reports. Of course I would also like to thank all the staff at Images Asia for their support, including Sam, Jang, Andrew, Cody and Liam. Their patience in the face of my technological illiteracy has been amazing. Above all, special praise must go to those brave anonymous researchers and cameramen who have risked their lives, usually unrewarded, getting visual evidence of the violations from inside Burma.

A special debt of gratitude is also due to Martin Smith whose work provides the framework within which I have tried to understand ethnic Burma, even if I do not always completely share his fluid perspective. Finally, may I thank my funders for their support, patience and understanding: they have helped challenge the conscious disregard of the international community on behalf of some of the most vulnerable, isolated people in the world. I ask for understanding if I have made mistakes, or been unfair to anyone. If I have made mistakes, it has not been intentional. Burma is complex, perhaps impossibly so, and, like many others, I continue to learn, especially in circumstances where well-informed, objective, multi-lingual interpreters are few and far between.
Finally, very deep sympathy must be given to some of the soldiers in the army of the military dictatorship. Many are victims of the regime who have been brutalized and often forced to commit violations against their will; nevertheless, they have sometimes courageously tried to reduce, or even oppose, the suffering inflicted on Burma's ethnic and democratic opposition in acts which can only be described as redemptive.

This report is, however, dedicated to the silenced, terrorized, isolated, internally displaced people of eastern Burma. When trying to describe their plight, they told me they were dying alive: dying, but alive; alive, but dying.

I told them I would not forget them.

Guy Horton
EXECUTIVE SUMMARY

1. INTRODUCTION

For over a decade, the United Nations and Human Rights organisations have documented systematic and widespread human rights violations inflicted on the people of Burma.
generally, and on the ethnic people in particular. Most reports, however, with the exception of some references to Article Three of The Geneva Conventions, have refrained from conceptualizing the violations in terms of International Humanitarian Law. This report addresses that gap and, in the aftermath of the State organised ambush of Daw Aung San Suu Kyi's convoy on May 30, 2003; the ongoing, widespread, systematic destruction of substantial parts of the eastern ethnic peoples; and the failure to end impunity, recommends a period of consultation, education and consensus building to explore the practicality, political appropriateness, and morality of applying and enforcing relevant International Humanitarian Law.

2. RATIONALE

This report analyses the human rights violations, identified by, amongst others, UN Special Rapporteurs for human rights and Amnesty International, and expressed in UN General Assembly Resolutions, that have been inflicted on the people of Burma for decades. The Report's rationale is based on the following key statements made by UN Special Rapporteurs and UN General Assembly Resolutions:

a) UN ASSESSMENT OF IMPUNITY AS THE UNDERLYING CAUSE

The apparent pervasive impunity of the security forces must be seen as the essential factor.

(From thematic Rapporteur Myanmar (Burma) of the UN Commission for Human Rights, March/April 2001).

b) UN ASSESSMENT OF NECESSITY FOR JUSTICE

In order for democratization to take place, there must be full accountability through a judicial mechanism, of abuses committed by state agents.

(UN Special Rapporteur on the situation of Human rights in Myanmar, Mr. Sergio Pinheiro, in his address to the United Nations General Assembly, November 6, 2002).

Significantly the UN Special Rapporteur recommended that prosecution of perpetrators of human rights abuses should take place before any transition to democracy.

c) UN ASSESSMENT OF END OF CONSTRUCTIVE ENGAGEMENT

The attack [on Daw Aung San Suu Kyi’s convoy] has constituted a potentially terminal set back on the political front and, for that matter, for the human rights situation in the country and has undone, in one stroke, all progress that has been achieved since the process of dialogue began in 2000.

(Mr Sergio Pinheiro, UN Special Rapporteur on the situation of Human Rights in Myanmar, in his address to the UN General Assembly, Sept.12, 2003).

d) UN AFFIRMATION OF THE RESPONSIBILITY TO PROTECT

Calls on the government of Myanmar
To immediately secure the safe and unhindered access to all parts of Myanmar of the United Nations and International Humanitarian Organisations so as to ensure the provision of humanitarian assistance and to guarantee the most vulnerable groups of the population.

United Nations General Assembly Resolution on Myanmar, para. 4 (c), 1 December, 2003. The most vulnerable parts of the population are, in effect, the internally displaced people.

3. TERMS OF REFERENCE: THE LEGAL FRAMEWORK

a) THE PREMISE

This report is premised on the former UN Special Rapporteur's (Rajsoomer Lallah, Q.C.) conclusion to his 1998 report on the situation of Human Rights in Myanmar in accordance with the Economic and Social Council decision, 1998/261, of 30 July, 1998 (para. 59):

The Special Rapporteur is deeply concerned about the serious human rights violations that continue to be committed by the armed forces in the ethnic minority areas. The violations include extra judicial and arbitrary executions (not sparing women and children), rape, torture, inhuman treatment, forced labour and denial of freedom of movement. These violations have been so numerous and consistent over the past years as to suggest that they are not simply isolated acts of individual behaviour by middle or lower rank officers but are, the result of policy at the highest level entailing political and legal responsibility. (My underline.)

This report will focus primarily, but not exclusively, on:

the serious human rights violations. . . committed. . . in the ethnic minority areas. . . [which] are the result of policy taken at the highest level, entailing . . . legal responsibility.

Before proceeding, we should note the exact meaning of some of the key words in the condemnation:

- Violations, according to the UN definition in its Training manual on Human Rights monitoring, are:
  

  The word, transgressions, thus imply that violations are formal, conscious, deliberate and, by implication, intended. The fact that violations are committed by governments expresses a level of gravity and culpability more serious than that implied by the word "abuses," which are acts inflicted by non-State parties.

- a policy is an organized set of plans which are clearly intentional in nature;

- a policy inflicted by those at the highest level is deliberately, consciously and actively chosen;

- the actions resulting are not, we can therefore infer, the result of negligence, recklessness, incompetence, or the unwanted side effects of a counterinsurgency campaign. They are likely to be intended.
The violations, cited in the Special Rapporteur\'s conclusion, we can infer, are, therefore, the intended outcome of policy.

b) EXPANDING THE FRAME: ACTS OF OMISSION AND ACTS OF COMMISION

This report expands, however, the UN Special Rapporteur\'s framework to include an assessment not just of violations committed through action, but also violations committed through deliberate inaction. Acts of omission express a form of negative violence which are intentional, not the result of negligence. Deliberate denial and non-provision of essentials for life, such as food, clean water, hygiene, shelter, medical care and supplies, etc., can be as destructive, in the long term, as acts of positive violence. As such, they are fully consonant with our understanding of violations of International Humanitarian Law.

c) LAW APPLIED

International laws applied in this report are primarily:

- *The Geneva Conventions*, especially *Common Article Three*;
- *Crimes against Humanity* as defined by the Rome Statute;

*War Crimes*, although applicable, have not been strongly emphasised as they can be considered to be isolated crimes and may, therefore, not necessarily express the systematic policy condemned in the 1998 Report. However, the category remains applicable when the systematic nature of crimes may be in doubt.

*The Convention on the Rights of the Child, The Convention on the Elimination of all forms of Discrimination against Women, The Convention on Forced Labour*, all acceded to by Burma, have not been applied because the crimes alleged to have been committed, and being committed, against substantial parts of some of the non Burman peoples of eastern Burma, are of such a gravity and scale that the very survival of these groups is in question, rather than their inequitable and unjust treatment.

*Crimes against Humanity* have been applied because the violations alleged by United Nations Special Rapporteurs and General Assembly Resolutions are sufficiently grave to justify consideration of such a category of crime; violations are frequently described in UN Resolutions and Reports in terms of the two distinguishing, disjunctive characteristics of this species of crime: spatially as widespread, or mentally as systematic, or both. The International Labour Organisation has specifically cited the use of forced labour as a Crime against Humanity and a contemporary form of slavery.

The crime of *Genocide* has also been applied because, according to UN and Amnesty International Reports, ethnicity is, at the very least, a serious, motivating factor underlying the violations which target ethnic peoples described as: *solely*, (UN Special Rapporteur March/April 2002), or *purely* (Amnesty International "Myanmar: Ethnic Minorities Targets of Repression," April, 2001, p.15) on the grounds of their ethnicity or where they happen to be living.

This ethnic motivation underlying the persecution and destruction is also stated particularly clearly in another Amnesty International Report:
The ethnic minorities in Myanmar run a greater risk of being subjected to a wide variety of human rights violations simply because they are a member of a particular group. ("Myanmar: Exodus from Shan State," 2000).

If the motivation for the destruction is partly or completely ethnic, it is reasonable to infer there may be an intention to destroy ethnic groups, either in whole or in part.

d) ISSUE OF GENOCIDE

Genocide, popularly understood as fast mass killing, is not occurring in Burma. However, the meaning of Genocide as defined by The Convention on the Prevention and Punishment of Genocide is very much broader than this populist notion. It embraces slow, indirect methods of destruction and assimilation. Thus, while taking into account the responsibility not to exploit the term for sensationalist purposes, or to use it irresponsibly to inflame feelings, the ethnic identity of about 526,000 internally displaced Shan, Karen, Karenni, and Mon people in eastern Burma (Thai/Burma Border Consortium figures, Oct. 2004), and between one and two million, internally displaced non-Burman, ethnic groups in Burma generally, and about 400,000 externally displaced mostly ethnic people (UN briefing figures, October 2002), suggests ethnicity is an important motivating factor underlying the violations. The overwhelming majority of these violently displaced victims are non-Burman ethnic civilians, not political groups, or resistance fighters.

In addition, Burma signed, and then acceded to, The Convention on the Prevention and Punishment of the Crime of Genocide in 1956. Thus, while the general principles of The Genocide Convention apply to all countries, (whether they have signed and acceded or not), the fact that Burma did sign, and did accede to the Convention, justifies and obliges the application of the specific articles of The Convention on the Prevention and Punishment of the Crime of Genocide to the specific violations cited in UN and Human Rights reports.

e) RELEVANCE OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

While recognizing that Burma has not signed or ratified the Rome Statute, this report applies the Statute’s definitions because its codification of law is the most comprehensive, up-to-date, authoritative statement of international humanitarian law in the world. The Statute would, at the very least, strongly guide decision makers when considering if a case exists justifying enforcement of international law. It would also strongly inform and influence the judgements of any future body enforcing that law.

Moreover, because Genocide is, firstly, a crime under international law; secondly, a crime of “inherent jurisdiction;” thirdly, was envisioned in Article 6 as being prosecutable by a future international tribunal; and fourthly, has been incorporated virtually without change into the Rome Statute, the International Criminal Court could arguably be considered to be the appropriate mechanism for enforcing the principle of Universal Jurisdiction for this crime. However, it must be admitted that this view is contentious.

Thailand, however, has signed the Rome Statute. This expresses an intention to accede to it and, at the very least, commits it not to act in a way which might undermine the Statute's principles. Moreover, as a signatory nation to the Statute, its position in relation to Burma is quite clear: it is obliged to co-operate with the enforcement of international humanitarian law.

f) THE INTERNATIONAL CRIMINAL TRIBUNALS FOR RWANDA AND YUGOSLAVIA

Judgements of the two UN Security Council mandated International Criminal Tribunals for Rwanda (subsequently referred to as the ICTR), and (former) Yugoslavia (subsequently
referred to as the ICTY), have been applied, since they express the most detailed, specific applications of International Humanitarian Law to particular situations since Nuremberg. As a result, a comprehensive, clear, accessible, respected, up-to-date and applicable body of authoritative Case Law has now been, and is being, established.

g) THE SCOPE AND LIMITATIONS OF THIS REPORT

While this report focuses primarily on the plight of the non-Burman peoples of eastern Burma, it also includes some analysis of crimes inflicted on ethnic peoples in other areas, and on the general civilian population of the country, including the largely Burman, urban, lowland democracy movement. It has not been possible to corroborate information in the West in person. Analysis has therefore been limited to information gathered by organisations such as Amnesty International and indigenous human rights groups. In addition, it has been impossible to collate and analyse human rights violations inflicted in Kachin State because of the extreme sensitivities surrounding the issue in the present political situation. Divided Kachin groups apparently find it too politically sensitive to explore the issue of violations and impunity.

There are also numerous smaller ethnic groups in eastern Burma, such as the Labu, Lisu, Akha and others, who have been suffering from violations, but it has not been possible to investigate these.

Finally, it should be pointed out that the present plight of the eastern ethnic peoples depicted in this report represents only a very small amount of the overall suffering that has been inflicted on non Burman peoples for decades. Evidence can only now be collected on the terminal stage of this destruction in eastern Burma because it is occurring close to the Thai border.

h) EVIDENCE

There is no doubt as to the existence of evidence of widespread, systematic human rights violations inflicted on the people of Burma for the past decades. They are included in all UN General Assembly Resolutions on Burma and in UN Special Rapporteurs Reports. (See Ch.10: "A manifest, consistent, systematic, pattern of destruction"). The present Rapporteur has, for example, cited prima facie evidence of State connivance in the attack on Aung San Suu Kyi's convoy on May 30, 2003.

The following intercept, from a very reliable source, is evidence by the Junta's own admission of its responsibility for massive, widespread human rights violations:

From: Ja Pa Ha-2
To: All Battalions under command
11 March 05
13.30

1. Radio message from Pang Long on 05 March 2005, (official) letter no 2604, (as notification or memo.) From January 2004 to January 2005 our army members have violated the military laws and public law. By the officer's level 559 cases, and by the private's level 9167 cases. All together 9726 law cases.
2. Under the command of Japal-la 2 (MOC-2, Military Operation Command 2, Karen area) from January 2004 to January 2005, there are 31 military officers and 353 private soldiers under lawsuits (law cases). All together 384 cases. One colonel, two Lt. Col., six majors, 17 Captains, 5 Lieutenants.
3. As example for the military law, that should be strictly obeyed, and protect the military officers from doing wrong against the law, they are dismissed from the army life long. And they get the penalties for hard work depending on the seriousness of each case. In the case of narcotics the length of jail term depends on the amount of narcotics.
4. Higher officers, as sample from Batallion KaRaLa (Lib Light Infantry? Batt 45), Maj. Kyaw Yan Nai, embezzlement. Batallion La Ma Ra 567, (Rapid Deployment Unit Battalion 567), Lt. Col. Ne Win, looted and raped woman, which is not his wife, penalty dismiss from the army, and hard work, lost his reputation his life long. Therefore all officer level have to warn all under their command every month so we can reduce law cases.

5. The penalties that we have put on the high officers serves that our army not lost the reputation belong to the public law and military forever. We hope that all level will understand and will not perform something wrong again. In the year 2005 we have introduced a formula that all officers have to sign, whenever we have meeting, to accept that everybody know about the military laws. This notification to all battalion as acknowledgement.

(RI recording time 11 March 15.45)

Although the message suggests for the first time a serious attempt may be being made to address impunity. The identification of 9726 violations by Junta itself in a single year expresses that, at the very least, violations are widespread and routine. Their number, gravity and infliction by officers at senior level suggests also that they are condoned, and possibly encouraged. This apparent attempt to address impunity does not negate that the destruction of food and homes, and deliberate non-provision of basic necessities, is intentional policy.

i) THE ISSUE OF CULPABILITY

In its emphasis on the suffering of ethnic peoples, there is no intention to minimize the suffering of the mainly Burman democracy movement, or the violations inflicted on it. In addition, the report does not accuse, or imply in any way whatsoever, that the Burman people as a whole bear any responsibility for crimes committed against the ethnic peoples. Alleged responsibility lies, as the former UN Special Rapporteur, Rajsoomer Lallah Q.C., pointed out, with those at the highest level, the ruling Junta, a group which was overwhelmingly rejected by nearly all sections of Burmese society in the 1990 elections, including Burmans and members of the armed forces.

Therefore, it is absolutely not the intention of this report in any way to blame the Burman people collectively for the violations committed against the non-Burman ethnic peoples. However, it is the intention of this report to show that there is a significant ethnic component to the violations, in addition to the political.

The responsibility for both these sets of crimes, the political and the ethnic, is the responsibility of those at the highest level, the ruling Junta.

4. FINDINGS

a) ASSESSMENT

THE GENEVA CONVENTIONS

VIOLATIONS OF COMMON ARTICLE THREE
This report finds overwhelming evidence to justify an investigation of the Burmese military dictatorship for violating Common Article Three of The Geneva Conventions. This protects “civilians taking no active part in hostilities in situations of an internal armed conflict.” The deliberate, systematic, widespread targeting of civilians taking no active part in hostilities for decades entails a grave violation of this fundamental cornerstone of International Humanitarian Law. It should be noted The Geneva Conventions were specifically signed and acceded to by Burma in 1992.

GRAVE BREACHES OF THE GENEVA CONVENTIONS: A THREAT TO INTERNATIONAL PEACE AND SECURITY

The systematic, widespread, state-sponsored, destruction of non-Burman refugee camps across the international border, inflicted by Junta troops and its DKBA proxy allies operating under its de facto control, inside Thailand, involves a grave breach of the Geneva Conventions.

The International Committee of the Red Cross, as guardian of the Conventions, has a particular duty to address this grave breach, even in retrospect. It also has a responsibility to take up with the Junta the ongoing violations of Common Article Three.

b) ASSESSMENT

CRIMES AGAINST HUMANITY

This report, in conjunction with the accompanying illustrative footage in the film, Dying Alive, finds sufficient evidence exists to justify an investigation of the Burmese military dictatorship for the following Crimes against Humanity, as defined by the Rome Statute of the International Criminal Court, allegedly inflicted on the civilian population of Burma in general, and the ethnic people in particular:

Article 7 (1) (a) The Crime Against Humanity of Murder, including, but not restricted to, the killing of Burmese civilian democracy activists in Daw Aung San Suu Kyi's convoy on May 30, 2003; the widespread, systematic killing of Burmese civilians in 1988, and the deaths of democracy activists in prisons resulting from torture and deprivation of resources necessary for survival; the mass killing of Karen civilians in or around Bogolay township in the Irrawaddy delta during and after the autumn of 1991, including the deliberately inflicted deaths which resulted from the subsequent interrogation, torture, and starvation inflicted on surviving victims in prisons throughout Burma; the selective and mass killing of civilians for decades;

Article 7 (1) (b) The Crime Against Humanity of Extermination defined by the Statute as the destruction of part of a group, using either direct or indirect methods, such as deprivation of access to food and medicines. These conditions have been, and are, inflicted on a systematic and widespread basis on those parts of the Shan, Karen and Karenni people identified as internally displaced people trying to exist either in free fire zones, or forcibly concentrated into camps in eastern Burma. The crime could also be applied to the mass killing and subsequent destruction of delta Karen in 1991 and afterwards;

Article 7 (1) (d) The Crime Against Humanity of Deportation or Forcible Transfer of Population for the widespread and systematic forced internal displacement of civilians, inflicted both on Burman and non-Burman peoples;

Article 7 (1) (e) The Crime Against Humanity of Imprisonment or other Severe Deprivation of Physical Liberty for the widespread and systematic imprisonment of Burmese civilian democracy activists, and the forced relocation into camps of hundreds of thousands of Burmese civilians in lowland Burma; moreover, The Crime of Severe Deprivation of Physical Liberty, particularly and specifically, applies to the hitherto largely ignored plight of hundreds of thousands of ethnic peoples forcibly concentrated into camps in eastern Burma,
or trapped in free-fire zones, isolated from the International Community in defiance of UN Resolutions;

*Article 7 (1) (f) The Crime Against Humanity of Torture,* institutionalized as a weapon of state terror, routinely inflicted in a widespread and systematic manner on Burmese opposition generally;

*Article 7 (1) (g) -1 The Crime Against Humanity of Rape,* committed on a widespread, and possibly systematic basis, against the women of Burma, particularly non Burman women in eastern regions associated with conflict;

*Article 7 (1) (g) -4 The Crime Against Humanity of Forced Pregnancy* allegedly committed against ethnic women in a widespread, and, possibly, systematic manner;

*Article 7 (1) (g) The Crime Against Humanity of Sexual Violence* for the wide range of crimes committed through the use of force, or the threat of force, or coercion, against the women of Burma, particularly ethnic women;

*Article 7 (1) (h) The Crime Against Humanity of Persecution* committed both against Burmese democracy activists, including the National League for Democracy, and ethnic and religious groups;

*Article 7 (1) (i) The Crime Against Humanity of Enforced Disappearance of Persons* particularly inflicted by death squads operating in Karen State, allegedly under the direct control of the Military Intelligence;

*Article 7 (1) (k) The Crime Against Humanity of other inhumane acts* including alleged systematic mutilation inflicted on ethnic victims and barbarous, repellent behavior inflicted both on the democratic opposition and ethnic peoples, not specifically identified in the above list of crimes, which are intended to humiliate, degrade, and destroy political and ethnic opposition by inflicting severe mental and physical suffering.

c) **ASSESSMENT**

**GENOCIDE**

In addition to the above widespread, and often systematic, Crimes Against Humanity committed against the general civilian population of Burma, it is also asserted that sufficient evidence exists to justify an investigation of the Burmese military dictatorship for attempting to carry out a low intensity form of genocide, genocide by attrition, against a substantial and considerable part of the internally displaced, non Burman peoples of eastern Burma. This is inflicted within the wider context of the persecutory programme of cultural destruction and assimilation, widely known and accepted by Burma scholars as, “Burmanization.”
This form of attempted genocide allegedly occurring in eastern Burma is not, however, inflicted in the way in which genocide is popularly conceived, namely fast, mass killing of entire peoples, as occurred in Rwanda and Nazi extermination camps. This, it must be most clearly stated, is not occurring in eastern Burma. Rather a slow, low intensity form of attempted genocide is arguably being inflicted, targeting substantial, distinct parts of the populations of some non Burman peoples, by deliberately inflicting on them conditions of life which make it impossible for them to survive in the long term, i.e., a slow, largely indirect, form of genocide by attrition. This indirect, slow form of destruction is typically and succinctly reported by Amnesty International thus:

All those interviewed said that they had left their homes because they could no longer survive. ("Myanmar: Lack of Security in Counter-Insurgency Areas," Introduction, para. 3)

The fact that the destruction in free-fire zones, and in the Junta controlled relocation sites where ethnic people have been forcibly concentrated, is often inflicted by undramatic acts of omission, does not mean conditions are not life threatening. Conditions have deliberately been made unsustainable for ethnic victims: food, clean water, or medical care is either not provided or destroyed. In such circumstances, victims die very slowly, usually from preventable illnesses. Although this method of slow, indirect destruction is very different from the immediate, mass extermination of Jews in the Nazi camps, or the physical slaughter of Tutsis in Rwanda, it may express an attempt to commit genocide as defined by article 2 (c) of The Convention on the Prevention and Punishment of the Crime of Genocide by:

deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

ASSESSMENT OF GENOCIDE: CONVERGENCE OF INTERPRETATIONS OF THE MEANING OF THIS FORM OF GENOCIDAL ACTIVITY BY UN TRIBUNALS, UN GENERAL ASSEMBLY RESOLUTIONS ON BURMA AND THE ROME STATUTE

There has been a convergence of interpretations of what the wording of article 2 c) of the Genocide Convention actually means. The two international Tribunals for Rwanda and former Yugoslavia and the Rome Statute all identify, inter alia:

deliberate deprivation of resources indispensable for survival, such as food, medicine and shelter as being expressive of this act of genocide.

The Rome Statute's codification (Article 6 (c), footnote 4) crystallises it to:

Include, but not necessarily be restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

The International Criminal Tribunal for Rwanda expanded this definition as follows:
The judges determined that this includes circumstances that will lead to a slow death, e.g. lack of proper housing, clothing, hygiene, medical care or excessive work or exertion. It also includes methods of destruction, which do not immediately lead to the death of members of the group, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, provided this would lead to the destruction of the group in whole or in part. (Prosecutor v Musema, ICTR, 96-13-T).

Similar interpretations have also been made by the International Criminal Tribunal for the former Yugoslavia. William Schabas cites, for example, in "Genocide in International Law."(pub. 2000, CUP, p. 245) four judgements by the Tribunal of the act of genocide, 2 (c), having been inflicted in detention camps where inmates had been deprived of proper food and medical care, and gradually subjected to conditions calculated to bring about their physical destruction. (ICTY, Case nos. IT-97-24-1, IT-95-5-1, 95-4, 95-8-1).
There has also been a convergence between these above interpretations of article 2 c) and some UN General Assembly Resolutions on the specific situation in Burma, such as that condemning:

*Deprivation of all means of subsistence.* (March 2001, para.14)

The large number of preventable deaths inflicted over decades, resulting from deliberately inflicted Junta activity in the non Burman ethnic free fire zones, and in the camps where people have been forcibly concentrated, raises the issue as to whether these people may be victims of a slow form of genocide.

In addition, it should be noted that the International Labour Organisation has specifically cited the crime of forced labour as being a Crime against Humanity.

**ASSESSMENT OF GENOCIDE: COUNTERINSURGENCY OR GENOCIDE**

A State has the right to maintain its territorial integrity by legitimate means. However, Burma has been accused by UN Special Rapporteurs and General Assembly Resolutions of systematic and widespread human rights violations, actions which by their very nature are illegitimate. Leaving aside the issue of the legal status of those actively resisting a policy, known in Burma's case as Burmanisation, the measures inflicted on non-Burman civilian peoples appear to be well in excess of the requirements of the military counter insurgency campaign, known in Burma as "The Four Cuts" policy. A counter insurgency campaign is intended to defeat armed resistance by severing links between resistance fighters and their civilian base in order to win over the civilians. Its intention is not to destroy civilians. The conditions inflicted by the Junta in Burma's case do not, however, appear to discriminate between resistance fighters and civilians. This is because the conflict is largely ethnic. Simply being an ethnic civilian in an area associated with resistance is to be a "legitimate" target for destruction.

Additional measures which appear to be intended to destroy substantial parts of ethnic non Burman peoples are inflicted in eastern Burma, including:

- the sustained, widespread, systematic destruction of the entire physical basis of life, such as homes, possessions and animals;
- permanent confiscation of land;
- relentless, sustained plunder, pillage and extortion;
- widespread, condoned rape and sexual violence;
- colonization and population transfer;
- destruction inflicted and disguised as "development."

Although the primary groups targeted for destruction are often in the free fire-zones, it is significant that many of the recorded violations occur in areas where civilians have been forcibly relocated, are under junta control, and physically removed from all contact with resistance forces. This suggests the intention is more than counter-insurgency.

In particular, condoned, or encouraged, sexual violence has nothing to do with counter-insurgency. It destroys targeted non-Burman groups by firstly, biologically changing their ethnic composition; secondly, by contributing to the disintegration of the group by seriously damaging women, the principal care givers; thirdly, by psychologically inflicting mental and physical harm.

**ASSESSMENT OF GENOCIDE: MOTIVES UNDERLYING THE INTENDED DESTRUCTION OF ETHNIC CIVILIANS**
International Humanitarian Law, as defined by the International Tribunals for Yugoslavia and Rwanda, does not require evidence of motive for proof of guilt; it only requires that the actions were actually committed and were intended. Proof of motive, or the reason why the crime was committed, in short, is not required. However, evidence of, or reasonable inference of motive, may help to illuminate the mental factors underlying violations, and contribute to establishing additional, credible grounds for addressing and ending impunity.

In Burma’s case, the wholesale, systematic destruction of the physical basis of the life of non-Burman ethnic internally displaced people appears to have three underlying motives.

Firstly, the Junta systematically diverts resources from ethnic people to the Burman military, especially its officer class. This motive seems the same as that which underlies the behaviour of the military dictatorship in relation to the general civilian population in Burma as a whole. Resources are systematically diverted from civilians to the military on a widespread basis to strengthen the military at the expense of civilians.

Secondly, however, the Junta, does not just exploit and divert resources in the eastern non-Burman ethnic areas: it systematically pillages and plunders. It does this to to sustain its troops in the field. Soldiers in the field inflict these activities because of the Junta’s policy decision not to provide adequate food or wages to its troops in eastern areas where the ethnic internally displaced people live. This contrasts with lowland Burma, where such necessities are reportedly provided to troops. The reason why troops pillage and plunder is thus, we can infer, to support themselves, because the Junta deliberately inflicts unsustainable conditions on its own forces. The plundering and pillaging of ethnic people’s possessions is thus a more aggravated form of destruction than the general exploitation inflicted on the Burmese people as a whole.

Thirdly, the activities of the Junta army appear to express, not just a motive to divert resources from civilians to the military, and to plunder and pillage from ethnic civilians to sustain itself as outlined above, but, additionally, a motive to destroy the actual physical basis of the lives of substantial parts of ethnic internally displaced people. This results in conditions being inflicted which make life physically unsustainable.

This is illustrated, for example, by the widespread, systematic destruction of animals, food, infrastructure and medical supplies, and the deliberate non-provision of minimal supplies to those subjugated and forcibly concentrated into camps. Significantly, livestock is often simply destroyed, not consumed by Junta forces.

It is reasonable to infer that the underlying motive is to create conditions where substantial parts of non-Burman ethnic groups will be unable to survive.

ASSESSMENT OF GENOCIDE: THE SCALE AND IMPACT OF THE INFLECTED SUFFERING

The scholar/journalist Martin Smith estimated as far back as 1991:

*a figure of about 10,000 deaths a year nationwide, including civilian victims, from the insurgencies over the last five decades,*

and quoted former SLORC chairman, Gen Saw Maung, who stated that:


Smith concluded that:

*much of the fighting has been in rural communities, especially in the ethnic minority states and that in the process millions of homes, families and lives have been shattered,* (ibid)
He also pointed out:

the birth rates of most minority races (and not just Mons and Karens) have inexplicably slumped.

Moreover, there is now evidence of outright collapse in population levels in some municipalities and geographic areas and a severe decline in numbers of young people. As long ago as 1998, Amnesty International estimated:


Conditions appear to have worsened considerably since then in that municipality and many other areas of Shan State.

In addition, most of north east of Karenni State has been permanently depopulated, as has, according to Martin Smith, the large Pegu Yomas mountain region previously inhabited by the Karen. There also appears to be evidence that some of the Karen population in the Delta region has been assimilated.

ASSESSMENT OF GENOCIDE: METHODS OF DESTRUCTION

KILLING

Genocide activity 2 a): Killing members of the group

Killing can be defined as: selective, mass, arbitrary and extrajudicial.

The first two, according to the International Criminal Tribunal for Yugoslavia, can be considered to be acts of genocide if inflicted with an intention to destroy the ethnic group in whole or in part. The latter two cannot.

As stated, although the military dictatorship primarily inflicts indirect, slow methods of destruction, it also inflicts selective and mass killing of non- Burman peoples.

Such killings, when understood within an overall context of cultural and physical destruction, appear not to be arbitrary, as so often described in Human Rights Reports, but may, in fact, be discriminatory and expressive of policy. Ethnic civilians are killed for
"rational" reasons: for example, on the grounds of their ethnicity; where they live; for the impact their killings have on the rest of the group; to enforce concentration into camps; to punish those who refuse to relocate. The specific killings, although sometimes not premeditated, nevertheless appear to take place within the overall context of a systematic plan which is premeditated: they may, in other words, be the result of an overall policy and cannot therefore easily be described as arbitrary. The two International Tribunals make it quite clear that selective killings, even if apparently unpimediated, can be considered to be acts of Genocide, or Crimes Against Humanity, if inflicted within an overall policy intended to destroy substantial parts of ethnic groups.

In addition, killings may sometimes be understated as extrajudicial, defined as disproportionately extreme reactions to perceived threats. Most victims are unarmed, ethnic civilians: civilians, particularly, women and children, pose no threat to perpetrators, unless, in a genocidal mindset, their very existence and ethnicity is perceived as such.

Estimates vary of numbers directly killed each year, but a conservative average recorded number is about six hundred a year (see "Human Rights Yearbook 2000," p.147). The Thai Burma Border Consortium Report states about 1.2% of the population of 525,000 has been killed or wounded over the past two years. ("Internal Displacement," Civilian Casualties of War, p. 44, Oct. 2004).

However, these figures probably significantly understate the real number of victims killed. In eastern Burma, bodies are often thrown into rivers, or left in the jungle an are often just too difficult to find.

ASSESSMENT OF KILLING AS GENOCIDE: THE QUESTION OF NUMBERS

To establish a case of attempting or committing genocide, International law requires proof of an intention, the mens rea, to physically destroy a group in whole in part. Evidence, therefore, of total destruction of the group is not required. Recent judgements express that in the case of killing, for example, it is the status of victims, rather than overall numbers, that can be the determining factor. In terms of status, they must be significant (e.g. leaders, or teachers or pastors), while in terms of numbers, they must be substantial (ICTY) or considerable (ICTR). The Rome Statute, however, reduces the minimum number to as low as one or more. Despite the ambiguity of significant, considerable, substantial and one or more, these four definitions clearly do not require evidence of the total destruction of an entire race popularly associated with the term genocide. Moreover, it should be noted that the Rome Statute's numerical criteria of one or more is a dramatic clarification and reduction.

The selective and mass killings documented by Human Rights groups, although not on the scale of Rwanda or even Srebrenica, may be considered, in the context of other widespread and systematic destructive activities, to be expressive of a policy intended to physically destroy substantial or considerable parts of non-Burman ethnic groups. Moreover, the selection
of significant victims, such as pastors or headmen, may express an intention to destroy the wider group.

As such they may express that form of genocide, defined by the International Criminal Tribunal for the former Yugoslavia as:

[Genocide is] an act committed against an individual because of his or her membership in a particular group as an incremental step in the overall objective of destroying the group. (ICTY, Prosecutor v Jelisic, Judgement IT-95-10-T, Dec. 1999).

ASSESSMENT OF GENOCIDE: INFlicting SERIOUS BODILY OR MENTAL HARM

Genocide activity 2 (b): inflicting serious bodily or mental harm

This involves widespread, condoned and, arguably, systematic sexual violence and institutionalized torture. Overwhelming evidence has been accumulated of widespread and, possibly, systematic sexual violence targeting ethnic women.

ASSESSMENT OF GENOCIDE: PREVENTing BIRTHS WITHIN THE GROUP

Genocide activity 2 (d): Imposing measures intended to prevent births within the group.

It may be possible, from numerous and consistent testimonies, to infer the existence of a policy to inflict biological genocide by encouraging coercive and forced sexual union between the Burman dominated, Burmanising army and non Burman women, with the intention of changing the biological integrity and viability of ethnic groups.

ASSESSMENT OF GENOCIDE: ARRIVING AT AN APPLICABLE DEFINITION OF GENocide TO THE SPECIFIC CONDITIONS OF THE INTERNALLY DISPLACED IN EASTERN BURMA

Taking into account:

• the wording of the The Convention on the Prevention and Punishment of the Crime of Genocide;
• its subsequent clarification, crystallisation and codification in The Rome Statute;
• the interpretation and application of The Convention by the two UN Security Council mandated Tribunals for Rwanda and the former Yugoslavia;
• the description and analysis of the facts in Burma as described by UN General Assembly Resolutions and the reports of the UN Special Rapporteurs for Human Rights;
• by Amnesty International;
• by grass roots Human Rights organisations,
• extensive personal reconnaissance in depth;

the definition on pages 28 and 29 of attempting to commit genocide, namely by inflicting a substantial step (Rome Statute, Article 25) in the overall destruction of significant parts of eastern ethnic peoples, is submitted as being applicable to what is being, and has been,
inflicted on parts of the civilian, ethnic Karen, Karenni and Shan peoples of eastern Burma, and possibly also on other ethnic groups in different areas of the country. However, before arriving at the definition, a number of issues related to Genocide and the situation in eastern Burma need to be clarified and resolved.

GENOCIDE AND NUMBERS: THE RELATION BETWEEN THE QUANTIFIABLE DEATHS REQUIRED TO JUSTIFY CHARGES OF ATTEMPTING AND/OR COMMITTING GENOCIDE TO THE ACTUAL CONDITIONS INFLECTED IN EASTERN BURMA

How many people must be physically destroyed to justify a charge of attempting or committing genocide? The Rome Statute requires that a *substantial step* must have been taken to justify a charge of attempting genocide. The enforced internal and external displacement of between 1 and 2 million, largely ethnic people (UN briefing figures, October, 2002); the State-instigated destruction of refugee camps across an international frontier; the infliction of *substantial* or *considerable* (William Schabas, Genocide in International Law), number of deaths of thousands of people a year, either directly or indirectly, for decades along with outright population collapses in certain municipalities and geographical areas, suggests, that a *substantial step has been executed* (criteria justifying the charge of attempting Genocide, Article 25, 3, (f) of The Rome Statute) in the destruction of considerable *parts* of the populations of eastern, non-Burman peoples.

In addition to the charge of attempting genocide, the widespread, systematic, ethnically targeted violations may also justify an investigation of a de facto act of genocide.

The Crime against Humanity of Persecution may well apply to substantial *parts* of other ethnic groups in the west of Burma, such as the Chin and the Rohingyas. It has not, however, been possible to carry out on-the-spot investigations in these areas.

ASSESSMENT OF GENOCIDE: THE MEANING OF THE DESTRUCTION OF PART IN TERMS OF NUMBERS OF A GROUP AS APPLICABLE TO EASTERN BURMA

*The Convention on the Prevention and Punishment of the Crime of Genocide*, clarified and crystallised by the International Criminal Tribunals for Yugoslavia and Rwanda, makes it quite clear that the destruction of *part* of a group can constitute genocide. International lawyers and the two international Tribunals generally define *part* quantitatively as *considerable*, or *substantial*; or intrinsically, according to the ICTY in its Srebrenica (Krystic) judgement, as a *distinct entity*.

The one million Karen in the eastern mountainous region, approximately 25% of their total population, would clearly constitute a *part* of the Karen people as defined by International Humanitarian Law: they are a *distinct entity*, (ICTY, Krstic Judgement, August, 2001) culturally and linguistically different from the Karen in other areas, such as the Irrawaddy delta and Rangoon, and inhabit a distinct geographical area.

The ethnic groups in Karenni State, by their very nature, existence and situation, are self-evidently almost the whole of the State's population, with the exception of those externally displaced in Thai refugee camps.
Those Shan people, particularly the 300,000+ internally and externally displaced in central and southern Shan State who have been forced to flee, or be violently concentrated into camps, self-evidently comprise a considerable or substantial enough group to be considered a part of the Shan people.

ASSESSMENT OF GENOCIDE: THE DEFINITION OF PART AS A PHYSICAL AREA

All three groups inhabit a physical area which can be understood as more than meeting the spatial criteria required by the International Criminal Tribunal for Yugoslavia to justify a charge of genocide being:

*a limited geographic zone or even municipality* (ibid).

Eastern Burma is a distinct and large geographic region, larger than the limited geographic zone identified by the ICTY. It comprises an approximately 1,800 thousand kilometre long region of mountains and hills, geographically and culturally distinct from lowland Burma. Moreover, people have been forcibly concentrated into camps, or forced to flee, throughout this region, an area very much larger than the minimal, one municipality, required by the ICTY.

Thus in terms of geography, ethnicity, and numbers, the peoples who are the subject of this report meet the qualifying criteria of part of a group, as expressed by The Convention on the Prevention and Punishment of Genocide, and interpreted by the International Tribunals for Rwanda and Yugoslavia.

ASSESSMENT OF GENOCIDE: ISSUE OF ETHNIC, INTERNALLY DISPLACED PEOPLES’ CONTINUING SURVIVAL

The great majority of eastern ethnic people are surviving. This may suggest genocide is not being inflicted. The fact that hundreds of thousands of internally displaced, non-Burman ethnic people survive in eastern Burma cannot, however, be used as an argument to automatically exclude the charges of attempting, or committing genocide. This is because their survival, particularly in the free-fire zones, appears not to be intended. It is certainly not due to support provided by the Junta’s army: rather the ethnic internally displaced people survive in spite of the Junta’s policies. They do so because of their extraordinary resilience; knowledge of jungle lore; provision of limited supplies from Thailand, and the opportunity to escape to refugee camps across the border, or become economic migrants. In addition, Junta forces are incapable of inflicting the fast, effective, wholesale destruction which occurred in densely populated Rwanda, or the former Yugoslavia with its relatively developed infrastructure. Junta troops are too poorly equipped and motivated to implement such a policy quickly in the sparsely populated, physical conditions which exist in eastern Burma.

Thus, the fact that the Junta has not succeeded in totally destroying or assimilating all eastern ethnic groups does not mean that the charges of attempting or committing genocide are inapplicable. Their survival may partially be a result of incompetence and logistical shortcomings. Such factors cannot be considered defences.
It should be noted that quantifiable proof of outcome, (i.e., evidence of numbers dying as a result of genocidal activities), is not required for any acts of genocide if the charge is 
*attempting* genocide; moreover, for the charge of actually *committing* genocide, proof of outcome is also not required for activity 2 (c):

*deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,*

or for activity 2 (d):

*imposing measures intended to prevent births within the group.*

In these two activities, what is required, instead, is proof of intention, explicit or inferred, to inflict such actions. Evidence of large numbers of dead people is not required. (See William S. Schabas, "Genocide in International Law," CUP, ch. 4, p. 155.)

**ASSESSMENT OF GENOCIDE: ISSUE OF ETHNIC CLEANSING**

What is being inflicted on the non-Burman ethnic peoples in eastern Burma cannot be described accurately as ethnic cleansing. Ethnic cleansing is generally understood to be the violent expulsion of peoples to create racially homogenous areas. However, fleeing displaced ethnic peoples, as opposed to civilian economic migrants, in eastern Burma appear to be forcibly prevented from escaping into Thailand. Additionally, systematic, widespread attacks have been launched across the international frontier on refugee camps in Thailand to force ethnic people back into Burma, not keep them out.

The intention appears to be to destroy ethnic people in situ through, amongst other things, relentless exploitation, subjugation, sexual violence, wholesale physical destruction and biological assimilation, not, as in the case of the Serbs with the Kosovars, to force them out quickly. Important exceptions to this analysis appear to be the Rohingyas in the West, and Moslems in general; in these cases, the evidence suggests the policy intention is to exclude and expel, not to assimilate.

**ASSESSMENT OF GENOCIDE: ISSUE OF DEVELOPMENT**

"Development,"-notwithstanding the International Crisis Group’s report of 2004 "Aid to the Border areas," in eastern Burma appears to be inflicted to subjugate and consolidate centralised Burman power. This form of "Development" cannot thus be used as an argument against considering the charge of attempting and/or committing genocide. Forced labour, such as cash-crop farming on ethnic people’s land confiscated by Burman military officers, plus infrastructure projects, such as road and dam building, facilitate colonization and population transfer: they contribute to, in effect, a form of slow indirect destruction, not development.

This raises the issue of complicity of foreign organisations and governments who knowingly take part in such projects. The International Crisis Group’s Report, that claims the Junta’s Border Areas development policy is "An organising principle" around which aid agencies can cohere, is a matter of particular concern, as is its endorsement of a centralised form of "Nation building."

**ASSESSMENT OF GENOCIDE: ISSUE OF SURVIVAL OF ETHNIC PEOPLE IN NON CONFLICT AREAS**
It must be stated that in the wider context outside internally displaced areas, physical destruction is not being inflicted; however, subjugation, persecution, land confiscation, extortion, population transfer, assimilation and absorption policies are inflicted which indicate a policy of slow cultural destruction and assimilation. In such a context, celebrations of cultural diversity appear to be largely cosmetic.

ASSESSMENT OF GENOCIDE IN RELATION TO JUNTA POLICY

The destruction inflicted on the ethnic peoples appears to express four interconnected policies:

A POLITICAL POLICY DESTRUCTIVE OF DEMOCRACY

The conflict can be understood as partly political, involving the imposition of an authoritarian, anti-democratic, centralized, centralizing, military dictatorship. The ethnic opposition peoples are motivated by a number of factors, which include, amongst other things, a desire for autonomy within a democratic, Federal State; independence; or simply cultural and physical survival.

A POLICY OF ECONOMIC DESTRUCTION

The conflict can also be understood in economic terms. Economic subjugation and exploitation diverts resources from the Burmese people in general to the Burman dominated military, particularly the relatively pampered Burman officer class.

However, in the case of the ethnic internally displaced areas of eastern Burma, subjugation, economic exploitation, and "development" is compounded by outright destruction in such a comprehensive, systematic, aggravated and discriminatory way that it appears to be intended to render the life of these ethnic internally displaced people physically unsustainable in the long term. The intention, in other words, appears to be not just exploitation to divert resources to the military, as occurs in lowland Burma, but outright comprehensive destruction of the physical basis of life itself wherever resistance occurs.

A POLICY OF ETHNIC DESTRUCTION

The conflict can also be understood in ethnic terms, i.e., as expressive of an intention apparently to actually destroy and assimilate ethnic groups. This is an extension of the cultural policy of destruction and assimilation known as Burmanisation and includes outright physical destruction.

Almost all the 526,000+ internally displaced victims in eastern Burma are ethnic civilians, namely Karen, Karenni, Mon and Shan. Almost all the victims forcibly concentrated into the 176 camps, and almost all the victims hiding in free-fire zones, are ethnic internally displaced people. They are not Burmans. Similarly, almost all the official 156,000+ externally displaced refugees in the Thai refugee camps are ethnic people, overwhelmingly Karen and Karenni. In addition, many of the "economic migrants" are ethnic people, particularly Shan, who are refused refugee status. In terms of victim status, almost all the one to two million internally displaced people inside Burma as a whole, most of the 526,000 internally displaced in eastern Burma, and most of the hundreds of thousands of refugees displaced outside Burma, are ethnic peoples.

The army inflicting the violations is overwhelmingly Burman, its officer class almost exclusively so; it imposes a policy of Burmanisation, involving, inter alia, long term homogenization of the ethnic people, including those living in the east of the country who are the subject of this report.
The fact that there are co-opted, and sometimes corrupted, ethnic splinter groups fighting alongside the Junta's Burmanising army does not fundamentally undermine the ethnicity underlying the violations. These splinter groups operate under the overall de facto control of the Burman dominated, Burmanizing army, assisting it in inflicting its policy objectives. Moreover, the fact that there are junior ethnic conscripts, often coercively or forcibly recruited into the army, does not reduce the essential racial nature and purpose of the army. The ethnic conscripts in internally displaced areas are exploited by Burmanization in three ways: as expendable agents, victims, or, if they survive, Burmanized subjects.

**A POLICY OF RELIGIOUS AND CULTURAL DESTRUCTION**

The policy can also be understood as religious persecution, involving the systematic imposition of a militarised, corrupted, nationalistic form of Buddhism on the people of Burma generally, and the non Burman, non Buddhists in particular. The latter is particularly evidenced in the discriminatory persecution inflicted on Christian Karen by Junta co-opted Buddhist Karen. In addition, this religious persecution is seen in the suffering and persecution inflicted on Chin and Kachin Christians. Muslims generally, and the Rohingya Muslims specifically, suffer from an aggravated, systematic, institutionalised form of persecution designed to destroy them through exclusion, rather than assimilation.

However, it would be wrong to suggest persecution of religious groups is limited to non-Buddhists: ethnic Shan, who are Buddhists, are persecuted and subjected to a Burmanised form of Buddhism.

Finally, Burman Buddhists, including Burman Buddhist monks are themselves also persecuted, tortured, shot and killed if suspected of being associated with democracy, political opposition, or human rights.

In addition to the infliction of this perverted form of state religion, a widespread policy of linguistic and cultural destruction is also inflicted.

**ASSESSMENT OF GENOCIDE IN RELATION TO THE ABOVE POLICIES**

The coexistence of the four intertwined policies (the political, economic, ethnic and religious), can make it difficult to come to a definite conclusion as to how the policy can be accurately defined, and thus which framework of international law should be applied. A particular difficulty lies in identifying the relative significance of the four violative strands.

The issue, however, as to whether a conflict has to be interpreted either as ethnic, or as political, was emphatically clarified and resolved by the Commission of Experts of the International Criminal Tribunal for Rwanda:

_This attempt at a defence [i.e., that a conflict is political not ethnic] is bound to fail, as it should, because the presence of political motive does not negate the intent to commit genocide if such intent is established in the first instance._ (ICTR Commission of Experts, pub. Transnational Publishers, p.172, para 159).

Amnesty International and UN reports frequently cite the coexistence of the above two motivating factors.

This then leaves the third and fourth policies and their relationship to the other two. As stated, while economic exploitation is a major factor motivating Junta behaviour throughout Burma, the behaviour inflicted in the ethnic areas of internally displaced people goes well beyond that which would normally be understood to be economic exploitation. This is, amongst other things, for the following reasons:
firstly, because the activities involve not just exploitation, but comprehensive destruction, what one UN Resolution described as the *deprivation of all means of subsistence* (UN General Assembly Resolution, March 2001, para. 14);

secondly, destructive activities involve widespread and, possibly systematic, or, at the very least, condoned or tolerated sexual violence (*rape is a regular feature in the relocation sites*, according to UN Special Rapporteur, Rajsoomer Lallah, in his 1998 Report), which has nothing to do with economic exploitation, and everything to do with assaulting the social and biological viability and integrity of ethnic groups;

thirdly, the widespread and systematic destruction of medical supplies, clinics and hospitals (see later accompanying photographs), and their deliberate non-provision in the relocation sites, again goes well beyond what could be understood as economic exploitation. Such activities systematically and intentionally create life-threatening conditions for ethnic internally displaced people, resulting in large numbers of preventable deaths each year. This indicates an intention to destroy ethnic civilians and a level of culpability far in excess of negligence.

The overall policy can thus be understood as being:

- politically, an attempt to inflict a centralised, unitary, undemocratic, militarised state;
- ethnically, an attempt to create a single, Burmanised, homogenous population, which involves systematic destruction of all those ethnic people resisting or associated with resisting such a policy;
- economically, an attempt to deprive ethnic displaced peoples of their means of survival, in addition to diverting resources from the Burmese people generally to the Burman officer class;
- culturally to undermine and destroy ethnic peoples' cultures, languages and religions and to assimilate them into a single, homogenised, Burmanised, Buddhistized identity.

The combination of these factors involves physical as well as cultural destruction. It is important to note that the above comprehensive policy goes well beyond the military strategy known and described by Martin Smith as "The Four Cuts", or by some non-governmental human rights groups as "Militarization." Such terms describe the strategy designed to implement the policy, not the underlying policy itself.

In short, the overall policy is to inflict one race, one culture and one religion on the whole of Burma, a country hitherto too renowned for the wealth of its ethnic and cultural diversity.

**ASSESSMENT OF GENOCIDE: A DEFINITION APPLICABLE TO EASTERN BURMA**

The following definition expresses the physical destruction inflicted on substantial parts of the ethnic peoples of eastern Burma within the hilly and mountainous geographical region stretching from northern Shan state to the southern Andaman sea.

Paragraph 1 describes the initial direct methods of destruction inflicted, including killing and forced fleeing, consonant with the definition of Genocide as expressed in article 2 a) of the Convention.

Paragraph 2 expresses the nature of victim groups in terms of numbers, geographical area and distinguishing intrinsic characteristics. These meet the criteria of *part of a group* as expressed by The Genocide Convention and elucidated in subsequent interpretations of the two international Tribunals for Rwanda and Yugoslavia.
Paragraph 3 describes the slow methods of destruction inflicted, consonant with the definitions of genocide as expressed in article 2b) and 2c) of The Genocide Convention.

Paragraph 4 expresses additional life threatening activities inflicted on ethnic non-Burman internally displaced peoples. These activities interact synergistically to make life physically unsustainable for substantial parts of ethnic groups.

It should be noted that the words in italics are taken directly from the judgements of the two international Tribunals established for Rwanda and the former Yugoslavia.

PARAGRAPH 1: INFlicting DIRECT DESTRUCTION

*Selective killing and widespread violence* inflicted on non-Burman ethnic groups of internally displaced people of eastern Burma *that leads to the destruction of the groups through such methods as forced fleeing or deportation, including forcible transfer of population of*; (ICTY, Prosecutor v Jelisic, IT-95-10-T);

PARAGRAPH 2: INFlicting DESTRUCTION OF SUBSTANTIAL NUMBERS OF CULTURALLY DISTINCT, ETHNIC PEOPLE ACROSS A LARGE, DISTINCT, SEMI-MOUNTAINOUS GEOGRAPHIC ZONE OF BURMA

those *parts* of ethnic internally displaced groups of Shan, Karen, and Karenni who can be considered to be *distinct entities* living in the *geographic zone* of eastern Burma and specific *municipalities*; (ICTY, Krstic Judgement, August 2001, para. 589).

PARAGRAPH 3: INFlicting CONDITIONS WHICH LEAD TO A SLOW DEATH

while forced to flee, or forcibly transferred, endure deliberately inflicted conditions which make it impossible for them to survive, including, but not restricted to:

*the deliberate deprivation of resources indispensable for survival, such as food or medical services or systematic expulsion from homes* (Rome Statute, Article 6 (c), footnote 4); and

*Conditions which lead to a slow death e.g. lack of proper housing, clothing, hygiene, medical care, or excessive work or exhaustion. It also includes methods of destruction which do not immediately lead to death of members of the group, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, provided this would lead to destruction of the group in whole or in part.* (ICTR, Prosecutor v Kayishema and Ruzindana Judgement, 95-5-T 21 May, 1999).

PARAGRAPH 4: INFlicting ADDITIONAL MEASURES

In addition, further destructive measures are inflicted on the internally displaced ethnic people in eastern Burma, such as: widespread and systematic extortion, land confiscation, sexual violence, pillage, plunder, forced labour, development induced displacement, and population transfer.

It should be noted that in certain respects the conditions of life inflicted on those ethnic groups in the free fire zones are actually worse than the criteria for genocide defined in paragraph 3.
Reducing medical services below a minimum does not adequately describe the systematic destruction of medical supplies and services in the free fire zones. Likewise the ICTR definition of genocide in another judgement by deprivation of essential medical supplies below a minimum vital standard (ICTR-96-13-T) understates the wholesale, systematic destruction of medical supplies and services. In addition, its definition of genocide by subjecting the group of people to a subsistence diet again is less severe than the systematic attempt to destroy all food supplies in the free fire zones. Neither does it adequately describe the conditions in camps where hundreds of thousands have been forcibly concentrated. In these conditions, normally no food is provided. If it is, it is below minimum and ceases after a few weeks.

In short, in certain respects, particularly with respect to food and medical services and supplies, the conditions deliberately inflicted on substantial parts of eastern non Burman peoples is actually worse than that defined by the International Criminal Tribunal for Rwanda as meeting the criteria of genocide as expressed in activity 2 c)

Inflicting on the group conditions of life calculated to bring about destruction in whole or in part

ASSESSMENT OF GENOCIDE IN RELATION TO CULTURAL DESTRUCTION

It should be noted that the above activities inflicting physical destruction take place within the overall context of the policy of persecution known as, “Burmanization,” or “Myanmification.” This is generally understood to be a process of cultural destruction and assimilation, not necessarily involving outright physical destruction, but nevertheless intended, we can infer, to establish a racially and culturally homogenous state. The International Criminal Tribunal for former Yugoslavia took into account cultural destruction when coming to its verdict of genocide in its Srebrenica Krystic judgement.

5. CONCLUSIONS

a) THE POLICY

The political, economic, physical and cultural destruction of substantial parts of some eastern non Burman internally displaced people are intertwined. The actions appear intended to interact destructively and synergistically to make life unsustainable in the long term for hundreds of thousands of non-Burman internally displaced people, particularly those in the free fire zones. These actions appear expressive of a policy intended to persecute and destroy substantial or considerable parts of eastern peoples. The application of The Convention on the Prevention and Punishment of the Crime of Genocide and investigation of the crime is, therefore, considered justifiable, appropriate, and necessary.

b) CRIMES AGAINST HUMANITY

The application of the framework of Crimes Against Humanity, involving civilians in general, is justifiable and applicable to the crimes committed against the people of Burma as a whole, including the Burman civilian population and the political democratic opposition; this offers a second, alternative, or additional, framework of law within which the violations committed against both ethnic and Burman peoples can be analysed and addressed. It would have the advantage of being less divisive.

c) THE GENEVA CONVENTIONS

The Geneva Conventions are clearly applicable, especially Common Article Three protecting civilians taking no active part in hostilities in eastern Burma which is and has been an area of internal armed conflict. Grave breaches of the Geneva Conventions also clearly apply to the
systematic, widespread destruction of refugee camps across the Thai/Burma border inflicted by the Junta and its de facto proxy allies, the DKBA.

d) THE CHARGES OF ATTEMPTING AND/OR COMMITTING GENOCIDE

It seems reasonable to infer from the widespread, systematic, sustained, targeted destruction of a substantial number of non Burman, internally displaced people in eastern Burma that there is an underlying intention to attempt, not just to assimilate, but also to destroy parts of these peoples. The particular group which appears to be most at risk of genocide, are the thousands of internally displaced people in the free-fire zones. Those in forced relocation camps seem victims of systematic persecution. Their conditions may fall short of the outright physical destruction required to justify genocide, but their lives are physically unsustainable in the long term.

e) THE SPECIFIC CHARGE OF COMMITTING THE CRIME AGAINST HUMANITY OF PERSECUTION

In addition, the Crime against Humanity of Persecution, denying fundamental rights intended to weaken or destroy groups, as defined by the Rome Statute, is found to be applicable to describe actions inflicted generally both against the Burman and ethnic peoples. These include political, religious, cultural, and economic persecution which collectively appear to make life physically unsustainable for victims over the long term.

f) ISSUE OF WHICH FRAMEWORKS OF CRIME TO APPLY

Both sets of crime are applicable. If the Crime against Humanity framework is applied instead of genocide, it has the political and human advantage of minimising divisiveness between the Burman democratic opposition and the ethnic people, because both groups can be considered to be victims of this crime. Applying it would also reduce the burden of proof required to prove the special underlying level of intent to destroy an ethnic group necessary to justify the charge of Genocide.

However, applying the Crime against Humanity framework, instead of Genocide, may fail to take account of the very specific, aggravated, destructively synergistic combination of activities which target ethnic, internally displaced people. Crimes against Humanity, as defined by the Rome Statute, are clearly set out with their distinguishing elements. They are the expression of the logical, systematic, very focussed, western mind: they therefore exhibit a characteristic, admirable clarity. However, this very clarity is achieved at the expense of wholeness: with the possible exception of the specific crime of Persecution, individual Crimes Against Humanity, even if "added up," cannot adequately express the destructive synergy of the cumulative effects of multiple violations, the sum of whose collective destruction is greater than the constituent, individual destructive parts. The very broad nature of article 2 c) of The Convention on the Prevention and Punishment of the Crime of Genocide, with its crucial clarifications and codifications in the Rome Statute, and the two UN Tribunals for Rwanda and former Yugoslavia, is, arguably, an accurate description of the comprehensive destruction inflicted on Burma's ethnic, internally displaced eastern people.

The Crime against Humanity of Persecution, while offering an alternative framework, may not do full justice to the outright physical destruction of life being inflicted on the ethnic internally displaced people in these areas. The crime is defined as involving de-privation of one or more fundamental rights. It appears intended to address those crimes which, while depriving
people of fundamental rights, do not primarily seek the physical destruction of victims as their first and main aim. However, in eastern Burma, as the following UN General Assembly Resolution of February 1999 (para 10) makes clear, it is actually the ethnic peoples right to life itself which is being destroyed, rather than their cultural survival:

Further strongly urges the Government of Myanmar to … put an end to violations of the right to life and integrity of the human being . . .

Violations to the right to life is more serious than the denial of fundamental rights associated with Persecution. At the time of the Resolution, the killing was being inflicted solely on ethnic internally displaced people. (The killing of Burman democracy activists in lowland Burma had ceased and the 2003 Depayin massacre had yet to be inflicted.) We can, therefore, deduce that the human beings referred to were (and are) ethnic internally displaced people. The killing of ethnic people, in the wider context of other violations, suggests outright physical destruction, rather than the more limited denial of fundamental rights expressive of the Crime against Humanity of Persecution.

Finally, the principle of Universal Jurisdiction, which applies so strongly to The Convention on the Prevention and Punishment of the Crime of Genocide, may be less easy to enforce in the case of Crimes Against Humanity, which are not so well bedded down in international law, and less likely to rouse the conscience of mankind.

Article Three of The Geneva Conventions should provide protection and offer legal redress to those ethnic civilians victimised in areas of ethnic conflict. The Conventions as a whole should legally protect and provide redress to all refugees inside camps in Thailand. They could not, it should be noted, however, be used to apply to those Burmese victims caught up in the democracy struggle.

The choice of which framework to invoke may be best left to victim groups and the democratic opposition themselves to decide on, after taking into account all relevant legal and political considerations. A final judgement will rest, however, of course with the judicial system.

g) ISSUE OF RESPONSIBILITY FOR ENFORCEMENT

The issues raised by this report must be debated widely and thoroughly by opposition groups and the international community. Ultimately, responsibility for enforcement could be undertaken by:

- An individual ethnic group;
- A collection of ethnic groups;
- A broad based multi-ethnic group involving ethnic peoples and ethnic Burmans applying the category of Crimes Against Humanity rather than Genocide;
- International groups, since the violations are of such gravity and have been going on for so long that they can not be viewed exclusively as an internal Burmese matter;
- A combination of all of the above;
- Individuals;
- UN bodies, including the Security Council and the General Assembly;
- National governments;
- Specially appointed Tribunals;
- The Secretary General of the UN.

6. RECOMMENDATIONS
In the light of the above alleged, grave violations of international law, and of the fact that the UN Special Rapporteur stated to the United Nations in his report on September 12, 2003 that, in the aftermath of the ambush of Aung San Suu Kyi’s convoy, constructive dialogue is in effect at an end, a completely new approach is needed.

This should involve:

a) EDUCATION AND ADVOCACY IN INTERNATIONAL LAW

The opposition should be educated in international law and encouraged to consult widely on whether and how it wishes to address the issue of impunity. Specialist advocacy teams involving Burman and non Burman groups should be trained to collect evidence and present violations in the context of international law with a view to prosecuting the Junta.

b) SUBMISSION OF A CASE OF ATTEMPTING, OR COMMITTING, GENOCIDE BY A SIGNATORY NATION, OR GROUP OF NATIONS, TO THE INTERNATIONAL COURT OF JUSTICE

ARTICLE 9 OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE COULD BE INVOKED:

Disputes between the Contracting Parties relating to the application or fulfillment of the present Convention, including those relating to the responsibility of a State for Genocide or for any of the other acts enumerated in article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Burma has signed and acceded to The Genocide Convention. It did not reserve on Article 9. A case of attempted, or committed, genocide can thus be submitted to the International Court of Justice by another signatory nation which has also not reserved on Article 9.

A number of like minded governments with a strong interest in establishing and maintaining the rule of law in the international community have also signed and acceded to The Convention and not reserved on article 9. These include the UK, Canada, the Nordic countries, particularly Sweden and Norway, the Netherlands, the Czech republic, and Chile. The way is thus open to them to submit a case of attempting, or committing, genocide to the International Court of Justice at The Hague.

The Government of the Netherlands, which has co-funded this part of the project, with its strong tradition of maintaining and promoting international law, and as host nation to the International Court of Justice and the International Criminal Court, and strong supporter of the Burmese democracy movement, has a special responsibility to consider this. The Government of the Netherlands does not recognise any country which has reserved on Article 9 of The Genocide Convention as a signatory party to the Convention. The fact that Burma has not reserved on this Article thus makes it quite clear that the Netherlands regards Burma as a signatory party to the Convention and can thus refer it to the International Court of Justice.

The United Kingdom has been the most enthusiastic supporter of Article 9. As the former colonial power which granted independence to Burma on the basis of a federal Constitution that would guarantee full autonomy in local administration for ethnic peoples, who were to be have been given full democratic rights, the United Kingdom has a moral and residual responsibility for ensuring these non Burmans peoples are not destroyed. Moreover, the United Kingdom’s affirmation of the emerging principle of the responsibility to protect, as shown by its actions in northern Iraq, Sierra Leone, Kosovo, Bosnia and East Timor, all express a willingness and ability to intervene to protect defenceless peoples exposed to gross human rights violations irrespective of strategic criteria. Moreover, the United Kingdom is the only signatory country to have rejected Burma’s reservations on Articles 6 and 8, which
respectively express international jurisdiction by an international tribunal and the obligation to suppress genocide by the United Nations. By implication, the UK's rejection of Burma's reservations implies a willingness on its part to enforce both these essential parts of The Convention on the Prevention and Punishment of The Crime of Genocide in Burma's case.

Canada and the Nordic countries have shown a particularly strong interest in Burma and an understanding of the nature and scale of human rights violations being inflicted, as well as a commitment to provide assistance to refugees and internally displaced people.

Canada as host country to The International Commission on Intervention and State Sovereignty has a special understanding of the emerging principle of the responsibility to protect and an obligation to promote it.

Sweden, as host country to the 2004 Conference on preventing Genocide, has a special responsibility to ensure the pledges at that conference are honoured and implemented.

Norway, with its special support for the democracy movement and Aung San Suu Kyi in particular, has a particular interest in ending impunity and enforcing international law.

The government and people of Chile, now engaged in confronting the legacy of dictatorship, as it emerges to confront its own savage dictatorship can contribute to ending impunity for dictators globally by contributing to enforcing international justice.

A combination of European and North and South American countries, acting in consort, would make this a truly international initiative to end Genocide and Crimes against Humanity.

The United States, although a signatory nation to The Genocide Convention, reserved on Article 9, and thus could not participate in such an initiative. Its support in effecting a democratic transition however, would be vital.

c) ENFORCING THE RESPONSIBILITY TO PROTECT

The International Community should enforce the emerging principle of the responsibility to protect. This has now emerged as a customary norm of international law, in situations where, as in Burma, the State has either failed to protect its citizens, or is, in fact, itself responsible for inflicting widespread and systematic destruction on them. This should be done for the following reasons:

• to deliver humanitarian aid to the internally displaced people of Burma in fulfillment of the General Assembly Resolution (December 2003) calling for such action;
• to protect the internally displaced people and help them rebuild their communities;
• to eradicate the drug trade, which undermines the stability of other nation states and inflicts serious mental and bodily harm on huge numbers of victims;
• to put an end to state-sponsored attacks on refugee camps across the border between Thailand and Burma;
• to end the impunity of perpetrators of gross human rights violations, requested by UN Reports and General Assembly Resolutions for over a decade;
• to contribute to national reconciliation and the establishment of a federal democratic State;
• to request the International Court of Justice to declare Article 2/4 of the UN Charter (enshrining national sovereignty) inoperative in order to remove impediments to the obligation to protect the internally displaced people suffering genocidal conditions inside Burma.
A ruling of this kind by The International Court of Justice would enable UN General Assembly Resolutions demanding humanitarian access to the internally displaced to be fulfilled on a legal basis. Action to protect the internally displaced would meet the Just Cause Threshold (B) Criteria identified by “The International Commission on Intervention and State Sovereignty” that justifies and obliges action to protect victims of:

*large scale ethnic cleansing carried out by killing, forced expulsion, acts of terror or rape.*

Action to protect the internally displaced, and enable the will of the people, as expressed in the 1990 election, to be honored; properly mandated by the UN; legally sanctioned by the International Court of Justice; facilitated in close co-operation with Burmese democracy and ethnic groups and supported by democratically minded states, would be welcomed and supported by most of the people of Burma.

Handled with sensitivity and care, guided and co-ordinated by Burmese opposition groups, intervention would be welcomed as protection and liberation, not perceived as hostile intervention.

It should be noted that in the light of the UN failing to respond to the situation in Burma, the obligation to prevent and suppress Genocide enables any nation, or group of nations, to act to suppress and punish it.

d) INVOCATION OF ARTICLE 8 OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE:

*Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of The United Nations as they consider appropriate for the prevention and suppression of acts of genocide or for any acts of genocide or any of the other acts enumerated in article 3.*

These organs include: the Security Council, the Economic and Social Council, the General Assembly and the International Court of Justice.

The possible avenues open are thus much broader than a single appeal to the Security Council with the veto powers of individual members.

The Secretary General himself, especially in the light of his participation in the January 2004 Stockholm Conference on genocide, and of the identification at that conference of Burma meeting five of the six factors identified by the US representative justifying a charge of genocide, should be asked to take a leading role in initiating action to protect Burma's peoples by:

- personally submitting a case of attempted and committed Genocide and/or Crimes against Humanity to the Security Council with a recommendation that it submits a case to the International Criminal Court, or failing that to the International Court of Justice.

Alternatives could be a:

- UN Commission of Enquiry;
- the establishment of a special Tribunal for Burma;
- taking the issue of Burma to the floor of the UN General Assembly.

e) PROSECUTION BY INDIVIDUAL COUNTRIES AND INDIVIDUALS
Impunity for the Junta's leaders should be ended. Its senior officials could be arrested when travelling abroad and charged, as occurred in the case of General Pinochet, with committing crimes violating international law. Universal Jurisdiction for Crimes against Humanity and Genocide oblige such action. Its moral justification inheres in the failure of all other measures to end impunity; the evidence of widespread and systematic destruction of ethnic groups; the persecution of democracy activists; the continued virtual imprisonment of Aung San Suu Kyi.

Individual prosecutions could also be taken against members of Junta armed forces in third countries. The US Supreme Court has ruled that the Alien Claims Tort Act can be used to prosecute individuals abroad for Crimes against Humanity and Genocide. The UK Court of Appeal has ruled (October 2004) it permissible to prosecute foreign individuals responsible for systematic torture in a case referring to Saudi torturers.

f) RESPONSIBILITY OF THAILAND

Thailand should be reminded of its obligations and required to facilitate the implementation of international law. Specifically, it should as a signatory nation to the Rome Statute, and in accordance with the fact that Genocide and Crimes against Humanity are crimes of Universal Jurisdiction, honor its obligations and duties to help facilitate investigations of violations of International Humanitarian Law and bring perpetrators to justice; accept that refugees in Thailand are often fleeing not just from direct fighting, but a genocidal situation of deliberately inflicted conditions where ethnic civilians cannot survive, a situation almost as grave as direct killing; withdraw from participation in "development" projects right in the heart of ethnic opposition areas which, if inflicted, would result in further displacement, permanent flooding, loss of land and colonisation. (Aiding and abetting such activities could be interpreted as the crime of complicity in genocide, by contributing to the destruction of ethnic peoples through the imposition of a form of grossly inappropriate, development induced displacement); recognise that its long term security rests with the establishment of a democratic Burma, with a government operating under the rule of law. The establishment of a militarized, racist state in Burma, rewarded for its violence with the world's indifference, is, on the contrary, likely to lead to a long term threat to Thailand's stability and prosperity.
CHAPTER 1: REFACE
1. INTRODUCTION

1.1 BACKGROUND

This Report has been written during what appears to be the last phase of prolonged armed resistance by some of the non-Burman peoples; the continued house arrest of Daw Aung San Suu Kyi after a State instigated attack on her and her supporters; the inability of the UN Special Rapporteur for Human Rights to visit the country for considerable periods of time; the bugging of that Special Rapporteur while trying to carry out his work; the continuing impasse of the diplomatic initiative of the UN Special Envoy; the reported sentencing to death by a Court of a group of people for co-operating with the International Labour Organisation; the continuing, desperate plight of the isolated one to two million internally displaced people inside the country ("UN briefing paper: Situation in Burma," October 2002); the existence of hundreds of thousands of externally displaced refugees and migrant workers outside the country (ibid); the suppression of the democracy movement in Thailand; proposed large scale "Development" projects in non Burman ethnic eastern areas which are likely to lead to further displacement and population transfers from lowland Burma; the possibility of coerced repatriation of refugees; an ongoing ideological offensive of influential commentators advocating constructive engagement with the Junta. In short, the lights have very nearly gone out in Burma. The situation in this once thriving democracy now represents one of the gravest set backs for democracy and human rights since the Second World War.

However, despite the climate of fear and secrecy in Burma, and self-censorship inside Thailand, considerable evidence has been collected over the years, by grass roots human rights groups, UN Special Rapporteurs and international Human Rights organisations, of widespread, systematic violations which have been repeatedly identified and condemned in UN General Assembly Resolutions.

At the same time, globally, we have seen the emergence of an increasingly comprehensive body of International Humanitarian law, clarified and crystallised by the judgements of the two International Criminal Tribunals for Rwanda and Yugoslavia, and now formally codified in The Rome Statute of The International Criminal Court. The nascent principle of The Responsibility of the International Community to Protect civilians in failed States, where regimes are either unable to protect their citizens, or are involved actually in inflicting violations on them, is now increasingly accepted as part of international customary law.

This responsibility is particularly applicable to the internally displaced people of Burma. The ruling Junta has not only failed to protect its citizens, but is itself responsible for systematically violating their rights, including, as some UN General Assembly Resolutions and Reports have pointed out, the right to life itself.
1.2 PURPOSE

It is the purpose of this report to analyse the human rights violations inflicted in Burma, particularly in the eastern ethnic areas; establish what legal grounds exist to protect the internally displaced, and explore, if and how, impunity can be challenged.

1.3 PREMISE

The Report is premised on the former UN Special Rapporteur's 1998 Report on Human Rights violations in Myanmar:


Paragraph 59. The Special Rapporteur is deeply concerned about the serious human rights violations that continue to be committed by armed forces in the ethnic minority areas. The violations include extrajudicial and arbitrary executions (not sparing women and children), rape, torture, inhuman treatment, forced labour and denial of freedom of movement. These violations are so numerous and consistent over the past years as to suggest that they are not simply isolated or acts of individual misbehaviour by middle or lower rank officers but are, the result of policy at the highest level, entailing political and legal responsibility. (my underline)

This report will explore the meaning and implications of:

_Serious human rights violations . . . committed . . . in the ethnic minority areas . . . [which] are the result of policy taken at the highest level, entailing political and legal responsibility._

It will seek to answer the following questions:

- What is this policy?
- What is the result of this policy?
- What legal responsibility is entailed?

1.4 SCOPE

However, it will widen the investigation in one important respect: the above conclusion by the UN Special Rapporteur limited itself to condemning positive violence, acts of commission, in legal parlance. However, international law can also be violated by acts of omission. According to William S. Schabas, one of the world's leading authorities on genocide and adviser to the Rwanda Tribunal:

_All the acts enumerated in Article Two of the Convention on Genocide [the defining acts of genocide] can be committed as acts of omission._ ("Genocide In International Law," C.U.P. p.157).

The inclusion of acts of omission thus expands the category of violations identified and condemned by the former Special Rapporteur in his 1998 Report.

It should be pointed out that this Report is not a work of journalism. It analyses the human rights violations in the context of Burma's post-war history, including Crimes Against
Humanity, Genocide and violations of The Geneva Conventions. Violations of such laws are not time constrained, i.e., they are not subject to any Statute of Limitations.

1.5 TARGET GROUPS

The Report is aimed at the following groups:

- Legal specialists and policy makers with a view to informing them that sufficient evidence exists to challenge impunity and enforce international humanitarian law;
- Non Burman peoples and democracy activists with the objective of providing them with a tool for effective advocacy and a means for establishing legal redress. The repetitions and amplifications in this Report are thus intended to help the democratic and non Burman opposition understand, apply and use legal concepts;
- Government and UN officials with a view to providing them with evidence of violations of International Humanitarian Law occurring on such a scale as to require and justify the provision of humanitarian help and protection to the internally displaced;
- The International Community so that it lives up to its responsibility to protect hundreds of thousands of internally displaced ethnic people;
- Thai government and politicians to remind them that the majority of refugees are primarily escaping not only direct killing, but from conditions which often make it impossible for them to survive, and to which they should not be returned until, and unless, democratic government and the rule of of law is established in Burma;
- World opinion, with the aim of informing and educating it as to what is going on in Burma, and encouraging it to demand effective action to end the impunity of perpetrators by implementing agreed international humanitarian law.

In many ways these target groups are incompatible: specialized lawyers, whose first language is English, require explanation and analysis different from peoples, who are unfamiliar with legal concepts and use English as a second language. The general public requires even less specialised information. There is no easy answer to these conflicting requirements, but it is likely that a populist piece of work would have only a limited short-term effect if convincing evidence, rooted in well-reasoned legal argument, is not presented.

This report is thus a mixture of visual evidence, analysis, and informed advocacy on behalf of hundreds of thousands internally displaced, silenced peoples. It is intended to tell the truth, rather than conform to current political pressures emphasising appeasement and constructive engagement.

PRELIMINARY OBJECTIONS

There are a number of legitimate objections which can be made to a report and film on this subject being made.

a) Firstly, some may say that it is unwise to focus on the suffering of the non-Burman peoples of eastern Burma, because this may rouse divisiveness, rather than promote reconciliation. This may be valid. The report, however, does not seek to divide: it is dedicated to all those courageous people, including Burmans, who have opposed the military dictatorship and suffered terribly as a result. The actions of Burman democracy activists, particularly those prisoners in jails who have done what they could to reduce the suffering of non Burman prisoners, are noble expressions of human compassion in the most terrible circumstances. Indeed, they contain within them the seeds of future reconciliation. In particular, the compassion showed by Burman prisoners to fellow Karen prisoners after the 1991 Delta massacre, (giving them clothes, food and moral support) was redemptive. However, because the non Burman peoples are now bearing the extreme brunt of the suffering, and their plight is little known in the outside world,
we all, arguably, have a duty to expose the suffering of the internally displaced, stop injustice, relieve suffering, and eventually bring perpetrators to account by using, and applying international law.

b) Secondly, some will object that the present conflict is not ethnic, but political, i.e., a conflict between those committed to establishing an authoritarian, militarised State, and those intent on establishing a democracy. Although this is partially true, it is not exclusively so. To anyone, such a myself, who has stood amongst the ruins of one of the two and a half thousand villages repeatedly burnt to the ground in eastern Burma, one thing is abundantly clear: they have been destroyed primarily because of the ethnic identity of their inhabitants. Rural villagers are not discussing, or fighting for political philosophical principles: they are simply trying to survive. The ethnic nature of this conflict, and the targeting of the non Burman, civilian population is specifically affirmed in UN and Amnesty International reports, and routinely expressed by the victims themselves.

The dominant ethnicity underlying the conflict was described by Martin Smith, referring to the post 1982 attacks on Karen areas, as follows:

*Unlike the Four Cuts campaign in central Burma, these attacks were strongly ethnic in character and were carried out by predominantly Burman officers against Karen, Karenni and Mon villagers.* ("Burma, Insurgency and the Politics of Ethnicity," ch.19, p. 397).

We have to accept and confront an uncomfortable truth: the suffering of some of the non Burman peoples is an extension and implementation of the policy of Burmanisation, which seeks to subjugate and assimilate non Burmans. It should, again, however, be made abundantly clear that the Burman people as a whole cannot be blamed for what is happening. Although Burmanisation is a policy implemented by an overwhelmingly Burman military dictatorship, that dictatorship was rejected by the great majority of the people of Burma, including the Burmans, in the 1990 elections. Thus the Burman people, including many soldiers, themselves press-ganged and brutalised by the regime, cannot be held collectively responsible for the policies of the ruling military dictatorship. That responsibility lies with, as the former UN Special Rapporteur stated, those *at the highest level.*

c) Thirdly, many honourable, thoughtful and humane people will say that we should forgive the perpetrators their crimes, and offer the military dictatorship an amnesty in the interests of reconciliation. I respect this point of view. However, it is unlikely the military dictatorship will ever give up power voluntarily: through a cleverly manipulated, Janus-faced policy of deception directed to the outside world and terror to the Burmese people, it will hold onto and consolidate its power (eventually probably "legitimised" in a carefully manipulated election) until all hope is extinguished, unless decisive pressure is brought to bear on it by the international community. This pressure is more likely to be applied if it is proved, beyond all reasonable doubt, that the present military regime is a criminal organisation violating the most fundamental laws of mankind. This report and supporting footage is a contribution to this process.

Thus, although reconciliation and forgiveness are essential in the long run, this cannot occur before the perpetrators stop their behavior and acknowledge, or are forced to acknowledge, their crimes. This report, therefore, is not retrospective. It is being written while the crimes are being inflicted by the regime. Its purpose is, thus, not a contribution to post-conflict resolution, or transitional justice. It is proactive: written to contribute to change. It calls on the international community to fulfil its obligations under international law to stop the most serious human rights violations known to mankind and punish perpetrators.

d) Fourthly, some would object that this report, with its emphasis on international humanitarian law, undermines the principle of State sovereignty. In reply, it should be pointed out that it does not seek in any way to question *A State's right to maintain order and*
territorial integrity by all legitimate means. (Article 9, Rome Statute, para.3). However, successive UN reports and General Assembly Resolutions continually cite widespread, systematic, human rights violations. A violation, according to the UN Handbook on Human Rights training, is A governmental transgression of law. Thus, by using the word violations, the UN is making clear that the military dictatorship is not using legitimate means: it is using illegitimate means. The International Labour Organisation, a UN affiliated body, has, in particular, accused the dictatorship of committing a Crime against Humanity in the specific case of forced labour, which it termed a modern form of slavery.

In short, there is no question as to the general illegality of the Junta's violations; only how they can be accurately conceptualised.

e) Fifthly, some would insist that the non Burman peoples are also guilty of serious human rights abuses. This is true. They have been documented by, amongst others, Amnesty International. For example,


- In Karen State, Amnesty International has documented abuses committed by the Karen National Union, including executions, arbitrary killings and torture and, in particular, described the alleged killing of a group of ten immigration officials in February 1999. (Amnesty International Report, "Myanmar, The Kayin State Militarisation and Human Rights," AI Index16/12/99, and "Myanmar No Law at all" ASA 16/11/92). Martin Smith has also drawn attention ("Fatal Silence") to serious human rights abuses committed by Christian Karen against Buddhist Karen in Paan district of Karen State, which contributed to the establishment of the Democratic Karen Buddhist Army who have in turn inflicted appalling abuses;

- Ethnic armed groups use child soldiers and plant land mines;

- Furthermore, in the process of completing this report, it has been brought to my attention from credible sources that ethnic resistance fighters in one region have themselves sometimes been mistreating and intimidating the very villagers they are supposedly protecting.

However, it would be misleading to ascribe some sort of moral, or quantative, equivalency to the systematic, widespread violations inflicted by the Burman dominated military dictatorship against ethnic civilians, with the abuses committed by ethnic resistance fighters. The scale and underlying intention between the two bear little comparison.

The existence of between 1 and 2 million internally and externally displaced, mainly non Burman people, fifteen years after an annulled election in which the people voted overwhelmingly for a democratic State, speaks for itself. We need to ask what sort of deliberately inflicted conditions would force 250,000 Rohingyas to flee into Bangladesh, one of the poorest countries in the world? In terms of quantative killing, one ethnic group alone, the Kachin, has reportedly (Martin Smith, "Burma, Insurgency and the Politics of Ethnicity," p. 100) documented the verifiable deaths of 33,336 civilians at the hands of government forces in the years 1961-86. The Washington based organisation, "Genocide Watch," estimates the deaths of 30,000 Karen in just ten years of a fifty-five year old conflict.

The military dictatorship must bear primary responsibility for the present situation: it annulled the elections in 1990 which, if honoured, would probably have resulted in the establishment of a Federal democratic state.
Sixthly, there is the issue of credibility. Because resistance areas have been closed off to the outside world for decades, it has been difficult to verify, directly and independently, human rights violations. However, interviews with any of the 146,000+ refugees in the camps on the Thai border, or the hundreds of thousands of so “economic migrants” in Thailand, or the one to two million internally displaced people inside Burma, will endorse the former UN Special Rapporteur’s conclusion to his 1998 report that:

_The violations including the killing of women and children are so numerous and consistent_ (my underline) . . . _as to be the result of policy taken at the highest level entailing legal and political responsibility._

It is the _numerousness_ and _consistency_ of the testimonies which are so overwhelmingly convincing.

However, so alarming is the tendency to question, undermine, or deny the veracity of these reports; so limited is the focus of some members of the NGO community; so pernicious is the present climate of self-censorship; so sustained is the apparent, conscious disregard of the issue by media organizations; and so pervasive is the present climate of constructive engagement and appeasement, that personal investigations were undertaken to verify the evidence inside eastern Burma, including one extensive reconnaissance in depth. At all times, I attempted not to over identify with victims, or be influenced by my guides. In general, reports of human rights violations were corroborated by what I saw personally: widespread, systematic, physical and cultural destruction. Moreover, because of the nature of the situation, it was not possible for anything to be stage-managed, or pre-arranged for propaganda purposes. Journeys constantly altered according to the latest information; intended stopping places often had to be changed at the last moment. In these completely unpredictable circumstances, I met Burman army defectors and other Burmans living quite safely amongst their Karen "hosts." I was surprised to find no evidence of victimisation, or ill treatment. Moreover, those who helped carry our loads did so voluntarily in an atmosphere of humorous, almost surreal, bonhomie.

Finally, it must be pointed out that it is not the primary purpose of this report to document more human rights violations. The responsibility for that lies with other organizations, such as Amnesty International and the UN Special Rapporteur for Human Rights. The purpose of this report is to place the violations in the context of International Humanitarian Law and explore what avenues exist to challenge impunity. The violations cited in this report represent only a very small selection of those which have been recorded over the years. However, during the course of writing it, details of an appalling massacre in Burma's post-war history did emerge, described as the Delta massacre in the evidence section.

The eastern, ethnic, internally displaced peoples, may not be able to survive in the long term, unless humanitarian relief and protection is provided and the violations ended.
CHAPTER 2: METHODOLOGY
2.1 METHODOLOGY

As stated, the purpose, has not been to conduct further primary research into human rights violations. The information in this report is largely based on field research carried out by indigenous field research teams and community organisations, particularly those working for the Thai Burma Border Consortium, such as the Committee for Internally Displaced Karen people, the Karen Office of Relief and Development, the Karenni Social Welfare Centre, the Mon Relief and Development Committee and the Shan Relief and Development Committee. The Consortium described the research methods employed as follows:

Community organisations conducted field surveys across eastern Burma between April and July 2004. Population estimates have been gathered from key informants in 36 significant townships and cross checked with estimates from other local humanitarian and human rights agencies wherever possible. Vulnerability indicators were also developed from a multi-stage cluster survey of 6,070 people and 1,071 households in 60 areas spread over six states and divisions. The sample population for this quantitative survey was distributed between internally displaced people in free fire areas, government relocation sites, ethnic ceasefire areas and mixed administration areas. ("Internal Displacement," TBBC, p.1., Oct. 2004)

The effects of human rights violations on health have been collected and analysed by Back Pack Health Teams operating from Dr Cynthia Maung’s Mae Tao clinic. They concluded:


In addition to analysing primary data, the following research methods have been employed:

a) Accessing and analysing the meaning and applicability of three categories of international law applicable to Burma, namely The Geneva Conventions, Crimes against Humanity and the Crime of Genocide;

b) Accessing and analysing the interpretations and applications of these laws, particularly the judgements and opinions of the two UN Security mandated Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR);

c) Taking advice from expert legal counsel;

d) Researching, analysing and applying the codifications of the above laws in the Rome Statute;

e) Researching and applying the interpretations of the Rome Statute published in the two accompanying Commentaries;

f) Analysing the applicability of the above laws and their interpretations to the specific situation in Burma;

g) Reviewing the UN General Assembly Resolutions on Burma, the Reports of the UN Special Rapporteurs for Human Rights, and Reports by Human Rights organisations, such as Amnesty International and Human Rights Watch;

h) Analysing the reports of the above organisations in terms of the three bodies of international law identified in a;

i) Identifying connections and convergences between the above laws, the judgements by the Rwandan and Yugoslav Tribunals and the specific situation in Burma as described by UN Resolutions, Reports and reports by Amnesty International;

j) Reviewing and analysing the raw data of human rights violations inflicted in Burma,
including video, photographs, interviews, Junta publications, orders and intercepts in the context of international law;
k) Personally observing the effects of violations in internally displaced areas;
l) Analysing the concepts of explicit and inferred intention and motive, and applying them to the documented violations inflicted in Burma;
m) Researching and identifying available legal enforcement mechanisms.
CHAP
APPLICABILITY OF THE LAW
3. THE PRINCIPLE OF UNIVERSAL JURISDICTION

3.1 GENOCIDE

The principles underlying the crime of genocide are binding on all nations.
International Court of Justice ruling, 1951.

3.2 CRIMES AGAINST HUMANITY

Crimes Against Humanity are subject to Universal jurisdiction, meaning that all States can exercise their jurisdiction in prosecuting a perpetrator irrespective of where the crime was committed . . . and States have the duty to assist each other in securing evidence needed to prosecute.
M. Cherif Bassiouni, Chairman of the UN Commission of experts on the former Yugoslavia.

3.3 THE GENEVA CONVENTIONS

They are now indisputably part of international humanitarian law. They were signed and acceded to by Burma in 1992. Two parts apply:

1. Common Article Three

This key part of international humanitarian law, in essence, protects Persons not taking any active part in hostilities. It is applicable to a situation of internal armed conflict. The International Criminal Tribunal for the former Yugoslavia defined Article 3 very widely as:

Constituting an umbrella rule. Article 3 makes an open-ended reference to all international rules of humanitarian law. The Chamber concluded that pursuant to Article 3 serious violations of any international rule of humanitarian law might be regarded as crimes falling under this provision of the Statute.
(Prosecutor v Furundziaja, Judgement, IT-95-17/1-T, Dec.1998).

2. The full Geneva Conventions.

The full Conventions apply to international conflict. They thus relevant to the attacks on the refugee camps across the Thai/Burma border. These attacks, and consequent widespread destruction, can be considered to have constituted a grave breach of the Geneva Conventions. They also, arguably, violated the UN Charter by threatening international peace and security.
CHAPTER 4: INTRODUCTION

THE INTERNALLY DISPLACED PEOPLE: THE SCALE OF THE PROBLEM
4.1 BURMA AS A WHOLE

The situation of the eastern internally displaced people has to be seen in the context of an ethnic conflict which has been going on since 1948. During that period it is estimated that there have been about 400,000 casualties. (Tom Kramer, "Burma/Myanmar: Military Rule and Ethnic Conflict," Searching for Peace in Asia Pacific, European Centre for Conflict Prevention, 2004.)

The plight of the internally displaced people in Burma is one of the most concealed situations of deliberately inflicted human suffering in the world. Estimates of the number of internally displaced people vary. The UNCHR suggested a figure of between 600,000 to 1 million (2002). Other sources suggest the figure is considerably higher:

*The total number of IDP’s in Burma range between one and two million, with around 300,000 in north-eastern Shan State, 100,000-200,000 in Karen State, 70-80,000 in Karenni State, 60-70,000 in Mon State and about 100,000 thousand in [far west] Arakan State.*


Whatever the exact figure, the numbers involved are of global significance.

In addition, there are about 400,000 refugees in neighboring countries (UNHCR, 2002), and an unknown number of economic migrants.

4.2 EASTERN BURMA
The Thai Burma Border Consortium of non-governmental organisations working with refugees in Thailand estimates there are about 526,000 internally displaced people in the specific area of eastern Burma. In its publication "Internal Displacement: vulnerability in eastern Burma," (TBBC, Oct. 2004) these have been broken down into the following groups:

### Distribution of Internally displaced persons in 2002 and 2004

<table>
<thead>
<tr>
<th>States and Divisions</th>
<th>IDPs in Hiding or temporary settlements</th>
<th>IDPs in relocation sites (&amp; no. of sites)</th>
<th>Total IDPs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2002 Free-fire areas</td>
<td>Cease - fire areas</td>
<td>2002</td>
</tr>
<tr>
<td>Southern Shan</td>
<td>75,000</td>
<td>9,300</td>
<td>185,000</td>
</tr>
<tr>
<td>Karenni</td>
<td>50,000</td>
<td>7,000</td>
<td>75,000</td>
</tr>
<tr>
<td>Eastern Pegu</td>
<td>10,500</td>
<td>13,500</td>
<td>0</td>
</tr>
<tr>
<td>Karen</td>
<td>75,500</td>
<td>46,900</td>
<td>75,000</td>
</tr>
<tr>
<td>Mon</td>
<td>50,500</td>
<td>2,300</td>
<td>25,000</td>
</tr>
<tr>
<td>Tenasserim</td>
<td>6,500</td>
<td>5,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Overall</td>
<td>268,000</td>
<td>84,000</td>
<td>365,000</td>
</tr>
</tbody>
</table>

Appendix 2 disaggregates data for 2004 into townships.

- The 2002 survey combined estimates for IDPs in hiding or temporary settlements whereas the 2004 survey has disaggregated these into IDPs in free - fire areas and cease - fire areas.
- 2002 estimates were originally disaggregated according to KNU boundaries for Karen State, but have been re - allocated according to official demarcations of state and division boundaries for comparison with estimated for 2003-4.
- 2002 population estimates for relocation sites included SPDC and non-State sites, whereas the 2004 survey has counted IDPs in non-State relocation sites in the ethnic administered ceasefire areas category. 120,000 IDPs in UWSA areas of Southern Shan State have thus been reclassified out of the population estimates for relocation sites and into the estimates for ceasefire areas for 2004.

The above Report distinguished between a number of different groups of displaced people: those hiding in free fire zones, vulnerable to being shot on sight; a second group, forcibly concentrated into camps; another group in ceasefire areas; an unknown number who have moved into Burmese cities; another group which has become externally displaced, either as refugees in camps, or economic migrants in Thailand and surrounding countries. In addition to these, there is a diaspora scattered throughout the world.

The Report identified about 2,536 villages known to have been destroyed, or damaged, by the Burmese army, or abandoned by villagers.

The figures used in the Report may, however, significantly understate the problem. According to Richard Humphries, they "Come from extrapolated data and probably represent extremely conservative estimates." (MA Thesis on Internally Displaced in Burma, University of Bradford, Dept of Peace Studies, 2004).

The Report suggests the apparent recent decline in overall numbers of internally displaced people since 2002 is due the unsustainable life of the forced relocation sites. Richard Humphries notes that "For many at those centres the principal survival strategy seems to be to flee." (ibid, p.37) In other words the reason for a small decline is the inability to survive. This raises the question about whether the unsustainability of the life in the relocation sites is...
a product of gross negligence, or whether it expresses systematic, intentional, negative violence. Many of those who flee seek refuge in cities. Very little is known about this group, but the Report estimates

_Possibly tens or even hundreds of thousands of people may have been forced to migrate to the fringes of rural and urban communities._ (ibid, p.23)

It is unclear as to whether this particular group of internally displaced people can sustain themselves on the fringes of cities as distinct ethnic entities. It is likely that violently displaced, rural, ethnic people would find it very difficult to survive as sustainable, distinct entities, once uprooted, fragmented and dispersed into urban conditions. They are likely to end up, like those in Thailand, being assimilated into the wider population.

The relocation sites, themselves, vary considerably. Richard Humphries, referring to the Burma Border Consortium Report "Internally Displaced People and Relocation sites in eastern Burma" (p.2) distinguishes between relocation centres and relocation villages:

_The relocation centres tend to be large. These are often near roads where infrastructure work is done, or even at army bases. Villagers sent there get little state assistance-there are clinics at some-while work, other than forced labour, is usually not available. Often, those villagers are forced to hand over rice stocks, which are then rationed or sold back to them. Relocation villages are smaller and one type comprises outlying villages compelled to move into a town centre._

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**4.3 HORIZONTAL BREAKDOWN OF THE DISPLACED**
Total Displaced People: 1-2 million (approximate)

4.4 VISUAL DEPICTION OF THE SITUATION OF THE DISPLACED

4.5 VILLAGES DESTROYED OR FORCED TO BE ABANDONED IN EASTERN BURMA
An estimated 1,000,000 people have been displaced in the border states since 1995.

At least 268,000 internally displaced people are currently living in hiding.

At least 365,000 people are currently resident in more than 176 forced relocation sites.

43,000 people have arrived to refugee camps along the border since 1996.

At least 100,000 Shan refugees have arrived in Thailand, joining the already very large 'illegal migrant' population.


4.6 FORCED RELOCATION SITES IN EASTERN BURMA

365,000 people were estimated to be held in forced relocation sites in 2002.
4.7 MULTIPLE DISPLACEMENT

Eastern non Burman villagers are usually forced out of their villages many times and the pattern of destruction is repeated again and again. When villagers attempt to re-establish themselves, they are again burnt out, systematically expelled and possessions destroyed. One
village I stayed in, for example, had been burnt down five times. The repeated nature of this displacement for the year 2001 has been presented by the Thai Burma Border Consortium ("Reclaiming the Right to Rice," p.50, Oct.2003) as follows:

The above does not include information from Shan State, one of the areas of greatest forced displacement.

It should be noted that the Rome Statute of the International Criminal Court defines one of the distinguishing, defining acts of genocide as:
Systematic expulsion from homes. (See appendix 1, footnote 4)

4.8 EXTERNALLY DISPLACED

In addition to the internally displaced, there are about 150,000 externally displaced people living as refugees in camps in Thailand TBBC ("Relief Programme," p.3, June 2004. In addition, hundreds of thousands live as economic migrants in Thailand and other countries.
4.9 CONCLUSION ON SCALE AND GRAVITY

The issue in terms of numbers represents a crisis of global significance, one of the most serious in the world. The number of Kosovars, for example, driven out of Kosovo, which activated the principle to protect in the former Yugoslavia, was about 800,000. The number of Kurds forced to flee in northern Iraq after the first Gulf War, triggering US and UK intervention, was about 600,000.
In terms of gravity, the TBBC estimates that the situation of the internally displaced people represents a public health emergency with famine conditions similar to the horn of Africa. People die not just from direct killing, but, more often, indirectly from deliberately inflicted conditions which deprive people of the essential conditions necessary for life.

Some explanation needs to be given as to how, at the beginning of the 21 Century, so many people can be violently displaced in conditions of almost complete secrecy, and subjected to deliberately inflicted life-threatening conditions, just across the border from a relatively open country, namely Thailand, replete with journalists and modern communications infrastructure.

### 4.10 REASONS FOR INTERNATIONAL IGNORANCE

1. Physical inaccessibility. The area is mostly mountainous forest and is physically very difficult to travel in for an outsider.

2. The climate. The heat and humidity for much of the year is intense.

3. Malaria. It is one of the most malarial infested areas of the world and outsiders entering it have a high chance of contracting the disease.

4. Landmines. The land is heavily mined.

5. Political isolation. It is totally closed to the outside world, both from the tourist circuit of lowland Burma and from Thailand. Outsiders, especially journalists and aid workers, run the very serious risk of being singled out and killed if they enter it, and villagers caught helping them may suffer very serious reprisals. Most aid agencies, the UN, and the Red Cross voluntarily agree to work within conditions which prevent them from having access to the most vulnerable groups of people, i.e. the internally displaced. This means reports of what is going on are seriously incomplete.

6. Lack of infrastructure. Even if journalists could, or wanted to investigate what is going on, there is very little infrastructure, or resources of any kind, such as food or electricity, in the internally displaced areas for them to depend on.

7. Disregard by the world’s media. These physical difficulties are compounded by the apparent disregard of the issue by the world’s media, which tends to focus its limited attention on the National League for Democracy and the plight of Daw Aung San Suu Kyi. The camera provided to me by a major news agency had dirty video heads, thus making the film unusable: few testimonies to the world's indifference are as damning as the footage of one of the few remaining schools operating in Karen areas depicting the hopes of young children blocked out by the hopelessly flawed footage.

8. Trivialisation. Whether intentionally or not, when the media has covered the issue of the non Burman internally and externally displaced, it has often trivialized it. On one occasion, it focused, for example, on two twin children, part of "God's army," contributing to the notion that this is a bizarre, incomprehensible conflict in a far away country. (Maggie O'Kane, "Two little boys," The Guardian, July 27, 2000). A British Broadcasting Corporation "Correspondent" programme ("The Forgotten War") tended to reduce the subject to an adventure story of aid workers battling through the jungle. It de-contextualised and dehistoricised the issues and failed to communicate the scale of the problem.

9. Distortion. The Thai popular media appears not to cover the issue of human rights violations, or explain the root causes of the plight of refugees. Instead, it tends to promote and sustain a stigmatised image of ethnic peoples as drug dealers and job stealers. It fails to
distinguish between democracy activists and ethnic resistance fighters on the one hand, and those collaborating with, and compromised by, the ruling Junta on the other. This, in turn, helps explain why Thai people and their government appear not to understand, or wish to understand, that the long term stability, security and prosperity of Thailand is inextricably linked to the establishment of a responsible, democratic government in Burma, operating under the rule of law, with a mandate to govern from its citizens.

10. Quiescence of non-governmental organisations. The non Governmental organisations on the border have tended to maintain an "Invisible presence," understandably, perhaps, concentrating on meeting the needs of refugees, rather than speaking out about human rights violations. Only very recently has the systematic destruction inflicted on the other side of the border begun to be documented.

11. Thai policy. The Thai government appears not to wish the violations to be publicised, or investigated, because it does not wish to offend the military dictatorship in Rangoon. (Note its response to the 2003 Depayin massacre.) It prevents investigators and aid workers from crossing the border into Burma. The previous ambivalent policy seems now to have degenerated into support of the Burmese military dictatorship and involves active suppression of the democracy movement within Thailand.

12. A divided opposition. The opposition is divided and the more vocal, Burman dominated groups tend, with admirable exceptions, not to emphasise the plight of the non Burman peoples. The 1,500 courageous political prisoners in lowland Burma get more publicity than the 525,000 internally displaced, despite the fact that many of whom have been effectively detained, in the former UN Special Rapporteur's words, in forced relocation camps.

13. Ambivalence, disregard, constructive engagement, appeasement by Burma watchers and funding agencies. Some members of the international community tend to take a position which, in effect, endorses the idea of a centralized, Burman dominated state. They appear to adopt a politically centralised, Burman-centric view of the situation and thus, intentionally or not, endorse its policy consequences. People working in the country can, understandably, all too easily get involved in constructive engagement and/or appeasement. Such views are expressed in the current efforts (March 2005) to persuade the European Union to back full engagement with the Junta.

The price of intellectual "constructive engagement" may be, perhaps subconsciously, to play down, or ignore the scale and gravity of the plight of the ethnic peoples. Additionally, funding agencies and educational groups often promote training programmes based on South African, or eastern European models, of transitional justice that may not be applicable in Burma's case. In the laudable and understandable attempt to promote reconciliation, they may be disinclined to confront and expose the gravity of the systematic and widespread destruction inflicted on the non-Burman, eastern, internally displaced peoples.

14. Weakness of ethnic opposition groups. The ethnic people themselves, partly from lack of funds, expertise, proficiency in the English language, advocacy skills, political repression and their own internal divisions, have been generally ineffective at communicating with the outside world. They have, for instance, no centralized media, or advocacy office, where international journalists could go, even if they wanted, to find out what is going on. This fragmentation has been compounded by international donors who have tended to fund fragmented organizations and offices with a minimal drip feed approach. This makes it difficult for any of them to be really effective.

15. Ethnic personality type and trauma. The non Burman displaced people tend to be naturally depressive, stoic types, rather than hysterics: this means their pain is usually directed inwards, rather than outwards. In addition, some suffer from post-traumatic stress disorder. This manifests itself in a kind of psychic and verbal numbness. As a result, they are often reluctant, or unable, to speak about their experiences. When they do, it is often in an
almost inaudible, numbed manner accompanied by blank expressions, or occasional
"incongruous" smiles. It is possible to spend a long time working closely with them, and have
little idea about what they have experienced. These factors make it difficult for journalists on
short assignments looking for a sound bite, or a strong image, to express their story
effectively.

16. Infliction of fear in Thailand. The Burmese military dictatorship intimidates and, on
occasion, even attacks ethnic peoples (see attacks on refugee camps) on the Thai side of the
border. It undermines them through infiltrating their networks and, reportedly, monitoring
their communication systems.

17. UN policy. The UN works government to government. It thus confers legitimacy on
States, even those based on institutionalised terror. Current UN policy has failed to bring
about significant, meaningful change in Burma and may be helping sustain it in power.

18. Failure to understand the Junta's underlying policy. There has been a failure in many
reports, with the exception of that of the International Labour Organisation on forced Labour,
to conceptualise human rights violations in a way that would enable the International
Community to really understand, confront the seriousness of what has been inflicted, and
take responsibility for protecting the internally displaced. This is particularly evidenced in
the tendency to misunderstand, ignore, refute, or understate the level of intentionality
underlying the Junta's actions, especially, and surprisingly, by some NGO's themselves.
There is a tendency to misrepresent the underlying policy as simply militarisation, rather
than examine the policy underlying militarisation.

19. Deceit, manipulation of information, and gullibility of the international community.

An additional problem with trying to understand Burma is that it is difficult to believe any
information coming from the Junta, or from organisations basing their policies on information
provided by the Junta. It is therefore not easy for anyone, including Burma watchers, to really
know what is going on. Let us take two examples.

Misrepresentation of illiteracy rates

Martin Smith pointed out two examples of manipulation in Fatal Silence. Prior to its
application to the UN for least developed country status, Burma claimed a literacy rate of
78.6% (for which it twice gained UNESCO prizes). In 1987, however, it immediately dropped
this figure to 18.7% to gain acceptance. The deceit is breathtaking in its scale and effrontery,
and all the more alarming in that it duped a major UN body, UNESCO, into not just accepting
its figures, but rewarding its deceit with prizes.

Misrepresentation of Infant Mortality Rates

Secondly, a fundamental key indicator of health, the Infant Mortality Rate, was set by the
Ministry of Health from the early 1970s at around 47 per 1000 live births for children under
one. It remained at this level for twenty years and was accepted unchallenged by UNICEF,
WHO and other international agencies until 1992, when it was suddenly doubled to 94 per
1000 (again to gain Least Developed Status). At the same time, the official under five
mortality rate was suddenly doubled to 147 per 1000 births.

It is not just the scale of the deceit about such fundamental indicators as literacy and infant
mortality which is so shocking, but the apparent willingness and gullibility of major players
in the International Community, such as UNESCO, WHO, UNICEF, to endorse it.
There must also be some doubt about the very low numbers (60-80) the regime claims to have died from the Tsunami disaster in Burma, a figure endorsed by international organisations working inside the country.

Rational, humane, salaried people with assumptions about the honesty and reliability of government information, seconded from the West to work on Burma for often limited periods of time, may be vulnerable to deception. The US ambassador’s comments about how the diplomatic community was completely taken unawares by the 1988 democracy uprising that exploded around it in the heart of Rangoon, indicates how little diplomats really knew about what was going on, even when it was on their literal doorstep. The situation in far off, isolated, mountainous, forested borderlands is even harder for them to understand, access or respond to.

20. Threat of death. Outsiders wishing to monitor the situation, face an Asian jungle equivalent of the old Berlin Wall. Crossing the border involves risk of death to oneself and, more seriously, others. A partially globalized society in Thailand, with all the advantages of technological communication, directly adjoins some of the most persecuted, isolated peoples in the world, who are now in advanced states of deliberately inflicted disintegration. Their predicament is compounded by the lack of infrastructure and equipment necessary for communication.

21. Historical denial and indifference to Crimes against Humanity and Genocide. The failure to bring to light what is happening, and has happened in Burma, is nothing new. Indeed, it is entirely consonant with other international responses to Genocide and Crimes against Humanity in the twentieth century. Information from victims has usually been ignored, downplayed, or misrepresented, not exaggerated.

4.11 BURMA: A SILENCED COUNTRY

It is significant how often Silence is used in titles of books, or reports, attempting to describe contemporary Burma: A Silent Emergency (UNICEF 1991); Living Silence, (Christina Fink 2001); Suffering in Silence (Karen Human Rights Report 2000); Shattering the Silence (Karen Women’s Organisation, 2004) and perhaps, most significantly linking silence and death, Fatal Silence, (Martin Smith, 1996).

The selective killings and the wider silent, slow dying of thousands of mostly ethnic villagers from deliberately inflicted conditions in sparsely inhabited remote areas, decade after decade, is particularly difficult to communicate. The victims, however, describe themselves in their own words as living in a paradoxical nightmare of death and life: dying but alive, alive but dying: Dying Alive.
CHAPTER 5:
LANGUAGE AND CONCEPTS
5.1 ARTICLE 3 GENEVA CONVENTIONS

In essence, this key part of International Humanitarian Law protects civilians in an internal armed conflict requiring that those *Taking no active part in hostilities should be treated humanely.* They have universal jurisdiction.

The full Geneva Conventions apply only to an international armed conflict and are therefore inapplicable to the internal conflicts in Burma, with the important exception of the systematic attacks on the refugee camps in Thailand. The International Committee of the Red Cross, present in Burma, has special responsibility for their enforcement.

5.2 BORDER AREAS DEVELOPMENT POLICY

This is the Junta's euphemism for inflicting economic Burmanisation in, and population transfer to, the border areas. The "Development" is, in effect, a form of economic and racial colonialism. It is effected by, amongst other things: intimidation, forced labor, forced relocation, systematic violence, extortion, land confiscation and population transfer of Burman military and families into non Burman areas.

5.3 BUDDHISTIZATION

A policy of forced and coerced imposition of a Burmanized and militarized form of Buddhism on other religious groups, particularly Moslems and Christians. This militarised form of Buddhism is also inflicted on non Burman Buddhist groups, such as the Shan and Mon Buddhists, and also on Burman Buddhists themselves.

This is a policy sometimes difficult for some westerners to accept: they understandably associate Buddhism with principles of tolerance and compassion. Buddhism manipulated into the service of a racist military dictatorship as a means of inflicting persecution and assimilation seems a contradiction in terms.

5.4 BURMA OR MYANMAR

The two names embody the conflict of national identity. To use the term Myanmar risks legitimizing the current Junta; to use Burma may invite accusations of colonialism. However, the present writer will use the term Burma because the non Burman peoples refuse to accept the Junta's conception of the unitary, centralized, Burmanised state, implicit in the name "Myanmar."

Ironically, the dictatorship, intent on implementing a policy of Burmanisation, justifies the term "Myanmar" as being more inclusive of diversity, because it does not suggest the land of Burmans. The ethnic nationalities, intent on retention of separate identities and opposing Burmanisation, insist, however, on using the name "Burma". Even more confusing, the ethnic peoples and outside observers insist on using the word Burmanisation to describe the negative process of imposing a single Burman identity, while retaining the name "Burma" for the country in a pluralistic, positive sense.

The word "Myanmar" is not, however, inclusive of ethnic diversity, but is, according to Martin Smith, an old ethnic Burman name for the country.

The answer to this etymological and political conundrum goes deeper than that however, and may express both an etymological and symbolic solution to "Burma's" tragedy: the anglicized
"Burma", is derived from "Bama" which is how some of the people of "Burma", particularly Burmans, pronounce the word. "Bama" was itself a derivative, "Myanmar", as it was arbitrarily pronounced in the Pegu area and much of lowland Burma (the labial M sound getting changed to a B). "Myanmar" as spoken by lowland people of Burma was in turn a corruption of the older "Mranma" as originally spoken by the Arakanese. The root of Mranma is ran, one of the forms of a widely spread Himalaic body for man. (Sir A. Phayre, "Transactions of the Ethnological Society," vol. 5).

Thus Burma-Bama-Myanmar-Mranma is a four branched tree rooted in the linguistic taproot Ran. Ran means man, or in more common modern parlance, humanity.

Moreover, the "Karen", often pronounced "Kran," has the same root (K)ran (as pronounced in Thailand) according to Phayre, With the guttural in the place of the labial prefix (ibid). The Kran are thus, etymologically and literally, human beings. Additionally, the Karen name for themselves, Pwa K'nyaw, means human being.

Thus, etymologically, literally and morally, all the people, of the land known as Burma, Bama, Myanmar, Mranma are all one: Ran, i.e., human beings.

Widespread or systematic violations inflicted on the people of Burma-Bama-Myanmar-Mranmar, are thus, etymologically as well as legally, Crimes against Ran, i.e., Humanity . . .

5.5 BURMANIZATION /MYANMIFICATION

Now generally accepted by Burma scholars, this is a process described by the Mon specialist, Ashley South, as process in which:

Minority cultures, histories and socio-political aspirations are subsumed into an homogenizing national identity derived from the Burman historical tradition.

The term, as distinct from ethnic cleansing, expresses an activity by which non Burman cultures appear to be destroyed through, and by, a process of assimilation and absorption, rather than by direct, violent destruction. However, the destruction implied in the words, subsumed into and homogenized, suggests a process which involves the complete loss of identity of ethnic cultures within the dominant Burman one.

It seems that the term Burmanization, however, as generally used, is restricted to describing a process of cultural and social destruction, followed by assimilation and absorption. In itself, this is not expressive of genocide, something generally understood to involve primarily, but not exclusively, physical destruction. However, there is ambivalence in The Genocide Convention on the issue of whether genocide embraces more than physical destruction. For example defining activity 2 c) forcibly transferring children from the group to another group, clearly expresses forced assimilation, not physical destruction, as a constituent act of genocide. Moreover, recent expansive interpretations of the two UN Tribunals for Rwanda and former Yugoslavia suggest that cultural assimilation and destruction are, at the very least, strong indicators of genocidal intent. (ICTY, Kristic Judgement, august 2001)

5.6 BURMESE OR BURMAN

This is particularly confusing, but important to clarify, because one of the essential tasks when investigating human rights violations, especially ethnically based violations, is to find
out who is doing what to whom. In line with most current academic writers, the term Burman will be used to refer to the numerically dominant, ethnic group found mostly in lowland Burma, while the term Burmese will be used to describe the collective peoples of Burma. However, many non Burman peoples do not consider themselves to be "Burmese". For example, when describing human rights violations, they use the term "Burmese" to describe the alien, predominantly Burman/Burmanising ethnic military group responsible for persecuting them. (See for example the accompanying footage on the Dooplaya massacre.) Eastern, ethnic, non Burman people, in fact, emphatically exclude themselves from being considered "Burmese." In addition, the internally displaced non Burman people do not even appear, in general, to recognise the name, "Burman." They call "Burmans" "Burmese."

Thus international observers, and non Burman eastern peoples, sometimes use terms at cross purposes. Non Burmans identify themselves themselves as Karen, Karenni, or Shan and the Burmans, "Burmese." International observers call the main lowland ethnic group Burmans, or Bamars, and all the people of Burma, "Burmese."

This lack of common terms, rooted in identity, can cause problems when trying to identify the ethnic identities of perpetrators and victims, especially when applying a framework of law, like Genocide, which is based on ethnicity.

5.7 CRIMES AGAINST HUMANITY

Crimes committed against any group of civilians, whether in time of peace or war, which are impermissible under International Law.

They must be widespread or systematic.

WIDESPREAD: defined by the International Criminal Tribunal for Rwanda as: massive, frequent involving a large scale action and carried out collectively with considerable seriousness and directed against a multiplicity of victims. (ICTR, Prosecutor v Akayesu, Judgement, 96-5-T Sept. 1998.)

SYSTEMATIC: Thoroughly organized and follows a regular pattern on the basis of a common policy involving substantial public or private resources. (ICTR -96-5-T, September 1998).

We should note the use of the word or, i.e., Crimes against Humanity do not have to be widespread and systematic

5.8 DEPRESSIVE TYPE

This refers to both an individual and cultural pre-disposition to redirect strong feelings, such as anger or pain, inwards rather than outwards. It is the opposite of the hysteric type who expresses intense feelings outwards. Burma's non Burman displaced people tend to be the former type. When compounded by post traumatic stress disorder, victims find it extremely difficult to express their feelings, and listeners find it difficult to sustain interest in the face of apparent, numb deadness. The numbness is, however, an expression of pain. It does not, however, make for good journalistic copy.

5.9 DISTINCT ENTITY

The International Criminal Tribunal for Yugoslavia in its Srebrenica Judgement opined that it is not the numbers destroyed that determine whether an act of destruction can be considered to be genocide, but whether the group destroyed represents a distinct entity which prevents
the wider group surviving. As such, it argued fewer people may die in an act of genocide than those dying from War Crimes, because the latter may not endanger the group’s survival.

5.10 ETHNIC CLEANSING

This has been defined as: Rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area (The United Nations Committee of Experts, Report to the Security Council, January 1993). According to the International Criminal Tribunal for Yugoslavia: it may involve genocidal characteristics, (Blaskic Judgement), but appears, from a legal point of view, not to be a form of genocide itself, since the intention is to violently expel the group, not to physically destroy it as such.

The definition of Burmanisation as, a process of subsuming ethnic peoples into an homogenized Burman identity, is arguably the opposite of ethnic cleansing which involves sudden, violent expulsion; Burmanisation, on the contrary, appears primarily, to be an indirect, slow form of destruction inflicted by absorption and assimilation. The long term intention may, however, be the same as ethnic cleansing: to render an area, in this case the whole of Burma, ethnically homogenous, not by violently expelling ethnic peoples, but primarily, after physical destruction of any resistance, by culturally, and biologically, absorbing and assimilating non Burmans out of existence. Thus ethnic cleansing is probably not the appropriate word to use to describe the Junta's policies in Burma, since it, firstly, misrepresents what is happening in the short term, and, secondly, is inherently meaningless in a legal sense; it thus lets the Junta off the hook of clear accountability. In any case, the term should never have become part of common parlance: it is, in fact, an objectionable euphemism invented by Serbs to disguise the moral consequences of their barbarous behavior of destruction through violent expulsion in the former Yugoslavia. To use the verb, "Cleansing," is in effect to linguistically endorse this form of mass destruction. Victims were not "Cleansed," but violently evicted on a massive scale, and often killed in the process.

Destruction through absorption, rather than expulsion, may be connected to the fact that Burma was never over-populated, or technologically highly developed. It has thus always needed labour for development, especially slave labor. Pagan was built, for example, by Mon slaves, just as modern roads have been built with forced labour, as will be, no doubt, the border area “Development” projects. This need for labor has possibly been a factor mitigating outright total destruction.

Moreover, we should remember that destruction through absorption was the activity of its traditional Burman conqueror kings on whom Senior General, Than Shwe, apparently models himself. They did not look for Lebensraum, or living space. They had that. They wanted slaves.

5.11 ETHNIC MINORITIES/NATIONALITIES/PEOPLES

The choice of term determines how those groups are politically perceived. The expression, "Ethnic minorities" has the effect of marginalizing them. No one knows the exact population of Burma, but it is estimated to be about 50 million, of whom about 20 million are ethnic “Minorities.” These people, therefore, collectively comprise a very large "Minority." They
inhabit over 60% of the land area of Burma and have always considered themselves to be separate peoples, with their own languages, customs and cultures. Many were in Burma well before the ethnic Burmans arrived. It would, therefore, seem to be more appropriate to describe them as ethnic peoples, and indeed, to consider the Burmans themselves to be one of these ethnic peoples. To shift from ethnic minority to ethnic people is to reframe the political perspective. It is, of course, the function of the SPDC to render such thinking unthinkable, and depict the situation simply as that of a Burman country with minority problems.

The term ethnic nationality has not been used since most of the ethnic leaders now appear to have renounced any claim to separate national status and embrace some form of federalism. The term "Hill tribe people" has been avoided, as it completely marginalizes them.

On reflection, it is felt that the most appropriate way to distinguish between Burmans and ethnic peoples is to use the terms "Burman" and "non-Burman groups."

5.12 ETHNOCRATIC STATE

A situation where the State acts as the agency of the dominant ethnic community . . . in which recruitment to the State elite and government is disproportionately and overwhelmingly from the dominant ethnic group . . . its political structure serves to maintain and reinforce monopolization of power by the ethnic segment. (David Brown).

Thus while Burmanization describes the racial policy, the ethnocratic State is the institution implementing the policy and sustained by the policy.

5.13 EXTRAJUDICIAL AND ARBITRARY KILLING

Amnesty International defines extrajudicial executions as: force which is disproportionate to any threat posed although authorities may claim that this use of force is legitimate.

It is questionable whether the term is an appropriate description for many of the killings in eastern Burma. The overwhelming number of killings, documented by Amnesty International and UN Special Rapporteurs, inflicted on the ethnic civilian populations of Burma are of defenceless civilians who are not involved in violence. As the Special Rapporteur stated in his 1998 report, the killings include women and children. The killing of such victims is not a use of force which is disproportionate to any threat posed, because women and children in eastern Burma pose no conceivable threat. The use of the term term, extra judicial killings, to describe the destruction of vulnerable civilians in eastern Burma, may contribute to understating the gravity of the violative conduct.

Arbitrary killings are understood as killings inflicted without any apparent purpose or meaning. However, if the killings are inflicted within an overall premeditated policy (ICTY) they may be considered to be acts of Genocide, or Crimes against Humanity of murder or extermination. Killings in eastern Burma are inflicted within the overall premeditated policy of subjugation and assimilation known as Burmanisation.

5.14 FAILED STATE

A State which cannot protect its citizens, or is itself responsible for violating the rights of its citizens, including their right to life. Burma, according to UN Reports and General Assembly Resolutions, is guilty of both.


5.15 FUNGIBILITY FUNDS

A technical term which apparently describes the process in which international aid can be used by a regime to reduce its responsibilities to provide essential services to its people, by diverting funds to sustain other, less justified activities. For example, if aid is provided for health and education, the money saved may be simply used by the military government to further reduce support for its people, and re-allocate the money saved to increase its military power. In Burma's case, armed forces of 400,000+ are maintained and equipped with, amongst other things, Mig 29's, and, up till recently, a relatively sophisticated medical system for the largely Burman dominated officer class, while there are virtually no medicines provided in the public health care system for the general public. Fungibility "Aid," by understandably attempting to meet the desperate need of the neglected poor, can become, inadvertently, a way of sustaining and augmenting State power, because it may help the regime to allocate resources to fund itself, at the expense of the citizens as a whole.

5.16 GENOCIDE

DEFINING ACTIVITIES OF GENOCIDE:

ARTICLE 2 OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF GENOCIDE:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group.

It should be noted that only one of the above activities expresses destruction by killing. It should also be noted that proof of quantifiable numbers of people destroyed is not required for proof of activity 2 c) and 2 d), only an intention to inflect the acts. This is particularly significant as indirect destruction described by 2 c), is arguably the most widely used method inflicted on non Burman, internally displaced people.

ACTS OF GENOCIDE

ARTICLE 3:

The following acts are punishable:

a) Committing Genocide;
b) Conspiracy to commit genocide;
c) Direct and public incitement to commit genocide;
d) Attempting to commit genocide;
e) Complicity in genocide.

It should be noted that attempting to commit genocide does not require the act to have been completed, only, according the Rome Statute, that a substantial step has been executed.

It should also be noted that the ICTY convicted perpetrators for Genocide in the case of 7000 deaths in Srebrenica (not an entire race); the government of the Netherlands is currently prosecuting a Dutch national for complicity in genocide inflicted on the Kurds in Halabja, northern Iraq, where "only" 5000 people were killed. These figures confirm the meaning of
genocide is very much broader than the popular notion of the fast destruction of an entire race.

5.17 HUMAN RIGHTS ABUSES

This is a term which describes conduct inflicted by non State actors. It thus probably implies a less grave level of responsibility than expressed by the word violations which are inflicted by governments violating agreed international law. (UNHCHR Manual No. 7, p. 10). Abuses express conduct committed by ethnic groups; violations those by the State.

5.18 HUMAN RIGHTS VIOLATIONS

Human rights violations include government transgressions of the rights guaranteed by national, regional, and international human rights laws and acts and omissions directly attributable to the State involving failure to implement legal obligations derived from human rights standards . . . Any discrimination on grounds of race, colour, sex, language, religion, political or national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of any human rights constitutes a violation of human rights. (UNHCHR Training manual, No 7, p. 10).

Violations are thus, by their very nature, illegitimate acts. Moreover, the words: failure to implement legal obligations, and discrimination, strongly imply that a high level of intentionality and knowledge is intrinsic to violations.

5.19 IDENTIFICATION WITH THE AGGRESSOR

This is a defence mechanism identified and described by Sigmund Freud. A victim may seek to protect himself/herself by identifying with an aggressor. This may involve not just ceasing to resist, but actually adopting and internalizing the aggressors' way of thinking and behaving. The concept helps explain the way in which some victims become their aggressors' most enthusiastic advocates. The Stalinist show trials revealed defendants, former communist revolutionaries, so identifying with the prosecuting State that they apparently "voluntarily" condemned themselves to death for crimes which they had never committed; Nazi atrocities were often enthusiastically carried out by defeated peoples who identified with their conqueror's ideology; in Burma, the relentlessness and totality of State persecution, makes such identification understandable, and helps explain why it is not uncommon to find non Burmans identifying with, and implementing, Burmanization. The fact that they do so does not undermine the racial nature of the programme. Rather, it suggests that the process has become so total, subtle and relentless as to be internalized and perpetrated even by its victims.

5.20 INSURGENTS, TERRORISTS, RESISTANCE FIGHTERS

The choice of appropriate term is difficult, but very important to consider. The words embody completely different worldviews.

The term most commonly employed, Insurgents, refers to people fighting against their own government, or army of their own country and, as such, may tend to illegitimize them and confer legitimacy on the ruling regime. The non Burman peoples would strongly dispute they are resisting an army of their own country, since Burma, as defined by the military dictatorship, is not their own country: that is precisely why they have been fighting for fifty-
five years. As such, the term may not be entirely appropriate. Moreover, the fact that Burma is accused by the UN of systematic and widespread violations indicates, in the use of the word violation, that it is formally and knowingly breaking, i.e. transgressing, international law: its actions are thus, by their very nature, illegitimate.

The opponents of a militarized State which has no Constitution, has been overwhelmingly rejected by its electorate, and which continuously and systematically violates international law in a widespread and systematic manner, cannot, therefore, easily be illegitimized as insurgents. It is the insurgents, we must remember, who are primarily calling for the 1990 election to be honoured and, in line with UN policy, for the rule of law to be established through tripartite dialogue, and the establishment of a Federal, democratic Constitution.

After much reflection, particularly on the international jurisprudence on the issue, and on the nature of the current level of armed struggle, it has been decided to use the term resistance fighters.

The decision is based on three key judgements defining the status of armed opponents of regimes imposing policies of racial hegemony (known locally in Burma’s case as Burmanisation) and, also, on the nature of the conflict itself.

1. The French Court de Cassation in the Klaus Barbie case defined Crimes against Humanity as:

   Acts performed in a systematic manner in the name of a State practising by those means a policy of ideological hegemony. (100 International Law Report, p. 336).

   The State policy of Burmanisation (i.e. homogenizing minority cultures) is a specific, local expression of a State systematically practising ideological hegemony. Thus Burmanization is, itself, likely to be a Crime against Humanity of Persecution.

2. The International Criminal Tribunal for the former Yugoslavia (Vukovar Rule 61, Decision of April, 1996) agreed with the above French Court’s definition and:

   Noted that crimes against humanity can be committed even where the victims are resistance fighters rather than civilians.

3. The French Court de Cassation, again in the Klaus Barbie case, when considering Crimes against Humanity committed against the armed French resistance against Germanization, expressed the same view:

   Inhumane acts and persecution which in the name of a State practising a case of ideological hegemony, committed systematically or collectively not only against individuals because of their membership in a racial or religious group but also against adversaries of that policy whatever the form of opposition could be considered a crime against humanity.

   The commonly used expression to describe those armed groups in France opposing the Criminal State (whether it was the Nazi occupied area, or the French collaborationist, proxy state of Vichy) imposing ideological hegemony was "Resistance fighters."

It has therefore been decided to adopt the term "Resistance fighters" because:

1. The armed groups in eastern Burma are fighting a State inflicting, amongst other things, a policy of ideological, cultural and linguistic hegemony commonly known as Burmanisation;

2. Those opposing such a policy elsewhere have been defined in authoritative judgments as resistance fighters;
3. The term, significantly, confers legal protection on those resisting, and to those associated with resisting, such a policy.

5. In addition, the nature of the armed opposition itself sustained by the non Burman, armed groups in eastern Burma is now most accurately described as resistance. They have very limited capacity left to mount large scale military offensives of any kind, their objective being simply to resist, in a limited way, the overwhelming presence of an occupying army inflicting Burmanization.

The choice of term to describe the armed opposition is important when assessing human rights violations in eastern Burma, since international humanitarian law might not be applicable if they were described as terrorists, or possibly even insurgents.

The term terrorist would confer inappropriate legitimacy on the military dictatorship, and reduce the armed opposition merely to extremist criminals intent on inflicting terror and destruction on innocent civilians. When controlling areas of territory, non Burman groups set up and administered schools, hospitals, roads, judicial systems, etc., actions which were not acts of terrorism.

The simple definition of terrorist, namely someone who kills civilians (Kofi Annan, 15/3/05) seems to be a more appropriate description of junta activity, than that of the mainly non Burman resistance.

5.21 INTENTION

This is sometimes known by its Latin name, Mens rea. A crime must consist of two parts: an intention to commit the crime, the mens rea, and the actual deed itself, also known by the Latin word, the actus rea. A crime must thus have a mental element, and a physical element.

Apparently academic sounding though the following definitions of levels of intention may seem, an accurate understanding and application of them to the violations inflicted in Burma is essential if we are to understand the violations properly from the point of view of international law.

For the purposes of this report, a person has intent where:

a) In relation to conduct, that person means to engage in that conduct;
b) In relation to a consequence, that person means to cause that consequence (volitional) or is aware (cognitive) that it will occur in the ordinary course of events. (Article 30 of The Rome Statute of the International Criminal Court).

There are five different levels of intentionality which need to be considered when trying to assess whether a violation can be judged to be an act of Genocide, a Crime against Humanity, a violation of Article Three of The Geneva Conventions, a Grave Breach of the Geneva Conventions, or a War Crime.

Special Intent or Dolus Specialis: This is the special level of intent which distinguishes genocide from Crimes Against Humanity or War Crimes: it is the special or underlying intention to destroy the group in whole or in part.

This underlying intention to destroy the group in whole or in part is in addition to the specific intention to inflict a particular crime. For example, if killing takes place, it can only be considered to be an act of genocide if it can be shown, or be reliably inferred to be, expressive of a deeper intention to destroy the group in whole or in part.

The other four levels are as follows:
1. **First degree intent or dolus directus first degree:** the crime is carried out with the full knowledge of all material elements of the crime and by the purposeful will to bring about the desired result (RSICC/C, pub. OUP, p. 906). In other words, the person wants to achieve the result which occurred and fully knows what is going on. However, wanting, the volitional element, is dominant.

2. **Second degree intent or dolus directus second degree:** the perpetrator while not wishing, however, certainly knows that he cannot reach his military aims without inevitably killing innocent civilians (RSICC/C, pub. OUP, p. 906). The volitional element is reduced, but the cognitive element increased.

3. **Third degree or dolus directus eventual is third degree:** the perpetrator does not wish to kill civilians, but in being aware of this danger is prepared to approve of it should it happen, i.e., he fully accepts the possibility of deaths occurring as a result of his action. The volitional element is low, but the cognitive element is high. This is the minimum level of intention required to prove a Crime against Humanity, if the additional other criteria of widespread or systematic are met. It is also the minimum level needed to prove a violation of the Geneva Conventions.

5. **Fourth degree,** recklessness or conscious negligence: the perpetrator is aware of the dangerousness of his actions, but the volitional element is totally lacking. He is not intending to kill civilians, but they may die as a result of his actions. Conscious negligence would not appear to meet the level of intent required to prove a violation of the Geneva Conventions, or Crimes against Humanity and certainly not Genocide.

### 5.22 INTERNALLY DISPLACED PEOPLE

This is a term used to describe those people who have been forced to flee their homes, but who have not crossed a recognized international boundary. Internally displaced people have been defined as:

*Persons who have been forced or obliged to flee or to leave their homes of habitual residence, in particular as a result of or in order to avoid armed conflict, situations of generalised conflict, violation of human rights or natural or man made disasters and who have not crossed an international recognised State border.* (Francis Deng, Representative of the UN Secretary General on Internal Displacement)

The term has the advantage of clarity and neutrality, but has no affective meaning as does, for example, the word "Refugees." The term "Refugees" elicits, or should elicit, compassion: "Displacement" is more usually associated with describing a morally neutral, scientific process whereby one thing is inevitably removed and replaced by another, as in Archimedes' famous principle. The predominant connotative, scientific, neutral, objective associations of this term, however, do not adequately take into account the suffering of people who have been intentionally burnt, shelled, shot out of their homes, and forced to live in conditions of fear and misery in free fire zones, or forcibly concentrated into camps.

The term becomes even more questionable when reduced to the casual jargonism of the euphemistic acronym, "IDP’s." They then become linguistically what they have been forced to become literally: marginalized and euphemized into a three letter acronym incomprehensible to anyone outside the specialized world of, "Aid."

However, in the light of the fact that there appears to be no alternative term available, the term has been retained, though, out of respect, these people have not been reduced to the status of an acronym.
5.23 KAREN or KAYIN STATE

Kayin removes the ethnic name, "Karen," from the place, so that the geographical area is not associated with the ethnic group. Changed place names verbally separate ethnic groups from their ancestral lands, thus making the idea of an ethnic homeland unthinkable, since there is no word to express it.

5.24 KARENNI/KAYAH STATE

Likewise the military dictatorship has sought to replace the name Karenni with Kayah to remove any association between the State and the Karenni ethnic group. It would be like removing the prefix Scot from Scotland and replacing it with something else.

5.25 KILLING

In line with the Rome Statute and the Case Law established by the ICTY and ICTR, the term Killing is interchangeable with causing death. Indirect methods, e.g. starvation, are thus embraced by the term "killing."

International law distinguishes between selective killing and killing en masse. According to judgements by the ICTY, the selective killing of a small number of people can be considered to be an act of genocide, if it is an expression of a deeper intention to destroy all or part of a wider group.

5.26 KNOWLEDGE

For the purpose of this report, knowledge means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. (Article 30 of The Rome Statute of The International Criminal Court). Thus if health clinics are deliberately destroyed and medicines deliberately not provided, a consequence will occur in the ordinary course of events: people will inevitably, or at the very least possibly, die from preventable illnesses.

5.27 LANGUAGE AND BURMESE REALITY

"I DO NOT SPEAK A LANGUAGE: A LANGUAGE SPEAKS ME."

Language is important. Its relation to thought is complex, but the two are dynamically interactive. It is not as though thought comes first and is then poured, like molten liquid, into an external mould of words: words shape thought, even as thought shapes words.

Those with political power define language and can thus also define thought. Certain regimes create totalitarian languages making certain thoughts literally unthinkable, described by George Orwell as Newspeak in his novel, 1985.

This is not to indulge in irrelevant theory, but to point out that the words we use in relation to Burma, (even the name itself is loaded with political controversy), defines how we think about, perceive, understand and respond to the country. The current regime, being firmly entrenched in power, is not just physically in control, but has manipulated language to serve
its ends. Many observers and journalists work within this linguistic framework, just as businessmen and aid workers choose to remain within the physical framework dictated by the Junta.

A independent assessment of the situation, therefore, requires that this "Juntaspeak" itself be subjected to rigorous analysis. Without this, the observer runs the risk of being framed in an alien discourse. For example, the world’s media recycled the Junta’s propaganda that the attack on Aung San Suu Kyi’s convoy was a clash, suggestive of a violent collision between two opposing sides, expressive of social disorder; once gullied by such words, it is only too easy to become manipulated into accepting her subsequent imprisonment as protective custody. This then becomes, in pure newspeak, a protective mutual security arrangement. Aung San Suu Kyi’s convoy was, however, violently attacked in a premeditated State organized ambush in which some of her nonviolent supporters were murdered. She herself just escaped with her life. She has since been forcibly incarcerated against her will.

Perhaps the most bizarre euphemism, accepted apparently even by aid agencies, is that access to the internally displaced is impossible, because of security reasons. The military Junta, however, annulled the election of 1990; destroyed the federal spirit and letter of the original Constitution, and has inflicted widespread, destruction on the non Burman civilian displaced populations, including their right to life, for decades. The Junta, in fact, is the security problem. Anyone who enters the areas where the internally displaced attempt to survive is protected by them, not attacked. They make every effort to try to feed one. Some try to access the Voice of America and the BBC on short wave radios. Those trying to kill one are the Junta army, not the starving internally displaced.

The point that needs making in relation to Burma is that appeasement, and constructive engagement, can begin with language. You then start thinking the Junta’s thoughts for it.

5.28 MOTIVE

Different from intention. It is the reason for doing something. The general consensus amongst international lawyers is that evidence of motive is not required to prove Crimes against Humanity or Genocide. It may, nevertheless, be relevant and helpful to try to establish the motives of criminal behavior to assist in establishing the legal grounds for prosecution.

5.29 NATION BUILDING

This is understood in two opposed ways by the opposition movement and the military dictatorship and some of those advocating constructive engagement. The former, in the spirit of Aung San and the country's original Constitution, interpret nation building as establishing a Federal democratic state founded on the principles of unity in diversity and equality; the Junta understands it as imposing a centralised, unitary State based on "One race, one religion, one language."
5.30 PERPETRATOR

The term perpetrator is used neutrally as regards guilt or innocence.

5.31 POLICY

A set of plans that is used as a basis for making decisions, especially in politics. It clearly embraces the notion of intention because planning expresses intention. Moreover, if a policy is a set of plans, it is, by its very nature, systematic and organized. The UN Special Rapporteur’s 1998 description of the violations being, *The result of policy* strongly suggests the violations are intentional and systematic.

5.32 POST TRAUMATIC STRESS DISORDER

A psychological term describing those suffering from the effects of trauma. It manifests itself in an inability to feel anything, especially the suffering inflicted by the trauma. Symptoms include psychic and verbal numbness: victims appear to express, to the untutored ear, extreme indifference and boredom, something which is unhelpful for journalists looking for good copy, sound bites and interesting visual material. The reality is, of course, that it is the very intolerability of the pain, caused by the trauma, which results in the need to deaden the self to protect it from feeling anything. The specific condition is compounded by the general depressive cultural type of ethnic peoples, who tend to direct pain inwardly, rather than outwardly into anger.

5.33 SPDC

State Peace and Development Council. This is a misleading, acronym coined by an American advertising agency, to describe the present regime.

Firstly, it is debatable whether Burma is a legitimate State. The military took power by force in the 1962 coup, because there was no common agreement about the nature of the State of Burma. It has maintained itself in power ever since through violence. It suspended the Constitution. There is no consensus on what a new constitution should be because there is no inclusive dialogue. Burma is a thus a country which, 55 years after independence, has no Constitution and no legitimate government. A country without a Constitution, or a legitimate government, is arguably not a State in a meaningful, political sense.

Secondly, not only did the military come to power by use of force in 1962: it was then overwhelmingly rejected by all sections of the electorate in the 1990 elections. This makes it quite unique in the world: a pariah State with such claims to illegitimacy not even former Iraq, or present North Korea, could rival.

Thirdly, there is no consensus on what the physical State of Burma is. The absence of agreed internal boundaries is given practical expression by the Junta itself in cease fire agreements. In Kachin state, for example, the lines marking the cease fire boundary are complete with flags and checkpoints, and the writ of the Junta does not run in cease fire areas where ethnic peoples have retained control and their arms.

Thus Burma has no Constitution; it is ruled by an illegitimate clique of army officers who have been specifically and massively rejected by its people; it has no agreed internal
boundaries; it has no agreed name, and there is no agreement as to what certain regions and certain peoples should even be called. Politically, it is a failed state.

Additionally, the word Peace is inappropriate. Burma has been at war with itself for over fifty five years. According to Martin Smith, quoting former SLORC Chairman General Saw Maung, *The death toll since 1957 runs into millions.* (Martin Smith, "Burma, Insurgency and the Politics of Ethnicity," pub. Zed books, p.101.) The reality on the ground, even as this report is written, is continued killing, looting, pillaging, raping etc in eastern Burma (see latest UN General assembly Security Council Resolution, 2003). Moreover, the apparent peace in most of lowland Burma is simply fearful resignation in the face of the threat of State violence.

Furthermore, the term “Development” is also inappropriate. The Junta has reduced Burma to the level of least developed country status whose economy is on a par with countries like Chad or Ethiopia, and below that of Bangladesh. It spends about 50% of the National budget on the military, and very little indeed on education and health. The World Health Organisation has rated it 190 out of 191 countries in terms of provision of health care, just above Afghanistan.

Council: This is normally understood to describe a peaceful group of people elected to run a town or area. It is an unsuitable term to describe this military dictatorship having positive, democratic, peaceful connotations inapplicable to a military Junta based on force.

Thus to use the term “SPDC” is to adopt the language of the aggressor, legitimize it, and linguistically collude with it.

5.34 SPLINTER GROUP

These include proxy armed groups, such as the DKBA (Democratic Karen Buddhist army), formed by breaking away from the ethnic resistance. They operate under the overall control of the military dictatorship and are often allowed, even encouraged, to indulge in drug trafficking with the complicity of State. They are often under the de facto control of the Junta, which is thus ultimately responsible for the violations they inflict.

5.35 STATUTE OF LIMITATION

This is a legal term that expresses a time limit on crimes. In the case of *Crimes against Humanity* and *Genocide*, there is no time limit, no Statute of Limitation. This means, no matter how long ago a crime was committed, it still remains actionable. This Report is not a work of journalism, and is thus not limited to considering only recent events.

5.36 VIOLENCE: POSITIVE AND NEGATIVE
Violence can be expressed not just by positive action, such as killing or burning, but also by indirect, negative action, such as not providing food, clean water or medicines. Negative violence, although more indirect and slow, can be as destructive as positive violence. It appears, however, to be less outrageous and obvious. International law, nevertheless, condemns negative violence and accepts it can inflict Crimes against Humanity, Genocide and violations of The Geneva Conventions.

5.37 WAR CRIMES

In contrast to Crimes Against Humanity, which must be widespread or systematic, and Genocide, which requires proof of a specific underlying intent to destroy a group in whole or in part (in addition to carrying out the specific crime), War Crimes can in principle cover even isolated acts committed by individual soldiers acting without direction or guidance from higher up. (Rome Statute of the International Criminal Court/Commentary). Most are applicable to a situation of internal armed conflict. However, as the former Special Rapporteur for Myanmar cited the violations were the result of policy at the highest level, i.e. systematic, this category of crimes has not been strongly emphasised.
COUNTRY BACKGROUND
Map of Ethnic groups of Burma (Relief Programme, TBBC) including major areas inhabited by ethnic nationalities. The map demonstrates that approximately 60% of the physical area of Burma is inhabited by ethnic nationalities.
6.3 THE ISSUE OF POPULATION

Normally population is not a contentious issue, but in Burma's case reliable figures are difficult to get, partly because there have been no reliable censuses for many years, and partly because figures may often be manipulated. This makes it particularly difficult to assess the quantifiable effects of decades of human rights violations.

6.4 DIVERGENT RATES OF POPULATION GROWTH BETWEEN
Yet these minorities [minority groups living in the horse shoe shaped hill areas which surround the Burman heartland on three sides] . . . except in rare instances are more prolific that the Burman population and are increasing at a very rapid rate. (The Pao people of Shan State, a sociological and ethnographic study of the Pao people, p. 3, W. D. Hackett, Phd thesis, University of Cornell, 1953.)

The ethnic Burman population has apparently continued to grow rapidly with the departure of the British and Indian communities while the birth rate of the ethnic minority races (and not just Mon and Karen) have inexplicably slumped. (Martin Smith, "Burma, Insurgency and the Politics of Ethnicity," ch. 2, p p 38-39.)

The two observations, the first made very early on in Burma's post war ethnic conflict, the second nearly fifty years later, describe very different trends. They imply that Burmanisation may have had quantifiable effects in terms of physical numbers of people.

In the case of the eastern non-Burman ethnic peoples, the apparently neutral question of population is connected to the wider issue at the heart of this report. Have they, and, if so, how they have been, physically affected by years of systematic, widespread human rights violations? A serious attempt to understand the apparently neutral subject of population and, more to the point, relative population growth rates between Burmans and non Burmans, involves exploring whether there may be a causal relationship between widespread, systematic human rights violations, and the actual population levels and birth rates of non Burman peoples.

6.5 ISSUE OF NUMBERS
The current population of Burma is estimated to be about 50,000,000, though this figure is very difficult to gauge accurately, since the last reliable census was carried out by the British in 1931. That census was itself open to question since it recorded all those who stated that their first language was Burmese as being Burman, thus probably massively over-estimating the number of Burmans. When the question was rephrased to find out the respondent’s mother tongue, the answers were very different.

Significantly, language is the primary method of self-representation for Burma’s ethnic peoples, e.g., you are Karen if you speak Karen. Language is thus very strongly connected to identity. Destruction of language may, therefore, be a strong contributory factor in the destruction of the identity of non-Burman groups.

Not just overall population numbers, but the proportion of ethnic Burmans to other ethnic nationalities is difficult to assess, with figures fluctuating widely. The Burman dominated military dictatorship asserts the breakdown between ethnic Burmans and non Burmans is about 70% to 30%. Researchers at the Karen Human Rights Group estimate it to be about 50% each. A more general consensus seems to be about 60% to 40%.

Thus current estimates of populations of Burmans and ethnic eastern nationalities vary widely according to perspective and are, according to the scholar/journalist Martin Smith, contentious. He states that:

No reliable figures have been collected or released since independence and those that are published appear to deliberately play down ethnic minority numbers. (“Burma, Insurgency and the Politics of Ethnicity,” ch. 2, p. 30.)

In fact, so widely do the quoted figures vary between ethnic leaders and the military dictatorship, and so unreliable is the evidence, that any accurate assessment seems impossible, though Martin Smith does state that Neutral estimates calculate Karen population at some 3-4 million. The regime puts them at about 1 million, but Karen leaders put the figure at about 7 million. The Shan and Mon estimate their populations at 4 million each. According to Martin Smith, all these figures Need treating with great circumspection, (ibid).

One problem when trying to assess what impact decades of human rights violations might have had on ethnic peoples is that we have very little information about what was occurring before the post-war conflicts began. Thus there is little we can compare the present situation with. However, we do have a possible small scale bench mark. In a unique study of the Pao people in southern Shan State in 1953 ”The Pao, an ethnographical study,” (W.D. Hackett, unpublished Phd., Cornell University Press), the populations of the Pao and other ethnic hill people were described as prolific, and increasing faster than Burmese people. His study offers a rare and reliable vignette of a group of non-Burman ethnic people at the time. Having been completed just before the beginning of the conflict in Shan state, it expresses a trend against which we can tentatively assess the quantifiable effects of the violations subsequently inflicted on eastern ethnic hill peoples. The slump in birth rates (Smith) of eastern ethnic peoples, and the reported outright population collapses in certain areas, needs to be seen against this observation of prolific population growth described in the 1953 study. There appears to be a strong contrast between the rapidly rising population levels of eastern hill peoples up until 1953, and what has been, and, is still now, occurring.

A further problem lies in an apparent contradiction between Smith’s general observation of a slump in birth rates of ethnic minorities and the very high percentage of young people reported amongst the specific group of internally displaced people:

While 33% of Burma's population is under 15 years old, the internally displaced population density in this age range is much higher at 41%. (“Reclaiming the Right to Rice,” TBBC, p. 47, pub. Oct. 2003)
However, this high percentage of very young may actually be indicative of a population under demographic stress, rather than the reverse:

The high proportion of children and low proportion of elderly in Burma’s internally displaced population is comparable to age distributions in the world’s least developed nations in Sub-Saharan Africa. (ibid)

What may be occurring simultaneously is a general slump in birth rates amongst non Burman peoples suffering systematic persecution, but an abnormal increase in birth rates in the desperate, specific, local conditions inflicted on the internally displaced. Such an abnormal increase in birth rates in these areas would be consonant with often happens in conditions of extreme stress, such as famine or war, as occurs particularly in parts of sub-Saharan Africa.

Thus, generalised persecution may lead to a fall in birth rates; violent destruction which threatens the group's physical survival may lead, on the other hand, to compensatory high increases in births, even if accompanied by high infant and maternal mortality rates. These apparent contradictions may well be applicable, and explicable, to the situation afflicting Burma's eastern, non Burman peoples.

6.6 POPULATION AND HUMAN RIGHTS VIOLATIONS

Despite the lack of hard data, and the impossibility of accurate verification, it would be reasonable to infer that widespread, violent, internal and external displacement of between one and two million people, resulting, inter alia, in very high infant and maternal mortality rates, (see comparative Childhood Mortality Rates, pub. TBBC "Internal Displacement," pub. TBBC, p. 49, Oct. 2004), and the systematic Deprivation of, what the 2002 UN General Assembly Resolution called, All means of subsistence resulting in severe adverse effects on health, is likely, over the long term, to have quantifiable effects on population. It should be noted there have been no major natural calamities, or dramatic rises in standards of living with accompanying absorption of women into the workplace, or well organised birth control campaigns, to account for the slumps in birth rates amongst ethnic peoples Smith noted.

A slump in birth rates of ethnic peoples subjected to sustained, widespread, systematic, long term human rights violations, raises serious issues. This is because of a possible connection between a Policy taken at the highest level inflicting widespread and systematic human rights violations and the much lower than expected population levels amongst those victim groups. Smith estimates that:

Every year thousands of civilians and villagers die in Burma's borderland areas. (Martin Smith "Fatal Silence," pub. Article 19, p. 66.)

He quotes one former SLORC general estimating numbers killed since independence as Running into millions.

6.7 THE RELATION BETWEEN POPULATION AND HEALTH POLICY

In the same publication, quoting in turn Medecins Sans Frontiers, Smith states that:
The great majority of deaths occurring in children under 5 each year are avoidable mortality, that is deaths from preventable or treatable illnesses such as malaria, diarrhea, measles, malnutrition or respiratory diseases (ibid p.9).

He goes on to connect explicitly such avoidable deaths with a failure to provide health care on such a scale as to represent a violation of international humanitarian law:

The failure to provide accessible health care to minority ethnic or religious groups . . . can constitute the most fundamental violation of human rights, (ibid, ch. 2, p. 9.)

However, he limits, (as does the International Crisis Groups 2004 Report on "Aid to the Border areas") his assessment of the Junta's responsibility for the deplorable health situation as a whole to, Negligence. Moreover, he does not distinguish between the negligence inflicted on the Burmese population as a whole, and the specific policies inflicted on the ethnic peoples:

The Burmese government has for many years demonstrated a negligence that threatens the health-and indeed the lives - of many of its people . (ibid. p. 29.)

Legally his use of the word negligence suggests the low level of intent four, where there is no intention to commit an action which will lead to death. However, his observation of a failure to provide accessible health care to minority or religious groups may suggest conscious intention, something graver than mere negligence, possibly expressive of negative violence.

It appears that there is a policy, not just to not to fund medical care for much of Burma's population in general, but not to fund it specifically for its ethnic people in particular. This is supported by confidential interviews carried out with respected Burman medical practitioners with extensive experience of working in ethnic areas. They confirmed intentional, non-provision of medical care and services to ethnic people.

The evidence of lack of health care is supported by international agencies:

There are still only a tenth the health facilities in the Border areas as the National average, [quoting UNICEF "Children and Women in Myanmar: A Situation Assessment and Analysis," Yangon, April 2001.]

Even the International Crisis Group states most facilities are seriously under-resourced and understaffed. (ICG Report: Aid to the Border Areas, Sept. 2004).

The Thai Burma Border Consortium Report also concluded:

Government clinics were of negligible benefit to internally displaced persons whatever type of location they were residing in. ("Internal Displacement," pub. TBBC, October, 2004, p. 49)

A policy of deliberately refusing to provide minimal medical services to non Burman ethnic peoples, and directing health resources to the military Burman officer class, is inevitably, we can infer, going to lead to preventable deaths amongst ethnic civilians. In addition, in the case of the eastern, ethnic non Burman displaced peoples, the negative violence implicit in the denial of medical care is aggravated by the positive violence expressed in the systematic destruction of medicines and health facilities. (See later section on destruction of health clinics).

The above observations of failure to provide medical services, and destruction of medical services, must, however, be accompanied by an important caveat. There is evidence of international NGO's being allowed to operate in areas where non-Burman vulnerable people attempt to subsist. For example in Karenni state, Medecins Sans Frontiers operates two clinics
outside urban areas close to very vulnerable non-Burman displaced people. Such provision of medical care would strongly contradict allegations of genocidal intent, or deliberate denial of health facilities. However, there is disagreement about the extent to which these facilities actually help ethnic vulnerable people. Some well-informed, non-Burman ethnic critics with an understanding of the immediate situation, allege the clinics are largely cosmetic, and that most of the medical aid goes to the local Burmese army. Other sources, on the other hand, suggest the clinics directly help local non- Burman people. In the face of the impossibility of personally investigating such facilities, the issue remains, unfortunately, unresolved.

6.8 POPULATION AND HEALTH: BURMAN AND ETHNIC INTERNALLY DISPLACED PEOPLES’ EXPERIENCES

The challenge is to understand and distinguish between the appalling health (A Silent Emergency according to UNICEF) and nutritional situation (one third of children under five nationwide are suffering from malnutrition, according to deputy director of World Food Programme, Sheila Sisulu, Sept 15, 2004) inflicted on the people of Burma generally with that aggravated, specific set of conditions, violently and systematically inflicted on the eastern ethnic, internally displaced peoples. The fact that the public health care system has virtually collapsed for the people of Burma as a whole should not be used to excuse the situation in the areas of internal displacement, where specific destruction, and intentional non provision of health facilities and services, is inflicted.

Martin Smith expanded on his assertion that there has been a quantifiable change in relation of birth rates between Burmans and ethnic people thus:

Moreover, by the deliberate manipulation of figures, which are only rarely released, the ethnic Burman population has apparently continued to grow rapidly with the departure of British and Indian communities, while the birth rates of most minority races (and not just the Mons and the Karens) have inexplicably slumped (my underline). For example, whereas the Burman population in 1973 was estimated at one calculation to have more than doubled, from 9.5 million in 1931 to 20 million, no explanation was given as to why, according to Rangoon, the ethnic Shan population had grown much more slowly, from just over one million to 1.6 million. ("Burma, Insurgency and the Politics of Ethnicity," M. Smith, ch. 2, pp. 38, 39).

(We need to remember this was written in 1991, well before the massive onslattles and displacements inflicted on central Shan, eastern Karen and Karenni States in the 1990's. The situation appears now to be worse, involving not just slumps in birth rates, but actual population collapses in certain areas.)

One reason for the difference in rates of population growth may be the very high infant mortality rates in ethnic, internally displaced areas. Doctors from Medecins Sans Frontiers have estimated the Infant Mortality Rate in the internally displaced areas of Karen state to be about 200 per 1000 live births along the Thai Burma border, whereas in eastern Shan State it may be as high as 300 per 1000 live births. The Thai Burma Border Consortium Report "Internal Displacement," p.48, October 2004):

found the child mortality rate amongst the internally displaced is three times higher than Burma's baseline rate and was comparable to war torn areas in the horn of Africa.

At the other end of the scale, according to D. Porter, In some new towns around Rangoon, it may be as low as 65 per 1000 live births. (D. Porter, "Wheeling and Dealing: HIV/AIDS and Development on Shan state borders," background paper supported by UNDP Rangoon Institute of Economics and Australian University, Oct. 1994, p. 29)
In other words, in some parts of the heart of the Burman lowland, infant mortality may be about 5 times lower than in some of the ethnic areas of eastern Shan State. There also appears to be a serious imbalance between male and female populations in Shan State. An unpublished UN survey undertaken in 1991 revealed a ratio of 1,430 females to 1000 males in the Tachilek district of southern Shan State indicating a high number of males having being killed or having died prematurely. (M. Smith, "Ethnic Groups in Burma; Development, Democracy and Human Rights," London Anti-Slavery International, 1994< 40,62.) These figures would suggest there is a measurable population deficit in certain ethnic areas.

Outright population collapses have been reported in certain specific areas and municipalities. The municipality of Kunhing township has lost 70% of its population, according to Amnesty International in its 1998 Report ("Atrocities in Shan State"). Other southern Shan State towns are reported as having lost most of their young people.

In addition, a far smaller proportion of non Burman, internally displaced people appear to be reaching the age of 65, than the Burmese average:

. . . the proportion of the internally displaced over 65 years old is just 2.6% which is almost half the national rate of 4.6%. ("Reclaiming the Right to Rice," TBBC, pub. Oct., 2003)

The issue of population is of the utmost gravity: Martin Smith is alleging, and he is probably better informed than any other observer on Burma, that there has been a sudden and serious fall (A slump) in the birth rates amongst precisely those non Burman groups which have been targeted by the State. Some of the points he makes need to be emphasized and expanded.

Firstly, the rate of population growth has been much slower in the eastern internally displaced areas than in lowland Burma. Smith states that the Burman population has increased by about 100% over a twenty year period, whereas the increase in population of Shan State over the corresponding period was about 50%. This is extraordinary: a fifty per cent difference in the rate of population increase between two adjoining states in Burma. (We need to remember that Smith is drawing on figures taken from Chao Tzang Yawngwe "The Shan of Burma: Memoirs of an exile," Institute of South East Asian Studies, 1987, figures now 16 years old and not reflective of the extremely destructive conditions which have been inflicted since.) So it has to be asked: why has this happened? Why have these babies not been born or, if they have, why have they not survived? Why did/do so many die in the earliest years of life? Is it the result of policy? Have measures, in effect, been taken which have intentionally prevented births within the group, or quantifiably lowered population levels below what they would naturally be?

Secondly, population growth well below expected levels, cannot be explained away as the product of natural calamity produced by external factors beyond the Junta's control, or by economic development resulting in a sudden, dramatic improvement in the standard of living, with the entry of women into the job market, gaining access to contraception and education. None of these developments have occurred in eastern Burma.

Mass systematic expulsion from homes and deprivation of all means of subsistence (UN General Assembly Resolution, March 2001) with serious adverse effects on health (ibid,) have, however, been inflicted in the eastern, ethnic areas.

It would be reasonable to infer there may be a connection, for example, between the general slump in birth rates, (and specific population collapses in certain areas), and the policy of systematic expulsion of hundreds of thousands of people from homes, deliberate deprivation of all means of subsistence, and, widespread violations, including sexual violence, described in UN and Amnesty International reports. Martin Smith, however, significantly does not explore reasons, but simply describes the slump in birth rates as, inexplicable.
The slump may, however, be explicable. Deliberately inflicted destructive conditions, whether through positive or negative violence, or a combination of both, must inevitably result, we can infer, in large numbers of preventable deaths: in the internally displaced areas of eastern Karen and Karenni State, present infant mortality rates are almost 30%, and maternal mortality rates are very high, (interview with Dr Cynthia Maung, Mae Tao clinic, June 21, 2003). This very high infant mortality rate in the Karen and Karenni internally displaced areas contrasts with a very low infant mortality rate in the Karen and Karenni refugee camps across the border in Thailand, where adequate medical services are provided. According to Dr Cynthia Maung:

*All these deaths* in the internally displaced areas are preventable, (ibid).

Some of the reasons for this very high level of infant and maternal deaths are as follows:

- The conditions of life deliberately inflicted on the internally displaced people, either in the sites where people are forcibly concentrated, or the free fire zones, mean that the situation in which mothers give birth lack all basic hygiene. Dr Cynthia Maung estimates that 75% of infants who die, do so in the first week of life, mostly because of the absence of hygienic conditions, (ibid). These conditions are the direct result of deliberately inflicted negative violence.

- The very high maternal mortality rate in the internally displaced areas is partially explained by the fact that only 16% of babies are delivered by trained health workers. This is not because of a lack of resources or negligence. Trained health workers and their equipment are deliberately targeted for destruction; even midwives operating from the Mao Tao clinic, who help deliver babies in internally displaced areas, are targeted, tortured, and their very basic medicines and simple equipment confiscated, or destroyed (ibid). This active, intentional targeting of midwives is a form of positive violence, but contributes to the negative violence expressed in the large numbers of preventable deaths of internally displaced mothers and babies.

- Health clinics and hospitals are specifically and deliberately targeted for destruction in the internally displaced areas. (See later section on destruction of health clinics.)

- It is a crime to possess, or carry medicines, in ethnic internally displaced areas.

In a preliminary study exploring the health impact of violent, forced displacement of 180,000 internally displaced people, ("Intersections of Disease Morbidity and Human rights abuse among internally displaced people in eastern Burma," Back pack Health Team Study, Feb. 2005), it was found, not surprisingly, that children forced to move were more likely to be moderately or severely malnourished (13.4%) than children in households that did not have to move (8.2%). Furthermore, the overall rate of moderate or severe malnutrition (11.4%) exceeded the WHO crisis/emergency definition of 10%. Additionally, children forced to move suffered much more from diarrhea and malaria than those who had not.

### DISPLACEMENT AND DISEASE

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<th>NON-Displaced</th>
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<td>Diarrhea*</td>
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In general the Report concluded that:

*Child diarrhea, child malnutrition and adult malaria are highly prevalent in eastern Burma and appear to be associated with forced migration.*

All three are major causes of death.

An earlier study carried out by Dr Howard Hu, assistant professor of occupational medicine, Harvard School of Public Medicine, for the Boston based organization *Physicians for Human Rights*, (*Health and Human Rights in Burma, Physicians for Human Rights,*" November 1991) confirmed a deliberate intentional policy of targeting healthcare workers and facilities resulting in deaths. He stated:

- *Health care personnel have been a target of the government crackdown and cites a community health worker detained for 18 months for providing medical care to insurgents; (suggestive of intent level 1: full volition and full knowledge of circumstances).*

  *The absence of basic health care contributes to i high infant mortality rate of 150 per 1000 live births compared to 69 in the rest of Burma;*

  The discrepancy with the Mao Tao clinic's figures can probably be explained by the dramatically worsened situation which has occurred since 1991 when he carried out his study.

- *The deliberate (my underline) use of repressive means to make people sick and weaken their spirits.*

  We should note that to deliberately *weaken a civilian group* in a widespread or systematic way is a defining characteristic of the *Crime Against Humanity of Persecution.*

  The wording of the last bullet point deserves close attention. Professor Hu uses the word *deliberate*, thereby expressing conscious intention; the use of the infinitive, *To make people sick*, expresses a causal connection between the repressive policy and sickness: the sickness is thus deliberately caused by the repressive means: *to*, in this case, being a shortened form of, *in order to.*

  The sickness and weakness is thus not an unwanted by-product of a counterinsurgency strategy; sickness and weakness are the intended consequences (*To make people sick*) of the *policy.* Moreover, his own figures, such as the infant mortality rate, suggest that this sickness and weakness result in large numbers of preventable deaths and may help throw light on Martin Smith's *Inexplicable slump in birth rates.* Using Dr. Cynthia's current figures, a *30%*
infant mortality rate and a high maternal mortality rate amongst approximately 525,000 internally displaced people, year in year out, decade after decade, is very likely to lead, we can infer, to a substantial (The Rome Statute's numerical criterion for attempting genocide) or considerable (William Schabas's estimate in "Genocide in International Law") number of preventable deaths from the Junta's destruction and non provision of medical services and resources.

6.9 POPULATION AND HEALTH: TENTATIVE CONCLUSIONS

We can probably infer, therefore, though it is not possible to quantify accurately because conditions do not exist to carry put proper studies, that the population levels in the internally displaced areas of ethnic, eastern Burma are substantially below what they would be if systematic human rights violations, including deprivation of all means of subsistence (UN General Assembly Resolution, March, 2001) leading to significant adverse effects on human health (UN General Assembly Resolution March 2001), were not being inflicted, and had not been inflicted, for decades.

This was indeed the impression I got from the villages through which I traveled. Villagers would expect about three out of five children to die before they reached ten years old, usually from preventable diseases. Most people I saw seemed very weak, though not actually starving. Many were badly scarred and wounded. Generally people estimated population levels were, at the very best, stable in these eastern hill villages, contrasting with Hackett's 1953 observation in his Pao Study of "prolific" hill tribe population growth, (p. 3 para. 3.) Thus, despite the lack of hard evidence, it is logical to infer, given the conditions inflicted on ethnic, internally displaced people, that the populations of these groups are below what they should be if they were increasing at the same rate as the Burmese average of 2.8% (UN figures), or the refugee camp average inside Thailand of 4%. As the population increase in the internally displaced areas appears at best to be zero, by contrasting that with the Burmese average rate of increase of 2.8%, or the refugee camp rate of 4%, it is be possible to infer that substantial numbers of people are not alive who should be alive, if destructive conditions targeting civilians had not been, and were not being, inflicted.

Granted that The Convention on the Prevention and Punishment of the Crime of Genocide requires no quantifiable proof of outcome of activity 2 (c), and that reliable data from the free-fire zones and camps where people have been forcibly concentrated is difficult to get, it may still be possible to reliably deduce approximate numbers of people dying from deliberately inflicted conditions in the internally displaced areas. Martin Smith's estimate was that about 10,000 people die a year, and have been doing so for decades, in the border areas, including civilian victims.

That figure would more than meet the threshold criteria of numbers destroyed directly or indirectly as a result of genocidal acts needing to be, substantial or considerable. (The numbers directly killed in the Srebrenica genocide was about 7000.) In the case of Halabja in northern Iraq, the government of the Netherlands is prosecuting an alleged perpetrator for complicity in an act of genocide in which "only" 5000 people died. However, unlike in former Yugoslavia, ethnic internally displaced people, have been dying in Burma from these conditions for decades. Moreover, they particularly include two distinct entities upon whom the long term biological viability of the group particularly depends: newly born infants and women giving, or soon to give, birth.

6.10 MOTHER AND INFANT VICTIM GROUPS: DISTINCT ENTITIES ESSENTIAL FOR BIOLOGICAL SUSTAIN ABILITY
As stated, the numbers dying include two distinct, and disproportionately significant victim groups, or entities: the approximately, 30% of infants who die before reaching five (in some cases five times the rate for lowland Burma), and mothers dying giving, or before giving, birth.

The significance of the high number of deaths in these two particular victim groups is that when combined, they may disproportionately affect the group's ability to procreate and sustain itself. Young babies are obviously the future generation. A 30% infant mortality rate directly impacts on the group's future long term, biological sustainability in a far more catastrophic way than, say, deaths of middle aged men; mothers of childbearing age are also obviously essential for the group's survival, both as mothers, and because of their capacity for procreation. A mother dying in childbirth means not only she and her baby die: the babies she would probably have given birth to in the future are also not born. The very high mortality rates in these two distinct groups is probably more disproportionately destructive than if they been inflicted on any other group.

In terms of Case Law, these two groups can be seen as distinct biological entities essential to the wider group's physical survival, even more, arguably, than the men of military age were deemed to be in the ICTY judgement (Kristic, August 2001) of the Srebrenica genocide. There the Tribunal classified the killing of this group, Men of military age, as an act of genocide because of the destructive impact of their deaths on the wider group's capacity to survive. However, although Men of military age are important, they are considerably less significant in terms of sustaining the group's biological survival than newly born infants and women of childbearing age. The Srebrenica men, nevertheless, were considered by the ICTY to be a distinct entity (Kristic Judgement, August 2001) essential to the long term survival of the wider Bosnian Moslem community. Their destruction, the Tribunal opined, thus constituted an act of genocide.

Whatever view is adopted on the legal significance of preventable deaths, including large numbers of women in childbirth and newly born infants, their occurrence, in harrowing, deliberately inflicted conditions, is outrageous and horrific. Moreover, they are totally preventable, if even minimal conditions of care and hygiene were allowed to be provided.

6.11 THE PARTICULAR ISSUE OF POPULATION IN KARENNI STATE

The specific situation in Karenni State is particularly alarming and confusing: the population for that State in 1998, according to UNICEF, was 207,357 people. However, the Burmese Ministry of Immigration and Population census provided a figure of 246,000 people for the State.

We thus have a "discrepancy " of about 40,000 between the Burmese government figures and UNICEF's figures for Karenni State. This is almost 20% of the population. Why, especially in the light of the fact that the Junta usually plays down (Martin Smith's words) ethnic people's populations, should its assessment of the Karenni population be 20% higher than the UNICEF figure? The conflicting figures rouse legitimate concern. The reason why ethnic population figures are usually played down is easy enough to infer: the Junta wishes to marginalise them. However, given the extreme conditions in Karenni State in which ethnic minorities are particularly targeted, solely (UN) or purely (Amnesty International) on account of their ethnic origin, and where over 30% of the population has been displaced, (including almost the whole of the north east of the State), another form of deception is probably being inflicted by the
Junta: distortion of population figures upwards to conceal the true scale of the physical destruction of the Karenni people.

6.12 THE RELATIONSHIP BETWEEN BIRTH RATES AND POLICY

Smith concludes on the relationship between difference in population growth between Burmans and non Burmans and Junta policies that:

*The result [of this very uneven growth in population between the Burmese average and the ethnic nationality groups] intentionally or otherwise (my underline), has been the continued marginalisation rather than integration of the minorities; evidence for this can be seen in the continuing political violence and civil war. Today ethnic minority languages are rarely taught or even used beyond fourth grade in schools, while few economic development projects have ever been located in the ethnic minority regions. By any denominator (economic, educational or political) the minorities have been hugely disadvantaged.* (*Burma, Insurgency and the Politics of Ethnicity,* ch. 2, p. 38.)

The passage appears confusing and needs exploring.

Firstly, he appears to avoid causes, describing *the slump* as, *Inexplicable.*
Secondly, he does not examine the central issue of intentionality, stating the so-called effects occurred, _intentionally or otherwise_. Consideration of moral responsibility and human agency is avoided.

Thirdly, he appears to reverse cause and effect. _Marginalisation and Lack of integration_ are seen as the effects of the _slump_, when the _slump_ is more likely to result, amongst other things, from such policies: the policy of _marginalisation and lack of integration_, (and direct and indirect destruction), come first: _marginalisation and lack of integration_ are intentional governmental policies which are likely to result ultimately, especially if inflicted in a _systematic and widespread_ manner, in a _slump in birth rates_. You do not destroy ethnic peoples' languages, deny them positions of responsibility and power; restrict or destroy education; create physical conditions in which they are weakened and cannot survive, in order to integrate them into society: you do these things to marginalize them, to create conditions which may ultimately lead to actual _slumps in birth rates_.

Another "result" is _political violence_: Political violence, however, is a primary cause of the problems, not a result: it is the _political violence_ inflicted by the illegitimate Junta itself (e.g. _Crush all internal destructive_ [i.e. democratic/ethnic opposition] _elements_) that has caused the _marginalisation, the lack of integration_ and the, perhaps all too explicable, _slump in birth rates_ and collapse in population levels of ethnic peoples in certain areas.

By reversing the order of events, Smith has removed the notion of moral responsibility: marginalisation, lack of integration, political violence, civil war, slumps in birth rates have somehow happened, _inexplicably, intentionally or otherwise_, as unplanned by-products of some activity without human agency or intentionality.

The apparent avoidance of the issue is implicit in the choice of the word, _Slump_: if something _Slumps_, it does so as if some internal, entropic process has occurred of its own volition. _Slump_ is an intransitive verb: you cannot slump something; something just slumps. Using the word _Slump_, therefore, removes all possibility of thinking about a responsible agent, e.g. who, or what, might have done, or be doing, the _Slumping_.

What I saw, or was told, over a number of weeks was that many villages had been deliberately burnt to the ground; paddy barns destroyed; health clinics destroyed; people were frightened to walk on the edges of paths for fear of being blown up by mines; very thin people appeared with bayonet and gunshot wounds, lacerations from forced portering. I was told stories about how babies relatives and colleagues had been shot, tortured and sometimes even beheaded. People generally seemed numb and very weak. Almost every conversation began with _When they came and burnt the village . . ._. When I sought permission to interview victims, many replied that it made no difference because they would die anyway.

It would be logical to infer that there is a connection between such deliberately inflicted conditions endured for decades over very large areas, and a _slump in birth rates_, and even outright falls in population in certain areas.

Using the words, _marginalisation and disadvantage_, Martin Smith may be understating the severity of the consequences of junta actions; falling birth rates, and population collapses in certain areas, are something of the utmost gravity, if resulting from deliberately inflicted violence. They trigger the application of the most serious international law. _Marginalisation and disadvantage_, however, are the sort of unintended social problems one finds in western societies which all too often afflict minorities: such words may fall short of adequately describing the destructive circumstances deliberately inflicted on Burma's eastern non Burman peoples.

The effect of such writing, by this rightfully highly respected and well-informed Burmese scholar, may understate the intentionality and human agency expressed in the UN Special Rapporteur's 1998 conclusion:
Human Rights violations including the killing of women and children . . . being the result of policy (my underline) at the highest level, entailing legal and political responsibility.

Policy expresses intentionality. The intentionality Martin Smith ascribes to the Junta appears limited to its Deliberate manipulation of figures, not to the policy itself, or its results.
HISTORY:
He who controls the past controls the future: who controls the present controls the past. (George Orwell, Party slogan, 1984.)

This is not the place to write even a limited history of Burma. However, an attempt to understand the scale and nature of the human rights violations which have been, and are being, inflicted in eastern Burma has to be placed within a historical context.

7.1 PRE-COLONIAL EXPERIENCE

Burma before the British annexation was never really a united country. Although there is some disagreement amongst historians about the exact unitary status of Burma before British annexation, the general consensus is best expressed by Professor Josef Silverstein as follows:

The political and social institutions of the Burma empire never created a united society. ("Burmese politics: The dilemma of National Unity," Rutgers University press, pub, 1988.)

Thus, when the British granted independence, it was not handing back a country with an agreed sense of identity and national boundaries. Prior to the British annexation of Burma, there had been continual warfare between the Burman majority in the plains and surrounding non-Burman peoples, and also between the non Burman peoples: atrocities were common and relations between the Burmans and the Karen were especially bad. This 1887 description could be written now, especially the practice of pounding people to death by crushing (the current Junta exhortation) them in rice pounders:

The dacoit [British derogatory term term for Burman rebels] atrocities are horrible. The unutterable Turk with his Bulgarian atrocities would have no choice in a competition with a Burman dacoit . . . you come in and find thousands of rupees have been taken, the women lashed to platforms and then violated by the dacoits in turn and kerosene then poured over their clothes and set on fire. The men bruised and slashed, have seen all this and are wailing like women around the horrible, blackened lumps of charred flesh that were once their wives. You are shown where babies have been beaten to a literal jelly in those rice mortars, before their mothers' eyes. (Donald Smeaton, "The Loyal Karens of Burma," p. 24, pub. Kegan Paul, 1887.)

Later the same writer describes a Karenni inter-ethnic raiding party:

When the party reach the house, the first rush is made by the two volunteers and the rest follow. The house is stormed. All the men are killed, whether armed or unarmed. Such women as are thought likely to be useful or profitable as slaves are taken and bound. All the rest are killed. Infants are always killed and the children are often barbarously massacred. Their hands and feet are cut off, and their bodies hacked off into small pieces, (ibid, p.85)

7.2 COLONIAL EXPERIENCE
The period of British rule, although bringing some order, can, be identified as contributing to Burma's present condition in the following ways:

- The British not only defeated the Burmans, but humiliated them by unceremoniously ejecting the last Burman king out of his Mandalay palace in an ox cart. The survivors of this dynasty still exist in India working as domestic cleaners in Bombay. Moreover, the damage was not just political, but also deeply spiritual. The Burmans believed their kings were descended from spiritual beings rooted in the history of the beginning of the world, and Buddhism in particular. The destruction of the monarchy was thus a spiritual, as well as a secular catastrophe for the Burman psyche, from which it has yet to recover. The present obsession of the military leaders with making merit and establishing the supremacy of state Buddhism is related to this need to reconnect the temporal with the spiritual, once embodied in the monarchy, and to present themselves as the legitimate successors to the Burman kings. Current Buddhistization has to be seen in the context of the destruction of the Burman's Buddhist monarchy.

- Furthermore, the British systematically discriminated against the Burmans on a widespread basis. As Shelby Tucker points out:

  *By importing huge numbers of Indians and favouring the ethnic nationalities, the Burmans were further humiliated by being reduced to third class status. The Burmese army was effectively cleansed of Burmans, the ratio of ethnic nationality soldiers to Burmans being 39 to 1. In senior positions in commerce and industry the ratio was 20 to 1. By the 1930's half the population in Rangoon was Indian. Moreover, an entire class of Indian money lenders had entered the countryside and exploited the largely Burman peasantry and took over the land.* (Shelby Tucker, "The Curse of Independence," pub. Pluto Press, ch. 3.)

This naturally caused terrible resentment and led to, amongst other events, the Burman peasant rebellion of Satya Saya, which was brutally put down by the British.

Thus British rule in Burma was not a simple matter of colonisation and exploitation of the Burmese people by the British people: some of the non Burmans, like the Karen and Kachin, benefited greatly from British rule and came to see the British as their protectors. The Burmans, however, had lost their country, including their monarchy, and felt themselves to be third class citizens in their own land, not just beneath the imported colonialists and Indians, but the other ethnic peoples themselves. For this state of affairs the British must accept responsibility and for much of the suffering that has ensued. It was understandable after independence that some of the Burman people: proud, systematically humiliated, exploited and oppressed in their homeland on the basis of their race, would seek revenge against those non Burmans who had sided with the British. This is not to condone what has happened, but to try to understand it. The human rights violations inflicted over the years and analysed in this report have to be seen and understood within this historical context.

However, understanding that historical context does not imply justification of what has been perpetrated by some Burmans since independence, or for maintaining the present culture of impunity. It does, however, suggest that the British are partially responsible for what happened and have a responsibility to atone for their actions.

7.3 THE SECOND WORLD WAR
The War (1942 -1945). With the Japanese invasion and occupation, the peoples of Burma understandably split again down ethnic lines, most of the Burmans under Aung San siding with the Japanese, many of the non Burmans, especially the Christian Karen and Kachin siding with the British and Americans. The Burmans, carried out violations on such a scale against the ethnic peoples that even the Japanese had to step in to stop the atrocities.

7.4 INDEPENDENCE 1945-1948.

The negotiation of independence was hurried, confused and carried out against the background of sudden collapse of British power in India and the beginning of the Cold War. British policy, under Mountbatten, however, moved from one of hostility to Aung San and the Burmans, to outright support of him at the expense of the non-Burmans. At the London agreement, Atlee reached an agreement with Aung San without the non-Burmans even being present, believing Aung San's assurances that the rights of the ethnic peoples would be protected. The agreement affirmed that The frontier areas should not be coerced into any future union. Winston Churchill, however, countered in the House of Commons asserting that The Karen have been betrayed.

THE 1947 INDEPENDENCE CONSTITUTION

Despite the doubts about Aung San's commitment to the autonomy of the non-Burmans, it appears that he courageously and magnanimously became a genuine, democratic federalist as expressed in the Panglong agreement, signed by himself on behalf of lowland (Burman) Burma, and Clement Attlee on behalf of the British government. The agreement:

*Guaranteed full autonomy in internal administration for the frontier areas.*

It affirmed:

*Citizens of the frontier areas shall enjoy rights and privileges which are regarded as fundamental in democratic societies.*

Moreover, it specifically promised the right of secession for Shan State in ten years.

However, with the assassination of Aung San and his whole cabinet, the stage was set for Burma's tragedy. The Panglong agreement was never fully honored: the crucial clause five, guaranteeing full autonomy in internal administration, is omitted from the text when Union Day is celebrated in Burma. Although Burma had democratic governments until 1960, the question of Federalism, and the position of ethnic peoples, were never resolved.

In 1962, General Ne Win took power to impose a Burman, centralised State.

7.5 THE POLITICAL AND ETHNIC REASONS FOR THE 1962 MILITARY COUP
This was justified by the claim that it was necessary to prevent the disintegration of the nation. Thus the issue of the non-Burman peoples and their relation to the State is the fundamental reason for the Burman military dictatorship's seizure and retention of power. It was the military's fear of "Disintegration," or the establishment of a Federal state, that led to the dictatorship. The present Burman dominated, mainly urban NLD democracy movement emerged later in opposition to the Burman military dictatorship: the ethnic and democratic forms of opposition are loosely connected, but the ethnic one is deeper and rooted in history. The ethnic peoples are primarily concerned with surviving, through preserving and affirming their ethnic identities: the mainly Burman NLD with establishing democracy. The gap between the two can be bridged by the concept of democratic Federalism. However, how the conflict is perceived, i.e., as primarily a horizontal ethnic conflict between Burman and ethnic peoples; or a vertical, political conflict between a fascist military dictatorship and democratic opposition is not a mere academic matter: the conceptualization chosen triggers either the legal framework of Genocide (a crime against an ethnic group), or Crimes against Humanity, i.e., crimes against any group of civilians, including political groups. Moreover, the choice of framework has important practical consequences: it is the first crime, the crime of crimes, which alone seems capable of rousing the International Community to honor its obligations to protect victims.

Smith, however, depicts the conflict as multi faceted. He expresses a complex interwoven pattern of race and politics ("Burma, Insurgency and the Politics of Ethnicity", ch.2, p. 35):

\textit{Political movements have usually reflected a regional/poly-ethnic character and perceptions of race are just one determinant in political-social behaviour.}

Nevertheless, he appears to conclude that the conflict is one fundamentally between Burman racists and democratic forces:

\textit{The real political struggle in Burma since independence has been a battle between the various new democracy forces against the might of Ne Win and the country's military strong men. This closeted and predominantly Burman group of soldiers, invoking fanatical blood loyalty (my underline) and the traditions of such great all-conquering monarchs as Alaunghpaya and Anawrahta, have simply put the clock back and embarked on a new era of military conquest in the mountains and countryside to re-impose a historical central authority. (M. Smith, ibid, ch. 5, p.101).}

Fascist militarism fuses \textit{(re-imposing a historical central authority by military strong men) with racism \textit{(fanatical blood loyalty). Than Shwe's reported current identification with racist Burman monarchical despots such as King Alaunghpaya bears this out. Smith conceptualises the opposition as democratic, but may, however, be understating the significance of ethnicity as the primary, motivating factor amongst resistance forces. The ethnic peoples, while apparently supportive of democracy and now willing to embrace a form of federalism, in their own eyes tend to see themselves as primarily fighting to defend their ethnic identities, as much as defending, or promoting, democracy. Moreover, the ethnic groups are not always particularly democratic themselves.}

The co-existence of the democratic and the ethnic, however, expressed itself in the 1990 elections, when the ethnic minorities voted overwhelmingly, either for the largely Burman dominated democratic NLD, or for their own ethnic parties, such as the United Nationalities League for Democracy, committed to working with the NLD in a spirit of democratic co-operation to establish the Federal democracy implicit in the 1947 Constitution.
CHAPTER 8:
THE CURRENT SITUATION OF EASTERN ETHNIC MINORITIES
The most lucid, up to date and succinct account of the situation of the ethnic minorities in eastern Burma is given by Professor Desmond Ball and Hazel Lang in their paper, *Factionalism and the ethnic Insurgent Organisations* (Australian National University, Strategic and Defence Studies Centre Working Paper no. 356 March 2001). This section of the report draws very heavily on this article and, indeed, quotes much of it verbatim.

The authors point out, quoting in turn Martin Smith, that the most important fact to grasp about the issue of the ethnic peoples is their extraordinary diversity. The principal ethnic groups in the Burma-Thailand borderlands (see accompanying map) are the Chinese, Wa, Shan, Karenni, Pa-o, Karen and Mon, but these are in fact collective names for many sub-groups. There are for instance more than twenty Karen sub-groups of which the two largest are the Sgaw and Pwo, whose languages are mutually unintelligible. The Karenni, themselves a sub-group of the Karen, include the Kayah, Kayaw, Kayan, Yeinbaw and Paku. There are eight branches of Wa and 16 Wa dialects.

8.1 BURMAN ETHNIC POLICY

In the face of this diversity, Professor Ball points out:

*In Burma, a pattern of suppression, predominantly by authoritarian and military means, has been used to restrain minority ethnonationalism. And successive governments have adopted an ethnocratic and assimilationist approach to managing diversity, with national culture represented as that of the numerically dominant Burmans, (ibid, p.5, para, 3).*

Despite the tendency to understate the culpability of the perpetrators and minimize the intensity of the suffering of victims, [*suppression fails to express adequately the systematic, widespread nature of the physical destruction; managing ethnic diversity sounds like the practice of a social democratic government; restraining ethnonationalism seriously understates the systematic terrorizing of ethnic internally displaced peoples,*) he makes a number of useful points:

1. Suppression by military means. In other words, this is not just a process of cultural assimilation, but one involving the use of military force;

2. The dominant framework he uses is the paradigm of ethnic conflict, (not a political one), i.e., the underlying intention is ethnic, not political: measures are taken to restrain ethnonationalism;

3. The policy is assimilationist. The word implies gradual and indirect methods of destruction by absorbing ethnic cultures into the wider Burman one until they disappear. This is the opposite of ethnic cleansing (although he later uses this term) which violently expels ethnic people out of a territory so that the aggressor ethnic group can take it over.

4. The intention and motive underlying the policy is described as racist: *National culture represented as that of the numerically dominant Burmans.*

8.2 IMPLEMENTATION OF POLICY
The policy he points out is implemented in a three-stage process:

a) Military suppression;
b) Destruction through assimilation;
c) Replacement of ethnic cultures by a Burman one.

This analysis echoes the description of genocide given by the original coiner of the term, Raphael Lemkin. It describes the destruction and replacement of the culture of one ethnic, racial, religious or national group by another in a two stage process; firstly, destruction of the victim culture and then its replacement by the aggressor's. Professor Ball's description, however, in his use of the words *suppression* and *assimilation*, puzzlingly misses the key stage of outright, physical, wholesale destruction manifestly inflicted on eastern ethnic peoples. 2,500 villages repeatedly burnt down; one to two million people internally displaced people throughout Burma; hundreds of thousands of deaths over decades, is not adequately described as *suppression* or *assimilation*. It is massive, widespread, systematic destruction.

8.3 DIFFERENT ETHNIC AND POLITICAL FACTIONS

He goes on to describe the principal factions and players in this complex world as follows:

8.4 THE COMMUNIST PARTY

The Party initiated the Civil War in 1948 but broke up into two factions: the Stalinist Red faction based in the Irrawaddy Delta where it collapsed in 1970, and the White Flag section based in Shan State in the north east which survived until 1989. The Communists split the ethnic groups along ideological lines: the Karen communist group known as the KNUP fighting the Karen nationalist KNU, and the Karenni communists such as the KNPLF fighting the nationalist KNPP. The ethnic groups fighting the Rangoon government at least until 1989 were thus partly fighting both for national independence or autonomy, i.e., an ethnic struggle, and partly for a political ideological objective i.e. achieving a communist state. The situation has thus been very different from, say, post-colonial Vietnam, where nationalism and communism largely fused, and more like the Yugoslav wartime resistance, which was split fundamentally down ethnic and communist lines. However, Burma's Tito, General Aung San, a Burman nationalist strongly connected to the left and committed to Federalism, was assassinated in 1947, plunging the infant state immediately into a kind of 90's style Yugoslavia.

The significance from a legal point of view however, is that from 1989, with the complete collapse of the Communist party, violations can be seen as being inflicted not against ideological resistance, but against resistance based primarily on ethnicity. It is ethnicity, not ideology, which has been since 1989, and still is, the determining factor motivating resistance activities in eastern Burma.

8.5 THE KAREN
The Karen are the second largest ethnic group in Burma, and probably comprise about 7% of Burma's population. Martin Smith estimates their population to be 3-4 million with another 200,000 living in Thailand; the Karen themselves estimate their numbers to be about 7 million, including Pao, Kayan and Karenni. About 1 million Karen, comprising 25% of the whole Karen population, live in what the Karen call Karen State in eastern Burma. Such a percentage would clearly comprise a part of the total population as defined by The Genocide Convention, especially as most comprise the distinct Sgaw and Pwo speaking sub-groups.

The Karen National Union, led by Bo Mya, is the principal Karen organization, and its army is known as the Karen National Liberation army. For over two decades during the fifties, sixties and early seventies, it was involved in fighting Karen communists, a battle it finally won in 1976.

However, the KNU was much more than just a political party with an army; in the 1970's and 80's it provided the machinery of government in the areas it controlled: a judiciary, health care, education, administrative services and infrastructure, clearly not the activities of a terrorist group and not adequately described as the activities of insurgents. To all intents and purposes they were running their own state with their capital situated in Manerplaw. This indicates that the term terrorists, or even insurgents, are probably inappropriate ways of describing them; moreover, the situation in Shan, Karen and Karenni States are best described as internal armed conflict, not a collection of sporadic civil disturbance (which is how the 1988 urban uprising could be construed). In this situation certain important parts of international law become applicable and are triggered, including War Crimes and Article 3 of The Geneva Conventions.

However, Professor Ball points out a number of factors led to the demise of the KNU in the 1990's:

- with its control of border trade and involvement in illegal logging serious corruption set in with accompanying wide income differential levels;
- the leadership was heavily Christian, nepotistic and excluded Buddhists and animists;
- the poorer Buddhist sections of the Karen felt so disaffected that they left and formed their own breakaway group, known as the Democratic Karen Buddhist Army or DKBA, which collaborates with the Burmese military dictatorship;
- with the collapse of the Communist party the Thais no longer considered they needed a buffer army and withdrew their support;
- the new Thaksin government sees its best interests lying in developing commercial ties with the Burman dominated military dictatorship.

The KNU has now negotiated a ceasefire with the Junta, but assimilationist policies, subjugation, forced labour, population transfers and "Development" continue to be inflicted on Karen civilians.

8.6 THE DEMOCRATIC KAREN BUDDHIST ARMY (DKBA)
The DKBA was founded by U Baddanta Thuzana, and its split with the KNLA was caused by the building of a pagoda in what the KNLA felt was a strategic position, which could be used by the Junta's forces. The DKBA helped the Junta's forces capture the KNU headquarters at Manerplaw and has carried out a number of brutal attacks on refugee camps inside Thailand with the support of the Junta. However, its recent strength seems to be about 1000 and its command structure is very weak. Its behaviour varies considerably from area to area; some members obey Junta orders and are notorious for their looting and torturing, while others have a genuine desire to help their fellow Karen. Professor Ball points out that it is a proxy army of the government in Rangoon and was formed with the connivance of Junta Generals (especially Lt. General Khin Nyunt and Major General Maung Hla). This connection is denied by the Junta which wishes to dissociate itself from DKBA atrocities. Lt. General Khin Nyunt has described it as an outlaw group and told Thai officials it can do what whatever it wants to retaliate when DKBA troops cross the border. However, professor Ball points out that the Junta exercises control over the DKBA through the DDSI, or Military Intelligence (MI) network in Pa-an, with detachments based at Halaingbwe, Myawaddy, and Kawkareik and officers posted to Tatmadaw units.

At the operational level, Professor Ball points out, coordination is achieved through meetings of the DKBA Brigade Commanders and the Commanders of the Tatmadaw in Karen State, such as commanders of the 22 Light Infantry Division based in Pa-an, the 44 LID in Thaton, and the military Operations Command at Kawkareik. DKBA soldiers generally accompany Tatmadaw formations as they move around the region. For example, a Tatmadaw column of 50-100 soldiers would have about five DKBA troops with them, who serve as guides, help collect food, money, and forced labourers for the Tatmadaw and point out suspected KNU collaborators.

The Junta, thus, must take full responsibility for violations carried out by the DKBA. However, from a legal point of view, violations committed by Buddhist Karen against Christian Karen does complicate the conceptualization of the violations: it becomes both an inter-ethnic conflict and a religious one, with the Buddhist Karen working with the predominantly Buddhist Burman Junta forces persecuting and destroying the mainly, but by no means exclusively, Christian led KNU.

8.7 THE KAREN PEACE ARMY

This is another proxy army set up by the Junta in an area of Dooplaya district, where the DKBA has never been very strong. It consists of about 300 troops and those who join can have their houses marked so that their families do not have to do forced labour.
The group has been used in the usual divide and rule tactics of the Junta as in the attack on Burman pro-democracy ABSDF students in the Thai village of Umphang in March 1998. By using Karen collaborators to attack pro-democracy Burman forces maximum divisiveness and suspicion can be sown.

The fact that ethnic Karen Buddhists are used by the Burman dominated military dictatorship to attack Burman democracy activists further complicates the legal conceptualization of the conflict, but does not fundamentally alter it. The Karen Buddhist DKBA is a proxy army implementing, perhaps unwittingly, Burmanisation policies, and has identified with the aggressor in its policy aims: as such it supports the twin-pronged policy of Buddhistization and militarisation against the more democratic and Christian forces, represented respectively by the Burman democratic opposition, and the Christian dominated KNU.

From a legal point of view, the fact that the DKBA is ethnic Karen may not undermine the racist nature of the crimes inflicted in the service of Burmanisation acting as a tool for the Burman dominated Burmanising army. The one important exception, however, is that the DKBA is not known to inflict sexual violence against their fellow Karen, even if they are Christian. This suggests that a strong ethnic motivation underlies widespread rape.

8.8 THE SHAN

The politics of Shan State are almost incomprehensibly complex, but Professor Ball succinctly summarises the situation thus.

The Burmese army entered Shan State in 1958 to prevent the possibility of secession guaranteed in the 1947 Panglong Agreement. Numerous opposition groups were formed in
response. The Shan State Independence army (SSIA) was set up in 1960 by Shan students who had broken away from the Noon Suk Harn; the Shan National United Front (SNUF) was formed in 1961 to unite various Shan armed groups; the Shan National Army SNA which lasted from 1961 to 1964 when some of the members formed the Shan State army eastern; the Shan State Army (SSA) and the Shan State Progress party set up in 1964 and 1971 respectively which had an armed strength of 5000-6000 men during its heyday in the 1970's, and which made peace with the SLORC in September 1989; the Shan National Independence Army (SNIA) established by an ousted founding leader of the Noom Suk Harn in 1966; the Shan United Revolutionary Army (SURA) set up in 1969 as a proxy army for the KMT 3 Army, by then based in Tarn Ngop in Thailand; the Shan United Army set up at Ban Hin Taek in Thailand by Khun Sa's forces in 1972 and re-established at Ho Mong opposite Mae Hong Son province in 1984; the Shan Peoples Liberation Army (SPLA) formed in 1974 by remnants of the SNA, but later absorbed by Lin Min-Shing's Eastern Shan State Army (ESSA); the Tai Revolutionary Council (TRC) formed in 1984 by the merger of the SURA and the SSA's 2 Brigade and joined by Khun Sa's SUA in 1985; and the Mong Tai army (MTA) set up by Khun Sa at Mo Mong in 1987. The Shan State National army (SSNA) headed by Gun Yawd, was set up in 1995 by former MTA troops willing to work with SLORC. When Khun Sa surrendered to SLORC in January 1996, his 20,000 man MTA split into four groups, two of which immediately declared their commitment to Shan nationalism and their intention to continue fighting the SLORC.

The most active Shan group now is the new Shan State army, SSA, commanded by Colonel Yawd Serk which has about 5000 troops and which has adopted an anti-drug policy in addition to its fight for independence. In June 1999 the SSA achieved a major military victory when a battalion of 1,500 troops attacked a Tatmadaw unit and captured a significant portion of land near Ho Mong which Khun Sa had conceded in 1996. Although there were reports in early 2000 that Yawd Serk was seeking a truce with the SPDC, the SSA has continued to fight both the Tatmadaw and the UWSA.

The most pervasive and divisive issue in Shan State has always been drugs. All attempts to achieve unity have been bedevilled by the presence of drug warlords to whom profits and power were always more important than political ideals.

Despite the plethora of organizations and innumerable splits, the conceptual framework is quite clear: ethnic Shan civilians have been targeted for decades in a sustained and violent campaign of Burmanisation, the results of which are now manifested in serious falls in population levels in certain areas.

8.9 THE KARENNI

The Karenni number between 200-300,000. They have been one of the most persistent armed resistance groups and have suffered grievously as a result. They are considered by some to be a branch of the Karen people, although many deny any form of Karen ancestry. They are located in Karenni State and consist of about 150,000 Kayah and about 100,000 other ethnically related tribal sub-groups such as Kayaw, Kayan, Pa-o and Paku. They had a form of independence from the beginning of the 19th Century until 1942, although there was incessant fighting between several princes.
There are now four armed Karenni nationality factions: the Karenni National Progressive Party (KNPP), the Karenni National People's Liberation Front (KNPLF), the Karenni National Defence Army (KNDA) and the Kayan National Guard (KNG), a small group which broke away from the KNPLF and signed a ceasefire agreement with the SLORC in 1992. Another group, the pro-communist Kayan New Land Party (KNLP) which signed a ceasefire in 1994, has been very active since the 1960's in the Shan/Karenni border area.

Since 1996, the SLORC/SPDC has been carrying out a forced relocation program of Karenni people which amounts, according to Professor Ball, to ethnic cleansing. Some 80,000 have now been relocated in Karenni State, with another 20,000 refugees in Thailand. In other words, one third to one half of the population has been violently displaced. Almost half of those in refugee camps inside Thailand have fled from The life threatening conditions inside the relocation sites inside Karenni state where they say they could not survive. Estimates of numbers dying during one particular period of forced relocation in 1997 was about 1000. Limited armed resistance continues.

The KNPLF is a splinter group which agreed to a ceasefire in 1994, but it remains deeply divided and has attacked Thai border posts with the SPDC.

The KNLP is another splinter group formed by the SPDC and acts as a small proxy army for the SPDC.

8.10 COMMENTARY ON PROFESSOR BALL'S DESCRIPTION OF EASTERN ETHNIC FACTIONALISM

As stated, the article is notable for the clarity and succinctness of its grasp of the complexity of eastern ethnic groups. However, two points need to be made:

1. He describes a two stage process of destruction: firstly outwardly through what he calls "ethnic cleansing," and secondly inwardly through the assimilation process known as Burmanisation. Both are compatible and complementary, but in the case of ethnic cleansing
we need to remember that the objective in Burma is not, generally, to drive ethnic people out of the country as in Kosovo, but to drive them out of their villages and then to forcibly concentrate them into camps inside Burma. This method of destruction through assimilation is entirely consonant with Burmese history.

2. The complex plethora of factionalised identities can lead to despair and resigned acceptance that all groups are as bad as each other, i.e., a pox on all their houses. This would be a wrong conclusion to draw. The Junta is skilled in fomenting factionalism. Professor Ball notes how the military dictatorship has adroitly used the cease fire arrangements to undermine and divide the opposition, and then reward the proxy collaborationist splinter groups with drug operations which both financially sustain them in the short term, but destroy also them in the long run. Drugs thus become the ideal weapon with which to manipulate proxy armed groups into working with the Junta: once drug dependency is established, the groups will ultimately be destroyed, either by the vitiating power of drugs themselves, or by being eliminated in an apparent antinarcotics drive with international help for which the Junta will claim credit. In the meantime, the Junta benefits from the profits of the trade.

8.11 CONCLUSION ON THE PRESENT STATE OF EASTERN ETHNIC GROUPS

Very recent developments suggest the KNU is participating in an informal fragile cease fire. The current situation in eastern Burma can best be summed up as follows:

• Cease fire Groups including Karen, Karenni, Shan and Mon groups;
• Non cease fire Groups including the Karen KNU, the Shan SSA, the Karenni KNPP and Mon splinter groups;
• Political Groups including the United Nationalities League for Democracy, the coalition of ethnic political parties, which won 65 seats in the 1990 election, and pledged itself to working with the mainly Burman National League for Democracy;
• National Democratic Front (Coalition of ethnic armies);
• The mainly Burman National League for Democracy in border areas.

However, in all the complexity of ethnic factionalism, a clear moral compass remains: in 1990 the ethnic peoples voted overwhelmingly either for the mainly Burman National League for Democracy, or for the United Nationalities League for Democracy committed to working with the NLD to establish a democratic, Federal State. By so doing, they were re-affirming the original vision of a Federal Democracy enshrined in the Panglong agreement negotiated by General Aung San and ethnic representatives, and which formed the basis upon which Britain granted independence to Burma, believing Aung San’s assurances that the frontier peoples would not be coerced into a union with lowland Burma against their will.

At the time of writing, Aung San Suu Kyi is still under house arrest, but a vigorous attempt is being made to organize a ceasefire with the KNU, thus reversing the situation when the work on this report began: then Daw Suu Kyi was being released, to the world’s gullible delight, while the ethnic people were being ruthlessly attacked. Now she has survived a massacre attempt, and the Karen have been wined and dined in Rangoon. The Junta continues its endless game of divide and rule, something the opposition groups seem, puzzlingly, all too ready to fall for.
CHAPTER 9:

REFRAMING THE DEBATE:
ESTABLISHING COMPASS
The situation in Burma is complex and compounded by the Junta's deceit. However, recognition of complexity need not lead to collusion with deceit, nor degenerate into moral ambivalence, or wilful gullibility.

It is important to approach Burma's problems, and particularly the issue of the non Burman peoples, with an internal moral compass. The Panglong Agreement was essentially Federalist. The 1990 election, won overwhelmingly by the National League for Democracy and its non Burman allies, the United Nationalities League for Democracy, in effect, endorsed that vision. Current disorientation is caused not just by propaganda and State violence, ethnic factionalism, the isolation of ethnic internally displaced people, but also by collaboration and understatement of some Burma watchers.

9.1 THROUGH A LENS DARKLY: THE BURMA WATCHERS

CONSTRUCTIVE ENGAGEMENT

This describes the thinking that has tended to dominate much of the international community's approach to Burma and indeed some of the democratic opposition. It is based on the rational assumption that peaceful change is most likely to be nurtured if the international community works with the Junta and establishes dialogue. This thoroughly commendable approach may, however, result in downplaying and understating the gravity and scale of the violations inflicted, particularly on ethnic civilians. This approach may now need to be reconsidered after the State sponsored ambush of Aung San Suu Kyi's convoy in 2003, and the lack of any real transition to democracy.


An example of persuasive constructive engagement is expressed in the International Crisis Group’s report “Myanmar: Aid to the border Areas” (Sept. 2004).

Before commenting on the Report, two preliminary points need to be made to qualify the following critique: firstly, compromise, even very significant compromise, may need to be accepted to reduce, or stop the suffering inflicted by over fifty years of conflict. Secondly, the ICG is a rightly highly respected organisation, intelligently and flexibly trying to find a way through Burma's impasse and promote practical ways of relieving suffering. However, despite the above qualifications, the Report has weaknesses.

There are four important specific matters of concern:

1. QUESTIONABLE ASSUMPTIONS;
2. DISTORTIONS;
3. UNDERSTATEMENTS;
4. OMISSIONS.

1. QUESTIONABLE ASSUMPTIONS
The report is premised on the questionable assumption that international assistance could be implemented without strengthening the present oppressive government. Executive Summary, p.1). It apparently believes that special measures can be implemented regardless of who or what system is dominant in faraway Yangon (p.2 ibid). Such assumptions may be naive. The Junta controls all aspects of life in Burma. When foreign agencies such as the ICRC have travelled in far away Shan State, local people who have spoken with them have reportedly been threatened; some of those co-operating with the ILO have also reportedly been killed and even sentenced to death; others working with UN agencies have reportedly suffered serious consequences. All activities, in effect, take place within the framework of the military dictatorship's control. Very little aid reportedly reaches the ethnic displaced people, or those associated with the democracy movement, from within Burma itself.

Additionally, the Report appears premised on a conventional view of progress which presents the ethnic areas as economic backwaters which need to be "Integrated into the neighbouring fastest growing economies." This is questionable. The economies of ethnic peoples were remarkably sustainable and, when administered by themselves, to a considerable extent met their educational, social and health needs. The Karen, in particular, thrived under British administration. The Report fails to grasp that "development" inflicted in present circumstances is strongly connected to subjugation, assimilation, colonisation and population transfer of the dominant Burman group into ethnic minority regions.

2. DISTORTIONS

The Report implies that ethnic people are responsible for the problems afflicting the area, for example:

a) Environmental Destruction

Population growth worsened by conflict-induced displacements, has put increasing pressure on already marginal lands, and deforestation is taking its toll (p. 2, ibid).

There appears to be no significant population growth. Instead, collapse in population levels in certain areas and slumps in birth rates are happening. As a result of systematic forced displacement, hundreds of thousands of ethnic civilians have been forced to flee into forests; in their efforts to survive, they have naturally resorted to unsustainable practices. The environmental destruction is, however primarily caused by the policy of widespread and systematic destruction which forces ethnic victims to flee into the jungle and live in unsustainable ways. The internally displaced are not choosing to live in such conditions.

b) Language limitations

The fact that they speak their own languages is, apparently in the Report's view, the cause of their educational failure, the assumption being that they cannot learn in their own tongue:

Many ethnic minorities do not speak the Myanmar language. This greatly limits their access to formal education, as well as to information about health, nutrition and improved agricultural technology and contributed to keeping them trapped in poverty.

The non Burmans can, of course, learn and communicate effectively in their own languages.

c) Distorted views of cease fires

They have normalised life in many war torn areas allowing people to work and travel freely again.

This is questionable. Numerous reports express the continuation of systematic violations and persecution continuing to be inflicted on ethnic peoples after ceasefire agreements have been reached. (See for example Mon Human Rights Groups Reports). The deputy director of the
World Food Programme has specifically condemned the Junta for inflicting suffering on farmers by its widespread practice of restricting travel for ethnic people. Many members of minorities, especially Rohingyas, Moslems and Christians, are not allowed to travel freely and are systematically persecuted on the basis of their religion, even though they present no threat. The UN Special Rapporteur in his October 2004 Report to the UN General Assembly condemned the restrictions on travel in areas where there is no conflict, the restrictions being so severe in some areas that they prevent victims from being able to earn a livelihood, since they cannot travel to trade, or find, or do work.

d) Misrepresentation of border areas policy

The Report also appears to distort the real intention underlying the Border areas policy, stating it is to integrate *ethnic minority communities into the broader society and economy*. This “development” is often associated, however, with subjugation. Significantly, the Report makes no mention of the plans to build a series of major dams on the Salween river which will displace large numbers of ethnic people, permanently flood their land, facilitate Burman population transfer, and impede the movement of resistance forces.

e) Marginalisation of Aung San Su Kyi and the NLD

The Report implies that the National League of Democracy and those who won the 1990 election, are obstructing the kind of development advocated by the report:

The NLD and other political parties should make it clear that they support all genuine efforts to promote sustainable human development.

It fails to point out the obvious, i.e., that world aid would have, and would still, pour into Burma if the 1990 election had been honored and the NLD been allowed to take power. It is the Junta, as demanded by UN General Assembly Resolutions, which should be called on to open its doors to the international community and promote sustainable human development by allowing access to all victim groups, especially the non Burmans in the border areas. The democratic opposition should not be marginalised, and indirectly blamed, for obstructionism.

f) Endorsement of the Junta's Position

It is in the Report's conclusion, however, that its premise appears to become explicit: Burma's central task is conceptualised as "Nation building," a process in which the ethnic minorities are presented as obstacles. They seem to be indirectly accused, in a classic case of blaming the victims, of being responsible for preventing democracy from taking root:

The primary challenge facing Myanmar is nation building... Without a common commitment to the Union and denunciation of violence, democracy cannot take root and flourish (p.21).

We can infer from the context that what the report means by "Nation building" is what the Junta means: a centralised, Burmanised State. The Report's priorities are the same as the Junta's: "Nation building," i.e., "a common commitment to the Union," must come before democracy. The truth, however, is the very opposite: if by nation building we mean establishing a genuine Federal democracy, then democracy is the prerequisite for nation building. The denunciation of violence, which the Report implies is required of ethnic groups, must, also, of course, come from the State responsible for inflicting violations on its citizens.

3. UNDERSTATEMENTS

a) Underlying Intent
The Report appears to reduce the intent underlying Junta policy to economic neglect:

Although Myanmar's long standing ethnic conflicts have diverse roots economic neglect is at their heart.

Systematic targeted destruction of thousands of villages and the forced fleeing of hundreds of thousands of civilians is not economic neglect: it is systematic destruction resulting from a policy at the highest level. In the report's mindset, however, those dying from the inflicted conditions are merely wasting away in abject poverty. The verb wasting away suggests the existence of some internal disease without any human agency responsible for it; poverty tends to deny the degree of intentionally inflicted suffering. The deliberate deprivation of all means of subsistence expressed in the UN General Assembly Resolution of 2002 is not something which can be adequately described as poverty. Poverty is usually unwanted, not intentionally created; it describes a situation resulting from a lack of development, not active widespread, systematic destruction.

b) Position of internally displaced people

It recycles the views of some international officials in Myanmar who point out that many of the displaced essentially have resettled and although facing harsh conditions are no worse off than the general population (p.9).

The international officials should, of course, be alerting the international community to the gravity of the situation, not helping foster complacency by understating the effects of mass forced displacement.

c) General denial of intentionality

The Report employs many euphemisms which undermine the criminality underlying Junta behaviour. For instance, the failure to set up and run health clinics in border areas is attributed to unofficial service fees (i.e. corruption?); the policy of not paying, or feeding, border troops in order to encourage, plunder and pillage ethnic communities is done, in the Report's view, by a reluctant, implicitly benign, Ministry of Defence because it is cash strapped (p.9).

4. OMISSIONS

In addition, The Report omits, or downplays, significant information.

a) Aung San Suu Kyi

No mention is made of the State instigated attack on Aung San Suu and her followers in May 2003. The attack is unprecedented, involving a brutal assault on a Nobel peace Prize winner, whose party overwhelmingly won the 1990 election. Her unconditional freedom was negotiated by The Secretary General of the United Nations Special Envoy, and agreed to by the Junta in the full view of the international media, and the world's general acclaim. She is dismissively referred to in the Report, as being, in custody.

b) Sexual violence

The widespread, systematic, ethnically targeted human rights violations are downplayed and, in particular, little or no mention is made of rape or sexual violence, despite the publication of major reports, substantiated by US Government Officials, documenting widespread, appalling sexual violence in the very border development areas where the Report states the international community should become involved.

c) Human Rights victims
No mention is made of those who have been targeted for co-operating with human rights organisations, yet it states that NGO's and UN agencies should be advocating for Human Rights.

d) Endorsement of Border areas development policy

The Report, having characterised the ethnic peoples as backward, needing to be integrated into the fast developing surrounding economies, explicitly blames their resistance to Burmanisation as being responsible for causing the lack of development:

*Until recently, development of the border areas was hindered by the many insurgencies.*

It concludes that aid for the Border areas provides an important organising principle and practical means for development at the very moment plans are being advanced to build a series of huge dams on the Salween river in the heart of ethnic areas which will have massive, destructive effects on the physical and cultural survival of ethnic peoples. The Border Areas Development Programme offers not so much an important organising principle but a programme involving development induced destruction, displacement, and cultural assimilation.

d) Apparent endorsement of assimilationist views

The Report concludes:

*Their long history of civil conflict, social and economic backwardness and ethnic minority composition are indicative of deep seated problems.*

The words seem to imply it is their very ethnicity, their ethnic minority composition, that causes their problems. The implied solution is thus, presumably, that they would be solved once Burmanised.

Martin Smith concludes that,

*At worst such writers give comfort to governments in Rangoon which has long since set course on what ethnic leaders allege is a straightforward course of Burmanisation of the minorities* (*"Burma, Insurgency and the Politics of Ethnicity,"* ch. 2, p.34), and then quotes as illustrative of this Burman centred view, the American Burma specialist, Robert Taylor, whose premise is "Ethnic politics is the obverse of the politics of national unity."

9.3 ASSUMPTIONS ABOUT THE SANCTITY OF THE NATION STATE

Another possible reason for the denial of the gravity and scale of the violations inflicted on eastern ethnic people by some western academics, observers, and journalists may be, firstly, psychological: all too alarmingly, the destruction of the ethnic peoples in the name of
"national unity" and "progress," repeats what has been inflicted by dominant, colonizing groups again and again in modern history. Moreover, nearly all political cultures, whether fascist, communist, or liberal market orientated, have inflicted forms of development which have damaged indigenous, largely self-sufficient cultures.

In some ways, we are witnessing in eastern Burma a process of internal colonisation and counter-insurgency tactics adopted from western behaviour, (augmented by what was learnt from the brief period of the savage Japanese wartime regime), but rooted in the Burmans’ own traditions of historical racial supremacy and regal despotism.

A second reason why some western observers appear to endorse a racist, unitary state is because of a general tendency to wish to view the nation State as something sacrosanct, even when not endorsed by its population. The sanctity of the nation state, and denial of rights of minorities, is enshrined in the UN Charter, itself strongly influenced by Hitler’s excuses for initiating war by claiming he was protecting the rights of German minorities in Poland and Czechoslovakia.

9.4 ECONOMIC OPPORTUNISM

Another reason for understating, or misinterpreting the situation, by the international community may be because of a desire to participate in, and benefit from, the opportunities provided by constructive engagement.

9.5 DISTORTING EFFECTS OF TOURISM

An additional explanation for misunderstanding the plight of the internally displaced may be due to the distorting effects of tourism. Most people's perceptions of Burma are not influenced by academic writers, or the experience of internally displaced people, or political activists, but by their experience as tourists. Unable to speak the languages, they generally see a placid calm which masks a comatose sense of resignation to fear. Most tourists on the border with Thailand taking their photographs of the long necked women near Mae Hong Son have no idea why the women are there, or that they are standing next to a refugee camp whose inhabitants have fled systematic destruction. Moreover, their guides will probably ensure that they remain ignorant of such realities. What the tourists see inside Burma is an apparent and reassuringly quaint calm, usually marketed as The land that time forgot. After one investigation, in which I had come across only one village which had not been burnt to the ground, I went straight to a hotel in Thailand to find myself sitting next to an American family who had just returned from Burma and were viewing their charming photographs of The Golden Land: bullock carts and temples. Tourists can promote a distorted view of the country, all the more convincing because they have been there physically.

The tourist industry can send you forth into the country like the three blind, deaf and dumb monkeys: see nothing real; hear nothing real; speak nothing real. Behind the veil of The Golden Land lies a failed State with between 1 and 2 million internally and externally displaced people fleeing systematic and widespread destruction, and a collapsed health service, ranked just above the failed State of Afghanistan.

9.6 QUEISCENCE OF NON GOVERNMENTAL ORGANISATIONS
A further reason is the reluctance of some non Governmental organisations to effectively communicate the scale and gravity of the problem. This seems to have occurred even after the attacks on defenceless refugee camps on the Thai side of the border.

\[ \text{I was to find that even people working for non governmental organisations didn't want their names or organisations printed such is the pervasive fear. (Richard Humphries, "The Karen an easy target in a borderless world," Japan Times, April 22,1998)} \]

9.7 FAILURE TO IDENTIFY POLICY AND UNDERLYING INTENTION

Perhaps the most surprising thing about grassroots Human Rights groups themselves is their failure to identify and condemn the policy that underlies the violations, and their avoidance of the issue of intentionality. For example, the Earth Rights International Report, School for Rape, consciously evades, in line with most other studies, this fundamental issue in its preface:

\[ \text{Whether this result [sexual violence] is unwitting or intentional on SLORC's part is, to some extent, beside the point (p. 10).} \]

It is, of course, precisely the point to address the issue of intention underlying widespread rape. In addition, most organizations have refused to conceptualise the crimes in terms of international law with the exception of some limited references to the Geneva Conventions.

Human Rights violations are generally seen in the limited context of militarisation. For example, the admirable Karen Human Rights group concludes that:

\[ \text{The SPDC represents no political faction or ideology other than pure militarism. ("Suffering in Silence," p.15).} \]

The depoliticisation of the process of physical and cultural destruction by the use of the word, militarisation, fails to address the underlying policy which drives that process. Militarism, of course, is simply the means of inflicting policy. It is a strategy. Burmanization, the imposition of a racially homogenous State, is the policy.

A recent publication, Uncounted: political prisoners in Burma's ethnic areas. A report by Burma Issues and Altsean-Burma (August 2003) tries to act as a corrective to the indifference, or ignorance, of the plight of non Burman eastern prisoners. The Report again, however, suffers from a confused understatement of the problem, and a refusal to address the underlying policy intentions of the Junta. The condition of the internally displaced is understated as Extreme personal insecurity (p.11). It limits underlying policy intention to Suppression of political dissent:

\[ \text{If the detention of those included in the cease fire or pacified areas is really a security issue of protecting Burma from subversive armed elements, how does it stand up when these subversive elements don't exist, or at least exist in such limited capacity that it doesn't affect the immediate population. The existence of such cases in these areas can only strengthen the assertion that armed groups are used as an excuse for the suppression of political dissent across the board, (p. 12).} \]

The deliberate subjection of hundreds of thousands of ethnic people to life threatening conditions is far more extensive and collective than can be expressed by the term, Extreme personal insecurity: They are collectively insecure as peoples, not as dissenting political individuals. Assaults generally take place against ethnic peoples because of their ethnicity, not on account of their personal, political beliefs: similarly, the Suppression of political dissent understates the destruction of two and a half thousand ethnic villages. Women and children and ethnic people are generally not being destroyed to Suppress political dissent, but are
targeted simply because of their ethnicity. The suppression of political dissent may be an appropriate description for the intolerable, but less grave situation afflicting the NLD, not for the mass destruction inflicted on ethnic people. As such, the statement downplays the gravity of the issue and may thus, inadvertently, actually contribute to the general climate of indifference and misunderstanding.

Even the remarkably comprehensive report, Food Scarcity and Militarisation in Burma, compiled by Burma Issues and the Asian Human Rights Commission (Feb. 1999), that documents the life threatening, widespread, systematic destruction of food, also downplays in its introduction both the underlying intention, and the consequent effects of such a policy:

*Hunger in Burma is the direct result of the intentional and systematic actions of a military government for which the well being of the population-particularly access to sufficient food-is at best not a priority and at worst a threat to its political survival.* (Introduction, p.2)

The well being of the population being at best not a priority understates the underlying intention behind a policy which the Report so convincingly demonstrates is intended to comprehensively and systematically destroy all food for ethnic civilians; moreover, its description of the effects of massive, widespread, systematic destruction of food as being, at worst, a threat to political survival, misrepresents the obvious reality that destruction of food is, first and foremost, and self-evidently, a threat to people's physical existence, not their political survival.

Another recent report on the internally displaced in southern Shan State, "Running the Gauntlet," (Gary Risser, Chulalongkhorn University, Dec. 2003) describes in its opening sentence their plight as being simply overlooked by the Junta, reducing the level of intentionality and culpability for the infliction of forced displacement of hundreds of thousands of Shan civilians to less than even negligence. It quotes, apparently uncritically, very high vaccination rates for ethnic peoples from the Myanmar Ministry of Health as "facts," ignoring the non-provision and destruction of health facilities for the internally displaced Shan.

Martin Smith concludes on the alternatives facing the ethnic villagers in the face of the Four Cuts policy as:

*Every community must fight, flee or join the Tatmadaw.* ("Burma, Insurgency and the Politics of Ethnicity," p. 260).

All three activities involve life threatening experiences: the first through confronting hopeless overwhelming odds; the second through flight into unsustainable conditions; the third, into becoming the tool and victim of the agent of Burmanization, the army.

In conclusion, if the media, some Burma specialists and grassroots organizations and human rights groups themselves ignore, or understate, or misrepresent the policy and the intention underlying that policy, and refuse to conceptualise the violations in terms of international humanitarian law, it is hardly surprising that the wider international community remains either ignorant, indifferent, confused, or willing to engage with the Junta.

### 9.8 CONSTRUCTIVE ENGAGEMENT BY THE UN

The UN’s presence in Burma appears to have provided the regime with legitimacy and failed to bring about democratic change.

The degree to which some UN organisations within Burma co-operate with the dictatorship is expressed by Jean Luc Lamahieu, the UN Organization for Drug Control representative, who in an interview with Steve Hirsch, (UN Wire service, December 18, 2003) denied Junta institutional involvement in drugs and appeared to describe the Junta policy toward ethnic people as civilising:
We are doing many elements which might help the political reform, including exposing the ethnic minority groups to norms and values accepted by the International Community, taking them away from uncivil society in which many of them were for many years.

In short, the role of the UN seems confusing: some organisations co-operating, even defending the Junta on the one hand, while Special Reporters and General Assembly Resolutions condemn it, year in, year out for widespread, systematic human rights violations and demand an end to impunity.

9.9 UNDERSTATEMENT OF POLICY AS "MILITARISM"

Militarism is not a policy: it is a tool for inflicting, or implementing, policy. Between 1939 and 1945 Britain and Germany were both highly militarised societies, but the policies of each country were quite different. To reduce the Junta's policy to militarism may understate its policy intentions.

A clear expression of the conventional understanding of the relationship between policy and human rights violations, which understates a possible underlying racist intent, is found in the admirable dissertation, "Dynamics and consequences of internal displacement in Burma's ethnic civil war: focus on eastern borderlands," (Richard Humphries, MA Dissertation, Dept. of Peace Studies, University of Bradford, 2004).

Junta activity is defined as "militarism," based on a policy of "autarky," i.e., a form of economic and self-sufficient nationalism. (In this context we would logically infer the author is referring to Burmese nationalism.) The policy is then inflicted in the counter-insurgency strategy, known as the Four Cuts. The author notes this strategy is accompanied by "persistent human rights violations," which "directly targets rural populations in contested areas." A strategy, however, which "deliberately targets" hundreds of thousands of ethnic peoples who are Burmese citizens is, arguably, not nationalism, or autarky. That would be a contradiction in terms. What, appears to be occurring, is the infliction of the nationalism of one ethnic group, i.e. the Burmans on other non-Burmans. Nevertheless, the human rights violations are described by Humphries as being, "part and parcel," of the strategy:

Forced relocations, extortions, and land confiscations have been part and parcel of that strategy and have swelled the number of displaced.

His analysis may involve a contradiction. Despite his initial definition of the policy being militarism based upon autarky, he nevertheless describes the displaced as ethnic peoples, (largely Karen, Karenni, Mon and Shan), who have been, in his words, "deliberately targeted" and forced to flee, even from relocation centres, (p.37) by measures which appear to go well beyond the requirements of counter-insurgency. The militarism and autarky exist, we can infer, to violently inflict a Burman form of nationalism on non-Burmans.

The widely accepted and disseminated description of an apolitical policy of militarism may understate an underlying racial motive and intention. The policy may be an expression not of Burmese nationalism, but Burman nationalism; it inflicts violations as an integral part of the policy, not as unintended side-effects; the victims in eastern areas are ethnic peoples, not Burmans; the conditions inflicted tend to make it impossible for victims to survive and, as a result, they become violently displaced. They are, arguably, victims of intentional policy, not apolitical militarism, or chaotic conditions. The fact that ethnic minorities are forcibly co-opted to inflict the policy does not negate a possible racist intent underlying the policy.
9.10 CONCLUSION

The systematic destruction inflicted on ethnic people has tended to have been disregarded by the media and certain Burma watchers: or acknowledged, but downplayed and understated; or inadequately, or confusingly, conceptualized.

Some of the reasons for this have been given. An additional one, in addition to the general tendency for people everywhere to be vulnerable to fear and corruption, and bend with the wind of political power, is that Burma is still a kind of Terra Incognita in the modern world. A mentality mired in a mediaeval, irrational world of spirits, numerology, superstition and astrology has politically regressed back into its own history of racist despotism. In the process, it has adopted policies, strategies, tactics and technologies of modern 20 Century State Terrorism. The result is a worldview of bewildering complexity and horror, a kind of mediaeval Asian "1984" that it is difficult for the rational, humane mind to understand.

It is the belief of the present writer, however, that the Junta's mindset can be understood, and that the violations are not the unintended, arbitrary, random by products of a counterinsurgency campaign, but are the physical expressions of the policy of Burmanisation; as such, they are are meaningful and comprehensible: the results of that policy taken at the highest level entailing legal and political responsibility, as described by the former UN Special Rapporteur. A policy can be understood.

Fortunately, international humanitarian law has now evolved, both in theory and practice, to the point at which these violations can be accurately identified, individually and synergistically; conceptualized two dimensionally in terms patterns, and understood three dimensionally in terms of an underlying inferred intention.

This extended, preliminary excursion has been necessary because constructive engagement, collusion, denial, obfuscation, understatement, or misunderstanding of Burma's State terror is sustained not only by the Junta, but by members of the international community itself.
Chapter 10:

A MANIFEST, WIDESPREAD, SYSTEMATIC AND CONSISTENT PATTERN OF DESTRUCTION: SELECTED EXTRACTS FROM UN GENERAL ASSEMBLY RESOLUTIONS, UN SPECIAL RAPPORTEURS AND AMNESTY INTERNATIONAL REPORTS
10.1 JUSTIFICATION

It may seem unnecessary to repeat the condemnations of widespread, systematic human rights violations in Burma, but so effective has the regime been in hiding evidence and intimidating opposition, and so indifferent has been the international community's response, that many people either do not know what has been inflicted, or question the credibility of reports of violations.

It is thus necessary to repeat a selection of the condemnations of systematic, widespread, human rights violations expressed in UN Special Rapporteurs' Reports and United Nations General Assembly Resolutions to establish beyond all doubt the veracity of the violations inflicted in Burma generally, and in the ethnic areas in particular: it is to these very areas, we must remember, that repatriation of refugees is being planned.

10.2 THE CURRENT SITUATION

EXTRACT FROM STATEMENT MADE BY MR. PAULO PINHEIRO ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR TO THE 61 SESSION OF THE COMMISSION OF HUMAN RIGHTS, ITEM 9, GENEVA, 29 MARCH 2005

I remain very disturbed by continuing allegations of human rights violations in ethnic minority areas, particularly those affected by counter-insurgency operations, and by the presence in ceasefire areas not involved in counter-insurgency activity of large contingents of the armed forces. Civilians in those areas have reportedly witnessed widespread violations of economic, social and cultural rights, including the deprivation of means of livelihood through land and crop confiscation, the destruction of houses, excessive taxation and extortion. Continuing reports of the use of landmines, forced labour and sexual violence indicate that fundamental human rights are at risk in those areas. I am particularly concerned by the situation in one ethnic area, namely north-western Rakhine state. During the reporting period, mosques continued to be demolished, the freedom of movement of the Bengali speaking people Muslim minority remained excessively restricted and the vast majority of that minority remained de facto stateless. I have also received reports alleging sexual violence against ethnic women, including, inter alia, Karens.

COMMENTARY

It is worth while pointing out the historical context of this statement. UN Special Rapporteurs have been "Disturbed" and "Concerned" about the situation of human rights in Burma for over ten years.

Firstly, the Special Rapporteur identifies the victims as ethnic minorities, nor Burmese citizens or political activists.

Secondly, he identifies the areas where the violations have been inflicted as being areas "affected by counter-insurgency operations" and "ceasefire areas not involved in counter-insurgency." This confirms allegations that the violence is in excess of what is required for counter insurgency, and suggests violations are being intentionally inflicted on unarmed civilians.

Thirdly he identifies the specific violations: the destruction of houses suggests not just destruction of dignity and the means of maintaining health, but the very basis of survival. The activity is consonant with one of the Rome Statute's defining acts of genocide: Systematic expulsion from homes, (footnote 4, article 6 (d), p.150, Rome Statute of the International Criminal Court, Part 1)
He further cites "The deprivation of means of livelihood," including "land and crop confiscation." This suggests the destruction of the very means of survival for rural subsistence farmers who have little or no other means of earning a living. The activity is consonant with the Rome Statute's codification of Article 2 c of The Genocide Convention by deprivation of resources indispensable for survival such as food. (ibid)

He then identifies other forms of persecution: excessive taxation, extortion, land mines, forced labour, and sexual violence. The taxation, extortion and forced labour when combined with land confiscation and crop confiscation suggest that physical survival of these groups may be at stake.

Land mines are a direct threat to the right to life itself.

The sexual violence he cites is clearly something more sinister than what can be considered to be a counter-insurgency campaign: it suggests an attempt may be being made, at the very least, to damage the social, and possible biological, sustainability of the group.

Surprisingly, he omits direct killing and, in line with most other Reports, makes no attempt to assess the destructive, cumulative, synergistic effects of these violations on these groups of ethnic, internally displaced people.

Arguably the violations, collectively and cumulatively, amount to an attempt to inflict conditions of life which make it impossible for a substantial part of the ethnic, internally displaced, non Burman people to survive in the long term consonant with Article 2 c) of The Convention on the Prevention and Punishment of the Crime of Genocide now defined by the Rome Statute as;

Deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes, (ibid)

THE DEPAYIN INCIDENT

In that regard, the issue of impunity relating to the events of 30 May 2003 in Depayin must also be adequately addressed and those who are found to be responsible brought to justice.

The Special Rapporteur has already stated in a former Report that there is a prima facie case of State connivance in the ambush of Daw Aung San Suu Kyi's convoy. In effect, he is asking the ruling Junta to investigate and punish itself.

10.3 THE SITUATION AS REPORTED IN OCTOBER 2004
The information I received during the reporting period indicates that the situation with regard to the exercise of fundamental human rights and freedoms in Myanmar has not substantially changed and may have even worsened (para. 80).

COMMENTARY

The UN Special Rapporteur's comments are significant. This assessment that the human rights situation may even have worsened comes after a prolonged period of sustained constructive engagement with the Junta involving Mr. Pinheiro himself, Ambassador Razali, Amnesty International and the prolonged collaborative presence of the International Committee of the Red Cross. Mr Pinheiro states:

I remain very disturbed by continuing allegations of human rights violations, particularly in ethnic minority areas affected by counter-insurgency operations or presence of large contingents of the armed forces not involved in counter-insurgency activity. (ibid)

The significance of this statement is that the Special Rapporteur is drawing attention, firstly to the human rights violations specifically inflicted on ethnic peoples as opposed to the general Burmese population: secondly, he is also drawing attention to human rights violations inflicted by:

large contingents of the armed forces not involved in counter-insurgency.

The second point confirms the generally agreed consensus that the violations inflicted by the Burman dominated army go beyond a counter-insurgency campaign. They are committed, according to the UN Special Rapporteur, by:

armed forces not involved in counter-insurgency.

We can infer that the violations (we note his use of the word violations not abuses) are intended to damage the civilian ethnic population over and above what would be required by a counter-insurgency campaign.

The Special Rapporteur's words have serious legal implications: they imply a Crime against Humanity is being committed, or, if the violations are intended to destroy civilians on the grounds of their ethnicity, the crime of Genocide.

He goes on to list the usual litany of horrors:

These areas have reportedly witnessed widespread violations of economic, social and cultural rights, such as deprivation of means of livelihood through land and crop confiscation, destruction of houses, excessive taxation, and extortion. Continuing reports of the use of landmines, forced labour, and sexual violence indicate that fundamental human rights are in peril in these areas.

The widespread violations of economic, social and cultural rights is expressive of the Crime against Humanity of Persecution being inflicted, particularly his use of the word widespread. However, his list of violations, including:

deprivation of means of livelihood through land and crop confiscation, destruction of houses, excessive taxation and extortion,

suggest a systematic, synergistic destruction of the physical basis of life itself. Deprivation of land and crop confiscation suggests destruction of the food supply, especially serious for
subsistence farmers with very little alternative sources of income; destruction of houses describes the elimination of shelter, an essential requirement for human survival; the combination of extortion and excessive taxation on very poor people implies the destruction of their financial viability. Without land, food, shelter or money, people are weakened to the point that their physical survival may be threatened. The conditions inflicted therefore come very close to the definition of Genocide as expressed by Article 2 (c):

Inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part.

He goes on to point out the special plight of the Rohingya minority in the west:

Mosques have been demolished, the freedom of movement of the Bengali-speaking Muslim minority has been excessively restricted and the vast majority of them are de facto stateless.

This clearly suggests that the Crime against Humanity of Persecution is being inflicted on the Rohingyas. The fact that they are de facto stateless people is a result of systematic state policy. At the time of writing (November 16, 2004) about 20,000 Rohingyas are reported as having fled again into Bangladesh in the last two weeks, a country where they have no protection or support, and from where 200,000 were formerly coercively repatriated. The question has to be raised, however, in the case of the Rohingyas as to whether the conditions from which they are fleeing go beyond cultural Persecution and are life threatening.

EXTRACT FROM REPORT OF UN COMMISSION ON HUMAN RIGHTS TO THE ECONOMIC AND SOCIAL COUNCIL, APRIL 2004.

It condemned:
The systematic enforced displacement of persons.

COMMENTARY

This implicitly refers to the violations committed against ethnic internally displaced people, since forced relocations on the Burman lowland have largely ceased. The enforced displacement is described as systematic. Systematic implies the activity is an expression of policy; it is also one of the two distinguishing characteristics of a Crime against Humanity. Enforced displacement of persons is now formally defined in the Rome Statute as: The Crime against Humanity of Forcible Transfer of Population. (Article 7 (1) (d).

Thus it can be established at the very outset that all the violations connected to, and resulting from, the mass enforced displacement of persons in eastern Burma are taking place within the overall context of a Crime against Humanity. The Four Cuts policy, involving, inter alia, massive, systematic, forced relocation is thus in itself a Crime against Humanity: it is based on, and requires, Forcible Transfer of population for its implementation.

The policy of forced relocation, intrinsic to the Four Cuts policy, cannot, therefore, be used to justify, or legitimise violations. It cannot be argued that resistance to forced relocation justifies punishment by killing, starving, rape or torture. The forced relocation, the primary motive underlying the violative activities, is itself a Crime against Humanity and justifies resistance.

9.5 EXTRACT FROM UN GENERAL ASSEMBLY RESOLUTION ON MYANMAR 1 DECEMBER 2003

PREAMBLE:
Aware that Mynamar is a party to the Convention on the Rights of the Child 3, the Convention on the Elimination of All Forms Of Discrimination against Women, 4 The Convention on The Prevention and Punishment of The Crime of Genocide 5, and the Geneva Conventions of 12 August 1949 for the protection of victims of war, 6 as well as the Convention concerning Forced or Compulsory Labour, 1930 (convention No. 29) and The Convention concerning Freedom of Association and Protection of The Right to organize 1948 (Convention No. 87 of The International Labour Organisation).

COMMENTARY

This UN General Assembly Resolution presents its condemnation of systematic violations of Human Rights in Burma within the framework of International Law. Moreover, it specifically cites The Convention on the Prevention and Punishment of the Crime of Genocide, and, by so doing, explicitly draws attention to its possible applicability. Moreover, the inference can be legitimately drawn from the Resolutions’ subsequent repeated references to systematic human rights violations that the Junta is violating international law.

However, the Preamble and Resolution suffer from two main defects: they fail to cite the crucial principle of Universal Jurisdiction and, secondly, they fail to invoke explicitly the body of crimes collectively known as Crimes Against Humanity. The latter are implicitly referred to, however, in the frequent references to widespread and systematic violations and, by inference, The Crime Against Humanity of Persecution is alluded to, especially with respect to the violations cited against religious and ethnic peoples. The body of crimes as a whole, however, has not been explicitly invoked. This is a most regrettable omission, since it is the body of crimes most applicable and relevant to conceptualizing the systematic and widespread human rights violations cited in this and other Resolutions.
The failure to invoke this crucial category of crime explicitly, implicit though it may be, along with the failure to invoke the accompanying principle of Universal Jurisdiction, weakens the case for enforcing international law and ending impunity.

The Resolution nevertheless expresses the violations as being inflicted within the overall context of the denial of democracy.

Affirming that the will of the people is the basis of the authority of government and the will of the people of Myanmar was clearly expressed in the elections held in 1990.

COMMENTARY

The moral and political significance of the 1990 election is re-affirmed. The responsibility for human rights violations since 1990 results mainly from the annulment of this election by the military dictatorship. Amongst the labyrinthine complexities of Burmese politics, the 1990 election is the lodestar against which the Junta's actions should be judged. The establishment of this fact, right at the beginning of the Resolution, shows clearly this is the view of the United Nations General Assembly itself.

THE DEPAYIN MASACRE

2 a) The events of 30 May 2003, the corresponding, subsequent and continuing violations of human rights situation in the country and the apparent involvement of the government affiliated Union Solidarity and Development Association in these events;

COMMENTARY

The Resolution clearly points to the Junta's responsibility for the attack on Daw Aung San Suu Kyi's convoy, but fails to identify the numbers murdered and that, as her release had been unconditionally negotiated by the UN's Special Envoy, the attack was, in effect, an attack on the credibility of the UN itself.

DAW AUNG SAN SUU KYI'S PRESENT POSITION

a) The detention and house arrest of Daw Aung San Suu Kyi.

COMMENTARY

There is no ambiguity here about Daw Aung San Suu Kyi's post ambush condition, as the Junta would have us believe, and as some ASEAN governments would wish us to go along with. She is detained and arrested.

DENIAL OF ACCESS TO INTERNALLY DISPLACED AREAS

b) The lack of co-operation of the Government of Myanmar with the Special Rapporteur of The Commission on Human Rights on the situation of human rights in Myanmar, particularly as concerns his proposal to visit ethnic nationality areas to investigate allegations of serious human rights violations.
Here the Resolution calls for a thorough investigation of human rights violations in ethnic minority areas, complains about the secrecy of the situation pertaining, and the continuing impunity of perpetrators. Although the Special Rapporteur seems willing to be constructively engaged, the Junta is not. He appears, in effect, banned, despite having done all he could to foster co-operation.

DESTRUCTION OF SUSTAINABLE CONDITIONS OF LIFE

3. Expresses once again grave concern at:

a) The ongoing systematic violations of human rights, including civil, political, economic, social and cultural rights of the people of Myanmar in particular:

- Extrajudicial killing; continuing use of torture; rape and other forms of sexual violence persistently carried out by members of armed forces; unsatisfactory conditions of detention; forced relocation with disrespect for the rule of law and lack of independent judiciary; trafficking in persons; forced labour, including child labour; destruction of livelihood and confiscation of land by the armed forces; and violation of the right to an adequate standard of living, including food, medical care and education;

The text recites the usual litany of horrors, but presents them in context and their collective synergistic impact suggests the infliction of unsustainable conditions of life. Significantly it the condemnation includes the:

- The destruction of livelihood and confiscation of land; and violation of the right to an adequate standard of living, including food, medical care and education.

Destruction of livelihood connotes something more serious and fundamental than loss of work: a livelihood is the economic basis of life; similarly, confiscation of land, particularly of subsistence farmers who have no other skills is, arguably, life threatening; violation of the right to an adequate standard of living including food, medical care, suggests the deliberate infliction of life threatening conditions in which people are likely to die slowly, especially when inflicted over a long period of time.

Such conditions in relocation sites have been explicitly described as life threatening (UN former Special Rapporteur Rajsoomer Lallah), or conditions in which people cannot survive (Amnesty International); in addition, the allegation that this is done by the State (systematic), expresses the actions are the result of policy decisions.

SPECIFIC TARGETTING OF ETHNIC PEOPLE

Discrimination and persecution on the basis of religion or ethnic background suffered by persons belonging to ethnic minorities, women and children;

COMMENTARY
Here the Resolution unequivocally identifies targeted victim groups as being religious or ethnic minorities. Both groups are protected by The Genocide Convention. However, the Resolution again falls short of expressing the outright physical destruction being inflicted on ethnic peoples in eastern Burma. It does imply the existence of the Crime against Humanity of Persecution, since the violations systematically discriminate against religious and ethnic groups.

THE SITUATION OF THE INTERNALLY DISPLACED AND VIOLATIONS OF INTERNATIONAL LAW

Draws attention to the situation of the internally displaced persons, the flow of refugees to neighbouring countries and recalls in this context the obligations of Myanmar under international law;

COMMENTARY

Here the Resolution identifies the specific plight of the internally displaced people and refugees, over and above that of the civilian democracy activists and ethnic peoples in general. It implies their treatment violates international law and threatens the peace and security of neighbouring countries.

COMMITTMENT TO END IMPUNITY AND PROTECT THE INTERNALLY DISPLACED

4. Calls on the Government of Myanmar:

   a) To initiate a full independent inquiry, with full international co-operation, into the Depayin incident on 30 May 2003;
   b) To immediately facilitate and co-operate fully with the proposed investigation by the Special Rapporteur of The Commission on Human Rights in the situation of human rights in Myanmar into charges of rape and other abuse of civilians carried out by members of the armed forces in Shan and other States, including unhindered access to the region and to guarantee the safety of those co-operating with and covered by the investigation;
   c) To immediately secure the safe and unhindered access to all parts of Myanmar of the United Nations and international humanitarian organizations so as to ensure the provision of humanitarian assistance and to guarantee that it reaches the most vulnerable groups of the population.

COMMENTARY

Here the Resolution calls for an end to impunity and demands access to the internally displaced people. This report and project as a whole, “JUSTICE IN BURMA” is thus fully within the spirit and letter of UN policy as expressed in UN General Assembly Resolution, 2003.

No action will, of course, be taken by the Junta to investigate the Depayin ambush, since it itself is responsible for the action. Likewise, access to the internally displaced will also continue to be refused since the ruling Junta is, itself, responsible for inflicting the violations.

ENDING IMPUNITY

2. Strongly urges the Gov’t of Myanmar:

   a) To end the systematic violations of human rights in Myanmar;
   f) To put an end to impunity by investigating and bringing to justice perpetrators of human rights violations including members of the military and the Union of Solidarity and Development Association and other government agencies in all circumstances.
COMMENTARY

Once again there is the unequivocal condemnation of systematic violations and a call to end impunity, which, of course, will not be implemented.

The Resolution, as a whole, in some ways does break some new ground, however. There is a greater invocation of international law and a direct allegation that the military itself, and its USDA accomplices, are responsible for systematic violations. Moreover, what occurred at Depayin in conjunction with Daw Aung San Suu Kyi’s continued detention is a defining moment for the United Nations. No longer can it sustain a policy of constructive engagement with a regime responsible for the ambush of her and her supporters. The UN negotiated her release. The situation is historically unprecedented.

9.6 EXTRACT FROM STATEMENT BY MR PAULO SERGIO PINHEIRO
SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS
IN MYANMAR
57 SESSION OF THE General Assembly third committee Item 119
NEW YORK 6 NOVEMBER 2002:

I am gravely concerned about credible reports of widespread human rights violations attributed to the military and armed groups operating in ethnic minority areas, including but not only those relating to sexual violence, forced relocation, porterage, extortion, persecution of muslims and forced conscription of child soldiers.

VJ.C
COMMENTARY

Here the Special Rapporteur refers to widespread violations. This refers to their spatial nature, rather than to their organized nature expressed in the word systematic. As stated, the terms widespread and systematic are the two crucial distinguishing features of Crimes against Humanity. Human rights violations which are either widespread, or systematic, or both, are by their very nature Crimes against Humanity. The thus trigger the principle of Universal Jurisdiction, enabling perpetrators to be arrested anywhere in the world. His explicit reference to Muslims emphasises the issue of religious persecution: his reference to the forced conscription of child soldiers in ethnic minority areas raises the issue of whether the act of genocide is being inflicted, defined by The Convention on the Prevention and Punishment of the Crime Of Genocide Article 2 (e) as:

Forcibly transferring children from the group.

9.7 RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY 28 FEBRUARY 2002
56/231. SITUATION OF HUMAN RIGHTS IN MYANMAR

The General Assembly

Recognising that the systematic violations of civil, political, economic, social and cultural rights by the Government of Myanmar have had a significant adverse effect on the health and welfare of the people of Myanmar,

Deplores the continued violations of human rights in Myanmar, including extrajudicial, summary or arbitrary executions, enforced disappearances, rape, torture, inhuman treatment, forced labour, including the use of children, forced relocation and denial of freedom of assembly, association, expression, religion and movement.

COMMENTARY

Significantly the Resolution again uses the key words, systematic violations.

Furthermore, it asserts that the violations are having destructive physical consequences on civilian victims: the serious ill health of its people is a result of deliberate policy, not an unwanted or accidental by-product of circumstances beyond its control. The systematic violations have caused the Significant adverse effects on health (see also General Assembly Resolution 2001 below): the very serious ill health of Myanmar's people is thus not an accident, or a result of climactic or economic conditions beyond the government's control, but a direct result of deliberate, organized policy. The Resolution is making a causal connection between human rights violations and serious physical ill health which results in the physical weakening the people, rather than cultural destruction.

Still gravely concerned at the deterioration of human rights situation in Myanmar especially the unabated suppression of the exercise of political rights and freedom of thought, expression, association and movement in Myanmar as reported by the Special Rapporteur,

Recognising that the systematic violations (my underline) of civil, political, economic, social and cultural rights by the government of Myanmar have had a significant adverse effect on the health (my underline) and welfare of the people of Myanmar,

4 Deplores the continued violations of human rights in Myanmar, including extrajudicial, summary or arbitrary executions, enforced disappearances, rape, torture, inhuman treatment, mass arrests, forced labour, including the use of children, forced relocation and denial of freedom of assembly, association, expression and movement as reported by the Special Rapporteur;

5 Expresses its grave concern at the increasingly systematic policy of the government of Myanmar to persecute the democratic opposition, members of the National League for Democracy, sympathizers and their families, and ethnic opposition parties and at the use by the government of intimidatory methods such as arbitrary arrest and detention and abuse of the legal system, including by harsh long term sentences, mass rallies and media campaigns which have forced many to refrain from exercising their legitimate political rights; (my underline)

10 Notes with grave concern that the government of Myanmar has failed to cease its widespread and systematic use of forced labour of its own people and to meet all three recommendations of the International Labour Organisation on that issue;

14 Deplores the continued violations of human rights, in particular those directed against persons belonging to ethnic and religious minorities, including summary executions, rape, torture, forced labour, forced portering, forced relocations, use of anti-personnel mines, destruction of crops and fields and dispossession of land and property which deprives those persons of all means of subsistence and results in large scale displacement of persons (my underline) and flows of refugees to neighbouring countries with negative effects for those countries and an increasing number of internally displaced persons;

COMMENTARY

We should note here particularly the wording:

*Deprivation of all means of subsistence, particularly the word all.*
To subsist is to barely stay alive; if all means of subsistence are removed, you die because there is nothing to subsist on. The conditions from which the internally displaced people are fleeing, we can infer, are thus deliberately created conditions (Deprivation expresses deliberate action) intended to cause death, either directly or indirectly. All the activities listed above (executions . . . etc) are clearly intended and given their widespread (spatial) and systematic (intentional) nature, and that they have been inflicted over decades, we can infer that they are expressions of policy at the highest level. We should note also the use of the prepositional verb results in: there is a direct causal connection between the violations and the life threatening conditions which force the internally displaced to flee.

The UN Resolution comes close to paraphrasing the act of genocide 2(c) defined in The Genocide Convention as:

Deliberately imposing conditions of life calculated to bring about physical destruction in whole or in part.

The large scale displacement into neighbouring countries raises the issue of the effects of whether the forced fleeing of hundreds of thousands of refugees across international borders represents a threat to the Peace and security of mankind.

16 Deplores the continued violations of the human rights of women, especially women who are refugees, are internally displaced or belong to ethnic minorities or the political opposition, in particular forced labour, trafficking, sexual violence and exploitation, including rape, as reported by the Special Rapporteur;

18 Deplores the recruitment of children as soldiers, in particular children belonging to ethnic minorities;

20 Expresses its grave concern at the high rates of malnutrition among school aged children which constitutes serious violations of their rights to adequate food and the highest attainable standard of health.

In 18 we again find the reference to the recruitment of ethnic child soldiers which by its very nature is forced. The use of ethnic minority child soldiers may on the face of it appear puzzling. One would not expect ethnic minority children to be selectively chosen as part of a racial policy of subjugation of other ethnic minority people. However, this can be partially explained because ethnic minorities, especially children born in internally displaced areas, frequently do not have any form of identification, and thus are particularly vulnerable to being forcibly conscripted into the Junta army where they serve as victims and agents of Burmanization. Once in the army, they are subjected not just to routine brutalisation, but are also exposed to forcible assimilation, e.g. they are forced to speak Burmese, and refused contact with their families etc. They are also used to fight other ethnic opposition groups. Thus the use of ethnic child conscripts serves Burmanization in multiple ways: the ethnic children are used to kill other ethnic people; they are themselves sometimes killed both by opposition ethnic forces and their own officers; those who survive are effectively brutalised and Burmanized. The behaviour of the Junta in systematically and coercively, recruiting ethnic child soldiers again raises the issue as to whether this activity is an act of genocide according to article 2 (e) of the Convention:

Forcibly transferring children of the group to another group.

In Burma's case, the children are forcibly or coercively transferred from their ethnic group to another group i.e. the army, a group which is Burman dominated, established to impose Burmanization on the whole country.
10.9 RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
FEBRUARY 2000 (Agenda item 116 c)

5 Deplores the continuing violations of human rights in Myanmar, including extra-judicial, summary or arbitrary executions, enforced disappearances, rape, torture, inhuman treatment, mass arrests, forced labour, including the use of children, forced relocation and denial of freedom of assembly, association, expression and movement as reported by the Special Rapporteur;

9 Expresses its concern that the composition and working procedures of the National Convention do not permit either members of Parliament elect or representatives of the ethnic minorities to express their views freely, and urges the Government of Myanmar to seek new and constructive means to promote national reconciliation.

(Note the continued exclusion of the ethnic peoples from the democratic process).

12 Strongly urges the government of Myanmar to cease widespread and systematic use of forced labour and to implement the recommendations of the Commission of enquiry;

13 Deplores the continued violations of human rights, in particular those directed against persons belonging to ethnic and religious minorities, including summary executions, rape, torture, forced labour, forced relocations, destruction of crops and fields and dispossession of land and property which deprives those persons of all means of subsistence; (my underline)

COMMENTARY

Here the Resolution clarifies and expands what is meant by the earlier deprivation of all means of subsistence, by explicitly identifying:

destruction of crops, fields, and dispossession of land and property belonging to ethnic and religious minorities.

This is not a description of a counter insurgency campaign intended to destroy armed resistance, but the destruction of the physical basis of life of ethnic and religious groups.

The words virtually paraphrase the indirect destruction expressed by Article 2 (c) of The Genocide Convention, now clarified by the Rome Statute to mean:

Deprivation of resources indispensable for survival such as food or medical services or systematic expulsion from homes. (The Rome Statute, Article 6 (c), footnote 4).

14 Also deplores the continuing violations of the human rights of women, especially women who are refugees, are internally displaced, or belong to ethnic minorities or the political opposition in particular forced labour, sexual violence and exploitation, including rape, as reported by the Special Rapporteur.
COMMENTARY

The existence of widespread sexual violence deliberately targeting ethnic women suggests a practice aimed at inflicting serious mental and physical harm, expressive of genocidal activity 2(b):

Causing serious bodily or mental harm to the group.

10.10 GENERAL ASSEMBLY RESOLUTION ON MYANMAR
FEBRUARY 1999

4 deplores the continuing violations of human rights in Myanmar including extrajudicial and arbitrary executions, rape, torture, inhuman treatment, mass arrests, forced labour, forced relocation and denial of freedom of expression, assembly, association and movement as reported by the Special Rapporteur.

10 Further strongly urges the Government of Myanmar to ensure full respect for human rights and fundamental freedoms, including freedom of expression, association, movement and assembly, the right to a fair trial and the protection of the rights of persons belonging to ethnic and religious minorities, to put an end to violations of the right to life and integrity of the human being, to the practices of torture, abuse of women, forced labour and forced relocations and to enforced disappearances and summary executions and to fulfil its obligations to end impunity for perpetrators of human rights violations, including members of the military, and to investigate and prosecute alleged violations committed by government agents in all circumstances.

COMMENTARY

Here item 10 explicitly calls for action to end impunity and investigate and prosecute alleged violations committed by government agents, and specifically identifies the crime of enforced disappearances. In the light of the failure of the Junta to prosecute perpetrators, any action taken by individual nations to bring them to justice would be fully in the spirit of the UN resolution calling for an end to impunity.

16 Calls upon the Government of Myanmar and other parties to the hostilities in Myanmar to respect fully the obligations under international humanitarian law including article 3 of the Geneva Conventions of 12 August 1949, United Nations Treaty Series vol.1 75, nos 970-973, to halt the use of weapons against the civilian population, to protect all civilians, including children, women and persons belonging to ethnic or religious minorities, from violations of humanitarian law and to avail themselves of such services as may be offered by impartial humanitarian bodies.

COMMENTARY

Here the UN General Assembly Resolution unusually invokes international humanitarian law. It is clear from its wording (halt the use of weapons against the civilian population) that it is condemning the Junta for violating the key article Three of the Geneva Conventions, itself a cornerstone of international law.

The Geneva Conventions are the most widely accepted body of international law, have universal jurisdiction and were signed and acceded to by Burma in 1992. The International Committee of the Red Cross has a special responsibility as guardian of the Geneva Conventions to ensure they are honored. Being present and active within Burma, knowing that Article 3 applies to a situation of internal armed conflict, aware that the United Nations has formally invoked Article 3 in a unanimously adopted Resolution of the General Assembly,
the ICRC must take up the question of such a serious violation of fundamental international law, for which it has special responsibility, with the ruling Junta. Moreover, the former Junta sponsored attacks on refugee camps across an international boundary trigger the charge of a *Grave Breach of the Geneva Conventions*, one of the most serious violations of International Humanitarian Law, and one which the ICRC has a special responsibility to address.

10.11 SITUATION OF HUMAN RIGHTS IN MYANMAR:
A REPORT BY SPECIAL RAPPOREUR MR. RAJSOOMER LALLAH SUBMITTED IN ACCORDANCE WITH COMMISSION ON HUMAN RIGHTS RESOLUTION 1999/17 (E/CN.4/2000/38), PARA. 50

*The rape and sexual abuse of women and girls by government forces has been a regular feature in the mode of operation of the army in its campaign of incursions into insurgency areas or else in relocation zones.* (my underline)

**COMMENTARY**

These *Relocation zones* are the so called, *Safe areas*, of David Steinberg where people are supposedly being monitored. It is significant that the Special Rapporteur describes rape and sexual abuse as being *regular features*: *regular* does not suggest something occasional, random or sporadic, but rather something frequent, patterned, almost normal and accepted behaviour. Moreover, he describes rape and sexual abuse taking place in relocation zones, i.e. places where there is no conflict controlled by the State. That the rapes are *regular* and in government controlled areas suggests a very special degree of culpability, i.e., crimes not inflicted by soldiers out of control in the heat of battle, (see Martin Smith *impossible to distinguish friend from foe*, note 40, p.495, "Burma, insurgency and the politics of ethnicity") but as a "normal" activity against detainees, completely separated from resistance fighters, who pose no conceivable security threat at all. The identity of these detainees are overwhelmingly ethnic people: Karen, Karenni, and Shan.

It is important to note that this allegation of widespread, *(insurgency areas and relocation zones are spread over an area almost 1,800 kilometres in length)*, and systematic *(regular feature carried out by government forces)* rape is being made by a UN Special Rapporteur, not an ethnic NGO.
10.12 EXTRACT FROM UN COMMISSION ON HUMAN RIGHTS
RESOLUTION 1998/63

Mindful that Myanmar is a party to the Convention on the Rights of The Child and the Geneva
Conventions of 12 August 1949 on the protection of war victims,

3. Expresses its deep concern:
   a) At the continuing violations of human rights in Myanmar, as reported by the Special
      Rapporteur, including extrajudicial, summary or arbitrary executions and enforced
      disappearances, torture, abuse of women and children by government agents, arbitrary
      seizures of land and property, violations of freedom of movement of people and goods,
      and the imposition of oppressive measures directed in particular at ethnic and religious
      minorities (my underline), including systematic programmes of forced relocation, and the
      widespread use of forced labour, including for work on infrastructure projects and as
      porters for the army;

   b) At the violations of the rights of women, especially women who are refugees, internally
      displaced women and women belonging to the ethnic minorities or the political opposition,
      (my underline) in particular forced labour, sexual violence and exploitation, rape, as
      reported by the Special Rapporteur;

   a) At the violations of the rights of persons belonging to minorities, including the systematic
      programmes of forced relocations directed against ethnic minorities, notably in Karen,
      Kayan, Rakhine and Shan States and in Tennasserim Division, resulting in displaced
      persons and flows of refugees to neighbouring countries;

   i) And all other parties to the hostilities in Myanmar to respect fully their obligations under
      international humanitarian law, including article 3 Common to the Geneva Conventions of
      12 August 1949, to halt use of weapons against the civilian population, to protect all
      civilians, including children, women and persons belonging to ethnic or religious
      minorities, from violations of humanitarian law (my underline) and to avail themselves of
      services offered by impartial humanitarian bodies.

COMMENTARY

Here the Resolution explicitly makes clear the discriminatory and aggravated nature of the
systematic violations inflicted on the ethnic and religious minorities over and above those
inflicted on the general civilian population. It is clear from the wording that there is a specific
additional component to the systematic violations inflicted on the ethnic peoples, implying an
intention to target ethnic peoples because of, and on account of, their ethnicity. Moreover, the
wording clearly states these victims are protected by Article 3 of the Geneva Conventions and
strongly implies this law is being violated.
10.13 UN COMMISSION ON HUMAN RIGHTS RESOLUTION 1996/80

Gravely concerned at the violations of human rights in Myanmar, which remain extremely serious, in particular the practice of torture, summary and arbitrary executions, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detention, forced displacement of the population, the existence of important restrictions on the exercise of fundamental freedoms, including the freedom of expression and association, and the imposition of oppressive measures directed in particular at ethnic and religious minority groups.

Gravely concerned at the continuing fighting with the ethnic and other political groups, despite the conclusion of ceasefire agreements, and noting that this, together with continued violations of human rights has resulted inflows of refugees to neighbouring countries.

12 Reminds yet again [this is 1996] the Government of Myanmar of its obligations to put an end to impunity of perpetrators of violations of human rights, including members of the military, and its responsibility to investigate alleged cases of human rights violations committed by its agents on its territory, to bring them to justice, prosecute them and punish those found guilty in all circumstances.

10.14 COMMISSION ON HUMAN RIGHTS RESOLUTION 1993/73

Expressing its deep concern at the violations of human rights in Myanmar which include putting an end to the right to life and integrity of the human being, to the practices of torture, abuse of women and forced labour and to enforced disappearance and summary execution.

The Resolution identifies the violations as going beyond persecution; they put an end to, i.e. destroy, the right to life itself. This wording is extremely significant in determining whether what is being inflicted on ethnic people is systematic persecution, which normally involves serious weakening of the group, or genocide, which involves outright physical destruction of whole or part of the group. While several Resolutions imply that the violations indirectly destroy civilian ethnic groups, this Resolution condemns the direct destruction of physical life itself. Moreover, the fact that the physical destruction of life results from violations implies destruction of life is a product of intentional State policy.
Torture:

Torture of political prisoners is believed to be routine (para.776).

Here the use of the word Routine suggests something not occasional, sporadic or isolated, but something normal and repeated; something widespread and systematic in fact. As political prisoners are almost all Burman democracy activists, (ethnic prisoners surreally do not exist in Orwellian Burma because the international community does not go there,) the Rapporteur is in effect alleging The Crime Against Humanity of Torture is being inflicted on democracy, mainly Burman activists.

FORCED RELOCATION:

The Special Rapporteur transmitted information about widespread practice of forcible relocations in the Kayin, Kayah and Shan states. They appear to be carried out solely on account of the ethnic origin or perceived political beliefs of those who are relocated, (my underline)

COMMENTARY

Here he is stating that this programme is one of officially sanctioned, systematic deprivation of liberty on a mass scale committed against ethnic groups; his assessment that this is being done solely on account of the ethnic origin of the victims expresses an intention to damage and weaken or destroy ethnic groups.

IMPUNITY

The consistency of the reports reaching the Special Rapporteur over the years with the general allegations referred to in the paragraphs above lead him to conclude that there is sufficient substance to them to give cause for the gravest concern. The apparent pervasive impunity of the security forces must be seen as an essential factor, (para. 805, my underline)

Here the Special Rapporteur expresses that it is the Junta’s forces ability to operate outside the law, and violate it at will, that is the essential cause of the human rights violations. (These are the very people Professor David Steinberg recommends being put in charge of training their victims in public administration). Impunity is thus not an issue which has to be addressed sometime in the future as part of a settlement: impunity is the cause of the present violations. Ending impunity is the fundamental issue. The implication is that this impunity must be brought to an end, not as some sort of dubious plea bargaining in a morally evasive final settlement, but as an act initiating change.

This sense of justice being intrinsic to the transitional process, not terminal to it, is expressed, perhaps surprisingly, even by the present Rapporteur:

Statement by UN Special Rapporteur Paulo Pinheiro to the UN General Assembly November 6, 2002:

Political democratization cannot take place without free elections and public accountability, through a judicial mechanism, of abuses committed by State agents.
Significantly he widens the target group to include not just the military but State agents, in other words those groups such as the DKBA and USDA operating under the general overall control of the State.

10.16 AMNESTY INTERNATIONAL: ETHNIC MINORITIES TARGETS OF REPRESSION
(Al-index: ASA 16/014/2001)

FOOD

Although the SPDC says its actions are taken to stop food supplies from reaching KNU, it is the civilians who are being systematically deprived of their right to food. The vast majority of those interviewed said that they had fled because they could no longer survive in the jungle. (p.8, my underline)

COMMENTARY

The systematic deprivation of food involves the following: firstly, the civilians and not resistance fighters are the target; secondly, the action is systematic deprivation, in other words, the actions are organized and planned by the Junta; thirdly the effects are not hardship, but an inability to survive, i.e., conditions have been deliberately created to ensure the slow death of civilians.

HEALTH

The significant adverse effects on health include large numbers of preventable deaths directly attributable to the conditions inflicted on the ethnic peoples of eastern Burma. The report cites as an example:

She had eight children but five died from preventable disease. (p.10).

CULTURAL SOCIAL AND ECONOMIC RIGHTS

As is the case with the Mon and Karen groups, the Shan ethnic minority has systematically been deprived of their economic, social and cultural rights by the SPDC, (ibid, p.13)

COMMENTARY

Again the key significant word Systematic is used, i.e., the actions are organized and planned. In addition, what is being alleged here is not just cultural persecution, but deprivation of economic rights, which particularly involves the confiscation of land from subsistence farmers, who have no other way of surviving but by growing food, thus leading to physical destruction through malnutrition, starvation or forced fleeing.

Minorities are targeted for violations purely because of their ethnic origins or where they happen to be living (ibid, p. 15).

COMMENTARY

Targeted clearly expresses deliberate, conscious, planned actions, i.e., a policy; violations are transgressions knowingly carried out by governments; Purely (echoing the UN Special Rapporteur's soley) conveys that there can be no other intention underlying the violations, but to attack ethnicity. (The caveat, or where they happen to be living is essentially redundant, because where they live is determined by their ethnic origins, i.e., a Shan will live in a Shan village because he/she is Shan, as is the case also with the Karen and Karenni).
FORCED LABOUR

Members of ethnic minorities are much more likely than ethnic Burmans to be forced to perform unpaid forced labour and are in effect targeted for such duties. (Amnesty International, 16/12/99, "Kayin State: Militarisation and Human Rights").

COMMENTARY

Unpaid forced labour is, in effect, a euphemism for slavery, as the ILO has indeed called it, a human rights violation cited by the International Court of Justice in its 1970 Barcelona Traction case as a crime all states have an obligation to prosecute. That this is an ethnic crime invites the consideration of the Crime of Genocide, particularly activity 2 (b) causing bodily and mental harm and activity 2(c) inflicting conditions of life calculated to bring about physical destruction of part of the group because, amongst other things, relentless demands for forced labour prevent civilians from being able to grow food for themselves. The fact that ethnic Burmans also have to do forced labour does not negate the fact that an additional aggravated crime is being inflicted on ethnic people.

FORCED RELOCATION

To date [in Shan State] almost 1400 villages have been relocated; a conservative estimate of the numbers of people in these villages is about 300,000. As a result of the relocations and the attendant human rights violations by the military against Shan villagers, some 80,000 of them have fled to neighbouring Thailand. The overwhelming reason they gave for fleeing to Thailand was their inability to survive in the face of continual demands for forced labour and the lack of resources or work at the relocation sites. (my underline, "Atrocities in Shan State").

Amnesty International is concerned by this widespread practice of forcible relocations in the Shan State, which appears to be carried out solely on account of the ethnic origin or perceived political beliefs of those who are relocated. (ibid, my underline).
10.17 SPECIFIC ISSUE OF FORCED LABOUR AND ITS LEGAL
CONCEPTUALISATION: INTERNATIONAL LABOUR
ORGANISATION REPORT 1998

Myanmar is guilty of an international crime that is committed in a widespread or systematic manner,
a Crime against Humanity (International Labour Organisation Report, August 1998)

This quotation is important for two reasons; firstly because a charge of Crime against Humanity
has been levelled for the first time, a crime which is impermissible and has universal jurisdiction.
Secondly, Amnesty International has identified this crime of forced labour, which the ILO has
called a Crime against Humanity, as specifically targeting ethnic civilians. A Crime against
Humanity leveled specifically at ethnic civilians may well be genocidal if it is part of the
overall policy to destroy the group in whole or in part.

What is being alleged, therefore, by the two organizations in the case of forced labour is a
Crime against Humanity in general against civilians, and in Amnesty International's case, a
specific, aggravated crime committed against ethnic peoples. The fact that the ethnic
minorities are specifically targeted does not prevent the crime from also being conceptualized
as a Crime Against Humanity when practised against mainly lowland Burmans: however, the
fact that ethnic minorities are selectively targeted means it is also an ethnic crime, and can
thus be considered as contributing to genocide. The two sets of crimes are not incompatible,
but complementary.

10.18 IDENTIFICATION OF MYANMAR AS BEING AT RISK OF
GENOCIDE AT THE STOCKHOLM CONFERENCE ON THE

This Conference, the first of its kind since the adoption of The Genocide Convention in 1948,
was convened in January, 2004 to explore ways in which genocide could be prevented in the
future. Chaired by the Swedish Prime Minister, attended and addressed by the Secretary
General of The United Nations and representatives from fifty nations, it committed itself to
preventing future genocides.

One presentation was given by Barabara Harff of the US Institute for International
Development and Conflict Management. The Institute was, I understand, set up by the
Clinton administration to develop an objective genocide early warning system to prevent
future genocides.

In her presentation, Ms. Harff identified Myanmar as one of the five countries in the world
most at risk of genocide. Using a six point model, she identified Myanmar as triggering five
of the six indicators, thus expressing the serious possibility that Burma's ethnic peoples may
be at risk of genocide.

The presentation was significant in that an important international institution monitoring
genocide, using an objective six point model, confirmed the views of refugees and internally
displaced people that they are being targeted for destruction on the grounds of their ethnicity.
The presentation clearly expressed that, at the very least, serious consideration should be
given to the issue of genocide in Burma.
10.19 GENERAL CONCLUSION

There can be no doubt, even from a very selective reading of the above very limited selection of UN Resolutions and Amnesty International reports, and the Stockholm Conference on *The Prevention of Genocide*, that a manifest and consistent pattern of destruction exists, involving widespread and systematic human rights violations targeted at the ethnic peoples in particular, and the people of Burma in general. Moreover, the repeated condemnations of similar widespread, systematic violations expresses a consistent pattern of destruction. Furthermore, the General Assembly Resolutions and Amnesty International Reports suggest policies and practices go beyond "mere" Persecution: they threaten some parts of ethnic peoples' right to life itself.

Thus Burma stands accused by the United Nations and Amnesty International for over a decade of widespread and systematic violations, but has refused to address the issue of impunity.

It is alarming that it is to this current regime that plans have been drawn up by the UNHCR to repatriate refugees who have fled from it. Moreover, constructive engagement by some countries now seems to have degenerated into outright collusion with a regime which has one of the worst human rights records in the world.
CHAPTER 11: PROJECT AIMS
11.1 TO ANALYSE VIOLATIONS IN TERMS OF INTERNATIONAL LAW

As already stated, the premise of this analysis is the former UN Special Rapporteur's conclusion to his 1998 report:

*The human rights violations ... are the result of policy taken at the highest level, entailing legal and political responsibility.*

By applying international humanitarian law, especially as expanded, clarified and crystallized by the two International Tribunals established for Rwanda and the former Yugoslavia, this project will conceptualize and analyse the violations so that perpetrators’ impunity can be challenged.

11.2 TO ESTABLISH THE JUNTA’S PARIAH STATUS

*Part of the glue which holds the military together is the belief that the world supports them, trades with them, gives them aid and accepts them as the legitimate government of their land. That glue could give way if the reality that they serve an outlaw government which neither the people of Burma nor the world accepts finally sinks in.* (my underline). (Joseph Silverstein, untitled article Burmanet #1524, 29/30, April 2000.)

Convincing evidence that Burma is violating fundamental international humanitarian law will ensure it is seen as a pariah State. If combined with evidence that it is institutionally involved in drugs and amassing a technology and army far in excess of reasonable security needs, the issue of Burma may be forced higher onto the international agenda.

11.3 TO ESTABLISH THE LEGAL OBLIGATION TO PROTECT AND ASSIST THE INTERNALLY DISPLACED PEOPLE

By highlighting the scale, intensity, and seriousness of the human rights violations, pressure will be brought to bear to prevent the forced, or coercive, repatriation of refugees from the Thai side of the border, and to provide protection to the internally displaced on the other side.

11.4 TO ADDRESS IMPUNITY

During the course of the project, political will and enforcement mechanisms will be assessed in order to ascertain whether impunity can, and should be challenged, and what means exist to end impunity.
Ch ER 12:
APPLICABLE LAW
12.0 INTRODUCTION

As stated, The United Nations General Assembly Resolutions have specifically called for an end to impunity of violations of human rights in Burma. The UN Special Rapporteur, Mr Paulo Pinheiro, in his address to the General Assembly in November 2001, specifically called for:

*The establishment of a judicial mechanism to try human rights violations before* (my underline) *democratization can take place.*

It thus needs to be established: firstly what international law is applicable to Burma and secondly, how the violations can be legally conceptualized.

12.1 THE LEGAL STATUS OF STATE VIOLENCE

Before embarking on this analysis,

*The responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State by all legitimate means* (Article 8, The Rome Statute)

must be acknowledged. However, the methods used to do this cannot themselves be illegitimate. The defence of defending territorial integrity is questionable in Burma's case. The regime has no real legitimacy as it was overwhelmingly rejected by its own people in the 1990 election. Its existence violates the fundamental principle that government depends on the consent of the governed; secondly, even a legitimate government only has the right to maintain unity and territorial integrity by all legitimate means (Article 8, The Rome Statute, para. 3). The numerous UN Reports and General Assembly Resolutions continually condemn *human rights violations* (not human rights abuses), expressive of serious illegality. They frequently use the adjective, *systematic*, when condemning violations, defined by the ICTR as an *organized policy involving substantial public resources*. Systematic violations are thus, by their nature, serious State sponsored illegal acts. In particular, the present UN Special Rapporteur has specifically confirmed what he called, *state connivance*, in the ambush and killing of members of Aung San Suu Kyi’s convoy on May 30, 2003. We can conclude that the state in Burma not only fails in its primary duty to protect its citizens: it is, itself, responsible for violating their security.

Having established its illegitimacy as an organization and the general illegality of its actions, we need, however, to clarify in what specific ways the Junta is violating international law. To do this, we need to identify what significant international law specifically applies to Burma.
12.2 APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW TO INTERNAL CONFLICT IN BURMA

The situation in eastern Burma in parts of Shan, Karenni and Karen states for the past few decades can be described as an internal armed conflict. The organised, sustained, armed struggle involving ethnic armies, who have at times controlled large areas of territory which they have administered as mini states, cannot be described as sporadic civil disturbances. As a result, important parts of international humanitarian law apply.

The International Criminal Tribunal for Yugoslavia defined an internal armed conflict as follows:

*An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized groups or between such groups within a State.* (Prosecutor v Furundzia Judgement, IT-95-17/1-T, 10,1998)

This definition clearly applies to eastern Burma where there has been protracted armed violence between governmental authorities and organized groups for decades. Moreover, the ICTY definition includes conflict not just between resistance forces and the State, but conflict between such groups within a State. Thus, conflict between resistance forces and proxy splinter groups, such as the DKBA, operating under the Junta’s overall control, can be included in the term Internal armed conflict.

The democracy uprising of 1988, being a series of civilian, sporadic disturbances, could not, however, be defined as a situation of internal armed conflict, even though many thousands of people were killed.

Additionally, in terms of time, the ICTY explicitly stated that international humanitarian law applies not just to the immediate conflict situation, but also to cease fire situations until real, peaceful settlements have been achieved:

*International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States, or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.* (ibid, my underline).

This important judgement asserting that International Humanitarian Law applies Whether or not actual combat takes place is further clarified in the following commentary: "Practice and Procedure of the ICTY,” (p. 24, pub. Kluwer Law International, 2002):

*The Chamber found that whether or not the conflict is deemed to be international or internal, there does not have to be actual combat activities in a particular location for the norms of international humanitarian law to be applicable.* (my underline). A trial chamber is not required to find that there existed an armed conflict in the particular municipality where alleged events occurred but rather in the larger territory of which it forms a part. ("Practice and Procedure of the ICTY”, p.24, pub. Luwer Law International, 2002).

The application of this judgement is of significance to eastern Burma in that it makes clear that International Humanitarian Law applies spatially to all of the areas identified below. This is because no formal peaceful settlements have been reached anywhere, only precarious temporary cease fires:

- The eastern free-fire zones where internally displaced people are hiding;
• The subjugated areas where people have been forcibly concentrated into camps and separated from conflict;
• The refugee camps in Thailand;
• The cease fire areas.

In other words, the ethnic peoples in almost all of the mountainous ethnic areas of eastern Burma, including Shan, Karenni, Karen, Mon and those in Tenasserim states, are protected by International Humanitarian Law, whether or not conflict is occurring. This is particularly relevant to the Mon areas, where a policy of land confiscation, forced labour and extortion, amongst other things, continues to be inflicted, even though a cease fire is in place. The above interpretations also apply to the very recently agreed tentative cease fire areas agreed between the KNU and the Junta where violations continue to be inflicted. The same judgements would also be applicable to Kachin State, where a ceasefire exists but no permanent settlement has been reached, and to Chin State in the West where limited armed opposition appears to be continuing. The desperate situation of the Moslem Rohingyas in the west, however, appears not to involve armed conflict, thus probably rendering the Geneva Conventions, including Common Article 3 inapplicable. It should be noted, however, that both Crimes against Humanity and the Crime of Genocide can be inflicted in time of peace or war and do not require a conflict situation to be activated. Thus all civilians throughout Burma are protected by the category of Crimes against Humanity from violations if they are either widespread, or systematic, or both. All ethnic, religious, national or racial groups are protected from intentional physical total or partial destruction by The Genocide Convention.

12.3 INTERNATIONAL CONVENTIONS APPLICABLE TO BURMA
Burma has signed and acceded to the following Conventions which are directly applicable to the violations inflicted against internally displaced people:

**The Geneva Conventions**

**The Convention on the Prevention and Punishment of the Crime of Genocide**

**The International Labour Convention.**

The Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention outlawing Discrimination against Women and the UN's Guiding Principles on Internal Displacement have not been applied because they are unenforceable. A regime such as the Burmese Junta which expresses contempt for even the most fundamental of international laws would clearly ignore agreements which are non-binding.

12.4 INTERNATIONAL CUSTOMARY LAW

This category of law is applicable to Burma, even though it may not be a party to a treaty or Convention.

**The Geneva Conventions** have in particular come to be accepted as part of International Customary Law, particularly Article Three proscribing certain activities in a situation of internal armed conflict; Genocide and certain crimes identified as being **Crimes Against Humanity**, particularly the crimes of torture and slavery, are now also considered to be part of international customary law, whether or not a country has signed a particular Convention or not.

As Burma has, however, specifically signed and acceded to **The Geneva Conventions** and **The Convention on The Prevention and Punishment of the Crime of Genocide**, they are given added force, specificity and applicability.

12.5 CRIMES AGAINST HUMANITY

Although Burma has not signed or ratified the Rome Statute which define and codify this category of crimes, they are arguably applicable as custom international law:

*They have existed in customary international law for over half a century and . . . they are subject to Universal jurisdiction, meaning that all States have the duty to prosecute or extradite, that no person charged with that crime can claim the political offense exception and States have the duty to assist each other in securing evidence needed to prosecute.*

M. Cherif Bassiouni (Professor of Law and Director of International Criminal Justice and Weapons Control Center at DePaul University Chicago, former Chairman of the UN Commission of Experts on the former Yugoslavia in "Crimes of War,"pub. W.W. Norton and Company, p.107).

12.6 GENOCIDE

The International Court of Justice has ruled that the crime of genocide applies to all nations:
Its principles are binding on all states irrespective of whether the State has signed or not. (International Court of Justice ruling, 1951).

This was restated in its 1971 Barcelona Traction case ruling:

By its very nature, the outlawing of genocide, aggression, slavery and racial discrimination are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes.

The universal jurisdiction of Genocide has also been confirmed in subsequent statements by UN Secretary Generals which were not objected to.

In addition, Burma specifically signed and later acceded to The Convention in 1956.

12.7 WAR CRIMES

These can be divided into two categories as codified in the Rome Statute: firstly, those which apply to a situation of internal armed conflict; secondly, those which apply to a situation of an international armed conflict.

As the situation in eastern Burma is an internal armed conflict, it is the first category which applies. However, it is unclear to what extent these crimes have Universal Jurisdiction, especially as they can be committed as isolated acts, not as a result of systematic government policy. They have therefore not been emphasised, but have been retained as a possible category of crime.

11.8 APPLICABLE CASE LAW FROM THE INTERNATIONAL CRIMINAL TRIBUNALS ON RWANDA (ICTR) AND THE FORMER YUGOSLAVIA (ICTY)
The applicable case law is derived from the post World War Two trials conducted in Germany, and in Tokyo, and then further expanded in subsequent trials of World War Two criminals in places such as France and Israel. This body of judicial case law has also now been dramatically expanded, clarified, and crystallized by the two International Criminal Tribunals set up by the UN Security Council for Rwanda and former Yugoslavia and by other Tribunals established elsewhere.

It is difficult to exaggerate the importance of the work of these Tribunals in developing International Law and, in particular, expanding the concept of Universal Jurisdiction of International Law over State sovereignty. The two Tribunals have clarified and crystallised international law in significant ways: it is now much easier to understand the detailed clauses of Conventions and apply Genocide, Crimes against Humanity and War Crimes to specific situations.

In addition, the standing of these Tribunals and their judgements is of the highest order. They were established with the full authority of the UN Nations Security Council and can in no way be accused of applying victor's justice, as could possibly be said of the allies' post war trials of axis criminals.

The report will draw extensively on this new and important body of Case Law and apply it to the specific circumstances of eastern Burma.

11.9 THE POSITION OF THE ROME STATUTE AND THE INTERNATIONAL CRIMINAL COURT

This is probably the most significant development in international law in human history. It codifies and clarifies for the first time the Crimes of Genocide, Crimes against Humanity, and War
Crimes. Signed and ratified by 94 countries, it came into force in July 2002, during the course of this project, and the Statute is now enforceable by the International Criminal Court.

Although not signed or acceded to by Burma, it is the international community's most authoritative statement of international law and, at the very least, provides guidance, sometimes in very specific crystallized form, as to whether and in what ways the violations occurring inside eastern Burma violate international law. Any future Tribunal, or to use the current Special Rapporteur's words, judicial mechanism, established in Burma to end impunity would very likely be based on the law as defined by the Rome Statute. This has occurred in the specific courts established for example in East Timor and Sierra Leone, neither of which have signed or acceded to the Statute. General Wiranto, the former head of Indonesia's armed forces has, for example, recently been indicted for Crimes against Humanity as defined by the Rome Statute by the United Nations Tribunal established in East Timor.

The Rome Statute sets out three ways in which a prosecution can be established:

Firstly, by referral to the Prosecutor of the ICC by a State party;

Secondly, by the Security Council;

Thirdly, the Prosecutor can initiate an investigation himself if convincing evidence is presented before him from various sources, including the victims themselves and NGO's. Since Burma, however, has not signed the Statute, the use of this mechanism for the prosecution of the Junta by the International Criminal Court is very unlikely:

In practice, . . . the ICC will not be able to exercise its regular jurisdiction over genocide or crimes against humanity committed by a government terrorizing parts of the population on its territory unless the State represented by this government has ratified the Statute. This situation marks a painful weakness of the jurisdictional regime of the future ICC and shows to what extent this regime falls short of universality. (RSICC/C, vol.1, p. 613).

However a number of points need to be made:

• Firstly, the non-applicability of the Rome Statute to the specific situation in Burma does not reduce in any way the general principle of Universal Jurisdiction in relation to Genocide, Crimes Against Humanity, and Article Three of The Geneva Conventions;

• Secondly, in the specific case of Genocide, a key principle of the Convention on Genocide was that it was a violation of international law and envisaged a universal enforcement mechanism implemented by a future International Tribunal. Arguably that enforcement mechanism is the International Criminal Court. Reservations to the Convention on jurisdiction by a future Tribunal are arguably unacceptable because Genocide is described in the preamble to the Convention as a crime under international law. Reservations which undermine Universal Jurisdiction for this crime are thus incompatible with the fundamental principle underlying the Convention. Moreover, Article 9 of The Convention specifically enables a case of Genocide to be brought before the International Court of Justice by any signatory nation irrespective of whether it has an immediate interest in the alleged case;

• Thirdly, the Rome Statute clarifies international law very considerably and would, at the very least, have a significant influence in determining the way the law would be applied and interpreted in relation the situation in Burma. This is confirmed by the ICTY in the following Judgement:

In many areas the Statute may be regarded as indicative of the legal views, i.e. opinion juris of a great number of States . . . resort may be made to these provisions to help elucidate customary international
Depending on the matter at issue, the Rome Statute may be taken to restate, reflect, or clarify customary rules or crystallize them, whereas in some areas it creates new law or modifies existing law. At any event, the Rome Statute by and large may be taken as constituting an authoritative expression of the legal views of a great number of States. (ICTY, Prosecutor v. Furundzija, note 35, para. 227).

Thus any legal consideration of the Human Rights violations which have occurred, and are occurring in Burma, and any future Tribunal established for it, would be significantly influenced, at the very least, by the Rome Statute. The determining influence of the Rome Statute, even in a country which has not signed or ratified it, is already evidenced in the establishment of the UN Tribunal for East Timor, for example.

UNTAET Regulation No. 2002/15 (6 June 2000) stipulates that the East Timorese courts created under this regulation by the United Nations Transitory Authority for East Timor may exercise universal jurisdiction with regard to genocide, crimes against humanity and war crimes, the definition of which are apparently taken from the Rome Statute. (RSICC/C, Vol.1, ch.16, p. 591, footnote 33).

In short, the Rome Statute is already the international community’s most authoritative, comprehensive, codified expression of international humanitarian law: whether a case is brought directly to the International Criminal Court; or to a specially established Tribunal as has occurred in East Timor, Yugoslavia or Rwanda; or, in the specific case of genocide, to the ICJ; or, as a result of unilateral action by a country enforcing International Law, or by individual prosecutions, the Rome Statute is certain to guide future legal assessments of situations, interpretations of violations and judgements.

It is therefore felt to be quite appropriate to apply the Statute’s definitions as the dominant framework within which to conceptualise Burma’s human rights violations, even though enforcement is unlikely through this court.

Thailand has signed the Rome Statute. As the neighbouring State in which the overwhelming number of externally displaced people reside, and whose testimonies provide much of the evidence of violations, its role is crucial in helping to apply and enforce international law. Having signed the Statute, Thailand has an obligation to help facilitate legal processes. The previous Thai Deputy Foreign Minister, H.E. M.R. Sukhumbhand Paribatra, said at a promotional meeting of the ICC in Bangkok, June 2000:

Without the ICC, Crimes Against Humanity, will go unchecked and the history of human rights tragedies will be repeated. We must work closely together to put an end to this culture of impunity.

As a State is a continuous legal entity, the subsequent change of government in Thailand does not relieve it of its obligations to co-operate with enforcement of international law, nor of its moral responsibility to enforce the Statute’s provisions. Moreover, its signing of the Statute commits it to working within its spirit and to refrain from doing anything to undermine it.

12.10 INTERNATIONAL LAW AND STATE SOVEREIGNTY

We live at critical juncture in human history. Two principles are in conflict: the principle of State sovereignty v the principle of the Universal Jurisdiction of International Law with its obligation to protect victims of Genocide and Crimes against Humanity. Burma illustrates the clash of these opposing principles most starkly. However, since the Nuremberg and Tokyo trials, the Criminal Tribunals for Rwanda, Yugoslavia, East Timor and Sierra Leone, the establishment of the International Criminal Court and the authoritative expression of
international law in the Rome Statute, it is now accepted that human rights violations of such gravity to justify charges of Crimes against Humanity and Genocide committed within a State are subject to universal jurisdiction. Moreover, in the case of the Kurds in northern Iraq, the Albanians in Kosovo and east Timorese in Indonesia, the international community intervened militarily on the grounds that human rights of groups were being violated, thereby establishing the supremacy of international humanitarian law over the claims of State sovereignty in certain circumstances. In the celebrated Tadic case, the International Criminal Tribunal for Yugoslavia, set up with the full authority of the United Nations Security Council, asserted this supremacy of human rights and the principle of Universal Jurisdiction over the narrow dictates of State sovereignty:

It would be a travesty of law and a betrayal of the universal need for justice, should the concept of State sovereignty be allowed to be raised successfully against human rights. Borders should not be considered as a shield against the reach of law and as a protection for those who trample underfoot the most elementary rights of humanity . . . one cannot but rejoice at the thought that universal justice being nowadays acknowledged in the case of international crimes, a person suspected of such offences may finally be brought before an international judicial body for a dispassionate consideration of his indictment by impartial, independent and disinterested judges coming, as it happens here, from all continents of the world. (Prosecutor v Tadic Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR, 2, October, 1995).

12.11 INTERVENTION AND THE RESPONSIBILITY TO PROTECT

The International Commission on Intervention and State Sovereignty wrestled with the dilemma of when it is appropriate to intervene (2001 Report). It concluded that in a situation in which a sovereign State is unable, or unwilling, to protect its citizens, and is itself responsible for inflicting grave violations on its citizens that:

The principle of non intervention yields to the international responsibility to Protect. (Basic Principles 1 B)

This newly emerging principle of the "Responsibility to Protect" can be seen as an expression of the UN Charter’s requirement to maintain international peace and security. UN Resolutions, Special Rapporteur and Amnesty International Reports included in the section, A Manifest and Consistent Pattern of Destruction, suggest the violations in Burma's case are of sufficient gravity and scale to activate this principle of the Responsibility to Protect.

12.12 THE GENEVA CONVENTIONS

The first definitive expression of international humanitarian law came to be embodied in The Four Geneva Conventions of 1949 and, in essence, they provide protection to civilians not actively participating in hostilities who should be treated humanely. Not only do the The Geneva Conventions carry universal jurisdiction, but, in addition, Burma has formally acceded to them. Moreover, several UN Resolutions specifically refer to Common Article 3 of the Geneva Conventions when condemning the Junta for human rights violations.
The Geneva Conventions require the criminal prosecution of perpetrators of grave breaches of their provisions. They also require all States parties to prosecute persons accused of such offences, or to hand them over to other States parties willing to conduct such prosecutions. This is the doctrine of mandatory Universal Jurisdiction, i.e., persons committing grave breaches can be subject to punishment by any state, no matter where the crime occurred.

However, the Geneva Conventions as a whole do not apply to a situation of armed internal conflict (as exists in eastern Burma) with the notable exception of Common Article Three. Invoking grave breaches of the Conventions thus appears not to be an option in Burma's case, with the very important exception of the State sponsored attacks on the refugee camps across the international frontier inside Thailand. However, Common Article Three does unreservedly apply to the internal situation as the following legal judgements indicate. The specific application of Common Article Three is evidenced in the judgements of the Trial Chamber of ICTY (Prosecutor v Tadic Judgement, August, 1995) where the judges stated that the Minimum standards of Common Article 3 apply to the conflict in the former Yugoslavia. It expanded on this applicability in the Furundzija judgement (IT-95-1717-T, December, 1998):

Applying the interpretation of Article 3 enunciated by the Appeals Chamber in the Tadic Jurisdictional Decision, the Trial Chamber found that it has very broad scope. It covers any serious violation of a rule of customary international law entailing, under international customary or conventional law, the individual criminal responsibility of the person breaching the rule. The Chamber ruled that it is immaterial whether the breach occurs within the context of an international or internal armed conflict. Furthermore . . . the Chamber held that the list of offences contained in Article 3 is merely illustrative and that this provision also covers serious violations of international rules of humanitarian law not included in the list. The Chamber asserted that. . . Article 3 constitutes an "Umbrella rule" and makes an open-ended reference to all international rules of humanitarian law.

Its specific applicability to Burma is made clear in the United Nations General Assembly Resolution 83/162 of February 1999. Item 16 explicitly cites Burma's obligations under Article Three, Common to the Geneva Conventions and:

Calls upon the Government of Myanmar and other parties to the hostilities to respect fully the obligations under International Law, including article three Common to the Geneva Conventions of August 12 1949, United Nations, Treaty Series vol. 75, No.s 970-973. to halt the use of weapons against the civilian population, to protect all civilians, including children, women and persons belonging to ethnic or religious minorities, from violations of humanitarian law and to avail themselves of such services as may be offered by impartial humanitarian bodies.

Significantly the Resolution specifically calls on the government To protect all civilians . . . belonging to ethnic or religious minorities.

Common Article Three of the Geneva Conventions then applies unequivocally to the situation of internal armed conflict in eastern Burma.

The full text of the Article is as follows:

In case of an armed conflict not of an international character, serious violations of Article Three common to the four Geneva Conventions of 12 August 1949, namely any of the following acts committed against persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or other cause:

Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; Committing outrages upon personal dignity, in particular humiliating and degrading treatment.
It should be noted the wording identifies people being detained (the former UN Special Rapporteur defined those forcibly concentrated into camps in Burma as “effectively detained” in his 1998 Report) as protected by Common Article Three: the ethnic civilians forcibly concentrated into camps in eastern Burma are thus specifically protected by Common Article Three, as well as those who have fled into free fire zones: all are taking no active part in hostilities.

Attacks on those taking no active part in hostilities has been defined by the ICTY in its Blaskic judgement (IT-95-14-T, March 2000 para. 180) as follows:

The Trial Chamber deems that the attack must have caused deaths and or serious bodily injury within the civilian population or damage to civilian property. The parties to the conflict are obliged to attempt to distinguish between military targets and civilian person or property. Targeting civilians or civilian property is an offence when not justified by military necessity. Civilians within the meaning of Article 3 are persons who are not or no longer members of armed forces. Civilian property covers any property that could not be legitimately considered a military objective. Such an attack must have been conducted intentionally in the knowledge or when it was impossible not to know, that civilians or civilian property were being targeted not through military necessity.

Thus the violations identified and described by the UN Special Rapporteurs and Amnesty International citing the targeting of civilians on the basis of their ethnicity are, by their very nature, violations of Article Three.

LEVEL OF INTENT REQUIRED FOR APPLYING ARTICLE 3 OF THE GENEVA CONVENTIONS

In the same judgement, the Chamber identified the level of intent required for proof of this crime as recklessness, or intent level 3:

If the perpetrator carried out the action deliberately or through recklessness.

Thus the Court accepted a much lower level of intent required for a violation of Article Three of the Geneva Convention, intent level 3, than the special underlying intention required for genocide.

As examples of Cruel treatment, the Chamber identified using people as human shields and trench digging and clarified outrages upon human dignity as acts intended to cause serious humiliation and degradation. It specifically included rape as an example of such activity (Prosecutor v Furunzija, Judgement, IT-95-17/1-T, December 1998). In addition, forced labour, rape and torture, all identified regularly in human rights Reports and General Assembly Resolutions on Burma, are thus all subject to prosecution under Common Article Three of the Geneva Conventions. However, it should be pointed out that the Article restricts protected groups to those taking no active part in hostilities: thus resistance fighters themselves would not be protected by the Geneva Convention.

12.13 BURMA’S POSITION IN RELATION TO GENOCIDE

Preliminary Remarks

Genocide is one the most emotive words in the English language. It embodies the conscience of humanity and, as such, any attempt to belittle or exploit it for political reasons, or use it for sensationalist, or inflammatory purposes, must be resisted, both out of respect for the memories of past victims, and to retain the potency of the word to prevent its future recurrence. There are, in addition, very good reasons, in particular, as to why it should not be applied in the specific case of Burma, namely:
a) To use it, is to risk inflaming and polarising opinion and feelings in unacceptable ways. Any person of goodwill would obviously wish the people of Burma to find ways of achieving eventual peaceful reconciliation, even if that reconciliation is imperfect. Reference to, and use of the term, genocide, might jeopardize such reconciliation, now and in the long term.

b) Invoking it might rouse accusations of trivializing the greatest crime known to humanity for political reasons, particularly devaluing the scale and intensity of the mass slaughter inflicted, for example, against the Tutsis in Rwanda, and the Jews in Europe.

c) Mass, fast killings on the scale of the Holocaust or Rwanda are not inflicted in Burma.

d) The conflict some would argue is political not ethnic. The military dictatorship, some believe, is simply that: it is not intent on destroying ethnic peoples as such, but political groups. Its purpose, they would argue, is simply to impose a centralized, unitary state. In support of such a view, people would point to: the existence of ethnic minority peoples in the army; the massive, human rights violations also committed against mainly Burman people in lowland Burma.

e) Critics point to an apparent ignorance of the law by members of the ethnic peoples, and suggest they do not understand genocide and use it inappropriately.

However, set against these honorably held opinions, the following points can be made: Many of the ethnic peoples believe they are being destroyed on the basis of their ethnic identity. This is a strong subjective reality. It is difficult to stand in the ruins of an ethnic Karen village which has been burnt to the ground five times by a Burmandominated army without coming to the same conclusion.

Many authoritative reports, including those produced by the UN and reputable human rights organizations, such as Amnesty International, point to a specific ethnic motive underlying the human rights violations, e.g.

*The Special rapporteur transmitted information about the widespread practice of forcible relocations in the Kayin, Kayah and Shan States. They appear to be carried out solely on account of the ethnic origin (my underline) or perceived political beliefs of those who are relocated. (UN Special Rapporteur on the Commission of Human Rights, March/April, 2001)*

*Minorities are targeted for violations purely because of their ethnic origin* (my underline) or *where they happen to be living.* (Amnesty International: Ethnic Minorities Targets of Repression Al-Index: ASA 16/014/2001)

The Mon specialist, Ashley South, also makes this point in relation to that group:

*Mon villagers have routinely been persecuted because of their ethnicity* (my underline) *and as a result many have had little choice but to flee to insurgent controlled territory.*

The crucial adverbs "solely " and "purely " make clear that the ethnic nature of victim groups is, at the very least, an important motivating factor. The direct causal relationship between the violations and ethnicity of victims is made quite explicit by the UN Special Rapporteur in his use of the words, *On account of the ethnic origin,* and in the Amnesty report, *Because of their ethnic origin.*

Ashley South makes the causal connection between three aspects of the destruction of the Mon people, a process which is identical to the situation of the Karen, Karenni and Shan.

Firstly they are persecuted; secondly they are persecuted because of their ethnicity; thirdly they are forced, as a result, to flee to free-fire zones.
The possible existence of genocide has to be seen within the overall context of the generally accepted policy of Burmanization/Myanmification, a policy of cultural destruction and assimilation. While not inflicting immediate total, physical destruction of the group, it nevertheless destroys the culture which nurtures the group's identity. As such, it may be indicative of a deeper underlying intention to destroy ethnic peoples physically.

Whatever view one takes, ethnicity is, at the very least, according to the UN, human rights reports and informed observers, a significant motivating factor behind the violations being inflicted in eastern Burma.

A legitimate inference of an underlying intention to physically destroy groups.

The UN Special Rapporteur's conclusion in his 1998 report that,

These violations (including the killing of women and children) . . . are the result of policy taken at the highest level

explicitly accuses the Junta of a policy to physically destroy ethnic people. There appear to be two levels of intent alleged by the UN Special Rapporteur: the level of intent of the specific perpetrators (he identifies middle or low ranking officers for example) of the particular crimes (killing women and children for example); and the second underlying level of intent of those devising the policy taken at the highest level. Policy suggests systematic planning; the highest level identifies the top level of decision makers. The UN Special Rapporteur is alleging that the killing of women and children, for instance, is not the result of chaotic conditions resulting from conflict, but of government policy; his suggestion of double intent (by troops on the ground inflicting the violations) and policy makers (at the highest level) expresses that the violations are part of a wider policy to destroy ethnic groups. It must be noted, the victims are almost entirely ethnic people at the mercy of an overwhelmingly Burman dominated, Burman officered, Burmanising army.

Applicability of genocide to eastern Burma.

The law on Genocide has at last been considerably clarified and expanded by the recent judgements of the Rwanda and Yugoslav Tribunals, and by its codification in the Rome Statute. These developments make the applicability of the law on Genocide, for so long unenforced and shrouded in ambiguous mystery, much easier to understand and apply. Now what is absolutely clear from the Convention's wording, the judgments of the two Tribunals, and the codification in the Rome Statute, is that genocide is not restricted to the popular notions of immediate mass killing, as occurred in Rwanda and the Holocaust. The Convention on the Prevention and Punishment of the Crime of Genocide explicitly included slow, indirect methods of destruction inflicted on parts of populations; it is these slower, more indirect, less dramatic activities which have now been particularly clarified by the judgements of the two Tribunals.

THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Convention was unanimously adopted by the General Assembly of the United Nations (most of whose members were Asian, African and South American countries) as Resolution 96, in December 1946, just after the promulgation of the Universal Declaration of Human rights. It came into force in 1948 and its principles were declared to be binding on all states by the International Court of Justice in 1951. This universal application was reiterated in a 1970 judgment when it declared:
By its very nature, the outlawing of genocide, aggression, slavery and racial discrimination are the concern of all states. In view of the importance of the rights involved, all States have a legal interest in their protection; they are obligations erga omnes. (my underline, Barcelona Traction Case).

The Stockholm Conference in January 2004 on Preventing Genocide, attended by fifty nations and the UN Secretary General, committed itself to enforcing the Convention and preventing the recurrence of genocide.

The timing of the adoption of The Convention, one day after the proclamation of the Universal Declaration, was significant. The Declaration of Human Rights failed to protect minorities within countries. Instead, it enshrined national sovereignty, even though the persecution and destruction of the Jews within Nazi Germany started long before the outbreak of World War Two. The Genocide Convention balances this fatal omission in the Charter, stating, unambiguously, that Genocide is a crime under international law which the international community has a duty to prevent and punish, thereby not just legitimizing, but requiring intervention within a State to prevent a protected group from being completely, or partially, destroyed. The Genocide Convention is therefore not just another Convention. The right and obligation of the international community to intervene within the affairs of a sovereign state, if genocide is taking place, has been described by William Schabas, the world’s leading expert on the subject, thus:

Arguably, humanitarian intervention without Security Council authorization could be legally permissible as a result of the treaty based obligation to prevent genocide in Article 1 of the Genocide Convention and the customary norm it reflects, even without Security Council authorization. If the duty to prevent genocide is a peremptory or jus cogens norm, then it trumps any incompatible obligation, even one dictated by the Charter of the United Nations, (my underline, "Genocide in International Law,"CUP, ch.10, p.501).

12.15 ENFORCEMENT OF GENOCIDE

Genocide is a Crime under International Law which enables a signatory nation to take a case to the International Court of Justice (under Article 9 of the Genocide Convention any signatory State can do this) asking the Court to declare Article 2(4) of the UN Charter, (protecting national sovereignty) inoperative if it it conflicts with the duty to prevent genocide. If the International Court of Justice rules in favour, humanitarian intervention, or to use emerging terminology, exercising the responsibility to protect, would have a legal basis transcending national sovereignty.

11.16 BURMA'S POSITION IN RELATION TO THE GENOCIDE CONVENTION

Burma signed and ratified The Convention on the Prevention and Punishment of the Crime of Genocide in 1956 (see appendix). This means not just the general principles of the Convention apply to Burma, but also the specific clauses of the Convention. Burma, however, reserved on Article 6 and stated that nothing contained in it is to be construed as giving foreign courts and tribunals jurisdiction over any cases of genocide or any other acts enumerated in Article 3 committed within Union territory.
Notwithstanding the above, and the questionable legal validity of such a reservation, Burma did not reserve on Article 9 which reads:

Disputes between the Contracting Parties relating to the interpretation, application, or fulfillment of the present Convention, including those relating to the responsibility of a State for Genocide or for any other acts enumerated in article three, shall be submitted to the International Court of justice at the request of other parties to the dispute.

The United Kingdom, as a signatory nation, has been a specially enthusiastic supporter of this clause in general; moreover, as the country which negotiated Burma's independence at the Attlee/Aung San 1947 London agreement on the basis that the ethnic peoples would enjoy full democratic rights and autonomy in internal administration, it has a special responsibility to ensure that that agreement is honored.

The government of the Netherlands does not recognize any country which reserved on article 9 as a signatory to the Convention. The fact, therefore, that Burma did not reserve on this article means that the Netherlands recognizes Burma as a signatory nation. It can thus submit a case of genocide it suspects is being attempted, or committed, to the International Court of Justice for adjudication. Moreover, it can ask the International Court of Justice to declare that Article 2(4) of the UN Charter inoperative.

However, irrespective of whether a state has signed or not, the principle of Universal Jurisdiction means that whether Burma signed or not, and whether it reserved or not, is largely immaterial. Any and every nation in the world is bound by The Convention on the Prevention and Punishment of the Crime of Genocide. The International Criminal Tribunal for Rwanda opined:

Even if Rwanda had not ratified the Convention it would be bound by the prohibition of genocide which has since 1948 developed into a norm of customary international law. Moreover it is universally recognized by the international community that the prohibition of genocide has attained the status of jus cogens. . . For these reasons the prohibition of genocide as expressed in the Genocide Convention applies to all members of the International Community rather than merely to parties of the Convention. (International Criminal Tribunal for Rwanda, Vol.2, part 2, p. 171, pub. Trans national Inc.).

However, the fact that Burma has signed the Convention, and not reserved on Article 9, gives added force to its applicability and indicates a specific legal route open to contracting parties to challenge impunity and put the responsibility to protect victims on a legal footing.

12.17 THE DUTY TO PREVENT GENOCIDE

The Convention is termed The Prevention and Punishment of the Crime of Genocide.

The prefix pre expresses that this is a law which requires prevention, not just punishment: thus genocide must be stopped before it happens, or at least before it has been completed, Action by its very nature must not await the certain knowledge that it has occurred (Diane F. Orentlicher, "Crimes Of War," pub. W.W. Norton and Co., p.153); thus it is not necessary to prove beyond doubt that genocide has been committed in Burma before action is taken; moreover, proof of outcome, i.e. quantifying the destruction inflicted is not required of genocidal activities 2(c) and 2(d). Moreover, no proof of result is required for any of the genocidal activities if the charge is attempting genocide. What would need to be shown is that
a substantial step (Rome Statute, Article 28, William Schabas, "Genocide In International Law,") has been taken.

11.18 DEFINITION AND UNDERSTANDING OF GENOCIDE

Genocide can now be clearly understood in the light of the judgements of the two international tribunals and its codification in the Rome Statute.

12.19 INTENTION

Genocide is defined by The Convention on the Prevention and Punishment as:

The physical destruction of an ethnic, racial, national or religious group in whole or in part.

In other words there must be an intention not just to inflict a particular crime; there must also be an additional underlying intention to destroy the group in whole or in part. However, this requirement to show evidence of an underlying intention has been qualified in two important ways by the International Criminal Tribunal for Rwanda:

• Firstly, there is no need to prove an explicit expression of intent:

  Intent can be inferred from either words or deeds and may be demonstrated by a pattern of purposeful action. The chamber considered evidence such as the physical targeting of the group or their property; use of derogatory language towards members of the targeted group; weapons employed and the extent of bodily injury; the methodical way of killing and the systematic manner of killing. (ICTR, Prosecutor v. Kayishema and Ruzindana Judgement, ICTR, 95-5-T May 1999);

• Secondly, the requirement of proof of underlying intent in every situation has also been qualified by the ICTR Commission of Experts. They argued that:

  If the prosecution were forced to prove specific intent to destroy the group as such in respect of the accused in each and every case in order to rebut the defence that ordinary murder rather than genocide had been committed, it would be faced with an unreasonably high burden of proof. (ICTR, vol.2, part 2, p. 173, pub. Transnational publishers Inc.).

11.20 DEFINITION OF PROTECTED GROUPS AS APPLIED TO THE ETHNIC PEOPLES OF EASTERN BURMA

Genocide is a crime committed against, amongst others, ethnic groups. The ethnic status of the Karen, Karenni, Mon and Shan thus needs to be established. This need not detain us for long; the fact that they are ethnic peoples is testified to by every Human Rights report on Burma. They clearly conform to the definition of ethnicity as expressed by the ICTR in terms of language and culture. Moreover, UN Reports routinely refer to them as ethnic minorities.

In addition, the Commission of Experts on the Rwanda Tribunal even went so far as to rule:

To recognize that there exists discrimination on racial or ethnic grounds, it is not necessary to presume or posit the existence of race or ethnicity itself as a scientifically objective fact. (ICTR, Vol. 2, part 2, page 172, pub. Transnational Publishers Inc.)
Nevertheless, the minorities are definable as distinct peoples in terms of the ethno-linguistic model used by anthropologists. An essential defining characteristic of these groups is language, e.g., you are Karen because you speak Karen. Therefore a policy which systematically destroys ethnic languages is by its very nature destroying a key determinant of ethnic identity. It could thus could be considered indicative of genocide.

This point was made by the ICTR when it identified UN Resolution 96(1), the precursor to the Genocide Convention, as protecting, inter alia, *Linguistic groups of human beings.* (See below: “Issue of national, ethnic racial or religious groups,” ICTR, ibid, para.157)

However, despite the gravity of a policy of destroying languages, especially for groups who largely define their identity in terms of language, it must be remembered that genocide is still primarily understood as physical destruction of the group, rather than cultural destruction. Judgements have, however, begun to take cultural destruction into account when determining genocide. (ICTY Krystic Case)

12.21 GENOCIDE: DEFINITION OF PERPETRATORS AND VICTIMS

The issue as to how this conflict is understood, i.e., as a struggle between activists with a democratic agenda on the one hand and a centralized dictatorship on the other; or as struggle between ethnic groups and a Burman dominated, Burmanising army, affects conceptualization in terms of law. As stated, although this question is difficult to answer conclusively, most observers, commentators and participants, including the drafters of UN Resolutions (see section A Manifest Pattern of Destruction) repeatedly assert, at the very least, a strong ethnic component to the violations.

However, the problem of deciding whether the crimes must be conceptualized either as crimes as crimes against civilians in general, (thus coming under the jurisdiction of *Crimes against Humanity*), or as crimes against ethnic peoples (thus coming under the jurisdiction of *Genocide*) has been clarified and resolved by the ICTR thus:
The issue of national, ethnic, racial or religious groups

157. In the view of the authors of the precursor to the Genocide Convention, General Assembly Resolution 96 (1), the purpose of the Convention was to prevent the destruction of racial, national, linguistic, religious or political groups of human beings. However, in the Genocide Convention as it was finally adopted, political groups were conspicuously not on the list because some States feared that the inclusion of such an arguably unstable category would create an obstacle to the Convention's ratification.

158. This may appear to leave the door slightly open for perpetrators to argue that the killings that they ordered or carried out were directed against political groups and not any of the groups listed in article 2. Alternatively, it may be argued that the killings were politically motivated and not with the intent to destroy a national, ethnic, racial or religious group, as such.

159. However, this attempt at a defence is bound to fail, as it should, because the presence of political motive does not negate the intent to commit genocide if such intent is established in the first instance. (My underline, ICTR, Vol.2, Part 2, Commission of Experts, p.172, pub. Transnational Publishers Inc).

In other words, the Commission of Experts on the Tribunal, which has done more than any other legal body to interpret and clarify the 1948 Convention on Genocide, concluded that the political and the genocidal are not mutually exclusive: the existence of political conflict does not preclude the conflict from also being considered ethnic and thus genocidal, if an intent to destroy an ethnic group in whole or in part can also be demonstrated. Thus a conflict can be both political and ethnic and the fact that a conflict has a political component does not prevent it from being also considered genocidal.

Thus when the Special Rapporteur alleged that forced labour appeared to be carried out solely on account of the ethnic origin or perceived political beliefs (Commission on Human Rights and Torture March/April 2001) of those relocated, the qualifying, or perceived political beliefs, does not undermine the force of the former, on account of ethnic origin, because, as the ICTR opined, the presence of political motive does not negate the intent to commit genocide if such intent is established in the first instance. By alleging the ethnic nature of the crime first, the Special Rapporteur would appear to be doing precisely that, i.e., establishing the ethnic nature of the crime in the first instance before the political.

It also needs to be born in mind that even the two most extreme examples of genocide, the Holocaust and the Rwanda genocide, were not inflicted purely on racial lines: in terms of victims, the German Nazi genocide began by first exterminating the German democratic opposition (the Dachau concentration camp was initially opened for Germans); in terms of perpetrators much of the extermination in the concentration camps was actually carried out by non-Germans, e.g., Ukrainians, Lithuanians, Estonians, etc; 75000 French Parisian Jews were efficiently rounded up in three nights by the French Paris police in preparation for deportation to the death camps, much to the delighted surprise of the German Gestapo. In the case of Rwanda, the Hutus began the genocide by systematically killing fellow moderate Hutus. In the Cambodian genocide, the term auto-genocide has been used to describe the mass killing by one section of the same race of another. In Yugoslavia, the army was, at least theoretically, the Yugoslav Federal army, comprising soldiers from different republics, not just a Serb army.

Thus rigid racial differences between perpetrators and victims need not be a prerequisite of genocide, which is perhaps why the International Criminal Tribunal for Rwanda defined the status of victims as being: any stable or permanent group.
12.21 DEFINING ACTS OF GENOCIDE

Genocide is defined in Article 3 of The Convention on the Prevention and Punishment of the Crime of Genocide as any of the following acts, provided they take place within the context of an overall intention to destroy the group in whole or in part:

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group.

12.22 MEANING OF DESTROYING A WHOLE OR PART

We have established what a group is as it relates to the plight of internally displaced people in eastern Burma: the Shan, Karen, Mon and Karenni are clearly ethnic groups. What, however, is meant by destroying a group in whole or in part? No one would argue that all the Karen, Karenni, Mon or Shan are being destroyed. Those away from conflict areas are surviving, even though they may be losing their languages, their cultural identity, and experiencing slumps in birth rates. Moreover, most of the internally displaced ethnic people are also surviving. Thus by no means all (in whole) the Karen, Karenni and Shan are being destroyed, and they are certainly not being killed en masse, as occurred in Rwanda and Nazi occupied Europe. How then does the situation of the ethnic peoples in eastern Burma relate to genocide, defined as the destruction of an ethnic group in whole or in part?

Firstly, it is clear from the explicit wording of the original Convention that not the whole of the group needs to be destroyed to justify a charge of genocide. The destruction of part of a group constitutes genocide, something stated in the Convention itself and re-affirmed by the International Criminal Tribunal for Rwanda:

The intention to destroy part of the group is sufficient for the crime of genocide to have been committed.


What, however, is the meaning of part?

12.23 PART: A NUMERICAL DEFINITION

The International Criminal Tribunal for Yugoslavia clarified this in its Srebrenica judgement. The Tribunal had to decide, in the light of the mass killing of about 7000 Bosnian men of military age, whether a crime of genocide had been committed. Clearly in this case not all Bosnian people had been killed. Indeed not all Bosnian men had been killed. Moreover, not all the men of Srebrenica had been killed. The people who had been killed were men of military age in the one town of Srebrenica.

The Tribunal had to decide if this group formed a sufficient part of the Bosnian Moslem population to justify a charge of genocide.

In the event, it ruled that the mass killing of these men was genocide. In the first case of its kind in Europe since the Second World War, it ruled an act of genocide had occurred because the men of military age in Srebrenica constituted what it called, a distinct entity. What matters, the Tribunal ruled, is not total numbers of people killed, but whether the numbers constitute a distinct entity, the destruction of which would render the existence of the wider group unsustainable.
The ICTY argued, perhaps surprisingly, in its Kristic judgement (August 2001) that fewer people may die in a Crime of Genocide than, say, in a War Crime or a Crime Against Humanity. The latter two could involve larger numbers of people killed over a greater geographical area. The determining factor in genocide, the Tribunal insisted, is whether the numbers destroyed constitute a distinct entity.

So important is this judgement for a contemporary understanding of genocide; so contrary is it to popular notions of the crime and so relevant is it to conceptualizing the human rights violations in eastern Burma that it is necessary to quote the reasoning of the court in full. When reading the judgement, we must understand its historical significance: the prevention of genocide was one of the main reasons for the establishment of the United Nations; this commitment was made explicit in The Genocide Convention on day one after the proclamation of the UN Declaration of Human Rights; the ICTY judgement in 2001 is the first time a properly constituted Court, established at the behest of the UN Security Council has applied the law on genocide and defined what is meant by destruction of part a group. It reasoned:

The intent to destroy a group, even if only in part, means seeking to destroy a distinct part of the group as opposed to an accumulation of isolated individuals within it. Although the perpetrators of genocide need not seek to destroy the entire group protected by the Convention, they must view the part of the group they wish to destroy as a distinct entity which must be eliminated as such. A campaign resulting in the killings, in different places spread over a broad geographical area, of a finite number of members of a protected group might not thus qualify as genocide, despite the high number of total casualties, because it would not show an intent by perpetrators to target the very existence of the group as such. Conversely the killing of all members of part of a group located within a small geographical area, although resulting in a lesser number of victims would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small area.

Indeed the physical destruction may target only a part of the geographically limited part of the larger group because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue.

In this regard, it is important to bear in mind the total context in which physical destruction is carried out. (My underline and spacing. ICTY, Krstic Judgement, 2 August 2001, para. 560).

The Tribunal continued:

The Bosnian Serb forces could not have failed to know, by the time they decided to kill all the men, that this selective destruction of the group would have a lasting impact upon the entire group. Their death precluded any effective attempt by the Bosnian Muslims to recapture the territory. Furthermore, the Bosnian Serb forces had to be aware of the catastrophic impact that the disappearance of two or three generations of men would have on the survival of a traditionally patriarchal society. . . . the Bosnian Serb forces knew, by the time they decided to kill all the military aged men, that the combination of those killings with the forcible transfer of the women, children, and elderly would result in the physical disappearance of the Bosnian Muslim population at Srebrenica. Intent by the Bosnian Serb forces to target the Bosnian Muslims of Srebrenica as a group is further evidenced by their destroying homes of Bosnian Muslims in Srebrenica and Potocari and the principal mosque after the attack, (ibid, paras. 595-597)

The Tribunal points out that where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group. In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group. (My underline, ibid, para. 580).
We note how the Tribunal sets the killing in the context of widespread physical and religious destruction which it considers to be expressive of evidence of genocidal intent.

12.24 A PART: GEOGRAPHICAL DEFINITION

The Tribunal also had to consider the issue of part in terms of physical area: the Srebrenica genocide was committed in the town of Srebrenica and its immediate surrounds, not across an entire country like Rwanda, or a continent, like Europe as in the case of the Jews. The ICTY ruled in the same judgement that the Crime of Genocide could be inflicted in an area as small as:

A limited geographic zone, even a municipality.(ibid)

Thus the crime of genocide has been clarified in two crucial ways; firstly the eligibility criteria of the group is a distinct entity, not overall numbers; secondly, the physical area can be as small as a limited geographic zone, even a municipality.

The 525,000+ internally displaced people in eastern Burma almost certainly comprise a part, or distinct entities, of the populations of the Shan, Karen and Karenni peoples. The 300,000 Shan displaced in central Shan State certainly comprise a part of the Shan people. In Karenni State, between 30%-50% of the population has been displaced and large areas, especially
north-east of the Salween river, systematically and comprehensively depopulated. As regards
the Karen, Martin Smith states that vast areas of rural Burma have not been repopulated . . . and
that the Pegu Yomas [mostly inhabited by Karen people] had been cleared of virtually all
population. ("Burma, Insurgency and the Politics of Ethnicity," ch.13, pp. 261, 267). Moreover,
the one million Sgaw and Pwo Karen people targeted for destruction who live in the eastern
mountainous areas, are culturally and geographically quite distinct from their mostly
Burmese speaking Karen in the Delta and Rangoon areas. They can therefore, be considered
to comprise a distinct entity or part of the Karen people. The Delta Karen, in addition, living in
a distinct geographic zone, separated from other Karen in the eastern highlands, and
speaking a different dialect of Karen, can also be considered to be a distinct entity or part of the
Karen ethnic group.

Physically, the ethnic peoples of eastern Burma, living in the 1,800 kilometres long region of
eastern mountains clearly meet the International Criminal Tribunal for Yugoslavia's physical
criteria for genocide being, A limited geographical zone. Self-evidently, they more than meet its
minimum criteria of, a municipality.

In conclusion, in terms of ethnicity, numbers and area the Karen, Shan and Karenni people,
who are the subject of this report, clearly meet the eligibility criteria of protected groups as
defined by The Convention on the Prevention and Punishment of the Crime of Genocide, and
clarified and crystallized by the judgements of the two UN Tribunals established for Rwanda
and Yugoslavia. The Rohingya, Chin, and the Kachin, in the north and west of Burma,
would also meet these criteria of protected groups.

12.25 SPECIFIC ACTS OF GENOCIDE

Genocide is defined as one of the following activities if committed with an underlying
intention to destroy the group in whole or in part:

Article 2( a) Killing members of the group

12.26 GENOCIDE BY KILLING: SELECTIVELY OR EN MASSE

International Law distinguishes between killing en masse and selective killing:

The Chamber found that genocidal intent might manifest itself in two forms. First it may consist of
desiring the extermination of a very large number of the members of the group, in which case it would
constitute an intention to destroy a group en masse. Second, it may consist of the desired destruction of
a more limited number of persons selected for the impact that their disappearance would have upon the
survival of the group as such (my underline). This then would constitute an intention to destroy the
group selectively. (ICTY, Prosecutor v Jelisic Judgement, IT-95-10-T, December, 1999).

The judgement is significant because it again makes clear genocide by killing need not
necessarily involve very large numbers of the group, but may involve:

a more limited number of persons selected for the impact that their disappearance would have upon the
survival of the group as such.

Moreover, the criteria of what constitutes selective killing is left deliberately open: it specifies
those persons selected for the impact their disappearance would have upon the survival of the group as
such.
Selective killing might involve killing prominent members of the group; however, the broader criteria used (selected for the impact on the survival of the group) would include those upon which the biological viability of the group depends, e.g., infants, pregnant women, and women in labour.

The requisite numbers has been further clarified and reduced by the Rome Statute. The Commentary to the Rome Statute summed up the situation as follows:

*It would seem that the customary international rule, as codified in Article 6, does not require that the victims of genocide be numerous. The only thing that can be clearly inferred from the rule is that genocide cannot exist when there is only one victim. However, as long as the other requisite elements are present, the killing or commission of the enumerated offences against more than one person may amount to genocide.* (My underline, RSICC/C, Vol.1, ch.11, p. 348).

However, although the Rome Statute requires only that *one or more persons be killed* (provided such action is part of an underlying intention to destroy a whole or part of a group), there appears to be disagreement about requisite numbers required to justify the charge. William A Schabas, in apparent disagreement with the Rome Statute, sums up what appears to be the general consensus, as follows:

*The prevailing view is where only part of a group is destroyed, it must be a substantial (my underline) part which is destroyed.* (William Schabas, “Introduction to International Criminal Court,” pub. CUP, ch. 2, p. 32).

The ICTR confirms this:

*The Chamber determined that in part requires an intention to destroy a considerable (my underline) number of individuals who are part of a group.*

Perhaps the disagreement between the Rome Statute's definition and the others is caused by the difference in meaning between "Killing" and "Destruction": the ICTR and William Schabas use the wider term destruction, not killing, when referring to substantial or considerable numbers. Killing is a method of destruction, not synonymous with it; destruction refers to a much wider spectrum of activities than direct killing. Thus perhaps actual numbers specifically "killed" in a particular incident need be only *One or more* according to the Rome Statute, but it needs to be proved that killing is expressive of an underlying intention to destroy a substantial part of the group, or a considerable number of people to justify a charge of genocide. Thus even a small number killed selectively, if shown to be part of an underlying plan to destroy a substantial or considerable part of the group, could be considered to be an act of genocide.

11.27 GENOCIDE: RELATION BETWEEN NUMBERS KILLED AND WIDER GROUP

The numbers involved in the specific act of killing; the relationship between this specific number and the wider group, and the meaning of the word destruction as applied to the wider
group, is succinctly clarified by the ICTY in its important and relevant Jelisic Judgement (IT-95-10-T-14, December, 1999):

*The selective targeting of the group may amount to genocide if the remaining members of the group are deported or forced to flee.*

Here the judgement clarifies the relationship between the specific destructive act, e.g., killing, and the wider intended effects, e.g. forced fleeing. The term *selective targeting* (the same term used we remember in the UN Resolutions and Amnesty International reports to describe violations committed against Burma's ethnic groups) is used. It has two victim groups: the small number selectively targeted and the wider substantial or considerable group forced to flee, in Burma's case into the unsustainable conditions of the relocation sites, or the free fire zones.

Thus what therefore needs to be proved is not that the numbers involved in the selective killing is large (*one or more* in fact), but that the numbers of the group *forced to flee*, or *forcibly transferred* into *life threatening conditions*, resulting from the killing, need to be *substantial* or *considerable*. Thus selective killing, even of small numbers, that leads to *substantial* or *considerable* numbers being *forcibly transferred* into *life threatening camps* (approximately 350,000+ in eastern Burma), or *forced to flee* into free-fire zones (approximately 250,000+), may express genocide. Total numbers forced to flee as internally displaced people in Burma as a whole is, according to the UN, between 1 and 2 million, and those forced to flee outside the country about 400,000. Such numbers clearly meet the criteria of *substantial* or *considerable*.

### 11.28 GENOCIDE: RELATIONSHIP BETWEEN NUMBERS KILLED AND THE WIDER GROUP IN BURMA’S CASE

Using the above explanations, an accurate, comprehensive, application of the meaning of genocide in terms of destruction of *whole or part* of ethnic groups in relation to Burma, involves identifying three interconnected victim groups:

Group one is the number (*one or more RSICC/C*) selectively killed (very approximately averaging in eastern Burma about 600+ a year);

Group two is the *considerable* or *substantial part* (ICTY, Jelisic Judgement) forcibly transferred or forced to flee (ICTY Jelisic). The UN figures are in the case of the Shan 300,000+; in the case of the Karenni 70,000-80,000; in the case of the Karen between 100,000-200,000; in the Mon's case 70,000. (UN "Briefing Paper on Human Rights and Political situation in Burma", October, 2002).

Group three is the wider part, or the whole of the ethnic group, whose life may become unsustainable in the long term as a result of group two fleeing or being forcibly transferred. In the case of the Karen this is the one million culturally distinct Karen living in eastern Burma in Karen State: in the case of the Karenni it is the total population of the State, namely between two hundred and three hundred thousand, and in the case of the Shan it is is the total population in Shan state, very approximately numbering four million.
Applied to eastern Burma, this means that the number of ethnic people killed selectively each year (group 1) leads to the destruction of the substantial or considerable part of the wider group in the surrounding geographic zone, who are forced to flee into Thailand or free fire zones, or be forcibly concentrated in camps (group 2); this second considerable or substantial part, (i.e. the 526,000 internally displaced people identified by the Burma Border Consortium report), is itself part of the whole population of ethnic people who live in eastern Burma (group 3). This population in eastern Burma may be almost the whole of that ethnic group, as in the case of the Karen in Karen State, or to a lesser extent the Shan in Shan State; or a part of the still wider ethnic group dispersed throughout Burma, as in the case of the Karen where the million eastern hill Karen are a part of the whole 3-4 million Karen people of Burma, who therefore comprise a further group (4).

12.29 GENOCIDE IN BURMA: A TENTATIVE HYPOTHESIS

Therefore, integrating the ICTY Jelisic judgement, with its clarification of numbers directly killed in group 1 as selective, resulting in the destruction, interpreted as forced to flee or deported, of the larger group 2, which is in turn part of the whole ethnic group 3; with the ICTY Kristic Judgement clarifying requisite physical area as a limited geographical zone even municipality, and the group being defined intrinsically as a distinct entity, we can now arrive at a definition of genocide applicable to eastern Burma, based on the original wording of the Genocide Convention, but clarified by the judgements of the ICTY, the codification in the Rome Statute and a detailed understanding of the situation in eastern Burma:

Genocide may be considered to be selective killing (ICTY, Prosecutor v Jelisic, IT-95-10-T) of groups of people one or more, Article 6, RSICC/C) that leads to their destruction, through such methods as the deportation or forced fleeing (Prosecutor v Jelisic, IT-95-10-T) of substantial or considerable numbers of people, who can be considered to be distinct entities living in geographic zones or even municipalities. (ICTY, Krstic Judgement, August 2001).

Further clarification of the relationship between the selective acts of killing and the genocide committed against the wider group, is succinctly expressed in a further judgement of the ICTY (Prosecutor v Jelisic, IT-95-10-T, 14, December, 1999, para.66):

It is an act committed against an individual because of his or her membership in a particular group as an incremental step in the overall objective of destroying the group, (my underline)
Here the Tribunal is explicitly stating that a genocidal act can be committed against a group as small as an individual (i.e., even smaller than a group), provided that it is an incremental step in the overall objective of destroying the wider group. The image of a step suggests that the individual act (i.e., a step) is in itself quite small, (as a step usually is), but the adjective incremental suggests that it is not so much the individual action which is important, but its relationship and contribution to the wider structure; a step is only significant if it is part of a larger whole (i.e., a stair) to which the step, although small, contributes, incrementally (step by step), helping to complete, in the case of genocide, the final overall structure: the diabolical stairway down to hell.

In the case of Burma, it is necessary to discover, in the absence of immediate, very large scale mass slaughter, whether there is a stair; whether the incremental steps, the specific, systematic, widespread violations identified in all the numerous reports, synergistically interconnect and contribute, over decades and over large geographical areas, to the destruction of parts of entire peoples.

12.30 CASE STUDY: INDIRECT SYNERGISTIC DESTRUCTION

Often people internally displaced people die indirectly and slowly from a destructive combination of activities. The deliberate destruction of specific trees and theft of thatching rooves for example, mean that in the rainy season the villagers have no shelter; how that leads to the rain pouring in day after day; how people get colds; how the destruction of medicines and health clinics mean there are no medicines available locally; how the colds turn into serious illnesses; how the constant demands for extortion mean the family has no money to buy medicines from the nearest town, even if they are available; how the constant demands for forced labour mean there is no one available to grow food, so there is no food available for the sick; how the paddy destroyed in the paddy barn means there are no reserves to fall back on; how the long mined journey to Thailand is too far and too dangerous for the sick and weak to travel; how the Thai policy of restricting access often makes such a journey fruitless; how the international community’s policy of not providing help because of "political sensitivities" ensures that no help gets through; how the SPDC ensures through total exclusion that no foreigners see what is happening; how the conscious disregard of the plight of the internally displaced when evidence does emerge, ensures the problem remains hidden or ignored; how the ICRC and international NGO’s fail to expose the problem by choosing to work within the framework of state terror, accepting its conditions, remaining publicly silent about what they choose not to know about, or are unable to find out about. The victim dies in the roofless hut, needlessly, painfully, tragically in a warp and woof of lies, indifference and systematic policy woven by human beings around her; the gaping hole through which the rain pours down on the feverish, dying body is a result of "policy": an inconspicuous preventable death, one of hundreds of thousands, contributing
"incrementally," year by year, decade by decade, to that all too explicable, inexplicable slump in birth rates, referred to by Martin Smith. This is the ethnic Burma of the internally displaced.

12.31 GENOCIDE Article 2 (b) Causing serious bodily or mental harm.

The Convention on the Prevention and Punishment of the Crime of Genocide's second defining activity is: Causing serious bodily or mental harm. This is clearly not killing, or even causing death, and obviously excludes immediate mass killing. It is one of the defining activities which most explicitly and clearly refutes the popular notion of genocide as mass slaughter, though it has to be inflicted, of course, in an overall context of physical destruction of whole or part of the group. Moreover, the ICTR ruled that the harm inflicted by this act of genocide does not have to be irredeemable or permanent to justify being considered genocide. In addition, the two Tribunals and the Rome Statute specifically give as examples of this form of genocide: torture, rape, sexual violence and inhuman or degrading treatment, thus significantly expanding and clarifying the original meaning of serious mental and bodily harm. Arguably, the intentional infliction of drugs and alcohol on a group could also be considered to be acts of genocide if inflicted with an intention to destroy the group.

12.32 RAPE AND SEXUAL VIOLENCE AS ACTS OF GENOCIDE

RAPE AND INTENTION

Rape is unique in this regard because, by the nature of the act, it cannot be inflicted without the full volitional assent of the perpetrator. Killing may be carried out arguably without the full volition of the perpetrator, who can plead he was acting under extreme duress and did not intend to kill. He may have pulled the trigger, but mentally he might have done this most reluctantly, fearing for his life if he refused to comply. This defence cannot be made in the case of rape because it is unlikely a man can violate his victim simply under orders, or from fear. Fear is likely to make such a crime impossible to commit. There is a difference between pulling a trigger, where a mechanical object, the gun, completes the act, and violent sexual penetration, as in the case of rape, where the perpetrator must give his full assent.

This issue of full volition in the case of rape raises issues when addressing impunity because lower ranking officers who carry out these acts and encourage their juniors carry a very high burden of responsibility, in addition to the policy makers who tolerate, or condone, such behaviour at the highest level.

RAPE AND THE ISSUE OF KNOWLEDGE OR COGNITION

Again the crime of rape involves a uniquely high level of cognition. The perpetrator cannot claim he does not have full knowledge of what is happening because by the very nature of the crime he must know: he is violating his victim's body with his own and therefore must be
fully and directly aware of the circumstances. Arguably a case could be made in other situations that the perpetrators may not fully know the full circumstances of surrounding their actions. Victims may have been misidentified, for example. This cannot be so in the case of rape. The victim is directly connected to the perpetrator, helpless, and of no conceivable threat.

RAPE AND ITS CONSEQUENCES

This crime can cause a complex number of destructive consequences:

The victim is very likely to suffer serious bodily or mental harm or both; She may be rejected by her husband if married; She may be unwilling, or unable, to procreate as a result of the trauma; She may suffer impregnation which will further increase her ostracism and inability to procreate, but contribute to her aggressor’s population; The long term effects of widespread rape may undermine the biological viability of the race.

The two international Tribunals of former Yugoslavia and Rwanda have both identified rape as an act of genocide.

Firstly it can be used as a weapon to inflict genocide activity 2(d) by imposing measures intended to prevent births within the group:

The systematic rape of women. . . is in some cases intended to transmit a new ethnic identity to the child. (ICTY, Prosecutor v Karadzic and Mladic, para. 94).

In the same context the ICTR opined:

In patriarchal societies membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is in the case where, during rape a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group. . . . rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate in the same way that members of a group can be led, thorough threats of trauma, not to procreate. (Prosecutor v Akayesu, ICTR-96-4-T, para. 94).

Here the Tribunal describes how rape can biologically destroy a group by forcing women to give birth to children from the ethnic aggressor, and by preventing natural procreativity within a group because of deliberately inflicted sexual trauma.

Secondly, it can express genocide activity 2 (c) inflicting conditions of life calculated to bring about destruction of the group in whole or in part.

The ICTR explained:

Sexual violence may cause disintegration of a group through deliberate emotional destruction of a vital part of that group. Women are the caretakers of society and if they become dysfunctional, the survival of the society is threatened. (ICTR, Transnational publishers, 1996, pp 587-8).

In conclusion rape can be defined as an act of genocide according to The Convention on the Prevention and Punishment of the Crime of Genocide by:

1. causing serious bodily and mental harm;
2. inflicting conditions calculated to bring about physical destruction of the group in whole or in part;
3. imposing measures to prevent births.

In addition, it is now defined as a Crime against Humanity, Article 7 (1) (g)-l by the Rome Statute of the International Criminal Court.

These clarifications of the crime of rape by the two Tribunals, along with the codification in the Rome Statute, clearly refute the misconceptions that genocide is mass, fast, direct killing. Genocide, as defined by the Convention, was never meant to be limited to such a restrictive definition. The failure to understand and implement the Convention correctly has not been due to weaknesses in the Convention, but in the failure of the international community to meet its obligations by probably intentionally interpreting it too restrictively.

Proof of result is required for causing serious bodily or mental harm.

12.33 INFLECTING INDIRECT DESTRUCTION

Article 2(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

Here again this clearly does not express immediate, mass, direct killing as was the case in Rwanda and the Holocaust. This third definition (only one definition needs to be proved to convict perpetrators of genocide) was clearly drafted to take into account indirect, slow, undramatic, low intensity methods of destruction, such as what was inflicted in the Jewish ghettos, as opposed to the death camps.

The ICTR defined this form of genocidal activity as follows:

The judges determined that this includes circumstances that will lead to a slow death e.g. lack of proper housing, clothing, hygiene, medical care or excessive work or exertion. It also includes methods of destruction which do not immediately lead to the death of members of the group, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, provided this would lead to the destruction of the group in whole or in part.


In another judgement it interpreted the activity as follows:

The judges determined that this section should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seeks their physical destruction. This includes, inter alia, subjecting a group to a subsistence diet, systematic expulsion from homes, or reduction of essential services below the minimum requirement. (Prosecutor v Akayesu Judgement, ICTR-96-4-T, Sept. 2 1998)
Further clarification of this form of genocidal activity has also been provided by the Rome Statute in the footnote to Article 5 (c) which states that:

The term conditions of life may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

The UNHCHR's Training Manual (No 7, p. 217) for Human Rights Officers also states that genocide can be inflicted, in exceptional circumstances through the denial of food.

12.34 CONNECTION BETWEEN UN RESOLUTIONS AND GENOCIDE

The connection between the Genocide Convention's definitions of inflicting slow death to the violations outlined in the section A Manifest and Consistent Pattern of Destruction are obvious: the General Assembly Resolutions condemning the deprivation of all means of subsistence; the significant adverse effects on human health resulting from the human rights violations; the violation to an adequate standard of living including food and medical care are particularly relevant.

In particular, the two UN Resolutions and the Rome Statute codification are virtually identical, focusing particularly on deliberate deprivation of food and medicine below a minimum requirement.

11.35 CONNECTION BETWEEN ICTR/ICTY JUDGEMENTS AND EASTERN BURMA

Moreover, it is significant that in the Akayesu ruling, the ICTR did not require deprivation of all food, but subjecting a group to a subsistence diet; additionally, it did not rule that no medicine be provided, but widened the criteria to: Reduction of essential services below a minimum requirement. Essential services would also include, for example, clean water, food, sanitation and medical supplies; below a minimum requirement means that even if limited food, water and housing are provided, such conditions would still trigger genocidal conditions if they were proven to be below a minimum requirement resulting in the slow destruction of the group.

It is therefore not necessary to prove that no essential services are provided, "only" that what are provided are below a minimum requirement, or as the Rome Statute states, below that indispensable for survival. This is relevant to eastern Burma, because victims who have been
forcibly transferred into camps are sometimes provided with a small tin of rice per day for the first few weeks. In addition, health clinics are sometimes set up, but according to most reports contain no medicines, or if they do, are well below minimum requirement, or are filled with bogus contents. It should also be noted that in the first ICTR ruling, excessive work or exertion is also included as a genocidal activity: infliction of forced or slave labour schemes which lead to, or contribute to, the slow death of victims, either directly through exhaustion, or by preventing victims from having enough time and energy to grow their own food, can thus be considered to be actions which contribute to this act of genocide.

These are significant, clear and expansive interpretations of the meaning of genocide, which again express the fact that genocide is not restricted to immediate mass killing, but includes imposing conditions which lead to indirect, slow death of part of the group. It would seem, however, incumbent on the prosecution to show, firstly, that these conditions were deliberately imposed as an act of policy, rather than being unintended side-effects of conflict, or a natural disaster; secondly, of course, these deliberately imposed conditions would have to be proven to be part of an underlying intention to destroy the group in whole or in part. In Burma's case the answer to the former question is obvious: two and a half thousand villages of ethnic civilians have been repeatedly, intentionally and deliberately burnt down as a result of policy.

Very significantly, no proof or evidence of result is required for the expression of this genocidal activity either for the charge of committing genocide or for attempting to commit genocide. (William Schabas, *Genocide in International Law*, CUP, p.155). What is required, according to William Schabas, is proof of intent to carry out the crime, (ibid).

**12.36 GENOCIDE BY PREVENTING BIRTHS WITHIN GROUP**

Genocide has also been defined as:

2 (d) Imposing Measures Intended to Prevent Births within the group

The jurisprudence of the two International Tribunals is far less extensive in relation to this activity. Moreover, the Rome Statute's codification does little to clarify the meaning of the original Convention's words. However, the ICTR (Prosecutor v Akayesu Judgement ICTR 96-4-T September 1998) defined this form of genocidal activity as follows:

*Such measures should be construed as sexual mutilation, sterilisation, forced birth control, separation of sexes, prohibition of marriages and deliberate impregnation by a man of another group. These measures may be physical or mental. Groups can be lead through trauma not to procreate.*

Thus measures deliberately taken to prevent an ethnic group from being able to reproduce within itself would amount to genocide, if part of an overall policy to destroy the group in whole or in part. A key word is the preposition within:: measures in which women of one ethnic group are forcibly, or coercively, impregnated by men from another ethnic group, with the underlying intention of undermining the biological viability of the women's ethnic group, could be considered acts of genocide, because the women would have been forcibly, or coercively, prevented from having babies with men from within their own ethnic group.

It is worth noting that allegations of Burma's one race policy involves not just forced sexual violence and coerced marriages between Burman men and non-Burman women, but also encouraged "marriages" between different ethnic groups. The children of the latter would lead, presumably, according to such thinking, to the creation of that greater Burman race identified in the alleged Top Secret document (see evidence section).
Questions can be raised about the meaning of *forcibly*: rape is, by its nature of course, forced and would have the likely effect of preventing the victims from giving birth again in normal consensual relationships with their ethnic partners; a policy of coerced impregnation, carried out without the genuine consent of the women, in which Burman men were encouraged through systematic bribery to marry women of ethnic minorities, who would face systematic intimidation unless they acquiesced, may be forced.

*Taking advantage of a coercive environment, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power,*

is defined by the Rome Statute as sexual violence, (Article 7 (i) (g) -6, element 1), even if legitimized by a technical, and usually temporary, "marriage".

Proof of outcome is not required with this specific form of genocide (William Schabas, *Genocide in International law*, CUP, p.155), i.e., it is not necessary to provide evidence of numbers of ethnic babies who have not been born as a result of measures inflicted. We note, however, Martin Smith’s observation on *the inexplicable slump in birth rates of ethnic minorities.*

### 12. 37 GENOCIDE BY FORCIBLY TRANSFERRING CHILDREN

Article 2 (e) *Forcibly transferring children from the group to another group*

The significance of this form of genocide is that the Genocide Convention explicitly accepts the principle that genocide can occur through a process of assimilation and absorption, rather than through direct physical destruction. Children transferred, for example in the case of young Poles to Nazi Germany, were not physically destroyed, but on the contrary specifically saved to be absorbed into Nazi German culture.

The discriminatory forced recruitment of ethnic children into the Burmanising, (see UN General Assembly Resolution, March 2001, para.18) mainly Burman officered army, may be expressive of this form of genocide.

UN General Assembly Resolution, March 2001, para.18.

*Deplores the recruitment of children as soldiers, in particular children belonging to ethnic minorities*

In addition, the fact that these ethnic child soldiers are then forced to fight ethnic resistance forces, often being used as canon fodder in human wave attacks, expresses a fourfold process of destruction: firstly absorption by abduction into a Burmanising army; secondly, physical destruction by inflicting life-threatening conditions on them in which they are not provided with adequate wages, or rations, and sometimes shot if not able to march, in effect becoming slaves of a Burmanising army themselves; thirdly, by destroying ethnic resistance and ethnic civilians, they contribute to the general policy of destruction of ethnic peoples. Fourthly by being killed in action against other ethnic peoples, they further contribute to the destruction of ethnic peoples. Conscripted ethnic soldiers thus serve Burmanisation as its active agents, assimilated victims, and fatalities.

There is evidence of ethnic children being specifically recruited into the Junta army (See for example No *Childhood at All*, Images Asia, p. 33 recording 2000 Shan children forcibly

Proof of result is required for this activity, though once again not if the charge is attempting to commit genocide, as opposed to committing it. Human Rights Watch estimated in its report "My Gun is as Tall as Me" there are about 70,000+ child soldiers, but it did not try to break this figure down into ethnic and Burman groups: indeed it appeared to confirm that children were indiscriminately abducted into the army from all groups, not selectively.

12.38 SPECIFIC UNRESOLVED LEGAL ISSUES

12.39 GENOCIDE AND ITS RELATION TO BURMANIZATION

There are two significant limitations to The Convention on the Prevention and Punishment of the Crime of Genocide, despite the fact that its originator, Raphael Lemkin, meant the term to include the destruction of the victim's culture, and its replacement by the perpetrator's alien culture. The final wording of The Convention limited its scope, as a result of self-interested political pressure by some of the interested parties at the time, to physical destruction.

However, the two UN Tribunals have now interpreted The Convention more expansively. The ICTY decided to take into account cultural genocide when arriving at its Srebrenica genocide judgement:

In this case, the Trial chamber will thus take into account as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group. (ICTY, Krstic, Judgement, August 2001, para. 580).

In addition, the ICTR expanded the definition of protected victims to include destruction of linguistic groups in one of its definitions.

Furthermore, the leading world authority on Genocide, William Schabas, has stated that:

A contemporary interpreter of the definition of genocide should not be bound by the intent of the drafters back in 1948. The words to destroy can readily bear the concept of cultural as well as physical and biological genocide, and bold judges might be tempted to adopt such progressive constructions. In any event, [he concludes]:

Evidence of cultural genocide has already proven to be an important indicator of the intent to perpetrate physical genocide. (My underline)
These expansive interpretations are of enormous significance since. If Burmanization is defined as a process in which minority cultures are subsumed into an homogenizing Burman identity, then Burmanization itself, irrespective of the evidence of accompanying, outright, large scale physical destruction, might be considered to be an important indicator of the intent to perpetrate genocide.

12.40 DESTRUCTION OF LANGUAGES

As previously stated, language is a particularly important expression of identity for the Karen, Karenni and Shan peoples and anthropologists studying Burma have defined ethnicity using an ethno-linguistic model. (See "Burma an Ethnographic survey," Indian Civil Service, 1949). The primary way in which the Karen and Karenni define themselves is through language: you are Karen or Karenni because you speak Karen or Karenni. Therefore a policy of Burmanization which seeks, as one of its objectives, to destroy ethnic languages is in effect destroying the main means of self-representation of ethnic identity.

The legal implications of systematic destruction of language groups remains contentious, but it is significant that the Commission of Experts of the International Criminal Tribunal for Rwanda, specifically referred to the destruction of language groups as a genocidal activity included in the meaning of genocide in the original UN Resolution:

In the view of the authors of the precursor to the Genocide Convention General Assembly 96 (1), the purpose of the Convention was to prevent the destruction of national, linguistic (my underline), religious or political groups of human beings. (ICTR, Commission of Experts, para.157, Transnational Pub. Inc.).

The State policy on language is most explicitly expressed in the new maps of Burma: place names in ethnic languages have often simply been erased and replaced with Burman ones, thus making it difficult to know whether the original places have actually been eliminated, or simply renamed in Burman, or perhaps both. They nevertheless express most explicitly institutionalised language destruction.

12.41 ISSUE OF ETHNIC CLEANSING

Ethnic cleansing is generally understood to be forced expulsion of peoples from their homelands to create a racially homogenous area. Current law is ambiguous about its legal status. It has been defined by the ICTY as having genocidal characteristics, but appears to be
primarily understood as an expression of the *Crime against Humanity of Persecution*. It is important to distinguish between a crime whose primary intention is to violently expel a group from its homeland, and a crime which seeks to destroy the group as such. The Secretariat to the Genocide Convention explained:

*Mass displacement of populations from one region to another does not constitute genocide. It would, however, become genocide if the occupation were attended by such circumstances as to lead to death of the whole or part of the displaced population (if for example they were driven from their homes and forced to travel long distances in a country where they were exposed to starvation, thirst, heat, cold or epidemics).* (My underline)

William Schabas comments on this as follows:

*The unspoken reference here is to the mass displacement of Armenians within the Ottoman empire in 1915, where the exposure to starvation, thirst, heat, cold and epidemics resulted in the deaths of hundreds of thousands.* (my underline, William A Schabas, "Genocide in International Law," CUP, ch.4, p.190).

This distinction between ethnic cleansing, where the primary intention is to violently expel a group, and genocide, which intentionally expels a group into unendurable conditions to cause the destruction of whole or part of the group, is relevant to understanding and accurately conceptualising the plight of Burma’s internally displaced, ethnic peoples.

12.42 SUMMARY OF KEY POINTS ON GENOCIDE

12.43 INTENT

The mental element of intent is the key to understanding genocide.

There must be an underlying intention, above and beyond the intention involved in a particular crime, to destroy the group in whole or in part

This special intention is known as the Latin term: Dolus Specialis.

**EXPLICIT AND INFERRED INTENT**

This underlying special intention need not be explicit, but can be inferred. This is because the underlying intention is often very hard to identify as even pathological regimes do not usually express an explicit intention (orally, or in writing,) to destroy a group in whole or in part. Even in the case of the Holocaust, it is difficult to find an explicit expression of intention, such as a written or recorded verbal order, to exterminate the Jews.

Thus in its judgement in the Akayesu case, the Trial Chamber of the ICTR took the view that:

*It is not necessary that an order be given in writing or in any particular form. It can be explicit or implicit. The fact that an order was given can be proved through circumstantial evidence.*

(Prosecutor v Akayesu Judgement, ICTR-96-4-T, para.280).

*Intent is a mental factor which is difficult, even impossible to determine. This is the reason why in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact . . . such as the general context of the perpetration of other culpable acts systematically directed against the same group, whether these acts were committed by the same offender or by others. Other factors such as the scale of the atrocities committed, their general nature, in*
a region or country, or furthermore, deliberately and systematically targeting victims on account of their membership of a particular group, while excluding members of other groups, can enable the Chamber to infer genocidal intent of a particular act. (My underline, Akayesu Judgement, ICTR-96-4-T, para. 523).

12.45 STATUS OF VICTIM GROUP

A protected group must be selectively targeted. The mass killings of civilians in Burma during the democracy uprising of 1988 did not include selective killing of ethnic groups, and thus cannot be considered to be an act of genocide. The destruction of Karen, Karenni and Shan peoples is, however, deliberate and systematic; victims are targeted wholly or partly on the basis of their ethnicity. The UN and Amnesty Reports with their references to targeting the ethnic groups solely or purely on the basis of their ethnicity, and the repeated use of the word, systematic, indicate that, at least, some of the violations may justify serious consideration as Genocide, in addition to being considered Crimes Against Humanity.

12.46 RELATION BETWEEN PREMEDITATED POLICY AND SPECIFIC APPARENTLY ABITRARY ACTS OF DESTRUCTION

Fourthly, the underlying intention must be made prior to the acts taking place:

For the crime of genocide to occur, the mens rea [special intention] must be formed prior to the commission of the genocidal acts. The individual acts themselves, however, do not require premeditation (my underline); the only consideration is that the act should be done in furtherance of the genocidal intent. (Prosecutor v. Clement Kayisbema and Obed Ruzindana, Judgement 21 May 1999, ICTR -95-IT, para.91.)

The distinction being made here is very important to an understanding of the meaning of the destruction of the ethnic peoples in eastern Burma. The ICTR is explaining the relationship between the premeditated overall plan, or policy, and specific acts themselves, such as killings. The policy must be premeditated; the individual acts need not be so.

Many of the killings in villages in eastern Burma take place without any apparent reason, and are thus described as arbitrary killings; however, they take place within an overall context of a long term, pre-mediated policy of Burmanisation and the Four Cuts strategy: this policy involves, indeed requires, amongst other things, outright physical destruction of all resistance and those thought to be associated with resistance, i.e. in effect the whole ethnic community. When Human Rights reports, or villagers themselves, describe killings as arbitrary, carried out for no reason except for the fact that the villager was, for example, out fishing, or collecting vegetables, or going to the market or whatever, they fail to understand that there was a very "good" reason for the killing: the victims were members of an ethnic people living in an ethnic area still opposing, or associated with opposing, the policy of Burmanisation and, as such, were/are legitimate targets for destruction.

Apparently arbitrary, individual destructive acts in the jungle are hence "meaningful."

12.47 KNOWLEDGE OR COGNITION OF PERPETRATORS
Fifthly, the knowledge of the perpetrators.

The ICTR defined the relationship between the knowledge of the individual perpetrator and the overall policy as follows:

_It is not necessary for each individual acting in pursuance of the genocidal plan or policy to know its full details, (ibid)._

The essential point is that there must be a policy, even though the perpetrators do not know the full details of the policy. In other words, soldiers firing at villagers may not know of the overall policy: they may think they are simply destroying an individual village associated with resistance without knowing that what they are doing is part of a policy to inflict destruction of entire, or parts of ethnic peoples. Their actions may nevertheless be considered to be an act of genocide if inflicted within the context of a policy to destroy ethnic peoples in whole or in part.

### 12.48 THE QUESTION OF PROOF OF RESULT

No proof of result is required if the charge is attempting to commit genocide, just that a substantial step has been taken to destroy the group in whole or in part.

If the charge is committing genocide, then proof of result is required for the following activities as listed in the Genocide Convention:

a) killing;
b) causing serious bodily and mental harm;
c) forcibly transferring children from the group.

No proof of result is required for:

c) inflicting conditions of life calculated to bring about about physical destruction of the group in whole or in part;
d) imposing measures intended to prevent births within the group.

What is required in the last two is evidence of intention to carry out the acts.
11.49 SUMMARY OF RECENT EXPANSIVE JUDICIAL INTERPRETATIONS OF THE MEANING OF GENOCIDE

Since The Convention on the Prevention and Punishment of the Crime of Genocide came into force in 1948, our understanding of it has been clarified and crystallized by the two International Tribunals and the Rome Statute. In almost all cases the interpretation of the Convention has become significantly more expansive, rather than more restrictive. These expansive interpretations can be summarized as follows:

a) Numbers: in the case of killing, defined broadly as causing death, it is not necessary to prove large numbers have been killed. The Rome Statute defines numbers as more than one: expert commentators and the international Tribunals, however, opine that considerable or substantial numbers are required to be destroyed to justify the charge.

b) The ICTY Srebrenica Judgement, however, greatly reduced the number criteria needed to justify the charge of genocide to 7000: in the current prosecution of complicity in Genocide in Halabja, Iraq, the number of dead was 5000; in the case of the Jews it had been 6 million; in the case of the Rwandan Tutsis, it was about 800,000.

c) Groups: the definition of what constitutes a protected group has also been expanded to include any stable or permanent group (ICTR). Moreover, proof of scientific definition of ethnicity or race is not required. (ICTR).

d) Numerical definition of part: a part destroyed to justify a charge of genocide need not be defined in terms of numbers, but can be defined in terms of intrinsic qualities, i.e. as a distinct entity, the destruction from which the wider group could not recover.

e) Physical definition of a part: the geographical area where Genocide can be inflicted can be as small as a limited geographical zone, even a municipality. (ICTY, Kirstic Judgement, August 2001).

f) Defining activities: these now explicitly include, in addition to outright direct killing: rape, torture, the deprivation of resources indispensable for survival, including food, medicine, homes, hygiene; imposition of excessive work or exertion; forcing people to flee en masse into unsustainable conditions; preventing births, and forcibly transferring children. Moreover, definition 2 (e) forcibly transferring children from the group accepts the principle that genocide can be carried out through, and by, a policy of assimilation and absorption, not only by direct physical destruction.
g) The requirement to prove Special Intent has been reduced. There is no need to prove explicit intent, but inferred intent based on presumptions of facts (ICTR, Akayesu Judgement), and this intent can be inferred from circumstantial evidence, (ibid)

h) Responsibility for Genocide. The responsibility for genocide has been greatly expanded. The Rome Statute requires evidence that Commanders knew, ought to have known or consciously disregarded information pointing to genocide taking place. William Schabas writes on command responsibility for genocide that Article 28 of the Rome Statute contemplates liability of commanders for genocide committed by their subordinates even if they have no real knowledge of the crime. (W.A. Schabas, Article 6, in O. Triffterer (ed.), "Commentary of the Rome Statute of the International Criminal Court" (1999), at margin).

These clarifications clearly demonstrate that the meaning and scope of The Convention on the Prevention and Punishment of the Crime of Genocide is much wider than the popular notion of immediate, mass killing of an entire people. Attempts to restrict the meaning of genocide to its most extreme expression, in order to evade the legal obligation to prevent and punish it, cannot be legally justified and are simply wrong.

12.50 INDICTABLE ACTS OF GENOCIDE

The Genocide Convention identifies the following punishable acts:

a) Committing genocide;

b) Conspiracy to commit genocide;

c) Direct and public incitement to commit genocide;

d) Attempting to commit genocide;

e) Complicity in genocide;

b) CONSPIRACY to commit genocide involves secret planning without actually necessarily carrying out the deed itself. To identify a secret plan could be seen to be a contradiction in terms, but in essence, in the absence of an explicit plan, it may be possible to infer the existence of such a plan from the facts.

c) Direct and public INCITEMENT to commit genocide is trying to incite people to commit the act by rousing hatred of the group using the media. The perpetrators would not usually be actually carrying out the crime

d) The ATTEMPT to commit genocide would mean that the crime is not necessarily accomplished, and may indeed have failed, although there would have been an intention to do so and a substantial step had been taken.

e) COMPLICITY in genocide

The ICTR explained this in its Prosecutor v Akayesu judgement (ICTR-96-4-T, 2 September, 1998) where:

*The perpetrator has facilitated the criminal enterprise carried out by others. The Chamber determined that one could be tried for complicity even when the actual perpetrator of the genocide is neither tried nor convicted.*
Complicity in genocide can be demonstrated by aiding and abetting genocidal acts. The intent component of the act of complicity in genocide is proven if the perpetrator knowingly aided and abetted one or more persons to commit the crime of genocide. An accomplice to genocide need not possess the dolus specialis of genocide. However, an accused is liable as an accomplice to genocide if he knowingly aided and abetted, or instigated one or more persons in the commission of genocide while knowing such persons were committing genocide, even though the accused himself did not have the intent to destroy, in whole or in part, a defined group.

Thus, if it could be shown that refugees were being repatriated, forcibly or coercively, into conditions which were genocidal in character, i.e. where food, medicines, housing, hygiene etc., were below minimum (ICTR), those organizations and countries involved in such activities might be guilty of complicity in genocide. Moreover, if external organizations or countries were involved in aiding and abetting genocide by colluding with activities intended to destroy ethnic groups, such as the imposition of ethnically targeted development programmes which indirectly destroy ethnic peoples, they could be considered to be complicit in genocide. Complicity in genocide may also be demonstrated by acts of omission as well as acts of commission. If measures were deliberately taken to remove protection from a protected group knowing they would be subjected to attack, this could, for example, be complicity in facilitating, or aiding and abetting genocide, even if the perpetrator was not involved positively in committing the act.

12.51 THE RELUCTANCE TO ENFORCE THE GENOCIDE CONVENTION

The refusal of the United Nations to enforce The Convention on Genocide has been disgraceful and, in the light of the 2004 Stockholm Conference on preventing genocide, it is now high time to do so. This is because the Convention is no ordinary convention and Genocide is no ordinary crime. The United Nations was specifically set up after the Second World War to prevent, amongst other things, genocide from ever being repeated. This is why it unanimously adopted the Convention as Resolution 96 outlawing Genocide as an international crime at its birth in 1946, and why the International Court of Justice ruled that its principles are binding on all nations. The UN has, however, failed to implement the Convention to prevent genocide in most cases which have occurred in the world since The Convention was adopted.

The case of the United States is particularly lamentable:

*It is daunting to acknowledge, but this country's consistent policy of non intervention in the face of genocide offers sad testimony not to a broken American political system but to one that is ruthlessly effective. The system as it now stands is working. No U.S. President has ever made genocide prevention a priority, and no US president has ever suffered politically for his indifference to its occurrence. ("A problem from hell; America and the Age of Genocide," Samantha Power, Harper Collins, p. 21)*

There is, however, evidence in the Stockholm Conference on Preventing Genocide (January 2004), and the actions taken after the Rwanda and Yugoslav genocides, that a new urgency and seriousness in the international Community may finally be dawning in relation to its obligations and responsibilities to prevent genocide. The Swedish government, having hosted the Conference, has a particularly important responsibility to ensure the implementation of the Convention's final declaration.
CRIMES AGAINST HUMANITY

The UN Secretary General in his report pursuant to Security Council Resolution 808 succinctly described this category of crimes as follows:

Crimes Against Humanity were first recognized in the Charter and judgement of the Nuremberg Tribunal as well as in Law No.10 of the control Council for Germany. Crimes against humanity are aimed at any civilian population and are prohibited regardless of whether they are committed in an armed conflict, international or internal in character._

Thus arguments over whether this is an ethnic conflict or a political conflict; an armed internal conflict or an international conflict, or how groups are categorized need not detain us. These are crimes against any civilian population, so the Burman victims of this dictatorship, as well as the ethnic peoples, can be considered to be victims of Crimes against Humanity.

The essential principle underlying Crimes against Humanity is that they are an attack on humanity itself. We are all, because we are human beings, attacked by these crimes by virtue of the fact that we share a common humanity with the victims.

The Commentary on the Rome Statute defines the main features of Crimes against Humanity in the following ways:

These crimes are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings; they are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned (my underline) by a government or a de facto authority. However, murder, extermination, torture, rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice (my underline). Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of meriting the stigma attaching to the category of crimes under discussion. On the other hand, an individual may be guilty of crimes against humanity even if he perpetrates one or two of the offences mentioned above, or engages in one such offence against only a few civilians, provided those offences are part of a consistent pattern of misbehavior by a number of persons linked to that offender (for example, because they engage in armed action on the same side or because they are parties to a common plan or for any similar reason.) Consequently when one or more individuals are not accused of planning or carrying out a policy of inhumanity, but simply of perpetrating specific atrocities or vicious acts, in order to determine whether the necessary threshold is met one should use the following test: one ought to look at these atrocities or acts in their context and verify whether they may be regarded as part of an overall policy or a consistent pattern of a inhumanity, or whether they
instead constitute isolated or sporadic acts of cruelty and wickedness. (My underline, RSICC/C, Vol. 1, p. 360).

It is important to note firstly, the level of culpable level on intentionality is relative to genocide quite low: tolerating or condoning the activities; secondly, individual violations need to be part of an overall policy or a consistent pattern of inhumanity. The UN Special Rapporteur’s 1998 conclusion upon which this report is premised, identified the violations being the result of policy; the UN General Assembly Resolutions that have been quoted in chapter 9, taken together, clearly express a consistent pattern of inhumanity.

12.53 MAJOR DIFFERENCES BETWEEN CRIMES AGAINST HUMANITY AND GENOCIDE

a) The victim groups are much wider than those groups protected by genocide and are defined as an attack directed against a civilian population. Thus issues such as defining the group in terms of ethnicity, race, nationality or religion, either from the point of view of perpetrators or victims, is irrelevant. Further point worth noting is that political groups, such as the NLD, and gender groups, such as women, would be included in this definition.

b) The intention, unlike genocide, is not, primarily, to physically destroy a group in whole or in part, but to impose ideological hegemony. Crimes against Humanity are acts performed in a systematic manner in the name of a State practicing ideological hegemony. (RSICC/C, Vol.1, p. 359). This has been most clearly expressed in the celebrated Klaus Barbie Case, by the French Court de Cassation in June 1988 which found that the accused had:

Taken part in the execution of a concerted plan aimed at achieving the deportation or extermination of civilian populations during the war or persecutions for political, racial, or religious reasons . . . an essential element in the crimes against humanity consisting in the fact that the incriminated acts were carried out in a systematic fashion by a State practicing through these means a policy of ideological hegemony.

It is widely accepted that Burma's military dictatorship is practising, and has been practising for decades, a policy of Burmanization, a term which has much in common with imposing ideological hegemony. It involves, amongst other things, the Crime Against Humanity of the Forcible transfer of civilians (both Burman and ethnic peoples), and the Crime against Humanity of Persecution of ethnic minorities, democratic opposition, and religious groups.

The ICTY in its Blaskic judgement (IT-95-14-T, 3 March 2000) found that such a policy need not be explicitly formulated:

The Chamber found that the policy element that directs the acts that constitute Crimes against Humanity need not necessarily be explicitly formulated or be the policy of a State. Moreover, the perpetrator need not identify personally with the policy but be aware that his actions are linked to it.

Thus even if the human rights violations identified by the UN Special Rapporteurs and General Assembly Resolutions cannot be explicitly linked to a policy, the violations identified can still be considered to be Crimes against Humanity, if they are widespread and condoned or tolerated by the Junta. Widespread (identified as such in all UN reports) crimes tolerated (the weakest volitional element, but identified as sufficient level of intention in the above RSICC/C) by the Junta can thus be considered to be Crimes against Humanity. However, the fact that the former UN Special Rapporteur identified them in his 1998 report as being the result of policy clearly expresses a level of volition in excess of tolerating or condoning. Such violations must be intended.
c) The list of crimes is not just wider, but considerably more specific and detailed than those identified as acts of genocide, particularly in relation to gender related violence.

d) The defining characteristics are that Crimes against Humanity are either systematic or widespread.

Systematic has been defined by the ICTY in its Prosecutor v Erdemovic Judgement (IT-96-22-A) as possessing the following four elements:

- The existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community; (my underline).
- The perpetration of a criminal act on a very large scale against a group of civilians or repeated and continuous commission of inhumane acts linked to one another;
- The preparation and use of significant public or private resources, whether military or other;
- The implication of high level political and/or military authorities in the definition and establishment of the methodical plan.

It is significant that it is not only the range of victims which is much wider than in the case of the victim groups cited in the Genocide Convention, but that the intention is also wider: not just to destroy, but, more broadly, to persecute or weaken.

Weaken would include, for example, the UN Resolution identifying significant adverse effects on health resulting from the Junta's policies and the slow, indirect destruction resulting from what one Resolution described as, the deprivation of all means of subsistence.

Widespread has been defined by the ICTR as being:

- Massive
- Frequent
- Large Scale
- Collective
- Directed against a multiplicity of victims

INTENT

The key mental level of intent is very considerably reduced in comparison with the special intention to destroy a group in whole or in part required by the Genocide Convention. The Rome Statute of the International Criminal Court specifically and explicitly makes clear that the threshold level of intent necessary to justify a charge of Crime against Humanity is as low as level 3 (Dolus Eventualis):

... the international rules prohibiting these crimes specifically refer, if only by way of illustration, to a series of underlying offences (murder, extermination, deportation, torture, rape, etc) for which national
criminal systems usually require intent or at least dolus eventualis (advertent recklessness). (RSICCC/C, vol.1, p. 364).

It is thus clear that intent level three, advertent recklessness, expresses a sufficient level of intent to justify a charge of Crime against Humanity, i.e. that victims may possibly die as a result of violations inflicted, provided the other criteria of widespread or systematic are met. Furthermore, it is not just the level of intent which is much reduced in the category of Crimes against Humanity: it is also not necessary to prove any discriminatory intent against a group, (with the important exception of the Crime against Humanity of Persecution). This is clearly expressed by the Appeals Chamber of the ICTY:

The ordinary meaning of Article 5 makes it clear that this provision does not require all crimes against humanity to have been perpetrated with a discriminatory intent. Such content is only made necessary for one sub-category of those crimes, namely "Persecutions". (Prosecutor v Tadic, Judgement IT-94-1-A).

The same interpretation was made in a subsequent ruling by the ICTY in the Blaskic judgement:

First, among the prohibited conduct as a crime against humanity pursuant to Article 5 of the Statute, discriminatory intent is not an essential ingredient of the mens rea of crimes against humanity, (my underline) except for the offence of persecution, where discrimination constitutes an integral element of the prohibited conduct. Second the motives of the accused-as distinct from his intent-are not pertinent. (ICTY, Prosecutor v Blaskic Judgement,IT-95-14-T, 3 March, 2000).

Here motive, as well as intent, have been removed as requisite criteria. Thus, if villages have been burnt down in eastern Burma, we need to ascertain only if they have been burnt down in a widespread or systematic manner and whether civilians may possibly die as a result of the actions. In the case of Genocide, however, we do need to accurately infer the intention behind the burning of the villages, e.g. are they being burnt to destroy the group in whole or in part?

As regards individual actions they need to be linked to the wider policy. There should be, according to the Commentary to the Rome Statute:

a) The awareness in the agent, of the possibility (my underline) of being or becoming instrumental in the execution of a governmental policy of inhumanity or a systematic practice of atrocities;

or;

b) The awareness of the possibility that one's actions are very likely (but not inevitably as in level 2) result in the perpetration of atrocities.

Examples of Historical Case Law

A German was convicted of a Crime against Humanity for denouncing three fellow Germans for listening to a foreign radio station because, firstly, the act was linked to the general system of tyranny and, secondly, two of those denounced died in the harsh prison conditions. The perpetrator clearly knew of the possibility of being an instrument in a governmental policy of inhumanity (his individual action was linked to the wider policy) and of the possibility that his actions would lead to great suffering.

The burning of synagogues in Germany, where the individual burnings were linked to an overall policy of systematic and widespread destruction of synagogues and Jewish culture.
DEFINITION OF CIVILIAN AS A VICTIM OF CRIME AGAINST HUMANITY

Some question may arise as to the protected status of people caught up in a region of internal armed conflict, for example, those internally displaced people in the free-fire zones where resistance fighters might be present and, indeed, the status of people who had once been resistance fighters, or even still are resistance fighters.

This issue was resolved in judgements by the ICTY and by the French Court de Cassation in the Klaus Barbie case.

With regard to the ICTY the Tribunal ruled:

*Crimes Against Humanity therefore do not mean only acts committed against civilians in the strict sense of the term but include also crimes against two categories of people: those who were members of a resistance movement and former combatants-regardless of whether they wore uniforms or not-but who were no longer taking part in hostilities when the crimes were perpetrated because they had either left the army or were no longer bearing arms or ultimately had been placed hors de combat in particular due to their wounds or their being detained. It also follows that the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian. Finally, it can be concluded that the presence of soldiers within an intentionally targeted civilian population does not alter the civilian nature of that population.* (My underline, Prosecutor v Blaskic, Judgement IT-95-14-T, 3 March 2000).

In another judgement the ICTY even included resistance fighters as being protected by this category of law:

*The presence of those actively involved in the conflict should not prevent the characterization of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity.* (My underline, Prosecutor v Zoran Kupreskic, 14 January 2000, para. 549.).

An even more expansive definition of civilian was established in the Klaus Barbie Case when the French Court de Cassation ruled that:

*Inhumane acts and persecution which in the name of a State practicing ideological hegemony, were committed systematically or collectively not only against individuals because of their membership in a racial or religious group but also against the adversaries of that policy whatever the form of opposition (my underline) could be considered a crime against humanity.* (Cass. Crim., 20 December, 1985, para.29.).

Thus we can conclude that *Crimes against Humanity* protect the following groups and individuals relevant to Burma as defined by the above ICTY Judgements:

- the group of internally displaced people forcibly concentrated into camps because:
Those who . . . were no longer taking part in hostilities when the crimes were perpetrated because they had either left the army or were no longer bearing arms or ultimately had been placed hors de combat in particular due to wounds or their being detained; (my underline);

• the second group in the free fire zones:

It can be concluded that the presence of soldiers within an intentionally targeted civilian population does not alter the civilian nature of that population . . . and includes those actively involved in a resistance movement against a state practicing ideological hegemony whatever the form of opposition.

• those who had resisted but no longer do so are protected;

• those continuing to actively resist the imposition of racial hegemony known as Burmanization are also protected.

Thus Junta policy which targets for destruction resistance fighters and those related to them (see later section including orders) in a widespread or systematic way is a Crime Against Humanity. All the internally displaced people in Burma are protected groups as defined by Crimes against Humanity.

11.55 SUMMARY OF KEY CHARACTERISTICS OF CRIMES AGAINST HUMANITY

• Crimes need to be inflicted, either on a widespread scale, or systematically, or both, to justify the charge of Crime against Humanity;

• No special discriminatory intent against a group needs to be proved with the exception of Persecution;

• The general level of intent required is the relatively low Dolus Eventualis, intent level 3, advertent recklessness, namely the possibility that the suffering identified in the various crimes might result from the perpetrators’ actions;

• The overall objective may include, not just destruction, but also persecution or weakening of the group;

• The level of culpable responsibility can be as low as condoning or tolerating the violations.
CRIMES AGAINST HUMANITY IDENTIFIED BY THE ROME STATUTE

MURDER

EXTERMINATION OF PART OF THE POPULATION BY INFLECTING CONDITIONS THAT COULD INCLUDE DEPRIVATION OF FOOD AND MEDICINE

ENSLAVEMENT

DEPORTATION OR FORCIBLE TRANSFER OF POPULATION (DEPORTED OR FORCIBLY TRANSFERRED IS INTERCHANGEABLE WITH FORCIBLY DISPLACED) (footnote 13)

IMPRISONMENT OR OTHER DEPRIVATION OF PHYSICAL LIBERTY

TORTURE

RAPE

SEXUAL SLAVERY

ENFORCED PROSTITUTION

FORCED PREGNANCY (CARRIED OUT WITH THE INTENTION OF AFFECTING THE ETHNIC COMPOSITION OF ANY POPULATION)

ENFORCED STERILISATION

SEXUAL VIOLENCE

PERSECUTION*

ENFORCED DISAPPEARANCE OF PERSONS

APARTHEID

OTHER INHUMANE ACTS

Three of the above crimes need to be explained in more detail because of their significance and relevance to eastern Burma.
11.57 THE CRIME AGAINST HUMANITY AS DEFINED BY THE ROME STATUS

Firstly the Crime against Humanity of Extermination as defined by The Rome Statute in Article 7 (1) (b) (Elements of Crimes, p.159)

1. The perpetrator killed (defined as either directly or indirectly in note 8) one or more persons including by inflicting conditions of life (defined as the infliction of conditions which could include the deprivation of access to food and medicine, note 9) calculated to bring about the destruction of part of the population.
2. The conduct constituted, or took place as part of, a mass killing of members of a civilian population.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

The above crime requires that only part of the population be killed; that the methods of killing can be either direct or indirect, including, specifically, deprivation of food and medicines; there is no requirement in this category of crime to prove an underlying intent to destroy the group in whole or part, only that the crime inflicted be either widespread or systematic.

This crime would appear to describe both direct and indirect destruction of a group in cases where not the whole group has been destroyed and where it is not possible to prove explicit, or show inferred intention, to destroy the group. In addition, it would be applicable to the destruction and killing of groups of democracy activists. As such it may be applicable to certain situations in Burma, such as the killings of 1988 and where it is not possible to prove intent to destroy groups of ethnic peoples.

11.58 Secondly, the Crime Against Humanity of Persecution (Article 7 (1) (h) which has been defined by the Rome Statute as follows:

(Article 7 (1) (h)

1. The perpetrator severely deprived contrary to international law one or more persons of fundamental rights.

2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law.

4. The conduct was committed in connection with any act referred to in article 7 paragraph 1, of the Statute or any crime within the jurisdiction of the Court.
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

This Crime is of considerable significance and is unique amongst this category of crimes.

Firstly its definition of a group is very wide, much wider than say the victim groups identified in the Genocide Convention:

targeting based on political, racial, ethnic, cultural, religious, gender as defined in article 7 (element 3).

Significantly, political, cultural and gender groups have been included.

Secondly, however, like Genocide, but unlike the other Crimes against Humanity, it is discriminatory:

The ordinary meaning of Article 5 makes clear that this provision does not require all crimes against humanity to have been perpetrated with a discriminatory intent. Such intent is only made necessary for one sub-category of those crimes, namely persecution provided for in article 5 (h). (ICTY Prosecutor v Tadic, Judgement IT-94-1A, 15 July, 1999).

Thirdly, it embraces a very wide range of offences and includes depriving one or more persons of fundamental rights. The ICTY specifically cited in the Blaskic Judgement, (IT-95-14-T, para.234, March, 2000) the following activities as being included in the crime:

- The Destruction and Plunder of Property

In the context of the crime of persecution, the destruction of property must be construed to mean the destruction of towns, villages and other public or private property belonging to a given civilian population or extensive devastation not justified by military necessity and carried out unlawfully, wantonly and discriminatorily. In the same context, the plunder of property is defined as the unlawful, extensive and wanton appropriation of property belonging to a particular population, whether it be the property of private individuals or of state or quasi state collectivities, (para. 234).

- The Unlawful Detention of Civilians

The unlawful detention of civilians, as a form of the Crime of Persecution, means unlawfully depriving a group of civilians of their freedom, (ibid.)

- The Deportation or Forcible Transfer of Civilians

The deportation or forcible transfer of civilians means Forced displacement of the persons concerned by expulsion or other coercive acts from the areas in which they are lawfully present, without grounds permitted under international law.

The ICTY found that the Crime against Humanity of Persecution also includes other crimes against humanity, such as murder, extermination, and deportation, (Prosecutor v Kupresic et al., Judgement IT-95-16-T, 14 January, 2000, para. 234), and judged that it expresses those crimes which are committed on discriminatory grounds, but which, for example, fall short of genocide with its specific intent to destroy a group in whole or in part. An example of such a crime included in the general Crime against Humanity of Persecution would be ethnic cleansing. (ICTY, Prosecutor v Blaskic, Judgement IT-95-14- T, para. 606).
12.59  THE POLICY ELEMENT

The ICTY found that the policy element need not be explicitly formulated, but held that Crimes Against Humanity must be sponsored by a State, Government or entity holding de facto authority over a territory, be a part of the policy of such an authority, or at least, be tolerated by such an authority.

12.60  THE INTENT ELEMENT

The perpetrator must have intended to commit the underlying offence, combined with knowledge of the broader context in which the offence occurs. (ICTY, Blaskic Judgement, para. 556.) In the case of murder the ICTY found that the level of intention required to prove murder was the intent level 3, to kill or inflict serious injury in reckless disregard of human life. However, the killing must be premeditated and intentional. It is premeditated when the actor formulated his or her intent to kill after a cool moment of reflection. It is intentional when it is the actor's purpose, or the actor is aware that it will occur in the ordinary course of events. (Prosecutor v Kupresic at al., Judgement IT-95-16-T, 14 January, 2000).

Here significantly the ICTY finds that Reckless disregard of human life (Dolus Eventualis, level three) is sufficient level of intent required to meet the demands of Crime against Humanity of Murder.

12.61  THE KNOWLEDGE ELEMENT

The ICTY found that the accused must know that his act(s) is/are part of a widespread or systematic attack on a civilian population and pursuant to some sort of policy or plan.

The Question of Numbers

The ICTY accepted that:

A single act may constitute persecution, where there is clear evidence of discriminatory intent. Thus, if an individual participates in the single murder of a person and the intent to kill that person was based on political, racial, and religious grounds and this killing occurred as part of widespread or systematic persecutory attack against the civilian population, this single murder may constitute persecution. (ibid, para.625).

In general the ICTY summed up the common elements of acts of Persecution as:

Those acts all aimed at singling out and attacking certain individuals on discriminatory grounds, by depriving them of the political, social, or economic rights enjoyed by members of the wider society.

Thus the United Nations General Assembly Resolutions which condemn Burma for systematic violations of civil, political, economic, social and cultural rights (e.g., General Assembly Resolution, February, 2002) are virtually paraphrasing the definition of the Crime against Humanity of Persecution as defined by the ICTY and by the Rome Statute.
Although the Crime against Humanity of Persecution and the Crime of Genocide are closely connected and are part of the same species of crime, the distinction between them is also clear and crucial:

In the case of persecution, the intent of seriously discriminating against members of a particular group is shared by both crimes against humanity and genocide; however, for the former crime to come about it is sufficient to prove that the perpetrator has intentionally carried out large-scale and severe deprivations of the fundamental rights of a particular group, whereas in the latter case it is necessary to prove the existence of the intent to destroy in whole or in part, a group. (my underline, RSICC/C, Vol.1, p. 340).

However, a number of crucial questions need to be raised: at what point do sustained, systematic violations of civil, political, economic, social and cultural rights, resulting, for example, in significant adverse effects on health and the inability to subsist (as stated in the UN General Assembly Resolutions) lead to physical destruction of whole or part of an ethnic group? When does weakening of the group become destruction of the group? Is widespread malnutrition, for example, inflicted by deliberate policy resulting in weakening the population, and leading to large numbers of preventable deaths of ethnically targeted civilians, a crime of Genocide, or a Crime against Humanity?

Significant adverse effects on health, for example, describes a serious negative physical impact on specifically targeted ethnic people, something more destructive than "mere" violations of fundamental rights, such as language rights. What, it needs to be asked, is the actual reality of these significant adverse effects on health on the physical lives of the ethnic peoples? Moreover, how much more destructively do these significant adverse effects on health impact on ethnic peoples than on Burman civilian victims? In addition, is there a connection between systematic violations resulting in significant adverse effects on health, and Martin Smith's inexplicable slump in birth rates and also, the actual population collapses noted by Amnesty International and others in certain areas? Moreover, has the sustained, systematic persecution been intended to cause the physical destruction of groups (therefore expressive of genocide), or has this destruction resulted from the recklessness of a long counter insurgency campaign (and therefore is expressive of Crimes against Humanity)?

The key distinction between Genocide and the Crime against Humanity of Persecution is this:

Genocide thus differs from the crime of persecution in which the perpetrator chooses his victims because they belong to a specific community but does not necessarily seek to destroy the community as such. (ICTY, Judgement, Prosecutor v Jelisic, IT-95-10-T, December 1996)

The General Assembly Resolution of February 1999, for example, calling for an end to violations to the right to life (para.10) at a time when such violations had largely ceased in ethnic Burman lowland areas, expresses killing, not just the deprivation of fundamental rights, such as language and religion.

As stated, the question as to whether a Genocidal conceptualization, or a Crimes Against Humanity one, is applied is of more than academic significance: even a well-founded charge of Persecution is, in reality, unlikely to elicit an effective response from the international community which would, in practice, reduce suffering on the ground in practice. (Note the limited, practical effects resulting from the International Labour Organisation's charge of The Crime against Humanity of Forced Labour). The crime of Persecution is little known and barely bedded down in international humanitarian law. A charge of committing, or attempting genocide, on the other hand, convicingly alleging destruction of ethnic peoples, may have a different effect.
The crime of Genocide is undeniably now part of international law; given clear and specific expression in the judgements of the two International Tribunals; codified by the Rome Statute; signed and ratified by most countries in the world, including Burma; it embodies an obligation to prevent and punish, and has been used to justify major military interventions in the affairs of sovereign States. It expresses the conscience of humanity and commands overwhelming moral force, unlike any other law known to mankind.

However, the question has to be answered in terms of what the evidence suggests is actually going on in eastern Burma, not on political grounds, in terms of what would be the most effective legal tool, or even on moral grounds, as to which category would most likely lead to a reduction in suffering. It must be considered in the light of the evidence and the existing state of international law. The task is made considerably harder because of the difficulty in getting access to the area by the international community and the lack of really competent interpreters. However, this has very often been true when cases of genocide or mass persecutions have taken place, and should not be used as an excuse to justify inaction.

12.63 THE SPECIFIC CRIME AGAINST HUMANITY OF TORTURE

In terms of enforcement, it is generally agreed that systematic torture is a crime that particularly triggers Universal Jurisdiction. This principle was convincingly confirmed in the UK House of Lords ruling on General Pinochet.

WAR CRIMES

APPLICABILITY

• Situation of Internal Armed Conflict

It is now accepted that War Crimes can exist in situations of internal armed conflict. The Security Council when establishing the ICTR recognized the punishability of War Crimes in internal armed conflict. (ICTR, UN Doc.S/RES/955, Annex. Art.5). This was confirmed by the Appeals Chamber of the ICTY (Prosecutor v Tadic, supra note, 51), and the specific crimes applicable to a situation of internal armed conflict now codified in Article 8 of the Rome Statute paragraphs (c) and (d). War Crimes cannot, however, be applied in situations of internal, sporadic disturbances, such as the 1988 democracy uprising. They are applicable:

whenever there is resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. (Prosecutor v Tadic, supra note 52, para. 70).

It is significant that the judgement includes Between such groups within a State.(my bold). This would therefore include splinter groups carrying out crimes on behalf of the military dictatorship, such as DKBA attacks on ABSDF groups, where there appears to be no ethnic or racial motive.

• Time Frame

In terms of time, William A. Schabas states, They can be committed after the conclusion of overt hostilities, particularly those relating to repatriation of prisoners of war. ("Introduction to International Criminal Court," ch. 2, p. 44, para. 2).
• Context
Unlike Genocide and Crimes against Humanity, they can be isolated acts committed by individual soldiers acting without direction or guidance from higher authorities.

• Intent
The Rome Statute requires that the perpetrator intended such civilian objects to be the object of attack.

• Knowledge
The Rome Statute requires that the perpetrator must be aware of the existence of an armed conflict.

• Civilian Status
They are defined as those people taking no active part in the hostilities.

• There are, however, serious omissions from the list of War Crimes applicable to an internal armed conflict as compared to an international conflict. In particular, the following are excluded: starvation, anti-personnel mines, chemical and biological weapons. (However, it can be argued the above are forbidden under customary international law (RSICC/C, vol.1, ch. 11.3, p. 420).)

• They could not be applied where a State was using legitimate means to maintain law and order and to defend the unity and territorial integrity of the country. However, the means to achieve these legitimate purposes must themselves be legitimate. Having this in mind, it is impossible that, for instance, outrages upon personal dignity, humiliating and degrading treatment, attacks against medical personnel, units, or transports or against humanitarian assistance or peacekeeping missions or sexual violence could constitute legitimate means. (RSICC/C, ch.11.3, p. 424).

These specific violations identified by the Rome Statute of the International Criminal Court are significant when trying to distinguish between violations resulting from a counterinsurgency campaign, which may, arguably, be intended to establish or maintain territorial integrity, and violations which are, by their very nature, illegitimate, totally inexcusable, indefensible and, by inference, intended to destroy the group as such, particularly:

• Outrages upon personal dignity;
• Humiliating and degrading treatment;
• Attacks on medical personnel, transports or humanitarian assistance;

Sexual violence
All these have been documented as widespread by the UN and Amnesty International and may also be systematic.

12.65 WAR CRIMES AS DEFINED BY THE ROME STATUTE

The Crimes as defined in Article 8 of The Rome Statute, sub paragraph 2 (e), codifying War Crimes applicable to situations of internal armed conflict, such as is occurring in eastern Burma, are as follows:
War Crime of attacking civilians;

War Crime of attacking objects or persons using distinctive emblems of the Geneva Conventions

War Crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission;

War Crime of Attacking Protected Objects (defined as buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which are not military objectives);

War Crime of Pillaging;

War Crime of Rape;

War Crime of Sexual Slavery;

War Crime of Enforced Prostitution;

War Crime of Enforced Pregnancy;

War Crime of Enforced Sterilisation;

War Crime of Sexual violence;

War Crime of Using, Conscripting and Enlisting children;

War Crime of Displacing Civilians;

War Crime of treacherously Killing or Wounding;

War crime of Denying Quarter;

War crime of Mutilation;

War crime of Medical or Scientific experiments;

War crime of Destroying or Seizing the enemy's property.

The ICTY defined the threshold at which plunder violated International Humanitarian Law as being when it involved grave consequences for the victims (ICTY, Prosecutor v Delalic Judgement, IT-96-21-T, November 1998). The United Nations General Assembly Resolution description of the deprivation of all means of subsistence clearly implies grave consequences for the victims.

In its Blaskic judgement (IT-95-14-T, 3 March 2000), the ICTY defined plunder as:

The organized seizure of property undertaken within the framework of systematic economic exploitation of occupied territory.
The full Geneva Conventions, as opposed to Common Article Three applicable only to on internal armed conflict, applies to the attacks inflicted by DKBA groups operating under the overall control of the Junta, and to the Junta troops themselves, who attacked the refugee camps inside Thailand across the international frontier.

11.67 GENERAL OUTSTANDING LEGAL ISSUES OF APPLICABLE LAW

There are a number of issues which are unclear or unresolved, two of which include:

12.68 A HIERARCHY OF CRIMES?

The question arises as to the relative status of the three sets of crimes. Broadly speaking the three categories of crime (Genocide, Crime against Humanity and War Crimes) can be ranked in order of gravity. In its Prosecutor v Erdemovic Judgement (IT-96-22-A, paras. 20 and 27, 7, October, 1997) the ICTY Trial Chamber explicitly ruled that there was a difference between War Crimes and Crimes against Humanity, the latter being more serious and ordinarily entailing a more severe sentence.

12.69 TRANSCULTURAL ISSUES

The project is founded on the premise that it is both possible and right to identify the violations, conceptualise them accurately and convincingly in terms of international humanitarian law, and then to explore and identify methods of enforcement to end impunity. Underlying it is an assumption that there are fundamental, transcultural values common to all humanity. Such a venture is, however, premised on cultural assumptions which might not be appropriate, or even comprehensible, to many, or some, of the people of Burma for the following reasons:

International humanitarian law, with its notions of retribution and equality of all before the law, is a western construct, not a Buddhist one. In Buddhism this present life is porous, a transient rite of passage between previous and future lives. Buddhist dhamma assigns each person his place in this life according to his kamma, or conduct, in past lives, and conditions him to accept whatever excesses those in power impose on him. In this traditional Buddhist world, it is argued, there are no guaranteed rights affording victims legal redress; no way to challenge the abuse of power of those in authority. Thus any exploration of if, how, and when to end impunity has to take into account not just political and legal issues, (the rational domain) but also the spiritual: the diametrically opposed notions of, on the one hand, kamma rooted in the mind of Burmese Buddhists, and the mainly secular western mind, with its obligations of social activism.

Thus issues of enforcement and impunity are not just about resolving questions of amnesty v retribution, drawing on South African, South American, Rwandan and Yugoslav models, but also about resolving the issues within and between the cultural spiritual mindsets of the people of Burma, and the western intellectual tradition of human rights and legal enforcement. Raising such issues is not, to indulge in academic procrastination, or to get caught up in the moral evasiveness expressed by so called Asian values; it is to make clear, however, that any attempt to end impunity has to be explored within this overall complex cultural context.

Secondly, a related problem is the different ways of thinking and feeling experienced by Burmese ethnic and western peoples. This has been summed up (in what is itself a highly
ethnocentric explanation) by Professor Ball when describing ethnic peoples' ways of thinking as:

They can never agree about means to ends relationships and, indeed, generally lack the formal rationality to comprehend the relationship between means to ends. They generally have a multi stranded, non-referential and conceptually decentralized view of the world, allowing contradictory and inconsistent approaches to political reality. (Working Paper No. 336, Australian National University Strategic and Defence Studies Centre).

Difficult though this is to understand, it appears to mean that their minds, like modern physicists, inhabit different realities at the same time without the need (or ability) to relate to a central unifying concept; or be able to break down courses of action into a number of sequential, separate steps to reach a clearly defined goal. In this, they may be much closer to how "reality" in fact "really" works: the referential, highly conceptually centralized, technically rational world of International Humanitarian Law (and Professor Ball) with its systematic codifications and identification of key elements attempting, for instance, to understand and differentiate between three dimensional and two dimensional sets of crimes, with their accompanying discrete, distinguishing elements, does not really correspond to the multi stranded, conceptually decentralized world of reality as lived out in chaotic "real life." A bunch of {multi stranded} soldiers, conceptually decentralised on army whisky, inflicting widespread violations on ethnic villagers do not fit easily into a set of rationally organized laws.

However, to really move forward in terms of effective ways of addressing impunity and issues of justice in a Burmese context, ways will, somehow, have to be found to connect (linguistically, conceptually and spiritually) the divergent ways of thinking and feeling between kama dominated Buddhism; the multi stranded, non-referential and decentralized ways of thinking of ethnic minorities, and western notions of analytical thought, social action and retributive justice. In addition, it is necessary to take very seriously the world of magic, especially black magic, as it is understood and practised by Burmese people. A visitor to the West might understandably be bewildered by witnessing queues of people taking the eucharist, or "worshipping" Princess Diana: likewise, we should not be surprised to learn that magic and black magic is a reality to many Burmese people.

These transcultural issues may sound too difficult, too theoretical, even impossible to overcome, yet the forging of real understanding will be necessary if a true consensus is to be found on challenging impunity and enforcing the law.

12.70 CONVERGENCE OF UN GENERAL ASSEMBLY RESOLUTIONS, HUMAN RIGHTS REPORTS, THE GENOCIDE CONVENTION AND JUDGEMENTS OF THE TWO INTERNATIONAL TRIBUNALS FOR RWANDA AND YUGOSLAVIA

Article 2 c) of The Genocide Convention clearly expresses a form of destruction which is indirect and slow. The Rome Statute defined it as:
including but not necessarily restricted to the deliberate deprivation of resources indispensable for survival, such as food, or medical services or systematic expulsion from homes including, inter alia, systematic expulsion from homes.

A fuller explanation of this act of genocide, consistent with the Rome Statute's codification, was provided by the International Tribunal for Rwanda:

*The judges determined that this includes circumstances that will lead to a slow death. E.g. lack of proper housing, clothing, hygiene, medical care or excessive exertion. It also includes methods of destruction, which do not immediately lead to the death of members of the group, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, provided this would lead to the destruction of the group in whole or in part. (Prosecutor v Musema, ICTR, 96-13-T).*

Further confirming, consistent judgements by the ICTY expressed Genocide had been inflicted in the former Yugoslavia where inmates had been deprived of proper food and medical care and subjected to conditions calculated to bring about physical destruction of detainees. (ICTY Cases, IT-97-24-1, IT-95-5-1, 95-8-1.)

These judgements, and the Rome Statute codification, are consistent with some General Assembly Resolutions, such as that of March 2001 (para.14) condemning:

*Deprivation of all means of subsistence.*

Human Rights Reports identify ethnic civilian groups as being targeted for destruction, not just resistance fighters.

*All those interviewed said that they had left their homes because they could no longer survive.* (Amnesty International, "Myanmar: Lack of Security in Counter - insurgency areas," para. 3).

Thus the original wording of *The Genocide Convention*, defining an indirect, slow form of genocide especially in article 2 c, has now been clarified and crystallised by consistent judgements of the two UN mandated Tribunals, and confirmed and codified in the Rome Statute. These, in turn, correspond closely with some UN General Assembly Resolutions and Human Rights Reports.

In short, we know that *The Genocide Convention* applies to Burma. We know what the meaning is of article 2 c). We can, also, observe that there are connections between it and the condemnations of violations by UN General Assembly Resolutions and Human Rights Reports.
Chapter 13:
THE EVIDENCE OF INTENTION TO DESTROY
13.1 AN HISTORICAL OVERVIEW OF THE EXTENT OF THE SUFFERING

As long ago as 1991, the scholar/journalist Martin Smith summarised the human cost of Burma’s internal conflicts as follows:

Though little seen and reported in the world outside, the death toll in five decades of constant fighting has been appalling. Compared to the much larger conflagrations in the region these wars may have seemed relatively small, but in the end the cost has been just as devastating. Much of the fighting has been around small rural communities, especially in ethnic minority states... in the process millions of homes, families, and lives have been shattered. (My underline, "Burma, Insurgency and the Politics of Ethnicity," ch. 5, p.101)

Moreover, he has estimated the numbers of people dying as:

about 10,000 deaths a year nation wide from the insurgencies over the last five decades.

He goes on to quote a former SLORC Chairman, Gen. Saw Maung, who estimated that the true death toll would reach as high as millions, (ibid).

The real total number of deaths would include those dying indirectly from the deliberately inflicted conditions imposed by the ruling Junta, including, amongst other things: the systematic destruction of homes, food, livestock, medicine, hygiene, non-provision of clean water, forced labour, sexual violence, extortion and the deprivation of all means of subsistence.

13.2 EXPLICIT INTENTION

Although there is not requirement to show evidence of explicit intention to prove genocide, there appears to be some examples of this in Burma’s case.

As the ICTR opined:

It is not necessary that an order be given in writing or in any particular form. It can be explicit or implicit. The fact that an order was given can be proved through circumstantial evidence. The intention can be inferred from certain presumptions of fact. (My underline, ICTR, Akayesu Judgement, ICTR-96-4-T, paras.280, 523).

Despite that, in the case of Burma, it appears that some explicit examples of intention to destroy ethnic peoples and democracy activists may exist.

13.3 THE ALLEGED EXTERMINATION ORDER
The most significant allegation of possible genocidal intent was expressed by the former commander in chief of Burma's armed forces, General Smith Dun, in his *Memoirs of a Four Foot Colonel*. (Data Paper: 113, Cornell University, South East Asia Program, 1980, ISBN 0-87727-113-5).

In these memoirs, he reports:

*In their drive North the Karen troops captured the Burmese operational document named "Operation Aung San" which clearly indicated the intention of the Burmese government to eliminate the Karens first, then other hill tribe people.* (p. 70, para.3)

The words:

*clearly indicated the intention of the Burmese government to eliminate the Karens first, then other hill tribe people,*

is an explicit, written allegation of an intention to commit genocide by the Burmese government. Moreover, this allegation comes from no less a figure than the former commander- in- chief of the Burmese army who had just retired, or been forced to retire.

Given the seriousness and possible significance of this allegation, it is important to place General Smith Dun in the context of Burma's history and understand what sort of man he was.

### 13.4 BACKGROUND TO THE ORDER

In his introduction to Dun's memoirs, Professor Steinberg describes how Dun's *reluctance to resume a public posture* [after his resignation from service] *was in the best traditions of the military education he received and the rank he held*. He was a good and loyal soldier of the Union of Burma.

Professor Steinberg goes on to say that, as a Karen, the appointment of Smith Dun by Aung San, *became the personification of Burman good faith towards Karens*, and that, although *he had a strong sense of Karen consciousness*, he was a loyal soldier of the Union. Steinberg explains that Smith Dun *says he resigned when Burmese troops burnt the Karen suburb of Thamiang in Rangoon and U Nu preferred to deal with deputy Ne Win*. The General's *loyalty to the Union remained strong and that it was to his credit that he was able to keep the Karen units under control during that difficult period.*

Professor Steinberg continued:

*Nothing became the general more than the manner he left the high position he held. He remained faithful to the government and was exemplary in his dealings with the civil authorities during that turbulent period. Had he joined the insurgent Karen forces, the history of Burma may have been different. . . [the memoirs] offer rare insight into the views and motivation of a man who was loyal to his country and to the traditions of his training.*

Thus by all accounts, Smith Dun was a man of outstanding integrity who, despite being Karen, and suffering and witnessing provocations and atrocities against the Karen by Burmans, remained loyal to the Union, did not retaliate against Burman atrocities and did not speak out during his long retirement. In short, it is not conceivable that he would deliberately fabricate an allegation as serious as the above; indeed the allegation is in stark contrast to the strict neutral silence he always maintained.
Elaborating on his statement, Smith Dun wrote:

*In their drive North the Karen troops captured the Burmese operational document named “Operation Aung San” which clearly indicated the intention of the Burmese Government to eliminate the Karens first, then other hill tribe people. This was neither the solution to the problem. But the Karens had their own solution to the problem. They were not to lay down their necks down for the slaughter, nor their women to dishonor, (ibid)*

The words he uses to describe the groups are significant. The operational document is Burmese and the authors the Burmese government; in the context where he is differentiating between the Burmese government and Karen and other hill tribe people, he is referring to ethnic Burmans. Those who are not hill tribe people are overwhelmingly Burmans. Furthermore, the words he uses describe an ethnic/racial conflict,, not an ideological one. Moreover, this is systematic action by the Burmese Government, not abuses inflicted by paramilitary thugs, (though the distinction is not always clear): the genocidal action, expressed in the last sentence alleging mass killing and mass rape, is the result of an official government order. Furthermore, Smith Dun, explicitly infers an underlying genocidal intention behind the order:

*Clearly indicating the intention* (my underline) *to eliminate the Karens first, then other hill tribe people.*

That the order expresses a direct explicit intention to destroy racial groups is evidenced by the words *Clearly indicating the intention*; moreover, the word *eliminate* suggests an intention to destroy totally (in whole rather than in part); in addition, the victims are protected groups under The Genocide Convention, all being ethnic or racial groups, not communists or members of the political civilian opposition, *Karens first, then other hill tribe people.*

Such an order, we can deduce, could only have come from the highest level. The Army Commander at the time was Ne Win, later to instigate the military coup of 1962 and the unbroken period of racist, military dictatorship that has continued in Burma to this day.

Smith Dun, very uncharacteristically, reveals his real feelings of moral outrage, despite having taken a crucial role in not allowing Karen army forces to defend their fellow kith and kin, by justifying the Karen response, not as irresponsible rebelliousness, but as legitimate self-defence against mass killing and implied mass rape:

*They were not to lay down their necks for the slaughter, nor their women to dishonour.*

This account of the existence of such an order has been independently corroborated to me by a senior widely respected Karen who had been taken prisoner at the time in Maymyo where the order was found. He added that the order was not acted on because of the intervention of a British military engineer who had remained in Maymyo after independence.

The background to the order has been researched by Harold Klein in an unpublished paper titled *The Karen: their struggle for liberty and justice.* I have not been able to corroborate the following, and a healthy scepticism may be in order, but it appears to confirm the beginning of a genocidal conflict. His quoting US officials’ evaluations at the time suggests independent witnesses confirmed the origins of the conflict as racial and genocidal, rather than political (as in the case of the communist uprising then about to begin). He writes:

*In two unrelated letters to A.H. Stonor dated 13 September 1981 and 27 November 1981, two eyewitnesses to the documents reported they had seen and read the original English version which had been captured by Karen troops in Maymyo, February 1949. Captain Naw Seng is reported to have found the document in the Commandant's office, a Col. Maung Maung, whose signature was on the order. It reportedly called for the liquidation of all Karen troops first, then Kachin, next Chin, and finally Gurkas. Thus two eyewitnesses in addition to General Smith Dun report substantially the same contents. In a third letter, Saw Samson one of the above two, reported additional details, 27 September*
1981 to A.H. Stomor. In this letter he cited four men as responsible for drafting, 1) U Kyaw Nyein 2) Bo khin Maung Galay 3) Col. Maung Maung and 4) Col. Aung Gyi. The first two were members of the AFPFL and in U Nu's cabinet and the latter two were under the command of General Ne Win, who had taken over the army when General Smith Dun had resigned and retired to Maymyo, where he saw the order.

The most acceptable account of the order was given this author by Saw Skaw Ler Taw in a letter dated 25 June 1987. He had actually translated and distributed the order to numerous persons. All his records however had been destroyed in subsequent Burman attacks against his hide out. In his account he cites three persons as the responsible draftees.

1) Col. Maung Maung,
2) Major Mya Thein and
3) Major Thein Doke.

This military order had two major parts.

1. All Karen armed personnel of the army, Police, Military Police and armed Karen Foresters and Karen leaders in all ranks in every town and village were to be rounded up and their movements and activities were to be watched.

2. Other indigenous nationals were also covered as the Karens above. These included Kachin, Shan, Chin and Pa-o.

Klein concludes:

If the intentions of the U Nu government had been simply to put down an insurgency, why call for the elimination of a people?

This is the same question one asks when confronting the wholesale destruction of ethnic civilian areas in eastern Burma now. The desperate situation at the time, suggesting the beginning of a genocidal campaign, is corroborated by other sources: a despatch, quoted by the same author, on January 1949 by an official at the US State department, Col. Joseph Baker at the Embassy at Rangoon to the State Department in Washington DC, titled, Karen Autonomy Movement, described the situation thus:

The Karen autonomy movement has now developed to a situation bordering on a Burmese-Karen racial struggle of annihilation

and he went on to describe a Burman militia force being armed by the government.

Klein also quotes, later in May of the same year, an Attache at the US Embassy, A. A. Rabida, reporting that U Nu had angrily told a group of elderly Karen that he would personally see all Karens in Burma were killed. (A.A. Rabida attache American Embassy Rangoon to US State Department, Despatch 3206, 18 May,1949, p. 2, Memorandum on Conversation Concerning Karen situation).

COMMENTARY

Neither the original order Smith Dun cites, nor a copy survives. It would therefore be wrong to infer genocidal intent on the basis of such evidence too strongly.

However, a number of points should be made. Firstly the allegation should be taken seriously because it is made by no less a figure than the former Commander in Chief of Burma's army, appointed by General Aung San himself, who always conducted himself with scrupulous fairness avoiding siding with any one faction; as already stated, Smith Dun's personal reputation for honesty was high and it is very unlikely indeed that he would
fabricate something of this significance. Moreover, the order was alleged to have been signed by the notorious Ne Win, Smith Dunn's immediate replacement; the instigator of the 1962 military coup who was committed to destroying ethnic autonomy; the organiser of the Burmanisation campaign and the creation of the military as a state within a state. At the time of the alleged extermination order, ethnic fighting was breaking out with militant Burman armed groups destroying Karen areas in Rangoon. In short, the order is consistent with the circumstances of subsequent destruction of ethnic peoples, Burmanisation and the tragic events of successive years that began at that time and continue to this day. In addition, independent corroboration of the extreme racial, as opposed to political, origin of the conflict about to begin was evidenced in a report quoted by Klein attributed to Colonel Joseph K. Baker, GSC of the US embassy:

The Karen Autonomy Movement has now developed to a situation bordering on a Burmese-Karen racial struggle of annihilation . . . The government has been outwardly tolerant and magnanimous in its official attitude, but in the meantime, a large militia force of Pobie Levies (PVO) has been organized and armed. Word apparently leaked out that Saw Ba U's Commission in its impending recommendations will not recommend the autonomy desired by the majority Karens and there is increasing evidence that the Socialist Party Leaders in the government feel they now have sufficient forces to suppress the Karen by armed action. (Baker, Joseph K, Col. GSC, US Embassy, Rangoon, 20 January 1949 to State Department, Washington DC, Subject Karen Autonomy Movement).

The above is significant for a number of reasons: it is likely to be objective; it conceptualizes the origin of Burma's conflict as racial; the use of the words, A racial struggle of annihilation, both in its definition of victim and aggressor groups as ethnic rather than political, and the total destruction implicit in the word annihilation, expresses a genocidal conflict. Moreover, the word annihilation is a word the Junta itself still uses in its exhortations to destroy ethnic opposition. It also describes the characteristic deceit of the government: while outwardly tolerant and magnanimous, it is organizing para military Burman forces to suppress the Karens. In other words, the "government" is, in fact, a factional special interest group operating for and on behalf of one racial group, prepared to use Burman paramilitaries to destroy Karen civilian communities in Rangoon. Moreover, this paramilitary force, like the USDA state agents who attacked Aung San Suu Kyi's convoy fifty-four years later, was organized and armed by the Burman dominated government.

It might be objected that the existence of an alleged elimination order is irrelevant, because the events are so long ago. This can be rejected for two reasons; the Crime of Genocide has no Statute of Limitation, meaning that it does not matter how long ago genocide occurred for it to be legally actionable; secondly, the events, described as a racial war of annihilation, which began in 1949 have been continuing ever since; thirdly, the author of the alleged order, Ne Win, trained in torture techniques by the racist genocidal Japanese secret police, the Kempetai, became the Commander-in-Chief of the armed forces at the time of the order; initiated the military dictatorship that has governed Burma since 1962, and was partially responsible for the massacres of democracy activists in 1988 and the racist policies inflicted on ethnic peoples. Such an order would be consistent with his mindset and consonant with his subsequent behaviour. There is, for instance, a direct line of continuous policy and action between the events which began in 1949 and the current two and a half thousand destroyed ethnic villages in eastern Burma today. Moreover, the fact that the present policies still being inflicted express a possible genocidal intention similar to that alleged by Colonel Baker in 1949 is routinely evidenced in such interviews given by current Burmese army defectors as the following:

Those who are Christians have to leave because SLORC hates Christians. Buddhist villagers stay in the village. SLORC troops and DKBA hate Christians. I do not know why, but I know they were given documents by their commanders that they said they should kill Christians. They said so to the villagers. (Earthrights International, Interview #26, School for Rape).
I myself have been told in interviews with DKBA members, a Junta proxy group, that One day we will kill all the Christians.

A Burman army defector, at a guard post on the Karenni boundary, has described to me how he was ordered by his commanding officer, a Lt. Colonel, very unusually, not to stop or search a busload of women from entering Karenni state from Mandalay because they were all HIV infected: they were to be allowed into Karenni state without hindrance, the implication being that HIV was being intentionally spread in an ethnic State.

13.5 ALLEGED ORAL EXPRESSION OF INTENTION TO COMMIT GENOCIDE

Allegations exist of oral expressions of intent to commit genocide. One particular very public example, about which different sources agree, is the following statement made at a surrender ceremony:

We will wipe out the KNU so_ (my underline) one day if you want to see a Karen you will have to go to a museum.

The statement was allegedly made in a public address, heard by many people at a surrender ceremony of Karen soldiers by Major General Maung Hla in Myabaing village, Pa-an district of Karen State, in the autumn of 1991.

COMMENTARY

Firstly, this is allegedly made by a Major General in a public statement and is therefore an expression representative of the thinking of senior officers.

Secondly, it echoes Hitler's statement in Czechoslovakia that the only place people will be able to see evidence of the Jewish race in the future will be in a museum.

Thirdly, it directly connects the counterinsurgency campaign with genocide: the destruction of the resistance forces (wipe out suggests total destruction) is causally connected (so) to the destruction of the race: moreover a museum clearly indicates the race has become extinct.

Fourthly, the statement throws light on the central issue as to whether the intention underlying the counterinsurgency campaign is to destroy the armed resistance, or the race itself.

13.6 ALLEGED BIOLOGICAL GENOCIDE

The issue as to whether to use the following document presents the greatest difficulty. Two people were willing to testify as to its origins and veracity. It is not, however, written on official stamped paper and an original may now be difficult to find. I therefore include it with grave reservations and only do so in the light of numerous and consistent testimonies which
suggest that an underlying intent can be inferred from the overwhelming amount of consistent, numerous circumstantial evidence of rape and sexual violence inflicted by Junta troops against ethnic women. This can be seen for instance in School for Rape, (pub. Earthrights International); Gathering Strength, (pub. Images Asia); Licence to Rape, (pub. SWAN); Report on Sexual Violence, (pub. Refugees International); Shattering Silences (pub. Karen Women's Organisation; System of Impunity (pub. By Women's League of Burma); UN reports including the 1998 report identifying sexual violence in the relocation sites as a regular feature; UN General Assembly Resolutions, Amnesty International Reports, the US Bureau of Democracy, Human Rights and Labour Report on sexual violence, and numerous personal testimonies describing not just sexual violence, but a widespread practice of forced and coerced, sexual union between Burman soldiers and ethnic women. These following testimonies were given by people who, to the best of my knowledge, had not seen the document termed "Top Secret". Their statements are, however, consonant with it, and suggest the existence of a policy of systematic sexual violence intended to change the biological composition of ethnic people.

The general consensus on the intention underlying the sexual violence being to inflict impregnation is expressed in the Karen Women's Organisation's Report on sexual violence, "Shattering Silences":

It is well known that forced pregnancy is one of the strategies adopted by SLORC/SPDC as part of a policy of ethnic cleansing. ("Shattering Silences", KWO, April 2004, p.21)

I have been informed that soldiers who engage in this kind of activity of forced, or coerced, impregnation are rewarded with either money, or promotion, or food, or by not being sent back to conflict areas.


Government soldiers stationed in Chin State reportedly were given higher rank and pay if they married Chin women and converted them to Buddhism.

It noted similar allegations of such a policy inflicted on another ethnic group, the Nagas, in the far west:

Since 2001 until the present there were several cases where Army personnel were reportedly given incentives to marry Naga Christians and convert them to Buddhism, (ibid)

The allegation of a policy of biological assimilation through coercive sexuality needs to be understood within the wider context of the condoned and encouraged culture of sexual violence expressed in UN and Human Rights Reports, e.g.,

Information received by the Special Rapporteur indicates that sexual violence against women, including rape, is frequently committed by members of the Tatmadaw with impunity. ("The situation of Human Rights", Myanmar, Sept.1998, para.51).

It is also relevant to recall, when considering the veracity of the Top secret document, the very expansive interpretation of intent can be inferred as opined by the International Tribunal for Rwanda:

Intent can be inferred from certain presumptions of fact . . . such as the general context of the perpetration of other culpable acts systematically directed against the same group (ICTR, Akayesu Judgement, para. 523).
Given the wealth of evidence not just of widespread sexual violence, but targeted sexual violence, it is suggested that the "Top Secret" document may accurately express a policy underlying the coercive and forced sexual violence.

In the context of systematically sexually targeting a group, it is significant that the Karen splinter proxy group, the DKBA, while guilty of many violations, does not inflict sexual violence against other Karen women and the Burmanising Junta army also appears to inflict less sexual violence on Burman women. Sexual violence, and the particularly sinister form of coercive violence intended, allegedly, to biologically assimilate the race, seems to be ethnically targeted.

Thus because it is now generally accepted that widespread, coerced, sexual violence is committed against ethnic women in particular, and witnesses are willing to testify about the document's authenticity, I think, on balance, it is justified to include it for consideration, because it is consistent with the numerous testimonies describing an officially encouraged practice involving coerced, or violent sexual union, intended to change the biological identity of the group. I have shown the document to well placed Burman exiles, who on condition of remaining anonymous, did confirm that the document probably accurately expresses Junta racial policy.

Such a practice would be consistent with, and a logical extension of, Burmanization. The existence and implementation of a policy of coercive violence intended to break down the biological integrity of ethnic groups can be seen as a "natural" biological extension of the process of cultural destruction and assimilation implicit in Burmanisation, a policy defined, we remember, as subsuming ethnic cultures into a homogenised Burman identity.

This document is dated 1988 and appears to be the fourth of its kind. It indicates that a policy of possibly imposing measures intended to prevent births within the group has been in operation for a long time.

The length of time that this practice has probably been inflicted is illustrated by the fact that grievances about coerced inter-ethnic marriages have been expressed for many years. For example, at a meeting at City Hall in Rangoon, as long ago as September 29, 1957, Shan representatives formally expressed their grievances on the subject in a statement which included allegations of a policy of coerced intermarriage systematically inflicted by the Rangoon government involving:

Enticements of Burmese soldiers with monetary rewards to marry Shan girls and complained of Shan girls being sold in the cities by Burmese soldiers.

Moreover, Burman army defectors have given accounts of the existence of similar written documents provided to Burmese soldiers which, in effect, advocate a policy of biological genocide by imposing measures intended to reduce births within ethnic groups. One of these interviews, from a soldier who had not been shown the Top secret document, is as follows:

The Burman soldiers think Burman blood is best. People talk about the rape a lot. People say that Burmese soldiers want to make more Burman babies. I once had a letter in my papers that said that Burmese soldiers would get certain rewards if they would marry certain kinds of ethnic women. They wrote in the letter that it is not limited to soldiers who are unmarried. The letter said your blood must be left in the village. (My underline) Earthrights International, School for Rape, Interview #15, p.44, pub.1998.)

The interviewee repeats, not just the frequently repeated allegation of state tolerated or condoned ethnically targeted sexual violence, but expresses the motive behind the behavior:

The letter said your blood must be left in the village.
13.7 GENERAL MOTIVES FOR SYSTEMATIC SEXUAL VIOLENCE

State tolerated, condoned, encouraged or systematically inflicted sexual violence can have, according to the United Nations Division for the Advancement of Women ("Sexual Violence and Armed Conflict: a United Nations Response 2000, April 1988"), a number of motives, namely:

- to reward soldiers;
- to punish female resisters;
- to humiliate men of the victim group;
- to inflict terror;
- to assist ethnic cleansing;
- to inflict genocide.

13.8 ALLEGED DOCUMENT EXHORTING BIOLOGICAL GENOCIDE

The following alleged document, given its secretive nature and advocacy of coerced rather than direct sexual violence, seems not to be motivated by the first five, but by the last. Its underlying intention and motive appear to advocate coercive sexual violence using deceit, with the primary intention of creating a mixed race which can then be easily absorbed into the greater Burman race. Circumstantially, it needs to be read and understood within the context of Martin Smith's, inexplicable slump in birth rates of ethnic minorities.
A notification to urge Burman comrades in the Shan State. —

Oh Comrades of the master Burman race, who reside throughout Burma.-

Since we love the Burman race and our country as much as our lives itself, we must support our motherland and protect our race. We must get together and take full responsibility in every way starting from economical, social, educational and cultures.

Therefore, our Burman comrades must gradually attract and integrate those non-Burman races within the country, utilizing all means such as social, economical and literary cultures so that they will accept our national prestige.

All our Burman comrades must endeavour in such actions as aggressive warfare to seize every opportunity to spread out our culture in the economic, social, and educational throughout the country by by taking a lawful stance in displaying those attractions cultivating their trust.

So that our great primary aim of our single Burman race to last forever we will meet with success, and for the greater national race to progress and develop, the easiest method is an aggressive campaign to dilute racial blood by taking foreign women who are not Burman.

Our Burman comrades who are within the Shan State should take as many Shan women as they can. Those who find difficulty of employment in the main part of our motherland, after earning a livelihood in the Shan State, should find opportunities and exert every effort to get Shan women to lean to the Burma side and come over to us. We should easily be able to bring them over by practising our Burman customs because most Shan women are lacking in or decadent in moral control, and prefer men from the main country for whom they have high esteem and wish to depend on them.

Burman comrades—should we not be able to take such action, the Shan will endanger us in the future. Therefore, our Burmese race must be united in this. We must take a firm hold of whatever situation is available to us. Even if it should come about that we, individuals, have permanently to abandon the Shan State, we must leave behind our own flesh and blood, our progeny and those related to us. Those women who are Shans and minorities must become in the end such that whenever a Burman offers money or makes advances to them, they are easily available almost as if they were prostitutes.

O— all of you Burman comrades: since we are in a period wherein it offers the best opportunity to undertake the matter we must, to achieve the purpose of admixture of blood while you are in the Shan State, lure and possess Shan and other foreign women by means of money, materials, incentives, or through the heart as in love affair.

Those of you good Burman comrades who are successful in possessing Shan women will get from the nation a gift tribute of a monthly assistance allowance as show below:

1. K (500) should it be an ordinary person from a ward.
2. 2K (1000) should be a daughter/niece of a prominent family of a high position of a township.
3. K 1500 should it be an educated person who holds a degree.
4. K 2000 should it be a person who is wealthy and graduate member of a sawbha lineage.

What our noble and numerous Burman comrades of a great racial lineage must particular adhere to and practise is to take victory by absorption of humanity by humanity. It is only through absorption of racial groups who are not Burman so that the victory of the Burman comrades in the Shan State will be stabilized for a long time.
It is not necessary for our Burman comrades to worry about financial matters at all. The nation has kept reserved funds for Burman comrades in the Shan State to the amount of five million pounds Sterling per annum, equivalent in Kyats.

When our Burman comrades meet with success in accordance with the above directions they should apply for the financial allowance through the same channels by which they received this circular. Higher authorities are awaiting with anticipation to assist Burman comrades with attention.

This secret directional circular should be distributed only to those Burman comrades and Burman racial members who promise there will be no leakage from those who are particularly concerned.

For those of the Burman lineage who keep foremost with love and respect and devotion of life, our religion, and the doctrine, this will be the fourth time of our special exhortation.

The Burman cause must prevail.
The fourth Burman empire protection society the motherland of Burma.

Burmese era: 1350- New Moon Day: Month of Tawthalin

Christian era: 1988, October 10

COMMENTARY

RACIAL TARGET GROUP

It is addressed to Burman Comrades in Shan State. The term Burman explicitly expresses the dominant racial group; the term comrades suggests men involved in a common military purpose.

UNDERLYING INTENTION

Secondly, it is clearly expressive of a racial policy of destruction through biological assimilation, not a counterinsurgency programme. This is a policy document calling for action which is exclusively racial and Burman: there can be no confusion about the racial nature of perpetrators and victims. It is not, for example, a policy to be inflicted by the general Junta army which, though predominantly Burman, also contains other ethnic minorities and thus, it could be conceivably argued, not an army capable of inflicting biological genocide. This document is for Burmans from Burmans advocating biological destruction through forced impregnation and then absorption and assimilation. Specifically, the document is for Burman comrades of the master Burman race- the concept of master race being well known to any one familiar with Nazi racial ideology. Race, country and their individual lives have been conflated into one; Burma is the motherland which (Oedipally) it is their duty to protect from being violated by other racial groups by impregnating their women.

IDENTIFICATION OF VICTIM GROUPS

Paragraph three refers to the non-burman races. The central contradiction in State policy is here revealed. While continually proclaiming the Union of Myanmar, the State actually considers its ethnic peoples to be non Burmans, foreigners, outsiders who have to be assimilated, and absorbed after being subjected to a programme of biological destruction. Paragraphs two and three, once having established that this is a Burman initiative to assert the primacy of the Burman (not Burmese) race, goes on to explicitly advocate the wider homogenizing policy of Burmanisation:
Attracting and integrating those other non-Burman races within our country utilizing all means such as social, economical, and literary cultures so that they will accept our national prestige.

However, in paragraph four, Burmanisation is expanded to include aggressive war, indicating that such a policy is not limited to cultural destruction and assimilation (the two opposite, but complementary parts of the policy), but also involves outright violence.

In paragraph 5 a clear statement of intention is expressed:

So that our great primary aim of our single Burman race to last forever will meet with success . . .

This is an expression of a fundamental primary intention, i.e., an underlying policy so that the Single Burman race [will] last forever. Two points need to be made: this is not just a Burman race, but a single Burman race, which must succeed, omni potently, for ever. Furthermore, a clear distinction is made between the single Burman race and the greater national race, the latter being, one can infer, a kind of bastardized hybrid formed as a result of the long term programme of forced impregnation, assimilation and absorption. The mindset seems, therefore, to include two racial concepts: the pure, single, Burman race and the larger, homogenized, national race.

Such a policy only makes sense to an outsider if, firstly, one understands a notion of identity based on race, and secondly, that this racial identity is determined by the father, not the mother, or even an interaction of the two. This is why a policy of impregnating women by Burman men leads, according to such thinking, to a greater Burman race and may help to explain the rage directed at Aung San Suu Kyi for being a race destructionist because she had children with a foreign man. (See later Depayin ambush).

METHODS OF DESTRUCTION

The means to carry out this policy is made very explicit in paragraph 5:

An aggressive campaign to dilute racial blood by taking foreign women who are not Burman.

This racist policy is implemented by Taking foreign women. Sexual violence is being advocated as a means of achieving racial superiority, not just for the sake of the dehumanising effects of the violence (see Refugees International Report, "Development of Democracy in Burma,", para. 3, June 2003), but actually to physically destroy the other races by producing Burman babies: diluting racial blood expresses biological genocide. The women are significantly described as Foreign, not fellow Burmese inhabitants of the "Union of Myanmar," moreover, they must be Taken, suggesting violence, or, at least, coercive violence.

Paragraph 6 expresses its widespread scale, the comrades being exhorted to take As many Shan women as they can. It then indulges in grotesque deceit, blaming the victims, because they Lack moral control. (At the level of arrested Oedipal development, the thinking makes sense: the pure motherland is protected; beyond lies a world of whores to be exploited and crushed. The greater the identification with the pure motherland, the greater the denigration of women beyond the maternal, national, Burman homeland.)

Paragraph 7 expresses a mindset based on crude Darwinian notions of natural selection, redolent of Nazism. Unless the comrades take this action, they are told, the Burman race will be in danger of not surviving. Therefore they must impregnate Shan women:

We must leave behind our own flesh and blood, our progeny, and those related to us.

The purpose is thus, racial destruction of the Shan people and, significantly, other minorities.
13.9 LEGAL ANALYSIS: FORCED IMPREGNATION AND ITS RELATION TO GENOCIDE

The connection between forced impregnation and genocide was made by the ICTR in the Akayesu Case. The judgement was also supported by M Cherif Bassiouni, Professor of Law and director of the International Criminal Justice and Weapons Control Center at De Paul University in Chicago and former Chairman of the UN Commission of Experts on the former Yugoslavia. The ICTR opined that forced impregnation could constitute genocidal activity:

"In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group. (ICTR, Prosecutor v Akayesu, para. 507).

Paragraph 8 of "The Top Secret" document, we note, advocated luring and possessing Shan and other foreign women. Luring suggests coercive deceit; possessing something more directly violent.

FORCED IMPREGNATION AS SYSTEMATIC POLICY

Paragraph 9 outlines, with its graded system of payments, that this is systematic state policy. Moreover, the relation of payment to the social and educational status of the female victims expresses a policy of planned, organised systematic destruction of the ethnic society by selectively targeting women of high social or educational status.

13.10 FEMALE VICTIMS AS DISTINCT ENTITIES

Such women could be considered to be distinct entities in terms of the ICTY Krstic Srebrenica judgement: just as men of military age in Yugoslavia were deemed to be a distinct entity from whose destruction the wider group could not recover, so the deliberate impregnation of women of childbearing age, targeting them in terms of social and educational status, could be argued to be a form of selective destruction intended to undermine the wider group’s ability to procreate, and survive socially as a distinct, ethnic group.

The policy expresses a form of selective destruction analogous to that defined by the ICTY in its judgement of forced disappearances:
the desired destruction of more limited number of persons selected for the impact their disappearance would have upon the survival of the group as such. This would then constitute an intention to destroy the group selectively. (ICTY, Prosecutor v Jelisic, Judgement, IT-95-10-T, December 1999).

These women victims seem to be selected according to criteria identified in the above Jelisic judgement. They are prioritized as victims of forced impregnation in order to inflict maximum destruction of the wider group.

The destruction, we should note, involves three identifiable victim groups: the female victims who are removed as mothers of future Shan babies; the Shan babies themselves who will not be born as a result of this policy; the wider Shan community which will lose, not just its mothers and future children, but in the selective targeting of women of high social and educational status, those particular women capable of leading, uniting and sustaining their community. Additionally, these Shan women are selected as targets for violative conduct, not just because of their social and educational status, but because of their reproductive abilities; they may thus represent a distinct entity as defined by the ICTY in its Krstic Srebrenica judgement (August 2001, para. 560); a distinct group of women of childbearing age upon whom the future biological viability of the race depends. The selective violation of such women would clearly have a lasting impact on the whole group.

TWO STAGE PROCESS OF DESTRUCTION

Temporally, the destruction is in the two stage process articulated by the founder of the concept of Genocide, Raphael Lemkin: first, the destruction of the group's ability to procreate within itself; secondly, the process of destruction through absorption and assimilation into the Burman race, because the babies born of such "marriages" are Burmans.

13.11 RELATION BETWEEN BURMANISATION AND BIOLOGICAL GENOCIDE

Burmanisation thus appears to embrace not just a cultural process of destruction and homogenization, but possible biological destruction too. The method advocated here of violating the biological integrity of the Shan race, followed by destruction through absorption, is slower and more indirect than immediate, physical violence, but nevertheless may be an expression of genocide activity 2 (d):

Measures imposed to prevent births within the group.

RESPONSIBILITY
Furthermore the policy is systematic, its organisation and allocation of resources expressive of a policy taken at the highest level:

*Higher authorities are awaiting with anticipation to assist Burman comrades with attention.*

Large sums of money have been set aside for its infliction.

**IDEOLOGICAL FRAMEWORK**

The document concludes by calling on those comrades to honour *race, religion and the doctrine*. Here we can see the coexistence of racism, perverted religion and ideology. However, the document reveals it is the racism which is fundamentally driving the policy, rather than religion or ideology. The fact that the Shan are Buddhists affords them no protection from a Burmanised, militarised form of Buddhism. In the primitive Darwinian mindset of the Junta, the mere existence of the Shan race is enough to threaten the Burman race: there can be no coexistence. The Burmans' survival must depend on destroying other groups. In such a mindset political subjugation is not enough; racial destruction through biological absorption may also be necessary.

**THE NATURE OF THE CRIME**

Some doubt may arise about the nature of the violence involved in a policy of sanctioned, coercive violence. The words *Take, Lure, Possess*, however, clearly express a sufficient level of criminality to justify *The Crime against Humanity of Sexual Violence*, now defined as:

An act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent. . . It is understood that genuine consent does not include consent obtained through deception. (Article 7(1) (g)-6 of The Rome Statute of The International Criminal Court).

Moreover, the underlying intention appears to be genocidal and, as such, is in contrast to the more limited level of intention generally ascribed to the Junta by Human Rights groups. For example, testimony by Veronika A. Martin to the US Senate Committee on Foreign Relations in June 2003 on behalf of Refugees International limited the intention to *brutalisation*:

*Refugees International's investigation on human rights violations against women and girls documented the widespread use of rape by Burma's soldiers to brutalise women from five different ethnic nationalities on Burma's eastern border.*

**13.12 PUBLIC EXPERTISE EXPRESSIONS OF RACISM**


*The nation should be one in which only Myanmars reside and which Myanmar own. We need to be vigilant against Myanmar Ngain-Ngan, the home of Myanmar nationals being influenced by anyone. And it is important that Myanmar Naing-Ngan does not become the home of mixed bloods influenced by alien cultures though it is called Myanmar Naing Ngan.*

It is significant here that not only is he warning against alien cultures, but also against mixed bloods. It is thus a expressive of racism, rather than a fear of acculturation.
In 1979 Ne Win also expressed publicly, the barely concealed racism that underlies policy:

Even people of pure blood are being disloyal to the race and country but are being loyal to others. If people of pure blood act this way, we must carefully watch people of mixed blood. Some people are of pure blood, pure Burmese heritage and descendants of genuine citizens. Karen, Kachin, and so forth, are of genuine pure blood. But we must consider whether these people are completely for our people, our Burmese people: our country, our Burma. (speech by Ne Win in BBC, SWB, 15 Dec. 1979, quoted by Martin Smith, "Burma, Insurgency and the Politics of Ethnicity").

Here we can see the thinking of someone steeped in racism. The conceptual mindset is one of Blood. People are split into two types: Pure blood and Mixed blood. Although he concedes that even people of pure blood (i.e. presumably ethnic Burmans) can be "disloyal" and, puzzlingly, that The Karen, Kachin and so forth are of genuine pure blood, his premise is that political loyalty is determined by "blood". Confusing though the speech is, he draws a fundamental distinction between "these people" (non Burmans) and "our people" (Burmans), and questions the loyalty of the former as to "Whether they are completely for our people, our Burmese people: our country, our Burma." His repetitive five fold use of the possessive "Our" emphasises the distinction between them (the Karen, Kachin and so forth) and "Our people," "Our Burmese people" (i.e. in effect the Burman people) and then significantly conflates "Our people" (i.e. not "The Karen, Kachin and so forth") with the country itself: Our country, our Burma.

Burma, in effect, belongs to the Burmans alone: it’s Ours.

This is the thinking of the architect of "modern" Burma: the former commander- in- chief of the army and former military dictator, whose legacy still hangs over Burma, just as Stalin's hung for decades over late twentieth century Russia long after his death. It is a mind in which mid twentieth century notions of racism championed by Nazi Germany and war time Japan, fuse with specifically historical Burman notions of racial supremacy with disastrous effects on democratic pluralism.

13.13 THE 1988 MASSACRES

Ne Win seems to have been responsible for his forces systematically killing unarmed civilians during the 1988 civilian democracy uprising:

When the army shoots, it shoots to kill.

Ne Win, addressing demonstrators, 23 July 1988.

The killings were shown around the world and their veracity is beyond question since they were captured on video. The mass killings, although they lie largely outside the scope of this project, are significant for two reasons; firstly because they express the Crime Against Humanity of Murder, being systematic and widespread killing of civilian democratic activists. Secondly, they provide irrefutable evidence that what is alleged to be occurring in hidden, ethnic minority areas is linked to a similar violative pattern, namely the widespread,
systematic murder of civilians, which was inflicted in lowland Burma in the heart of Rangoon on camera. If the regime can inflict mass murder in the heart of its capital, close to the diplomatic community, on its own largely Burman citizens, it is logical to infer that it is capable of inflicting similar, or worse atrocities, on helpless, ethnic civilians hidden far from the eyes of the world in remote, mountainous forests.

INSTITUTIONALISED RACISM:
BURMA'S CITIZENSHIP LAWS

According to Martin Smith,

*Burma today has some of the most extreme citizenship laws in the world. Full citizenship is in theory confined to those who can prove they had ancestors resident in Burma before the first British annexation in 1824. Non Buddhists have always been regarded with great suspicion . . ("Burma and the Politics of Ethnicity," ch. 2, p. 37)*

Amnesty International points out:

The Report goes on to explain how To reinforce the three citizenship categories and easily identify the bearer's status, colour coded identity cards were introduced in 1989; pink cards were issued for full citizens, blue for associate citizens and green for naturalised citizens. These new cards also mention ethnicity and religion. (ibid)

Ethnic minorities and members of minority religions can easily be identified and thus persecuted. In the case of the Muslim Rohingyas it appears that there is a deliberate policy to render them stateless:

Amnesty International is concerned that the Burma Citizenship Law of 1982 and the manner in which this law is implemented effectively denies the right to a nationality for members of the Rohingya population, (ibid, p. 6)

This "legal" framework institutionalises and legitimises persecution, helping to inflict unsustainable conditions on this ethnic, religious group. The policy has led to mass, forced fleeing. 200,000 Rohingyas fled to Bangladesh in 1978 and 250,000 fled again in 1991-92

The persecution of Rohingyas is self-evidently deliberate and intentional. However, what occurs more often in areas of internal displacement, and in the refugee camps, is that ethnic people have never had the opportunity to get identity cards. They are thus also stateless. This makes them very vulnerable to persecution, particularly children who can be forcibly conscripted into the army. This Statelessness impacts particularly harshly on ethnic minority peoples, especially those living in eastern Burma, and in the refugee camps in Thailand.

Dr Cynthia Maung of the Mao Tao Clinic described the effects as follows:

Children who are born in Burma, among the internally displaced communities, or those born in remote areas of the ethnic states, or the cease fire areas, do not receive any birth certificates or citizenship papers. Children who have no ID cards are targeted by the Burmese army and forced to join as child soldiers. (Dr. Cynthia Maung, Mae Tao Clinic, statement, Dec.11, 2002).

This denial and deprivation of rights to citizenship for ethnic peoples is intended, one can only infer, to ensure that they have no protection under law, and are thus especially vulnerable to human rights violations. In Kosovo, we saw the Serb policy of deliberately stripping the Kosovars of all identity papers as an integral part of their policy of ethnic cleansing: in eastern Burma this is not necessary since the internally displaced ethnic people have never had papers, or identity cards. The problem is compounded by the fact that the externally displaced refugees in Thailand, almost all of whom are ethnic peoples, also have no identity papers, and many are not even granted refugee status.

The case of systematic, institutionalized persecution of an ethnic minority is strongest in the case of the Rohingyas who are denied identity papers and have to seek a licence if they want to marry non Rohingyas; here, however, we see a difference in motive and intention between the specific persecution of Moslem Rohingyas (and Moslems in general) and other ethnic groups: the Rohingyas are denied papers and forbidden to marry non Rohingyas to keep them out of the greater Burman race: in effect ,the policy is to exclude, not assimilate. This appears to be true of other Moslem groups: when, for example, two hundred Moslem refugees in Thailand's Mae Sot were being prepared for repatriation, the Junta army refused to accept them because they were deemed not to be Burmese ("Report by Refugees International to US Senate," June 2003): thus Moslems are treated differently from Christian Karen who, although persecuted, and sometimes selectively killed, are primarily subjugated and then targeted for long term assimilation.f Persecution by exclusion seems, on the other hand, to be the policy behind the treatment of Moslems.

The institutionalized racism within Burma inflicted on ethnic groups is complemented by the Junta's 1998 law forbidding Burmese citizens to marry foreigners. The underlying intention of
this law is, one can infer, to prevent the race from being "destroyed" through inter-racial marriage; to stop people from becoming what it calls Aung San Suu Kyi, race destructionists, by having children with people of other races. This racism against marriage to foreigners is expressed by Khin Nyunt’s public rejection of his own son for having married a woman from Singapore. Racism, in such a mind set, trumps even the bonds of the family.

Internally and externally the institutionalised policies of the Junta express a primitive paranoid-schizoid concept of identity deeply rooted in race: all "badness is projected onto others who either have to be destroyed, assimilated or ejected.

13.15 DESTRUCTION AND PLUNDER OF FOOD

The UN General Assembly Resolution of March 2001 described the deprivations of all means of subsistence. The subsequent Resolution in 2002 condemned the violation of an adequate standard of living including food and medical care for religious and ethnic minorities. Evidence of this wholesale systematic destruction can be seen in accompanying footage of destroyed villages, food, clinics, livestock, animals, tools and utensils.
The destruction is the result of policy, not the random behavior of ill disciplined troops:

The SPDC told its field units in 1998 that it would no longer be able to provide full rations and that the units would have to find alternative methods to get food. (BBC, "Reclaiming the Right to Rice," Oct., 2003).
The evidence of destruction of food and resources suggests two underlying levels of intention: to pillage and plunder to sustain the Junta troops, but also to destroy the resources needed to sustain the ethnic civilian population. Sometimes, for example, animals are killed and food destroyed but not consumed, suggesting the latter intention is dominant.

The order, which in effect encouraged plunder by depriving troops of the means of subsistence, was given at a time of an unprecedented increase in expenditure on the military and the purchase of sophisticated weapons:

*Analysts also estimate that the Tatamadaw has spent at least 1.2 billion dollars on arms from China alone and possibly more than two billion in total during the last decade, though reliable figures are notoriously difficult to determine as barter deals and funds derived from heroin sales have allegedly been used to finance this build up. ('Capitalising on Conflict,' Earthrights International, Oct. 2003).*

In other words, we can infer the intention underlying the policy decision not to provide adequate resources to its troops in the internally displaced ethnic areas was to encourage systematic destruction of the means of subsistence. It was not because of an objective lack of resources at the Junta’s disposal. Policy decisions on allocation of resources interact destructively in the following ways: firstly, resources are directed away from civilians to the military on such a scale as to endanger the health of the general civilian population of Burma, and particularly its ethnic peoples (the regime spent 264% more on its military than it spent on health and education combined between 1990 and 1997 according to UNICEF's "Report on The State of the World's Children" 1999); secondly, these resources allocated to the military are directed to arms expenditure and the maintenance of a pampered, overwhelmingly Burman officer class. Thirdly, the resources are specifically directed not just from civilians and ethnic people in particular, but also from ordinary soldiers in such a systematic and comprehensive manner that the soldiers’ own means of subsistence is threatened. These deprived soldiers are then, in effect, encouraged to pillage, plunder, extort and deprive all means of subsistence from the ethnic villagers, thus inflicting a slow, indirect form of destruction.

The policy decision not to provide adequate rations and wages to Junta troops is an act of negative violence which, in turn, leads to the positive destruction of the conditions of life needed to sustain internally displaced ethnic people. The negative violence is inextricably linked to positive violence.
Incitement to genocide is one of the prohibited acts of the Genocide Convention. It has been interpreted broadly to include expressions which indirectly create the conditions, i.e., a climate of opinion, in which genocide becomes possible.

Throughout Burma we see hoardings expressing "People's Desire." This is an explicit statement of State policy. It includes the incitement:

**TO CRUSH ALL INTERNAL AND EXTERNAL DESTRUCTIVE ELEMENTS.**

The exhortation to crush all opposition has to be seen in the overall policy of the State:

**OUR THREE MAIN NATIONAL CAUSES;**

- Non-disintegration of the Union;
- Non-disintegration of national solidarity;
- Perpetuation of sovereignty

The explicit policy objectives of the State is thus a form of centralized nationalism.

The Internal destructive elements are the democratic opponents of the dictatorship, both Burman and ethnic peoples, who captured 82% of the seats in the General Election of 1990 and are broadly committed to a form of Federal democracy. As Martin Smith points out:

*It can be said that the real political struggle in Burma since independence has been a battle between the various "democracy" forces against the might of Ne Win and the country's military strong men. (*Burma, Insurgency and the Politics of Ethnicity,* ch. 5, p.101).

The incitement to crush all of these elements clearly expresses a policy that is both widespread, because all must be crushed, and systematic, because this is an explicit, formal, written, expression of state policy. Its meaning and underlying intent, therefore, deserve to be explored in detail. However, before we do, a brief excursion into the legal background to incitement is necessary.

The Secretariat responsible for drafting the *The Convention on the Prevention and Punishment of Genocide* addressed the issue of hate propaganda in general and concluded that:

*All forms of public propaganda tending by their systematic and hateful character to promote genocide, or tending to make it appear as a necessary, legitimate or excusable act shall be punished.*

The Secretariat further opined that:

*Such propaganda is even more dangerous than direct incitement to commit genocide. Genocide cannot take place unless a certain state of mind has previously been created.* (my underline, UN Doc. E/4447, p.32)

The exhortation To crush all internal destructive elements as the common enemy all over Burma is, arguably, precisely that: a deliberate attempt to create a certain state of mind in which genocide, and events such as the Depayin massacre, become necessary, legitimate or excusable.

Moreover, To crush expresses a specific method of destruction.

Firstly, it expresses the destruction of an object's physical external shape or structure: in the process of being pressed, or squeezed very hard from the outside, the object is physically broken, and its shape destroyed. We can call this the initial stage of physical, external destruction.
Secondly *crush* expresses total destruction. The object is actually changed into something else and becomes, in fact, unrecognisable from its original state. If something is crushed, it is transformed. For example, a solid is changed into a powder, a seed into oil. Let us take a pot. If it is broken, it may be put back together again. If it is crushed, it is reduced to unrecognisable powder. It cannot be turned back into a pot again. If a seed is crushed, it is transformed into oil. The oil cannot be turned back into a seed. The act of crushing, therefore, expresses not just a primary process of pressing and squeezing from the outside till the object is broken, but also a secondary grinding process of the surviving residual elements, so that nothing intact is left, no fragment by which the original could be known, let alone be remade. Crushing is total destruction.

Thirdly, crushing suggests a form of destruction which is not just total, but permanent. Something crushed can never be repaired. The powder can never be transformed back into a pot. The oil can never be turned back into a seed. In general terms, the Junta expresses the permanence of this form of destruction very visibly through the elimination of ethnic villages from its maps.

Fourthly, the object crushed can be totally *subsumed* or assimilated into something else, because nothing is left of its original structure, or integrity. Oil, or crushed salt, for example, become totally absorbed into cooked food. Crushed, ethnic people can become transformed into Burmans. Landless, and languageless, they can be physically and culturally reconstituted and absorbed into the greater Burman race: they do not all have to be actually physically destroyed. We remember that the alleged document expressing biological genocide advocated precisely that secondary part of the process: *Absorption of racial groups*. All memory of the original state is erased. Human memory and language, the internal structures of the mind which preserve culture, can be totally erased through permanent absorption.

There is evidence to suggest that this is what has happened in areas where ethnic minorities have been "crushed" for a long time. It is reported that many of the "crushed" ethnic Karen in the Delta region, or the Pao, now no longer know who they are, or were, or moreover, even care. The ooze of oil crushed, absorbed into food for assimilation by others, can no longer remember it was ever an olive.

Moreover, *All* must be crushed. This refers not to the nature of the external and internal destructive process, but to quantity. *All* is more than *widespread*, the criterion required for proof of Crime Against Humanity: it is more than the destruction of *part of a group* required for genocide. The public official incitement of the State of Myanmar requires total, as well as permanent and complete destruction, of *all* opposition.

The crushing of all destructive elements thus expresses an intended four fold process of destruction: firstly, to destroy, by pressing and squeezing, all ethnic and opposition groups as external physical structures; secondly, to grind them into unrecognisable, unreconstitutable elements; thirdly to transmute them into something else, i.e. Burmans; fourthly, to erase all memory of cultural and political identity completely.

Finally, crushing is not just a metaphor. Moslem mosques are crushed to form aggregate for roads: ethnic peoples are sometimes literally and deliberately crushed to death. For example on 26/7/99 troops from IB 101 led by Lieutenant Colonel Soe Win reportedly came to Ka-weh and Pway-plaw villages and massacred 22 Karen villagers. The victims were beaten, *pounded in paddy pounding mortar*, or in the case of women, gang raped to death. The activity is not new, as evidenced by atrocities inflicted before the British period. Moreover, the language used to describe the opposition incites crushing in a literal physical sense: Karen resistance are called *Nga Pway* or *Roundworms*; peaceful opponents of the regime in Thailand were described in "The New Light Of Myanmar" as *maggots in the carcass*. This kind of dehumanising language, a distinguishing characteristic of genocide according to the ICTR, is comparable to the way Nazis employed language to describe Jews (*rats* or *Judenrat*) to incite...
destruction. *Roundworms* and *maggots*, incite precisely the action advocated on the Junta hoardings: to *Crush* dehumanised victims totally and permanently to death.

Additionally, orally transmitted messages indicative of genocidal policy have been cited.

In "Fatal Silence" Martin Smith cites the state radio broadcasts in 1997 from a station at Myawaddy as being responsible for inciting the attacks on the Christian Karen in the Thai refugee camps and writes:

> it appears the Junta played a significant role inciting the attacks on the mainly Christian refugee camps inside Thailand including a 33 part series of Articles in the New Light of Myanmar the main thrust of which was to accuse the KNU's President Bo Mya and Christian zealots within the KNU movement of plotting anti-Buddhist discrimination and atrocities. To ensure these allegations reached the widest possible audience, many of these reports were also carried on State radio (including the newly inaugurated Myawaddy station of the Burmese armed forces or Tatmadaw) and in June 1995 they were reproduced in book form in both Burmese and English language versions.

**WRITTEN INCITEMENT**

The systemic racism is also evident in Junta publications. The book *"Watching for Long . . . and Didn't Say,"* a special collection of articles from "The New Light of Myanmar" published by the News and Periodicals Enterprise, under exemption order 286, is *meant to give readers a correct understanding of the stand and attitude of Myanmar towards other nations, particularly her neighbours* (e.g. Thailand).

One particular article titled, *A neighbour engaged in breeding,* "analyses" the issue of Thailand, refugees and their relationship to Burma thus:

> Some neighbours raise and breed chickens and dogs. These animals from the neighbouring house usually enter and destroy crops of other people's houses. If such animals are shooed away or beaten away, then there is bound to be some problem with the owner of the animals, the neighbour.

> Now Thailand is like a neighbour carrying out breeding work, as it has kept the so called refugee camps of the insurgents in its territory. Due to the acts of the insurgents, the so called refugees there occurred misunderstandings between Myanmar and its neighbour Thailand. As for Myanmar which has come to live near a neighbour carrying out breeding work, it is assumed that the national vigil and patriotism should be invigorated so that the sovereignty and territorial integrity of the State shall not be undermined, (p . 357)

Dehumanisation is explicit and total; the refugees are likened to dogs, or chickens, destroying crops next to other people's houses. (The refugees have, of course, been forced to flee from their ancestral lands where their animals, amongst other things, have been destroyed). Thailand is apparently involved in *breeding work.* The implication is that it is deliberately and intentionally undermining Burma in some sort of sinister, biological population project. The word *breeding* is particularly repellent and dehumanizing. The article, while not sufficiently strong in itself to justify a charge of genocidal incitement, nevertheless contributes to that way of thinking and feeling which makes genocide *necessary, legitimate or excusable.* If the refugees are compared to out of control dogs, intent on killing neighbours' chickens, and being deliberately bred to undermine national sovereignty by a hostile neighbour, their destruction is surely rendered, according to such reasoning and language, *excusable or legitimate.*

The article's subtext is the Junta's anger at the success in cutting infant mortality rates in the refugee camps to zero, thus leading to an annual 4% population increase. This compares to the 30% infant mortality rate the Junta inflicts, through active destruction and non provision of medical facilities, on infants born inside the internally displaced areas just across the border. A
state which expresses strong criticism at the survival of ethnic babies in refugee camps, whilst deliberately inflicting conditions which lead to a 30% infant mortality rate within its own borders, is arguably genocidal. In their primitive Darwinian world, survival of ethnic refugee babies is a threat to Burma national sovereignty.

We must remember that the article is no ordinary propaganda article produced by the State controlled newspaper: it has been specifically written, selected and published as a book in an unusual limited edition (2000 copies) for specific propaganda purposes to give the readers a correct understanding of the stand and attitude of Myanmar towards other nations, particularly her neighbours. It is in other words, an expression of policy (exemption order 419) produced by a select group of people operating at that highest level.

**CRUSH ALL THOSE HARMING THE UNION**

Virtually identical to the previous incitement, it differs slightly in that the victim group is explicitly identified as those harming the Union, i.e., those opposing the centralized State. As the mainly Burman democratic opposition is primarily concerned with establishing a democratic society, and as the ethnic peoples are primarily concerned with establishing a decentralized State, one can infer from this incitement that it is primarily aimed at destroying the ethnic opposition, since it is the latter which pose the main threat to the Union.

The main characteristics of the activity, however, namely destruction which is permanent and total implicit in the word Crush, remain.

**RACIST INCITEMENT AT THE AMBUSH OF DAW AUNG SAN SUU KYI'S CONVOY**

Although an organized attack on the National League of Democracy, a political organization, thus a Crime Against Humanity of Persecution and Murder, the events of May 30, 2003 were characterised by an extraordinary amount of racist hatred and incitement. For example, the following abuse was typical of the State sponsored USDA members who attacked the convoy:

*You destroyers of race, whores, who want to have Kala husbands; don't become kala wives, become my wife.* (Affidavit of U Khin Zaw on Depayin Massacre, Burma Lawyers Council, no 15, p.29)

*Race destroying women. You want to be wives of Kala. Before you make yourselves wives of Kala, become our wives.* (Report on Depayin Massacre, Legal Issue on Burma, Burma Lawyers Council no.15, p.21)

*Are you death-defying force for Kala women?* (ibid p.25)

A key factor in the relentless campaign and violent assault against Daw Aung San Suu Kyi is not just her democratic views, but race; despite the fact she is Burman she is, in the eyes of the Junta, a race destructionist, as she has had children with a foreigner, the man with the long nose.

The racial and the political are intertwined, but it seems that the attack and mass murder of members of Daw Suu's convoy was motivated by racial hatred, as well as political persecution.

One eyewitness described the attackers literally enacting the exhortation to crush:

*I saw with my own eyes the attackers striking the victims with all the force and stabbing viciously with pointed iron rods. Truly it was a murderous attack. The beating was done until the victims died.*
Furthermore, the incitement to kill Daw Suu was reportedly made by an USDA official at a public meeting on 1-11-96, at Le Pyin village, at 1400 hours:

Do you understand what is meant by eradicated? Eradicated means to kill, and added five times, Dare you kill Daw Suu Kyi? (Letter no.179/Cee (Nyein)/96 of 20.12.96).

Thus the incitement to kill Daw Suu was made by an official in a State organization; the attempt to kill her was made in a State organized ambush on May 30, 2003; a motivating factor was racial hatred. Political persecution, murder and racial hatred fuse in the attack of May 30, 2003, legitimized by the State's public incitement to crush all opposition as the common enemy.

13.17 THE POLICY OF BURMANISATION

This policy has been identified, explained, commented on and accepted by various scholars and writers: the following quotations acknowledge the existence of this state sponsored racial policy and an understanding as to how it works in practice.

Martin Smith, while accepting it, describes the policy with such curious understatement that it appears almost civilising:
Since independence governments in Rangoon have not been concerned with anthropological niceties. Rather, the priority has been to establish the idea of a common Burmese identity shared by all the inhabitants of modern Burma. (M. Smith, "Burma, Insurgency and the Politics of Ethnicity," ch.2, p. 35)

The description of Burmanization as establishing a common Burmese identity shared by all the inhabitants of modern Burma suggests a voluntary process. Indeed, a policy aimed at establishing a common Burmese identity sounds rational, even laudable. The man en route for Australia, however, with all his papers in order, dragged off the plane at the last moment, interrogated and refused permission to leave because he had not changed his original Indian name to a modern Burman one, was not being invited to share his identity with the inhabitants of modern Burma; nor are/were ethnic Karen prisoners starved to death in prisons, or ethnic women raped on a widespread basis, experiencing the fruits of becoming inhabitants of modern Burma. Moreover, the documented existence of 2,500 destroyed villages and the infliction of between 1 and 2 million internally displaced people as a result of the policy suggests, surely, that Burmanization is something a little more sinister than a process that involves not being concerned with anthropological niceties.

Professor Desmond Ball is somewhat more direct:

Successive governments have adopted an ethnocratic and assimilationist approach to managing diversity, with "national culture" represented as that of numerically dominant Burmans.

(Professor Desmond Ball, Working paper, No. 356, p. 5, Factionalism and ethnic Insurgent Organisations, Strategic and Defence Studies Center, Australian National University, March 2001)

This ethnocentric, Burman State has been defined by David Brown as follows:

A situation where the State acts as the agency of the dominant ethnic community... in which... recruitment to the State elite... and government is disproportionately and overwhelmingly from the majority ethnic group... the ethnocentric State is one which employs national ideology... to serve and re-enforce monopolisation of power by the ethnic segment.

What this means in practice can best be understood by a teacher who recently escaped from an ethnic area into Thailand. He has a Christian forename. When he wrote a reference for a student in Burma, his student would be automatically rejected because the reference contained his, i.e. the referee's, Christian name. Moreover, his ethnic students could not pass exams, because exam passes have to be paid for in bribes in Burma. Bribery is organised on the following racial/political lines:

- Firstly, ethnic discrimination: Burmans are favoured before other ethnic people. Even poor Burmans are favoured before wealthy ethnic people. Racist criteria trumps economic corruption.
- Secondly, the political discrimination in favour of the military: Burman military are discriminated in favour of even wealthy Burman citizens. The political criteria of maintaining a military State trumps the mundane need to perpetuate corruption.
- Thirdly corruption: rich Burmans are favoured before poor Burmans;
- Finally, the ethnic and religious minorities are doubly discriminated against and, in effect, excluded from success in the educational system, which in turn leads to their isolation from mainstream society and further marginalisation.
The discrimination is thus ethnic, religious, political and financial. These multiple threads intertwine and mutually complement each other simultaneously in a contorted tapestry of State sponsored persecution and corruption. Finally, however the teacher concluded his testimony by stating that Burman soldiers are currently given a sack of rice each month (equivalent to a month’s salary) to "marry" Karenni Christian women. The women are reportedly usually abandoned when the soldiers rotate out of the area at the end of the tour of duty. It is significant he stated that the payment was on condition that the woman must be from an ethnic minority and be a Christian, thus suggesting the co-presence of religious and ethnic persecution. This allegation, however, crosses the border line of legal, conceptual boundaries: the systematic discrimination and corruption outlined above in education strongly suggests the Crime against Humanity of Persecution is being inflicted, not the actual physical destruction of the group in whole or in part required for Genocide: however, a state sponsored programme bribing Burmans to "marry" (and then abandon) very traditional ethnic Christian women, with an inferred intention to prevent births from taking place within the group, does suggest something more than Persecution: it suggests a subtle form of biological genocide since such a programme carried out systematically over a long period of time on a widespread basis would lead to a large number of abandoned women with babies fathered by ethnic Burmans. This, in effect, reduces births taking place within the ethnic group.

In the above example, we can see how in reality the Crime Against Humanity of Persecution implicit in Burmanization, with its discriminatory intent to weaken or destroy ethnic and opposition political groups, can merge all too seamlessly into Genocide.

Ashley South, the Mon specialist, identifies three key threads of Burmanisation (or what he calls "Myanmification") as follows:

In its appeal to national monolithic identity, Myanmification i.e., Burmanization displays aspects of Fascist ideology. Furthermore, the emphasis on Burmese (Burman) purity and denial of minority cultures has led to a characteristically totalitarian [racist?] re-writing of history.

Interestingly he conflates the results of the emphasis on Burman purity with totalitarianism: the latter, however, may not necessarily have anything to do with racism. The Soviet Union was a totalitarian state but not, arguably, a racist state. Racism does not necessarily automatically lead to totalitarianism, though the two can be all too comfortable bedfellows. However, in the case of Burma, there is a convergence of three non-democratic traditions: Fascist militarism, racism and totalitarianism. The racism and the fascism are fused in the structure and role of the Burmanised/Burmanising army. It is Burman centred and officered, i.e. organised on racist principles and it controls most spheres of national life in a fascist, authoritarian way. The racism and fascism significantly contribute to totalitarianism, an ideology which excludes all other ways of thought and expression. What Ashley South did not describe was how the emphasis on Burman purity is intended not just to re-write history, but write the future on exclusive Burman lines.

What we have, however, is a generally accepted policy to Burmanise the population of Burma which is appears to be racial in intention and motive. It seems to have five components:

• Firstly, a totalitarian racist worldview;

• Secondly, the establishment and extension of an authoritarian, militarized, and Fascist State;

• Thirdly, cultural, ideological, linguistic and religious persecution of ethnic groups;

• Fourthly outright physical destruction of ethnic groups resisting or associated with resistance;
Fifthly, their replacement, through imposition of, and assimilation into, Burman culture, language, religion and people;

Sixthly, persecution and destruction of political, democratic opposition groups, including Burmans, which might provide a Federal space in which these peoples might survive.

13.18 INFERRED INTENTION: CIRCUMSTANCIAL EVIDENCE

As stated there is no need when proving a case of genocide to show evidence of explicit intention to destroy a group. Intention can be inferred from certain presumptions of fact and from circumstancial evidence as the ICTR opined. In the light of this it is significant that the greatest number of human rights violations are actually inflicted in areas where there is no armed resistance. This is evidenced in the following area breakdown of human rights violations (TBBC Report "Internal Displacement," ch.25, p.43, pub. Oct.2004) where the highest percentage of violations occur in relocation sites and cease fire areas:
This infliction of violations on victims with no physical connection to armed resistance was also commented on by the UN Special Rapporteur in his October 2004 address to the General Assembly.

One may infer that the disproportionate infliction of violations on victims with no contact with armed resistance indicates measures inflicted which go beyond what is required by a counter insurgency campaign and imply the existence of a policy of racial subjugation and assimilation, what is know in Burma's case as "The One Race policy."
14.1 TOTALITARIANISM

There is a general consensus that there is no discernible ideology motivating the Junta, just a desire to hang onto power. This is an opinion expressed even by grassroots human rights organizations themselves. To believe this, however, is to seriously misunderstand the regime. The opposition to the Junta has seriously, and perhaps fatally, failed to understand its underlying racism, what Martin Smith calls, its *Fanatical blood loyalty*. This is partly, perhaps,
for the very understandable reason that much of the vocal opposition comes from Burman
groups and much less from ethnic ones.

An example of omnipotent, Burman centred, totalitarian worldview is expressed in the
Pondaungia political palaeontology project under the control of the former ubiquitous Military
Intelligence chief, and former Prime Minister, the "moderate" Khin Nyunt. The project
involves the excavation and examination of a forty million year old fossil primate found in
the western part of the country (presumably the creature must have been politically a little
unwise to have dared originate in such a peripheral, non Burman area . . . but originate there
it apparently did, according to the former Head of Military Intelligence). The purpose of this
"project" is to show that man began in Myanmar. Myanmarrman will thus prove, not just that
the Burmans are the centre of Burma, but that Myanmar is the ethnocentric centre of the
entire world. Myanmification goes global. . .

This totalitarian worldview of the supremacy of the Burman race is the essential software
installed in the head of the Junta, something we can call, "WALLS": a system so sealed, so
complete, so self-sustaining as to justify the term totalitarian since it excludes all other ways
of thinking, knowing and remembering. The software comes with a full set of programmes
generically titled "Burmanisation" which when installed with the correct mindset
systematically destroys cultures, memory and history. However, to run and implement this
ideological software, to download the software of racial totalitarianism practically in the field,
the physical hardware of a fascist, military State is required, a 400,000 strong army, and a
concomitant militarised society.

14.2 RACISM: THE ONE RACE POLICY

The creation and propagation of this totalitarian, racist worldview, the policy is in the hands of
the Office of Strategic Studies commanded again by the former Prime Minister, Khin Nyunt.
It is staffed by relatively "educated" men with experience of working abroad and with good
command of English. However, central also to its world view is racism: the first objective
being to convince the people of one of the most ethnically diverse countries in the world that
the Burmese are one single Burman race (ein folk, ein Reich). Dr Hla Myint, one of the
centre’s spokesmen, clarifies the situation thus:

There has been [sic] research on medicine, health system and behaviour and there is one which directly
contributes to national consolidation. This research has led to the conclusion that we all descended from
the Mongolian tribe and therefore we, the indigenous races are not aliens but kith and kin.

Thus the racist policy of Burmanisation, homogenising all the Burmese races and ethnic
groups, is paradoxically, premised on the totalitarian principle that there are no peoples from
different races. The people of Burma are a single race. This theory is a politically convenient
way of destroying concepts of ethnic identity by convincing ethnic groups that the very
grounds of their identity, their ethnicity, do not exist. One wonders, if they are all one race,
why do they need to be Burmanised.

14.3 EXTERNAL RACISM

While the first objective of this worldview is to racially homogenise all people into Burmans,
the second objective is to exclude the outside world, (even if, puzzlingly, man originated in
Myanmar and the rest of the world must then have developed from My(r)anma man. . .)

Colonel Hla Min, spokesperson of the policy making body, Office of Strategic Studies,
clarifies this part of the policy once again:
For the future generations as well this constitutes a piece of historical evidence for trusting the blood relations and not outsiders whenever the affairs of the State are to be carried out. ("Order in Disorder", D. Seekins, pub. White Lotus, p. 289).

It is now illegal for Burmese citizens to marry foreigners.

14.4 REWRITING HISTORY

At the heart of this totalitarian project, however, lies an almost insuperable problem: the father of independent Burma, the Burman General Aung San, was a Federalist, a kind of Asian Tito who wanted to establish a Federal State with the ethnic peoples as full partners. The problem for the Junta is, as the trishaw man told me, gazing up at his photograph in a teashop: *We will never forget him.*

The totalitarian worldview, however, needs history to be forgotten, rewritten, re-remembered: "Windows" has to be taken out, "Walls" installed. To ensure that he is forgotten Aung San is being removed from history; the bank notes no longer bear his image, replaced instead by rampant Chitwi, the symbol of USDA; his museum is neglected; the anniversary of his death passes without commemoration. A world view intended to distort history; glorify the despotic Burman kings; rewrite the Second World War to exclude the role of the ethnic peoples in opposing the Japanese; demonise foreigners; destroy ethnic identities and idealise the army, has been created.

14.5 MILITARISATION AND FASCISM

If a mono-racial, mono-cultural State based on racist ideology represents the Junta's ideology, i.e., its software, then the hardware necessary to run the software is the militarized, fascist State of Myanmar. Fascism is an often abused word in the West, used in a loosely perjorative way: in reality, it denotes a State based on rigid authoritarianism, State control of the economy, and denial of liberty. It may not be racist, but racism and fascism are often all too comfortable bedfellows. Burma, however is not just a racist society: it is also a fascist society.

14.6 PERSECUTION

This is the downloaded software running day and night, decade after decade in Burma. It consists partly, but not exclusively of:

- Linguicide
- Religious persecution
- Racial persecution

Linguicide takes many forms including, most obviously, Burmanising place names, restricting ethnic language teaching, closing down ethnic language periodicals.
Religious persecution ranges from killing religious leaders, such as pastors, destroying mosques and churches, preventing new ones from being built, infiltrating the Buddhist Sangkha, and undermining Shan Buddhists.

Racial persecution involves systematic denial of citizenship rights, and a whole raft of explicit and implicit methods of persecution.

In the case of some ethnic groups, such as the Karen and Karenni, all three strands of the policy of persecution and destruction converge. They are racial, linguistic and often religious minorities. As such, they are targeted in all three ways. However, sometimes the ethnic group, as in the case of the Mon or the Shan, are predominantly Buddhist. Thus it might appear that their Buddhism might mitigate some of the the brutal effects of Burmanisation, since in respect of their religion they are of the same religion as their oppressors. Not so. For example, puzzlingly, I was informed of the destruction of a Buddhist stupa. This appeared confusing, even by Burmese standards, because Burmanisation, I had believed, imposes Buddhism on the population. The stupa was destroyed, then rebuilt, but written all over it was the Burman major's name who had had it rebuilt: the stupa had, in effect, been militarised, Burmanised and "Consecrated" as an artefact of the militarised state. Revering the stupa becomes inseparable from revering a perverted, Burmanised, militarised State version of Buddhism. An example of the perversion of Buddhism in the service of Burmanisation is given by Christina Fink:

Mon and Shan monks have faced difficulties in distributing literature in their own languages, and in some cases they have been prohibited from taking Buddhist exams in their own languages. Shan people were furious when SLORC authorities took over the funeral arrangements for a famous Shan monk who died in Hsipaw in the mid-1990’s. The entire ceremony was Burmanised, from the design of the structure holding the coffin to the way he was cremated. Like wise when the regime restored a famous Shan temple in Hsipaw, the Shan style roof was replaced with a Burmese style one. Thus the regime has attempted to impose a homogenous culture that is both Buddhist and Burman. "Living Silence," pub. Zed books, p. 226.

Racism is the key motive underlying Burmanisation. Being Buddhist, although a key component of Burmanisation, does not protect you if you are not racially Burman. In fact, the Shan have been targeted perhaps more violently and destructively than any other ethnic group, even though they are Buddhist.
Chapter 15:
EVIDENCE OF PHYSICAL DESTRUCTION:

15.1 THE STRATEGY OF DESTRUCTION: THE FOUR CUTS
The military programme to physically destroy resistance, which complements the policy of cultural destruction and assimilation known as Burmanisation, is known as The Four Cuts. It has been described by Martin Smith as follows:

Known as the Pya Ley Pya (Four Cuts), it was a counter-insurgency programme designed to cut the four main links (food, funds, intelligence and recruits) between insurgents, their families and local villagers. Over the years its use has been well documented and indeed frequently praised in public speeches by such leading army officers as Ne Win's long time deputy, Brig. San Yu, and General Tin Oo ex-minister of Defence and present NLD leader. The strategy, which is hardly unique to Burma, owes much to the new village tactics developed by British forces under Sir Robert Thompson in defeating the CPM insurgency in Malaysia; it was also similar in concept to the strategic hamlet programme the United States employed, with Thompson's advice, in Indo-China. Both were criticised for their gross human rights abuses. ("Burma, Insurgency and The Politics of Ethnicity," ch. 13, p. 259).

Two points need emphasising: the policy is official and systematic. It is also closely associated with, perhaps inseparable from, gross human rights abuses (or rather violations as this a state policy). It is significant that Martin Smith compares the Four Cuts policy to those inflicted in Malaya and Vietnam. He could have added South Africa in the Boer war, where the practice was pioneered. However, in those situations, the violations were committed by democracies with independent media: news of My Lai did emerge, for instance, and the South African camps operated during the South African war caused moral outrage in Britain. In Burma, however, the policy is inflicted by a dictatorship, in areas totally closed off to the outside world. In addition, the violations are arguably part of the the policy, not unwanted side effects of a counter-insurgency campaign. They target ethnic civilian people, not just resistance fighters. Also, in Vietnam and Malaya the Americans and British were involved in, arguably, political conflicts against Communists, not wars against ethnic peoples (though in the case of people like Lieutenant Calley and others the distinction appears to have got lost): in eastern Burma, however, the peoples in Shan, Karenni and Karen states are fighting, as they see it, a conflict to protect and maintain their ethnic identities, not primarily for a political ideology; the army opposing them is an overwhelmingly Burman officered army, implementing a policy of Burmanisation, inflicting cultural and physical destruction. In a political conflict, citizens and activists can arguably be separated; in an ethnic conflict this is more difficult. A counter insurgency campaign targeting ethnic opponents will tend to view the whole ethnic group as the potential enemy.

15.2 THE FOUR CUTS: A POLITICAL OR ETHNIC STRATEGY
Thus an important difference must be made as to intention and motive between the British and American use of The Four Cuts programme, which was to defeat a communist political movement, and the Burman use, which is to destroy ethnic resistance, and then subjugate, assimilate, and absorb the remaining population. The role of civilians, and how they are treated by subjugating armies, is likely to be different in an ethnic conflict compared to a political one. In the political conflict, for pragmatic reasons if for nothing else, everything must be done to divide military opposition from civilians in order to "To win hearts and minds": it makes military and political sense to treat civilians humanely. In an ethnic conflict, the very existence of ethnic peoples per se makes them a legitimate target since ethnicity, something which cannot be erased, is the motive for resistance. The Burmese army actually expresses this in some imagery it uses to describe its activities. It likens the resistance to the leaves of a plant which must be lopped off; then the stem must be cut and the whole plant pulled up. Finally, the surrounding soil must be scorched. This comprehensive destruction clearly implies a scale of destruction far more comprehensive that what is generally understood as a counter insurgency campaign. Moreover, most commentators now agree that the distinction between resistance fighters and civilians no longer exists in eastern Burma: civilians are targeted, as the UN and Amnesty reports state, solely or purely on the basis of their ethnicity. What I saw on my investigation was wholesale destruction of villages, churches, schools and food supplies. The killing of civilians included a pastor who was beheaded after being tortured for three days and a two old child shot through its whole body. The Four Cuts campaign as described by Martin Smith as a counter-insurgency programme is may be an incomplete way of conceptualising such behaviour. It limits the intention underlying the violations to counterinsurgency, rather than subjugation and assimilatioin of ethnic peoples.

However, Martin Smith, himself, on occasion does describe how the programme goes well beyond the limits of counter-insurgency. For example, he describes the wholesale, permanent, forced fleeing of civilian ethnic peoples in certain geographic regions:

> Vast areas of rural Burma, especially in the Pegu and Arakan Yomas and the mountainous ethnic minority areas, have not been repopulated since the rebels were forced out. ("Burma, Insurgency and the Politics of Ethnicity," ch.13, p.261).

> Vast [ethnic] areas which have not been repopulated suggests an intention to remove a significant part of the group permanently, not just to separate resistance fighters from civilians in order to eliminate the former. (We can recall here the ICTY definition of genocide as:

> Selective killing of a group of people that leads to their destruction through such methods as deportation or forced fleeing. (Prosecutor v Jelisic, IT 95-10-T).

Smith also draws attention to the specifically ethnic nature of the destruction in eastern ethnic Burma, in contrast to mainly Burman lowland Burma:

> Unlike the Four Cuts campaign in central Burma, these attacks were strongly ethnic in character and were carried out by predominantly Burman officers against Karen, Karenni and Mon villagers, (ibid, p. 397).

This conflation of resistance fighters and civilian is also described by Chris Cusano in his chapter on displaced Karen in "Caught Between Borders" (ed. Mark Vincent, Pluto Press, Ch. 6, p. 146):

> While standard anti-insurgency tactics undeniably caused much suffering, in theory they distinguished between civilians and combatants. But during the 1990s the Burmese army seemed to have abandoned these distinctions in preference for a less discriminating strategy.

He quotes one aid worker as follows:
The big issue, the aid worker said, is that before people were dislocated due to fighting between the Burmese army and the ethnic insurgencies, and the villagers were caught in the middle, so they had to flee. Now, it's not because of any offensives that they have to move; it's directly because of military activities against civilian villages.

The former UN Special Rapporteur, Rajsoomer Lallah Q.C., also described the Four Cuts in a way that expressed a form of destruction far more comprehensive than what is understood by the term, counter insurgency:

Forced relocation has now been going on for many years and would appear to be in furtherance of a scorched earth policy, or what is generally known as the "four cuts" strategy adopted by the military, that is to say, depriving insurgents or suspected insurgents of firstly, food, secondly funds and resources, thirdly sources of intelligence and information, and fourthly possibilities of recruitment. All this exacerbated by the army forcibly taking, without payment, any rice, poultry and other farm animals to feed themselves and burning off the rest of the crops. (Statement by Special Rapporteur, Rajsoomer Lallah, to the General Assembly, October 2000)

A Scorched earth policy expresses a form of destruction which is total and indiscriminate, significantly different from a policy limited to separating civilians from resistance fighters. The exacerbation he notes, involving the comprehensive destruction of food, inflicts conditions in which civilians cannot survive. The question is what is the underlying intention behind the the exacerbation: is it intended to destroy civilians as well as feeding marauding troops? The special Rapporteur's observation of the burning off of the rest of the crops implies the intention is to create unsustainable conditions of life. What other intention or motive could there be behind such systematic, widespread destruction of food? It is an activity which goes beyond persecution and denial of rights by inflicting indirect, physical destruction of substantial parts of ethnic groups.

Although religion, especially in the case of the Christian Karen and Chin, and ideology, in the case of democracy activists, are important factors motivating resistance, it is primarily ethnicity, which characterizes the conflicts in eastern Burma, both from the point of view of perpetrators and victims.

### 15.3 IMPLEMENTING DESTRUCTION: ORDERS TO DESTROY

We have identified some key areas of International Humanitarian Law and applied them to Burma's human rights situation, and related them to selected Human Rights reports. It is now necessary to examine the implementation of the policy of Burmanisation. The following orders can serve as a bridge between the policy of destruction and its practical expression.

### 15.4 ORDER TO DESTROY FOOD

The following order was intercepted on November 1, 1998 in Tenasserrim Division from No 5 Operational Command Headquarters to No.3 Tactical Command:
On 28 November, 1998, No. 5 Operational Command Headquarters sent a message ordering No.3 Tactical Command to search and destroy all IDP sites and rice plantations. The order included the following instructions:

1. Battalions must search where there are IDP’s and their plantations, and clear all. 
2. If there are IDP’s, investigate where they have been settled and report back promptly. If there are rice plantations and related items, destroy them tactically. 
3. Information will be forwarded to the Coastal Military Command headquarters to await further instructions.
This is Systematic destruction: the order coming from No. 5 Operational Headquarters states that the destruction has to be carried out tactically, suggesting something planned and methodical. This is widespread destruction: namely all plantations of rice and related items must be destroyed. This order expresses full intention to destroy all means of subsistence, i.e., rice plantations and related items.

The actions are carried out in the full knowledge of the circumstances, i.e., they know the victims are internally displaced people, not resistance forces, and they know what they are doing, i.e., destroying rice and related items. They know that the destruction of rice and all related items will inevitably lead in the ordinary course of events to people dying as the victims are very poor subsistence rice farmers, who have already been internally displaced, and have no other source of income or food. The fact that some might be able to escape to Thailand, or forage in the jungle does not reduce the culpability of the perpetrators. (It is not the intention of the order that the victims should survive by receiving aid from Thailand or by finding edible forest products.)

The victims are, in the orders’ own words, internally displaced people, not resistance fighters.

The above, in its systematic and probable widespread aspects, expresses a Crime against Humanity of Persecution defined as weakening or destroying a civilian group. This is in addition an ethnic crime. In this case, the perpetrators giving the orders are Burmans implementing a policy of physical destruction expressive of the wider policy of Burmanisation. (Senior officers are almost always Burman and this order comes from Command Headquarters). Moreover, the victims are ethnic Karen villagers, living in the Karen area of Mergui Tavoy.

The destruction expressed in this order is thus an expression of a policy deliberately inflicting on the group conditions of life calculated to bring about its physical [not cultural or social] destruction, in this case a particular group of Karen in Mergui Tavoy, a part of the wider one million Karen targeted for destruction in identical circumstances in Karen in eastern Burma. The order may thus express a genocidal act as defined by Article 2 (c) of The Convention on The Punishment and Prevention of the Crime of Genocide, clarified by the International Criminal Tribunal for Rwanda as measures imposed to create a slow death (ICTR -95-5-T, May 1999) including systematic destruction of homes, food and medical supplies, (my underline)

There is, perhaps, some ambiguity, however, about the meaning of the word Clear. It usually means totally remove and thus, if applied to people, is close to the idea of ethnic cleansing as inflicted in Yugoslavia. However, applied to plantations and related items it would suggest outright destruction: you cannot clear plantations, (living plants) without destroying them. Plantations and related items form the basis of life for subsistence rural farmers. Applied to internally displaced people themselves, its meaning is more ambiguous. It suggests, perhaps, not their immediate immediate physical destruction, but their total, and probably violent, removal. But removal from where to where? Clearing them, it can be inferred, means forcibly concentrating them into the life threatening conditions (UN Special Rapporteur, 1998 Report) of the relocation camps, where, if the victims survive, they face subjugation, routine and regular rape and torture (ibid) and, finally, long term extinction through subjugation and assimilation.

15.5 ORDER TO KILL

4, AUGUST 1998
From frontier Division Headquarter (44) 041900/2230

To all Batallions, frontier/All Batallion, rear headquarters/All militia/
Division Headquarter 4/ Tactical Command 441/442/443 Tactical Command 442/443

1 The commander, South-east command gave an order, while inspecting Paan, Kawkareik, Hlaing Bwe Town with those responsible on 10 July to 15 July, 1998.
   a) To scrutinize and achieve each aim and duty, that had been given by Army sperm, South-east Command.
   b) To swipe out the enemy with counter guerilla warfare against their guerilla warfare. To make counter mines operation against their mines operation. To crush down the enemy who infiltrate into inner part, by blocking not letting them escape, to cleanse them through and through by combating. To relocate or abolish villages if necessary for military operation and to quiet down territory. Not to keep alive anyone related with the enemy. To make more operation during rainy season. To search for enemy, otherwise block up illegal; trafficking of animals crossing the border and illegal timber trading.

2 I order you to carry out effectively the above south east commander's command.

COMMENTARY

The order clearly comes from the highest level- South East Supreme Command- and is thus expressessive of full intention and knowledge. It is clearly systematic. Moreover, it is part of a widespread pattern of violative behaviour.

Most of the specific commands can be considered "legitimate": countering guerilla warfare with guerilla warfare; countering mines with mines; acting against trafficking of animals etc, would appear to be the limited actions of a counterinsurgency campaign. However, the order to relocate, or abolish, villages for military operation suggests widespread destruction leading inevitably, or at least possibly, to civilian deaths, either directly or indirectly. The underlying intention and motive, however, still appear to be limited to counterinsurgency, rather than targeting civilians for destruction as such. The villages, it appears, are to be destroyed as part of a counter insurgency military operation. So far the order would appear to be consonant with the widespread and systematic attack, inevitably or possibly leading to suffering and inevitable deaths of civilians, expressive of a Crime against Humanity such as Forced Transfer of Population, for example.

It is, however, the order not to keep alive anyone related with the enemy which is more problematic. It suggests that what is being inflicted is more than counterinsurgency. Not to keep anyone alive is, presumably, a euphemism for killing, either directly or indirectly. But what is this target group: anyone related to the enemy?

The enemy, we can infer from the physical context of rural Paan district, are ethnic Karen resistance fighters. Anyone related to them could literally mean relatives, or, more broadly, it could refer to any kith and kin of the local Karen community connected with them. From the context of the widespread and total destruction inflicted on the eastern Karen areas, we can infer that it is likely to mean this wider community, given that this is primarily an ethnic conflict, rather than a political one. The fact that the Karen resistance fighters come from the same ethnic group as the villagers, suggests the target group probably includes much of the local, ethnic, civilian population.

The order is, one can infer, calling for the killing of ethnic civilians not directly involved in conflict. It is thus a clear violation of Common Article Three of The Geneva Conventions which
protects civilians not directly involved in fighting. The difficulty is trying to determine when targeting of ethnic civilians for destruction becomes genocidal. The order does limit the victim group to those related to the enemy. Its intention does, thus, appear to be limited to selective killing of civilians connected to armed resistance, rather than killing the group en masse. However, does killing anyone related to them constitute selective killing which leads to the destruction of the wider group?

As stated, the order is clearly a violation of Article Three of The Geneva Conventions because it orders the killing of people not taking an active part in hostilities: being related to resistance does not mean being an active member of the resistance. Furthermore, its systematic nature suggests the order expresses the Crime against Humanity of Murder. Moreover, in the context of hundreds of thousands of ethnic people forced to flee externally, and between one and two million forced to flee internally, the killing of anyone related to the enemy could be interpreted as an act of genocide, i.e. selective killing in the context of massive forced fleeing, as expressed by the International Criminal Tribunal for Yugoslavia:

Selective killing which leads to the destruction of the group through such methods as deportation or forced fleeing (Prosecutor v Jelisic, Judgement IT-95-10-T). . . As an incremental step in the overall objective of destroying the group, (ibid)

We can see the order clearly demands the killings in the context of the overall campaign to inflict forced removal of the people.

15.6 DESTRUCTION BY KILLING
15.7 NUMBER REQUIREMENT

When examining killing we need to remember that international law does not require that the numbers killed be very large:

Genocide is an act committed against an individual because of his or her membership in a particular group as an incremental step (my underline) in the overall objective of destroying the group. (ICTY, Prosecutor v Jelisic, IT-95-10-T)

The Rome Statute requires only that one or more be killed.

15.8 ARBITRARY KILLING AS GENOCIDE

Secondly, the individual acts do not require premeditation themselves, but need to be inflicted in furtherance of the act of genocide:

For the crime of genocide to occur, the mens rea [special intention] must be formed prior to the commission of the genocidal act. The individual acts themselves do not require premeditation; the only consideration is that the act should be in furtherance of the genocidal act (Prosecutor v Kayishbema and Ruzindana, Judgement 21 May 1999, ICTR-95-IT-para.91).

Thus we can see that the killing of small numbers of people in apparently random arbitrary ways can be considered to be acts of genocide if they have been inflicted as part of an overall plan to destroy an ethnic group in whole or in part.

15.9 ESTIMATES OF NUMBERS KILLED IN EASTERN BURMA

Despite the predominant reliance on slow, indirect methods of destruction in eastern Burma, there is also overwhelming evidence of selective and, to a lesser extent mass killing of ethnic peoples. Each year well documented reports, including photographs, of hundreds of killings are brought back to the Thai border by survivors and researchers. (In the very first hut I came to fifteen yards into Burma from the Thai border, the guide had been shot to death in the back while fleeing and the hut was riddled with bullet holes). However, it should be pointed out that the numbers documented are well below the numbers of people who have actually been killed. The following is a description from a defector describing how soldiers try to conceal dead bodies:

Beside the village, there's a stream. So we to kill people beside the stream, where we could dig a hole easily and bury them easily. If we didn't bury them properly, animals might come and find them. Also we had to worry the villagers might see. Sometimes if we killed two people, we'd put them in the same hole. If the villagers knew the people we caught, they'd question us about them. We'd say we released them, but actually we killed them. ("No Childhood At All," Images Asia: Maung Hlaing, April 1995).

Reliable sources indicate that actual documented killings probably account for only about 25% of those which have actually been inflicted, and that the numbers killed each year are much higher. This is because many killings are carried out in areas where researchers simply cannot go, and killings take place in conditions of secrecy, with bodies very often dumped in rivers, deep jungle, or burnt. It is, however, quite possible to see Karen bodies floating in the eddies of the Salween river from the banks of the Salween national park in Thailand, north of
Mae Sariang. If it is possible, sometimes, to see these bodies on a limited stretch of the single river, one can infer that the number of people killed further inside may be considerable. Taking the year 2000 as an example, the Human Rights Documentation Unit recorded about 600 killings (Human Rights Year Book 2000, Extrajudicial Killing. Summary and Arbitrary execution, p.147) In 1997 Amnesty International recorded 300 killings in one month in Shan State alone.

Despite the difficulties, evidence has been collected of selective and mass killings. For example Amnesty International recorded the following mass killings in the year 2000 in Shan State:

*In the first five months of 2000, a series of massacres reportedly occurred in Kunhing township (the municipality where we remember there has been a 70% fall in population levels) where previous massacres had taken place in mid 1997. Over 100 Shan and hill tribe people are believed to have been killed in January, February, and May 2000. Amnesty International was able to obtain detailed information about the first massacre, when 19 people were killed by SPDc troops at Khaen Kham village on 30 January. A group of 20 men from Kun Pu village tract, Kunhing township were reportedly shot dead on 12 February after they returned to their ancestral village to pay respect to the local guardian spirit. Five women and children who were hiding in a forest hut nearby were subsequently shot dead by the same military unit. On 23 May a group of 64 Shan and hill tribe villagers were working in fields near Kunhing town when they were reportedly shot dead by troops from infantry battalion 246. (Amnesty International, Myanmar, ”Exodus from Shan state,” p.7, ASA 1611/2000).*

We note that the victims were all civilians and included women and children.

15.10 OVERALL ESTIMATES OF NUMBERS KILLED

As examples of deaths among ethnic groups, Genocide Watch in Washington DC estimates that about 30,000 Karen have been killed in ten years. In the case of the Kachin, Martin Smith noted that *The Kachin have recorded the verifiable deaths of over 33,336 Kachin civilians at the hands of government forces in the years 1961-1986.* ("Burma Insurgency and the Politics of Ethnicity," ch. 5, p.101). Martin Smith has estimated about 10,000 people die a year in the border areas and the overall figure for the past decades runs into hundreds of thousands. Such figures of people directly killed obviously meet the qualifying criteria of considerable or substantial necessary to justify a charge of genocide by killing in terms of numbers. They far exceed the Rome Statute's requirement of one or more. These deaths do not, of course, include the deaths of those resulting from conditions deliberately inflicted on civilians.
15.12 REASONS FOR CHOICE OF THIS MASSACRE

This massacre has been chosen as a case study for the following reasons:

- It occurred at about the time of Aung San Suu Kyi's last release when the world's journalists were invited to Rangoon to applaud her "freedom" and herald the new dawn of democratization. It thus illustrates the contrast between the bogus, stage-managed event in which the global media was all too ready to collude, and the reality on the ground which it chooses to consciously disregard;

- It occurred at the beginning of this particular project;

- The victims were all Karen civilians, mostly women and children;

- A camera was, very unusually, on hand to photograph the dead bodies in the immediate aftermath on the following morning;

- I was personally able to interview some of the survivors, including severely wounded children, at length after their arrival in Thailand;

- The survivors were also interviewed and video taped by a United Nations consultant working for the United Nations High Commission for Human Rights and translated by an interpreter;

- The results of the interviews were then further crosschecked and corroborated with other interviews carried out by a journalist who wrote up the story for "The Bangkok Post"; (see "The Bangkok Post," August 4, 2002);

- This case study is based on these extensive recorded interviews;

- The survivors' stories expressed a consistent pattern of events;

- The perpetrators were allegedly, according to one report, from a special counter insurgency shock force directly under the central command of Rangoon, thus implicating the highest level in the army;

- The commander of the division was reported to have been redeployed, or promoted, to a teaching position in an officer training school, thus indicating not just failure to punish the person responsible for the massacre, but also his official exculpation, and even reward;

- Villagers said that before the massacre took place the local commander had said: all Christian Karen must be killed;

- The immediate motive for the massacre was to punish those who did not wish to be forcibly concentrated into a relocation camp;

- The killings took place within the widespread and systematic, premeditated policy of forced relocation and forced labour, itself the Crimes against Humanity of Severe Deprivation of Physical liberty and Forcible Transfer of Population, inflicted on the eastern ethnic Karen;
The mass forced concentration of ethnic peoples into the life threatening conditions of the camps, selected on the grounds of their ethnicity and deprived of necessities for survival, may itself be a genocidal act, irrespective of whether they are killed directly in the process.

15.13 BACKGROUND TO THE MASSACRE

The villagers came mostly from Hter Leh Bleh village in Dooplaya district.

They had been ordered to be forcibly concentrated into a camp, but about thirty of them escaped to two isolated huts where they could hide.
The villagers reported that their cattle had already been killed by Junta troops before the order to relocate had been given. Some ethnic villagers had in fact previously escaped prior
to this event from other villagers to Hter Ler Bleh and were being given protection by these villagers.

15.14 THE MASSACRE ITSELF

The massacre was carried out by about 20 soldiers of Division 88 (a division notorious for its brutality) at about 11.55 on the night of April 28, 2002. When I asked how the victims knew the time, some explained they had watches. They knew the identity of the perpetrators because many of the victims had been forced to porter for this group of soldiers, and had thus lived in close proximity to them. The soldiers were guided to the two huts by the village headman.

The route of the soldiers is illustrated on the accompanying sketch map drawn by a medic who found the bodies on the following morning. It is clear that the attack did not come from the front, but from behind the huts, i.e., from the opposite direction from which the soldiers came had come. This suggests the attack was premeditated.

Ten Karen civilian villagers were killed at 11.55 on the night of April 28, 2002 in the hamlet of Ta Ri Tae Khi, near the village of Htee Ler Bleh in Kya-in township, Dooplaya district Karen
State. A pregnant woman died from her wounds sustained during the massacre ten days later, after trying to give birth to her stillborn child.

The very high incidence of women and young children amongst the victims is accounted for by the fact that the men were sleeping in the surrounding bush in order to provide enough room for the women and children to sleep in the huts: the men were thus able to escape. It was reported by a woman in a nearby hut that she heard after the first burst of prolonged firing, a second round which consisted of a number of repeated, single shots. This suggests that the wounded victims, including the young children, were "finished off" by the soldiers in a round of single shot firing. It is significant, in this context, that all the victims unable to escape were killed, not wounded. One would expect there would have been wounded survivors if the attack had been unpremeditated. The evidence of the two sets of firing suggests an intention to systematically kill all the victims.
Most witnesses reported two intermittent phases of gunfire. No gunfire was reported from inside the huts because the villagers were unarmed and no gunfire was reported coming from the surrounding area, apart from that fired by the Burmese soldiers. An eyewitness stated that one reason for the high number of child casualties was because ladders leading down from the huts, which were built on stilts, had been shot away and so the little children attempting to flee were stuck at the top of the ladders unable to jump.

**ETHNIC IDENTITY OF VICTIMS**

All the witnesses identified the dead victims as being Sgaw Karen. All the survivors I interviewed identified themselves as Sgaw Karen. This is, therefore, we can infer an ethnically motivated crime, all the victims being from one ethnic group: the survivors described the perpetrators as Burmese, the Karen term for Burman.

**THE PERPETRATORS**

The survivors all claimed the perpetrators were about 20 Burmese soldiers from Light Infantry Batallion 78. One unconfirmed report suggested this batallion was part of Division 88. This division was formed, according to Martin Smith, (ch.13, "Burma, Insurgency and the Politics of Ethnicity", p. 261) as part of a Special new strike force in 1967. Smith points out, with characteristic understatement, that this division has Few qualms about local sensibilities:

> Significantly, overall command of this new division was given not to regional military commands but to the Office of the Chief of Staff in Rangoon. The intention was deliberate. As counter-insurgency "shock troops", they have few qualms about local sensibilities.

Three points need to be made. Firstly, because this Division has a reputation for brutality, it would be consistent with its past pattern of behaviour to carry out a massacre such as this. Smith, himself, calls them Counterinsurgency shock troops.

Secondly, as they are directly commanded by the Office of the Chief of Staff in Rangoon, there is a particularly direct line of responsibility to the highest level of army commanders.

Thirdly, Martin Smith seems to be implying that the reason why this division was deliberately placed directly under central command, was because of their implied brutality (few qualms about local sensibilities); the inference being that central command would give them a free rein. In other words, the more brutal a division is likely to be, the more likely it is to be placed under central command, not to rein it in, but in Burma's topsy turvy world, to license it to do whatever it wants.

**CONDITIONS OF LIGHT**

Witnesses said the massacre took place in moonlight, but it was difficult to get any more detailed information about this. However, it is clear that the light was sufficiently good to enable the troops to operate, identify the huts, and fire accurately enough to kill their victims. Arguably, it is likely that the soldiers would have been able to identify silhouettes of victims clearly enough. The children, in particular, were very young and small, and it is likely they would have been identifiable as such. Moreover, one can infer their childish screams would have been easy to hear and distinguish in the silent forest clearing, especially as the killing took place in two phases of gunfire.
15.15 GENERAL CONTEXT OF THE MASSACRE

The killings took place within the context of the systematic, premeditated, forced relocation campaign described in UN General Assembly Resolutions. (It was not, of course, the intention of the soldiers to force the villagers to flee to Thailand, but to relocate them to another subjugated part of the locality. The intention was, therefore to enforce internal displacement, not external displacement.) The perpetrators thus knew that their actions were part of the wider campaign to forcibly displace ethnic Karen civilians. The crime would therefore appear to be a mass killing taking place in the context of the systematic policy of forced internal displacement, defined as The Crime Against Humanity of Deportation or Forcible Transfer of Population. (Article 7 (1) (d) Rome Statute.)

One of the purposes of this forced displacement is to extract forced labour from the villagers when concentrated into one of the 176 relocation camps. The forced labour has been documented by the UN affiliated ILO which has charged Burma with conducting forced labour on such a scale as to justify the charge of Crime Against Humanity, identified in the Rome Statute, as the Crime Against Humanity of Enslavement (Article 7 (1) (c) (See footnote 1: It is understood that such deprivation of liberty may in some circumstances include exacting forced labour.) Thus the Crime Against Humanity of forced displacement is directly connected to the Crime Against Humanity of Enslavement.

Moreover, the systematic concentration of tens of thousands of people in camps justifies the allegation of the Crime Against Humanity of Imprisonment or other severe deprivation of physical liberty.

Furthermore, in this particular case, the survivors described how, prior to being ordered to forcibly relocate to the site, their animals and possessions had already been destroyed; thus conditions had been inflicted which would have made it difficult for them to survive in their village. They were thus trapped in the dilemma of so many ethnic villagers in eastern Burma: caught between being forcibly concentrated into a camp, hiding in the jungle, or fleeing to a very inhospitable Thailand.

This particular massacre was thus carried out in the context of a long campaign of widespread and systematic forced displacement; widespread enslavement and widespread and systematic use of forced labour. All have been documented and condemned by UN Special Rapporteurs and General Assembly Resolutions for over a decade. They have been clearly defined in the Rome Statute as the three interconnected Crimes Against Humanity of Displacement; Forced Labour and Severe Deprivation of Liberty.

The victims, all ethnic Sgaw Karen, were named as follows:

1. Saw Hto Paw (male) 56 years old from Noe Ta Shu village
2. Naw Hsar Kay (female) 51 years old from Noe Ta Shu village
3. Naw Kri Htoo (female) 12 years old from Noe Ta Shu village
4. Maw Ble Po female 5 years from Noe Ta Shu village
5. Daw Htwe Ye (female) 50 years from Meh Ka Taw village
6. Naw Mu Tha (female) 40 years old Meh Ka TaW village
7. Mu Pwat Pwat (female) 7 years old Hter Law Bleh village
8. Saw Ka Pru Moo (male) 14 years old Htee Law Bleh village
9. Naw Plah (female) 5 years old Htee Law Bleh village
10. Naw Dah Baw (female) 2 years old Htee Law Bleh village
11. Naw Pi Lay (pregnant female) 45 years old from Htee Law Bleh village
12. Still born baby of Naw Pi Lay
Twelve victims have been named, while there are only ten bodies in the photo, because the pregnant woman (shown in the second photograph) and her still born child survived for ten days.
The killings were premeditated. This is demonstrated by the fact that the troops set out at night guided by the village headman in search of the specific missing villagers. Additionally, the huts were attacked, not directly from the direction from which the troops were approaching, but indirectly from behind. (Had the soldiers stumbled unexpectedly on the hut, they would have approached directly.)

The troops opened fire, not randomly or arbitrarily, but selectively at a specifically targeted group of victims who had fled forced relocation. The two firings, interspersed by a distinct pause, indicate planned, organized pre-meditated action. (There was no returning fire at any time, including during the pause, clearly showing that there was no armed opposition.)

There were no wounded survivors left at the scene as one would expect to see in a shoot out. All the victims were dead, suggesting that any wounded were systematically executed. This is substantiated by a witness in a nearby hut who heard a series of single shots being fired after the first burst of firing.

Despite the probable poor visibility, it is very likely that the screams of victims, particularly of women and children, would have been audible and distinguishable, especially in the interval between the two sets of shooting.

The light was good enough for the troops to kill their victims. As most of the children were very young children (four were 7 years old, or younger), and the survivors stated that some were shot while trying to escape from the hut, it would be logical to infer that the women and, especially, the children, were also visually identifiable.

**VOLITION**

The troops who carried out the massacre clearly intended to do so.

**COGNITION**

The perpetrators had full knowledge of circumstances. They had knowledge of the wider context of systematic forced relocation or severe deprivation of liberty, because they were inflicting this policy. They knew the families they were looking for.

In terms of level of intentionality and knowledge of the circumstances, this mass killing meets the criteria of intention level 1. The perpetrators fully intended to kill their victims and had full knowledge of the circumstances. (We remember that the minimum level of intentionality for a Crime against Humanity is set as low as level three, i.e., the perpetrators, while not wishing to kill their victims, know that such a possibility exists if they carry out their actions.)
The killing of the ten civilians, mostly women and children, and subsequent death of a pregnant woman and her still born child meet the specific criteria of a Crime Against Humanity of Murder as described in the Rome Statute of The International Criminal Court:

**Article 7 (1) (a)**

**Crime Against Humanity of Murder**

**Elements**

1. The perpetrator killed one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

This Crime Against Humanity of Murder took place within the consistent pattern of crimes known as The Crime against Humanity of Deportation or Forcible Transfer of Population as defined by the Rome State:

**Article 7 (1) (d)**

**Elements**

1. The perpetrator deported or forcibly transferred without grounds permitted under international law, one or more persons to another state or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

This mass murder can thus be considered to be a Crime against Humanity. Does it also justify being considered an act of Genocide by killing?

The victims were all Karen, the perpetrators reportedly all Burmans, understood to be part of special shock troops probably directly controlled from Rangoon by the Policy making Directorate of Defence Services Institute. This is, therefore, an ethnic crime in addition to a crime against civilians in general. Is it, however, expressive of a policy to destroy the Karen people in whole or in part?

The Sgaw hill Karen of eastern Burma, of which the villagers of Hter Ler Bier are part, are a distinct part or entity of the Karen people, physically and culturally quite different from the other parts of the Karen people in the Delta, or in Rangoon.

This mass killing therefore needs to be considered within the overall context of a widespread and systematic policy of ethnically targeted destruction, which includes systematic destruction of homes, and deprivation of resources necessary for survival. As Dr Cynthia Maung of the Mae Tao Clinic said on December 11, 2002, summarising a view expressed by the victims themselves and by independent reports:
Many of these people have fled Burma because they could simply no longer survive there.

15.18 MASSACRE AS AN ACT OF GENOCIDE

This killing of civilians took place to force them into conditions where many would not be able survive, either in the free fire zones or forced into camps. It thus appears to be expressive of a form of genocide as described by the ICTY:

*Selective killing of a group of people* [defined, we remember, by the Rome Statute as one or more] that leads to the destruction of the group through such methods as deportation or forced fleeing. (Prosecutor v Jelisic, IT-95-10-T).

The group of Karen selectively killed in this case study contributes to the destruction of part of the wider group of about a million Karen in eastern Burma, who are forced to flee, or become concentrated into camps.

Thus we have three interconnecting circles which express both crimes against humanity and genocide: immediate mass murder, (1) taking place within the context of a policy of forced transfer of population, (2) into concentration camps or free fire zones where (3) life threatening conditions are inflicted by deliberate deprivation of resources indispensable for survival. These violative activities are expressive of Policy taken at the highest level.

All victims are ethnic Karen.

The event can be be seen in three ways:

a) As three two dimensional interconnecting circles expressive of widespread Crimes against Humanity (i.e. the murder itself; the forced transfer of population of the village; the wider incarceration of hundreds of thousands of ethnic people in the life threatening conditions of the forced relocation camps camps);

b) Three dimensionally, as three circles superimposed on each other holographically with an additional fourth underlying circle expressive of the intention to destroy the ethnic group;

c) Linearly, beginning with the Burmanisation policy of assimilation and absorption of ethnic peoples; the practical implementation of physical destruction of opposition to such a policy; the expression of that in the forced concentration of tens of thousands of peoples into camps; the killing of those who resist; the forced fleeing of those who survive into free fire zones where they are liable to be shot on site, or gradually destroyed using indirect methods such as starvation; the forced incarceration of others into the forced relocation camps; the subjugation of the general local population through forced labour, extortion, confiscation of land etc; the eventual assimilation and absorption of survivors into the "greater Burman race" through such activities as "Development", "Buddhistization" and "Intermarriages". Once the cycle has been completed, the process of Burmanisation has been achieved.

15.19 THE MASSACRE AND THE ISSUE OF NUMBERS
Although all the victims were Sgaw Karen and the perpetrators Burmese soldiers inflicting Burmanisation, doubt remains as to whether this killing can be considered an act of genocide, partly because of the apparent confusion in law about requisite numbers needed to justify such a charge. While the ICTY Jelisic judgement above and the Rome Statute require numbers to be as few as one or more if part of a policy of forced fleeing, William Schabas states a more generally agreed consensus on requisite numbers killed is substantial or considerable. This number of 12 would appear to fall well short of substantial or considerable. It is certainly far fewer than the 7000 Moslem men killed in the Srebrenica genocidal killing. However, if the killing is seen as part of the approximately 600+ hundred other killings a year taking place over decades (See Human Rights Documentation Unit estimates), and those killings are inflicted in the wider context of about 10,000 preventable deaths resulting from deliberately inflicted conditions in the border areas, the killing of this group of 12 could be considered to be a genocidal act, if seen as expressive of an overall policy to attempt to destroy that part of the Karen living in eastern Burma. What is important when drawing a conclusion is the relationship between the individual act of mass killing and the wider pattern of destruction. Does this murder of twelve civilians contribute incrementally (ICTY, Jelisic Judgement) to the destruction of the wider group? The answer would appear to be yes.

15.20 CULPABILITY

When the photographs of the dead were shown by the ICRC to senior Junta officers, the victims were dismissed as Caught in the crossfire, accidentally and unintentionally killed in a counter insurgency campaign. The evidence would suggest otherwise: the civilians were targeted as such; the perpetrators knew the victims included women and children and were ethnic civilians; the absence of return fire, especially after the first firing followed by a silent interval, probably punctuated by screams of women and children, indicated there was no cross fire, and that the perpetrators knew there was no cross fire. No action has been taken to punish perpetrators, or investigate the crime.

Moreover, the massacre, can be seen within the overall context of the wider policy of Burmanisation, i.e. subsuming ethnic cultures into an homogenized Burman identity, itself The Crime Against Humanity of Persecution.
15.21 DESTRUCTION BY KILLING : SHAN STATE

This second report is taken from the Human Rights Watch Report "My Gun is as Tall as Me" (2002, p.42) in which a Burmese child soldier describes a mass killing of Shan civilians in February, 2001, in Kunhing Township, central Shan State:

We captured about fifteen women and children. Some of the women were single, some were married. About five were thirty or forty and two or three were about nineteen, all women. Three girls were raped. I didn't see it. I was in the shop eating biscuits. I know because one of my friends told me that some of the soldiers had raped three of the girls.

There were four or five children - three babies and four others who were under eighteen. They took the babies away from their mothers. We gathered them in one place and sent a report to headquarters by radio. The radio operator was a sergeant. The captain ordered him to send the message to headquarters. We reported that we'd captured the women and children. The captain didn't ask permission to kill them, he just reported that we'd captured them and asked what to do. The order that came over the radio was to kill them all. I heard the whole thing. The order that came over the radio was to kill them all. I heard the sergeant say it to the captain. The battalion commander has ordered that all those we have captured be killed. Then the Captain said, "All of you have heard the order from the battalion commander. Kill all of them. They took some of the women's clothing and used it to blindfold them. The officer told them "We'll take you to headquarters. We're doing this so you won't know or run away". Then they took them away in a line to a little gully some distance away and made them stand in a line along the slope. All the soldiers were guarding them. Then six of the corporals loaded their guns and shot them. They fired on auto. The women had no time to shout. I saw it. I feel very bad because there were all these people in front of me, and they killed them all. Their bodies were left there.

The soldiers were holding the babies and the babies were crying. Two of them were less than a year old, maybe nine or ten months. One was maybe fourteen or fifteen months old. After the mothers were killed they killed the babies. Three of them the privates killed. They swung them by their legs and smashed them against a rock. I saw it. (February 2001, Kunhing Township Shan State).

The Human Rights Watch report confirmed the description was corroborated,

COMMENTARY

This mass killing took place in the context of the mass forced relocation of the population of central Shan State, in which over 300,000 people had been forcibly relocated. The population of this particular township had been reduced to less than a third of its normal total as far back as 1998, according to Amnesty International. This was thus a selective killing of ethnic people in the context of wider systematic destruction which had dramatically reduced overall population levels in the municipality.

The killing was premeditated and could not be described as arbitrary. An order to kill was given by headquarters after a period of calm reflection. This was not random, spontaneous action. The level of responsibility exceeds that of tolerating, or condoning, or disregarding criminal behaviour. It was ordered by headquarters, expressive of full intention and full knowledge of the circumstances. Moreover, the ethnicity of the victims was known and they were all, self-evidently, women, children and babies.

The killings could not be described as extrajudicial, because these unarmed women, children and babies could in no way be described as a threat in any way whatsoever to armed male soldiers. This was not an excessive use of force disproportionate to a threat.

The victims were all ethnic Shan and this killing could not therefore be described as a Crime Against Humanity intended to destroy political opposition. These Shan women and children were very unlikely to be a political group, or resistance fighters. The victims were killed, we can infer, because of their ethnicity.
Moreover, the fact that they were killed when they represented no possible threat to the soldiers leads one to infer they were killed simply because of their ethnicity. Furthermore, being babies and women they can be considered to be biologically significant distinct entities essential to the group's biological viability.

The killing is arguably an act of genocide by selective killing expressive of an incremental step to destroy ethnic Shan.

15.22 DESTRUCTION: KILLING AND FORCED DISAPPEARANCES

DEATH SQUADS: INTENTIONAL SELECTIVE KILLING AND FORCED DISAPPEARANCE OF PERSONS

This extended description of the use of use of death squads by the Junta has been taken from the KHRG Report Suffering in Silence. (Similar activities were often described to me by villagers while I was inside eastern Burma).

The Sa Thon Lon Guerrilla Retaliation Units

_They move during the night and they wear short pants most of the time. They go to houses and ask the names of the people, and if the person is on the list they kill them. They were given special authority and a license to kill. They can kill anyone who has helped the KNU. With the authority that they have, people have said that even Operations Commanders can't comment on their work. They Operations Commanders is under them because they are directly controlled by Khin Nyunt. _“Saw January” (M), KHRG human rights monitor (interview # 1, 1/99)

Villagers in the plains east of the Sittaung River and in the western reaches of the hills say that at present there is one thing, which they fear more than all the other SPDC abuses in their area, land that this is the SPDC's new Sa Thon Lon Guerrilla Retaliation force. No information is readily available on when this special force was first recruited, but it began appearing in the villages of western Nyaunglebin District in September 1998. The force only consists of an estimated 200 troops but they have been handpicked and specially trained. Operating in small sections of 5 to 10 soldiers, they have very secretive, moving by night from village to village. Their self-stated purpose is to summarily execute every villager who has ever had any kind of contact with resistance forces, whether at present or long in the past. They have been carrying out this function brutally, shooting, stabbing, and often beheading their victims and dumping their bodies in the rivers. Operating in Mone, Kyaik Kyi and Shwegyin townships, estimates on the number of people they have executed thus far range between 50 and over 100, though it is difficult to establish any definite numbers. Recent testimonies from villagers fleeing Tantabin township in southern Toungoo District indicate that they have now expanded their operations northward into this area, and they are also going west of the Sittaung River to look for people to target. This expansion of their operational area is cause for grave concern.

15.23 STRUCTURE AND PURPOSE
This force goes by a variety of names, including Sa Sa Sa (‘SSS’), Sa Thon Lon (‘Three S’), Sa Thon Lon Dam Byan Byaut Kya (‘Sa Thon Lon Guerrilla Retaliation’), A’Htoo Ah Na Ya A’Pweh (‘Special Authority Group’), Baw Bi Doh (‘Short Pants’, a name invented by the villagers because of the civilian clothing the soldiers often wear), Myanma Ta Oo (‘Burmese Eldest’, i.e. most senior, troops), and Shwit A’Pweh (‘Shwit group’, ‘Shwit’ being the sound of a knife cutting someone’s throat). All of these names have been used by the troops themselves in front of villagers. Judging by the testimonies of many villagers who have had contact with them and KNLA sources, it appears that their official name is the Sa Thon Lon (or Sa Sa Sa) Dam Byan Byaut Kya, which is translated in this report as Sa Thon Lon Guerrilla Retaliation.

"People call them Baw Bi Doh [‘short pants’], but they don’t like that so they ordered people to call them Thad Shin A’Pweh [‘killing and clearing group’], later, they didn’t like that either and forced people to call them Shwit A’Pweh [‘shwit group’]. They say that the sound of cutting someone’s throat with a knife is ‘shwit’.” - "Saw Tee Ko” M, 40), xxxx village, Mone township (Interview #19, 2/99)

"I don’t dare even go near the [Sa Thon Lon] guerrilla troops. Ifi looked at their faces I’m afraid they’d kill me. In Meik Tha Lin the village headman is friendly with him [Shan Bpu] so he asked him, ‘Teacher! What is your group called?’ Then he [Shan Bpu] took out his knife, put it to the headman’s throat and said, ‘Shwit’. The village headman told him, ‘You can tell me the word ‘Shwit’ without having to pull out your knife’. Then he didn’t dare ask more.” - "Saw Ghaw” (M, xx) xxxx village, Mone township (Interview #29, 1/99)

"Sa Sa Sa’ is a Burmese abbreviation equivalent to SSS in English; ‘Sa Thon Lon’ simply means Three S’s. This is abbreviation for A’Htoo Son Zan Seh Seh Yay Oo Zi Na, which translates as Bureau of Special Investigations (BSI). According to independent Karen sources, this department was first formed by General Ne Win’s BSPP regime in that late 1970’s or early 1980’s with the function of cracking down on the country’s black market and investigating some other crimes. Something in the mid-1980’s it was shifted and placed under the control of the Directorate of Defence Services Intelligence (DDSI). DDSI currently has several branches, including Military Intelligence, Special Branch (the police), and the Bureau of Special Investigations (Sa Thon Lon). The Sa Thon Lon still has the function of cracking down on the black market, but the new Guerrilla Retaliation force has also been in this department. The reason may be to keep the force under the direct personal control of Lt. Gen. Khin Nyunt, Secretary-1 of the SPDC and head of the DDSI. According to villagers and KNLA sources, the Guerrilla Retaliation force was created by his direct order and remains under his control. This is the origin of the name A’Htoo Ah Na Ya A’ Pweh [‘Special Authority Group’]. SPDC Battalion Commanders and Strategic Commanders in the area have said directly to villagers that they have no control over the Guerrilla Retaliation troops, and there are reports that regular SPDC troops ion the region have shown some enmity and fear toward them. Villagers in the area consistently state that the regular SPDC troops never come near their village when a Sa Thon Lon group is around and vice versa. According to KNLA source, the Guerrilla Retaliation force reports to Military Intelligence Unit #3 based in Toungoo, though they also appear to have some contact with the regular Army’s Southern Regional Command headquarters in Pegu (commanded by Brig. Gen. Tin Aye). This contact with the Regional Command may only result from the fact that most of the Guerrilla Retaliation troops were selected from regular SPDC units already operating in Nyaunglebin District.

"They told the villagers, ‘If you want to report about our guerrilla group, don’t bother reporting us to the Operations Commander or the Regional Commander. You should go to centre, to Saw Maung [former chairman of SLORC] and Khin Nyunt to report about us. If you go there to report about us we’ll give you trip expenses.” After they said that, village heads and elders didn’t dare do anything.” - “Saw Tha Pwih” (M, 38), xxxx village, Tantabin township, Toungoo District (Interview #50, 5/99)

"The villagers went to complain to the Strategic Command Intelligence but they said they couldn’t do anything. They said, ‘In the past if you came and gave us money we could help you. However, they [the Sa Thon Lon troops] are controlled directly by the regional command so even if you give us money we
can't help you. "-"Saw Htoo lay" (M, 25), xxxx village, Kyauk Kyi township (Interview #20, 2/99)

"In the past we could run to the Operations Commander or the Battalion Commander for help if someone was arrested and they could help us to buy the lives of those arrested. But now the Operations Commander says He can't do anything about this group [the Sa Thon Lon] because they have been given complete authority. ","Naw Hser" (F, 40), xxxx village, Mone township (Interview #20, 2/99)

"When the Army troops come the guerrilla group [Sa Thon Lon] goes to another village, then when the Army troops leave they come back again" - "Saw Lay Muh" (M, 42), xxxx village, Tantabin township, Toungoo District (Interview #53, 5/99)

"Now IB 39 and the Guerrilla [Sa Thon Lon] don't like each other, even though they are both Burmese. They've said that a battle occur between them. "," Pu Than Nyunt" (M, 60), xxxx village, Toungoo District (Interview #52, 5/99)

The Guerrilla Retaliation troops were specially selected from among the Non-Commissioned Offers (Corporals and Sergeants) of the regular SPDC Battalions already operating in Nyaunglebin District. Based on their subsequent behavior, it appears that they were selected based on their capacity for brutality. According to some KNLA sources, some of the troops were also recruited from among former KNLA soldiers who had surrendered to the SPDC. None of the villagers interviewed by KHRG have confirmed this, but it would make sense given the purpose of the force; former KNLA soldiers would be able to point out many people who had helped the KNLA in the past. In addition, one woman from Kyauk Kyi township told KHRG that a group of Guerrilla Retaliation soldiers accidentally left a leaflet in her house titled 'Training Course of Pado Aung San', which they later came back for. Pado Aung Sun was the notoriously corrupt forestry minister of the KNU who defected to the SPDC in early 1998; since then, he has denounced the KNU in several statements and appeared to be trying to find a role with the SPDC. It is possible that he gave some portion of the training for the Guerrilla Retaliation troops, possibly in KNU/KNLA strategy or politics.

They have created the Dam Byan Byaut Kya because they hope people won't dare be involved with the KNU even a little bit. ... They chose 12 people from each Battalion. They only chose Sergeant and Corporals, and they were given training... Wherever they move there are no other SPDC troops moving. They stay in many different villages in groups of 4 or 5, and they walk during the night. The people that they have to kill, they kill immediately. ","Saw January" (M), KHRG human rights monitor (Interview #1, 1/99)

"The Sa Sa in kler Lweh Htoo district are special troops. We've received information that the enemy has collected soldier who have surrendered from the KNLA, as well as P'Doh Aung Sun's [soldiers], Thu Mu Heh's [soldiers] and the DKBA. These soldiers, along with SPDC soldiers, have received special training and are being sent into each area. They are calling those troops the Sa Sa Sa, but they are also called the A'Htoo Ah Nah Ya'Pweh ['Special Authority Group']." -"Saw Kaw Doh Muh" (M), who is with the KNLA in Nyaunglebin District (Interview #36, 2/99)

"One day they came to my house and took a rest, and when they left I saw a paper that the government had given them. I opened it and saw the title, "Training Course of Pado Aung Sun", there were some things there written by Pado Aung Sun. They forgot it there in my house and came back for it."-"Naw Thu" (F, 26), xxxx village, Kyauk Kyi township (Interview #29, 1/99)

"Some of them are SPDC soldiers and some of them are part of the resistance that was living in the jungle but surrendered to the Burmese. They joined the guerrilla troops and guide them. I only know the name one of the group commanders, his name is Bo Nagah." -" Saw Ta Roh" (M, 37), xxxx village, Shwegyin township (Interview #32, 12/98)

Most available estimates place the total size of the Thon Lon Guerrilla Retaliation force at about 200 soldiers. It is organised along the lines of a regular Army Battalion though using
smaller numbers, and is apparently divided into four or five main Companies: 'Mone Thon' ('Monsoon'), 'Mone Daing' ('Storm'), 'Galone' ('Garuda') and 'DPyet Hle' ('Sweeper'); the fifth is Moe Kyo' ('Lightning'), though as yet KHRG has not been able to confirm whether this is a Company or just a Section. The main operation unit of this force is the section, consisting of 5 to 10 men. According to the limited information available, it appears that there are five sections in each company (making it different from a regular Army Battalion, which at full strength has five companies, each consisting of three platoons of three sections each). Several of these sections have taken on their own names, such as 'Nagah' ('dragon') 'Moe Kyo' source provided the following partial list of Sections and Section Commanders which comes from KNLA Intelligence:

<table>
<thead>
<tr>
<th>Commanded by</th>
<th>Battalion of Origin</th>
<th>Section Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Sergeant Kayw Tint</td>
<td>IB #39</td>
<td>10 soldiers</td>
</tr>
<tr>
<td>2 Sergeant Khin Maung Than</td>
<td>IB #73</td>
<td>10 soldiers</td>
</tr>
<tr>
<td>3 Sergeant Wan Kan Dane</td>
<td>IB #26</td>
<td>10 soldiers</td>
</tr>
<tr>
<td>4 Sergeant Maung Myo</td>
<td>IB #60</td>
<td>10 soldiers</td>
</tr>
<tr>
<td>5 Sergeant Myint Naing</td>
<td>IB #53</td>
<td>10 soldiers</td>
</tr>
<tr>
<td>6 Sergeant Tint Lwin</td>
<td>LIB #440</td>
<td>10 soldiers</td>
</tr>
<tr>
<td>7 Sergeant Myint Oo</td>
<td>IB #35</td>
<td>8 soldiers</td>
</tr>
<tr>
<td>8 Sergeant Khin Maung Myint</td>
<td>IB #57</td>
<td>10 soldiers</td>
</tr>
<tr>
<td>9 Sergeant Pa Tee Pyut</td>
<td>LIB #350</td>
<td>9 soldiers</td>
</tr>
<tr>
<td>10 Sergeant Soe Win</td>
<td>LIB #349</td>
<td>8 soldiers</td>
</tr>
<tr>
<td>11 Sergeant Aung Naing Win</td>
<td>IB #59</td>
<td>9 soldiers</td>
</tr>
<tr>
<td>12 Sergeant Zaw Win</td>
<td>IB #30</td>
<td>8 soldiers</td>
</tr>
<tr>
<td>13 Sergeant Mya Zaw Tint</td>
<td>LIB #264</td>
<td>9 soldiers</td>
</tr>
</tbody>
</table>

According to the same source, Sections 1 through 5 above are part of the 'Monsoon' Company, which is commanded by Captain Maung Maung (commonly referred to as Bo Maung Maung) and operates in Mone township and the area between Kyauk Kyi and Na Than Gwin. Sections 6 through 10 are part of the 'Storm' company, commanded by Major Zaw Naing Htun and operating south of the Kyauk Kyi / Na Than Gwin area. The above list is not complete, because according to information available thus far it appears that the force has 4 or 5 companies. Villagers in Shwegyin, southern Kyauk Kyi and Tantabin township refer to a commander there named Moe Kyo. In Mone and Kyauk Kyi townships, several names recur in the villagers' testimonies as being particularly brutal: Bo Maung Maung himself (commander of 'Monsoon' company), a section commander under him named Sergeant Bo Shan Bpu (also known as 'Bo Shwit'), another Sergeant named Tint Lwin who is subordinate to Bo Shan Byu, and a section commander named Bo Nagah (note: 'Bo is simply a prefix attached to the name of a commander). Bo Maung Maung was previously with LIB #351, and Bo Shan Byu was reportedly with IB #59. According to several accounts, Bo Shan Byu is ethnically Shan, or at least can speak Shan. Villagers say that several of the Sa Thon Lon troops can speak various languages such as Pa' O, Shan and Karen. Bo Shan Byu is a pseudonym, as is Bo Nagah ('Nagah' means 'dragon'); Maung Maung may also be a pseudonym. Some of the section commanders use the same names as their sections; for example, Bo Nagah commands the Nagah ('Dragon') group, and Moe Kyo commands the Moe Kyo ('Lightning') group. Many of these soldiers may be using pseudonyms, because the Guerrilla Retaliation troops are very secretive, and they give very little information to the villagers other than telling them they will kill everyone who has contact with the resistance.

"The bad person who goes and kills people is Bo Shan Byu, but he calls himself Bo Shwit. He is the worst, and he is a Shan. I asked him, 'Commander, what is your nationality? and he answered that he is a Shan national, and his wife is Karen. He is about 28 years old and his hair is long, down to here."- "Pu Than Nyunt" (M, 60), xxxx village, Tantabin township, Toungoo District (Interview #52, 5/99)
These units operate death squads, executing anyone even remotely suspected of having had any contact with the KNU/KNLA, even if that contact ended 10 or more years ago. Their secretiveness, their brutal methods of killing and beheading their victims, in short everything about the way they operate, is intended to terrify the villagers (My italic and bold). The overall purpose of this is very clearly to deliver a message to the villagers that even the slightest contact with the KNLA, even involuntary contact such as when KNLA units demand food from village elders, will be punished with a brutal death, if not immediately then whenever this contact is discovered, even 5, 10, or 20 years in the future.

"They are a mobile unit that is trying to cut the connection between the KNLA and the people. They are primarily active during the night, but also during the day. This force is controlled directly by the regional command. The local troops in the area where they are active can’t make decisions for them or reprimand them. The regional commander held a meeting and told them they had to kill 30 people each month in each township. (My underlining) They are to kill 20 villagers who support KNLA and democracy groups, and they other 10 people are to be anyone they find who has weapons. The names of people who support the resistance groups and democracy groups are written in their books. This group has already killed 2 villagers in each village of Ler Doh township. They’ve also killed villagers in Mone township and Hsaw Tee township. ... Among the people they have killed, only a few of them have actually been in contact with us. Most people they have killed are innocent villagers. The names they have in their books are names of people who helped us a very long time ago and haven’t been in contact with us since then, but they look for the people who are listed in their books and they kill them." - ”Saw Kaw Doh Muh” (M), who is with the KNLA in Nyaunglebin District (Interview# 36, 2/99)

"They came on the first of September (1998). They said they would patrol for 6 months and make the area A’Pyu Yang Neh Myay (a ‘white’ area, SPDC terminology for areas which are completely subjugated). ... They are abusing the villagers from all areas. They can’t fight their enemy (the KNLA), so they say the villagers are their enemy for feeding the KNLA; that if the villagers didn’t feed the KNLA then the KNLA couldn’t fight them, so they are finding and killing the villagers.” - ”Saw Htoo Lay”, (M, 25), xxxx village, Kyauk Kyi township, talking about the Sa Thon Lon (Interview# 30, 12/98)

Initially these units only appeared in the plains east of the Sittaung River of Nyaunglebin District, but testimony from villagers who fled Tantabin township of southern Toungoo District in April 1999 indicates that Sa Thon Lon units are now operating there as well (excerpts from some of these testimonies are included in this report). They also now search for targets in villages on the wet side of the Sittaung River. This expansion of their operational area is cause for extreme concern, as it may indicate that Nyaunglebin District has been used as an experimental ground for this type of operation, which if successful will be introduce in other regions as well. The SPDC’s major military offensives and mass relocation campaigns have weakened the resistance forces but have not even come close to wiping them out, and the death squad tactic may be an attempt at a new approach. There may also be elements of internal SPDC politics at play. The tension between the DDSI’s Lt. Gen. Khin Nyunt and regular Army leaders such as Gen. Maung Aye is well known, and Khin Nyunt’s initiative in this case may be intended to prove that his tactics are more effective than those of the other Generals. In addition, the creation of the Sa Thon Lon Guerrilla Retaliation force gives the DDSI an armed wing, which in effect gives Khin Nyunt his own private army. If the force is expanded in numbers and/or in the size of the territory where it operates, it will be important to watch its interaction with the regular Army as well as the dynamics, which develop between the Generals in Rangoon.

"You can’t expect us to know their names. They never even allow us to look at their faces-when we see them we have to look down, away from their faces. ... They said that the soldiers who came before were supposed to kill the people but they didn’t, so they are now showing the people that they can kill.”- “Saw Htoo Lay”, (M, 25), xxxx village, Kyauk Kyi township, talking about the Sa Thon Lon (Interviews 30, 12/98)

15.24 METHODS OF KILLING
“They find people who had contact with the KNU in 1995 and those who have contact now. If they can find people who have had contact with the KNU at any time in their past, they kill them. Shan Bpu has killed people in Lu Ah, Ho Ko Ghaw, Twa Ni Gone, Myeh Yeh, and Yan Myo Aung too. When we found out that they are going to kill all the villagers who have ever helped the KNU, we knew they would kill us too. Our names are in their books.... They are the Sa Thon Lon. People said that they don't ask any questions [they kill without interrogation] and they are going to "cut off the tops of all the plants". The second group, Sweeper, will come to sweep up the people and then the third group will come to scorched the earth and " dig out the roots". They will kill all the relatives of the forest people (the KNLAs). (My underlining) The Sa Thon Lon don't look like they will go and fight [go into battle], they are just going around killing members of the general public. They said that they are going to clear the people out of the countryside that they have to kill all of people who support forest people and people who give taxes to the forest people. They also said that if the KNLAs shoots and kills one of them, they will burn down the village closest to where it happened and kill everyone in the village.” - “Saw Tee Ko” (M, 40), xxxx village, Mone township (interview #19, 2/99)

The operation unit of the Sa Thon Lon Guerrilla Retaliation force is the section. Each section has 5 to 10 soldiers and moves independently from village to village. Between them they cover the villages of the plains east of the Sittaung River as well as the westernmost reaches of the hills. They do not establish their own camps, but stay in the houses of villagers along their ways. Usually they stay in a village through the day, then move to other villages by night. They seldom spend two consecutive nights in the village. They demand their food and money from the villagers, but when in the villages they order the villagers to look at the ground and not to look in their faces. They do not wear standard issue SPDC Army fatigues. Instead, many villagers say that they often wear civilian clothing, such as T-shirt and sarongs, around the villages, and guerrilla camouflage uniforms by night, or various combinations of civilian clothing and guerrilla camouflage. They very frequently wear camouflage short pants, and this brought about the Karen name Baw Bi Doh (Shorts Pants) which many villagers call them. Villagers also say that their weapons are not the standard Army-issue G3 and G4 assault rifle but the AK47 and AR assault rifles, which are far better in the jungle. They have also on occasion used M79 grenade launchers, and they do much of their killing with knives.

“They only walk during the night and sleep during the day.... During the day they sleep in people's houses but they never introduce themselves to the owners of the house, they never make friends with them. They live there with faces of stone and eat whatever they want to. They never look at the faces of the people they are staying with because they are afraid the villagers may be able to recognize them... They don't have people staying in every village at the same time, but they move around and sometimes stay in Haw Ko Ghaw, or Thit Cha Seik, or Yay Leh, or Nga Nwah Seik, or Weh Tu, or sometimes in Yan Myo Aung. They move around like that and don't really have a home base. ... They kill people wherever they go.” - “Saw Tee Ko” (M, 40), xxxx village, Mone township, describing the Sa Thon Lon (interview #19, 2/99)

“People are afraid of them because if you're walking on the path and you suddenly see them you're supposed to sit down and you must not look at their faces. If you look at their faces they icky you at once and say, "Why are you looking at my face? Am I a handsome of something?"” - Pu Nya Thu” (M, 70), xxxx village, Mone township (interview # 4, 5/99)

“As for the short-pants group, the area leader has to collect money for them once a week. Each family has to give 200 to 300 Kyat each week. This money isn't toward any fees, just for the short-pants group's food. Every village in Kyauk Kyi township has to pay that.” - “Naw Say Paw” (F, 26), xxxx village, (interview # 29,1/99)

According to the villagers, the sections have lists of the people to be killed in each village, and some even claim that they are assigned a quota of people to kill in each township. A consensus on this number appears to be 30, though one villager interviewed claimed that Bo Nagah had said that they are to kill 70 people in each township; if this is so, the number 30 or 70 may have been decreed based on superstitious numerology, which is taken very seriously
by Khin Nyunt and other SPDC leaders. In addition, a villager from southern Toungoo District who fled in April 1999 said that the Sa Thon Lon have now ordered villagers in his area to have family photos taken and submit one to the Sa Thon Lon and one to the Army Division. The Sa Thon Lon officer told the villagers that the Sa Thon Lon sections will check the faces of people they meet against their set of photos, and if your photo is not in the set for your village you will be killed.

"Now they've said that they plan to kill 30 people per month between Shwegyin and Mone, and 30 more between Mone and Tantabin. Among the 30 that they kill, one will be a bad person and the other 29 will be good, [innocent] people." - "Saw Lah Thaw" (M), xxxx relocation site, Mone township, (interview # 2, 5/99)

"They forced people to take family photos. We had to take three pictures; one to give them [Sa Thon Lon], another to keep in our house and another to give to the Division. They said that if they see people going anywhere they will ask their village name, look at the pictures from that village and if that person isn't in the picture's they'll kill him. Therefore people were afraid and had the pictures taken. Even if they didn't have the money, they borrowed it from others and had the pictures taken." - "Pu Than Nyunt", (M, 60), xxxx village, Tantabin township, Toungoo District (interview # 52/99) 

In some cases they enter villages and surround the houses of people they plan to kill and try to catch them that way. Other tactics they use are to pretend to stop for a rest in a villager's house and then kill him, or to conscript a villager as a guide and then kill him once they are out of the village. Many villagers have fallen unsuspecting into these traps, simply because they have had no contact with the opposition for years and are completely unaware of any suspicion against them. However, people are now aware of the Sa Thon Lon's tactics and some have fled the village rather than face them, even if they have never had contact with the opposition. In fact, many of the people already killed have been completely innocent but were killed based simply on a remote suspicion or unfounded accusation. The Sa Thon Lon units have not only killed those on their lists, also people who they encounter outside the villages at night, who are automatically suspected of working with resistance forces. At a meeting called by the Sa Thon Lon in Kyauk Kyi in December 1998, they told villagers that they are no longer allowed to leave their villages between 6 p.m and 6 a.m. Even during the day, if they encounter people outside of villages they often stop them and beat them for no apparent reason other than to drive fear into them.

"They told us not to enter or leave any villages between 6 p.m and 6 a.m or they would kill us. They said for our villagers to call their children who are in KNLA to come back and live in the village, or they will kill the parents. They know, they said the names of all the KNLA are in their file, and they said they will kill anyone who has contact with the KNLA." - "Naw Say Paw", (F, 26), xxxx village, Kyauk Kyi township, describing what the Sa Thon Lon said at a meeting in her village, (interview 29,1/99)

"They are really doing what they've planned to do, they are going to kill every relative of the KNLA in our area. They said that there's only one way for them to win against the Karen and that is to kill all the relatives of the KNU. The Burmese soldiers who are friendly with us and go to the frontline told us that our names are in their book of those to be killed. We don't dare live there anymore." - "Naw Hser", (F,40), xxxx village, Mone township, (Interview #20, 2/99)

"They held a meeting in our village one time, the same morning that they captured my husband. He (Shan Bpu) said that we mustn't contact people on this side [KNLA]. He said 'if you want to contact them, leave with your whole family, if you don't go, the day that you contact them will be the day you die.'" -"Naw Paw Paw Htoo", (F, 31), xxxx village, Mone township (Interview # 12, 3/99)

"I fled because they are killing anyone who has ever had any contact with the KNU. There have been times when we've met them [KNLA soldiers] along our way and spoken to them, because they're all people that we know. They kill people for that. During January of this year [1999] they killed our village headman, Mya Htun, from Meik Jha Lin, and dumped him in the Sittaung River. He was 48
years old and had 5 children. He was unable to avoid being friends with the KNLA [the KNLA approaches the village headman for food and money]. In their book there are name of anyone who has ever been friends with the KNLA, and they heard that they kill the people whose names are in the book. .... To cut all connections with the [KNU and KNLA]. To threaten the public so they won't dare contact them in the future and won't dare to give them rations. This is the main objective of their killing." - " Moung Soe", (M, 40), Kyauk Kyi town, (Interview # 21,1/99)

"They call themselves 'Bo Shwit', because 'Shwit' is the sound of thrusting a knife into someone to kill him. They are murderers... Huay!! I can't say how many tens of people they've killed. Any place you go you'll hear about the people they've killed, they've killed people in almost every village. They haven't killed anyone in xxxx yet, but they've killed people in Myeh Yeh, His Mu Flaw, Si Pa Leh, and Meik Tha Lin which is across the [Sittaung] river from our village. Their commander is Bo Maung Maung. I don't know their base, they just travel from village to village. They don't make camps, they just stay in peopled houses. They walked the whole night without sleeping." - " Naw Lah Paw", (F, 21), xxxx village, Mone township (Interview # 28,1/99)

The Sa Thon Lon troops sometimes shoot their victims, but more often kill them with knives by cutting their throats or stabbing them into chest. In most cases it appears that they do not interrogate or torture their victims beforehand, they simply kill them. Some Sa Thon Lon soldiers have even told villagers that the Sa Thon Lon stands for 'no interrogation'. However, after killing them they often mutilate the bodies, presumably to deliver stronger message to the other villagers. Villagers interviewed for this report described many instances beheadings, in some cases the heads were then displaced as a warning to all villagers. In November 1998 they shot dead villagers Saw Aye from Myeh Yeh village and Po Theh Pyay from Ter Bpaw. They then ordered local villagers to build stands of bamboo, one along the path to Kyauk Kyi and the other on the path to Mone, and displaced the heads on these stands; the villagers were forced to guard the heads for a month, under threats that if the heads disappeared they would be replaced with their own. In another incidents, after shooting dead Saw San Myint in Baw Bpee Der village on December 27, 1998, they beheaded him, hung his head over the path to Mone town, and stuck a cheroot in his mouth. The Sa Thon Lon troops often dump the bodies of their victims in the rivers, though sometimes they leave them where they lie and forbid the villagers to move or bury them. For many villagers, the mutilation of their relatives' bodies and the inability to give them a proper burial or cremation is almost as much as crime as the killing itself, (my underlining)

"Before they kill people they tie their hands behind their back. Most of the people are not shot, instead their heads are cut off with a knife and their bodies are thrown in the river. They normally call people on sentry duty from the village to bury the bodies after they kill them." - " Maung Soe", (M, 40), Kyauk Kyi town (Interview # 21,1/99)

"They cut out people's tongues, cut their ears off and cover their faces with their own intestines. They do that so the villagers will be afraid. Now if we hear their voices, our hands and knees tremble and we can't do anything. The women are very afraid of them... all the villagers are afraid of them." - "Saw Htoo Lay" (M, 25), xxxx village, Kyauk Kyi township, talking about the Sa Thon Lon (Interview # 30,12/98)

"The group that kills people now is the short-pants group (Sa Thon Lon). They have been there since about two months ago. If they think you've done anything wrong they never ask any questions, they just summon you and kill you at once. They said that if they kill anyone the villagers have no right to say anything, to report it or to hold a ceremony for the dead people." - " Naw Say Paw", xxxx village, (F, 26), Kyauk Kyi township (Interview # 29,1/99)

Many villagers have managed to escape execution by fleeing the village before the Sa Thon Lon comes for them. In these cases the Sa Thon Lon troops come to the village and confiscate or destroy all of the villagers belongings, as well as their house, land, and livestock. If there is a crop in the field they have on occasion ordered the other villagers to harvest it and hand it over. The Sa Thon Lon troops know that many of these people have fled to villages on the
west side of the Sittaung River because it is outside their usual area of operations, so they now occasionally go to villages west of the river and check family registrations form house to house, searching for the people they want. As a result, many people living west of the river are afraid to accept relatives or guests from the east any longer.

"Some of the people they tried to arrest fled and escaped. When they can't catch people they commandeer their belongings in the village, such as their land, farm fields, fishponds, cattle and buffaloes. They take everything they see in the person's house and sell it." - " Saw Ta Roh", xxxx village, Shwegyin township (Interview # 32,12/98)

"In Lah Gkaw Wah village of Kyauk Kyi township, they accused Ko Moung Aye and Bee Win of helping the KNU and were going to arrest them. They fled and escaped so they confiscated their cattle, chickens and buffaloes and took all their belongings from their houses. They took those things to Baw Ka Hta camp." - " Saw Htoo Lay", (M, 25), xxxx village, Kyak Kyi township, talking about the Sa Thon Lon (Interview # 30,12, 98)

"Lately, people who don't dare stay in their villages have been going to other places that are safer such as to town or to the other side of the river [to the west of the Sittaung River], (ray underlining) So the Sa Thon Lon have gone to towns and villages on the other side of the river looking for people they want. They are checking family registration lists at each house. When they find people they want, they kill them and make problems fort the families that took them in. Because of this, people in towns and villages on the other side of the river don't like to take in villagers from eastern villages when we run to them anymore. They don't even like us to go and visit them." - " Naw Hser", xxxx village, Mone township (Interview # 20, 2/99)

The KNLA has tried to attack the Sa Thon Lon force on several occasions but with very little success, and they have tried to target Bo Shan Bpu himself at least once. In late February or early March 1999 the KNLA ambushed a passenger vehicle on the road near Kyun Bin Seik in Mone township, thinking that Bo Shan Bpu was inside because he always forces the drivers of passengers vehicle and motorcycles to transport him around rather than using Army vehicles. The driver and passengers were killed, but Bo Shan Bpu had already got off the car some time before. The KNLA soldiers ordered everyone out of the car and burned it. Afterwards, the Sa Thon Lon punished the villagers by forcing every family in the villages from Weh Kyi to Kyun Bin Seik to pay 3,500 kyat, allegedly to pay for the cost of the car. In addition, Sa Thon Lon commanders Bo Maung Maung and Bo Shan Bpu have both told villagers in southern Mone township that for every Sa Thon Lon soldier killed by the KNLA, they will execute 10 villagers.

"When the Sa Thon Lon are in our area they use the villagers as their cover. They said there must be no sounds from weapons. If there is the sound of a weapon that causes one of them to die, they will kill 10 of our villagers.” - "Saw Ner Muh", (M, 30+), xxxx village, Mone township (Interview# 8, 4/99)

"I've heard that they have already killed 30 people between Shwegyin and Kyauk Kyi. When the group commanded by Bo Nagah came, they said they are supposed to kill 70 villagers in the area between Shwegyin and Kyauk Kyi. They must kill exactly 70 people, then the group that comes when they rotate their troops will also kill 70 people. Each of their groups must kill 70 people. ... They are killing a lot of people in Shwegyin and Kyauk Kyi areas. I've heard that they have also killed 30 to 40 people up in Mone township. They are killing there as they are here. The (SPDC) guerrilla troops are moving everywhere east of the Sittaung River. Usually they kill one person at a time, but hey have killed 2 people at a time and also 8 people at a time. I've also heard and seen that they have gone to Nyaunglebin township ansd Kyauk T'Ga township (west of the Sittaung River) and are killing people there. They are doing in the towns the same as they are doing here (in the villages).” - "Saw Ta Roh", (M, 37), xxxx village, Shwegyin township (Interview # 32,12/98)

Killings of Villagers
"When they came and captured my husband, we were all in the house: my mother, my children and me. When they called him to go with them, I told my husband, 'Don't be afraid, pray to God.' Then Shan Bpu took his knife and held it to my throat telling me not to speak. He said, 'Don't say anything! Don't open your mouth! Or you will die!' I was afraid and couldn't speak. At first only two Burmese came for my husband, but later Bo Maung Maung arrived and tied my husband's hands behind his back and covered his face with one of his old sarongs. They took a guitar string and tied it around his neck...

They didn't say anything after that and they killed him that evening. They pulled him from place to place and then killed him at Teh Su while we were still in Yan Myo Aung. ... The sadness I suffer from is so deep I can't describe it. It's like I'm in the dark. When they first captured my husband I couldn't eat for 2 days but still my stomach felt full. I prayed all day and night. We also had the problem of not having any rice at that time so I had to find rice. I have many children and had to find food for them before every meal. My children didn't know what was happening, they were playing and laughing innocently. ... We didn't have contact with the KNLA and we don't have a well known name, the Burmese soldiers had never asked about us before, so how could we have known that they were going to come and kill us?" - "Naw Paw Paw Htoo" (F, 31), xxxx village, Mone township, describing the killing of her husband Saw Mah Htoo (a.k.a. Ga Gyi, age 37) in November 1998 (Interview #12, 3/99)

It is difficult to establish the exact number of villagers already executed by Sa Thon Lon units in Nyaunglebin District, but villagers and KNLA sources estimate somewhere between 50 and over 100. Most victims have been Karen, but there have also been many Burmans killed because there are many Burmans in the Sittaung River plains who sympathise with the Karen resistance. Many of the killings go completely unreported and in some cases people simply disappear so even the local villagers cannot be sure. KHRG has collected information on a number of killings which have been witnessed or are known to have happened, most of which have been corroborated by the testimony of several villagers. A list of 151 of these killings by the Sa Thon Lon and other SPDC units since 1997 is included in the appendix of this book. One factor which is very consistent in the villagers' testimonies and other information is that many of those systematically executed by the Sa Thon Lon have either been completely innocent or have only had some rudimentary contact with the KNU or KNLA which occurred years ago. Many never did more than act as a guide a few times for a KNLA column or give them some rice. Some of those killed have been village elders who had no choice but to have contact with the KNLA, because the KNLA approached them to demand food and taxes from their village.

"Since 1998 the SPDC has been commanding guerrilla troops [Guerrilla Retaliation units]. ... One night at 9 o'clock they entered Shan Su village and arrested Ko Kyi Hmwe, the 43 year old son of U Poh Bin. I saw them kill him outside of the village. They did that sort of thing in other villages also. They stabbed U Than Myint from Ma Oo Bin village [also in Shwegyin township] with a knife, they did it in the middle of the village. While lie was working on his pond, they went and called him and then killed him without asking any questions. In Leh Gkaw Wah village [southern Kyauk Kyi township], which is near Ma Oo Bin, they called Maung Ba Aye down from his house and killed him without asking anything." - "Saw Ta Roh" (M, 37), xxxx village, Shwegyin township (Interview #32,12/98)

"On 22/11/98 they killed a villager from Kya Flaw village who was over 40 years old. They accused him of helping the KNU in the past and killed him between Kya Flaw village and the old village of her Wah. They cut out his tongue and cut off his ears. On 2 7/10/98, they accused another man of being part of the backbone of the KNU. They took him to the top of Po Noh o Pivillage and killed him. They didn't allow people to go and bury that man. ... They also killed two other Burman villagers, U Aung Baw and Khin Win, from A Tet [Upper] Twin Gyi village in Shwegyin township. They killed them at the same time. U Aung Baw was 52 years old and Khin Win was 32 years old. They slit their throats near the Sittaung river and kicked their bodies into the river. People didn't see the corpses." - "Saw Htoo Lay" (M, 25), xxxx village, Kyauk Kyi township, talking about Sa Thon Lon killings (Interview #30,12/98)
In our village they have killed 2 people, a wife and her husband. In Weh Gyi they also killed 2 people at night after the movie had finished showing. They captured them that night and killed them at once. In the morning the village head went to them and asked about the two villagers they had captured, but they told the village head they had not captured them.” - "Maung Sein" (M, xx), xxxx village, Kyauk Kyi township, talking about Sa Thou Lou killings in November 1998 (Interview #33, 12/98)

The killings carried out by the Sa Thon Lon units to date can be divided into two main categories: systematic executions of people they have targeted, and ad hoc killings of people they find in farm field huts or meet along the pathways. When they target a specific person for execution, a Sa Thon Lon section usually enters the village sometime in the night, surrounds the person's house and orders them to come out, then takes the person away and executes them outside the village. On occasion they will have another village go to fetch the suspect, or will call the suspect to go with them as a guide and then execute him/her once they are outside the village. One typical example occurred in Yan Myo Aung relocation site in November 1998. A Sa Thon Lon section led by Bo Shan Bpu and Bo Maung Maung asked various village headmen at the site for the whereabouts of Saw Mali Htoo (a.k.a. Gah Gyi). One of the Burman headmen said that he knew of him. That night the Sa Thon Lon group surrounded Saw Mah Htoo's house, tied him up and marched him away. When his wife tried to protest, Bo Shan Bpu held a knife to her throat and threatened to kill her. They marched Saw Mali Htoo to Yay Leh village, executed him and threw his body in the Sittaung River. Saw Mali Htoo and his wife never even knew they were under suspicion, because the only contact he had had with the KNLAs occurred years ago when he would sometimes act as a guide for them. In a similar example which occurred on the evening of November 15th 1998 in xxxx village on the west bank of the Sittaung River, Sa Thon Lon troops came to kill villager Maung A---, but caught his wife Ma S--- instead. Maung A---ran to escape and they fired at him but missed. They began beating Ma S---on the head intending to kill her, then cut off her ears to steal her earrings, slashed part of her mouth off and left her for dead. However, she lived and her brother secretly carried her to a hospital. When the Sa Thon Lon found out about it, one of them went to the hospital and threatened her, after which she had to leave the hospital and now lives in hiding, as do her husband and brother.

"They tied him up, covered his face and forced him to go with them. His wife came down [out of the house] and said, 'My husband is a good person.' The Burmese who captured him said to her, 'He is a good person now', but in the past he was a bad person." Then they pulled him away. ... When they pulled him out of our village they were beating him, and we heard the next day that they killed him in Yay Leh and threw his body in the Sittaung river. Some people saw it. He shouted loudly and said, 'I am not the leader of the defenders.' ... The rest of the Burmese left in the village called people to come to the school for a meeting, I didn't dare go, I stayed in my house. Many people hid in their houses. They said, 'Let this serve as an example. We won't forgive you next time. In the future, you must live and stand for people on this side [the side of the SPDC], you shouldn't contact the KNU. The day we hear about you contacting the KNU, you will know/ This is really dangerous." - "Saw Kyaw", (M, 34), Yan Myo Aung relocation side, Mone township, who witnessed the Sa Thon unit take away Saw Mah Htoo, whom they later killed, in November 1998 (Interview # 23,1/99)

"They captured her, tied her up with rope and then beat her head until her head was broken. Her husband ran away, and they shot at him while he was running but he wasn't hurt. Then they tried to finish killing her. They were beating her to death with a gun butt, but she wouldn't die so they slashed her with a knife. They cut off her ears. There was a set of ornamental earrings worth over 10,000 Kyat in her ears. They slashed her chin and her face and left her to die, but still she didn't die.” - "Maung Sein" (M, xx), xxxx village, Kyauk Kyi township, describing how the Sa Thon Lon tried to kill his sister in November 1998; they left her for dead but he carried her to hospital, and she survived (Interview #33,12/98)

"I went to see her in xxxx hospital but I don't recall her name. She is a smart woman and speaks bravely. She told us that the Sa Thon Lon soldiers were coming to kill her husband but when they came her husband ran away. She spoke bravely to the soldiers so they got angry at her and cut off her mouth."
When the doctors asked her about her story, she answered truthfully and told them that the soldiers had said: 'You're a woman who can speak very well so I'll cut off your mouth.' The doctor sewed her mouth [back together]. They [the soldiers] thought that she was dead but she wasn't. When she was in the hospital, they heard about it so they went to the hospital. They [the doctors] couldn't kill her in the hospital because there were doctors, nurses and police around. He told her, 'You are very lucky! I thought that you died but you are still alive, so if you have to leave the hospital you'd better go somewhere that I can't find you or you're dead. 'She is a strong woman, her mouth, ears and skin were cut off but she is still alive.' - "Naw Hser' (F, 40), xxxx village, Mone township (Interview # 20, 2/99)

"On November 11th 1998, Sa Thon Lon Guerrilla Retaliation troops led by 'Bo Nagah' [a pseudonym] killed Saw Ba Aye and his wife Naw Dah at the same time without asking any questions. They said that this couple had supported the NLD since 1988 [note: the NLD did not even exist until 1989], and that this is why they had killed them. The couple were from Leh Gkaw Wah village in Kyauk Kyi township. When they were killed their son Maung Lay Lay was only three months old. Now his relatives have to take care of him and they are living in fear, spending only one day in each place. He is not getting enough milk and is very weak." - incident report from KHRG field reporter.

The Sa Thon Lon have also been killing people in Tantabin township of Southern District, just north of Nyaunglebin District, which has become part of their operating area since the end of 1998. According to villagers who fled this area in April 1999, the first Sa Thon Lon unit there was from the Garuda company and they were mainly just interrogating people, but after one of their members raped a Burman schoolteacher they withdrew and Bo Shan Bpu's group came in. Since then people have been killed in several villages of southern Tantabin township. The worst case occurred in April 1999, when Sa Thon Lon troops went to Dtaw Gone village and ordered all the villagers to come to the church. They were then ordered to come out two by two, and were beaten when they did. After interrogating and beating all of the Dtaw Gone villagers and 16 villagers from nearby Zee Byu Gone who happened to be there, they selected three men whom they knew had had past contact with the KNU: Hsah Tu Ghaw, age 35, married with 3 children; Pa Bee Ko, age over 30, married with 5 children; and Ka Ni Ni, age 22 and single. They took them into the trees nearby and executed them. From the church the villagers heard the screams of Ka Ni Ni, whose throat had been partly cut and who died slowly. They stabbed Hsah Tu Ghaw twice, then cut his throat and kicked him to the ground, and also stabbed Pa Bee Ko to death, all in front of witnesses from the village.

"They killed two people in Byin Gah and they also killed people in Yay Sha and Taw Ma Aye. In Taw Ma Aye they killed Uncle Pa Thu Po Pah, he is over 50 years old. They called all the villagers of Taw Ma Aye to go and give 'obligation' paddy. When they went, they asked Uncle Pa Thu Po Pah, 'What is your name?' He said, 'Bo Gkay', and then they tied him up, pulled him to Lay Tee and killed him. This group, if they capture anyone there is no coming back" — "Saw Tha Pwih" (M, 38), xxxx village, Tantabin township, Toungoo District (Interview #50, 5/99)

"They killed three people in Dtaw Gone, near my village. They killed them 2 weeks ago. Hsah Tim Ghaw is 30 years old, he has 3 children. Pa Bee Ko is over 30, he has 5 children. Ka Ni Ni is 22, he is single. They captured them in the church, took them to the jungle and killed them...Ka Ni Ni was yelling in the jungle because his throat wasn't completely cut. When we were worshipping in church at noon he was yelling, people heard it and went to him but he died when they got there. People buried him after the Short-Pants group left. We couldn't bring him home because all his blood had run out. As for Hsah Tu Ghaw, there was a hole in his side where they'd stabbed him with a knife. And as for Pa Bee Ko, he had been ill almost to death even before they killed him. " — "Naw Htoo Say" (F, 22), xxxx village, Tantabin township, Toungoo District, describing a Sa Thon Lon killing which occurred in April 1999 (Interview#51, 5/99)

Many of those beaten and killed are not specific targets, but simply villagers found outside their villages or relocation sites by the Sa Thon Lon troops. (My underlining) Sa Thon Lon units have issued orders that no villagers are to be outside their villages between 6 p.m. and 6 a.m., and that even when they are allowed outside they must have a pass and are not allowed to have any food. People caught outside their village at night or caught with food are
generally executed, while those caught without a pass or with an expired pass during the daylight hours are severely beaten. One of the worst killings of this nature occurred in November 1998, when a group of four Twa Ni Gone villagers and two Myeh Yeh villagers had gone from Yan Myo Aung relocation site to fish at some ponds near their home village. They had a pass, but a Sa Thon Lon unit found them in a hut with some rice and accused them of feeding the resistance. The two Myeh Yeh villagers were released, but the four Twa Ni Gone villagers were taken into a patch of scrub and shot dead. The gun jammed when they tried to kill the fourth victim, a schoolboy in his late teens, so they killed him with a knife and then seriously mutilated his body. The four killed were all male: Saw Gka Bweh. Maw Nyunt Po, Saw Lay Heh and Shaw Po Gkeh. A month later, 5 more Twa Ni Gone villagers were executed under almost identical circumstances. On November 18th 1998 in southern Mone township, Sa Thon Lon troops saw Po Theh Pyay from Ter Bpaw village and Saw Aye from Myeh Yeb village along a path because they had returned from the relocation site to fish. They called to the two villagers, but they ran because they were afraid and the troops shot them in the back. The bodies were then beheaded, and the Sa Thon Lon group forced the villagers to display the heads along two nearby pathways for an entire month. On December 27th 1998, Bo Maung Maung and Bo Shan Bpu led Sa Thon Lan troops into Baw Bpee Der village, where villagers were having a volleyball tournament for Christmas. They opened fire on the villagers, killing Saw San Myint, who was in his early twenties. They beheaded him and hung his head along the footpath to Mone with a cheroot stuck in its mouth as a warning to the villagers. These are only a few examples of some of the killings, both systematic and random, which are being carried out by the Sa Than Lon troops; many more examples are provided in the table in the appendix, the field reports and the texts of the interviews with villagers which appear in the Annex to this report, and even these are only a partial sample of the killings which have already occurred and are still occurring throughout the district.

"When they killed the four Twa Ni Gone villagers at the fishpond hut I was also in one of the fishpond huts. Those people were keeping some rice in their fishpond hut because they were staying there and needed to eat. They were villagers who had been forcibly relocated but had come back to work at their pond. When the soldiers saw their rice they accused them of feeding the KNLA, so they killed them. First they asked them questions and brought them to our hut. We had a pass to slay in our fishpond hut. ... But the soldiers took the four Twa Ni Gone villagers away to kill them, and then we heard the sound of the gun: Doan, doan, doan, doan. One of the four killed was a schoolboy. He was in 10th Standard [Grade 10], so he was about 20 years old. " - "Saw Ghaw" (M, xx). xxxx village, Mone township (Interview #29,1/99)

"They killed Saw Gka Bweh, Maw Nyunt Po, Saw Lay Heh and my cousin Shaw Po Gkeh. When the Burmese shot at him their gun didn’t work, so they dug out his eyes with a knife, cut open his belly and cut open all his intestines. It was Shan Bpu who killed him. " — "Saw Tha Doh" (M, 1 8), xxxx village, Mone township, describing the murder of his cousin in November 1998 (Interview #13, 3/99)

"That first time they killed 2 people who were single and 2 who were married. Then the next time they killed 5 people - they were all Twa Ni Gone villagers as well. That was on December 26th or 27th [1998]. Three of those people were single and two were married. All the people they killed were Karen. ... They killed them for being friendly with the KNU. It's part of their 'dig out the roots' policy. " - "Pu Hla Maung" (M, 57). xxxx village, Mone township (Interview #22,1/99)

"They killed Saw Aye and Po Theh Pyay while they were fishing in their boat [in November 1998; Saw Aye was from Myeh Yeh and Po Theh Pyay from Ter Bpaw]. When they saw them, they demanded that they come to them. When Saw Aye and Po Theh Pyay got to them, they ordered them to raise their hands and then they shot them dead. After killing them, they cut off their heads and took them to Ter Bpaw and Po Thaung Su. They hung one of the heads on the path to Mone and the other on the path to her Doh [Kyauk Kyi]. They ordered people [villagers] to guard the heads and said that if the heads were lost they would be replaced by the heads of those who had been guarding them and lost them. People on sentry duty watched them all day and night. They finally threw the heads away when they were
decomposing. They have been hanging there for over a month before they finally ordered them thrown away." - "Saw Tee Ko" (M, 40), xxxx village, Mone township (Interview # 19, 2/99)

"They hung one of the heads on the path out of the village that goes to Mone and another on the path to her Doh. We had to cut bamboo and weave it into stands like those used for drinking water and then put the heads on them. ... [T]hey ordered people to do sentry duty around those heads and if the heads disappeared, they said the villagers would have to replace them with our own heads. They kept them therefor over a month and then another Army group came and forced the villagers to bury the heads.” - "Saw Ner Muh" (M, 30+), xxxx village, Mone township (Interview #8, 4/99)

"On October 15th /998, Sa Thon Lon Guerrilla Retaliation troops entered Thit Cha Seik village in Mone township and burned down the houses of village chairman Nga Soe and secretary Tin Win. Later they fired three M79 grenades into Ter Bpaw village. The grenades hit village headman Po Thaut Kya’s house, killing his 2 daughters Naw Mu Lay, age 8, and Naw Dah Dali, age 2.” - incident report from KHRG field reporter.

"In our area, if we add it up, they are killing 2 or 3 people per day, but we are busy working so we don’t have time to listen to that and we don’t hear about it. Even though we’re not listening for that news, we still hear of people dying every day, because the enemy is killing many people.” - "Maung Baw" (M, 30), xxxx village, Kyauk Kyi township (Interview #39,12/98)

Other Sa Thon Lon Activities

"One of them got married in Nga Nwah Seit. His name is Bo Maung Maung, he is from the Sa Thon Lon. He asked the girl's parents to give him their daughter, and she didn’t like him but she had to marry him. People in the countryside are forced to marry them. They wrote letters to each of the villages and the village leaders had to collect enough money from all the villagers to pay for the food that was going to be prepared and for the clothing and jeweled, a necklace and earrings for the bride. The elders from my village of Yan Myo Aung collected money from the villagers and the whole village had to pay 17,000 [Kyats]. I don’t know what other villages had to pay but big villages had to give more. He [Bo Maung Maung] showed movies in each village before the wedding to make money. Each person had to pay 50 Kyats for each night the movies were showing regardless of whether they went to see the movie or not. In our village they showed movies on two nights so we had to pay 100 Kyats each. One movie was an English movie and the other was Burmese, but I don’t know the titles of the movies because I’m not interested in movies. The village elders couldn’t do anything, they could only tell us that we had to pay whether we went or not, so some villagers went and watched the movies.

After the wedding he [Bo Maung Maung] had a house built in Nga Nwah Seit. It was a brick house and the villagers had to bring the brick as well as build the house. All the expense and labour that went into that house came from the villagers.” - "Saw Tee Ko”, (M, 40), xxxx village, Mone township (Interview # 19, 2/99)

Through killing is their main function, the Sa Thon Lon units are also involved in several other activities, some of which are deliberate efforts to intimidate the villagers and some of which are the random and brutal acts of undisciplined soldiers. Their overall purpose is to terrify the villagers (my underlining) so that they will not support the opposition, and to achieve this they make a point of trying to frighten villagers whenever they see them. Ordering villagers not to look them in the eyes, refusing to tell them anything, constantly moving and arriving by surprise in the middle of the night are all tactics intended to disorient and frighten the villagers. Sa Thon Lon leader Bo Shan Bpu makes a point of hitting villagers before he even speaks to them whenever he meets them along the pathways. One villager told KHRG that he and his teenage friends met Bo Shan Bpu along a path near their fields- he immediately slapped them all in the face, then asked them their ages and beat them for being younger and yet taller than him. Another villager described how his 67-year-old father was stopped by a Sa Thon Lon unit when going for SPDC forced labour with other villagers; the leader beat all of them for not having passes, but gave his father an extra beating because he was the eldest and should therefore "know better". 
"My uncle asked me to help by pounding his paddy so I went to do that, and on the way back I and two of my friends met the Shot Pants. I was with my friends M..., he is 16 years old. ... They asked us about our passes and we showed them to them. Another one, Shan Bpu, came up to us and he didn't say anything, he just slapped my face 3 times and punched the three of us in the stomach once each. He asked M... how old he was and when he answered that he was 16 years old, Shan Bpu punched him in the chest and said, 'Why are you taller than me if you are 16 years old? I couldn't say anything he would have killed me. He asked again, 'Why are you this big if you are only 16 years old?' Then he slapped his face again, ... Shan Bpu said, 'Nga lo ma Kayin myo, pyangV [loosely translated as, 'You Karen sons of my whore, get out of here!']. Then we rode out bicycles home." - "Saw Tha Doh" (M, 18), xxxx village, Mone township (Interview # 13, 3/99)

"They even beat my father-in-law who is 67 years old. They force villagers to go back [from the relocation sites] and clear the paths in their old villages. Every morning villagers are going back to their own villages to cut the scrub. One morning in December, they came and saw villagers going to clear their old village. They asked for their passes but none of them had a pass, so they beat them all with fresh bamboo they had cut in the area. On that day, my father-in-law went instead of me because I had to go and give my paddy to the central (command). . . . They beat each of them 2 times with the exception of my father-in-law. He (the Sa Thon Lon commander) said that the others were young and had little knowledge, but that my father-in-law is old and should have enough knowledge to show some respect but didn't. So he was beaten 12 times. He is 67 years old and his head shakes all the times. ... When he returned after being beaten he got a fever, and we had to give him an injection of penicillin.” - "Saw Ner Muh", (M, 30+), xxxx village, Mone township (Interview # 8, 4/99)

"We hadn't done anything, we were just going to carry our paddy and they saw us, called us to them and then beat us. Most of us were Karen, but there were three children among us and they were Burmese. Some were 35, 40 or over 50 years old, and the children were about 10 years old. Eight of them called us over to beat us. First they just asked us, 'Where do you live?', and we told them we live in xxxx. They forced us to lie on our stomachs on the ground. They beat us with 8 cane sticks until all but one of the sticks was broken. They beat us here, on our legs. Thirteen of us were beaten, and they beat each of us ten times. The children were only beaten 3 times each, but they beat the rest of us with all of their strength. While they were beating us their officer (Shan Bpu) ordered them, 'if they move, shoot them dead at once'. Two of them were beating us, and the rest were aiming their guns at us.” - "Naw Lah Paw", (F, 21), xxxx village, Mone township, describing her beating by Bo Shan Bpu's Sa Thon Lon unit in December 1998 (Interview # 28,1/99)

"When we were sitting and talking about how to get our living, the guerrillas (Sa Thon Lon) came suddenly. My friends saw them and ran away. I didn't run, because the Burmese soldiers always told us not to run when we see them. I stayed, and they came and asked me, 'Who was that running?' Before I answered he hit my head and it bled. ...He hit me with his gun barrel, my face was cut here and my head was bleeding.” Tha Pwih" (M, 38), xxxx village, Tantanbin township, Toungoo District (Interview # 50, 5/99)

In order to preserve their element of secrecy and surprise, the Sa Thon Lon units have also been ordering villagers to kill their dogs. Many villagers keep small dogs which they take with them to the forest, particularly when hunting, and which provide security at night in the village by barking at strangers. Sa Thon Lon units do not want the villagers to know when they are arriving in the night, so when dogs bark at them they order the owner to be brought forward. They then order the owner to kill his dog, and in addition they beat or fine him as punishment. In the villages of T'Kaw Pwa, Way sweh, Nga Byaw Daw, Twa Ni Gone, Haw Ko Ghaw, Lu Ah, and Weh Gyi, all in Mone township, Sa Thon Lon units issued orders in late 1998 for all villagers to kill their dogs. In T'Kaw Pwa village alone the dead dogs filled two bullock carts, and the villagers had to discard them outside the village. Some villagers tried to hide their dogs, but when these were found later the troops threatened to kill the owners if they wouldn't kill their own dogs, and most people complied out of fear.

The Sa Thon Lon are moving in the area at night and don't like the dogs because they bark at them when they want to move secretly. They ordered the village headmen to tell people kill all their dogs or
they would beat the owners. They are really doing what they threatened to do. After killing the dogs
that bark at them they beat their owners. Some of us loved our dogs and didn't want to kill them, so we
tied our dogs in hiding places. It's not easy for them to be tied up all the time for many days, so we
untied them sometimes. There was one night that they came and people didn't know they were coming.
The dogs barked at them so they asked, 'Whose dogs are these?' People had to go and get the owners of
the dogs, and when the owners came they said 'if you are going to kill your dogs then kill them now,
but if you aren't going to kill them then I'm going to kill you.' The dogs' owners were afraid of dying
so they had to kill the dogs they loved. My dog was very good and obedient, so I was very upset but
there was nothing I could do. Finally I had to kill it. When I killed it my children were crying loudly,
but we had to kill it because we feared for our own lives. Our dog had to die for us. In T'Kaw Pwa
village, people had to give them a list of all the dogs and then people had to kill all the dogs in the
village. The dead dogs filled two bullock carts, and the people had to take them and throw them away in
the fields. - "Naw Hser", xxxx village, Mone township (Interview # 20, 2/99)

"They beat the dogs to death and then they beat the owners of the dogs (which bark at them). If they
shoot the dog dead, then they beat the owners and also demand 500 kyats for the cost of the bullet after
they beat him. They have ordered villagers in the area of Way Sweh, T'Kaw Pwa and Nga Byaw Daw
villages to kill all their dogs. ... Now there are no dogs there. I even had to kill my own dog. In Yan
Myo Aung 10 dogs were killed, but in Twa Ni Gone, Haw Ko Ghaw, Lu Ah, Weh Gyi and T'Kaw Pwa
all the dogs were killed." - "Saw Tee Ko", (M, 40), xxxx village, Mone township (Interview # 19,
2/99)

The Sa Thon Lon units have threatened villagers with forced relocation and burned houses
casion. They have also ordered villagers who have already been forcibly relocated to return
by day to their old villages in Mone township to cut down all the fruit and other trees in the
village and to clear scrub along the sides of footpaths, presumably to protect the Sa Thon Lon
and other SPDC troops from ambush by eliminating cover for resistance forces while also
making it harder for the villagers to find food in their villages. (For more information on force
relocations see below under 'Villages in the Sittaung River Plains'.) One villager stated that in
March 1999, Sa Thon Lon units in Kyauk Kyi township began ordering villagers to build
fences around their home villages, with only two gates for access. Villages in Tantabin
township of Toungoo District have also been forced to fence in their villages.

"When we were in Yan Myo Aung, Bo Maung Maung came and told us, 'In this area, if I don't allow
you to live here, you can't live here. If I allow you to stay you can stay, so cut down the trees and
plants in the village so it looks clear.' Anytime he comes to the village he demands clothing, sarongs,
and food. When we see a taxi arriving with Shan Bpu inside it, everyone prays and no one feels like
eating. He forces taxi drivers to take him wherever he wants to go, and he never pays them. When he
came, all the villagers didn't dare move. Some hid in their rooms and others went to hide in theirs
toilets." - "Naw Paw Paw Htoo", (F, 31), xxxx village, Mone township (Interview # 12, 3/99)

"In March 1999, when the road construction was almost finished, the intelligence (Sa Thon Lon)
soldiers of the SPDC Army ordered villages in Kyauk Kyi township to make fences around their
villages. The villages were allowed to have only two gates." - "Naw Ghay", (F, xx), xxxx village,
Kyauk Kyi township (Interview # 11, 4/99)

"They forced us to fence our village and then they forced us to stick sharpened pieces of bamboo around
the fence. People have to do that in every village." -"Saw Lay Muh", (M, 42), xxxx village,
Tantanbin township, Toungoo District (Interview # 53, 5/99)

"Now they closed everything. They don't allow people to go to farm. They burned every farm hut and
ordered people not to go out of the village. They've fenced the village tightly." - "Pu Than Nyunt",
(M, 60), xxxx village, Tantabbin township, Toungoo District (Interview # 52, 5/99)

Like other SPDC troops, the Sa Thon Lon units largely support themselves by looting and
extorting money in villages. In Kyauk Kyi township, each family in villages where they
operate has to pay 200 to 300 Kyat per week which is supposedly for the Sa Thon Lon
soldiers' food. Villagers throughout their entire area of operations have to pay varying amounts of fees to support them. In addition, when they arrive in villages they choose a villager's house; go to stay there and demand that the house owner prepare food for them. One villager claimed that the Sa Thon Lon group that comes to his village demands at least 5 chickens per day; by Karen standards this is a grossly extravagant amount of meat for a group of only ten people. They also take whatever they like from small village shops without paying, and demand that the villagers weave or buy fancy traditional clothing for them. The villagers often have to pool their money afterwards to pay for the food and goods they have taken. For transport, they commandeer bullock carts and bicycles, often ordering people with bicycles to deliver messages for them or summon people to them. When Bo Shan Bpu goes back and forth to town and along the roads, he never uses military transport, but instead orders local passenger vehicle or motorcycle drivers to take him wherever he wants to go without payment. His preference for civilian over military transport may be for his own safety; he is a KNLA target, so he may feel that he is safer traveling covertly with civilians.

"They commandeer bullock carts and bicycles (to carry or send things for them). Two bullock carts and one bicycle must be ready for their use each day. The bullock carts must take them wherever they want to go, and the bicycles have to send messages for them or go to summon anyone they want to see. In the past, although we had to give taxes and fees we could travel when there was no fighting, but since they've arrived people dare not travel or do their work. When people can't dare go anywhere they can't think of what to do with their lives." - "Saw Ner Muh", (M, 30+), xxxx village, Mone township, about the Sa Thon Lon (Interview # 8, 4/99)

"They demanded we give them a chicken every day. We had to buy the chickens for them. When they demanded alcohol they didn't like local rice whisky, they liked the alcohol that people sell in town. They demanded things like that for a long time, until the villagers couldn't support it any longer. ... They once held a meeting where I heard them say, "Whenever I go out (on patrol) you will hear that I have killed people." - "Saw Dee Ghay", (M, 38), xxxx village, Kyauk Kyi township, talking about the Sa Thon Lon (Interview # 9, 4/99)

"When they came to our village, they went to the shops and took everything they liked without paying and then left. The villagers had to take up the cost of that. They did it 3 or 4 times. When they first arrived in our village we had to buy them a jacket, which cost 5,000 Kyats, and 5 or 6 sets of Karen traditional clothing and sarongs. ... We don't dare to wear watches and we hide our nice clothes. When the Sa Thon Lon enter the village and see you wearing nice clothes or watches, they demand that you give all of it to them. When a person from Tint Lwin's group say my cousin's watch, he demanded the watch from my cousin but my cousin said, 'This is my mothers watch.' He slapped his face and took his watch anyway." - "Naw Ner Muh", (M, 30+), xxxx village, Mone township, describing the behaviour of Sa Thon Lon troops (Interview# 8, 4/99)

The Sa Thon Lon troops are definitely targets of the KNLA, and as a result they are afraid to travel along the road from Kyauk Kyi to Mone because it skirts the western edge of the hills. To protect themselves, in January 1999 they began ordering villagers to build a new road about 5 kilometres further west, running from Na Than Gwin to Mone along the Sittaung River. The length of this road is 30 to 35 kilometres, and forced labour on it has been intensive because they are in a rush to complete it. Thousands of villagers had to rotate shifts of five days to a week building and smoothing a 4V2 foot high embankment and roadbed all along its length between January and March 1999. Sa Thon Lon troops have been supervising the construction, which is now mainly complete except for a number of bridges. Villages have been ordered to provide all the timber for these bridges, and are currently being forced to build them. In April, when the Sa Thon Lon commander Bo Maung Maung ordered a final intensive labour week to smooth the embankment, he told the villagers that at the end of the week he would ride a motorbike from Na Than Gwin to Mone and back, and that if the ever had to stop his motorbike because the road was too bumpy the villagers would "know about it". (For more information on this road see below under "Villages in the Sittaung River Plains: Forced Labour on Roads").
Several Sa Thon Lon soldiers have also forced local girls to marry them. (My underlining) The most notorious case of this involved Bo Shan Bpu in Mone township. In December 1998 he saw Naw O..., a 19 year old girl from Lu Ah village, working in her family's beanfield. He grabbed her and tried to rape her, and she fled. Later he went to her village and asked her parents and the village headman for her in marriage, even though there are some reports that he already had a wife elsewhere. When Naw O... heard this she fled her village and went to Toungoo. Then Bo Shan Bpu threatened that if she did not return he would burn the village and kill everyone in it, so her parents called her back and she was forced to marry him on December 25th. He ordered her to move to Meik Tha Lin but she didn't want to go, so to encourage her he burned down her family's house in early January. Realising that after that he would be known throughout the district as the man who burned down his father-in-law's house, he then burned down all the houses in Lu Ah village. The Lu Ah villagers had to flee, and are now living in small shelters in a field outside Weh Gyi village. All of these details have been confirmed by the testimony of several different villagers from the area. One villager reported that after that time, he arrived at xxxx village with a bunch of pigs he had stolen, intending to use them to buy a girl named Naw L... in marriage, but when he found out she was away studying in town he forced the villagers to buy the pigs he had brought and then left.

"We saw a girl in Lu Ah treated that way. Shan Bpu asked the village headman, her parents and the villagers to give her to him. Both her parents and the village headman had to tell her to marry him. The villagers told her the same thing. They said, 'If you don't marry him, they will kill us all, as the village headman and your parents told you.' Finally she had to give herself to the Burmese (soldier) because she loves her parents, the village headman and the villagers. ... She was crying when they first got married and after they were married she was still crying because she doesn't like him. Now her husband has called her to go and live in another area but she didn't go, so he said that she was too attached to her house and return to burned down his father-in-law's house. When he had finished burning his father-in-law's house he was worried that the people would say 'He's the one who burned his own father-in-law's house, so he burned down every house in the village.' - "Saw Tee Ko", (M, 40), xxxx village, Mone township (Interview # 19, 2/99)

"She told her siblings, 'I feel very sad that I had to sell myself because of all of you. I want to die but I don't know how to die. (My underlining) So her siblings are very sad for her also. Whenever she sees her siblings she tells them she is very ashamed. We told her not to be ashamed. She asked us how to suffer this kind of life and we told her there's no other option but to suffer like this. Shan Bpu burned the houses of his in-laws and then burned all the houses in the village. He burned all 50 or 60 houses in (Lu Ah) village plus all the bamboo that the villagers were going to use to build new houses. That happened in early January (1999). They built temporary huts in a place near Haw Ko Khaw, but then they had to move and build temporary huts in the field near Weh Gyi. ... They are living in the fields and can't build (proper) houses because all of their things were burned." - "Naw Hser", (F, 40), xxxx village, Mone township (Interview # 20, 2/99)

"He killed four people after he got married. He got married on December 25th and on the night of December 26th he called four people out of the village and killed them." - "Saw Ghaw", (M, xx), xxxx village, Mone township (Interview # 29, 1/99)

"They raped a woman near Zayat Gyi. She is a teacher and she is Burmese, not Karen. That group calls themselves the Garuda group. Then they had to go back to clear that up so Bo Shwit (Shan Bpu) came to replace them. When the Garuda group was in our area they came and ate in our village and they just interrogated people, they didn't torture them, but when Bo Shwit came we saw killings and beating." - "Pu Than Nyunt", (M, 60), xxxx village, Tantabin township, Toungoo District (Interview # 52, 5/99)

Bo Maung Maung and other Sa Thon Lon soldiers have also reportedly forced local women to marry them. Villagers in Mone township repeatedly complain that every time a Sa Thon Lon soldier marries, everyone in the area is forced to give money as a wedding gift. When Bo Maung Maung was getting married, he sent orders to several villages demanding money for
the wedding feast, clothing and jewellery; for Yan Myo Aung relocation site alone, the total came to 17,000 Kyat. Bo Maung Maung then arranged for movies to be shown on two consecutive nights in each village, and everyone had to pay 50 Kyat per night for the movies whether they went to see them or not. After each Sa Thon Lon soldiers gets married, the villagers have been forced to buy tickets, take them to the village where the soldiers wants to live, and build a brick house and surrounding fence for the bride and groom.

"Sa Thon Lon soldiers also liked two female students around the age of 16. Those girls were about to write their examinations, but instead they left the school and fled." - "Naw Hser", (F, 40), xxxx village, Mone township (Interview # 20, 2/99)

15.25 ANALYSIS OF THE DEATH SQUAD KILINGS

This extract from the Karen Human Rights Group very much confirms what I was told directly by the villagers on one investigatory trip.

These killings are clearly pre-meditated, systematic and State sponsored. They are not arbitrary killings carried out in the heat of battle. They are specifically intended to kill civilians as part of a campaign intended to destroy opposition to the policy of Burmanisation. However, can these selective killings of small groups of people be considered acts of genocide, i.e., contributing to destruction of the group as such?

The answer is unclear and we need to look at two crucial judgements concerning the question as to when selective killing of members of an ethnic group can be considered to be acts of genocide, as opposed to a crime against humanity. In a restrictive judgement, the ICTY concluded that although Goran Jelisic had singled out many Moslems for execution he had killed, Arbitrarily [i.e., for no particular reason] rather than with the clear intention to destroy the group. Thus the Tribunal rejected a charge of genocide. The question which thus has to be answered is: what is the intention and motive behind the killings of the death squads? The short answer is that the killings are intended to destroy the resistance by killing anyone who is in the resistance, or has ever been connected with the resistance. If that is so, then the killings are not genocidal, but, being widespread and systematic, a Crime Against Humanity of Murder. However, the killings, and how they are carried out, suggest that the intention is wider than just killing members of the resistance, or those associated with it. Two points can be made suggesting that the killings are more than acts of simple elimination.

Firstly, people are not just killed: they are beheaded, mutilated, their heads sometimes hung on posts. The intention underlying such actions is, one can infer, to spread terror amongst the wider group. It is difficult to convey the extent of this terror at night in jungle villages with no electricity, no means of communication, no rule of law, no one to ask for help. With the village dogs all dead, the deaths squads move silently and at ease everywhere and anywhere, often sitting quietly under houses listening to possibly incriminating talk: the night is filled with this paralysing terror. Moreover, the victim group is much wider than simply resistance fighters:

They are going to cut off the tops of the plants. The second group will come to scorch the earth and dig out the roots. They will kill all the relatives of the forest people (Interview #19,2/99)

The analogy is being made between the resistance fighters and the tops of plants, their relatives with plant roots; their culture with soil. The tops of the plants are the resistance fighters to be cut off; their roots are their biological connections, their families and relatives; the earth their ethnic culture which nurtures them. Not just the tops of plants will be cut off (the resistance fighters); the roots will also be dug up, then the earth itself scorched. In other words the relatives of resistance fighters and then the whole sustaining culture has to be
destroyed also. The analogy suggests total, permanent and widespread destruction, root and branch destruction, something much wider than limited, selective killing. We can see this in the two and a half thousand villages destroyed in eastern Burma and in the vast areas of ethnic Burma, such as the Pegu Yomas region, which have been permanently depopulated. Thus, this selective killing may be part of something wider than the counter insurgency campaign known as The Four Cuts. The systematic killings described above, have to be seen in this wider context of ethnic destruction and the inexplicable slump in birth rates and outright population collapses in certain areas. Moreover, the army does not just eliminate people physically: the mutilations are intended to produce terror amongst ethnic civilians and thus express to the second act of genocide:

2 b) Causing serious bodily and mental harm to the group.

However, the determination as to whether killings are arbitrary, (and thus not genocidal), or selective and discriminatory, (and thus possibly genocidal) is determined, according to the ICTY, by the wider context in which they take place. Prosecutor v. Jelisic Judgement IT-95-10-T, 14 December 1999:

The factors which may be taken into account when determining the discriminatory [i.e. possibly genocidal] intent of the accused are the general context in which the acts occurred, the statements and deeds of the accused and that the acts of the accused occurred against a backdrop of the widespread and systematic violence being committed against only one specific group. This combination of factors would show that the accused chose his victims discriminatorily.

It is asserted that as these killings take place within the context of widespread, sustained and systematic State sponsored violence against specifically targeted ethnic peoples, they cannot be considered to be arbitrary, but discriminatory, because the killings of ethnic people are part of this wider discriminatory pattern of destruction.

The victim group selected for killing comprises the following:

- The resistance fighters;
- People who had once been resistance fighters;
- Relatives of resistance fighters;
- Anyone connected with, or who has ever been connected with resistance fighters, e.g. someone who once provided them with food;
- The whole terrorized surrounding ethnic community.

It must be emphasised that the resistance fighters are not primarily a political group, e.g. they are not communists, or NLD members. They are primarily ethnic resistance fighters defending the ethnic integrity of their communities against State sponsored, racially motivated terror. It is thus impossible to separate the resistance fighters from their ethnic group, just as it is impossible, to use the Junta’s root and branch analogy, to separate the tops of plants from their underlying roots, and the roots from their surrounding soil.

Thus it is possible to draw the following conclusions:

Firstly, the selective killings are inseparable from the wider context of destructive activities;

Secondly, the activity of selective killing systematically practised by agents answerable directly to the Military Intelligence headquarters in Rangoon, is expressive of a policy taken at the highest level by the ruling Junta;

Thirdly, the victim group is the not just the resistance, but anyone vaguely associated with it who is targeted, i.e. virtually the whole surrounding ethnic community.
The killings are planned and inflicted by soldiers specially trained in this kind of killing.

The causal relationship between selective killing and the genocidal destruction of the group is described by the ICTY as follows:

*Genocide is an act committed against an individual because of his or her membership in a particular group as an incremental step in the overall objective of destroying the group.* (ICTY, Prosecutor v Jelisic, IT-95-10-T Dec. 1999)

In other words, the Tribunal is opining that where the individual, the particular group and the wider group are inseparable (the *tops of plants, the roots, the surrounding soil* corresponding to the individuals killed, the immediate relatives and the surrounding supportive culture), the selective killing of an individual can be understood as an act of genocide because it is directly connected *incrementally* to the destruction of the wider group. The individual is killed basically because of his ethnicity. The selective killings by the death squads can therefore be understood as expressive of the act of genocide by *killing members of the group.*

Moreover, the degree of terror intentionally inflicted on the whole ethnic group (in conjunction with the wide range of other complementary destructive activities) surviving in the areas where death squads operate can arguably be considered to be genocidal, as it inflicts serious mental harm on the group. Bodies are beheaded, mutilated, displayed on sticks or dumped secretly in rivers. These activities could be considered to be act of genocide,

2 (a) *causing serious bodily and mental harm to the group.*

While I was inside a woman was brought into our camp whose husband had just been beheaded. Her anguish was beyond words.

The practice of dumping bodies secretly also increases the sense of terror, prevents emotional closure. It is now characterised as the *The Crime Against Humanity of Enforced Disappearance of Persons.*

15.26 DESTRUCTION BY KILLING:
THE 1991 DELTA MASSACRES AND THEIR AFTERMATH
15.27 REASON FOR CHOICE

Although this event took place in 1991, it has been included for the following reasons:

- Its widespread scale across the whole Irrawaddy delta;
- The unusually large numbers of victims involved, suggest killing en masse rather than selective killing;
- The ethnic Karen identity of almost all the victims;
- The methods of killing employed;
- The quality and number of the mainly Burman witnesses;
- The use of US Drug Enforcement Agency supplied helicopters in the initial massacre;
- Its unknown quality. It has never been comprehensively reported before.

The systematic, aggravated, violence specifically inflicted against Karen prisoners intended to kill them, was in addition to, and in excess of, that inflicted on Burman prisoners. It involved such calculated, systematic cruelty that many Karen prisoners died as a result of the conditions deliberately inflicted on them.
15.28 PHASE 1: THE INITIAL ATTACK

The events began with an attack by land, sea and air on Bogolay township amongst the mangrove swamps in the very south of the delta region on, or around, September 27/29 1991. Called Operation Storm, it was led by South West division commander, Myint Aung. It was a systematic and widespread attack.

The motive for the attack was to destroy all possibility of armed resistance in the area after a village headman had reported a consignment of arms had been brought into a delta village by boat. The attack destroyed mainly Christian Karen villages marked red on the map; the town of Bogolay itself was spared. (It is important to be aware that Delta villages are much larger than the eastern hill villages, averaging about 1000 inhabitants in each, as opposed to a hundred or so in eastern mountains). Witnesses described helicopters being used in the attack, firing on civilians indiscriminately. When asked to draw the helicopters, witnesses all independently drew something which corresponded to the shape of the US Bell helicopter. Some witnesses described a chemical spray being used which turned the skin of victims to a charcoal colour and caused the destruction of crops and foliage in the area.

THE INITIAL KILLING September/ October 1991

The initial assault was carried out by ship, air and land. It indiscriminately destroyed victims. The numbers killed in the initial assault are unclear. However, survivors describe many people in Bogolay township rounded up, shot, bayoneted, thrown into wells and streams till they became clogged. Some were thrown into ditches and holes and grenades were then thrown in. Other witnesses described victims being thrown into rivers with their hands and legs tied behind their backs, and others being thrown out of helicopters at sea, as occurred in Argentina. Estimates of total numbers killed varied widely. The lowest estimated an immediate death toll of a few hundred; others put the total number killed initially and then dying from subsequent torture and imprisonment in the low thousands. Although it is not possible to estimate accurately the total numbers dying as a result of the operation, it is clear that this was mass, rather than selective, killing. Some witnesses also said that in addition to mass killing, community leaders, such as pastors were specially selected for killing. The overwhelming majority of the victims appear to have been Christian Karen men.

Survivors fled west, but two groups in particular were caught and massacred in two separate places. One group of approximately 30 was systematically killed on or immediately after the night of October 7,1991 by LIB 93 on a hill two miles south of Myaung Mya, four miles north of Knotha (see map and accompanying sketch); a second group of approximately 60 was bayoneted to death much further west at Shwe Taung village, beyyeen Bassein and Trangale on one of the main outlets of the Irrawaddy (see map). Their bodies were then later brought back in by the incoming tide and many were secretly buried by villagers.

The scale of the killing, indicating that it affected the whole Delta region, is expressed by this witness from the far west in Ngaputaw Township, Irrawaddy Division mountain range:

In our area, although far from Bogalay, it’s close to the western seaboard, and so the army seemed to figure that people might try to escape to boats by crossing through our area and soon they made new security measures. All of the roads and river ways were closed and we were instructed to go and serve as sentries on roads, one person from each house. We had to go for a whole week, although the clampdown itself lasted for a month or so. We were stationed along the road from Bassein to Maw Tin Sein in groups of five at thirty intervals, by the military.

(Burma Issues, “Food Scarcity and Militarisation”, p. 213, Case Study 376)
15.29 PHASE 2: INTERROGATION, TORTURE AND KILLING

Thousands of mainly Karen civilians were rounded up after the initial massacre, tortured, interrogated and sometimes killed in the immediate aftermath of the first phase of the killing. One witness in Bogolay township was told by two drunk soldiers he would be killed that night because he was a Karen secretary of the local NLD. The story is indicative of two strands that frequently interweave in Burma's tapestry of human rights violations. Firstly, ordinary Burman soldiers, not infrequently go out of their way to save civilian victims indicating that these crimes are primarily the responsibility of those at the highest level. Secondly, this man's identity overlaps two legal categories: he is an ethnic Christian Karen, but he was also a secretary of the local NLD branch which is a democratic, largely Burman, political party. The criteria used for his selection for killing is thus difficult to determine: was he selected for killing because he was Karen, thus on ethnic grounds, or was he selected for political reasons, because he worked for an organization advocating democracy?

The question needs to be constantly posed because this is how, for better or for worse, crimes have been framed by international humanitarian law, i.e. either in terms of race, ethnicity, nationality and religion (Genocide), or as crimes against civilians generally (Crimes Against Humanity) which include political victims. One can perhaps logically but tentatively infer from the situation, however, that since the mass assault was launched at an almost exclusively Karen population, and a largely rural Christian one at that, the primary reason for selection for killing was ethnic. The fact that this man may have been known to have been involved in political democratic activity was probably an additional serious aggravating factor. Active Burman NLD members usually tend ("only") to be imprisoned and tortured, rather than killed. Thus his selection for killing was probably determined by his ethnicity. Whatever the case, we must the remember the experts on the ICTR accepted that the existence of a political motive can co-exist with a genocidal motive.

It is difficult to know the scale of forced displacement and arrests after the initial attack, but certainly a large number of Karen civilians were rounded up afterwards. One witness said that after the intitial assault no men were left in Bogolay township; other witnesses reported prisoners were executed in police stations during this second phase, the survivors being then transferred to prison in phase 3.

15.30 PHASE 3 OF DELTA MASSACRE: IMPRISONMENT OCTOBER+

Burman prisoners inside Insein prison in October 1991 describe a sudden influx of about 2000 Delta Karen prisoners being brought to the gaol. They all describe the prisoners being in appalling condition, especially with regard to some whose skin appeared to be blackened like charcoal. One witness described in some cases their hair had fallen out, and they were suffering from sickness and fever and were covered in scars. Interrogation and torture, prior to being brought to the prison, had included, amongst other things, being buried up to the neck and having trucks repeatedly driven over them. We can infer that only some had survived this secondary phase of torture and that many had died before arriving at Insein prison.
15.31 PHASE 4 OF DELTA MASSACRE: DISPERSAL AND SLOW DEATH

(For an idea of what it is like inside a Burmese prison, please look at the film *Burma Behind Bars* made mostly by Burman democracy activists). After arriving in Insein, many prisoners were transferred and sent to other prisons, such as Myaungma, Myinngyan, Thayawaddy, Maubin and Pokoku prisons, though about 400-500 remained in Insein for about four years. About 500 prisoners were estimated to have been placed in Maubin and a similar number in Myaungma. A particularly notorious prison was Mygyan, where Burman inmates described about 90-100 Karen prisoners died in the prison from deliberately inflicted conditions, such as systematic starvation and overwork. Others describe 49 Karen prisoners dying in Pokoku prison; 100 dying in Maubin prison, and 64 dying in Myaungma prison. Witnesses described some being killed directly, while others died indirectly as a result of deliberately inflicted conditions.

The Burman prisoners described the following ways in which the Karen prisoners were specifically, and often fatally discriminated against, in excess of those conditions inflicted on Burman political prisoners:

• They were allowed no family visits. This may not seem life threatening in a normal country, but in the case of Burma such a situation can be precisely that. Medicines and adequate food are not provided in prison, and the only way prisoners can get them is
through visits from the outside. No visits mean no food, medicine or money for bribes. Moreover, family visits lessen the probability and frequency of torture and killing. An example of specific linguistic discrimination was given by one witness who described how a man's daughter came to visit him, but she only spoke Karen and he only Burmese. She was forbidden to speak to him in Karen and was turned away;

• Karen prisoners had to do additional forced hard labour not required of their Burman colleagues. In Myin Gyan prison, Karen prisoners had to do ten to twelve hours hard labour each day performing heavy work not required of their Burman colleagues. This was exacted from them in conditions where less than minimal food and medicines were provided;

• The Karen prisoners, unlike the Burmans, were not registered when coming to the prison, so officially they did not exist. Thus they could not be located by anyone in the outside world and they were denied any rights, such as there might be, in a Burmese prison;

• Some Karen prisoners were systematically starved to death. For example two Karen prisoners, Saw Hla Hswe and Saw Za Pip died from lack of food in Myan Gyan prison. A Burman prisoner recalled the last words of the latter, crying out: Give me some food. However, many died not directly from starvation, forced labour and lack of medicines individually, but from a synergistic combination of all these. Many witnesses described what food was given was often full of white grit, or had been contaminated to make it inedible.

15.32 PHASE 5 OF DELTA MASSACRE: 
AFTERMATH OF ATTEMPTED FORCED RELOCATION

Subsequent to the massacres and mass arrests, an order was reportedly given for all the Karen to evacuate Bogolay township. The remaining Karen reportedly refused to move and affirmed that they were prepared to die where they lived, rather than comply with a forced relocation order. As a result they were, apparently, allowed to remain where they were. However, it should be noted that it was not the intention that any Karen be allowed to survive in Bogolay township: thus the fact that some have survived does not preclude a charge of attempted genocide from being made, a charge which we remember requires no proof of outcome. However, there is conflicting evidence on the number of Karen who have remained in the area.

15.33 PHASE 6 OF DELTA MASSACRE: 
THE LONG TERM CONSEQUENCES

The Delta region has traditionally been a Karen area, especially in the rural parts, and has been the main centre of Karen population in Burma. Rough estimates of the percentage of the population who were Karen in southern Irrawaddy townships was traditionally about 40-
50%. However, a population survey of 432 villages in Bogolay township commissioned by the United Nations* in 1999 revealed a breakdown in population between Burman and Karen as follows:

**Burman** 94.23%

**Karen** 4.52%

Moreover a similar survey in the adjacent township of Laputta immediately to the west reveals the following breakdown:

Karen: 15% Burman: 79%

In the Delta township of Mawdamyinegun immediately to the north, the survey revealed a breakdown of:

**Burman** : 94%

**Karen**: 5%


Some witnesses have spoken of about 18 villages being destroyed in Bogolay township with the area not being repopulated. One specific village identified as destroyed was U Ni Su village with about 200 houses and 1000 people. Witnesses who returned reported that all family members of former resistance fighters had been killed.

The possibility that the massacres were followed up by a mass transfer of population, or flight, is also supported by reports from an independent researcher working in the area who told me there were no Karen in the area of Bogolay township where she is working.

The mass killing of mainly adult men in a largely patriarchal society, is likely to have had a devastating effect on the Karen population of Bogolay township. The alleged use of chemical sprays to destroy vegetation and rice, and the destruction of churches and subsequent expulsion of 33 Karen teachers in the adjoining township compounded the effects of the killings by inflicting physical and cultural destruction. Moreover, terror tactics used are likely to have led to serious mental suffering.

15.34 WIDER EFFECTS AND POSSIBLE CARTOGRAPHICAL EVIDENCE

One expression and result of long term Burmanisation is the physical erasure of ethnic villages from maps. When I asked witnesses and survivors to identify Karen villages in Bogolay district and the Delta in general, many could not be found because they simply did not exist on the new Junta map. (This is something repeated elsewhere in eastern Burma.) In fact it was reported about 75% of large Karen villages in the area were missing from the modern map. Many Karen villages now only exist on the old British maps. However, in the new maps original small Burman villages have been included and in fact expanded. This is very significant: it may show in clear visible form the state sponsored policy of ethnic destruction, both in terms of policy intention (why else would large ethnic villages be erased and small Burman ones be included and expanded?), and as an expression of the reality of the consequences of that policy (many of the villages may actually have been literally destroyed by that policy and no longer exist). While in all countries, towns and villages naturally grow and decline, there is something suspicious if such changes are occurring along ethnic lines in a country whose regime is practising a racial policy of Burmanisation. Moreover, the removal of villages from modern maps show that the deliberately inflicted changes are identifiable, quantifiable and measurable.

Witnesses brought to Thailand, who have survived in the Delta area since the events of autumn 1991, estimate that mass killings occurred between October 1991 and December 1992 and that the overwhelming majority of victims were ethnic Karen.
However, significantly, some witnesses report that although an order was given for the physical removal of Karen survivors from Bogolay township after the massacres, the surviving population refused to move and the authorities backed down. When asked about the extraordinary low percentage in the UN commissioned study of Karen still living in Bogolay and surrounding townships, Karen survivors assert these figures are based on bogus government figures, and that the real number of Karen surviving in the area is proportionately higher. Thus, paradoxically, it is Karen survivors who contest the low surviving Karen population and contradict the assertion that the massacres were followed up by widespread forced eviction.

15.35 LEGAL CONCEPTUALISATION OF THE DELTA MASSACRE

The numbers directly and indirectly killed were clearly considerable or substantial. The nature of the immediate killing, a military operation involving helicopters, gunboats, and infantry assault under the direction of South Western Command expresses systematic, widespread, indiscriminate physical destruction; the subsequent torture, interrogation, and then imprisonment involving starving, working to death and denial of basic resources necessary for survival specifically inflicted on the Karen prisoners, are expressive of discriminatory intent to destroy an ethnic group of mainly Karen males in Bogalay township.

The attack differs from many other examples of killing because it involved, firstly, killing en masse, and secondly, selective killing. The indiscriminate nature of the initial phase of killing is an indication of killing en masse; while the subsequent arrests, torture, starvation and working to death is an example of selective killing with a high percentage of middle aged Karen men amongst the victims.

However, because of the inaccessibility and difficulty of carrying out research in the area, it is difficult to know what the long term effects have been on the surviving Karen population of Bogolay and on the wider delta region as a whole. If it has been unable to survive, as the UN survey suggests, then the killings may have had the effect of permanently destroying the Karen population of Bogolay and some surrounding townships, and thus the killings could be described as mass killings leading to the destruction of the wider group in the municipality (ICTY, Kristic Judgement) or the limited geographic zone (ibid.) of the wider delta.

However, the UN figures may be incorrect, because some Karen witnesses claim they may be based on Junta figures which deliberately play down Karen numbers. Some Karen witnesses state that the Karen community has, in fact, survived in the area, and that the inhabitants successfully defied an order to relocate. Thus it is difficult to ascertain exactly the longterm effects on the Karen Bogalay community and the wider Karen delta population resulting from the events occurring around and subsequent to September/October 1991. Moreover, the current independent researcher working in the area reports that many Karen left the area before the events of 1991, thus indicating that Operation Storm may not be solely responsible for the apparent absence of Karen living in the township.

Nevertheless, the fact that the Junta is reported to have issued an order for all Karen to leave the area subsequent to the mass killing expresses the intention attempt to destroy the Karen population in the municipality, and possibly the wider region as well. That it was not able to implement the alleged expulsion order because of the threat of mass resistance may not negate an intention to attempt to destroy the Karen community. The immediate mass murder, the subsequent torture and infliction of fatal conditions on prisoners, and the order for the population to move, appear to express, in fact, an intention to permanently destroy the Karen in the geographical area of Bogolay and surrounding townships.
In conclusion, we can say the actions express an underlying intention to attempt to destroy the group of Delta Karen in the municipality of Bogolay township; the mass killing of Karen civilians generally, both directly and indirectly, may express a substantial step (The Rome Statute requirement) was taken to destroy a distinct entity of the Karen people, namely the Karen men of the township.

If however there is insufficient evidence to show that the attack was an attempt to destroy the Karen community in Bogolay township and the wider Delta region, it nevertheless meets the criteria of the Crime against Humanity of Extermination; part of the Karen group was killed directly, through mass killing, and indirectly, through starvation, denial of medical services and overwork in a systematic and widespread manner.

The fact that the initial motive might have been to destroy resistance is immaterial: the Moslem enclave of Srebrenica was also a center of armed resistance to the Serbs, but that did not stop the killing its male citizens from being judged an act of genocide. The systematic killing of survivors of Bogolay township, through starvation and overwork in prisons throughout Burma, expressed an intention over and above that of suppression of resistance. The conditions inflicted, and the methods used in the discriminate and deliberate killing of Karen prisoners while in jail express an intention to destroy them on the grounds of their ethnicity.

15.36 DESTRUCTION BY KILLING: THE SHAN

From mid June to mid July 1997 some 300 Shan civilians were reportedly killed in a series of massacres by the Burmese military in Kunhing township, central Shan State. Amnesty International believes that there is credible and compelling evidence which indicates that a series of mass killings did occur in central Shan State in mid 1997. Thirty villagers who had been forcibly relocated to Kunhing town, returned to their old village of Wan Sar in Kaeng Lorn tract at a waterfall called Tard Pha Ho. The troops killed 27 of them, burned their oxcarts and pushed them into the water and then slaughtered the oxen for meat. In another massacre twenty nine villagers were killed as they were returning from retrieving their rice at Sai Khao village, Kaeng Kham tract, Kunhing township. When Burmese troops discovered them, they detained them for one evening and then tied them up and shot them dead near a forest north of Sai Khao village. (Amnesty International, "Atrocities in Shan State", 1998).

In both cases it is obvious that the victims were civilians. In the second massacre, the killings were clearly pre-meditated because the victims were detained for one evening, more than meeting the ICTR requirement that premeditated murder be accomplished, After a cool moment of reflection.

Moreover the victims in all the massacres were ethnic Shan. Unlike some of the other areas of eastern Burma, the ethnic nature of the crimes in Shan state is unequivocally clear. In Karen State perpetrators are sometimes Karen splinter proxy armed groups killing fellow Karen,
and sometimes Burman democracy activists fight fellow Burman soldiers with ethnic resistance fighters: these "confusions" do not arise in Shan state where the victims are almost all ethnic people, and where the primary cause and purpose for the conflict appears to be ethnic.

THE IMPACT OF THE SYSTEMATIC VIOLATIONS ON THE TOWNSHIP COMMUNITY OF KUNHING

Although in the case of the charge of attempted genocide there is no requirement to show proof of outcome, there appears to have been a very serious collapse in population levels of Shan people in some municipalities.

*It is estimated that there is only one third of the original population of Kunhing township remaining; the rest have either fled to Thailand or to other townships to seek work.* ("Atrocities in Shan State", Amnesty International, ENGASA160051.

### EXTRA JUDICIAL KILLING IN THE FORCES RELOCATION AREAS IN SHAN STATE DURING 1997

<table>
<thead>
<tr>
<th>No. Killed</th>
<th>Date</th>
<th>Name/Sex of victim</th>
<th>Age</th>
<th>Village of origin</th>
<th>Killed by Slorc/ SPDC troop no.</th>
<th>Site of killing</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>23/1/97</td>
<td>Mae - tha (m)</td>
<td>57</td>
<td>Wan Hae village, Nar Loi tract, Murngnai township</td>
<td>LIB 518</td>
<td>In the bush outside Wan Hae village</td>
<td>Beaten dead</td>
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<tr>
<td>1</td>
<td>28/1/97</td>
<td>Naling (m)</td>
<td>20</td>
<td>Long Maw village, Wan Lao tract, Kunhing township</td>
<td>LIB 332</td>
<td>In Long Maw village</td>
<td>Beaten dead</td>
</tr>
<tr>
<td>1</td>
<td>28/1/97</td>
<td>Thark Khe (m)</td>
<td>40</td>
<td>Long Maw village, Wan Lao tract, Kunhing township</td>
<td>LIB 332</td>
<td>In Long Maw village</td>
<td>Beaten dead</td>
</tr>
<tr>
<td>1</td>
<td>30/1/97</td>
<td>Loong Sa (m)</td>
<td>40</td>
<td>Khai Yern village, Wan Keng tract, Murngkerng township</td>
<td>At a stream near Khai Yern village</td>
<td>Shot dead</td>
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<tr>
<td>1</td>
<td>10/2/97</td>
<td>Loong Aing (m)</td>
<td>38</td>
<td>Sai-murng Wang Long village, Kaeng Lorn tract, Kunhing township</td>
<td>IB 43</td>
<td>In Sai-murng Wan Long village</td>
<td>Beaten dead</td>
</tr>
<tr>
<td>1</td>
<td>10/2/97</td>
<td>Khur Harn (m)</td>
<td>56</td>
<td>Sai-murng Wang Long village, Kaeng Lorn tract, Kunhing township</td>
<td>IB 43</td>
<td>In Sai-murng Wan Long village</td>
<td>Beaten dead</td>
</tr>
<tr>
<td>Date</td>
<td>Name</td>
<td>Age</td>
<td>Location</td>
<td>Reference</td>
<td>Fate</td>
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<td></td>
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<tr>
<td>21/2/97</td>
<td>Ka Ling (m)</td>
<td>47</td>
<td>Kao Lam relocation site, Nam Zarg township</td>
<td>IB 246</td>
<td>In relocation site</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21/2/97</td>
<td>Ai Pi (m)</td>
<td>4</td>
<td>Kao Lam relocation site, Nam Zarg township</td>
<td>IB 246</td>
<td>Killed by mortar shell</td>
<td></td>
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<tr>
<td>21/2/97</td>
<td>Za ling ta (m)</td>
<td>28</td>
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<td>IB 246</td>
<td>Killed by mortar shell</td>
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<td>21/2/97</td>
<td>Nang Nu (f)</td>
<td>28</td>
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<td>IB 246</td>
<td>Za Ling Ta's wife</td>
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</tr>
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</tr>
<tr>
<td>21/2/97</td>
<td>Nang Zang (f)</td>
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<td>Za Ling Ta's wife</td>
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<td>22/2/97</td>
<td>Loong Su (m)</td>
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</tr>
<tr>
<td>22/2/97</td>
<td>Nang Nu (f)</td>
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<td>Kao Lam relocation site, Nam Zarg township</td>
<td>IB 246</td>
<td>Loong Su's wife</td>
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<td>3/3/97</td>
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<td>Pa Noom (f)</td>
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<td>Long Zum (m)</td>
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<td>Beaten and burnt to death</td>
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<tr>
<td>28/3/97</td>
<td>Ven. Ein Taga (m)</td>
<td>32</td>
<td>Kyawng Long monastery, Kho Lam tract, Nam Zarg township</td>
<td>IB 524</td>
<td>In Kho Lam Slorc military base</td>
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<td>Sai Long (m)</td>
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<td>Beaten and burnt to death</td>
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<td>Yawt Kham (m)</td>
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<tr>
<td>28/3/97</td>
<td>Par Hla (m)</td>
<td>4</td>
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<td>IB 246</td>
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<tr>
<td>28/3/97</td>
<td>Loong Thi (m)</td>
<td>42</td>
<td>Kho Lam relocation site, Nam Zarg township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Phui</td>
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<tr>
<td>28/3/97</td>
<td>Hla Kyi (m)</td>
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<td>28/3/97</td>
<td>Tee Ya (m)</td>
<td>30</td>
<td>Kho Lam relocation site, Nam Zarg township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Phui</td>
<td>Beaten and burnt to death</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Gender</td>
<td>Age</td>
<td>Place of Incident</td>
<td>Location</td>
<td>Cause of Death</td>
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<tr>
<td>Sai Kham</td>
<td>m</td>
<td>29</td>
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<td>IB 246</td>
<td>Beaten and burnt to death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sai Nu</td>
<td>m</td>
<td>28</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Beaten and burnt to death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sai Myo</td>
<td>m</td>
<td>22</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Beaten and burnt to death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sai Laeng</td>
<td>m</td>
<td>20</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Beaten and burnt to death</td>
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<td></td>
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<tr>
<td>Ar-lee-ya</td>
<td>m</td>
<td>29</td>
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<td>IB 246</td>
<td>Beaten and burnt to death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vi-sing-tar</td>
<td>m</td>
<td>22</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Beaten and burnt to death</td>
<td></td>
<td></td>
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<tr>
<td>Kar Vi</td>
<td>m</td>
<td>21</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Beaten and burnt to death</td>
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<tr>
<td>Vi-mar-lar</td>
<td>m</td>
<td>19</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Beaten and burnt to death</td>
<td></td>
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<tr>
<td>Nang Pong</td>
<td>f</td>
<td>18</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Raped and killed</td>
<td></td>
<td></td>
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<tr>
<td>Nang Aye</td>
<td>f</td>
<td>19</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Raped and killed</td>
<td></td>
<td></td>
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<tr>
<td>Nang Pool</td>
<td>f</td>
<td>24</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Raped and killed</td>
<td></td>
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<tr>
<td>Khan Arm</td>
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<td>23</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Raped and killed</td>
<td></td>
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<tr>
<td>Nang Parng</td>
<td>f</td>
<td>20</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Raped and killed</td>
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<tr>
<td>Nang Soi</td>
<td>f</td>
<td>30</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>Raped and killed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sai Phit</td>
<td>m</td>
<td>35</td>
<td>Wan Phui quarter, Kho Lam relocation site, Namzarng</td>
<td>LJB 378</td>
<td>Shot dead</td>
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<tr>
<td>Name unknown</td>
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<td>12</td>
<td>Ho Pung village, Nawng Kaw tract, Laikha township</td>
<td>IB 246</td>
<td>Raped and killed</td>
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<tr>
<td>Koong Mard</td>
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<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
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<td>Ai Shwe</td>
<td>m</td>
<td>30</td>
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<tr>
<td>Ai Sum</td>
<td>m</td>
<td>42</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
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<tr>
<td>Sai Lao</td>
<td>m</td>
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<td>Wan Parng village, Wan Heng tract, Laikha township</td>
<td>IB 246</td>
<td>Shot dead</td>
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<td>Name unknown</td>
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<td>Wan Parng village, Wan Heng tract, Laikha township</td>
<td>IB 246</td>
<td>Shot dead</td>
<td></td>
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</tr>
<tr>
<td>Date</td>
<td>Name</td>
<td>Location</td>
<td>Unit</td>
<td>Event Description</td>
<td></td>
<td></td>
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<tr>
<td>Late Mar.</td>
<td>Ven. Yean Na</td>
<td>Kaeng Kham village temple, Kunhing township</td>
<td>IB 246</td>
<td>Near a stream outside Kaeng Kham village</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mark Kawk</td>
<td>Mark Kawk village,</td>
<td>Slorc troops from Noi Bo Ma-1</td>
<td>In a rice</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wan Zae tract,</td>
<td></td>
<td>farm near</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Laikha township</td>
<td></td>
<td>Mark Kawk</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Name unknown (m)</td>
<td>Mark Kawk village, Wan Zae tract, Laikha</td>
<td>Slorc troops</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>township</td>
<td>from Noi Bo</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ma-1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Name unknown (f)</td>
<td>Mark Kawk village, Wan Zae tract, Laikha</td>
<td>In a rice</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>township</td>
<td>farm near</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mark Kawk</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Name unknown</td>
<td>Kao Lam, Namzarng</td>
<td>IB 246</td>
<td>Near a rice mill, close to Nam Taeng river</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Beaten dead</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Ven. Yean Na</td>
<td>Ton Hoong village, Ton Hoong tract, Namzarng</td>
<td>LB 378</td>
<td>In a forest 5.6 miles west of Ton Hoong</td>
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<tr>
<td></td>
<td></td>
<td>townships</td>
<td></td>
<td>village</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Thark Awn (m)</td>
<td>Wan Nang village, Kho Ood tract, Namzarng</td>
<td>LB 378</td>
<td>In a front west of the old village of Ho</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>townships</td>
<td></td>
<td>Nar</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Early Apr.</td>
<td>Zit -ta Awn (m)</td>
<td>Nar Law village, Kho Ood tract, Namzarng</td>
<td>LB 378</td>
<td>In a front west of the old village of Ho</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>townships</td>
<td></td>
<td>Nar</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Nang Ying (f)</td>
<td>Nar Law village, Kho Ood tract, Namzarng</td>
<td>LB 378</td>
<td>In a front west of the old village of Ho</td>
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<tr>
<td></td>
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<td>townships</td>
<td></td>
<td>Nar</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Name unknown (m)</td>
<td>Nar Law village, Kho Ood tract, Namzarng</td>
<td>LB 378</td>
<td>In a front west of the old village of Ho</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>townships</td>
<td></td>
<td>Nar</td>
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<td></td>
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<tr>
<td>Early Apr.</td>
<td>Loong Awn (m)</td>
<td>Ho phai Mawk Zarm village, Murngpan township</td>
<td>Slorc troops</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>from Loi Bo</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Ma - 1</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Ping - nya (m)</td>
<td>Kan kan village, Murngpan township</td>
<td>Slorc troops</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>from Loi Bo</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ma - 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Apr.</td>
<td>Name unknown</td>
<td>Kunhing township</td>
<td>IB 246</td>
<td>Near Nam Parng river, 3 miles north of</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Kunhing</td>
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</tr>
<tr>
<td>1/4 1997</td>
<td>Sai Mon (m)</td>
<td>Nawng Parng village, Murng Yarng tract,</td>
<td>Div. 55</td>
<td>Near Murng Nawng town, Kaesee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kaesee township</td>
<td></td>
<td>Beaten dead</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1/4 1997</td>
<td>Wa Ling (m)</td>
<td>Nawng Parng village, Murng Yarng tract,</td>
<td>Div. 55</td>
<td>Near Murng Nawng town, Kaesee</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Kaesee township</td>
<td></td>
<td>Beaten dead</td>
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<tr>
<td>1/4 1997</td>
<td>Thark Nyo (m)</td>
<td>Kang Kawk village, Murng Yarng tract</td>
<td>Div 55</td>
<td>Near Murng Nawng town, Kaesee</td>
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<tr>
<td>1/4 1997</td>
<td>AiMon (m)</td>
<td>Kang Kawk village, Murng Yarng tract</td>
<td>Div 55</td>
<td>Near Murng Nawng town, Kaesee</td>
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<tr>
<td>1/4 1997</td>
<td>Pi Lern (m)</td>
<td>Kang Kawk village, Murng Yarng tract</td>
<td>Div 55</td>
<td>Near Murng Nawng town, Kaesee</td>
<td></td>
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<tr>
<td>1/4 1997</td>
<td>Kham Leng (m)</td>
<td>Kang Kawk village, Murng Yarng tract</td>
<td>Div 55</td>
<td>Near Murng Nawng town, Kaesee</td>
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<td></td>
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<tr>
<td>3/4 1997</td>
<td>Ai Mart (m)</td>
<td>Kang Sarm Kyawng village, Hai Lai tract</td>
<td>Div 55</td>
<td>Near Wan Sai Khao village, Hai Lai tract</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>3/4 1997</td>
<td>Pan Zik Ta (m)</td>
<td>Kang Sarm Kyawng village, Hai Lai tract</td>
<td>Div 55</td>
<td>Near Wan Sai Khao village, Hai Lai tract</td>
<td></td>
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<tr>
<td>3/4 1997</td>
<td>Ai Ti (m)</td>
<td>Kang Sarm Kyawng village, Hai Lai tract</td>
<td>Div 55</td>
<td>Near Wan Sai Khao village, Hai Lai tract</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>3/4 1997</td>
<td>Name unknown (f)</td>
<td>Kho Lam, Namzarng</td>
<td>IB 246</td>
<td>Near Kho Lam relocation site</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Name</td>
<td>Location</td>
<td>Division</td>
<td>Fate</td>
<td></td>
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</tr>
<tr>
<td>4/4</td>
<td>Name unknown (f)</td>
<td>Kho Lam, Namzarng</td>
<td>IB 246</td>
<td>Near Kho Lam relocation site</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7/4</td>
<td>Name unknown (m)</td>
<td>Kho Lam, Namzarng</td>
<td>IB 246</td>
<td>At the old village of Par Son, Kho Lam</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/4</td>
<td>Name unknown</td>
<td>Tard Mawk relocation site, Laikha</td>
<td>LB 515</td>
<td>Tard Mawk</td>
<td>Killed by grenades</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7/4</td>
<td>Name unknown (f)</td>
<td>Kung Yung village, Laikha township</td>
<td>LB 515</td>
<td>In a forest near Kung Yung village</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9/4</td>
<td>Name unknown (a mother and her daughters)</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>At the old village of Kung Yom, Hai Lai tract, Namzarng</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/4</td>
<td>Name unknown (f)</td>
<td>Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>At Wan Lin village, Kho Ian tract</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/4</td>
<td>Aw Ta (m)</td>
<td>22 Ter Zarn village, Nar Poi tract, Namzarng township</td>
<td>Div. 55</td>
<td>A place about a quarter mile north of Ter Zarn village</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>Moo Ling (m)</td>
<td>30 Ter Zarn village, Nar Poi tract, Namzarng township</td>
<td>Div. 55</td>
<td>A place about a quarter mile north of Ter Zarn village</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>Sai Nawng (m)</td>
<td>38 Ho Lin village, Kaeng Lorn tract, Kunhung township</td>
<td>IB 246</td>
<td>At Nar Nam Parng, 1 mile north of Ho Lin village</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>Thark Awn (m)</td>
<td>40 Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Nang, Kho Ood tract</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>ZikTa Awn (m)</td>
<td>35 Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Nang, Kho Ood tract</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>Sai Hurng (m)</td>
<td>30 Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Nang, Kho Ood tract</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>Sai La (m)</td>
<td>33 Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Nang, Kho Ood tract</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>KhatTiYa (m)</td>
<td>30 Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Nang, Kho Ood tract</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>mid Apr.</td>
<td>Ang Sai (f)</td>
<td>16 Kho Lam relocation site, Namzarng township</td>
<td>IB 246</td>
<td>On the way to the old village of Wan Nang, Kho Ood tract</td>
<td>Shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14/4</td>
<td>Name unknown (f)</td>
<td>Laikha township</td>
<td>LB 515</td>
<td>Near Wan Warn village, Laikha</td>
<td>Raped and killed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14/4</td>
<td>Name unknown (f)</td>
<td>Kung Nam Tawng Lur, Kho Lam relocation site, Namzarng</td>
<td>IB 246</td>
<td>At Nam Naeng stream, east of Kho Lam</td>
<td>Raped and killed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14/4</td>
<td>Name unknown (f)</td>
<td>Kung Nam Tawng Lur, Kho Lam relocation site, Namzarng</td>
<td>IB 246</td>
<td>At Nam Naeng stream, east of Kho Lam</td>
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<td>Name</td>
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<td>Cause of Death</td>
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<td>16/4/97</td>
<td>Name unknown (m)</td>
<td>Loi Lam village, Wan Long tract, Namzarn township</td>
<td>LIB 515</td>
<td>At Loi Ai bridge, near Loi Lam village</td>
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<td>17/4/97</td>
<td>Name unknown</td>
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<td>IB 246</td>
<td>Near the old village of Wan hui Nawng Kai, Kho Lam tract</td>
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<td>18/4/97</td>
<td>Khing Sarng (m)</td>
<td>Nawng Hai village, Kho Lam tract, Namzarn township</td>
<td>LIB 378</td>
<td>At a farm near Nawng Hai village</td>
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<td>19/4/97</td>
<td>Name unknown (f)</td>
<td>Kung Kyawng village, Kho Lam tract, Namzarn township</td>
<td>IB 246</td>
<td>At a farm south of Kho Lam</td>
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<td>Raped and killed by 7 soldiers</td>
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<td>mid Apr 1998</td>
<td>Name unknown</td>
<td>Mark Hard village, Hai Lai tract, Namzarn township</td>
<td>IB 246</td>
<td>On the bank of Nam Mawng stream</td>
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<td>LIB 515</td>
<td>Near Ho Kho village, east of Pa Lai village</td>
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<td>Nang Zing (f)</td>
<td>28 Pa Mai village, Nar Poi tract, Namzarn township</td>
<td>LIB 515</td>
<td>Near Pa Mai village</td>
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<td>4/5/97</td>
<td>Nya Mon (m)</td>
<td>Nam Mo quarter, Kho Lam relocation site, Namzarn township</td>
<td>IB 246</td>
<td>Near the old village of Kun Sai, Kho Lam tract</td>
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<td>Mu Ling (m)</td>
<td>32 Kho Lam relocation site, Namzarn</td>
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<td>Kung Ma (m)</td>
<td>32 Kunhing relocation site</td>
<td>Div 55</td>
<td>Near the old village of Nar Mark Khaw, Kaeng Lorn tract, Kunhing township</td>
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<td>Zang Ta (m)</td>
<td>90 Kunhing relocation site</td>
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<td>Sang Long (m)</td>
<td>45 Kunhing relocation site</td>
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<td>IB 246</td>
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<td>10/5/97</td>
<td>Nang Seng (f)</td>
<td>26 Nawng Kwai village, Kho Lam tract, Namzarn township</td>
<td>IB 246</td>
<td>At a farm near Nam Kawk Suk Mer village, Kho Lam</td>
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<td>11/5/97</td>
<td>NanTi (m)</td>
<td>30 Nawng Kwai village, Kho Lam tract, Namzarn township</td>
<td>IB 246</td>
<td>Near the old village of Pa Mai, Nar Poi tract, Namzarn township</td>
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<td>Number</td>
<td>Name</td>
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<td>Cause of Death</td>
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<td>Ar Ta Pa (m)</td>
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<td>Nang Sep (f)</td>
<td>Kunhing relocation site</td>
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<td>14/5/97</td>
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<td>Kung Nam Tawng Lur, Kho Lam relocation site, Namzarng</td>
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<td>14/5/97</td>
<td>1</td>
<td>Nan Ta's brother</td>
<td>Kung Nam Tawng Lur, Kho Lam relocation site, Namzarng</td>
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<td>Kaw Yao (m)</td>
<td>Ter Z arrogant village, Nar Poi tract, Namzarng township</td>
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<td>Ter Z arrogant village, Nar Poi tract, Namzarng township</td>
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<td>22/5/97</td>
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<td>Ter Z arrogant village, Nar Poi tract, Namzarng township</td>
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<td>5</td>
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<td>Sai Tu (m)</td>
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<td>27</td>
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<td>35</td>
<td>Su Nan Ta (m)</td>
<td>Ton Hoong tract, Murngmai township</td>
<td>In Ton Hoong village Shot dead</td>
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<td>30/5/97</td>
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<td>Ai Kaw (m)</td>
<td>Kung Mong village, Kaeng Kham tract, Kunhing township</td>
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<td>30/5/97</td>
<td>35</td>
<td>Kung Ma - La (m)</td>
<td>Quarter 3, Kunhing township</td>
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<td>30/5/97</td>
<td>25</td>
<td>Ai Lot (m)</td>
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<td>60</td>
<td>Nai Li (f)</td>
<td>Wan Kung Ho Yard village, Kaeng Kham tract, Kunhing</td>
<td>In the forest near Wan Kung Ho Yard village Shot dead</td>
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<td>53</td>
<td>Loong Kham (m)</td>
<td>Mark Lang relocation site, Laikha township</td>
<td>On the way to the old village of Wan Mawn, Laikha township Stabbed</td>
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<td>53</td>
<td>Samg La (m)</td>
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<td>On the way to the old village of Wan Mawn, Laikha township Stabbed</td>
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<tr>
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<td>Name</td>
<td>Age</td>
<td>Location Description</td>
<td>Ref</td>
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<td>Nang Zing</td>
<td>28</td>
<td>Ter Leng village, Laikha township</td>
<td>LIB 424</td>
<td>Ter Leng village</td>
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<td>3/6</td>
<td>Nang Pang</td>
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<td>Ter Leng village, Laikha township</td>
<td>LIB 424</td>
<td>Ter Leng village</td>
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<td>4/6</td>
<td>Moo Ling</td>
<td>32</td>
<td>Nar Keng village, Murng Lerm tract, Kaesee township</td>
<td>LIB 515</td>
<td>In Nar Keng village</td>
<td>Beaten dead</td>
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<td>Wu Ling</td>
<td>41</td>
<td>Nar Keng village, Murng Lerm tract, Kaesee township</td>
<td>LIB 515</td>
<td>In Nar Keng village</td>
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<td>7/6</td>
<td>Ai Nu</td>
<td>27</td>
<td>Nar Kham quarter, Kho Lam relocation site, Namzarang</td>
<td>LIB 378</td>
<td>In the forest 3 miles north of Kho Lam</td>
<td>Shot dead</td>
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<td>7/6</td>
<td>Ai Sa</td>
<td>25</td>
<td>Nar Kham quarter, Kho Lam relocation site, Namzarang</td>
<td>LIB 378</td>
<td>In the forest 3 miles north of Kho Lam</td>
<td>Shot dead</td>
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<td>7/6</td>
<td>Zara</td>
<td>30</td>
<td>Nar Kham quarter, Kho Lam relocation site, Namzarang</td>
<td>LIB 378</td>
<td>In the forest 3 miles north of Kho Lam</td>
<td>Shot dead</td>
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<td>Kaw Ling</td>
<td>32</td>
<td>Nar Kham quarter, Kho Lam relocation site, Namzarang</td>
<td>LIB 378</td>
<td>In the forest 3 miles north of Kho Lam</td>
<td>Shot dead</td>
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<td>Mae Tha</td>
<td>29</td>
<td>Nar Kham quarter, Kho Lam relocation site, Namzarang</td>
<td>LIB 378</td>
<td>In the forest 3 miles north of Kho Lam</td>
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<td>7/6</td>
<td>Wa La</td>
<td>39</td>
<td>Nar Kham quarter, Kho Lam relocation site, Namzarang</td>
<td>LIB 378</td>
<td>In the forest 3 miles north of Kho Lam</td>
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<td>Name unknown</td>
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<td>Nar Kham quarter, Kho Lam relocation site, Namzarang</td>
<td>LIB 378</td>
<td>In a field of one and a half mile west of Kho Lam</td>
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<td>7/6</td>
<td>Zar Li</td>
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<td>LIB 332</td>
<td>Near Wan Kyawng village</td>
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<td>7/6</td>
<td>Nan Ta</td>
<td>45</td>
<td>Wan Kyawng village, Murngpan township</td>
<td>LIB 332</td>
<td>Near Wan Kyawng village</td>
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<td>Sai Ta</td>
<td>37</td>
<td>Wan Kyawng village, Murngpan township</td>
<td>LIB 332</td>
<td>Near Wan Kyawng village</td>
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<td>8/6</td>
<td>Kang Nya</td>
<td>52</td>
<td>Ton Hoong relocation site, Murngpan military base</td>
<td>LIB 520</td>
<td>In Murngpan Slorc military base</td>
<td>Beaten dead</td>
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<tr>
<td>6</td>
<td>10/6</td>
<td>Name unknown</td>
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<td>Kunhing township</td>
<td>LIB 524</td>
<td>At a farm west of Kunhing town</td>
<td>Beaten dead</td>
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<td>10/6</td>
<td>Name unknown</td>
<td>-</td>
<td>Wan Sarng village, Laikha township</td>
<td>LIB 515</td>
<td>At Nawng Leng village, Laikha</td>
<td>Beaten dead</td>
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<td>3</td>
<td>10/6</td>
<td>Name unknown</td>
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<td>Wan Sarng village, Laikha township</td>
<td>LIB 515</td>
<td>On the mountain of Loi Taeng, Laikha</td>
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<td>Loong Zarm</td>
<td>50</td>
<td>Kunhing township</td>
<td>LIB 524</td>
<td>At the old village of Wan Phai, Kaeng Lorn tract, Kunhing</td>
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<td>Pan Ti</td>
<td>22</td>
<td>Kunhing township</td>
<td>LIB 524</td>
<td>At the old village of Wan Phai, Kaeng Lorn tract, Kunhing</td>
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<td>Sai Suay</td>
<td>20</td>
<td>Kunhing township</td>
<td>LIB 524</td>
<td>At the old village of Wan Phai, Kaeng Lorn tract, Kunhing</td>
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<td>11/6</td>
<td>Sai Ekka</td>
<td>27</td>
<td>Kunhing township</td>
<td>LIB 524</td>
<td>At the old village of Wan Phai, Kaeng Lorn tract, Kunhing</td>
<td>Shot dead</td>
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<td>11/6</td>
<td>Su Zing</td>
<td>29</td>
<td>Kunhing township</td>
<td>LIB 524</td>
<td>At the old village of Wan Phai, Kaeng Lorn tract, Kunhing</td>
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<td>Age</td>
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<td>Cause of Death</td>
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Note: Date format is in sliding format, 1/26/97, 2/26/97, etc.
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<td>LIB 524 &amp; IB 44</td>
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<td>Non Zing</td>
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<td>Nam Tao village,</td>
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a) Shot dead
b) Raped and killed
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<th>No</th>
<th>Name</th>
<th>Age</th>
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<th>Cause of Death</th>
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<td>Raped and killed</td>
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<td>TiYa(m)</td>
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<td>Wan Kyawng village, Murng Khun tract, Murngkerng Township</td>
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</tr>
<tr>
<td>1</td>
<td>Ai Long (m)</td>
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<tr>
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<td>IB 12, Near Wan Huay village, Laikha</td>
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<tr>
<td>1</td>
<td>Nang Ee (f)</td>
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</table>
15.37 THE ICTY DEFINED GENOCIDE BY KILLING NOT ONLY AS MASS KILLING BUT:

The desired destruction of a more limited number of persons selected for the impact that their disappearance would have upon the survival of the group as such. (ICTY, Prosecutor v Jelisic, Judgement, IT-95-10-T December 1999).

Clearly the impact of the massacres and associated activities, including the deliberate deprivation of resources necessary for those concentrated into camps, have led to such a serious fall in the numbers of people living in the municipality of Kunhing that the survival of the community as a sustainable entity must be in doubt. This collapse in population levels is reflected in population estimates for other towns such as Larng Kher near Mong Nai in the south of the State, where it is reported that the towns are almost devoid of young Shan people. The absence of almost all young people from an area raises serious issues because it may lead to the actual collapse in population of the ethnic group in that area through an inability to procreate. Thus it appears that there has not just been an inexplicable slump in birth rates in ethnic areas, but, in some Shan areas, an actual slump in population levels as well. Three situations are of particular significance.

Firstly, the killing of villagers trying to flee from being forcibly concentrated into camps. On July 11 1997, Junta troops laid out the beheaded bodies of 26 villagers beside the main Keng Lom-Kun Hing road in apparent warning to other villagers straying from the relocation camps. On July 12, a further 12 headless corpses of villagers were placed by the Keng Lorn Keng road in Kun Hing township. These killings are clearly systematic and pre-meditated in that the corpses have been beheaded and then laid out carefully by the side of the road. The motive for the killings was apparently to deter other people from straying from the concentration camps, yet we know that conditions in the camps are unsustainable. All the victims were ethnic Shan. Such public mutilation of exclusively ethnic victims expresses an intention to destroy the group by inflicting serious bodily and mental harm.

KILLING OF SHAN CIVILIANS CONCENTRATED INTO CAMPS

There are documented examples of systematic killing of people inside these camps. For example, on February 21, 1997, at about 9.00 p.m. two Shan families, including three young children, were blown up while sheltering in a ditch near their homes by Junta troops at Kho Lam relocation site in Nam Zarn township. Shells had been fired into the camps. The Shan Human Rights Foundation recorded the following numbers of people killed in the camps during 1997 alone as:

- Kun Hing: 319 killed
- Nam Zarng: 159 killed
- Lai Kha: 58 killed
- Ke See: 45 killed
On April 4, 1997, SLORC fired shells into Trad Mork relocation site, killing three people and injuring three, while on April 10, large sections of the camp were burnt down with many people being burnt alive in the process. Many other killings in camps where people have been forcibly concentrated have not been documented. These killings are clearly not the unintended consequences of a counter insurgency campaign. The victims were physically separated in government controlled camps. Moreover, the fact that artillery shells were used, indicates that the killings were particularly systematic and intentional, and thus demonstrating very serious positive violence, in addition to the negative violence normally inflicted on the camps.

Thus, in the two above examples, we have villagers being killed systematically where they had been forcibly concentrated, and when leaving the camps. In both cases they were completely separated from contact with resistance forces.

KILLING OF VILLAGERS RETURNING HOME

For example, on June 16, 1997 two groups of villagers who had been relocated to the town of Kun Hing were given permission to return to their old villages to collect rice. They left in two convoys of ox-carts. Both groups were stopped on the way by SPDC troops; one near Sai Khao, one near Tard Pa Ho waterfall. In one group, 29 villagers were massacred, in the other 27. One of the survivors, a woman with a small child, who was spared, related the horror of the massacre:

We were made to stay in the house. They (the SLORC troops) came to the door and called on people one by one. They called away 16 people first, 12 men and 4 women. Then they came and called another group of 10 ... Then to the west I heard bursts of machine gun. They were killing the 16 people. Then after just a bit I heard gunfire nearby ... In the group of 10 my husband died. In the group of 16 my younger sister and her husband died ... I was sure I would be killed too ... I was shaking, shaking! I was sitting and shaking all the time. My blood was hot all over my body. I could not think properly. I would have run away but they were standing there guarding me ... I think I would be dead if I hadn't had my son with me. One of the women who was killed had left her baby at home. She squeezed out milk from her breast to show she had a baby, but the SLORC commander said that her baby must have died and killed her anyway. (KHRG interview with villager from Keng Kham, August 30, 1997).

These killings are examples of ethnic Shan civilians being killed in the forced relocation camps, leaving the camps, and at, or near, their villages. They are clearly widespread, systematic and ethnically targeted. Moreover, they express the fact that the killings are not results of Negligence, or part of a counterinsurgency programme to control civilians; they express an intention, taken in the wider context of activities, to physically destroy the ethnic Shan people as such: if people cannot survive outside the camps; if they are killed inside the camps and forced to live in unsustainable conditions; if they are killed for trying to flee the camps, we can infer that they are being targeted for destruction, not just corralled as part of a counterinsurgency campaign.

The only hope of survival is fleeing to Thailand where the group's ability to survive as a sustainable entity in the long term is very much in doubt.
15.38 DESTRUCTION BY CHEMICAL WARFARE: SHAN EXPERIENCE

In January and February 1986 the toxin 2,4-D, a compound used in Agent orange, was sprayed over 60,000 acres of Shan State, ostensibly as part of a drug eradication programme. The areas involved were Tang Yan district in Lashio and Moung Sat district in Kentung province.

The evidence suggests that the intention was not to eradicate poppy fields, but to destroy villagers’ crops and livestock, and directly attack villagers themselves because:

- the villages themselves appear to have been directly and intentionally targeted. In Tang Yan district 100 villages were affected and their crops were completely destroyed as were many domestic animals;
- no advance warning was given of spraying operations;
- spraying took place in areas where resistance was suspected;
- samples of chemical used in spraying operation were analysed by the Thai Office of Narcotics Control Board which identified concentrations being four times the permitted maximum dose.

Villages Destroyed:
1. Tarn Bon Moung Coc, 22 villages destroyed
2. Tarn Bon Nam Bha, 7 villages destroyed
3. Tarn Bon Mun Hoam, 12 villages destroyed
4. Tarn Bon Toung Tha, 22 villages destroyed
5. Tarn Bon Nam Khawk, 30 villages destroyed
6. Tan Bon Moung Inn, 20 villages destroyed
7. Tarn Bon Moung Lone, 5 villages destroyed
8. Tarn Bon Moung hi, 6 villages destroyed
9. Tarn Bon Sent, 20 villages destroyed
10. Tarn Bon Moung, Lu 7 villages destroyed

Names of those identified as dying directly as a result of the spraying include:
1. Nha Saw from Moung Sat district
2. Aho Ni from Moung Sat district
3. NanYee Moung Sat district

Many suffered illnesses as a result of the attack and livestock also became sick.

As in the case of the Delta massacre, the planes and herbicide had been supplied by the US Drug Enforcement Agency.

LEGAL CONCEPTUALISATION

The degree of culpability is certainly, at a minimum, advertent recklessness, in that the spraying took place in a manner and place which indicated at least the possibility that people might die and suffer as a result. It is thus, given its widespread nature, expressive of a Crime
Against Humanity. However, the fact that concentrations were four times the permitted recommended dose (tested independently by the Thai Office of Narcotics Control Board), and that the areas sprayed were not poppy fields, but ethnic villages where resistance was still active, suggests a level of cognition, and a degree of volition characteristic of intent level one or two, i.e., full knowledge that the results would inevitably occur in the ordinary course of events. Moreover, as the victims were all ethnic peoples, and the spraying took place within the context of systematic and widespread violations against Shan people, this could be considered to be a genocidal act.

15.39 DESTRUCTION BY KILLING: DEMOCRACY ACTIVISTS

This project focuses on the plight of ethnic minorities, but the Junta has, of course, killed democracy activists, including mainly ethnic Burmans during the democracy uprising of 1988 afterwards. The fact that the Junta could massacre its own citizens right in the heart of its capital, sometimes very close to foreign embassies, should surely suggest that it is capable of doing the same things to ethnic people isolated from the eyes of the world. The reason for devoting less space to the issue of the suffering of democracy activists is that their plight is much better known. Video film was taken of the killings in Rangoon, and the plight of political prisoners is frequently reported, while many receive visits by the Red Cross. This in no way reduces the degree of their suffering or their heroism, but suggests that the suffering is not on the same scale as that inflicted on the ethnic minorities. However, in the course of this project Aung San Suu Kyi and her followers were attacked and ambushed in an event of great significance which requires legal analysis.

15.40 THE AMBUSH AND MASSACRE OF DAW AUNG SAN SUU KYI'S CONVOY AT DEPAYIN

BACKGROUND

The attack on Aung San Suu Kyi and the murder of her followers is an unacceptable affront to the world for the following reasons:

• Aung San Suu Kyi’s party the NLD was elected by the great majority of the people in 1990;
• She is a Nobel Peace prize Laureate;
• Her unconditional release was negotiated by the UN;
• That unconditional release was agreed to by the military dictatorship;
• The attack took place within the context of widespread, sustained systematic persecution of the NLD which has included, amongst other things, systematic torture and killing.
15.41 DEPAYIN MASSACRE:

EYEWITNESS STATEMENTS

I have underlined the evidence which expresses the systematic, premeditated nature of the attack.

After her release for house arrest on May 6, 2002 Daw Aung San Suu Kyi journeyed to 95 townships during the time from June 11, 2002 to April 2003, and reopened NLD offices.

Beginning from May 6, 2003, she traveled to Mandalay division, Sagaing division, Kachin division and Shan State and presided over the installation of signboards and opening of NLD offices. On May 29, she began the Mandalay-Monya trip. Trips to Upper Burma were made, only after she had obtained prior permission and agreement from the SPDC (1) and township election commissions.

On May 29, at 9.00 a.m., a party of more than 100 persons in a convoy of 7 vehicles of NLD members, vehicles of supporters from Mandalay and more than 20 motorcycles set out for Sagaing, from due west of the 38 street and south of the 84 street of Mandalay. At the front, a scout car for security drove at a distance ahead of the convoy, and the car of Daw Suu (2), cars of NLD members and those of others followed. The convoy reached the Sagaing bridge at about 10.00 a.m. While it was passing the bridge and at the entrance to Sagaing Town, 800 members of the USDA (3) on the left and right sides of the road, were holding placards with slogans "We don't want people who don't support USDA". They were also chanting the slogans exactly as they were written on the placards. After the convoy had passed these protestors, about 2000 people from Sagaing who greeted the NLD leaders with "Long Live Daw Suu Kyi" and "Long live Ba Ba U Tin Oo."

The entourage continued their journey after leaving Sagaing and arrived at Myinmu at about 12.00 noon. In the whole length of the journey, the traffic police and military intelligence unit members followed from behind the convoy and took pictures with video and still cameras. In Myinmu, signboard Township NLD office was installed and the Upper Burma Youth officer as well as MP elect of Leway Township constituency, Ko Tin Tun Oo, presided over formation of Myinmu Township NLD Youths. Then the convoy left Myinmu for Monywa after 3.00 p.m. Before reaching Chaung U, a group assembled for protest against Daw Suu near Yeposar village was seen by the security scout car. It tried to turn back so as to inform the convoy about the matter. However, as the crowd prevented it from turning back, the scout car had to go to Monywa. When the scout car, on reaching Chaung U, related about the incident at Yeposar to a crowd of students and people from Monywa, who had come to welcome Daw Suu, the crowed riding on about 3000 motorcycles rushed to Yeposar. As there were about 6000 supporters, the protestors were not able to do any mischief and Daw Suu and the party was able to reach Monywa safely at 6 p.m.

The town's people of Monywa and the local population warmly welcomed Daw Aung San Suu Kyi and the NLD members. Though the government supporters had cut off power to the whole town, there was a rousing candle-lit welcome by the people, with shouts of "Long live Daw Suu, Long Live Ba Ba U Tin Oo!" Daw Aung San Suu Kyi addressed the welcoming crowd in Monywa Town for about 40
minutes. After that, she retired for the night at the house of a former military officer and owner of Sein Hymar Store at Monywa, U Tin Soe.

On the morning of May 30, Daw Aung San Suu presided over the installation a signboard and reopening of Monywa Township NLD Office, and then the formation of Monywa Township NLD Youths. Though Daw Aung San Suu Kyi and her party members later went to Zawtika monastery of Monywa to pay respect to the abbot, they did not have a chance to do so, as the abbot had been invited away by the army North West Command headquarters. After that, Daw Suu and her party went to Okkan Tawya monastery briefly. At about 10.00 a.m. departure was made for Butalin town through the Circular Road of Monywa. When Daw Aung San Suu Kyi and party arrived near Zeedaw village, military authorities from the North West Command headquarters stopped the convoy including cars of the people of Monywa who came along to send off Daw Suu and party. When Daw Suu and party arrived at Butalin, the ceremonies of installing the signboard and opening of Butalin Township office and formation of Butalin Township NLD Youths were performed.

After that, the supporters form Monywa who came along with the party returned to Monywa. When they arrived at Zeedaw, which was near the army North West Command headquarters, the police waiting in readiness beat them up and put them under arrest.

At about 4.30 p.m., the entourage left Butalin for Depayin Town. When it arrived at Saiangyin village, Daw Aung San Suu Kyi went to the house of U Win Myint Aung, who was an MP elect and who had been in prison, and gave a word of encouragement to the family members of U Win Myint Aung and NLD members of the village. On the way to Depayin, as the scout car for our convoy did not return, motor cycle riders were sent to find out about the situation. However, they also did not return.

Then, the entourage continued the journey, and reached Kyi village at about 7.30-8.00 p.m., where the massacre took place. From there, Depayin was only about two miles away. At Kyi village, the villagers and local population came out to welcome Daw Suu and the NLD members. After passing Kyi village for about 100 yards, the car with registration number Ar/5415 in which Daw Suu was riding, was at the forefront of the convoy and behind that was the car in which U Tun Wun from Zaygo and U Khin Maung Thaung were riding. The third car (Hilux model green colour) was that of members of Mandalay Township youths, who had the duty of providing close security. Behind that was the car of Sagaing Township MP elect Dr. Hla Soe Nyunt (Sunny white colour). Behind Dr Jhla Soe Nyunt’s car was the car of members of Rangoon division, NLD Central Youth security detail, (Hilux model white colour) and behind the car of the Central Youths was the car of NLD Vice-Chairman U Tin Oo (Town ace model, micro-bus) and behind U Tin Oo’s car were members of the NLD, all in line.

After passing Kyi village for about a hundred yards, by blocking the way in the front, two monks stopped Daw Suu San Kyi’s car. When central committee Youths security officer Ko Tun Zaw Zaw got off the car and asked the reason the two months said, “We have been waiting a long time. Ask Daw Aung San Suu Kyi to give a speech”. In reply, Ko Tun Zaw Zaw explained that it was not possible because of lack of time. At that moment, attackers on 2 Dyna trucks and 2 Torlagai cars, altogether 4 vehicles, which had been tailing the convoy, repeatedly shouted “Relying on external forces, axe handles; people with negative views, we don’t want!” So shouting, they alighted from their vehicles. In response to that, Kyi villagers, who had come out to welcome Daw Suu and NLD members, shouted, “We the people, in turn, don’t want you!” At that, the USDA members, and the faked monks, who had got off from the Dyna and Torlagi asked, “what are you saying?” So asking, they started to attack the Kyi villagers with pointed iron rods, iron bars, bamboo sticks and wooden bats, which they had brought in advance with them. As one of the Dyna trucks attempted to run over the people seen in the light of the cars, the villagers had to run in disorder. Then they gradually approached the convoy of Daw Aung San Suu Kyi.

At the meantime, about three thousand thugs holding the similar lethal weapons, who were laying in wait to attack beside the road appeared immediately. They joined the previous perpetrators and attacked the people in the cars of the convoy, including that of Daw Aung San Suu Kyi, NLD supporters who were taking motorbikes, and the people who came along to send off the NLD, systematically. The killing
field could be seen in the light of some Dyna trucks numbered at least four that had been tailing the convoy.

The faked monks with the red armband and people in civilian clothes with white arms bands while beating the women, they shouted, “Race destroying women; you want to be wives of Kala, become our wives.” Shouting such unspeakable abuses, they beat on violently without ceasing. From the women victims who had fallen to the ground, they pulled their NLD jackets, and sarongs, and they wrapped the hair around their hands and bumped the faces against the road. They rudely and savagely attacked until causing fatal injuries. They looted ornaments and cash from the victims.

The attackers concentrated their savage assault on the right side of Daw Aung San Suu Kyi’s car, where members of youths responsible for security stood, with linked hands, in tiers. Many members of the youth security detail were seriously injured. As they hit violently and repeatedly on the head, NLD photographer Tin Maung Oo and Ko Thein Toe was killed on the spot. To terrorise the victims, the attackers violently struck the car with iron bars and broke windows by stabbing with pointed iron rods. In the vehicle, with registration number Ar/5415, were Daw Aung San Suu Kyi, Ko Tun Zaw Zaw, the NLD Central Youths Security Officer, and car driver Kyaw Soe Lin, member of the Mandalay Division NLD. Daw Aung San Suu Kyi’s car came under intense and violent attack. At the same time the attackers launched a violent assault on the car of NLD Vice-Chairman U Tin Oo and then seized U Tin Oo at the place of attack and led him away.

The victims who escaped from the first killing field near Kyi village and fled towards Depayin were attacked again by more than 1000 attackers, who were waiting ready on the left and right sides of the road, at a place near a compound of local irrigation deopartment. It was a second killing field. It could also be seen with the spotlights already installed in the big rain trees beside the road and in the light of many Dyna trucks that had been positioned by the authorities. Daw Aung San Suu Kyi and Dr. Hla Soe Nyunt narrowly escaped attack at second killing field, because their cars rushed through the waiting crowd at high speed.

The reliable sources indicate that the authorities gathered and trained these terrorist attackers numbered about 5000, comprising the USDA members and other criminals from the prisons. They attacked Daw Aung San Suu Kyi and party, as well as the local population, who came out to welcome her and the accompanying NLD members, using violence and terror, with the intention of causing grievous injuries and death to large number of people of the innocent, defenceless and unsuspecting civilians.

It was learned that on the night of attack, after 11.00 p.m. about 80 riot policemen, with shields and sticks, in four Dyna trucksand two cars, that looked like Pajeero jeeps, arrived at the scene of the attack. Two officers got off from the two smaller cars and inspected the scene of the attack. The policemen threw the bodies of the dead and injured, as if they were garbage, into the trucks. The two Hilux pick up trucks left at the scene were pushed down into the rice field and then they set them up as if they had a head on collision. Then they took pictures of them with video and still cameras, for the record. On the morning of May 31, an emergency police station was set up near a compound of the Irrigation Department not far from the place of the incident. In order to eliminate all the evidence, water was brought in with municipal trucks and bloodstains and other marks were washed away by the policemen, using brooms.
KHIN ZAW: . . . then the people with weapons jumped down from the trucks and started attacking the villagers, who were welcoming Daw Suu Kyi. . . I think these Buddhist monks were fake monks. . . We saw them taking out red cloths and wrapping them around their arms down to the elbow level. Accordingly it was clear at they had planned the advance for the attack. I think wrapping the red cloth around the arm was an arrangement to prevent mistaken attack and to make them distinct from the monks who had accompanied us.

While commotion was thus taking place, the thugs who had hidden in the bushes in advance came to join forces with those who had come in trucks. They were also armed with iron bars, pointed iron rods, bamboo sticks and wooden bars. They numbered about 3000 . . . it was a time when everyone had to run for his life.

At first I did think about helping our leaders and our NLD members. On second thoughts, I realized I would surely die before I got to my leaders . . . because I had first to pass through the killing ground. It was frightening even to imagine.

Before my own eyes, people were beaten savagely. I was hearing the wounded, dying victims moaning and wailing in pain, shrieking in agony, and crying for help. At that time, as the attackers from the Dyna trucks were shouting unspeakable abuses it was just like hell boiling over. I saw with my own eyes the attackers striking down the victims with all their force and stabbing with pointed iron rods. Truly, it was a murderous attack. The beating was done until the victims died.

The second eyewitness, Wunna Maung, was close to Mrs. Suu Kyi's car during the attack:

When the glass was broken, they jabbed into the car with rods they were carrying . . . Daw Suu escaped beating because she did not get out of the car. If she did, the attackers would have beaten her to
death, because they were totally drunk. They did not look like they were drunk on liquor but they looked as if they were high on drugs . . .

ADDITIONAL EVIDENCE

Four sworn additional affidavits supporting the above have been published in the above publication of the Burma Lawyers Council (No. 15, August 2003)
This was a systematic attack in that it conforms to the definition of the term as defined by the ICTY, Prosecutor v Blasic, Judgement IT-95-14-T, March, 2000:

The Chamber determined that there are four elements that make up a systematic attack:

- **The existence of a political objective; a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is to destroy, persecute or weaken a community;**

- **The perpetuation of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another;**

- **The preparation and use of significant public or private resources, whether military or other;**

- **The implications of high level political and/or military authorities in the definition and establishment of the methodical plan.**

Firstly, the attack was clearly political and ideological. It physically and brutally attacked the key members of the National League for Democracy.

Secondly, this was a large-scale criminal attack, involving thousands of people, mainly USDA members, on an unarmed convoy from behind, in front, and from the side. Moreover, it was a co-ordinated, planned attack because the convoy was attacked from different directions by thousands of assailants who had been seen hiding in the bushes. Furthermore, the attack was not a one-off event, but was repeated in the next town. Repeated and continuous beatings led to the deaths of about 80 people, and an unknown number of wounded. Specially prepared sharpened weapons, clearly intended to wound and kill, had been brought to the scene. The sharpened bamboo stakes are particularly lethal in that they are normally used for killing pigs. The attack was clearly large scale and systematic and was part of a pattern of continuous inhumane acts, such as torture, which have been committed against NLD members for years.

Thirdly, the attack was carried out by members of the paramilitary, state-run organization, USDA, and facilitated by State military and police personnel, thus involving public resources and planning. These people were thus not out of control thugs behaving independently of the State, but State agents. Moreover, the fact that USDA has subsequently been designated a political party indicates that not only has it not been punished for the criminal act, but that it has been rewarded, indicating State support at the highest level.

Fourthly, the attack was highly organized, pre-meditated and could only have been carried out on the orders of the ruling military junta. One eyewitness remembers police and military giving orders on walkie talkies, shots being fired and attackers wearing red arm bands.
The Ad Hoc Commission on the massacre described the systematic nature of the attack as follows:

1. Systematic training was given prior to the massacre, specifically on how to attack.

2. Weapons of whose size and length were potentially lethal, were prepared in advance and used in the attack.

3. The strategy and tactics of the attack, the time and killing field were all carefully chosen. Radio communication sets were used. Excessive violence was used, with the help of floodlights and head lights from vehicles to support the attack.

4. The attack was executed as if it were a battle, commanded by army officers as high ranking colonel, by other junior police officer ranking Captains, as well as Police chiefs.

5. There was the recruitment of around 5000 hired thugs from Sagaing Division and their assembly and the dispersal was executed systematically as in battle.

6. The regime was able to keep the plan for the attack hidden, prior to the attack. The evidence including the dead bodies of the victims, was destroyed after the crime was committed. Witnesses were intimidated, threatened or jailed so that they would not speak out. These are all attempts by the state authorities to keep even a shred of evidence of the crime from being exposed to the public.

7. The regime came out with a readily prepared statement after the attack, declaring the incident a scuffle between the supporters of Aung San Suu Kyi and her opponents. Further, the regime explained away deaths as the results of scuffle gone wrong.

INTENTION

Given these findings, the Commission therefore cannot accept, even at this stage of a preliminary Report upon the massacre, that the regime merely intended to frighten the NLD and Aung San Suu Kyi in order to coerce them into ending their political activities. The Commission has come to the conclusion that the Depayin massacre was a premeditated crime, and that the regime actually intended to kill Aung San Suu Kyi and Tin Oo.

Furthermore, the Commission has come to the conclusion that Aung San Suu Kyi was the primary target of the attack. It has the following evidence:

1. Many of the youth who linked their hands in a chain and surrounded Aung San Suu Kyi’s vehicle during the attack were beaten severely and fell to the road. The attackers were able to smash the rear windshield of the backseat, where she was sitting. Her car was only able to speed off from the first killing because her driver took his own initiative and broke through the line of attack.

2. Aung San Suu Kyi’s vehicle was able to escape the second killing because it was able to drive through the barricades and two dyna vehicles that tried to ram her head-on.

3. An army major was giving orders from the Irrigation Compound to stop and detain all vehicles that had been able to break through the attack. The order was given to fire at vehicles if necessary. There are witnesses who heard the orders, saw well as gunshots at the same time as the vehicle carrying Aung San suu Kyi drove through the barricades. Therefore, it can be assumed that she was lucky able to escape amid gunfire.

MOTIVE
This leads the Commission to examine the motives as to why the regime considered and executed a plan to eliminate Aung San Suu Kyi. It seems plausible to the Commission that the regime came to the conclusion that the situation was no longer viable, as she could no longer be controlled. She posed a danger to its plans to hold onto power, if she were alive and continued her activities... in other words the regime decided to use state terrorism to eliminate Aung San Suu Kyi and the NLD once and for all, and in doing so to instil greater fear in the people's minds in the hope that they would become even more passive. The regime believed that if it could create such enormous fear, it could continue to control the country's national agenda.

COGNITION

The perpetrators, having planned and systematically implemented the attack, were clearly fully aware of what they were doing and of the surrounding circumstances.

LEVEL OF RESPONSIBILITY

The attack on Aung San Suu Kyi's convoy on May 30, 2003 was described understandably, but inappropriately, by the US Secretary of State, Colin Powell, as being committed by Just a bunch of thugs. The description, though partially valid, underestimates the degree to which this was a State sponsored act of terror. It is the word Just which is inappropriate, in that the word reduces the gravity of State responsibility for the attack. Just a bunch of thugs could lead to the dismissal of the massacre as the work of an insignificant out of control mob and therefore ignore the essential nature of the intentionality underlying the act. The 1936 Kristalnacht assault on Jews in Germany may have been committed by bunches of thugs, but they were state licensed thugs and as such it was, like the May 30 massacre, not an ordinary offence, but a systematic Crime against Humanity. Moreover, the General understood to have been involved in the operation is reported to have been promoted and has replaced Khin Nyunt as Prime Minister. This suggests the attack was as the former UN Special Rapporteur, Rajsoomer Lallah, described of the violations inflicted on the ethnic peoples:

The result of policy taken at the highest level.

SPECIFIC DEFINITION OF THE CRIME

The attack on Aung San Suu Kyi's convoy on May 30, 2003 can best be described as the Crime Against Humanity of Murder, defined as such by the Rome Statute:

1. The perpetrator killed one or more persons.

2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

The attack meets the systematic criteria and, understood within the context of persecution, torture and forced displacement criteria, can also to be part of a widespread pattern of crimes.

DEFENCE
There can be no defence by perpetrators claiming they were under the influence of drugs or alcohol. Reports that alcohol had been provided clearly suggest it was used to facilitate the crime and as such perpetrators who took it in a context of a well planned murderous attack on unarmed civilians must have done so wishing to facilitate the violence. The premeditated taking of alcohol in such circumstances expresses an intention to use violence, and cannot be used as an excuse to escape culpability.

THE UN AND THAI GOVERNMENT RESPONSES

The reponse of both of these has been grossly inadequate. The UN envoy's comment on the ambush was a flippant and implausible dismissal of Suu Kyi's personal condition after a twenty minute visit as fine and in good spirits. His comments completely failed to do justice to the gravity of the event. The current UN Special Rapporteur, Paulo Sergio Pinheiro, has, however, now confirmed official connivance of the Junta in the ambush, though the word connivance is too weak a word to describe an attack as systematic as this:

I can say that there is a prima facie evidence that the depayin incident could not have happened without the connivance of State agents.

The Thai government's response is reprehensible: survivors of this massacre, a Crime Against Humanity of Murder inflicted as part of the more general crime of Persecution, had to hide in Thailand because of fear of action from Thai authorities. The victims were in effect re-victimised in what is considered to be a democracy which has signed The Rome Statute. This seriously undermines Thailand's commitment to the Statute, a commitment clearly expressed by the former deputy Foreign Minister H.E. M.R Sukhumbhand Paribatra on June 12, 2000:

Without the ICC, crimes against humanity will go unchecked and the history of human tragedies will be repeated. We must work closely together to put an end to this culture of impunity.

The Thai government, both in its capacity as a government which has signed the Rome Statute and because of the universal jurisdiction of Crimes against Humanity, has an obligation to facilitate an investigation of a crime such as this, not suppress its victims.

15.43 OVERALL SIGNIFICANCE OF THE DEPAYIN MASSACRE

The Ad Hoc Comission on the Depayin massacre has described it as:
different from many other abuses that the Burmese junta has committed in the past... If military impunity continues, as it has thus far in other crimes, justice will be lost not only for the victims of the massacre, but also for the whole of Burmese society. It will be like bestowing a legitimate license to kill on the Burmese junta. Fear will be instilled in the minds of the Burmese people, even more so than at present, and the populace's passivity will become even greater. Under these circumstances, any opportunity for genuine reconciliation will be lost forever. It may also not be possible for the nation to achieve peace that is complete both in essence and deed. (Ad Hoc Commission Report, p. 11)

It is significant that the Burman lawyers are demanding an end to impunity and stating that without such action reconciliation will be impossible in the future. They are expressing the same opinion as the UN Special Rapporteur demanding a judicial mechanism to prosecute State abuses before democratic transition can take place.

The significance of the Depayin massacre has, however, to be seen in the context of the widespread violations inflicted on ethnic peoples. Seen in such a context, the Depayin massacre is almost a routine event. It is only the significance of its victims which makes the crime so unique. The violations inflicted on ethnic peoples far from the world’s attention are inflicted, not by a few thousand state sponsored USDA members, but by a 400,000 strong army directly controlled by a central command structure. Ultimately the crimes inflicted on both groups, the political and the ethnic, have to be seen as part of a single whole.

15.44 GENERAL CONCEPTUALISATION OF KILLINGS IN BURMA

We thus have evidence of widespread and systematic killings of both Burman civilians and ethnic peoples. However, the way in which killings are inflicted are often different: some are specifically targeted and premeditated, while others seem more arbitrary and spontaneous. Let us take two examples from my own personal reconnaissance.

The first example is of a Baptist pastor hiding in the jungle who told me how his fellow Pastor had been tied up, beaten for three days, and then beheaded. His house was then looted and a Bible destroyed. This is clearly premeditated and intentional. Moreover, the choice of victim and method of killing expresses selective killing intended to have a maximum destructive impact on the group namely his village. The victim killed is both ethnic and Christian. It would seem to be an act of genocide as defined as:

An act committed against an individual because of his or her membership in a particular group as an incremental step in the overall objective of destroying the group. (ICTY, Jelisic Judgement)

However, the second example is of the sudden attack on a village in which two toddlers and an old lady got left behind and were deliberately and intentionally burned alive. In this example, we remember, I discovered that the commanding officer had not given orders that the civilians be burnt alive. What is the level of responsibility here? Who is responsible? As this may be a common situation in eastern Burma, it is necessary to quote in full the deliberations of the ICTY on this issue in its Tadic judgement, where the Tribunal was deliberating on whether Tadic could be held criminally responsible for the killings, even though there was no evidence he had personally carried them out (Prosecutor v Tadic, IT-94-1-A, July, 1999, para. 204):

The third category concerns cases involving a common design to pursue one course of conduct where one of the perpetrators commits an act that, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example of this would be a common, shared intention on the part of a group to forcibly remove members of one ethnicity from
their town, village or region (to effect “ethnic cleansing”) with the consequence that, in the course of doing so, one or more of the victims is shot or killed. While murder may not have been explicitly acknowledged to be part of the common design, it was nevertheless foreseeable that the forced removal of civilians at gunpoint might well result in the deaths of one or more of these civilians. Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk. Another example is that of a common plan to forcibly evict civilians belonging to a particular ethnic group by burning their houses, if some of the participants of the plan, in the process of carrying it out kill civilians by setting their houses on fire, all the other participants in the plan are criminally responsible for the killing if these deaths were predictable. (My underlining)

In the mass, forced and often violent removal of ethnic Shan, Karen and Karenni from their lands, it is foreseeable and predictable, at the very least, that some will be killed. All participants in the plan, including those responsible for the policy, according to the ICTY judgement, are criminally responsible for these killings as they are predictable and foreseeable.

15.45 DESTRUCTION BY CAUSING SERIOUS BODILY OR MENTAL HARM

The two primary distinguishing activities in this category of crime are rape and torture.

15.46 RAPE

As stated in the section on applicable law rape can now classified as:

- An act of Genocide;
- A Crime Against Humanity;
- A War Crime;
- A Violation of Article Three of The Geneva Conventions.

15.47 SEXUAL VIOLENCE DOCUMENTED AGAINST SHAN WOMEN

The following evidence of widespread, and probably systematic, rape of Shan women is taken from the Shan Women’s Action Network publication Licence To Rape: it documents 173
attacks on 625 Shan girls and women. 83% of the attacks are alleged to have been committed by officers of the Burman army. The evidence confirms other reports by reputable Human Rights organizations of sexual violence committed by Junta soldiers and was itself corroborated by a follow-up investigation carried out by representatives of the United States government.

<table>
<thead>
<tr>
<th>No</th>
<th>Date of rape</th>
<th>age of woman</th>
<th>Age of girl under 18</th>
<th>Village of origin, tract, township</th>
<th>What the woman was doing; Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8.3.1991</td>
<td>19</td>
<td></td>
<td>La-Hu village, Murng Sart</td>
<td>coming back from a video show through farmland on the way to village</td>
</tr>
<tr>
<td>2</td>
<td>17.6.1991</td>
<td>17</td>
<td></td>
<td>Nong Lorn village, Nar Worn tract, Murng Pan township</td>
<td>Coming back from the farm, the troops took her with them in the jungle</td>
</tr>
<tr>
<td>3</td>
<td>May-92</td>
<td>26</td>
<td></td>
<td>La-Hu village, Murng Sart</td>
<td>looking after buffaloes and cows, in a hut in the jungle</td>
</tr>
<tr>
<td>4</td>
<td>24.8.1992</td>
<td>38</td>
<td>16</td>
<td>Nam Nor village, Wan Jid tract, Larng Kher township</td>
<td>planting sugar cane on the farm</td>
</tr>
<tr>
<td>5</td>
<td>Jul-94</td>
<td>22</td>
<td></td>
<td>Na Bang Pai village, Mai Hai tract, Murng Nai township</td>
<td>working on rice farm, in a small hut on the farm</td>
</tr>
<tr>
<td>6</td>
<td>20.12.1996</td>
<td>18,25</td>
<td></td>
<td>Mong Pawk village, Mak Mong Mon tract, Namzarng</td>
<td>walking to town to buy some brown sugar to make Shan confectionery to sell, near forest</td>
</tr>
<tr>
<td>7</td>
<td>20.12.1996</td>
<td>15</td>
<td></td>
<td>Pang Long town, Loilem township</td>
<td>driving a bullock-cart to get hay from their farm, a few hundred yards from the town, in the forest</td>
</tr>
<tr>
<td>8</td>
<td>21.12.1996</td>
<td>18,20,22</td>
<td>17</td>
<td>the old village Hai Seng, Murng Yai tract, Ke See township</td>
<td>the women had come back to their old village to get</td>
</tr>
<tr>
<td>Date</td>
<td>No.</td>
<td>Event Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----</td>
<td>-------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29.12.1996</td>
<td>22</td>
<td>Kun Khoi village, west of Ton Hoong in Keng Tawng area</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31.12.1996</td>
<td>16,17</td>
<td>the old village Nong Kham, Nar Mon tract, Kun Hing township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.1.1997</td>
<td>22</td>
<td>Kho Lam village, Nam Zarng township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18.1.1997</td>
<td>18</td>
<td>Wan Phui village, Kho Lam tract, Nam Zarng township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28.3.1997</td>
<td>18,19,24,23,20,30</td>
<td>Wan Phui village, Kho Lam tract, Nam Zarng township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.3.1997</td>
<td>12</td>
<td>Nawng Kaw village, Nawng Kaw tract, Lai-Kha township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.3.1997</td>
<td>12</td>
<td>Nawng Kaw village, Nawng Kaw tract, Lai-Kha township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1997</td>
<td>7</td>
<td>Sop Sim village, Kaeng Kham tract, Kun Hing township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mar-97</td>
<td>Teenage</td>
<td>Mark Kawk village, Wan Zae tract, Lai Kha township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4.1997</td>
<td>16</td>
<td>Wan Lao village, Kun Hing township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.4.1997</td>
<td>16</td>
<td>Nong Kham village, Ho Yarn tract, Kun Hing township</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.4.1997</td>
<td>18</td>
<td>Waeng Nur village, staying at home, in her</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Kun Khoi village, west of Ton Hoong in Keng Tawng area

Kho Lam village, Nam Zarng township

Wan Phui village, Kho Lam tract, Nam Zarng township

Wan Phui village, Kho Lam tract, Nam Zarng township

Nawng Kaw village, Nawng Kaw tract, Lai-Kha township

Nawng Kaw village, Nawng Kaw tract, Lai-Kha township

Sop Sim village, Kaeng Kham tract, Kun Hing township

Mark Kawk village, Wan Zae tract, Lai Kha township

Wan Lao village, Kun Hing township

Nong Kham village, Ho Yarn tract, Kun Hing township

Waeng Nur village, staying at home, in her

Women who had come in search of their cart oxen, in old village.

When she was forced to clear roadside bushes east of village.

In the house, in village

In the village

Driving ox-cart carrying rice paddy, probably to sell to Palawng people, on the way in the forest.

She was taking hay down to feed cattle in a field.

On the nights when all the men in the village had gone away, house after house

They were forced to moved to Laikha relocation site, on the way there.

In her house, in village

Staying at home, in her
<table>
<thead>
<tr>
<th>No.</th>
<th>Date</th>
<th>Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td></td>
<td>Murng Sart township</td>
<td>house, in village</td>
</tr>
<tr>
<td>2</td>
<td>14.4.1997</td>
<td>Wan Warn village, Lai Kha township</td>
<td>on a mini-tractor</td>
</tr>
<tr>
<td>2</td>
<td>18.4.1997</td>
<td>Nawng Hai village, Kho Lam tract, Nam Zarng township</td>
<td>the way to village</td>
</tr>
<tr>
<td>2</td>
<td>20.4.1997</td>
<td>Pa Lai village, Nar Khan tract, Murng Nai township</td>
<td>in the house, in village</td>
</tr>
<tr>
<td>2</td>
<td>Apr-97</td>
<td>La-Hu village, Murng Sart</td>
<td>sleeping in her house, in the village</td>
</tr>
<tr>
<td>2</td>
<td>3.5.1997</td>
<td>Woe Long village, Kaeng Kham tract, Kun Hing township</td>
<td>coming back with her father from Kun Hing relocation site to old village Woe Long to pick up some belongings</td>
</tr>
<tr>
<td>2</td>
<td>3.6.1997</td>
<td>Ter Leng village, Lai Kha township</td>
<td>sneaking back into the village to get their gold, which they had buried underneath the head of their beds.</td>
</tr>
<tr>
<td>2</td>
<td>6.6.1997</td>
<td>Murng Kerng township</td>
<td>walking to Wan Nar village, Murngton township. In local Military base</td>
</tr>
<tr>
<td>2</td>
<td>8.6.1997</td>
<td>Ter Hung village, Ton Hoong tract, Murng Nai township</td>
<td>forced to carry military things from Kaeng Tawng area all the way to Murng Pan.</td>
</tr>
<tr>
<td>2</td>
<td>1.7.1997</td>
<td>Waeng Kham, Kun Mi, Wo Long, Nar Taw, Wan Parng, Ho Ha, Nar Poi, Karng Nar, Nar Yao, Son</td>
<td>coming back to collect their possessions left behind at their</td>
</tr>
<tr>
<td>Date</td>
<td>Number</td>
<td>Event Details</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>--------</td>
<td>-------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>10.8.1997</td>
<td>30</td>
<td>Kho Lam tract, Nar Khar Long villages, Kaeng Lorn tract, Kun Hing township</td>
<td></td>
</tr>
<tr>
<td>6.9.1997</td>
<td>31</td>
<td>Huay Kharn village, Murng Poo Awn tract, Murng Paeng township</td>
<td></td>
</tr>
<tr>
<td>15.9.1997</td>
<td>32</td>
<td>hiding in the forest, Kun Hing township area</td>
<td></td>
</tr>
<tr>
<td>26.9.1997</td>
<td>33</td>
<td>Pha Khe village, Huay Sai tract, Murng Ton township</td>
<td></td>
</tr>
<tr>
<td>3.10.1997</td>
<td>34</td>
<td>Nam Tao, Nar Mark Zawk, Wan Tab, Wan Nar Huay and Wan Mark Man villages, Murng Khun tract, Murng Kerng township</td>
<td></td>
</tr>
<tr>
<td>3-4.10.1997</td>
<td>35</td>
<td>Waeng Nur village, Murng Sart</td>
<td></td>
</tr>
<tr>
<td>12.10.1997</td>
<td>36</td>
<td>Mai Heo Lao village, Murng Pan township, which had been forced to move since 20.8.1997</td>
<td></td>
</tr>
<tr>
<td>18.11.1997</td>
<td>37</td>
<td>Kung Sa village, Kun Hing township</td>
<td></td>
</tr>
<tr>
<td>23.11.1997</td>
<td>38</td>
<td>Mai Hong Sarm Ton near</td>
<td></td>
</tr>
</tbody>
</table>

The 2 women were accused of being wives of Shan army members. The troops gathered all the villagers together and chose out 11 young women refusing to move to the town, staying in the forest.

They went back to look for their belongings at their former villages. They had come back to search for food and green vegetables.

Young men of the village went to the relocation sites to build shelters before they moved their families and belongings. During that time the women and old man were left in village.

They had come back to get their rice and paddy at the deserted village of Kung Sa.
<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
<th>Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>997</td>
<td></td>
<td>Hai Narng village, Pang Long tract, Loi-Lem township</td>
<td>Mai Hong Sarm Ton</td>
</tr>
<tr>
<td>18.1.97</td>
<td></td>
<td>Wan Parng village forcibly moved to Murung Nawng relocation site</td>
<td>they were resting in a hut at a rice field near Wan-Parng. Legally returning to old rice-fields after relocation</td>
</tr>
<tr>
<td>18.12.98</td>
<td></td>
<td>Wan Sar Lar village, Murung Ton township</td>
<td>in her house, in village</td>
</tr>
<tr>
<td>18.1.98</td>
<td>18,20,4</td>
<td>the countryside, 3 miles north of Ho Lin village, in Murung Pan township</td>
<td>they were clearing the forest to make place for rice cultivation</td>
</tr>
<tr>
<td>18.6.1998</td>
<td>17</td>
<td>Murung Nai, Nam Zarn, Larng Khur and Murung Pan township</td>
<td>returning from working in Thailand, crossing Salween river of Ta Sarng (Ta-Sar-Lar)</td>
</tr>
<tr>
<td>28.1.98</td>
<td>17</td>
<td>Hawk Zarm village, Nam Pa Luk tract, Murung Kerng township</td>
<td>alone in the house, in the village</td>
</tr>
<tr>
<td>1.2.1998</td>
<td>18</td>
<td>Murung Sart town</td>
<td>in the kitchen, at house, in village</td>
</tr>
<tr>
<td>19.4.1998</td>
<td>24,35</td>
<td>Nar Mon and Wan Pek villages, Ham Ngai tract, Murung Kerng township</td>
<td>in Huay Kyawng</td>
</tr>
<tr>
<td>3.5.1998</td>
<td>30,29</td>
<td>from the old villages of Nar Mon and Wan Pek forcibly relocated to Ham Ngai relocation site, Murung Kerng township</td>
<td>one woman went back to tend her orange orchard at the old village and another woman and her sister went to their former village to dig for yams because they had no rice to eat.</td>
</tr>
<tr>
<td>11.5.1998</td>
<td>14</td>
<td>Nawng Zem village, which had been forced to move to Lai Kha town relocation site</td>
<td>at a farm hut, 3-4 miles east of Lai Kha</td>
</tr>
<tr>
<td>18.5.1998</td>
<td>20</td>
<td>Na Loi, Wan Loi villages, Na Loi tract and Loi Khio tract, Murung Nai</td>
<td>returning from Murung Nai, near Ta Sang</td>
</tr>
<tr>
<td>No</td>
<td>Date</td>
<td>Timeframe</td>
<td>Location</td>
</tr>
<tr>
<td>----</td>
<td>------</td>
<td>-----------</td>
<td>----------</td>
</tr>
<tr>
<td>4 9</td>
<td>6.6.1998</td>
<td>30</td>
<td>Kho Lam, Nam Zarng township</td>
</tr>
<tr>
<td>5 0</td>
<td>Jun-98</td>
<td>25</td>
<td>Kaeng Lorn relocated to Kun Hing relocation site</td>
</tr>
<tr>
<td>5 1</td>
<td>25.6-10.8.1998</td>
<td>18,20</td>
<td>deserted Loi village, Phawng Seng tract, Lai Kha township</td>
</tr>
<tr>
<td>5 2</td>
<td>14-15.7.1998</td>
<td>25,27,36</td>
<td>Nar Kharn village, Murng Nai township</td>
</tr>
<tr>
<td>5 3</td>
<td>16.7.1998</td>
<td>29</td>
<td>La-Hu village, Murng Ton</td>
</tr>
<tr>
<td>5 4</td>
<td>17.7.1998</td>
<td>28</td>
<td>outermost quarter of Lai Kha town</td>
</tr>
<tr>
<td>5 5</td>
<td>18.7.1998</td>
<td>24</td>
<td>Murng Wee village, Nam Kham township</td>
</tr>
<tr>
<td>5 6</td>
<td>25.7.1998</td>
<td>16</td>
<td>Zaet Lawk village, Phawng Seng tract, Lai Kha township</td>
</tr>
<tr>
<td>5 7</td>
<td>27.7.1998</td>
<td>13</td>
<td>Phawng Seng village, Phawng Seng tract, Lai Kha township</td>
</tr>
<tr>
<td>5 8</td>
<td>1.8.1998</td>
<td>14,14</td>
<td>Zaet Lawk village, Sa Nin tract, Lai Kha township</td>
</tr>
<tr>
<td>5 9</td>
<td>10.8.1998</td>
<td>19,24,32,36,49</td>
<td>Kun Hing township</td>
</tr>
<tr>
<td>6 0</td>
<td>14.8.1998</td>
<td>14</td>
<td>Murng Yaen village, Wan Parng village, Nam Tu township</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
<td>Location</td>
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<tr>
<td>19.8.1998</td>
<td>Nar Pa Kao village, Me Ken tract,</td>
<td>walk properly because one leg was limp. On the day of the event, she</td>
<td></td>
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<tr>
<td></td>
<td>Murng Ton township</td>
<td>was attending school and feeling sick, she asked permission and returned</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>from the middle school of Murng Yaen village to her village, Wan Parng.</td>
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<td></td>
<td></td>
<td>on the way</td>
<td></td>
</tr>
<tr>
<td>27.9.1998</td>
<td>Wor Tawng village, Ho Lin tract,</td>
<td>she was collecting firewood in the forest west of Nar Pa Kao village,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Murng Pan township</td>
<td>in a farm hut 1 mile west of village.</td>
<td></td>
</tr>
<tr>
<td>27-28.9.1998</td>
<td>Kaeng Lom village forced to relocate to Kun Hing town relocation site</td>
<td>the family was staying overnight and tending their rice and soybean farm, in a deserted house, in deserted village.</td>
<td></td>
</tr>
<tr>
<td>14.10.1998</td>
<td>Nam Hoo village, Nar Poi tract,</td>
<td>going to their farm located 2-1/2 miles from town, in the deserted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>forced to relocate to Mark Mong Pawk village, Mark Mong Mon tret, Nam Zarg</td>
<td>village of Mark Larng, Kaeng Lom tract, at Kaeng Kham deserted village.</td>
<td></td>
</tr>
<tr>
<td>14-17.10.1998</td>
<td>Long Maw village, Kun Hing township</td>
<td>staying a few nights to work at their farm 3 miles south of Mark Mong Pawk village relocation site.</td>
<td></td>
</tr>
<tr>
<td>19.10.1998</td>
<td>Wan Nam village, Murng Yarng township</td>
<td>going to reap rice at their farm in the country side, in deserted village.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>washing clothes at Nam Yarng river outside the village, she was alone.</td>
<td></td>
</tr>
</tbody>
</table>
| 7/8 | 4/1999 | 19-21.10.1
998 | 18,20,22,26 | Kaeng Lorn and Ho Yarn villages, Kun Hing township | working on a farm 3 miles north of Kun Hing. |
| 7/8 | 2/1998 | 22.10.1
998 | 18 | Murng Yu village, Murng Yawng township | gathering wild vegetables along the bank of Nam Luay river outside their village. |
| 6/9 | 1/1998 | 21.11.1
998 | 25 | Nar Khong Mue village, Murng Ton township | at home, while husband was portering for SPDC |
| 7/0 | 1/1998 | 10.12.1
998 | 19 | Nawng Kaw village, Wan Zard tract, Kae See township | watering her vegetable garden just outside of the village, in a farm hut |
| 7/1 | 6/1999 | 1.1.199
9 | 22,27,30,31,33 | 15 | Wan Ek and Wan Wawn villages, Nawng Kaw tract, Nam Zarng township | carrying rice on their shoulder yokes and walking from their farms to their villages. |
| 7/2 | 2/1999 | 10.1.19
999 | 16,17 | Murng In village in Murng Sart township | collecting firewood near their village, near the bank of Nam In stream |
| 8/4 | 1/1999 | 17.1.19
999 | 18,19,20,21,22,23,23,24,40,40,41,41,42,44 | Tawng Seng village, Huay He tract, Ho Pong township | 11 men and 14 women were taking rice from their farms to the village, using shoulder yokes |
| 7/4 | 1/1999 | 24.1.19
999 | 16 | originally Kawng Yao Village relocated to Wan Nawng Kung Mong tract, Nam Zarng township | alone at home, in relocation site |
| 7/5 | 5/1999 | 27.1.19
999 | 18,28,35,36,42 | Nam Pa Man village, Ka Li, Kun Hing township | a group of men and women villagers came to work on their farm in Kaeng Lorn area, Kun Hing township |
| 8/1 | Feb-99 | 40 | Tam Yaung village relocated to Murng Kyaut town. | working alone on the hillside |
| 7/1 | 4.3.199 | 19 | Wan Ten village, Murng | gathering firewood in a
<table>
<thead>
<tr>
<th>Date</th>
<th>Place</th>
<th>People</th>
<th>Location Details</th>
<th>Description</th>
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<tr>
<td>10.4.1999</td>
<td>19.37</td>
<td>Laang tract, Kaeng Tung township</td>
<td>Kun Mong village, Kung Hing township</td>
<td>2 women were just going to their farm, near Kun Nyawng village, 3 miles north of Kun Mong. Between Kaeng Tawng and Kun Hing.</td>
</tr>
<tr>
<td>13.4.1999</td>
<td>17</td>
<td>Murng In village, Murng Poo tract, Murng Sart township</td>
<td>Murng In village, Murng Sart township</td>
<td>A girl and her 2 friends went together to gather wild vegetables along the banks of Nam In stream in the vicinity of their village.</td>
</tr>
<tr>
<td>21.5.1999</td>
<td>-48</td>
<td>Nai Lao and Loi Hong villages, Loi Lem township which had been relocated to Pang Long</td>
<td>Nai Lao and Loi Hong villages, Loi Lem township which had been relocated to Pang Long</td>
<td>They had sneaked back secretly to their old villages to pick their crops of tea in order to earn money to survive.</td>
</tr>
<tr>
<td>22.5.1999</td>
<td>20,25,45,49</td>
<td>Wan Tong village, Wan Heng tract, Kae See township relocated to Kae See relocation site</td>
<td>Wan Tong village, Wan Heng tract, Kae See township relocated to Kae See relocation site</td>
<td>4 married couples had been cultivating their farm since early April 1999, 3-1/2 miles from Kae See town.</td>
</tr>
<tr>
<td>24.5.1999</td>
<td>18,22</td>
<td>Wan Paang village, Nawng Hee tract, Nam Zarng township relocated to town</td>
<td>Wan Paang village, Nawng Hee tract, Nam Zarng township relocated to town</td>
<td>They were working on their rice farm, 3-1/2 miles from the town.</td>
</tr>
<tr>
<td>29.5.1999</td>
<td>16</td>
<td>Nam Kham village in Naa Poi tract relocated to outskirts of Kun Hing town</td>
<td>Nam Kham village in Naa Poi tract relocated to outskirts of Kun Hing town</td>
<td>They were working with their parents on their farms, in Kaeng Lorn tract.</td>
</tr>
<tr>
<td>29.6.1999</td>
<td>15,17</td>
<td>Naa Pung village, Wan Phui tract relocated to outskirts of Murng Kerng town</td>
<td>Naa Pung village, Wan Phui tract relocated to outskirts of Murng Kerng town</td>
<td>Villagers were working on their rice and sesame farms 3-1/2 miles west of Murng Kerng town.</td>
</tr>
<tr>
<td>Date</td>
<td>Time</td>
<td>Location</td>
<td>Description</td>
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<tr>
<td>8/5</td>
<td>7.7.1999</td>
<td>16</td>
<td>originally from Tawng Heo village, Wan Thi tract relocated to Lai Kha town</td>
<td>Tending a plot of land to grow vegetables about 1 mile from the town</td>
</tr>
<tr>
<td>8/6</td>
<td>30.7.1999</td>
<td>23</td>
<td>Naa Lao village, Murng Laen tract, Ta Khi Laek township</td>
<td>while gathering wild vegetables outside her village</td>
</tr>
<tr>
<td>8/7</td>
<td>16.9.1999</td>
<td>30</td>
<td>originally from Kaeng Lorn village, Kaeng Kham tract relocated to Kun Hing town relocation site</td>
<td>she and her husband were tending their rice field on the eastern side of Nam Paang river, about 4 miles from the town</td>
</tr>
<tr>
<td>8/8</td>
<td>18.9.1999</td>
<td>18</td>
<td>Wan Tap village, Murng Nung tract, Murng Khak township</td>
<td>she was catching fish alone in an irrigation ditch outside her village</td>
</tr>
<tr>
<td>8/8</td>
<td>21.9.1999</td>
<td>21</td>
<td>Nam Kai village, Pa Leo tract, Ta Khi Laek township</td>
<td>she was digging bamboo shoots on the bank of Nam Kai stream</td>
</tr>
<tr>
<td>9/0</td>
<td>29.9.1999</td>
<td>18,21</td>
<td>Wan Pae village relocated to Kun Hing town relocation site</td>
<td>they were going around and selling confectionery to people working in the farm in Kun Hing township,</td>
</tr>
<tr>
<td>9/1</td>
<td>8.10.1999</td>
<td>18</td>
<td>a middle school in Lai Kha</td>
<td>asking questions, against the laws of SPDC military regime, in military base</td>
</tr>
<tr>
<td>9/2</td>
<td>30.10.1999</td>
<td>30,31,38,42</td>
<td>originally from Kung Pek village, Huay Awn tract, relocated to Murng Kerng town relocation site</td>
<td>4 women were returning from reaping rice at their farms in the deserted village west of the town</td>
</tr>
<tr>
<td>9/3</td>
<td>11.11.1999</td>
<td>23</td>
<td>Murng Khawn tract, Kaeng Tung township</td>
<td>she was washing vegetables on the bank of Nam Khawn river alone</td>
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<tr>
<td>9/4</td>
<td>17.11.1999</td>
<td>18,19,22</td>
<td>Pa Sak village, Me Nim tract, Murng Sart township</td>
<td>gathering wild vegetables in the morning to sell at the market</td>
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<td>22.11.1 999</td>
<td>19,20</td>
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<td>16,16, 17,17</td>
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<td>7.12.19 99</td>
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<td>27.12.20</td>
<td>21 up</td>
<td>15 up</td>
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<td>Date</td>
<td>Location</td>
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<tr>
<td>21.2.20</td>
<td>Ho Phaai Long tract, Murng Pan township</td>
<td>to move to the other part of the village</td>
<td></td>
<td></td>
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<tr>
<td>2.2.20</td>
<td>San Long Lao Lee village, Murng Laen tract, Ta-Khi-Laek township</td>
<td>the girls were gathering wild vegetables just outside their village.</td>
<td></td>
<td></td>
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<tr>
<td>2.2.20</td>
<td>Ta Khoi village, Wan Tap tract, Murng Yawng township</td>
<td>they were catching fish in a stream near Ta Khoi village</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.3.200</td>
<td>Yaang Khum Mu village, Nawng Kwaang tract, Kaeng Tung township</td>
<td>they were foraging for wild vegetables along the banks of Nam Yaang stream some distance from the village</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.3.20</td>
<td>Pa Sak village, Waeng Nur tract, Murng Sart township</td>
<td>the women were collecting firewood in the forest near the road, 2 miles west of village.</td>
<td></td>
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<td>26.3.20</td>
<td>Wan Khem village, Wan Khem tract, Kae See township relocated to Kae See town relocation site</td>
<td>the women were foraging for wild vegetables in the forest about 2-1/2 miles south of the town</td>
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<td>29.3.20</td>
<td>Kung Kaat village relocated to Wan Lao tract, Kun Hing township</td>
<td>she was alone in the kitchen, in Naa Kawng Mu village, Murng Harng tract, Murng Ton township</td>
<td></td>
<td></td>
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<tr>
<td>9.4.200</td>
<td>Wan Paw village, Murng Yu tract, Murng Yawng township</td>
<td>she and 2 other women from the same village were gathering wild vegetables along the banks of Nam Paw stream some distance from their village</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.4.20</td>
<td>originally from Kun Pan village relocated to relocation site in Kun Hing</td>
<td>Amongst farms on a small remote island on Nam Paang river</td>
<td></td>
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<tr>
<td>25.4.20</td>
<td>Kun Pu village,</td>
<td>These women had been</td>
<td></td>
<td></td>
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<tr>
<td>No</td>
<td>Date</td>
<td>Time</td>
<td>Place</td>
<td>Details</td>
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<tr>
<td>1 0</td>
<td>2.5.2000</td>
<td>16,17</td>
<td>originally from Kung Sa village, Wan Saang tract and Nam Tawng village, Wan Lur tract, Lai Kha township</td>
<td>2 girls were grazing their oxen in a meadow about half a mile west of town</td>
</tr>
<tr>
<td>1 1</td>
<td>16.5.2000</td>
<td>18</td>
<td>Bang Yong village, Wan Ler tract, Lai Kha township</td>
<td>at home, in house, in relocation site.</td>
</tr>
<tr>
<td>1 2</td>
<td>May-00</td>
<td>18,20,24,27</td>
<td>Sa Harng, Naa Khaak, Naa Tong, Kaeng Lom Awn, Nam Pon and Laai Ha villages, Ho Yarn tract, Kun Hing township</td>
<td>these women were going from Ka Li relocation site towards Kun Hing town to buy their goods and were carrying 3,000-5,000 Kyat of money each.</td>
</tr>
<tr>
<td>1 3</td>
<td>29.6.2000</td>
<td>18</td>
<td>in Lai Kha township</td>
<td>she was alone weeding grass in a rice farm, Lai Kha township</td>
</tr>
<tr>
<td>1 4</td>
<td>2.7.2000</td>
<td>36,44,45</td>
<td>Ho Ha village, Son Oi tract, Kung Mark Pin village, Haai Kuay tract and Loi Thun village, Haai Kuay tract, Larng Khur township</td>
<td>they were secretly growing rice and vegetables at a small, remote plot of land some distance from Nawng Long village.</td>
</tr>
<tr>
<td>1 5</td>
<td>5.7.2000</td>
<td>18,35,37</td>
<td>Haang Naa village, Wan Zid tract relocated to Kho Lam relocation site, Nam Zarng township</td>
<td>displaced women at farm in Kho Lam area</td>
</tr>
<tr>
<td>1 6</td>
<td>8.7.2000</td>
<td>40</td>
<td>in Kun Hing township</td>
<td>a displaced woman and her husband, in hiding were taking some food to sell</td>
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<td>1 7</td>
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<tr>
<td>Date</td>
<td>Code</td>
<td>Event 1</td>
<td>Event 2</td>
<td>Event 3</td>
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</tbody>
</table>
| 17.8.20 | 2 | 18.7.20 | 18 | 16 | and buy rice in the town, before they reached the town. 
| | | 00 | | | 
| 20.7.20 | 1 | 20.7.20 | 16 | Ho Pai village, Ham Ngai tract, Murung Kerng township | walking on a farm. 
| | | 00 | | | 
| 7.8.200 | 4 | 7.8.20 | 25,28,3 | Naa Keng village, Loi Keng tract, Naa Yaang village, Saai Khaao tract, Nam Hoo village, Saai Khaao tract and Naa Waai village, Wan Lao tract, Kun Hing township | They were working at a farm and forced to carry military things for the troops. 
| | | 0 | 3,36 | | 
| 17.9.20 | 2 | 17.9.20 | 19,21 | Pa Sak village, Mae Nim tract, Murung Sart township | the girls were gathering firewood in the forest about 1-1/2 miles from the village. 
| | | 00 | | | 
| 18.9.20 | 1 | 18.9.20 | 18 | Wan Nawng Nur village, Nawng Long tract, Kaeng Tung township | she was visiting her family in Wan Lao village. On her way back to her village alone, at a remote spot, 
| | | 00 | | | 
| 24.9.20 | 1 | 24.9.20 | 21 | Kun Hung village, Wan Saang tract, Lai Kha township | she and her husband were weeding their rice farm. 
| | | 00 | | | 
| 25.9.20 | 2 | 25.9.20 | 20 | Nam Kaang village, Huay Koi tract, Kaeng Tung township | they were working in their farm. 
| | | 00 | 17 | | 
| 6.10.20 | 3 | 6.10.20 | 18,18,19 | Sali Mon village, Wan Maan tract, Murung Yawng township | they had gone together to gather wild vegetables in the forest near their village. Bathing in a stream. 
<p>| | | 00 | 9 | |
| 27.10.2 | 1 | | 30 | Loi Sak village, | she was returning from |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/27/20</td>
<td>4:11PM</td>
<td>Kyawk Teng tract, Yawng Hwe township</td>
<td>the town market to her village by bicycle, at a remote spot on the way.</td>
</tr>
<tr>
<td>5/12/20</td>
<td>5:11PM</td>
<td>originally from Som Khawn village, Pa Laai tract, Loi Lem township relocated to Pang Long town</td>
<td>the 2 women were threshing rice alone on their farm in Loi Lem township</td>
</tr>
<tr>
<td>2/29/20</td>
<td>15</td>
<td>Ho Lin village, Naa Law tract, Murng Pan township</td>
<td>she and her parents were working in their farm, near Ho Lin village</td>
</tr>
<tr>
<td>2/26/20</td>
<td>15</td>
<td>Waeng Nur village, Waeng Nur tract, Mung Sart township</td>
<td>She and her father were watering their vegetables, about 3 miles north of village</td>
</tr>
<tr>
<td>2/17/20</td>
<td>17</td>
<td>Ho Ha village, Nam Zarng township</td>
<td>she and her father were going to gather firewood, 1-1/2 miles from village</td>
</tr>
<tr>
<td>2/24/20</td>
<td>17</td>
<td>Ho Ha village, Kaeng Tawng area, Murng Nai township</td>
<td>in their house, in the village</td>
</tr>
<tr>
<td>2/23/20</td>
<td>14</td>
<td>Ton Hoong village relocation site in Ton Hoong tract, Murng Nai township</td>
<td>they were gathering wild vegetables at an old farm some distance northwest of Ton Hoong.</td>
</tr>
<tr>
<td>3/19/20</td>
<td>18</td>
<td>Market quarter, Kaeng Tung</td>
<td>going to buy basic provisions in the camp.</td>
</tr>
<tr>
<td>3/2/20</td>
<td>19</td>
<td>Nawng Hoi village, Huay Koi tract, Kaeng Tung township</td>
<td>she was gathering vegetables in a farm near her village.</td>
</tr>
<tr>
<td>3/2/20</td>
<td>24</td>
<td>Wan Pa Khae village, Nam Phung tract, TaKhiLaek township</td>
<td>working on their farm alone, a half-hour walk from the village</td>
</tr>
<tr>
<td>1/29/20</td>
<td>18</td>
<td>Nong Tao village, Nong</td>
<td>While working on the</td>
</tr>
<tr>
<td>Date</td>
<td>Time</td>
<td>Location</td>
<td>Action Description</td>
</tr>
<tr>
<td>-------</td>
<td>-------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>30.3.2001</td>
<td>17</td>
<td>Kun Kawk village, Kun Mong tract, Murng Nai township</td>
<td>She was with her uncle on an ox-cart carrying pieces of wood and bamboo. Adam was alone at home, in her house, in the village.</td>
</tr>
<tr>
<td>Mar-01</td>
<td>5</td>
<td>Ba Sar village, Kaeng Tung township</td>
<td>Serving as forced labourer at the military camp. Staying alone at home, in her house, in the village.</td>
</tr>
<tr>
<td>Mar-01</td>
<td>5</td>
<td>Kho Lam village, Nam Zarng township</td>
<td>She and 3 men were on the way to their farm.</td>
</tr>
<tr>
<td>16.4.2001</td>
<td>19</td>
<td>Koong Sar village, Wan Nong Koong Mong tract, Nam Zarng township</td>
<td>Staying alone at home, in her house, in the village. Staying alone at home, in her house, in the village.</td>
</tr>
<tr>
<td>27.4.2001</td>
<td>19</td>
<td>Naa Ing village, Ho Lin tract, Murng Pan township</td>
<td>Staying alone at home, in her house, in the village. Staying alone at home, in her house, in the village.</td>
</tr>
<tr>
<td>30.4.2001</td>
<td>50</td>
<td>Ta Mark Laang village, 3 miles north of Lai-Kha town</td>
<td>They had been conscripted as civilian labourers for road construction in township. The residents were walking back to their village with her friend.</td>
</tr>
<tr>
<td>Apr-01</td>
<td>4</td>
<td>Mai Nyawng Khongkhang village, Murng Pan township to Ton Hung village</td>
<td>Staying alone at home, in her house, in the village. Staying alone at home, in her house, in the village.</td>
</tr>
<tr>
<td>Apr-01</td>
<td>12</td>
<td>Ton Hoong village, Kaeng Tung township</td>
<td>Staying alone at home, in her house, in the village. Staying alone at home, in her house, in the village.</td>
</tr>
<tr>
<td>1.5.2001</td>
<td>18</td>
<td>Nong Kor village, Wan Zad tract, Ke See township</td>
<td>They had been conscripted as civilian labourers for road construction in township. Walking back to her village with her friend.</td>
</tr>
<tr>
<td>4.5.2001</td>
<td>18</td>
<td>Naa Kawng Mu village, Murng Ton township</td>
<td>They had been conscripted as civilian labourers for road construction in township. Walking back to her village with her friend.</td>
</tr>
<tr>
<td>18.5.2001</td>
<td>21</td>
<td>Nam Kat village, Nar Boi tract, Nam Zarng township</td>
<td>In the house, in the village. Staying alone at home, in her house, in the village. Walking back to her village with her friend.</td>
</tr>
<tr>
<td>No.</td>
<td>Date</td>
<td>Time</td>
<td>Location</td>
</tr>
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<td>---------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>2.6.2001</td>
<td>17</td>
<td>Paang Sa village, Naa Loi tract, Lai-Kha township</td>
</tr>
<tr>
<td>1</td>
<td>7.6.2001</td>
<td>62</td>
<td>Paang Ken village, Pha Khe tract, Murng Ton township</td>
</tr>
<tr>
<td>1</td>
<td>8.6.2001</td>
<td>1</td>
<td>Naa Kawng Mu village, Murng Ton township</td>
</tr>
<tr>
<td>1</td>
<td>13.6.2001</td>
<td>8 up</td>
<td>from the relocation site in the outskirts of Murng Kerng town</td>
</tr>
<tr>
<td>1</td>
<td>4.7.2001</td>
<td>27</td>
<td>Ter Hong village, Nong Hee tract, Murng Nai township</td>
</tr>
<tr>
<td>1</td>
<td>11.7.2001</td>
<td>24,30</td>
<td>Wan Phui village, Kho Lam tract, Nam Zarng township</td>
</tr>
<tr>
<td>1</td>
<td>14.7.2001</td>
<td>16</td>
<td>Murng Turn village, Murng Sart township</td>
</tr>
<tr>
<td>1</td>
<td>16.7.2001</td>
<td>16</td>
<td>Koong Sar village, Wan Nong Koong Mong tract, Nam Zarng township</td>
</tr>
<tr>
<td>1</td>
<td>23.7.2001</td>
<td>3</td>
<td>Pang Kae Tu village, Pang Kae Tu tract, Murng Kerng township</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
<td>Location</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
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<td>---------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>17.8.20 01</td>
<td>Wan Long village, Ham Ngaai tract, Murng Kerng township</td>
<td>They were stopped at Ta Saang bridge check point, on the Salween river.</td>
<td></td>
</tr>
<tr>
<td>17.8.20 01</td>
<td>Wan Zing village, Wan Kung village, Kae See township</td>
<td>The villagers were ordered to provide the military with 3 tons of teakwood.</td>
<td></td>
</tr>
<tr>
<td>30.8.20 01</td>
<td>Nam Kaa Long village, Nam Saw tract, Murng Khark township</td>
<td>She was sitting alone waiting for her friends on the bank of Nam Luay river, near Paang Mu village, in Murng Khark township.</td>
<td></td>
</tr>
<tr>
<td>Aug-01</td>
<td>Keng Lorn village, Kun Hing township</td>
<td>Staying on their farm with her husband, hiding in the farm near deserted village.</td>
<td></td>
</tr>
<tr>
<td>Aug-01</td>
<td>Nam Kham village, Kun Hing township</td>
<td>Collecting vegetables in the forest with her friend.</td>
<td></td>
</tr>
<tr>
<td>11.9.20 01</td>
<td>Loi Noi village, Nong Long tract, Murng Pan township</td>
<td>Alone at home, in relocation site.</td>
<td></td>
</tr>
<tr>
<td>16.9.20 01</td>
<td>Wan Lawn village, Murng Khawn tract, Kaeng Tung township</td>
<td>She was washing clothes alone in a stream some distance west of her village.</td>
<td></td>
</tr>
<tr>
<td>22.9.20 01</td>
<td>Pa Pek village, Pa Hok tract, Murng Yawng township</td>
<td>Collecting bamboo shoots, in the forest near their village.</td>
<td></td>
</tr>
<tr>
<td>1.10.20 01</td>
<td>originally Keng Lorn village, Keng Lorn tract, Kun Hing township relocated to Ka Li relocation site</td>
<td>She was gathering wild vegetables along the edge of a rice field about 1 mile from relocation site.</td>
<td></td>
</tr>
<tr>
<td>9.10.20 01</td>
<td>Wan Thaang village, Wan Dap tract, Murng Yawng township</td>
<td>She and her husband went to the town market with some fellow villagers, when returning home.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Number</td>
<td>Location and Details</td>
<td></td>
</tr>
<tr>
<td>------------</td>
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<td>--------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>19.10.2001</td>
<td>18,19</td>
<td>Mae Hai village, Murung Hai tract, Ta-Khi-Laek township</td>
<td></td>
</tr>
<tr>
<td>24.10.2001</td>
<td>19</td>
<td>Kang Oon village, Nong Kaw tract, Lai Kha township</td>
<td></td>
</tr>
<tr>
<td>6.11.2001</td>
<td>32</td>
<td>Loi Sim village, Wan Lone tract, Murung Kerng township</td>
<td></td>
</tr>
<tr>
<td>6.11.2001</td>
<td>17</td>
<td>Wan Khom village, Murung Khun tract, Murung Kerng township</td>
<td></td>
</tr>
<tr>
<td>6.11.2001</td>
<td>14</td>
<td>Nar Lein village, Wan Phey tract, Murung Kerng township</td>
<td></td>
</tr>
<tr>
<td>28.11.2001</td>
<td>24</td>
<td>Na Lae village, Murung Boo Long tract, Murung Pueng township</td>
<td></td>
</tr>
<tr>
<td>4.12.2001</td>
<td>18</td>
<td>Warn Lao village, Warn Lao tract, Kun Hing township</td>
<td></td>
</tr>
<tr>
<td>SLORC/SPDC troop details</td>
<td>What happened</td>
<td>Legal Action</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------------</td>
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<td>--------------</td>
<td>-------</td>
</tr>
<tr>
<td>1 SLORC soldier from IB 49, branch 3, Murung Sart-based</td>
<td>raped</td>
<td>none</td>
<td>faced censure from family and friends.</td>
</tr>
<tr>
<td>Co.4, LIB 332, Captain Maung Maung Soe</td>
<td>raped for 4 nights and 5 days</td>
<td>none</td>
<td>stayed 2 days and 2 nights in hospital</td>
</tr>
<tr>
<td>1 SLORC soldier from LIB 333, Murung Sart-based</td>
<td>raped</td>
<td>none</td>
<td>husband and children rejected her as a result of the rape</td>
</tr>
<tr>
<td>5 SLORC troops led by Captain Maung Soe</td>
<td>4 soldiers raped her mother and a captain raped her</td>
<td>4-5 days later her father complained to headman but headman said it was too late to take action</td>
<td>Troops also stole sugar cane</td>
</tr>
<tr>
<td>4 SLORC troops from Co.2, IB 64, led by officer</td>
<td>gang raped at gunpoint, her mother complained to headman, headman said he would complain to tract</td>
<td>5 SPDC soldiers stole snake gourds, pumpkins from the farm</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Action</td>
<td>Fate</td>
<td>Details</td>
</tr>
<tr>
<td>-----------------------------</td>
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<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Soe Maung Nyo</td>
<td>beaten unconscious</td>
<td>headman, but nothing happened.</td>
<td></td>
</tr>
<tr>
<td>3 SLORC soldiers led by Sergeant Khin Maung IB 66</td>
<td>gang-raped</td>
<td>The parents and village leaders complained to battalion commander. He said that Sgt. Khin Maung had been transferred long ago; slapped village leader; fined them 5,000 Kyats each</td>
<td></td>
</tr>
<tr>
<td>SLORC soldiers</td>
<td>gang-raped</td>
<td>the case was dropped because she could not find the rapists.</td>
<td></td>
</tr>
<tr>
<td>80 SLORC troops led by Maj. Kyaw Khaung, IB 64</td>
<td>Maj. Kyaw Khaung raped 17-year-old girl and other 3 were gang raped by sergeants and soldiers.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IB 99 led by Capt. Aung Zaw</td>
<td>raped</td>
<td>Complained to base commander Capt. He denied rape fined them 1 cow, 1 pig and 3,000 Kyat.</td>
<td></td>
</tr>
<tr>
<td>100 SLORC IB 64 commander Khin Than Aye</td>
<td>Commander raped both women and the soldiers killed both oxen for food</td>
<td>the troops eventually burnt down all the houses in all the villages.</td>
<td></td>
</tr>
<tr>
<td>IB 66 Sgt. Sein Win, Nam Zarng-based</td>
<td>raped and threatened to shoot her if she dared make any noise.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IB 99 Capt. Than Than, Nam Zarng-based</td>
<td>raped, soldiers ordered to take father away</td>
<td>Village was being forcibly relocated</td>
<td></td>
</tr>
<tr>
<td>100 SLORC soldiers led by Major Saw Win from IB 246</td>
<td>raped and killed all of them, accusing them of being</td>
<td>Village was being forcibly relocated</td>
<td></td>
</tr>
<tr>
<td>SURA soldiers' wives.</td>
<td>15 SLORC troops from Kho Lam-based</td>
<td>raped, shot dead</td>
<td>2-year-old child left alone in the forest while the 2 oxen were taken to Kho Lam and killed for meat.</td>
</tr>
<tr>
<td>----------------------</td>
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<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>SLORC troops from Kho Lam-based</td>
<td>raped, shot dead</td>
<td>When some of her relatives asked for permission to bury her body, the soldiers said, &quot;She must be kept like this as an example for you people of Shan State to see. If you bury her you must die with her&quot;.</td>
<td></td>
</tr>
<tr>
<td>A platoon of SLORC troops from LIB 519, Led by Sgt. Hla Phyu, stationed at Sop Sim village</td>
<td>raped the wives of seven houses,</td>
<td>Village was being forcibly relocated. The soldiers tied up her father, suspended him from the beam of a hut with a rope and made a fire under him, roasting him over it. A few days later, her father died. Her mother witnessed the rape and torture; has become mentally unbalanced.</td>
<td></td>
</tr>
<tr>
<td>SLORC troops</td>
<td>raped and killed, father tortured</td>
<td>Headman and villagers confronted Major. He denied it, beat her unconscious. Fined parents 10,000 Kyat for false accusation.</td>
<td></td>
</tr>
<tr>
<td>LIB 424, Major. Maung Kyaw Tun, Kun Hing-based</td>
<td>raped</td>
<td>Village was being forcibly relocated. The troops burned down all houses in the village</td>
<td></td>
</tr>
<tr>
<td>26 SLORC troops led by Major. Myint Lwin from LIB 424 Kun Hing-based</td>
<td>gang-raped</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IB 45, led by Maj. Aung Lwin</td>
<td>raped, slapped her face was swollen</td>
<td>Reported to headman. Headman could do nothing.</td>
<td></td>
</tr>
<tr>
<td>SLORC soldiers</td>
<td>raped and burnt to death</td>
<td>local villagers found the remains of her body</td>
<td></td>
</tr>
<tr>
<td>LIB 378 (brought in from Arakan state), 1 Capt. And 3 soldiers</td>
<td>raped woman and beat and stabbed man's chest, belly</td>
<td>asked man about Shan resistance movement in the area</td>
<td></td>
</tr>
<tr>
<td>Troops/Commander</td>
<td>Action</td>
<td>Location/Details</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
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<td>------------------</td>
<td></td>
</tr>
<tr>
<td>50 SLORC troops from Lai Kha-based IB 64, led by Maj. Khin Than Aye</td>
<td>Maj. raped her, other soldiers raped her mother and beat her father unconscious</td>
<td>Village was being forcibly relocated</td>
<td></td>
</tr>
<tr>
<td>1 SLORC soldier from Murng Sart-based, mortar battalion</td>
<td>raped</td>
<td>Camp commander beat a soldier and put him in jail</td>
<td></td>
</tr>
<tr>
<td>50 SLORC troops from Kun Hing-based IB 44 led by Maj. Than Oo</td>
<td>Raped and killed, tied up father day and night</td>
<td>Stole iron, lumber, livestock and burned down all the 36 houses.</td>
<td></td>
</tr>
<tr>
<td>Troops from LIB 424 led by Maj. Myint Than, brought 35 porters from Laikha with 36 bullock-carts.</td>
<td>raped and killed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LIB 519, commanded by Maj. Min Sein</td>
<td>robbed, raped and killed. Father beaten to death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SLORC troops from Murng Pan-based LIB 520, led by Maj. Than Maung</td>
<td>gang-raped all night; some could hardly walk, a headman was later beaten to death</td>
<td>Village was being forcibly relocated</td>
<td></td>
</tr>
<tr>
<td>250 SLORC troops of LIB 524 led by Maj. Htun Mya</td>
<td>raped several times during 3-4 days and nights before killed</td>
<td>43 women and 53 men villagers were beaten, tortured, questioned and accused of being supporters who provided food and information for Shan soldiers. 2-3 days later the troops put plastic bags over their heads, wrapped up their necks until they suffocated to death and threw</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Location</td>
<td>Actions Taken by SLORC Troops</td>
<td>Actions Taken by Burmese Troops</td>
</tr>
<tr>
<td>-------</td>
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</tr>
<tr>
<td>80 SLORC troops led by Maj. Too Nyeing from IB 246</td>
<td>raped repeatedly for 5 consecutive days, warned not to tell anyone. Or face 6 months' imprisonment</td>
<td>4 male villagers in the same group were accused of supporting the Shan troops with food and were taken to the Army base at Kho Lam. They were beaten and tortured while being interrogated and finally killed by suffocation with plastic being put over their heads and faces.</td>
<td></td>
</tr>
<tr>
<td>60 SLORC troops from IB 43 led by Capt. Ohn Myint, ransacked Huay Karn village</td>
<td>raped and robbed, beaten and burned</td>
<td>Headman questioned about Shan troops. Beaten unconscious. Valuables robbed during relocation, 37 houses burned down.</td>
<td></td>
</tr>
<tr>
<td>120 SLORC troops of LIB 524 led by Capt. Htun Mya</td>
<td>gang-raped for 2 days and 2 nights, then killed</td>
<td>All villagers (57 men and 42 women) killed.</td>
<td></td>
</tr>
<tr>
<td>SLORC troops from IB 277 led by Capt. Khin Maung Nyunt, Murng Ton-based</td>
<td>raped all night</td>
<td>Complaint registered with Commander Col. Aye Thant; victim shown line up that did not include the accused. Fined 15,000 Kyat for &quot;defaming&quot; military when victim could not make positive identification.</td>
<td></td>
</tr>
<tr>
<td>80 SLORC troops led by commander Maung Maung Htwe of LIB 515</td>
<td>gang-raped by the troops 3 days and 2 nights, 3 male villagers shot dead</td>
<td>During relocation 57 houses burned down.</td>
<td></td>
</tr>
<tr>
<td>25 SLORC troops from LIB 333, Murng Sart-based, disguised as Shan soldiers, but Burmese firearms</td>
<td>raped during relocation</td>
<td>-Complaint registered at military base with Commander of LIB 333. -Victim shown line up of 80 soldiers. Accused were not among them. -Victims apologized profusely to avoid paying fine.</td>
<td></td>
</tr>
<tr>
<td>SLORC</td>
<td>raped one</td>
<td>Relocated villagers accused of being</td>
<td></td>
</tr>
<tr>
<td>Troops from LIB 277 led by Maj. Aye Thant</td>
<td>by one for 3 days; released for ransom of 2,000 Kyat each</td>
<td>Shan soldiers’ wives</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td>100 troops from IB 246 and 250 troops from LIB 524</td>
<td>3 raped and killed. 1 raped and wounded.</td>
<td>2 men, also shot and killed.</td>
<td></td>
</tr>
<tr>
<td>Troops from Pang Long-based, LIB 513 led by Maj. Kooma</td>
<td>gang-raped and killed</td>
<td>SPDC troops called the police to come look at the corpse, saying that they had found a body of a dead woman. They took photographs.</td>
<td></td>
</tr>
<tr>
<td>120 troops from LIB 524 led by commander Htun Mya with 20 porters and 5 horses</td>
<td>raped by all soldiers until evening and killed</td>
<td>One woman escaped with help of an ethnic officer</td>
<td></td>
</tr>
<tr>
<td>3 SPDC soldiers led by Capt. Aung Zaw from IB 225, Murung Ton-based</td>
<td>raped for 2 hours</td>
<td>House ransacked, parents falsely accused of selling amphetamines and fined 500 Kyat.</td>
<td></td>
</tr>
<tr>
<td>SPDC troops from IB 66, led by deputy commander Htun Myint</td>
<td>a commander and his officers raped the women and tied 4 men to trees for 2 days and 2 nights</td>
<td>Victims fined 2,000 Kyat each for destroying forest.</td>
<td></td>
</tr>
<tr>
<td>SPDC troops led by officer Aung Myint</td>
<td>forced to work and raped</td>
<td></td>
<td></td>
</tr>
<tr>
<td>115 troops from Lai Kha-based, LIB 515 led by Maj. Soe Hpyu</td>
<td>raped, shot dead, her father and relatives shot dead, house burned down</td>
<td>Father shot after striking the Major with fire-wood and knocking him unconscious. House ransacked, valuables stolen. Village ordered to be relocated. Headman’s house set on fire.</td>
<td></td>
</tr>
<tr>
<td>3 SPDC soldiers led</td>
<td>raped</td>
<td>Registered complaint with commander Myo</td>
<td></td>
</tr>
<tr>
<td>Unit</td>
<td>Event Description</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>SPDC troops of LIB 513</td>
<td>raped and killed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A group of SPDC soldiers from IB 9</td>
<td>One woman raped and stabbed 6 times in the chest, body dumped in ditch and covered with mat and twigs. Other woman raped and stabbed to death, 4 times in the chest, and buried under thin earth.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>85-90 SPDC troops from LIB 442 led by Maj. Myint Than</td>
<td>raped and burned to death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPDC troops from IB 225 near Ta Sang led by an officer Tin Aung</td>
<td>raped, mutilated, breasts cut off and killed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>80-90 SPDC troops from IB 246 led by Major Tu Nyein</td>
<td>gang-raped and shot dead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 soldiers from LIB 246 and LIB 524</td>
<td>gang-raped</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPDC troops of LIB 517</td>
<td>repeatedly raped until 10.8.1998; one died and one lost her sanity was abandoned</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Thant of IB 40, Han Sein denied charges and was reassigned to a new location before punishment was levied.

Her parents and one villager tied up and left in forest. Mother died of grief.

Had returned from Thailand following crackdowns on migrant workers.

Villagers from relocated village received permission to return to fields. In spite of permission, 8 were detained for 9 days until their families paid 15,000 Kyat for each.

7 other villagers were lined up and interrogated and beaten until some of them lost consciousness. Two of the women were accused of being wives of Shan soldiers.
<table>
<thead>
<tr>
<th>Troops</th>
<th>Action</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 SPDC troops from LIB 524 led by commander Khin Hla Win</td>
<td>gang-raped and killed</td>
<td>One man accompanying two of the women was also killed; the bodies were heaped together near the road.</td>
</tr>
<tr>
<td>1 SPDC soldier from Murng Ton-based</td>
<td>Raped</td>
<td></td>
</tr>
<tr>
<td>50 SPDC troops from LIB 515 led by commander Han Aung from Lai Kha-based</td>
<td>raped and shot dead; her husband threatened</td>
<td>Registered complaint with LIB 515 Commander Soe Phyu who claimed that Han Aung had been sent on a military operation 3 days earlier and had not yet returned. The accused was assigned to a distant outpost. The husband, fearing reprisal, fled to Thailand.</td>
</tr>
<tr>
<td>SPDC’s township Officer of Nam Kham, Captain Ant Maw</td>
<td>Raped</td>
<td>Capt. Ant Maw was said to have been interrogated by the Commander of the Northeastern command. No punishment was levied.</td>
</tr>
<tr>
<td>SPDC’s troops from LIB 515</td>
<td>raped for one hour until she lost consciousness</td>
<td>Parents beaten with rifle butts when trying to protect their daughters.</td>
</tr>
<tr>
<td>SPDC’s troops from LIB 515</td>
<td>raped until she fainted</td>
<td></td>
</tr>
<tr>
<td>50-60 SPDC troops from LIB 524 led by commander Thein Aung</td>
<td>raped</td>
<td>kept men and women at separate places, while the troops raped the other 4 women all night. The next</td>
</tr>
<tr>
<td>by commander Kin Maung</td>
<td>Corporal Naing Htay from SPDC’s LIB 324</td>
<td>morning, the commander gathered the 9 villagers together, lined them up, and told them not to tell anyone that he and his troops had ever come to that place; he would send his troops to kill anyone who did.</td>
</tr>
<tr>
<td>------------------------</td>
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<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>raped</td>
<td>Complaint registered with Major Ne Win, Commander of Murung Yaan military camp and Deputy commander of LIB 324. Under pressure from Brigadier Commander of SSNA (a Shan ceasefire group), he agreed to a line up. Although the victim made a positive identification, no further action was taken.</td>
</tr>
<tr>
<td></td>
<td>Raped for 3 hours</td>
<td>Registered complaint with Lt. Col. Shwe Myint (aka) Hla Myint, IB 65 Commander; he asked 5 villagers if they had witnessed the rape itself. On hearing they had not, he fined the victim 5,000 Kyat and the villagers 2,000 Kyat each for &quot;defaming&quot; the military.</td>
</tr>
<tr>
<td></td>
<td>Raped and shot dead. Brother and parents interrogated and shot dead</td>
<td>Troops stole rice, chili, salt and soybeans.</td>
</tr>
<tr>
<td>58 SPDC troops Capt Shwe Nyunt, commander of Company 2 of SPDC’s IB 65 Murung Ton-based</td>
<td>Gang-raped</td>
<td>Registered complaint with Myint Oo who denied charges. Community leader arrested for &quot;defaming&quot; military and fined a total of 60,000 Kyat before release.</td>
</tr>
<tr>
<td>80-90 SPDC troops from LIB 520 led by Major Maung Ong</td>
<td></td>
<td>Women accused of being wives of Shan soldiers. When soldiers discovered woman was pregnant, they poked her womb with stick. Advised by hospital workers to lie about cause of injury.</td>
</tr>
<tr>
<td>SPDC troops from LIB 246 led by Commander Myint Oo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 SPDC troops of IB 22 led by commander Than Nyunt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Troops Led by Capt. Aung Kin, Kun Hing-based</td>
<td>2 SPDC troops, Maung Kyi and Than Htaik from Company No.1 of Capt Sein Win of IB 227</td>
<td>5 SPDC troops led by Capt. Htn Maung, Kun Hing-based</td>
</tr>
<tr>
<td>---------------------------------------------</td>
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</tr>
<tr>
<td>2 SPDC troops, Maung Kyi and Than Htaik from Company No.1 of Capt Sein Win of IB 227</td>
<td>raped, 4 villagers and 2 porters were killed</td>
<td>forced to massage the soldiers, raped all night, 2 of the victims' husbands and one villager shot and killed</td>
</tr>
<tr>
<td>forced to massage the soldiers, raped all night, 2 of the victims' husbands and one villager shot and killed</td>
<td>gang-raped, until both of them were bleeding</td>
<td>Raped at gun point</td>
</tr>
<tr>
<td>Unit details</td>
<td>Event description</td>
<td>Additional information</td>
</tr>
<tr>
<td>-------------</td>
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<td>------------------------</td>
</tr>
<tr>
<td>70-80 troops of IB 66 led by commander Myint Sein</td>
<td>1 girl raped and shot dead, raped other 5 for 1 hour, 1 porter shot dead</td>
<td>Accused of assisting Shan soldiers</td>
</tr>
<tr>
<td>SPDC troops from LIB 333 led by Capt. Maung Maung</td>
<td>Raped</td>
<td>Complaint registered with Mung Sart SPDC authorities</td>
</tr>
<tr>
<td>SPDC troops from Mung Pawn(in Loi-Len) led by commander Aung Mya</td>
<td>Raped, one girl released while the other 11 men and 13 women were taken away with the troops as porters. 3-4 of them were killed and others disappeared.</td>
<td>Accused of assisting Shan soldiers.</td>
</tr>
<tr>
<td>SPDC Capt. Than Kyaw from IB 66</td>
<td>Raped and robbed at gun point</td>
<td>Fled to Thailand to avoid future abuses</td>
</tr>
<tr>
<td>50 SPDC troops from LIB 246 led by Maj. Aung Shein</td>
<td>Raped, robbed, men taken to be porters</td>
<td>Men taken for porters, disappeared.</td>
</tr>
<tr>
<td>3 SPDC soldiers</td>
<td>Gang-raped at knife point</td>
<td>Reported to village headman who did not dare approach SPDC authorities. No further action taken. Woman became addicted to opium following incident; gave her young child to another family to look after.</td>
</tr>
<tr>
<td>Lt Kyaw Soe from LIB 314</td>
<td>Raped</td>
<td>Reported to village headman who did not dare approach SPDC.</td>
</tr>
<tr>
<td>25 SPDC troops led by Maj Khin Maung Lay, from Co.1 of</td>
<td>Mother and daughter gang-raped and killed</td>
<td>Accused of assisting Shan soldiers</td>
</tr>
<tr>
<td>LIB 422, Murng Nai-based</td>
<td>7 SPDC troops from LIB 527, Murng Sart-based</td>
<td>raped and killed</td>
</tr>
<tr>
<td>--------------------------</td>
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</tr>
<tr>
<td>80 SPDC troops from IB 64, LIB 513, LIB 514 and LIB 515</td>
<td>raped, beaten with a stick on their back and legs</td>
<td></td>
</tr>
<tr>
<td>50 SPDC troops from LIB 514 led by Capt Sein Win</td>
<td>raped for 3 consecutive nights, locked up in military camp for 3 days and 3 nights</td>
<td>Had returned to harvest their crop. Captain disregarded their permit. Would not release the women until ransom of 10,000 Kyat was paid for each couple. After that the people fled to the Thai border.</td>
</tr>
<tr>
<td>50 SPDC troops from Co.4 of LIB 247 led by commander Tha Aye</td>
<td>gang-raped, slapped and beaten until they were bruised all over. Killed 1 girl</td>
<td>Headman advised parents not to make a complaint.</td>
</tr>
<tr>
<td>SPDC troops from LIB 246, Kun Hing-based, and IB 12, Loi Lem-based, led by Capt Soe Naing Oo, Capt Tin Maung Win and Capt Than Naing Oo</td>
<td>gang-raped and killed</td>
<td>The troops separated them from their parents and took them to different places, different groups of troops gang-raped them, later killing all of them.</td>
</tr>
<tr>
<td>35 SPDC troops from LIB 524 led by Capt Win Naing</td>
<td>raped, tortured</td>
<td>the headman and village committee members went to LIB 524 base and lodged a complaint with Commander Aung Win. The Commander ordered 70 soldiers to line up, for identification but Capt Win Naing was deliberately left out. The headman and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The troops arrested 2 men and 5 women. The troops separated men and women and tied up the men and interrogated them about the Shan soldiers while torturing and beating them. The troops then raped the 4 young women, the captain took the youngest one for himself and gave the other 3 to his officers. A girl was so scared that she cried and struggled, a captain struck her on her head with his pistol, splitting her scalp and fracturing her skull.</td>
</tr>
<tr>
<td>2 SPDC soldiers from LIB 515</td>
<td>raped</td>
<td>Her parents and village leader complained to the authorities at their military camp. The company commander, Capt Saw Hpyu, then ordered about over 30 of his troops to line up for identification but the rapists were not included. The SPDC commander then accused the village leaders of trying to vilify the military and arrested the headman and his deputy and ordered 5,500 Kyat for the release of each.</td>
</tr>
<tr>
<td>-----------------------------</td>
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</tr>
<tr>
<td>2 SPDC soldiers from Ta Lur-based LIB 316</td>
<td>raped</td>
<td>Her father and the headman went to complain to the military authorities at LIB 316 base and were promised that the culprit would be taught a proper lesson.</td>
</tr>
<tr>
<td>SPDC troops from IB 246 led by Capt. Kyaw Aye</td>
<td>raped and killed</td>
<td>the husband was beaten to death with sticks at the edge of the rice field. The wife was forced to go with the troops for 4 days and 3 nights during which she was raped by the Capt, whenever he liked. On the last day when the troops were about to return to their base, a captain called up his officers one by one and ordered them to rape her one after another. She was given to a private who, after raping her, stabbed her to</td>
</tr>
<tr>
<td>a soldier from IB 227 Murng Phyak-based, a private name Hla Tin</td>
<td>raped</td>
<td>Her parents and village headman complained to tract chairman. He was too afraid of the SPDC troops to do anything against them and dared not push the case any further.</td>
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</tr>
<tr>
<td>3 Privates, Maung Bo and 2 other soldiers from Co.2 of LIB 316 Nam Mae Kong river crossing ferry at Kaeng Laap village-based</td>
<td>Gang-raped her and killed her husband</td>
<td>The parents and relatives of the couple, together with some village leaders, went to complain to the Commander of Co.2 Capt Aung Naing. They were consoled by him that if the incident was true he would take action against the culprits immediately and put them in jail. But nothing happened.</td>
</tr>
<tr>
<td>57 troops from IB 246 led by Capt. Than Maung</td>
<td>raped and killed</td>
<td>The troops arrested them, accused them of being wives of SSA soldiers and interrogated them. (Their fathers and the husband of one of them were among those who had been killed in Taad Pha Ho massacre, one of the notorious massacres on 16.6.1999 by SPDC then known as SLORC troops.) The troops took them along on patrol for 5 days and 4 nights during which they abused and raped the women to their satisfaction and eventually shot both of them dead and took away their confectionery worth 2,876 Kyat, and 252 Kyat of money from them.</td>
</tr>
<tr>
<td>the commander of SPDC's LIB 515, Lt-Col. Htun Sein, Lai Kha-based</td>
<td>arrested, detained, raped and money was extorted for their release</td>
<td></td>
</tr>
<tr>
<td>Troops</td>
<td>Details of Attack</td>
<td>Details of Response</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>30 SPDC troops from LIB 514</td>
<td>raped all night and shot dead</td>
<td>The troops accused them of having gone to provide rice for the Shan rebels.</td>
</tr>
<tr>
<td>led by Capt. Myint Aung</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Kyaw Lwin from Co.2 of</td>
<td>raped</td>
<td>Her parents and the headman went to complain to the Company Commander Capt. Htun</td>
</tr>
<tr>
<td>Loi Muay-based IB 226</td>
<td></td>
<td>Sein. He said, &quot;I sent Kyaw Lwin, the one you are talking about, to town</td>
</tr>
<tr>
<td></td>
<td></td>
<td>yesterday. But you said it was him. How could it be him? You are only</td>
</tr>
<tr>
<td></td>
<td></td>
<td>too quick to accuse us soldiers. Go back home or I will order my men</td>
</tr>
<tr>
<td></td>
<td></td>
<td>to lock you up here&quot;. The headman could say nothing.</td>
</tr>
<tr>
<td>SPDC troops from Co.3, of</td>
<td>raped for 3 hours, their mouths and faces slapped, threatened to be killed</td>
<td>A commander and his men forced the villagers at gun-point to go into the nearby</td>
</tr>
<tr>
<td>LIB 333 led by commander</td>
<td></td>
<td>forest and tied the man at the tree with a rope, and raped the women. Took their</td>
</tr>
<tr>
<td>Thein Maung</td>
<td></td>
<td>money.</td>
</tr>
<tr>
<td>23 SPDC troops from Co.5 of</td>
<td>Raped</td>
<td></td>
</tr>
<tr>
<td>LIB 524 led by commander</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hla Aung</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capt. Kyaw</td>
<td>raped</td>
<td></td>
</tr>
<tr>
<td></td>
<td>When her father</td>
<td>She was stopped by a captain who</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aye commander of Co.5 of IB 225 Murng Ton-based</td>
<td>complained to the captain, he was arrested and severely beaten. Village leaders had to pay a cow and pig for his release.</td>
<td>wanted her to take a letter to the village headman. She went up to the house to collect the letter only to be raped by the captain at gunpoint.</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>80-90 SPDC troops from Co.2 of IB 102 led by Capt. Saw Hpyu</td>
<td>raped and shot dead, farm huts burnt</td>
<td>The 3 men were interrogated, tortured and killed.</td>
</tr>
<tr>
<td>Segeant Hla Myint and his 2 soldiers from IB 279</td>
<td>gang-raped at gunpoint</td>
<td>Her parents went to complain to the headman but he did not dare to take the case to the town; they could do nothing further.</td>
</tr>
<tr>
<td>70-80 SPDC troops from IB 66 led by Capt. Htun Mya</td>
<td>Raped, beaten and killed</td>
<td>1 man and 1 woman shot and killed; the other woman and man were captured for 90 days; they were beaten and tortured, and the woman repeatedly raped. She died 5 days after her release.</td>
</tr>
<tr>
<td>50-60 SPDC troops from IB 246 led by Capt. Aung Moe</td>
<td>Repeatedly raped then beaten to death</td>
<td>Father and brother also tortured and beaten to death; accused of supporting Shan soldiers.</td>
</tr>
<tr>
<td>70-80 SPDC troops from LIB 520 led by Capt. Than Maung</td>
<td>arrested, robbed and raped</td>
<td>Women were raped when their husbands ran away.</td>
</tr>
<tr>
<td>12 SPDC troops from LIB 316 led by Commander Naing Lin</td>
<td>raped</td>
<td>They were taken to a nearby farm hut and both of them were raped by Naing Lin and some of his troops.</td>
</tr>
<tr>
<td>3 SPDC soldiers from LIB 334</td>
<td>raped and humiliated by being given 10 Kyat</td>
<td>The soldiers seized the women in the water, took them out and raped them on the bank of the stream.</td>
</tr>
<tr>
<td>3 SPDC soldiers from LIB 314 led by Lt. Hla Htwe</td>
<td>raped them several times on the bank of the stream, depriving</td>
<td>Their parents complained about it to community leaders, but no one dared take the case to the SPDC authorities in the area. The troops seized the girls who screamed in terror and struggled to free themselves, but the village was out of hearing distance and the soldiers were too strong for them.</td>
</tr>
<tr>
<td>80 SPDC troops from LIB 359 led by Capt. Htun Kyaw</td>
<td>raped and beaten to death</td>
<td>The troops seized the women and interrogated them. After a while, a captain took the youngest girl into a nearby bush and raped her. After that, he gave all the women to his junior officers and told them to rape them. The troops beat all the women to death with the sticks.</td>
</tr>
<tr>
<td>30 SPDC troops from Co.3 of LIB 514 led by Capt. Than Myint, Lt. Aung Hla and Sgt. Pa Thein</td>
<td>3 SPDC officers raped the women all night and into half of the next day and finally gave the women to the remaining 30 troops. The troops gang-raped and shot all dead.</td>
<td>The troops accused the women of being wives of Shan rebels, tied them up and interrogated them, demanding to know where the Shan resistance soldiers were in the area and who their leader were.</td>
</tr>
<tr>
<td>Commander Capt. Hla Maung of Co.4 of LIB 529, Kaeng Tung-based, stationed at Naa Kawng Mu</td>
<td>Raped at gunpoint</td>
<td>She, a headman and 5 village committee members together went straight to the military camp where the captain was staying. The captain denied the charge right away. The captain came to the house where she was staying in village and asked for some cooked sticky rice. When he learned that she was alone, he put his pistol on her and raped her.</td>
</tr>
<tr>
<td>Private, Kyaw San from Co.2 of LIB 334, Murng Yawng-based</td>
<td>Raped</td>
<td>When her father and headman tried to lodge a complaint with the Commander of Co.2 at the military camp, no action whatsoever was taken to address their plight. The soldier grabbed her and dragged her into a nearby bush. The other 2 women were too frightened to help their friend and ran away toward their village.</td>
</tr>
<tr>
<td>100 SPDC troops with 20 forced civilian porters from IB 246 led by Capt. Htun</td>
<td>raped and killed</td>
<td>The 18-year-old physically and mentally disabled girl had been living with her family in a hidden village on the river. When the soldiers came everyone ran away, leaving the disabled girl behind as she was unable to walk. The Captain</td>
</tr>
</tbody>
</table>
nevertheless, interrogated her for some time, beating and torturing her. He then ordered his troops: "Take her away, I don't want to see this kind of fool anymore." The soldiers gang raped her and shot her dead, dumped her body down into the water.

The troops forced them to lead the way to the secret camps of the displaced persons where they had peddled their goods.

The troops saw the girls and arrested them. They took the girls and their 4 oxen to their camp and detained them for 6 days and 5 nights, during which the 2 girls were repeatedly raped by a captain and his officers. The 4 oxen were also killed for meat by the troops. The captain later ordered his troops to shoot the girls dead.

The troops arrived in their village, and began to search the houses in the relocation site. At that time, most of the villagers were away at their farms, and she was home alone. When a captain saw her, he ordered her into the house. When they reached the bedroom, the captain raped her at gunpoint. She was ill for 3 months, but she recovered eventually.
<table>
<thead>
<tr>
<th>Date</th>
<th>SPDC Troops</th>
<th>Action</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>70-80</td>
<td>80-90</td>
<td>Robbed, raped and killed in a group</td>
<td>The troops stopped them and took them some distance away from the road and robbed them of all their money. The captain raped one of them and told all his troops to rape all women. The captain ordered his troops to make all the women sit in a group and shoot them dead.</td>
</tr>
<tr>
<td>80-90</td>
<td>80-90</td>
<td>Rapied and her brother who tried to intervene was shot dead</td>
<td>The captain ordered his troops to stand guard around the farm. He asked the girl to come into the hut on the farm, then threatened her with a gun if she struggled or screamed. She managed to scream attracting the attention of her brother who tried to stop the captain. Her brother was shot.</td>
</tr>
<tr>
<td>70-55</td>
<td>70-55</td>
<td>Burned up all the granaries, beat up the farmers and gang raped the women, causing many to lose consciousness, suffer from broken limbs and lose eye sight.</td>
<td>These farmers dared not bring their farm produce back to the relocation site but stored their unhulled rice in containers made of bamboo at hidden places near their farms, secretly drawing a little at a time for their families to eat. The troops robbed them of the little money they had.</td>
</tr>
<tr>
<td>80</td>
<td>80</td>
<td>Repeatedly gang-raped during 4 days and 3 nights</td>
<td>The troops forced the women to go with them for 4 days and 3 nights. Raped by all the troops. The youngest girls, even after she got back home, was so physically and mentally sick that she was not able to eat and sleep properly for many months.</td>
</tr>
<tr>
<td>35</td>
<td>35</td>
<td>Raped, beaten; she and husband died</td>
<td>The troops stopped them, took all their belongings and interrogated them.</td>
</tr>
<tr>
<td>60</td>
<td>60</td>
<td>Raped and beaten to death</td>
<td>The troops with some civilian porters and guides surrounded the farm and arrested them.</td>
</tr>
<tr>
<td>Co.3, LIB 514, Captain</td>
<td></td>
<td>Raped her at gunpoint</td>
<td>A captain spotted her in the fields and called her to come to a small hut.</td>
</tr>
</tbody>
</table>

She reported the incident to her relatives.
Than Maung from 10am to 3pm. and the headman, but they didn't complain to military. They wanted to see justice done, but they knew of others who had complained about rape, and had been forced to pay a fine of 10,000 Kyat to the military.

SPDC troops used them for almost 4 months, during which time the women porters were frequently raped and one man porter killed. A porter tried to escape but was captured by the troops. He was beaten and tortured, including by a bamboo stick being rolled on his shins, in front of the other porters. In 3 days, the wounds in his shins were full of pus and the troops beat him to death.

3 SPDC soldiers from Mung Sart-based, LIB 333 Tin Aye, Mya Maung and Htun Hpe raped The women knew these soldiers and even knew their names. They told their parents and they went to consult with the village headman. The headman explained that there was no way the military commander would be fair to them. Most likely, the victims would be told to point out the perpetrators in a line of soldiers where they were not included, and then they would be scolded, accused of dishonouring the military and fined and/or punished. The headman said that this had often been the case with rape cases committed by SPDC soldiers. In Murng Sart township alone, there had already been 20-30 rape cases by SPDC troops that were being left un-tackled and in most cases the victims

The soldiers threatened to shoot them if they did not comply.
<p>| 3 SPDC soldiers from LIB 314 led by Lt. Hla Htwe | gang-raped | Her parents were very frustrated and angry, and went to complain to the village leader. But the village leader was not willing to push the case further because he knew it would only bring more harm to the family. | The 3 soldiers seized her, took her into the nearby forest and gang raped her. She screamed several times during her ordeal, for which she was slapped and threatened each time. |
| SPDC troops from LIB 515 led by Capt. Aung Hpyu | gang-raped her for 10 days and beat her husband to death | | She and her husband was arrested. For 10 days she was repeatedly raped by several officers. On the tenth day she was gang raped by about 10 troops. She was not even able to stand up when she was released, and it took her some time to be able to walk back to her village. |
| 7 SPDC troops from IB 245 | gang-raped | All 7 of them raped both women several times. The older girl managed to keep herself conscious and the younger girl completely lost consciousness. The older girl staggered back to her village and reported the incident to her parents. When the parents and some relatives and fellow villagers went to the farm to look for the younger girl, she was still unconscious. |
| 12 SPDC troops from Murung Yawng-based, LIB 334 | women forced to stand naked and insulted | The women were bathing naked in the waist-deep clear water. The troops came near the stream and ordered the girls to stand up and come near the bank, pointing their guns and threatening to shoot if they did not comply. The girls were too afraid to defy the order, and when they reached where the water was about knee-deep, the troops started to laugh at them. Extremely embarrassed and ashamed, the girls squatted down into the knee-deep water to hide their naked bodies and cried. But the troops forced them to stand up again, threatening to shoot, and when the girls stood up the soldiers laughed at them again, clapping their hands. This happened 5-6 times until the troops saw several other women from the village coming to take a bath and left the scene. |
| Khun Gyi, raped | she and her parents | The rapist was driving a car alone. |</p>
<table>
<thead>
<tr>
<th>Troops Details</th>
<th>Action Taken by the Troops</th>
<th>Additional Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>The deputy commander of Co.2, a member of SPDC sponsored Pa-O militia in Kyawk Teng tract.</td>
<td>Complained about it to the headman. Though the headman said he would do whatever he could, nothing happened</td>
<td>He stopped his car and stopped her, and dragged her into a roadside bush, pointing his pistol at her and threatening to shoot if she shouted or struggled. After he raped her, he drove his car away, leaving her crying in the bush.</td>
</tr>
<tr>
<td>45 SPDC troops from Pang Long-based LIB 513, led by commander Hla Thaung</td>
<td>Gang-raped until they could not stand up</td>
<td></td>
</tr>
<tr>
<td>40-45 SPDC troops from Co.3 of LIB 332 led by Capt. Hla Hpe</td>
<td>Raped mother and daughter, beat father</td>
<td>The troops also took 5 chicken and 2 ducks from their farm hut.</td>
</tr>
<tr>
<td>15 SPDC troops from Co.4 of LIB 333 led by Corporal Kin Maung Soe, Murung Sart-based</td>
<td>Raped her and killed her father, complaining about the incident to Capt. Soe Naing Oo who promised to look into the matter and help the victims as much as he could. But no action was taken.</td>
<td>The troops came into their farm regularly and took as many vegetables as they wanted. Her father complained, the Corporal then ordered his troops to take her father away and kill him. She was taken to a nearby hut and raped.</td>
</tr>
<tr>
<td>70-80 troops of IB 66 led by Capt. Aung Kyaw</td>
<td>Raped her and killed her father</td>
<td>The troops stopped them and interrogated them, and beat her father to death. A captain raped her and took her along with them for 2 days before they released her.</td>
</tr>
<tr>
<td>60-70 SPDC troops of Co.2 from IB 66 led by commander Tin Myint, Nam Zarng-based</td>
<td>Raped her, beat her husband to death and looted their house</td>
<td>The troops came to Ho Ha village and searched all the house. At one of the houses, the troops beat to death a villager in his house and raped her wife, and took away all the money and valuables and things they wanted, including clothes, household utensils, chickens, pigs and cattle.</td>
</tr>
<tr>
<td>45-50 SPDC troops from Co.4 of IB 246 led by Capt. Zaw Thein, stationed at Ton Hoong relocation site</td>
<td>Raped her and beat to death her father and brother</td>
<td>The troops tied up her father and brother and interrogated and tortured them, and eventually beat them to death with sticks. A captain raped her and took her along with the troops for 3 nights.</td>
</tr>
<tr>
<td>Officer San Win Po and ten soldiers from Kun Hing-based, IB 246</td>
<td>held her prisoner and gang raped her for four days</td>
<td>She reported the incident to the village headman, and received a medical check-up from a relative who was a nurse. The village headman, worried for her safety, told her, 'If you have a place to move, you should move. You shouldn't face those soldiers again'. And so she stayed on the move, spending each night at a different relative's house. Her parents were anxious about her security, but they didn't dare complain to the military for fear of repercussions. Ten days after her release, her mother took her to Thailand.</td>
</tr>
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</tr>
<tr>
<td>20 SPDC troops led by Lt. Kyi Htun from IB 226</td>
<td>raped</td>
<td>She, the headman and her father saw the head of the Lahu people's militia of Huay Koi tract, and lodged a complaint with the township authorities. The township officer listened to the case and consoled the villagers that he would take appropriate actions to bring the culprit to justice. But no action was taken. When Lt. Kyi Htun learned that she was alone, he ordered his troops to go ahead of him to the next village, ordered her to go into the farm hut, threatening her with his gun. Using his gun as a threat to keep her from struggling and screaming.</td>
</tr>
<tr>
<td>7 soldiers from LIB 359, Ta Khi Laek township</td>
<td>raped and threatened to shoot her with their guns</td>
<td>Two years prior to being raped, her husband had been beaten to death by SPDC soldiers, when portering for them. She was left to work on their farm alone. She could not run away on her bad leg. A villager, hearing her screams, ran over to help. Upon seeing the villager, the soldiers stopped their attack, and left the scene. At the time of interview she was three months pregnant by the soldiers who raped her.</td>
</tr>
<tr>
<td>Co.4, LIB</td>
<td>raped</td>
<td>Her uncle went to</td>
</tr>
<tr>
<td>Captain Soe Nyint</td>
<td>complain to the village headman and village elder. A Shan police captain told him not to bother reporting the incident because he expected that the villagers would lose the case, and that there would be no consequences for Capt. Soe Nyint.</td>
<td>captain didn't release her until he had finished. After the rape she felt ashamed, angry and sad. She travelled across the border to Thailand.</td>
</tr>
<tr>
<td>---</td>
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<td>---</td>
</tr>
<tr>
<td>13-14 SPDC soldiers from IB 66 led by Capt. Soe Win, Nam Zarng-based</td>
<td>gang-raped, her uncle was tied up with rope. They killed the oxen for meat.</td>
<td>She was gang-raped by all soldiers including their captain for several hours.</td>
</tr>
<tr>
<td>1 SPDC soldier from Meikhtila and Myinchan-based, new camp in Ba Sar village</td>
<td>tied her hands and legs with rope and raped her</td>
<td>Her parents complained to the village headman, but they were afraid for their children's safety, and because they were often away from their house all day, they worried that the military might loot and destroy their home.</td>
</tr>
<tr>
<td>35-40 SPDC troops from IB 66 led by Capt. Nyunt Maung stationed at the outpost camp at Kho Lam village</td>
<td>raped women labourers</td>
<td>The troops often come into the village at night and conscripted 10 villagers, 5 men and 5 women, to serve as forced labourers at the military camp. Once at the camp, men and women are separated to different quarters and the women often raped by the officers.</td>
</tr>
<tr>
<td>Co.3, LIB 248 Captain Hla Phye</td>
<td>raped and stole her gold necklace</td>
<td>Ashamed, and fearful of retaliation by the Burmese soldiers, she didn't complain to the authorities.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Captain said he needed to search her house for one of his soldiers. He forced her into a bedroom and raped her and stole her valuables. She kept to herself, lost weight and eventually</td>
</tr>
<tr>
<td>Unit</td>
<td>Action</td>
<td>Details</td>
</tr>
<tr>
<td>-------</td>
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<td>---------</td>
</tr>
<tr>
<td>35-40 SPDC troops from LIB 332 of Co.5 led by Capt. Kyaw Win</td>
<td>raped</td>
<td>The troops accused the villagers of providing rice for the Shan soldiers.</td>
</tr>
<tr>
<td>11 SPDC troops from Co.2 of IB 55 led by Capt. Khin Soe</td>
<td>gang-raped</td>
<td>The troops came to the village and seized pigs and chickens from the houses. The troops came to the woman's house and forcibly took her chickens and a lot of vegetables. When they learned that she was alone in the house, all the soldiers raped her.</td>
</tr>
<tr>
<td>SPDC troops from LIB 332 and LIB 520</td>
<td>raping the women labourers at night</td>
<td>About 80 villagers including men and women had to stay at the work sites and work for 9-10 days at a time before they were replaced by another shift of labours. At night, the women were kept separately from the men where some of them were singled out at gunpoint and raped by the troops. Almost all the women at the work sites had been raped in this manner.</td>
</tr>
<tr>
<td>1 SPDC soldier from IB 99, Meikhtila and Myinchan-based, new branch in Kaeng Tawng</td>
<td>attempted rape</td>
<td>She had trouble with her eyes since she was a baby, and could not see very well. On her way to the temple, she walked with the elders of her village. On the way back she walked alone with her friend. A soldier saw the two girls, grabbed her and tried to rape her. Her friend ran away, but she could not run far because of her poor eyesight. At that moment, a woman riding a bicycle passed by. When the soldier saw the woman watching him, he released her. Her face was bruised and scarred from the blows he had inflicted, and her</td>
</tr>
</tbody>
</table>

- fell ill, becoming severely jaundiced. Though her relatives supported and took care of her, her fiance would not come to see her. As a result of the rape, they broke off their engagement. 
- She had trouble with her eyes since she was a baby, and could not see very well. On her way to the temple, she walked with the elders of her village. On the way back she walked alone with her friend. A soldier saw the two girls, grabbed her and tried to rape her. Her friend ran away, but she could not run far because of her poor eyesight. At that moment, a woman riding a bicycle passed by. When the soldier saw the woman watching him, he released her. Her face was bruised and scarred from the blows he had inflicted, and her
<table>
<thead>
<tr>
<th>Battalion</th>
<th>Captains</th>
<th>Action</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co.5 of LIB 424, Captain Soe Phue</td>
<td>raped</td>
<td>Her father and the headman complained to Capt. Thung Zaw, commander of LIB 424 based in Ke See township. As there were no eyewitnesses, other than herself, the commander said he could do nothing.</td>
<td></td>
</tr>
<tr>
<td>Co.4, LIB 503, Murng Phyak-based, Capt. Thaung Sein</td>
<td>slapped, dragged, raped at gunpoint</td>
<td>Soon after the incident the troops left her village and she could not do anything about her plight.</td>
<td></td>
</tr>
<tr>
<td>IB 66, Capt. Than Maung Tun</td>
<td>slapped and raped</td>
<td>The headman, the woman and her husband came together to see the Captain. She accused the captain saying, &quot;yesterday, you raped me in your room&quot;. The Captain replied, &quot;If I raped you, why didn't you call for help? If I raped you, why didn't the other fourteen women who came with you hear any noise or sign of a struggle?&quot; Turning to the other fourteen women, the Captain asked, &quot;Did anybody here see me rape this woman? If so, raise your hand.&quot; No one raised her hand, because no one had seen the rape with her own eyes. Upon that, the captain fined her 15,000 Kyat for causing him to lose face.</td>
<td></td>
</tr>
</tbody>
</table>

While Chit Htwe was raping her, her father who was worried about his body was sore. The headman and a villager took her to Kaeng Tung hospital for medical treatment. A doctor and several nurses took photographs of her injuries to keep on record. Many of the villagers blamed her for the incident, claiming that she had been foolish to return to Ton Hoong without the elders. Her husband was a member of the village people's militia. He was out on security duty. Although she managed to shout 2-3 times in protest, no one dared to come near her house. The local camp commander ordered fifteen women to come to the military camp to clean the camp's guard house. The captain assigned fourteen women to clean the bedrooms of the other captains, ordering her to clean his room. The captain followed her, closing the door behind him. He grabbed her, and she screamed "The captain is raping me!". After the incident, she felt sad, ashamed and afraid. She was lethargic and had no appetite. Her husband and relatives understood and supported her, and she and her husband continue to live together. Two to three months after the incident, she and her husband came to live in Thailand.
Chit Htwe complained to the battalion commander Aung Kyaw at LIB 333 base. She was asked if she would recognize him when she saw the one who had raped her. When she said yes, the commander told all 3 of them to come back the following morning when the troops lined up for morning check. The next morning, 3 of them accompanied by 13 other fellow villagers, went to the military base and the commander told her to point out her rapist among the lines of 250 or so soldiers. She could not find Chit Htwe. The commander then said that those were all the soldiers in the camp and accused her of trying to defame one of the soldiers under his command. The 3 villagers who had filed the complaint were obliged to pay 30,000 Kyat each and the other 13 who had accompanied them were to pay 20,000 Kyat each.

The troops stopped at Paang Ken village for a night's rest. Capt. Htun Myint chose a house for himself to spend the night. When he was alone with the woman, he raped her and when she tried to shout he closed her mouth firmly with one of his. She did not dare to tell anyone until the troops left the village.

A captain and his troops went on an inspection round for unreported guests in the village. A captain raped her threatening her with his pistol while the other soldiers stood guard around the house. After that, the 5 other soldiers gang-raped her.
<table>
<thead>
<tr>
<th>Commander of Co.4 of IB 65. The captain listened to the case and said that he would report it to the superiors of the troops who had committed it. But no action was taken.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The troops took all the adult men from houses. Where men were not available they took women and children. Altogether 142 men, 108 women and children.</td>
</tr>
<tr>
<td>SPDC troops from LIB 514 led by Capt. Thein Maung, under the orders of the battalion commander, Lt. Col. Hla Myint</td>
</tr>
<tr>
<td>raped and served the military without pay for 16 days</td>
</tr>
<tr>
<td>The troops suspected the farmers of helping and providing rice for the Shan soldiers. The commander sent an order to the village headman of Wan Phui to bring the 5 farmers to the military camp at Kho Lam for interrogation. Some time later the farmers were released and they all returned home safely. When they went again to work at their rice farm, the farmers were arrested by the troops, the 3 men were tied up and interrogated, tortured and beaten to death. The 2 women were taken into the farm hut and gang raped by the troops and beaten to death.</td>
</tr>
<tr>
<td>50 SPDC troops from IB 247 led by Capt. Mya Htoo</td>
</tr>
<tr>
<td>gang-raped and beaten to death</td>
</tr>
<tr>
<td>A captain pointed a pistol at her and dragged her by the hand into a nearby bush. When he released her, she started to cry and shout again and he struck her on the head with his pistol butt, and she fell down on</td>
</tr>
<tr>
<td>Co.3, LIB 524, Captain Tun Oo, Kun Hing-based</td>
</tr>
<tr>
<td>Ordered her husband to porter for his troops. Raped her from 10 in the morning until 3 in the afternoon.</td>
</tr>
<tr>
<td>Her husband reported the incident to the village headman and a village elder. Upon hearing what happened, they said, &quot;the only eyewitness is she. Though we want to report the incident, it is your word against his. We will not be able to win&quot;. They decided not to complain to the military.</td>
</tr>
<tr>
<td>He threatened her with a gun, dragged her into the bed room and raped her. Later, her husband blamed her calling her &quot;Burmese leftovers&quot;. Family members from both sides intervened and talked through what had happened, making it clear that she had not chosen to have sex with the captain, but rather had been raped at gun point. In August she and her husband came to Thailand.</td>
</tr>
<tr>
<td>Co.4 LIB 333, Capt. Naing Oo</td>
</tr>
<tr>
<td>raped and beaten unconscious</td>
</tr>
<tr>
<td>A captain pointed a pistol at her and dragged her by the hand into a nearby bush. When he released her, she started to cry and shout again and he struck her on the head with his pistol butt, and she fell down on</td>
</tr>
<tr>
<td>Unit</td>
</tr>
<tr>
<td>-----------------------------</td>
</tr>
<tr>
<td>Co2, IB 66 Nam Zarng base, Capt. Zaw Hlaing</td>
</tr>
<tr>
<td>7-8 SPDC troops from LIB 383</td>
</tr>
<tr>
<td>21 SPDC troops from IB 225 led by Capt. Myint Lwin</td>
</tr>
<tr>
<td>37 SPDC troops from LIB 516 led by deputy battalion commander Maj. Tin Maung Htoo</td>
</tr>
<tr>
<td>3 SPDC soldiers from IB 227</td>
</tr>
<tr>
<td>SPDC troops from LIB 246</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>A captain came into the relocation site, saying that he wanted to buy some chickens. After the incident, she didn't complain to authorities but confided in her family. She later went across the border to Thailand with her relatives.</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>Caught and raped her until her nose bled. Although she was seven months pregnant, raped her one after the other.</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>Caught and raped her</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>Caught and raped her until her nose bled. Although she was seven months pregnant, raped her one after the other.</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>Caught and raped her until her nose bled. Although she was seven months pregnant, raped her one after the other.</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>Caught and raped her until her nose bled. Although she was seven months pregnant, raped her one after the other.</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>Caught and raped her until her nose bled. Although she was seven months pregnant, raped her one after the other.</td>
</tr>
<tr>
<td>A captain from LIB 246, Kun Hing-based Co.4, LIB 520</td>
</tr>
<tr>
<td>Caught and raped her until her nose bled. Although she was seven months pregnant, raped her one after the other.</td>
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</tr>
<tr>
<td>Caught and raped her until her nose bled. Although she was seven months pregnant, raped her one after the other.</td>
</tr>
</tbody>
</table>
would come and kill not only her but also her parents. The soldiers searched them, deliberately and repeatedly touching the wife’s private part in front of the husband, prompting him to intervene. One of the soldiers then punched the husband to the ground, and told him not to move or he would shoot him dead. One which seemed to be the commander of the troops dragged the wife into a nearby bush and raped her. The troops then laughed at them loudly and went away.

The troops ordered them to come to the bank. When the women got on the bank, the troops gang-raped them without saying anything to them. When they regained consciousness, it was almost dark. The captain asked to search her house. At the house, a captain forced her to lie down, pointing his pistol at her head. After her release, she did not feel well. She had a headache and was dizzy and had to go to the hospital in Lai Kha town five times. Eventually, she recovered.
<table>
<thead>
<tr>
<th>Officers</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIB 514  Officers  Thein Myint and Nyan Lin</td>
<td>Slapped her face and forced her to leave with the troops. She was raped continually for a total of six days and nights.</td>
<td>The troops were patrolling the area and her husband ran away. The troops took her first to the jungle for two nights, then took her to the deserted village of Koong Ben for 3 nights and then took her to the local military camp for one night. She was raped by 2 officers throughout this time. Before she left one captain warned her not to tell anyone or he would come and kill her and her husband. The couple still live together. Her husband is understanding and only blames the soldiers. She fell ill after the incident, and spent seven days in the hospital in Murng Kern town.</td>
</tr>
<tr>
<td>Co.5 of LIB 514, Capt. Kyaw Myint and 4 of his officers</td>
<td>gang-raped every night for six nights</td>
<td>Her uncle went to report the incident to Murng Kern town's headman. They went to discuss the incident with a Shan Captain of Co.3, LIB 515. The captain said, &quot;Burmese soldiers have a habit of lying. Since we didn't witness the incident ourselves, they will ask who can verify that it happened. Although she knows which soldiers raped her, they can still claim that she is lying. I'm not saying this because I want the soldiers to go unpunished. Even though I'm an SPDC soldier, all my relatives are Shan, and I'm very sorry about what happened. I just know that it will be impossible to win this case&quot;.</td>
</tr>
<tr>
<td>Co.5, LIB 514, Capt. Kyaw Myint</td>
<td>Slapped and raped</td>
<td>When the troops entered the village, the men of the village ran away in fear of being forced to be porters, leaving only women in the village. A captain ordered his troops to stand guard outside the house, and he dragged her into the bedroom. She cried loudly. After the troops left the village, her older sister took her to</td>
</tr>
<tr>
<td>Co.3, IB 248, Capt. Tun Yin and Lt. Than Maung</td>
<td>one pointed his gun at her and the other raped her.</td>
<td>She, her husband, her parents and a headman went to complain to Co.3 commander Capt. Kyaw Kaeing in Murng Boo Long tract base. Next morning, the commander asked her to identify the rapist. She was shown a line up of 48 soldiers, but she couldn't find Tun Yin and Taung Maung among them. The commander then blamed them for seeking to defame his men, and imprisoned them. She and the headman had to paid 10,000 Kyat each, her husband paid 5,000 Kyat and her parents paid 7,000 Kyat each for their release.</td>
</tr>
<tr>
<td>Co.4, LIB 524, Capt. Myint Maung Htwe</td>
<td>Slapped her and raped her</td>
<td>Her father went to do forced labour, her mother and sister went to work on the farm. A captain raped her at gunpoint in her house. He warned her not to tell her relatives and her parents or he would come and shoot them all dead. Next morning her mother brought her to Kun Hing hospital for a medical check.</td>
</tr>
</tbody>
</table>

15.48 CORROBORATION OF SWAN REPORT BY US GOVERNMENT
The report was corroborated by a follow up investigation by the US Bureau of Democracy, Human Rights and Labor in co-ordination with the US Consulate in Chiang Mai. This investigation concluded that:

The rape of ethnic women by the Burmese military has been and continues to be a widespread (underline) and serious problem.

The words express not just that the facts are true, but expresses the victims are targeted on the basis of their ethnicity.

ANALYSIS OF RAPE INTENTION UNDERLYING WIDESPREAD RAPE

All those women interviewed by the US investigators confirmed not just that they had been raped, but that they had been gang raped. This expresses collective, not individual, responsibility and guilt. They also stated they had been forcibly relocated by the Burmese military between 1995 and 1997. The rape victims could thus not be considered “legitimate” targets of a counterinsurgency campaign for two reasons: firstly, because rape can in no way be construed as a legitimate counterinsurgency weapon; secondly, these women had been forcibly concentrated into camps and were physically separate from any resistance fighters.

SERIOUS MENTAL HARM

The US report stated:

All the women appeared severely traumatized by their experiences, were disturbed mentally and spoke in whispers, if at all.

The women thus clearly suffered from serious mental and bodily harm as defined by the Convention on the Prevention and Punishment of Genocide and the US interviews provide proof of the result needed for this particular crime of inflicting mental harm. The US report also describe how the rapes took place within a wider context of torture and executions, actions which obviously also inflict metal and bodily harm.

Subsequent to the report's publication, one third of the US Senate wrote to the UN Secretary General alleging a War Crime had been committed and demanding an official UN enquiry. The classification of the rapes as a War Crime, however, probably understates the widespread and systematic nature of the crime.

INSTITUTIONAL DENIAL AND COVER UP OF RAPE

The evidence of an official attempt to cover up the rapes is shown by an intercept from Regional Command Taungyi to all troops in Shan State ordering troops to conceal evidence of rape:

Sent from Intelligence Unit, Taunggyi 21 Sept. 02 17.30
Receiver All units under command

In Shan State there are many reports about our military raped the Shan women. About this, be careful that there is no evidence left behind, and avoid such occurrence. Be careful and do not leave any picture or something behind that can be used as evidence.
THE ISSUE OF SYSTEMATIC RAPE

The SWAN report is significant because it shows the rapes are not isolated. They are, in the US investigators words, widespread, thus meeting one of the essential criteria distinguishing a Crime Against Humanity. Moreover, high percentage of rapes were committed by officers often in front of their men. This suggests that the rapes may be systematic. However, the above intercept, though it advocates a cover up and thus, by implication, acknowledges the existence of rape, warns of avoidance of such occurrence and thus, by implication, that the practice is not ordered, approved or rewarded by senior commanders and that rape is, therefore, not systematic. However, the weakness of the admonition also clearly implies no intention to take the necessary measures to prevent or suppress the crime, or investigate or prosecute the perpetrators: in fact its failure to take such actions, while acknowledging the existence of the crime, suggests complicity.

THE ISSUE OF RAPE AS AN ACT OF GENOCIDE

However, the question arises whether widespread, and possibly systematic rape, inflicted within an overall context of Burmanisation can be considered an act of genocide. The evidence of collective trauma in the US follow-up study suggests that the Junta’s soldiers have caused serious bodily and mental harm; the fact that many victims were subsequently killed suggests selectively killing women of childbearing age, a victim group which could be considered to be a distinct entity. In the context of the alleged document encouraging changing the biological integrity of the Shan race, the practice may be considered to be a measure intended to prevent births within the race by impregnating Shan women with Burman babies.
15.49 EARTHRIGHTS INTERNATIONAL REPORT ON RAPE

The report investigated 46 cases of rape and sought to make visible the structural origins of the rape of ethnic Burmese women with particular attention paid to the institution that nurtures the rapists, the Tatmadaw.

Despite its references to structural origins, suggesting rape is planned and institutionalized, and the use of the word nurtures, expressive of a deliberate planned policy, it "skirts", as do so many Human Rights reports, the central issue of intentionality, euphemistically evading the issue in conscious understatement:

*Whether this result is unwitting or intentional on SLORC's part is, to some extent, beside the point. (p.10)*

It is of course the point to try to infer the level of intentionality underlying the widespread rape of ethnic women.

RAPE AS AN ETHNIC CRIME

However, despite the evasiveness around the issue of intentionality, the report clearly affirms the existence of an underlying intention to target ethnic women, both in its quotations and analysis:

*I think the soldiers bully the ethnic groups. I think they behave badly to all the people from the ethnic groups . . . The women I know who were raped were Mon nationality. The soldiers were Burman. I do not think soldiers ever raped Burman women. It might happen, but I never heard of it. (ERI Interview #1.)*

Rape appears to be a specific ethnic or racial crime. This is supported by the fact that the splinter proxy Junta army, the Buddhist Karen DKBA, does not rape other Karen women, even if they are Christian. Rape is thus particularly suited to conceptualization as Genocide rather than a Crime Against Humanity because of the ethnic identity of victims and the destructive biological and social effects the groups. Moreover, the fact that it can have nothing to do with a counterinsurgency campaign in any way whatsoever, expresses it is an attack on the civilian population not a weapon in a counter insurgency campaign.

The Earthrights report describes how ethnic women are sexually targeted in a number of ways over and above the actions of a counterinsurgency campaign to destroy the ethnic civilian community as such:

*The Burmese army says that the KNU nation is their enemy, rebels against them, and we are KNU people. The Karen girls are the KNU people, so they rape them. (ERI Interview #15.)*

Thus resistance fighters, the Karen people, and Karen women are conflated into one common enemy. This is again evidence not of a counterinsurgency campaign aimed at separating fighters from their civilian base, but a campaign directed against the civilian population itself and, in such a mindset, women are legitimate targets, the most effective weapon against them being rape. It traumatizes them; may lead them to be unable or unwilling to procreate; produces Burman babies; creates physical suffering and death though botched abortions; "rewards" perpetrators, and probably contributes to reducing birth rates and eventually actual ethnic population levels.
The report also describes a system of coerced and forced marriages between Burman soldiers and ethnic women systematically encouraged by officers, consistent with the document titled *Top Secret* included in the Evidence section and concludes that:

*It is inescapable these forced marriages are connected to rape.* (p.97)

**COLLECTIVE EFFECT OF RAPE ON THE GROUP**

As with the US corroborative follow up to the SWAN report, *Licence to Rape*, the Earthrights Report also concludes that *serious mental harm*, has been inflicted collectively on the group:

*Another result of rape by the Tatmadaw, intentional or not, is to create entire communities of traumatized people* (My underline, p.45).

It would be reasonable to infer that systematic rape, leading to *entire communities of traumatized people*, contributes to the destruction of *distinct entities of people*: *entire communities* is very close to the ICTY Srebrenica definition of genocidal target groups being *distinct entities*: *a community* is, by very definition, a *distinct entity*; *an entire community* is by definition a whole; moreover, it is very difficult not to infer that the creation of *entire communities of traumatized ethnic people*, inflicted on ethnic peoples over an area 1,800 kilometres in length for decades, could not be condoned or intended.

The report's weakness lies in identifying the causes of rape as rooted in the *brutalisation* of soldiers in the process of militarisation: this has the effect of reducing the crime to the level of inevitable side-effect of a brutalizing system, rather than being condoned as an expression of policy; moreover, it understates the cause of rape which it describes as resulting from *bigotry*.

15.50 REPORT ON RAPE BY REFUGEES INTERNATIONAL
A further study of rape against ethnic women was carried out by Refugees International who reported its findings to the US Senate Committee on Foreign Relations, sub committee on East Asian and Pacific Affairs, on June 18, 2003.

This investigation of rape, committed against five different ethnic nationalities (Karen, Karenni, Mon, Shan, and Tavoyan) on Burma's eastern border, confirmed Widespread and Systematic rape was being practised. The report found one third of the rapes occurred on military property and, in over one third of confirmed cases, perpetrators were officers in the Burma army. Everyone of the 45 women who participated in the Refugee International focus groups said she had heard about rapes occurring in her area of origin, and 75% said they knew someone who had been raped. The rapes occurred in conjunction with other human rights abuses, such as forced labour, forced relocation, forced portering, torture and extrajudicial killings. One story included the following:

Thay Yu is a Karen mother in her forties who was fleeing to Thailand because of oppression by the military in her village. Near the border of Thailand, a group of six Burmese soldiers caught one of the families traveling with her. It was a family of four, composed of parents, a nursing baby and a six year old girl. Thay Lu hid in a nearby bush and while soldiers killed the baby with a blow to the neck, then raped the mother while forcing the husband to watch. After killing the mother by stabbing her through the vagina with a bamboo pole, they shot the husband. The six year old daughter ran away and hid in a tree where Thu Yu collected her and brought her to Thailand after burying the bodies of her parents. (Report to US Senate Committee on Foreign Relations by Refugees International, June 18, 2003.)

Undoubtedly true though the stories are, the report draws some conclusions which appear to be challengeable. It describes the widespread and systematic rapes taking place within a context of forced labour, forced relocation, forced portering, torture and extrajudicial killings. It concludes that the rape of ethnic women is a way of waging war on civilian populations, thus again limiting rape to a War Crime: however, it goes on to say that The rapes are part of a pattern of brutal abuse designed to control, terrorize, and harm ethnic minority populations through their women, thus suggestive of a systematic Crime against Humanity.

Nevertheless, as with other human rights reports, it appears contradictory and confused over the issue of intentionality underlying the policy of tolerating/condoning/encouraging rape. The rapes take place, as the report makes clear, in conjunction with forced labour, forced relocation, forced portering, torture and extrajudicial killings; taken together they suggest a campaign to destroy ethnic peoples, not just to brutalise ethnic women. A very high percentage of raped women in all reports are subsequently killed. The report cites:

In one third of the confirmed cases the abuser raped the women on military property, and in over one third of the confirmed cases, he was an officer in the Burma army. (ibid p. 5)

These facts express rape is at least condoned, or even encouraged by the military system, in such a widespread manner as to be a weapon of ethnic destruction, something expressed by a Burmese army defector in a quotation I have heard many times myself:

In the frontline, everything in the village of the ethnic groups is yours—women, domestic animals. You are free to do anything you want. . . . you can do so even if you have a wife at home in your village.

This is more than toleration: it is a form of encouragement tantamount to official endorsement, a logical expression of the state of mind created by the notorious and ubiquitous expression of state policy to Destroy all destructive elements as the common enemy. Ethnic women, in such a mindset, are destructive elements and thus legitimate targets for destruction.

However, the report lapses into muddled equivocation when it tries to draw conclusions on the issue of underlying intentionality:
The logic of the quoted statement is also flawed: a faulty system for protecting civilians does not suggest rape is systematic: a faulty system suggests a basically good system exists, but that it is not working properly, leading to unintended negative consequences: systematic rape, on the other hand, is, by its very nature, an expression of intended policy. A faulty system does not produce systematic rape. If rape is systematic, (and the report states it is), it is the intended result of the system and is therefore expressive of an underlying policy to ensure rape and sexual violence is inflicted on ethnic target groups. The system, in fact, is not faulty at all: it is working effectively; it ensures rape and sexual violence is inflicted on a widespread, and probably systematic basis on the ethnic population of eastern Burma, as report after report documents and acknowledges. Everything is yours including domestic animals and women as the Burmese defector explained. This is not the expression of a faulty system, but of intended policy. Systematic is planned, organized working properly, whereas a faulty system is the opposite and is not working properly: by simultaneously accusing the Junta of systematic rape resulting from a faulty system, the report contradicts itself and creates confusion precisely where clarity is most needed: the issue of intentionality underlying the violations.
THE KAREN WOMEN’S EXPERIENCE: “SHATTERING SILENCES”, THE KAREN WOMEN’S ORGANISATION’S REPORT ON SEXUAL VIOLENCE COMMITTED AGAINST KAREN WOMEN (April, 2004)

The report documents 125 cases of sexual violence committed by troops in Karen State from 1988 until 2004. 50% of the rapes were committed by military officers; 40% of the victims were gang raped. In 28% of the cases, the women were killed after being raped.

The report places the rapes within the context of an overall policy intended to commit genocide by inflicting mental and bodily suffering, creating social disintegration, and biologically changing the composition of the group:

_Designed to terrorize and subjugate the Karen people, to completely destroy their communities . . . It is well known that forced pregnancy is one of the strategies adopted by the SLORC/SPDC_. (p.6 -p.21)

The very high percentage of rapes inflicted by officers again identified in the Report strongly suggests the crime of rape is not just tolerated but condoned, encouraged, even, and as the following expresses, actually seems to be systematically and violently enforced:

_After she arrived back home she told her husband and her father-in-law that about 20 Burmese soldiers at Pah Klaw Hta SPDC camp raped her. She said, “I was raped by the column commander Captain Ye Htut first, then he ordered his soldiers to rape me. Captain Ye Htut also said to his soldiers, You must rape that women, those who refuse will be shot and killed”. (Naw Bway Poung’s story, case no. 31)_

The report also describes two aspects not covered as much in other reports on sexual violence. Firstly, many of the women are raped in a prolonged manner, especially while enslaved as porters, expressive of the _Crime Against Humanity of Sexual Enslavement_. In addition, entire communities of Karen women have been raped as described below, suggesting rape is not an individual crime, but a systematic, collective weapon of destruction. (The following description echoes an almost identical one given me by a Human Rights researcher documenting the systematic, rape of all the women in a Shan village).

_Some of the soldiers went down into the trench where we’d been hiding. They started calling all the women, one by one, down the trench with them. When each woman went down there, they would accuse her of hiding money and gold in her clothes and force her to strip. Then they searched her clothes for anything valuable, and took turns raping her. Not one woman was spared, whether young, old, married or unmarried. Even though I was holding my baby son at the time, when my turn came, I had to go into the trench like the others and was raped or the soldiers would have killed me. In this way, every woman in the village was gang raped. Only when all the soldiers were finished with you, were you allowed to get dressed and leave the trench. Then they would call the next woman in._

_I can remember the names of some of the women who were raped. Along with myself, Naw Aye Mya, I can remember Naw Moo Dah, Ma Pyo, Ma Kyi Thaung, Ma Than Sein, Naw Che Che, Naw Lay Paw, and Naw Bae Paw. But there were many others._

_The SLORC soldiers stayed in our village for a week. They wouldn’t let us leave. During the week many women were raped again and again. The soldiers murdered a village headman, Pah Ngwe Kawn, in front of all of us. (Case no.7)_

The systematic rape of the women of a whole village such as this suggests rape is being used to destroy an ethnic community, rather than as a way of punishing victims, or rewarding soldiers.

Complete List of Rape Cases
## LIST OF RAPE CASES

<table>
<thead>
<tr>
<th>No</th>
<th>Name</th>
<th>Age</th>
<th>Place</th>
<th>Date</th>
<th>Troops</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ma Chit</td>
<td>27</td>
<td>Azin village, Doplaya District</td>
<td>2/10/1988</td>
<td>SLORC LID (44) led by Major Ohn Myint</td>
<td>The troops came to her house and when they didn’t see her husband one of the officers, Major Ohn Myint, raped her many times. It was at night when she was alone in her house. No one took action for that. After she was raped she got mental problems.</td>
</tr>
<tr>
<td>2</td>
<td>Naw Lah Lah</td>
<td>44</td>
<td>Ter Heh Pwey village, Mutraw Township, Papon District</td>
<td>6/12/1991</td>
<td>Ba Gyi from SLORC troops LIB 60 led by Captain Soe Win.</td>
<td>She was stabbed in the chest and raped by an SLORC soldier</td>
</tr>
<tr>
<td>3</td>
<td>Naw Aye Mya</td>
<td>32</td>
<td>Htee pa Nar village Shwegun Township Thaton District</td>
<td>1/24/1992</td>
<td>A large group of SLORC</td>
<td>She was gang raped by SLORC soldiers along with many other women in her village.</td>
</tr>
<tr>
<td>4</td>
<td>Daw Khin Aye</td>
<td>32</td>
<td>Theinzayat village</td>
<td></td>
<td>SLORC LIB1</td>
<td></td>
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<tr>
<td>5</td>
<td>Daw Win Hla</td>
<td>42</td>
<td>Kyaito Township</td>
<td>1/24/1992</td>
<td>SLORC LIB1</td>
<td>They were captured as porters and were raped by the troops of SLORC LIB1 at night. In daytime they had to work as porters.</td>
</tr>
<tr>
<td>6</td>
<td>Khin Lay</td>
<td>20</td>
<td>Thaton District</td>
<td></td>
<td>SLORC</td>
<td>She was gang raped by SLORC soldiers along with many other women in her village.</td>
</tr>
<tr>
<td>7</td>
<td>Naw Eh</td>
<td>17</td>
<td>Kyaito Township</td>
<td></td>
<td>SLORC</td>
<td>She was gang raped by SLORC soldiers along with many other women in her village.</td>
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<tr>
<td>8</td>
<td>Naw Moo Dah</td>
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<td>9</td>
<td>Ma Pyo</td>
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<td>10</td>
<td>Ma Kyi Thaug</td>
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<td>11</td>
<td>A Than Sein</td>
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<td>12</td>
<td>Naw Che Che</td>
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<td>13</td>
<td>Naw Lay Paw</td>
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<td>14</td>
<td>Naw Bae paw</td>
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<td>15</td>
<td>Daw Aye Hla</td>
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<td>16</td>
<td>Naw Gaw paw</td>
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<td>17</td>
<td>Naw paw Soe</td>
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<tr>
<td>18</td>
<td>Htio Htio Poe</td>
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<tr>
<td>19</td>
<td>Naw Tha Shee</td>
<td>30</td>
<td>Htee pa Nar village</td>
<td>1/24/1992</td>
<td>SLORC</td>
<td>She was gang raped by SLORC soldiers along with many other women in her village.</td>
</tr>
<tr>
<td>20</td>
<td>Naw Wah Paw</td>
<td>18</td>
<td>A Village, Kyaito Township, Thaton District</td>
<td>10/24/1992</td>
<td>SLORC troops No. LIB</td>
<td>She was captured and forced to labour as a other for the SLORC. She was gang raped every night.</td>
</tr>
<tr>
<td>21</td>
<td>Naw</td>
<td></td>
<td></td>
<td>10/24/199</td>
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<tr>
<td>KuLah</td>
<td>2</td>
<td>10/24/1992</td>
<td>SLORC troops</td>
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<tr>
<td>22</td>
<td>Naw Ler Paw 19 A Village, Doplaya District</td>
<td>She was forced to work as a porter for the SLORC, threatened at gunpoint and was gang raped every night.</td>
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<tr>
<td>23</td>
<td>Naw Say Paw 15 A village, Thaton Township, Thaton District,</td>
<td>She was captured as a porter. She was gang raped at night during portering for SLORC Troops.</td>
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<td>24</td>
<td>Naw Kee Soe 38 A village from Kyakki Township, Nyaunglebin District</td>
<td>She was interrogated and raped and raped by Ba Kyi of SLORC.</td>
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<td>25</td>
<td>Naw Htoo Htoo 33 Wet la Daw village Kyakkiy</td>
<td>The Infantry Regiment of SLORC</td>
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<tr>
<td>26</td>
<td>Naw Lay Wah 38 A village Paan Township Paan District</td>
<td>She was captured and forced to labour for SLORC. She was gang raped by the SLORC soldiers. (She was asked to worked for the full day and at night the troops raped her.)</td>
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<td>27</td>
<td>Naw Aw Paw 21 A village, Hiang Bweh Township, paan District</td>
<td>She was raped and forced into &quot;marriage&quot; with a SLORC soldiers. Over the next three months she was beaten and psychologic ally tortured.</td>
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<tr>
<td>28</td>
<td>Naw Baw Baw 32 A village Hlaing Bweh Township Paan District</td>
<td>She was abducted by SLORC soldiers to work as a forced labourer and raped.</td>
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<tr>
<td>29</td>
<td>Naw Sha 45 Kyoo lu village, Kyakkiy Township, Nyaunglebin District.</td>
<td>She was raped while she was captured as a porter.</td>
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<td>30</td>
<td>Naw Chit Pya Pay 23 Kaw thay der village, Toungoo District</td>
<td>She was captured and raped by SLORC troops when she and her husband went to the forest to find vegetables.</td>
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<tr>
<td>31</td>
<td>Naw Beh Htoo 16 A village Doplaya District</td>
<td>While she was at home about 10 pm. Sergeant Aung Aung came to her house and raped her. At that time she has given birth only a month before.</td>
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<tr>
<td>32</td>
<td>Naw Me Me 22 Kyain Hseit Kyi Township Doplaya District</td>
<td>These two sisters stayed in their house with their parents. They were raped at night at their house while they were sleeping by SLORC soldier Sergeant Chit Shwe about 1 am.</td>
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<td>33</td>
<td>Naw De De 19 Were assaulted</td>
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<tr>
<td>34</td>
<td>Naw Ywa Moo 22 Maw keh tha per ko kyaukti township Nyaunglebin District</td>
<td>She and her friends were raped while they were in relocated area by troops of SLORC LIB 439 and IB 26</td>
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<tr>
<td>35</td>
<td>Naw Paw Sha 14 Poe Yi village</td>
<td>Both of them were raped by SLORC LIB 208 Sergeant Tway Ngeh, under the command of Major Tay Aung.</td>
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<tr>
<td>36</td>
<td>Naw Dina 35 Kya in seik kyi Township Doplaya District</td>
<td>Both of them were gang raped, and shot to dead and the naked bodies of them were left at the edge of the forest by Company 1 commander from SLORC LIB 205 Capt. Thein Aung and his whole company</td>
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<tr>
<td>37</td>
<td>Naw paw Lah 35 Galacee Kya in seiky Township Paan District</td>
<td>Both of them were gang raped, and shot to dead and the naked bodies of them were left at the edge of the forest by Company 1 commander from SLORC LIB 205 Capt. Thein Aung and his whole company</td>
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<td>38</td>
<td>Naw tha Bit 17</td>
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</tr>
<tr>
<td>39</td>
<td>Naw Ta 4/19/1997</td>
<td>She was raped one month after giving birth</td>
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<tr>
<td>Naw</td>
<td>Soe Mya</td>
<td>Lar Aw Kor village, Thaton township, Thaton District</td>
<td>SLORC LIB 534 Led Major Aung Than</td>
<td>She was kidnapped and raped for two days badly by SLORC LIB 534 led by Major Aung Than.</td>
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<tr>
<td>Naw</td>
<td>thak Ko</td>
<td>Plaw poe Htoo village, Thaton Township, Thaton District</td>
<td>10/22/1997 Mying Oo of DKBA lackey of SLORC</td>
<td>She was raped and brutally killed by Mying Oo of lackey of SLORC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Naw</td>
<td>Hee Paw</td>
<td>Ta Lay ko village</td>
<td>12/22/1997 IB/LIB 280/285</td>
<td>Both of them were raped and killed by SPDC IB/LIB 280/285 who took away the 14 year old daughter and 8 year old son of Naw Hsi Hsi Thart.</td>
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<tr>
<td>Naw</td>
<td>Ta Mla</td>
<td>Tavoy District</td>
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<tr>
<td>Naw</td>
<td>Shwe Myint</td>
<td>Azin village Kya in seikyi Township, Doplaya District</td>
<td>12/26/1997 IB 62, Medic San Htay led by LID (44) Colonel Aung Khaiing</td>
<td>She was raped by one of the SPDC soldiers, who performed oral sex and other acts.</td>
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<tr>
<td>Naw</td>
<td>Myint</td>
<td>A village, Kya in Seik Gyi Township, Doplaya District</td>
<td>2/20/1998 SPDC IB 355 led by Column Com. Saw Aung and Second Column Com. Aung Lwin from Column (2)</td>
<td>She was gang raped badly while she went outside her house not so far to find firewood, by 4 SPDC soldiers.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Naw</td>
<td>Pee Eh</td>
<td>Ba Hat</td>
<td>4/7/1998 LIB 234 Officer</td>
<td>Raped and killed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Naw</td>
<td>Lweh Htoo</td>
<td>No pa Doe, Thaton District</td>
<td>5/14/1998 LI 546 Officer</td>
<td>Raped her and took her and put her into jail in Toungoo.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Naw</td>
<td>Htoo Lweh</td>
<td>A village Yee Township, Doplaya District</td>
<td>5/23/1998 SPDC, LID (207) led by battalion Second in Commander Myint Thein and friends</td>
<td>They were raped by the SPDC troops Commander Myint Thein. Naw Htoo Lweh was pregnant.</td>
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<tr>
<td>Naw</td>
<td>Eh Mu</td>
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<tr>
<td>Ma</td>
<td>Sein Sein</td>
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<tr>
<td>Ma</td>
<td>Kyi Aye</td>
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</tr>
<tr>
<td>Naw</td>
<td>Lay Lay</td>
<td>Shwe Dee village, Nyaunglebin District</td>
<td>6/28/1998 LIB 60, Capt. Nyi Nyi thun</td>
<td>Raped her and then asked her 18,000 Kyats and release her.</td>
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<tr>
<td>Naw</td>
<td>Thaw baw</td>
<td>Shwe Dee village, Nyaunglebin district</td>
<td>6/28/1998 LIB 60, Capt. Nyi Nyi Thun</td>
<td>Raped her in front of her husband and shot both the husband and the wife to death. It was after her 14 days of delivered her baby.</td>
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</tr>
<tr>
<td>Ma</td>
<td>Thanda</td>
<td>Ma U bin</td>
<td>6/29/1998 SPDC LIB 250, Officer Maung Maung Thein</td>
<td>Raped her and released her and now the woman is in the one of the villages along the border.</td>
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<tr>
<td>Naw</td>
<td>Lu Lu</td>
<td>Hut Baw village, Pupan District</td>
<td>7/20/1998 LIB 230 officer</td>
<td>Raped her and shot a bullet into her vagina to death.</td>
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</tr>
<tr>
<td>Naw</td>
<td>San Aye</td>
<td>Noe padoe village Pa-an District</td>
<td>8/17/1998 4 soldiers from SPDC LIB 546 led by Major Tin Aye</td>
<td>She was raped by 4 soldiers form SPDC LIB 546 led by Major Tin Aye while she was at home.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Naw</td>
<td>Aye Thein</td>
<td>Noe padoe village Pa-District</td>
<td>8/17/1998 4 soldiers from SPDC LIB 546 led by Major Tin</td>
<td>She was raped by 4 soldiers form SPDC LIB 546 led by Major Tin Aye while she was at home.</td>
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<tr>
<td>No.</td>
<td>Name</td>
<td>Age</td>
<td>Place</td>
<td>Date</td>
<td>Other</td>
<td>Details</td>
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<tr>
<td>60</td>
<td>Naw Hsar Paw</td>
<td>45</td>
<td>Du Soe Pwe Plaw</td>
<td>10/8/1998</td>
<td>LIB 552 Soldiers</td>
<td>Raped and killed</td>
</tr>
<tr>
<td>61</td>
<td>Naw Ler Bweh</td>
<td>20</td>
<td>Aung Chan Thar</td>
<td>10/13/1998</td>
<td>LIB 59</td>
<td>Raped and then shot her to death.</td>
</tr>
<tr>
<td>62</td>
<td>Ma Thi Da</td>
<td>16</td>
<td>Nyaunglebin District</td>
<td>10/13/1998</td>
<td>Capt. Aung Soe</td>
<td>Raped and then shot her to death.</td>
</tr>
<tr>
<td>65</td>
<td>Naw Men Tu</td>
<td>15</td>
<td>Tha Dwe Ko village, Hlaing Bweh township Paan district</td>
<td>1/6/1999</td>
<td>DKBA Battalion 555 Maung Pauk Kyaing and 2 others</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>Naw Hsar Paw</td>
<td>23</td>
<td>Kyain Hseit township, Doplaya District</td>
<td>1/9/1999</td>
<td>Kyaw Kyaw Win Lt Colonel LID 22, LIB 205, Aung Gyi, Colonel Battalion 2nd in Command, pay Than Win, Captain Company Commander, Kyaw Lwin Bo2nd Company Commander.</td>
<td>This women was raped by a sergeant and a soldier from SPDC LIB 55 led by Company commander Maung Cho</td>
</tr>
<tr>
<td>67</td>
<td>Naw Sot poe</td>
<td>25</td>
<td>Ta wah law kee village Toungoo District</td>
<td>2/15/1999</td>
<td>A sergeant and a soldier from SPDC LIB 55 led by Company Commander Maung Cho</td>
<td>This women was raped by a sergeant and a soldier from SPDC LIB 55 led by Company commander Maung Cho</td>
</tr>
<tr>
<td>68</td>
<td>Naw yinpoe</td>
<td>16</td>
<td>Toe mae kee village at the road side Papon District</td>
<td>3/25/1999</td>
<td>Battalion Commander Aung Win o fSPDC LIB 434 and No. 1 Company Commander of Column 1 Kyaw Khin Than</td>
<td></td>
</tr>
<tr>
<td>69</td>
<td>Naw o' Sar</td>
<td>38</td>
<td>Paung Aw Taw nyaunglebin District</td>
<td>4/4/1999</td>
<td>Capt Aung Zaw Myo, Special troops</td>
<td>Gang raped.</td>
</tr>
<tr>
<td>70</td>
<td>Naw plot Soe</td>
<td>40</td>
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<tr>
<td>71</td>
<td>Naw Kaw</td>
<td>32</td>
<td>Hay Tay Weh, Nyaunglebin District</td>
<td>4/15/1999</td>
<td>Capt Aung Zaw Myo, Special troops</td>
<td>Raped and killed.</td>
</tr>
<tr>
<td>Say</td>
<td>District</td>
<td>Special troops</td>
<td>Remarks</td>
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<tr>
<td>74 Naw Bway</td>
<td>21 Toe mae kee village at the roadside Papon District</td>
<td>5/4/1999 Battalion Commander Aung Win of SPDC LIB 434 and No. 1 Company Commander of Column 1 Kyaw Khin Than</td>
<td>She was raped at the roadside by the Battalion Commander Aung Win of SPDC LIB 434 and No. 1 Company Commander of Column 1 Kyaw Khin Than as a gang rape three times.</td>
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<tr>
<td>75 Naw Bway paw</td>
<td>23 A village Kyain township, Doplaya District</td>
<td>5/15/1999 LBP 210 battalion Commander Mg Mg Ohn</td>
<td>She was raped by 8 soldiers of LBP 210, Battalion Commander, Mg Mg Ohn in her house. They tied her husband. Her baby was born dead.</td>
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<tr>
<td>76 Naw KuKya Boe</td>
<td>18 Baner village Nyaunglebin District</td>
<td>6/2/1999 Shan Bu leader of SPDC from Sa Sa Sa unit</td>
<td>The SPDC troops Shan Bu raped her at her house.</td>
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<tr>
<td>77 Naw Ku paw</td>
<td>17 Mat Taw Ku village Nyaunglebin District</td>
<td>6/5/1999 Shan Bu leader of SPDC from Sa Sa Sa unit</td>
<td>The SPDC troops Shan Bu raped her at home.</td>
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<tr>
<td>78 Naw The Pah</td>
<td>20 Ta po kee village</td>
<td>7/3/1999 LBP 101 Section 4 4 Capt Moe Kyaw, Kar Tay</td>
<td>All were raped and killed.</td>
<td></td>
<td></td>
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<tr>
<td>79 Naw Way poe</td>
<td>23</td>
<td>7/22/1999</td>
<td>Naw Way poe was five months pregnant; she was shot dead in her stomach.</td>
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<tr>
<td>80 Naw Ner Kaw</td>
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<td>81 Naw Dee Gay</td>
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<tr>
<td>82 Naw Nay Thaw</td>
<td>32</td>
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<tr>
<td>83 Naw EhBer</td>
<td>44 Par Khu village paan District</td>
<td>8/8/1999 SPDC LIB 102 Htun Aung a company Commander</td>
<td>Was raped by SPDC LIB 102 Htun Aung a company Commander, she was forced by Htun Aung to sleep with him every night and was raped every night while she was there.</td>
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<tr>
<td>84 Naw Hser Bleh</td>
<td>46</td>
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<tr>
<td>85 Ma Hsan Thi</td>
<td>46 Nga yant in village Thanton District</td>
<td>4/9/1999 Nyi Nyi Aye SPDC IB 92 intelligent officer of the column</td>
<td>A military Column from the SPDC IB 92 came to the village, and one of the intelligence officers of the column Nyi Nyi Aye raped her before they departed.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>88 Naw KuKu</td>
<td>18</td>
<td></td>
<td>Raped and killed.</td>
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<tr>
<td>89 Naw Bay Be</td>
<td>33</td>
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<tr>
<td>90 Naw Win Win</td>
<td>16 Kyaut bilu village Doplaya District</td>
<td>3/22/2000 SPDC LIB 581 troops</td>
<td>They were Gang raped by SPDC LIB 581 troops Commander Tin Oo Lwin and his troops.</td>
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<td>91 Naw Leh Mu</td>
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<tr>
<td>Date</td>
<td>Location</td>
<td>Author/Officer</td>
<td>Action Description</td>
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<tr>
<td>6/26/2000</td>
<td>Peh Leh No village Thaton Township Thaton District</td>
<td>SPDC LIB 3, Lieutenant Win Naing and Intelligence officer under company commander Kyaw Tin Oo</td>
<td>Was reaped at 12 pm. By SPDC LIB 3, Lieutenant Win Naing and Intelligence officer under company commander Kyaw Tin Oo</td>
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<tr>
<td>12/20/2000</td>
<td>Pyaw Pyaw</td>
<td>SPDC LIB 246 column 2, Zaw Myint</td>
<td>She was raped by SPDC troops led by SPDC LIB 246 column 2, Zaw Myint.</td>
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<tr>
<td>1/28/2001</td>
<td>Kyet San Pyin village, tavoy Township, Tavoy District</td>
<td>Thein Myint Zaw, Battalion 104</td>
<td>On January 28, evening she arrived to a Burma Army border check point at Thuka, opposite to Thailand's Kanchanaburi province. Lt. Thein Myint Zaw a Company Commander in that camp summoned her in his hut and said that he needed to check her. Then he raped her badly. He let her go the next morning.</td>
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<tr>
<td>7/25/2001</td>
<td>Chan Tha Oo village Tavoy District</td>
<td>Lieutenant Col. Zaw Lwin from No.2 Column, Battalion Commander of IB (17)</td>
<td>These two women were raped and stabbed to death by bayonet.</td>
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<tr>
<td>8/3/2001</td>
<td>A village, toungeo District</td>
<td>LIB 124 Officer, Thara Maung, Ba yee Naw Troops</td>
<td>Raped her on her way home from than Taung Kyi section 5 and section 2 killed her after they raped and took a golden necklace, sarong and watch from her.</td>
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<tr>
<td>10/20/2001</td>
<td>Pyo village Thaton District</td>
<td>K'bar Min Moe Heain from DKBA troops led by Moe Kyow (aka) pah nee Thow</td>
<td>She was a teacher from Pyo village. While she was in her house, K'bar Min Moe Heain from DKBA troops led by Moe Kyow (aka) pah Nee Thow raped her in her house</td>
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<tr>
<td>2/11/2002</td>
<td>Kaw Kareit township Doplaya District</td>
<td>SPDC IB 10 under LID 88</td>
<td>They were taken outside the village, tied with rope and both gang raped. No action was taken against the troops committing the rapes.</td>
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<tr>
<td>2/19/2002</td>
<td>Palaw Township Tavoy District</td>
<td>Win Nyunt led a group of Pyithu People's militia from the Burman village of Maw Maid</td>
<td>On 19 February 2002, Win Nyunt led a group of people's Militia from a Burman village Maw Maid and raped these two Karen women</td>
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</tr>
<tr>
<td>2/19/2002</td>
<td>Palaw Township Tavoy District</td>
<td>Win Nyunt led a group of Pyithu People's militia from the Burman village of Maw Maid</td>
<td>On 19 February 2002, Win Nyunt led a group of people's Militia from a Burman village Maw Maid and raped these two Karen women</td>
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<tr>
<td>No.</td>
<td>Name</td>
<td>Age</td>
<td>Village Location</td>
<td>Date of Event</td>
<td>Event Details</td>
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<td>106</td>
<td>Naw Thu Thu</td>
<td>45</td>
<td>A village Kya in Township, Doplaya District</td>
<td>5/18/2002</td>
<td>She was raped in her house at night 9 pm by IB 78 Let by Capt. Win Zaw Oo.</td>
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<tr>
<td>107</td>
<td>Naw Leh Kee</td>
<td>22</td>
<td>Ka Toe Hta village Doplaya District</td>
<td>6/8/2002</td>
<td>She was gang raped by SPDC IB 77 troops.</td>
<td></td>
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<tr>
<td>108</td>
<td>Nan Bway Puong</td>
<td>50</td>
<td>A village, Kyaukkyi Township, Nyaunglebin District</td>
<td>6/10/2002</td>
<td>She was raped by Capt. Yeh Htut first and then he ordered his troops to rape her. After she was released she told people about that and then she drank poison and killed herself because of her pain and shame.</td>
<td></td>
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<tr>
<td>109</td>
<td>Naw Thay Mya</td>
<td>15</td>
<td>A village, Tenasserim Township, Tavoy District</td>
<td>6/14/2002</td>
<td>She was raped by sergeant Poe Tha Gay from LIB 111 temporary Battalion Commander Aung Min Lwin of the SPDC troops of LID 33.</td>
<td></td>
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<tr>
<td>110</td>
<td>Naw Tah Tah</td>
<td>25</td>
<td>A village, Kyaukkyi Township, Doplaya District</td>
<td>7/6/2002</td>
<td>Burmese troops from Light Infantry Battalion 552 raped her and beat her.</td>
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<tr>
<td>111</td>
<td>Naw Eh Tahw</td>
<td>21</td>
<td>A village, Kyaukkyi Township, Nyaunglebin District</td>
<td>9/10/2002</td>
<td>She was a widow and stayed with her children. 6 of the SPDC came to her house and stayed for 2 days. Then one night about 2 am. One of the soldiers came to her place where she slept with her children and her sister and forced her to have sex with him. She refused but he soldier was strong and then he raped her about half an hour and then went out from her house.</td>
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<tr>
<td>112</td>
<td>Naw She Mu</td>
<td>19</td>
<td>Ka Lo village Kyaukkyi Township Nyaunglebin District</td>
<td>10/13/2002</td>
<td>While they were finding vegetables in the forest they met with the soldiers. Then these SPDC troops led by Kla Min captured all of them and raped them by the river. After raping the women they shot to death.</td>
<td></td>
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<tr>
<td>113</td>
<td>Naw Sei paw</td>
<td>20</td>
<td>Thin Dan Quarter, Kyaukkyi Township Nyaunglebi</td>
<td>10/21/2002</td>
<td>She was raped by guerilla troops of SPDC which stayed in Kyautkyi township led by officer Hla Min while she was at her house and working.</td>
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<tr>
<td>114</td>
<td>Naw EhLar</td>
<td>24</td>
<td>Paw autaw village, Kyatkyi Township Nyaunglebin District</td>
<td>10/25/2002</td>
<td>She was raped by a guerilla officer Sat La Shwe from SPDC troops who stayed in Kyautkyi town near Koe Poe of Bway Ko motor road.</td>
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<td>115</td>
<td>Ma Myint Thein</td>
<td>28</td>
<td>A village, Tavoy District</td>
<td>2/6/2003</td>
<td>She was 3 months pregnant and was raped by Maung Aye. After raping her, he slashed her to death and threw her three year old daughter into Pi stream and took kyat 40000 and three gold necklaces from her.</td>
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<tr>
<td>116</td>
<td>Naw K'done</td>
<td>19</td>
<td>Sha Kyay village, Shwe kyi Town</td>
<td>3/8/2003</td>
<td>She was gang-raped by SPDC Sergeant Chan Tha and 2 of his friends under the control of Bo</td>
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<td>No</td>
<td>Name</td>
<td>Age</td>
<td>Location</td>
<td>Date</td>
<td>Event Description</td>
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<td>119</td>
<td>Naw He Nay Shee</td>
<td>38</td>
<td>K'neh lay village Doplaya District</td>
<td>4/13/2003</td>
<td>The SPDC troops of LIB 343 Column 2 Commander Lin Oo and one of his soldiers. She was raped by the SPDC troops of LIB 343 Column 2 Commander Lin Oo and one of his soldiers.</td>
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<tr>
<td>120</td>
<td>Naw Baw</td>
<td>58</td>
<td>K'neh lay village Doplaya District</td>
<td>4/13/2003</td>
<td>The SPDC troops of LIB 343 Column 2 Commander Lin Oo and one of his soldiers. She was raped by the SPDC troops of LIB 343 Column 2 Commander Lin Oo and one of his soldiers at 6 pm in her hut. She has 4 children.</td>
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<td>121</td>
<td>Naw MuKu</td>
<td>17</td>
<td>Spadaykee village, pa-an District</td>
<td>8/6/2003</td>
<td>Padawbo and Mooe Gyo of DKBA, backed by SPDC. Troops of DKBA came into the village of Sepadaykee and shot at Ta Ku Ku's hut and looted everything from him and captured him. Then they raped his daughter Naw Mu Ku and shot her to death on August 6th in 2003.</td>
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<tr>
<td>122</td>
<td>Naw Kyin Shwe</td>
<td>58</td>
<td>Hee Swa village, Nabu township, District</td>
<td>10/4/2003</td>
<td>The SPDC troops of LIB 549 Sergeant Nay Win and friends, under the control of Battalion commander Myo Tin. She was raped by the SPDC troops of LIB 549 Sergeant Nay Win and friends, under the control of Battalion commander Myo Tin, who knocked her in both eyes, raped her and killed her near their camp.</td>
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</tr>
<tr>
<td>123</td>
<td>MaYo yo</td>
<td>24</td>
<td>Doplaya, District</td>
<td>16/2/2004</td>
<td>3 SPDC soldiers, LIB 32 Sergeant Kyi Naing, Corporal Soe Hla Oo and soldier Ang Gyi. She was raped in her home when SPDC soldiers came to her village.</td>
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<tr>
<td>124</td>
<td>Naw BayPo</td>
<td>38</td>
<td>Taungoo District</td>
<td>17/7/2004</td>
<td>Sergeant Tin Shwe, LIB 124 under the command of Captain Aung Naing Oo. She was abducted from her home and raped. Her 1 year old child was with her.</td>
<td></td>
</tr>
<tr>
<td>125</td>
<td>Naw Naw Thay</td>
<td>17</td>
<td>Paan District</td>
<td>1/8/2004</td>
<td>SPDC soldier, LIB 357 under the command of Captain Khin Maung Htay. She was raped by and SPDC soldier. But is too terrified to provide more details.</td>
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</table>
15.52 DESTRUCTION BY CAUSING SERIOUS MENTAL AND BODILY HARM:

BURMESE WOMEN’S EXPERIENCE "SYSTEM OF IMPUNITY: NATION WIDE PATTERNS OF SEXUAL VIOLENCE BY THE REGIME’S ARMED FORCES AND AUTHORITIES IN BURMA," (PUB. WOMEN'S LEAGUE OF BURMA, SEPT. 2004)

IDENTITY OF VICTIM GROUPS

This report, carried out by a multi-ethnic team, documents sexual violence and rape on a nationwide basis, rather than on an ethnic one. Although it does not seek to analyse the crimes in an ethnic context and uses the framework of Crimes against Humanity, it is significant that the overwhelming number of crimes it documents have been inflicted in ethnic areas (*see accompanying two maps of Burma identifying places where crimes were inflicted). Moreover, the victims themselves appear to be almost all ethnic women.

CONCEPTUALISATION OF THE SEXUAL VIOLENCE AND ITS MOTIVATION

The Report states:

*It is clear that the rapes and violence are not committed by rogue elements within the military but are central to the modus operandi of this regime. Structuralized and systematic human rights violations, including sexual violence, are an inevitable result of the regime’s policies of military expansion and consolidation of control by all possible means over a disenfranchised civilian population.*

The use of the words, *structuralised* and *systematic*, express that the violence is organised and inflicted as policy, rather than as the result of random abuse by rogue soldiers. However, the
identification of motive, as expressive of militarization over a disenfranchised civilian population, removes all reference to ethnicity. This would seem to contradict the report’s findings which show the overwhelming majority of victims are ethnic women in ethnic areas. Moreover, reducing the underlying policy to militarization in the service of consolidation of power over civilians, avoids the whole issue of Burmanisation. The Report’s conceptualisation, while an admirable contribution to our understanding of systematic, sexual violence inflicted by the Junta, seems to be at odds with its own findings which demonstrates ethnically targeted, sexual violence inflicted on ethnic women in ethnic areas. In addition, the fact that much of the ethnic, sexual violence it documents is inflicted in areas where there is no conflict, suggests also that it is not limited to a weapon of war, but is more likely to express a policy to seriously physically and mentally harm ethnic women from ethnic backgrounds to undermine the social and biological viability of their groups.

PAYMENT OF COMPENSATION BY JUNTA FORCES

The report includes rare details of the Junta making reparation payments to rape victims, e.g.

_The victim was given 150,000 kyats, equivalent to approximately 150US dollars. She was given a warning to not reveal the story. She was placed under close observation and was forbidden to leave her village._” (Nang Seng La's Story, Number 8, p.19).

The payment of compensation, even if pitifully inadequate, would, on the face of it, appear to suggest that such a crime was not systematically inflicted as policy. Indeed compensation by higher authority would suggest acceptance of some degree of culpability and contrition, quite at odds with a crime against humanity or genocide. However, if the motivation is simply to conceal the crime, as the case states, then the offer of compensation, far from expressing contrition, actually compounds the crime and makes its explicit, systematic nature even more obvious. Higher authorities become complicit in the crime, not just by condoning its activity and then failing to punish and repress it, but also by being involved in systematically covering it up.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Gender</th>
<th>Ethnicity</th>
<th>Age</th>
<th>Human Rights violation</th>
<th>Perpetrator</th>
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<th>Place</th>
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<tbody>
<tr>
<td>i</td>
<td>Ma de La Baw</td>
<td>F</td>
<td>Lahu</td>
<td>15</td>
<td>Gang rape, torture and murder of a child: intimidation</td>
<td>SPDC troops based in Mong Pyark Township</td>
<td>05/02/03</td>
<td>Lahu village, Mong Pyark Township, Shan State</td>
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<tr>
<td></td>
<td>Ma San San Aye and Ma Aye Mi San</td>
<td>F</td>
<td>Burman</td>
<td>15 &amp;</td>
<td>Rape? lack of legal redress? false accusations; arbitrary imprisonment</td>
<td>U San Net Kyaw, SPDC Village Chairman</td>
<td>26/11/02</td>
<td>Kalahteik village, Dedalu village, pyapon Township, Lower</td>
</tr>
<tr>
<td>Case #</td>
<td>Name(s)</td>
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<td>Incident Date</td>
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<td>Perpetrators</td>
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<tr>
<td>3</td>
<td>Mae Song, Mae Aik Linn, and Mae U Don</td>
<td>F</td>
<td>35-36</td>
<td>04/12</td>
<td>Rape, torture; lack of legal redress; intimidation</td>
<td>Three soldiers from LIB 516 and LIB 517</td>
<td>Former Naung War village, Namzang Township, Southern Shan State</td>
<td></td>
</tr>
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<td>4</td>
<td>Mi Khin Hling</td>
<td>F</td>
<td>23</td>
<td>01/04</td>
<td>Sexual slavery; rape; torture; forced labour; beating; detention</td>
<td>IB 299</td>
<td>Southern Ye township, Mon State</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Mi Myat Hlay, Mi Soe Win and Mi Za Tile</td>
<td>F</td>
<td>20-25</td>
<td>02/04</td>
<td>Rape; gang rape; torture; arrest; beating; detention; death threats</td>
<td>Captain Hla Khming and soldiers of LIB 586</td>
<td>Ywa Thit, Thae Khan and Sin Gu villages, Mon State</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Mi Mya Htay</td>
<td>F</td>
<td>17</td>
<td>02/04</td>
<td>Rape; lack of legal redress; harassment; threats</td>
<td>Corporal Naing Naing from the 4th Military Training Center of Southern Command</td>
<td>Kyoun KaDat Village, Thanbyuzayat Township, Mon State</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Naang Ung</td>
<td>F</td>
<td>13</td>
<td>03/04</td>
<td>Gang rape, sexual slavery, torture and murder of a child</td>
<td>SPDC Commando troops from IB 246 led by Commander Myint Oo</td>
<td>Wan Lao village, Kun-Hing Town, Central Shan State</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Nang Seng La</td>
<td>F</td>
<td>160</td>
<td>04/04</td>
<td>Gang rape; torture; intimidation;</td>
<td>SPDC IB 245 lead by a Second</td>
<td>Mong Hta Village,</td>
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<tr>
<td>#</td>
<td>Name</td>
<td>Gender</td>
<td>Age</td>
<td>Location</td>
<td>Crime</td>
<td>Location Details</td>
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<td>9</td>
<td>Sai Tienkeow and Nang How</td>
<td>M &amp; F</td>
<td>42 &amp; 14</td>
<td>Shan Township</td>
<td>Gang rape and murder of a child; torture; false imprisonment</td>
<td>SPDC IB 244 based in Keng Tung, Eastern Shan State Mid 2001 End 2003</td>
<td></td>
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</tr>
<tr>
<td>10</td>
<td>Aye</td>
<td>F</td>
<td>29</td>
<td>Paluang Township</td>
<td>Gang rape; torture; death threats; lack of legal redress</td>
<td>SPDC LIB 324 troops, column Three led by Captain Tin Maung Myint based in Namtu Township 2000 9/02</td>
<td></td>
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</tr>
<tr>
<td>11</td>
<td>Shajeeeda</td>
<td>F</td>
<td>12</td>
<td>Rohingya</td>
<td>Rape, torture, murder of a child; lack of legal redress</td>
<td>Member of Nasaka (Border Disciplinary Control Foece) from Nasaka Headquarters 2004 4/04</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Ma Saw Myint</td>
<td>F</td>
<td>16</td>
<td>Rohingya</td>
<td>Abduction, rape and forced marriage of a</td>
<td>Captain Khin Aung and soldiers of Battalion 542 2003 9/03</td>
<td></td>
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</tr>
</tbody>
</table>

Mong Ton Township, Southern Shan State

Wan Kid, Mong Kok Tract, Mong Hsat Township, East Shan State

Between Kham and Loi Jae Village, Namtu Townships, Northern Shan State

Near Kyi Kan pyin Village, Maung daw Township North, Rakhai ng State

Mazichang Village, Kyaupk
<table>
<thead>
<tr>
<th>No</th>
<th>Name</th>
<th>Sex</th>
<th>Age</th>
<th>Crime</th>
<th>Suspect(s)</th>
<th>Date</th>
<th>Location</th>
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<tbody>
<tr>
<td>3</td>
<td>Daileh</td>
<td>F</td>
<td>15</td>
<td>Rape, torture of a child; death threats; lack of legal redress</td>
<td>SPDC soldier Ngae Lay of LIB 428/531 and IB 72</td>
<td>07/07/03</td>
<td>Beside the military base, near Hoya, Pruso Towns hip, Karenni State</td>
</tr>
<tr>
<td>14</td>
<td>Maw Lee Meh</td>
<td>F</td>
<td>7</td>
<td>Rape, torture of a child; lack of legal redress; harassment; death threats</td>
<td>Private Myint Lwin of LIB 530 under Column Commander Myint Soe</td>
<td>25/08/02</td>
<td>Daw Tamagyi village, Dee Maw So Township, Karenni State</td>
</tr>
<tr>
<td>15</td>
<td>Ling Cin</td>
<td>F</td>
<td>28</td>
<td>Rape</td>
<td>A soldier of IB 140 led by Major Soe Win</td>
<td>09/03</td>
<td>Near Matupi Civil Hospital, Matupi Town, Chin State</td>
</tr>
<tr>
<td>16</td>
<td>Nu Nu and Khai Paw</td>
<td>F</td>
<td>21 &amp; 20</td>
<td>Gang rape; torture; forced labour</td>
<td>Captain Zaw Latt and seven soldiers of IB 266</td>
<td><em>ML 3</em></td>
<td>Riverbank between pamai and Kadi Village, Matupi Township, Chin State</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Gender</td>
<td>Age</td>
<td>Occupation</td>
<td>Perpetrator</td>
<td>Location</td>
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<td>7</td>
<td>Swe Tin</td>
<td>F</td>
<td>20</td>
<td></td>
<td>Gang rape? torture; death threats; lack of legal redress</td>
<td>SPDC soldiers&lt;br&gt;-trafficking&lt;br&gt;death threats</td>
<td>Pha Nang village, Matupi Township, Chin State</td>
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<tr>
<td>18</td>
<td>Sui Tang</td>
<td>F</td>
<td>35</td>
<td></td>
<td>Rape; sexual slavery; torture; forced labour</td>
<td>SPDC soldier Maung Zaw of IB140</td>
<td>Mindat Town, Chin State</td>
</tr>
<tr>
<td>19</td>
<td>Naw Bay paw</td>
<td>F</td>
<td>38</td>
<td></td>
<td>Rape; torture; intimidation; death threats</td>
<td>Sergeant Tin Shwe from LIB 124 under the command of Captain Aung Naing Oo</td>
<td>Taung oo Area, karen State</td>
</tr>
<tr>
<td>20</td>
<td>MaYoYo</td>
<td>F</td>
<td>24</td>
<td></td>
<td>Rape; lack of legal redress; victimization; physical punishment</td>
<td>Soldier Ang Gyi from SPDC troop LIB 32, with complicity of Sergeant Kyi Naing</td>
<td>Lay Hkaw Ktee Du Paw village, Kya-in Township, Doplaya District, karen State</td>
</tr>
<tr>
<td>21</td>
<td>Ma Khaing Hla and Aung San Hla</td>
<td>F &amp; M</td>
<td>27</td>
<td></td>
<td>Gang rape of a child; lack legal redress; victimisation;</td>
<td>Captain Khin San and two soldiers of Battalion 334</td>
<td>Nga Taut village, Rathed aung Township, Rakhai ng State</td>
</tr>
<tr>
<td>22</td>
<td>Ma Nang Kon</td>
<td>F</td>
<td>8</td>
<td></td>
<td>Rape, torture of a child; lack of legal redress</td>
<td>Private Soe Win: Identification No. Ta: 225821 LIB 510 Company Four</td>
<td>Naung Thaun Kalalan village, His</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Gender</td>
<td>Age</td>
<td>Place of Crime</td>
<td>Alleged Perpetrators</td>
<td>Date of Crime</td>
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<tr>
<td>23</td>
<td>Ma Myint</td>
<td>F</td>
<td>17</td>
<td>Tavoy</td>
<td>Gang rape, torture of a child; lack of legal redress</td>
<td>16/12/03</td>
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<td></td>
<td>Myint San</td>
<td></td>
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<td>Corporal Tun Tun Zaw and three SPDC soldiers of LIB 405 Company One</td>
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<td>Yun Maw village, Tavoy Township, Tavoy District, Tenasserim Division</td>
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<tr>
<td>24</td>
<td>Daw Mi Than</td>
<td>F</td>
<td>54</td>
<td>Tavoy</td>
<td>Gang rape? torture; lack of legal redress</td>
<td>14/03/04</td>
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<td></td>
<td>Second Corporal Maung Toe and two SPDC soldiers of LIB 402 Company One</td>
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<td></td>
<td>Kyauk Hlayga village, Thayet chaung Township, Tavoy District, Tenasserim Division</td>
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<tr>
<td>25</td>
<td>Naw May</td>
<td>F</td>
<td>38</td>
<td>Karen</td>
<td>Rape; torture; murder; theft of property</td>
<td>26/06/04</td>
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<td></td>
<td>SPDC troops of IB 101, led by Column Two Commander Colonel Kyaw Lwin Oo</td>
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<td>Laylaw kahtikh ee village, Maniro e (IDP area), Tenasserim Township, Mergui</td>
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<td></td>
<td>Tavoy District, Karen</td>
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</tbody>
</table>
15.53 CONCLUSION ON RAPE

The widespread, probable systematic rape of ethnic women in eastern Burma, can thus be conceptualised as follows:

1. the Crime against Humanity of Rape and Sexual Violence;
2. the crime of Genocide causing serious bodily or mental harm with the intention of destroying the group in part;
3. the crime of Genocide preventing births within the group by creating conditions in which women become so traumatized they do not wish to procreate;
4. the crime of Genocide imposing measures intended to prevent births within the group because, as mothers of unwanted Burman babies, they contribute to the further Burmanisation of their ethnic group and become unable, or unwilling, to subsequently give birth to babies from within their own ethnic groups.

15.54 DESTRUCTION BY CAUSING SERIOUS BODILY AND MENTAL HARM: TORTURE

WIDESPREAD AND SYSTEMATIC

The infliction of torture in Burma is well established and well documented. The former UN Special Rapporteur stated:

_Torture of political detainees is believed to be routine._ (UN Special Rapporteur on torture, E/CN.4/2001/66, March/April 2001, para.776).
Routine expresses something so frequently repeated that it is a normal occurrence and certainly suggests the practice is widespread.

Torture has been documented by, amongst others: UN Special Rapporteurs, Amnesty International, the Human Rights Documentation Unit of the Government in exile, the All Burma Students' Front in their publication "Tortured Voices", the AAPPB in their publications "Spirit for Survival" and "Women Political Prisoners in Burma", ALTSEAN "The Uncounted" and the publications of various ethnic groups. Additionally if sexual violence is understood to be a specific form of torture, this has been convincingly documented by SWAN, KWO, and WLB in their recent reports on sexual violence.

Amnesty International in its report, "Myanmar: The Institution of Torture" (ASA 16/024/2000) described it thus:

Torture and ill treatment have become institutionalised in Myanmar. They are practised by the army as part of counter insurgency activities; by Military Intelligence (MI) personnel when they interrogate political detainees; by prison guards; and by the police. Patterns of torture (my underline) have remained the same, although the time and place vary. Torture occurs throughout the country and has been reported for over four decades. Most of the Security Forces continue to use torture as a means of extracting information; to punish political prisoners and members of ethnic minorities; and as a means of instilling fear in anyone critical of the military government. (My underline)

Significantly Amnesty International describes torture as "Institutionalised", i.e. something which is part of the fundamental structure of the state. It refers to Patterns of torture: a pattern is something not random or arbitrary, but something imposed, ordered and repeated, something which is, in other words, systematic and expressive of policy. Moreover it is more than widespread occurring throughout the country for over four decades.

TORTURE: MOTIVE AND INTENTION

Characteristically, in the above quotation Amnesty International limits the intention underlying the three specific motives to inflicting counter insurgency. However, later on page 7 of the same Report, it stated:

But it is the Shan, Karenni and Karen civilians who are primarily the victims of conflict. They are targeted by the SPDC because of their ethnicity and presumed support for armed groups operating near their villages.

Here is an understandable contradiction between the underlying intention of torture being a counter insurgency weapon, and torture intended to be used to inflict mental and physical suffering on civilians on the grounds of their ethnicity. In the latter case, the intention is to inflict serious bodily and mental harm on victims simply for being ethnic civilians. Unlike the political persecution, ethnicity and opposition are inseparable, since the reason for opposition is based on the need to defend ethnic identity.

In general, victims of torture have been identified as political prisoners, members of ethnic minorities and the general public. The overwhelming amount of evidence however has documented the torture of mainly political Burman prisoners, the fate of ethnic prisoners having been largely ignored due mainly to the difficulty of gaining access to them.

The intention underlying widespread and systematic torture in Burma has been described by Bo Kyi ("Spirit of Survival," AAPPB, pub. Sept. 2001, p.17) as follows:

Destroy the soul of a human being, or to use more secular language, to break down the identity of a strong man or woman turning a trade union leader, a politician, a student, leader, a journalist or leader of ethnic minority group into a non entity with no connection on to the world outside of their torture chamber.
Such an activity clearly involves the infliction of enormous mental and physical suffering. The accuracy of Bo Kyi's explanation can be inferred from reading any of the accounts of torture victims in Burma, the only caveat being that in many cases victims are so badly traumatised by the experiences that they sometimes cannot describe them. This is especially true of victims who have been subjected to systematic sexual torture, particularly of their sexual organs. This includes men. It is only after a great deal of time and in the context of greatest confidentiality that they dare relate their experiences. In other words, the more terrible and destructive the torture has been, the less likely it is to be revealed.

What is the meaning of Bo Kyi's words, defining the intention of torture being To destroy the soul of a human being or to break down the identity of a strong man or woman? It appears to mean the psychological destruction of a human being for political purposes, rather than outright physical destruction. However, one also has to ask the question: what is the intention underlying the intention to destroy human beings psychologically and spiritually? The Junta clearly intends to achieve something through the use of widespread, systematic, institutionalised torture beyond simply destroying human beings spiritually and psychologically, extracting information and punishing them. It intends to destroy all opposition. To identify the intention in such a way is to invite the practice to be seen for what it is, not an arbitrary disgusting activity intended to destroy individuals, but a systematic, collective activity expressive of state policy intended to destroy collective groups of people. Understood thus, torture can be seen as a Crime against Humanity inflicted on the people of Burma and, if part of a policy to destroy ethnic opposition, the crime of Genocide intended to inflict serious bodily and mental harm on the ethnic groups.

15.55 METHODS OF TORTURE

It is inflicted by two main methods, negative and positive violence, i.e. acts of omission and acts of commission.

TORTURE AS NEGATIVE VIOLENCE

This involves depriving victims of the essentials needed to maintain their minimal health and dignity, e.g.

- Sanitation;
- Medical care;
- Water to wash;
- Enough clean water to drink;
- Enough food to eat;
- Space to move around;
- Ventilation;
- Light;
- Hygiene;
- Access to people.

It is difficult to communicate the horror of conditions which result from being incarcerated in stiflingly hot, tiny, crowded cells, often dog kennels, where it is impossible to empty latrines or wash, or have enough clean water to drink, or food to eat. Physical and mental illness inevitably result from such conditions, sometimes resulting in death:

Because of the lack of malnutrition and the lack of proper health care, many children died in prison. When a female warden left the women's ward carrying a plastic bag, we understood the child was dead.
Sometimes as a result of the mental suffering inflicted, victims lose their minds and commit suicide.

**POSITIVE VIOLENCE**

In addition to the above negative violence inflicted, the Junta also inflicts positive violence. Bo Kyi of the AAPPB summarises it thus:

*Systematic beating aimed at inflicting permanent injury, unsystematic beatings using rifle butts, truncheons etc electric torture applying electrodes to sensitive parts of the body, such as gums, ears, fingertips and sexual organs and moe dewa or water torture drops of water fall onto the victims head until. After a number of hours, they feel like a pounding hammer. Another common pattern is burning victims with cigarettes.*

Prisoners are also forced to adopt humiliating physical postures for long periods of time.

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**RESULT OF TORTURE ON POLITICAL PRISONERS, ETHNIC OPPOSITION PRISONERS, AND ETHNIC PRISONERS IN CONFLICT AREAS**

Such deliberately inflicted suffering is self-evidently intended to cause serious bodily and mental harm which at the very least will *inevitably* (level 2) result from the torture. The widespread and systematic use of prisoners, including Burmans and political prisoners in forced labour camps, *inevitably* leads to large numbers of deaths:

*Breaking up stones or constructing roads are so harsh that hundreds or perhaps thousands have reportedly died due to ill treatment, over work and lack of food and medical care. (Amnesty International "The Institution of Torture," p.10)*

Is there a difference, however, both in scale and intention between the torture inflicted on ethnic/religious groups and the democratic opposition?

**POLITICAL NLD GROUPS**

There would appear to be discriminatory levels of violence inflicted on victim groups, the less severe being inflicted on NLD opposition groups. This is not to minimize the intensity of their suffering, their heroism, or the fact that many have died in prisons as a result of their treatment. However, they appear to be treated less violently than other groups. First of all they are registered so they "exist"; secondly, they receive visits from the Red Cross, and thirdly their plight is generally known to the outside world. They are also reported to be better monitored:

*They only took your blood pressure and weigh you if you are a member of the NLD so a non member like me they don't weigh me.* (interview with Dr. Khin Mar Kyi, 2002, Nov.6, "Women Political Prisoners of Burma").
ETHNIC GROUPS

Prisoners who are members of ethnic groups seem to be treated much worse. Significantly a female prisoner identified in the above publication as suffering from positive violence was an ethnic Karen:

*She ran away to her relatives to Bogolay township, Irrawaddy division when we were arrested. MI also knew she went. She is Karen. MI tortured her brutally. As a result she lost hearing in one ear until she was released. Her physical condition was terrible when she came to us. Her face was very swollen because of the beating she received.*

In the AAPPB publication "Spirit of Survival" we get a description from a Burman prisoner of the advice from prison guards to the criminal prisoners (as opposed to political prisoners) on how to treat the influx of Karen prisoners after the mass killing of Karen in Bogolay in September 1991:

*They are rebels. Don't be soft on them. Teach them how to behave in prison. Until they understand the prison rules, beat them to death. We will take responsibility for everything.*

The earlier section on the aftermath of the Bogolay massacre described the deliberate, systematic starving and working to death of Karen prisoners in prisons all over Burma described by Burman inmates.

There would appear to be a difference in levels of intention underlying the torture of democratic opposition groups and ethnic groups. The torture of the former would appear to meet at least the criteria of intent level 3, i.e.

*While not intending victims to die perpetrators are quite willing to accept the possibility they may die as a result of the circumstances inflicted.*

In some cases, torture of democracy activists, would appear to meet level 2 where conditions inflicted would *inevitably* lead to prisoners' deaths as in the case of some forced labour conditions.

However, in the case of ethnic prisoners, it would appear that the negative and positive violence is so brutal and systematic that it is inevitable that they will die. Karen prisoners after the Bogolay massacre were systematically starved and worked to death. The fact that more Karen prisoners did not die immediately when transferred to Insein prison in October 1991 was not due to the actions of the Junta, but to the courageous help provided by mainly Burman political prisoners.

ETHNIC PRISONERS IN INTERNALLY DISPLACED AREAS

It is this group which is the most vulnerable. Unknown, unregistered, not visited by the Red Cross, they are targeted by the Junta on the grounds of their ethnicity. (Amnesty International, "Myanmar the Institution of torture", p.7) They are not even held in prisons but often in in holes in the ground or just tied up to trees. Many are tortured to death. In my travels, I saw many victims with appalling scars. The ALTSEAN 2004 Report on Prisoners in conflict areas, "Uncounted," recorded that out of its sample of ethnic prisoners, 22% died. This is a much higher percentage of deaths than that occurring in lowland opposition prisoner groups. This torture of ethnic opposition has to be seen within the wider context of selective and mass killing identified in the section on killing.

CONCLUSION ON TORTURE
Thus while the treatment of ethnic and political prisoners in lowland Burman prisons meets both the widespread and systematic criteria, and intent levels necessary to justify the charge of a Crime against Humanity, the infliction of torture in the ethnic areas appears to be part of a wider attempt to inflict physical and mental suffering to destroy groups physically. This appears to be different from lowland Burma, where the intention is to persecute, weaken and destroy the political opposition, but not necessarily physically destroy a groups of people. The Junta wishes to destroy the NLD as a political force not necessarily as a physical group. The infliction of torture is thus limited to that objective. In the case of the ethnic opposition, however, ethnicity is inseparable from opposition and cannot be changed. Outright physical and psychological destruction is thus inflicted.

The torture of the mainly Burman opposition is thus best understood as the Crime against Humanity of torture inflicted within the wider context of the Crime against Humanity of Persecution. The crime of torture inflicted on ethnic groups can be best be understood as inflicting serious bodily and mental harm with the intention of destroying those groups.

15.57 DESTRUCTION BY DELIBERATELY INFLECTING ON THE GROUP CONDITIONS OF LIFE CALCULATED TO BRING ABOUT DESTRUCTION IN WHOLE OR IN PART

This form of genocide, as with the previous one, does not require proof of outcome:

The offence of deliberately imposing conditions of life calculated to bring about the group’s destruction does not require proof of result. The conditions of life must be calculated to bring about the destruction, but whether or not they succeed, even in part is immaterial. (William A. Schabas, "Genocide in International Law", CUP, pub. 2000, p. 167).

However in the case of eastern Burma there is overwhelming evidence of the destructive results of Junta policy destroying the conditions of life of ethnic people.

This form of genocidal activity can be understood in two ways:

- firstly, as positive violence, e.g., acts intended to destroy the group in whole or in part, e.g. systematically destroying people’s homes, food supplies and medicines;
- secondly as negative violence, e.g., deliberate non-provision of essential facilities, thereby creating conditions which prevent the group from being able to survive. This notion of negative violence, of destroying a people by not doing things, is expressed historically in, for example, Jewish ghettos where Jews were left to die in coralled conditions where there was little or no food, clean water or medicines.

In territories occupied by the Nazis this negative violence was expressed by reducing the amount of food in occupied countries to 400 and even 250 calories a day. ("War Crimes: An attempt to define the issues", London, Stevens and Sons, 1945, p.21).
In Burma's context this notion of negative violence applies particularly to the people forcibly concentrated into camps. Ethnic people forcibly concentrated into camps are sometimes given a small milk tin of rice per day for a few weeks which, I understand, consists of about 300 calories, precisely the average medium amount identified as a form of negative violence inflicted in the occupied Nazi territories. Amnesty International describes the fatal conditions in these camps resulting from this negative violence:

*Relocated villagers were placed in an impossible position; they were not given the means to survive in their relocation centers.* (My underline, Amnesty International "Atrocities in Shan State," ENGASA1600511998)

The former UN Special Rapporteur described such conditions as *Life threatening*, the negative violence of less than minimal supplies often compounded by sexual and other physical violence.

The most detailed and authoritative definition of this third form of genocidal activity is expressed by the ICTR (Prosecutor v Musema, ICTR, 96-13-T, January, 27, 2000, para.110):

*The judges determined that this includes circumstances that will lead to a slow death, e.g. lack of proper housing, clothing, hygiene, medical care or excessive work or exertion. It also includes methods of destruction which do not immediately lead to the death of members of the group, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, provided this would lead to the destruction in whole or in part.*

This form of systematic, negative violence, causing preventable deaths by deliberately inflicting malnutrition, lack of clean water and medicines, is, however, undramatic and difficult to record.

15.58 **INFLECTING CONDITIONS CALCULATED TO BRING ABOUT DESTRUCTION: KAREN NI STATE**
Internal Displacement in Karenni State, 2004

POSITIVE VIOLENCE

- Inflicting conditions of death: the villages
The number of people forcibly displaced both internally and externally is about is about 70-80,000, or between a third and a half of the state's population. The map on shows the number of villages destroyed and people forcibly concentrated into camps.

The burning of Daw Kaw village
The question needs to be answered as to what the cumulative and synergistic effects of all this destruction has on the lives of previously largely self-sufficient isolated villagers, whose villages and contents are totally destroyed again and again and again. (One village I stayed in had been destroyed five times).

What, to focus again for a moment on one particular item, is the meaning of destroying a cooking pot? Clearly it has nothing to do with counterinsurgency. Cooking pots don’t fight. However, the destruction of a cooking pot represents a more serious threat to the community: without a cooking pot you cannot cook. If all the cooking pots have been destroyed, the whole village cannot cook. If the whole village cannot cook, it is difficult to feed itself. Thus the destroyed cooking pot seen as part of the destruction of all artefacts in the village multiplied by 2,500 villages begins to suggest that conditions of life are being deliberately created which make it impossible for people to survive. The fact that the massive destruction of everyday things is less dramatic than wholesale massacres does not detract from the fact that a form of destruction is deliberately being inflicted on a huge scale and sustained over decades to weaken ethnic peoples’ ability to survive. This destruction is not just a by-product of inter-ethnic conflict: it is the deliberate attempt to deprive a specific group of ethnic civilians of its means of subsistence.

- **Inflicting conditions of preventable death: medical facilities and medicines.**

The destruction also specifically targets health clinics, medicines and mobile medical teams. According to the backpack medical teams, ten medical clinics were burnt down between 1995 and 2001, and six para medics killed. In Karenni state, as in the other eastern States, it is illegal to carry medicines.

- **Inflicting conditions of death: food.** Data collected from mobile, medical teams in 1996 and 1999 revealed a malnutrition rate of 51.3% in under fives. This compares with other famine affected countries as close to the Korem famine in Ethiopia. Moreover it is systematically inflicted.

- **Inflicting conditions of death: forced relocations.** Amnesty International’s Report on Karenni State stated that,

  > The forced relocations seem to have little connection with counter insurgency but are targeted at the civilian ethnic population per se.

  It continued:

  > forced relocations which occurred in Pruso township even though there appears to have been little insurgent activity in Pruso township itself.

As the maps and accompanying footage and photographs show, the scale of these forced displacements clearly meet the criteria of widespread as defined by the ICTR (Prosecutor v Akayesu ICTR-96-4-T:

> Massive, involving large scale action and carried out collectively with considerable seriousness and directed against a multiplicity of victims; and systematic: thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources.

As about one third to one half of the population of Karenni has been violently and systematically displaced, this judgement of the ICTR is applicable to Karenni State. The township of Shadaw in the northeast, for example, has been almost completely depopulated. Moreover, the villages destroyed were almost all inhabited by ethnic Karenni people. This is more than the cultural and social destruction known as Burmanisation: this is massive, physical destruction. The scale, discriminatory intent and involvement by the State suggests what is going on is genocide as defined by the ICTY:
Genocide may be considered selective killing of a group of people (one or more) that leads to the destruction through such methods as deportation or forced fleeing of that part of the group which can be considered to be a distinct entity living in a limited geographic zone or even municipality. (My underline, Prosecutor v Jelisic, IT-95-10-T.)

Here in the maps of destroyed villages and camps where people have been forcibly concentrated, we can see conclusive evidence of mass deportation and forced fleeing of the ethnic group. As to whether this constitutes part of the Karenni people, as defined by The Genocide Convention and subsequent Case Law, the evidence suggests that the percentage of people victimized by being forced to flee would qualify as part of a people: defined by the ICTY and William Schabas, as being considerable or substantial. 30%-50% of the population of the State violently displaced would meet that criteria. The geographic zone can be defined as the whole State and the specific area north east of the Salween river known as Shadaw or So Der Sha township, where the total population has been forced to flee or deprived of its liberty, can be defined in the ICTY’s terms as a municipality. The destruction inflicted in these areas is total and involves:

- Working to death. Those forcibly concentrated into camps have to do forced labour. Not only does this weaken victims physically, but prevents them having time or energy to work elsewhere to obtain money or grow food. Those farmers who have not been forced off their land into refugee camps, or concentrated into camps, or free-fire zones, face the following unsustainable deliberately inflicted conditions resulting from agricultural policy. Each farmer has to provide six tins of rice and sixty tins of milk per acre. He is paid 350 kyat per tin of rice. The market price is 800-1200 hundred Kyat per tin. In addition, each farmer has to borrow 3,500 kyat for each acre he owns and then pay the loan back at 100% interest in three months. (Burma Issues, “Food Scarcity and Militarisation,” 1998). This is deliberately creating unsustainable economic conditions in which ethnic civilians cannot survive.

 normally, either no services at all, or well below a minimum, are provided in the camps where the people have been forcibly concetrated. For example:

- No food, or less than a minimum, is provided to those forcibly interned. Refugees state that rations ar insufficient and stop after a few months. Moreover, the June 1996 forced concentration process was carried out during a crucial phase of the rice planting season when rice seedlings are transferred to paddy fields, thus ensuring the rice crops failed. Food is also regularly extorted.

- Non provision of clean water. There is normally no clean, available water in the camps. Moreover, many refugees have alleged that the water supply was deliberately contaminated by a chemical resulting in a large number of deaths in the Shadaw camp. Such allegations of deliberate contamination resulting in death has also been recorded in Shan state, where rats poisoned with a chemical banned by the World Health Authority were dumped into the water supply above a camp. It has not, however, been possible to corroborate this form of alleged positive violence, although even if caused by reckless negligence such acts could be deemed Crimes Against Humanity.

- No sanitation. The implication of this deprivation is obvious in terms of hygiene and health. Moreover, in the context of large numbers of people crowded into camps in a tropical or sub tropical climate, such deprivation creates really life threatening conditions. It has been reported that a thousand people died from starvation and illness in the relocation process in north east Karenni State in 1997 (Human Rights Documentation Unit).

- Below minimum provision of health care and medicines
The General Assembly Resolution of 2002 condemned the Junta generally for *The systematic violations which have had a significant adverse effect on health*. According to the Burma Ethnic Research Group report:

*There is little or no public health care services available at the village level in much of Karenni State.* (BERG report, "Conflict and Displacement in Karenni”, p. 77)

Malaria is the greatest cause of death in Karenni State. Despite this, *the malaria team leader post in Loikaw remained unaccountably vacant* (my underline) according to the report, suggestive of a crime of omission resulting inevitably in preventable deaths. Many of the leading causes of mortality are preventable. In the eastern townships such as Meh Set and Shadaw, medicines for malaria and tuberculosis are unavailable. The fact that the dictatorship cites security problems is simply topsy turvy junta logic: they themselves are the security problem inflicting violations, and preventing access to the areas by the International Community.

**EFFECTS OF POLICIES:**

**MALNUTRITION**

The Berg report states:

*According to the MICS (1997) malnutrition among under three and under five children remains high in Karenni, where the rate for severe malnutrition is 14% and 11% respectively and the rate for moderate malnutrition is 46% and 39%. . . Mobile medical trips indicated that the malnutrition rate for under fives tested by mean upper arm circumference worked out to be 239 children from a tested population of 432 i.e 55.3%. Data from two trips to Pasaung township in 1996 and 1999 collected in the same way reveal a malnutrition rate amongst under fives of 51%.*

The severity of these figures can be gauged when compared with comparable malnutrition rates from other parts of the world (See Table 12).

The BERG Report concluded:

*A rate of malnutrition of 55.3% would put the level of disaster in Karenni on a par with the Korem famine in Ethiopia.*

In the wider context of the eastern interbally displaced people, The TBBC Report on Internal Displacement 9 (October 2004) states that the child mortality and malnutrition rates are similar to those amongst the internally displaced in the Horn of Africa.

This disaster is deliberately inflicted as a result of policy, food and medicines being systematically destroyed on a widespread basis for ethnic Karenni in the following ways:

- Destruction through food pricing. Where it is possible to buy rice it is quite out of reach of the ordinary Karenni. A tin of rice currently costs 6000 Kyat, something equivalent to a teacher's monthly salary.

- Destruction through loss of land. The problem is compounded by the large scale confiscation of land by the Burman military removing the very physical basis upon which the people subsist. The Report states:

  *The displacements have led to the expropriation of vast tracts of land and natural resources and this has shattered the fragile resource base of local communities, (p.97)*

- Systematic destruction of food.
• Destruction through dams. The dams proposed to be built just south of the Karenni border will flood much of Karenni State, rendering it permanently uninhabitable.

Moreover, it will make it impossible to cross from west to east for resistance fighters, thus destroying resistance and reduce land available for cultivation.

Other methods of destruction include:

• Destruction through drugs. The military intelligence, as elsewhere in Burma, works hand in glove with ceasefire groups in the production and transportation of drugs. In 2003, a KNPLF splinter group working in conjunction with LIB 413 were guarding poppy fields in the Daw Ru Khu area in the north west of the State. Security guards were paid 15000 to 20,000 kyat for every viss of poppy collected which was then transported south with the connivance of the local Military Intelligence. The example is a microcosm of the destructive synergy between corrupted ceasefire groups, the army and the military intelligence. Burman army defectors have informed me of their having guarded bogus public burnings of heroin, escorting drug caravans, growing poppies behind maize fields and producing heroin in military operated refineries.

• Destruction through sexual violence and possible coerced or forced interbreeding.

• Destruction through colonization. To complete the cycle, Burman settlers and army officers are moved in to farm the confiscated land and work on "development" projects.

• Cultural destruction. Palaces and artefacts of the former royal ruling families have been destroyed and the language is not taught.

The combined effects of all these measures, along with others, is to create conditions in which long term survival is impossible. Approximately half the refugees in the Karenni camps in Thailand have fled, not from fighting or from free fire zones, but from what the former UN Special Rapporteur called the life threatening conditions of the relocation camps.
A similar pattern of destruction is observable in Shan state, but on a larger scale. In central and southern Shan State over 300,000 people have been forcibly concentrated into camps with little or no assistance provided:

_The Tatmadaw did not provide the relocated civilians with any shelter, sanitation, or food once they arrived at their new site. Relocated villagers were placed in an impossible situation; they were not given the means to survive in their relocation sites._ (Amnesty International, "Atrocities in Shan State," p. 5, 1998)

_The overwhelming reason for fleeing to Thailand was their inability to survive in the face of continual demands for forced labour and the lack of resources or work at the relocation sites. Relocated villagers were placed in an impossible position; they were not given the means to survive in their relocation centers._ (My underline, Amnesty International, ibid)

One can only infer that this is deliberate policy, rather than gross negligence, i.e., that the means of survival are deliberately not provided; the deliberate infliction of this form of negative violence, reminiscent of the Jewish ghettos, takes place within the context of positive violence, including widespread rape and killing.

Although The Convention on Genocide does not require proof of outcome of this form of genocidal activity 2 (c), there are other consistent reports now of a serious collapse in population levels to complement Martin Smith’s (now 12 year old 1991 observation) of _An inexplicable slump in birth rates_ occurring in ethnic minority areas, especially in Shan State. The 1998 Amnesty Report estimates that:

_There is only one third of the original population of Kunhing township remaining; the rest have either fled to Thailand or to other townships to seek work._ (ibid, p. 4)

Other reports this year cite some southern towns as having almost no young people left in them.

This degree of population collapse in the context of sustained long term state sponsored violence suggests that in some areas the Shan race's ability to sustain itself as a viable group may be at risk. Many of the missing people are young people who would otherwise have remained in the State and have had families. The fact that they are overwhelmingly of an age when they would normally be expected to marry and have families suggest that they are a distinct entity, as defined by the ICTY in its Srebrenica Judgement, in this case a group whose age structure makes them essential to the biological survival of the race: in the Srebrenica ruling, the group was defined as men of middle age whose loss in such a patriarchal society would prevent that society from ever recovering: here the group destroyed through forced fleeing, the young of marriageable age, are arguably a more distinct and significant entity since, literally, the future biological survival of the group depends on them.

On the other hand, the group destroyed could be defined not in terms of its intrinsic characteristics, but quantity. The population of Kunhing township falling by 70% (and this estimate is as long ago as 1998 since when conditions have deteriorated further) threatens the very sustainability of that township’s survival irrespective of the defining intrinsic characteristics of those who have been forced to flee.

Alternatively again, changing the criteria from intrinsic characteristics and numbers to physical area, the 7000 square mile zone of central Shan state, where 300,000 Shan people have been forcibly relocated at gunpoint into conditions where they cannot survive, could certainly be considered a limited geographical zone. Altogether 11 townships (or municipalities) in that area (not one as the ICTY required, _i.e.even a municipality_, in the Krystic Judgement) have been turned into free fire zones whose populations have been forced to flee or be forcibly concentrated into camps.
Additionally, in Shan State the threat posed by development induced displacement in the form of the Tasang dam is particularly acute. According to Earth Rights International the dam will displace people; employ forced labour; lead to environmental and cultural destruction and inflict further brutality on the people. (EarthRightsInternational-Energyproject:TasangDam, www.earthrights.org/tasang/resist.shtml) This would also be accompanied by Burman population transfer and further colonisation. The scale and systematic destruction can be seen from the following maps.

**ROUTES OF EXODUS TO THAILAND**

- = area of forced relocation

1 = routes taken by refugees to Thailand
Map of Villages forcibly relocated in Ho Pong and Loi Lem Township (1998)
Map of Villages forcibly relocated in Murng paeng Township (1997 - 1998)
Map of Villages forcibly relocated in Murng pan Township (1997 - 1998)

VILLAGES FORCIBLY RELOCATED IN MURNG PAN TOWNSHIP (1997-1998)

Village forced to move
SPDC Base/Post
Relocation site
Area forced to move
Township borderline
Main road
River

Village forced to move
SPDC Base/Post
Relocation site
Area forced to move
Township borderline
Main road
River
VILLAGES FORCIBLY RELOCATED IN MURNG SU XOWTISISHIP (1996)
VILLAGES FORCIBLY RELOCATED IN LARNG KJER TOWNSHIP (1996-1998)

AIC
VILLAGE OF OKS FORCIBLY RELOCATED IN LAI KHA TOWNSHIP (1996-1998)
VILLAGES FORCIBLY RELOCATED IN NORTHERN KE SEE TOWNSHIP (1996-1998)

VILLAGES FORCIBLY RELOCATED IN SOUTHERN KE SEE TOWNSHIP (1996-1998)
VILLAGES FORCIBLY RELOCATED IN NAM ZARBNG TOWNSHIP (1996-1998)

Town | Village forced to | SPDC Base/Post | Relocation site |
----- | ----------------- | -------------- | -------------- |
      |                   |                |                |

Area forced to move | Township borderline | Main road | River

W

Kong Yao

Ton Kenc

Wan Heng

Nam Mor Pan

Kong Nu

Kong Kheng

Mak Pemg Ton Long

MaK Kheekho

Wan Heng

Nam Z

Mork ZH

Bai Boi

Koori

China
The problems facing the Shan are compounded by the recent forced move of about 126,000 Wa from the north of the State to the south.

**Wa Resettlement Patterns**

Colours show origins of resettled villagers. Patterns indicate destinations of Wa villagers depend on their origin.
MOTIVE

The reasons for this forced transfer of population are unclear. The following offer some possible explanation:

* DRUGS

Some say that it is part of a resettlement programme designed to eradicate drugs by moving the Wa away from their opium growing areas. However, credible reports indicate that the Wa are now growing opium in the south with the connivance of the Junta, and that the resettlement may have been devised to facilitate drug production and shipment. As they are now close to the Thai border and along the Mekong river, transportation is made considerably easier. This is supported by a report from the Thai border patrol police of 24/11/04 identifying collusion in drug production and trafficking between senior representatives of the United Wa State Army and the Burma Army at the highest level, including the head of police, Lt. Gen. Soe Win, now Prime Minister of Burma:

REPORT ABOUT SPDC, BA AND UWSA MEETING

1. There was an important meeting on the 5 November 2003 between the SPDC’s member, BA Commanders and the UWSA’s VIP at the HQ of the 171 Region Command in Ban Hong, NC 327600. Main subjects of the meeting were the new military’s regulations and the improvement of the co-operation on development along the border area of Burma opposite CM and CR.

The persons who presented on this meeting were:

1.1 Lt. Gen Soe Win, Member of SPDC
1.2 Wei Shueh Ying, younger brother of Woe Shueh Kang, Commander of the 171 Brigade of UWSA Force.
1.3 Pao Yuri, President of the Southern Wa State.
1.4 Maj. Tu Ta Swe, Commander of the BA Forces in the area of M.Ton and M.Hsat.
1.5 There were approx. 60 persons presented at the meeting.

14.5 BA requested the Wa unit which engaged in production and transporting the narcotics be more aware and carefully camouflage the route and operation on delivery to the buyers in Thailand.

If there is any disclosure or get caught from the opposite, the BA will not take any responsible for.

14.6 It is not allowed that any BA-and Wa-forces, which station in the bases along the border, to store any kind of narcotics in their bases.

14.7 BA-and UWSA-Forces have to cooperate to earn some income as central fund keeping for the purpose of their own supplies, back up or both.

14.8 Opium field cutting will be done only in some areas as show off. If we destroy all opium field correspondence to the policy of the government, we can not get enough government’s support for all the expenses needed for.

On the other hand all BA forces in the area have to support themselves in any way. We can put as the general rule to get tax from all who plant the opium content approximately 250 to 300 gram each one viss (1 viss=1,600 gram) and keep that amount for further refining as heroin to earn money.

COMMENTARY

This is collusion in the drug trade between the Junta and Wa leaders at the highest level involving: organised, systematic, camouflaged transportation of drugs, as described in 2.5., with the Junta enabling the drug transportation to take place while evading responsibility for it. The Junta protects itself by not allowing any drugs to be kept on its premises. (2.6). The report shows drug income is structurally important to the Junta’s army in Shan State, the income going into the army’s central fund. (The Junta’s policy makers at the highest level are partially responsible for this by not funding its forces in the field adequately). Opium destruction is carried out for publicity purposes (2.8), and, is carefully not totally destroyed to enable the flow of funds to continue for drug elimination from the gullible international community. Destroying all the opium would disastrously reduce the income accruing from the drug “elimination programme” and finance from international donors. These donors, it would appear, are inadvertently funding State terrorism. Opium planting is not just not stopped, but encouraged, and revenue collected by taxing planters. The taxation levied on the opium growers is then further used to refine heroin as a value added product available for the world market. The Junta makes money from the drug elimination programme, from the growers and from the final product, while all the time pretending to eliminate drugs. The fact that someone as senior as Lt General Soe Win, the Chief of Police and organizer of the ambush of Suu Kyi’s convoy, is apparently involved indicates that the Junta is institutionally involved at the highest level.

• BUFFER ZONE

Others explain the motive behind the move as a desire to establish a buffer zone, by placing the WA between the resistant forces of the Shan State army and their support in Thailand.

SINICIZATION

Another reason given is that it is an extension of Chinese influence southwards, part of a Sinicization policy. Chinese involvement is indicated by the fact that Chinese have moved to the south with the Wa, especially in trading and military roles, and that about 26,000 Wa were actually moved from China’s Yunnan State in the forced relocation, obviously
thus requiring China's involvement at a policy and institutional level. (Chinese six wheel trucks were used to transport the displaced Wa south). Moreover, forced relocation along the Mekong river fits with Chinese plans for its development.

There were some Chinese with them. They set up shops and sold various food items. They also made whiskey to sell from corn. I also saw some Chinese soldiers and officers with the Wa army. They wore Wa uniforms, but they were whiter skinned than the Wa, so it was easy to tell them apart. (LNDO Interview)

CORRUPTION

Finally others allege the involvement of senior officials who reportedly sold the land and pocketed the money. Certainly one possible explanation of Khin Nyunt's demise is not that he was a closet liberal wanting to promote reform, but that he had simply become too rich through collusion with drugs, and that this had riled his "colleagues".

It is difficult to draw definite conclusions, but it may be a mixture of all these. However, we remember that the defining characteristics of a Crime Against Humanity are widespread or systematic, there being no requirement to prove intentionality with the exception of the specific crime of Persecution.

In addition to the above forced transfer of population of Wa, about 48,000 Shan and other tribal groups have been forced to flee from this southern area.

We thus have double displacement: forced displacement of Wa out of the north of the state to the south of the state, and forced relocation of Shan and other ethnic groups out of the areas of the south where the Wa have been moved into other areas, such as Thailand, which does not of course accept, or recognize Shan refugees.

The widespread nature of the forced relocation is expressed by the fact that 126,000 Wa, about 25% of the total Wa ethnic group, were forcibly resettled very quickly, with very little warning. The extraordinary scale of the relocation is expressed on the accompanying map (p. 9, "Unsettling Moves") showing villages completely, or partially, resettled. The systematic nature of the forced relocation is evidenced by the fact that it was organized and forcibly implemented by the United Wa State Army, a ceasefire group working with the Junta and very strongly implicated in drug production.

THE HUMAN COST OF THE FORCED WA RESETTLEMENT

It is estimated that as a result of forced relocation into unfamiliar and grossly ill prepared lands over 4000 Wa people died of malaria and other diseases during the year 2000 alone. ("Unsettling Moves: Wa Forced Resettlement in Eastern Shan State," pub. 2002, LNDO, p. 3)

Agence France Press estimated that about three thousand people had died from diseases in the town of Mong Yawn alone between July and September 2000 (The Nation Sept. 14, 2000) and quoted a figure often thousand deaths as a whole by a Thai military source. Most of the victims were civilian internally displaced people, since whatever medication existed in Maung Yawn was given to UWSA soldiers, not civilians.

LEGAL CONCEPTUALISATION OF THE WA RESETTLEMENT
The scale and organized nature of the forced relocation expresses a Crime against Humanity of Forced Transfer of Population and, in the case of the forced relocation of the 26,000 Wa from across the international Chinese frontier, of the Crime Against Humanity of Deportation.

The intent level underlying the forced relocation indicates level 2 or 3; the perpetrators, while not wishing to kill civilians, went ahead with the action knowing that civilians would inevitably die as a result of their actions or, (level 3) would possibly die as result of the displacement.

The 48,000 Shan, and other ethnic groups such as Akha and Lisu who were forced to relocate from the affected areas in the south of the State, are arguably also the victims of a Crime Against Humanity of Persecution; their areas were deliberately targeted and all their fundamental rights violated, including the right to subsist on their own ancestral lands, to such a degree and extent that, having nowhere to flee and being denied refugee status in Thailand, their very survival is threatened. Their expulsion has to be considered in the overall context of the forced displacement of over 300,000 Shan in central Shan State which in turn has to be understood within the overall context of a policy of Burmanisation, cultural destruction, and assimilation.

THE WA DISPLACEMENT AND THE ISSUE OF GENOCIDE

It would appear that genocide is not applicable in the case of this mass forced relocation. The 126,000 Wa were forcibly relocated by their own Wa army, the USWA, i.e., members of the same ethnic group. Although it is likely they were acting under the overall control of the Burmese Junta, possibly at the behest of China (why else would twenty six thousand people be forcibly relocated from China?), it would be difficult to argue that this crime is an act of genocide, both because the immediate enforcers were from the same ethnic group as the victims, and because the underlying intention does not appear to be to destroy the group as such. On the contrary, the intention appears to be to move them so that they can survive and be of use to the Junta, either as part of a buffer zone, or to facilitate Sinicization, or act as an advertisement for drug eradication in the north, or actually, to facilitate drug production in the south.

This does not undermine the seriousness of this crime, which has caused thousands of deaths (certainly substantial or considerable) of internally displaced people from preventable diseases resulting from conditions deliberately inflicted by the Wa army and its Junta masters.

It must, however, be born in mind that recent Genocide judgements greatly expand protected victim groups as being, for example, any stable or permanent group (ICTR); furthermore, it now seems to be increasingly accepted that what happened in Cambodia was a kind of Genocide, even though it was mainly the same race killing itself. Moreover, in the Wa's case, thousands of people died from diseases resulting from deliberately inflicted conditions, as a result of being systematically discriminated against in that they were not allowed access to medicines, whereas soldiers were. Thousands of civilians thus died for two complementary reasons: firstly because they had been forcibly displaced into life threatening conditions; secondly, when they became ill as a result, the civilian internally displaced were specifically and systematically deprived of medicines which went to a different identifiable group, the military United Wa State group. Moreover, the numbers dying are certainly substantial or considerable: 4000 according to Agence France Presse, 10,000 according to the Thai military.
In the case of the 56,000 Shan victims forced to flee their lands and abandon them to the Wa, the situation is more complex. In itself, the action does not appear to threaten the Shan race, or even a part of it, with destruction. However, if seen in the overall context of a racial policy which has been targeting them for decades, this additional forced deportation into conditions where they cannot claim refugee status, along with the 300,000 other Shan relocated in central Shan State, could be seen as contributing to genocide. However, if not considered genocidal, the forced removal of these southern Shan at least meets the criteria of a Crime Against Humanity of Forced Deportation and Forcible Transfer of Population.

15.61 DESTRUCTION BY INFLECTING CONDITIONS OF LIFE CALCULATED TO BRING ABOUT PHYSICAL DESTRUCTION:
KAREN STATE

The same patterns of positive and negative violence identified in Shan and Karenni States can be identified in Karen State. We should note the systematic, widespread destruction and confiscation of food in Karen state. According the Thai Burma Border Consortium about 3,600 metric tone of paddy was conficted or destroyed in Karen State in 2002 alone. "Reclaiming the Rights to Rice", p.4, October 2003)

In this State, I was able to personally inspect and verify what is happening during a four week investigation. The investigation was very rare since it has been most difficult for the past few years for a foreigner to see what is happening at first hand. Previously until the mid 90's, areas of land were securely held by resistance forces and thus it was comparatively easy to travel in some areas. However, what visitors saw was what was held reasonably securely by resistance forces: no areas are securely held now. The situation now is quite different: all areas are either under the control of Junta forces or are under constant threat of attack and occupation and the border largely sealed. Thus investigatory trips are now virtually impossible.
Internal Displacement in Karen State, 2004

Destroyed, Relocated or Abandoned villages
Parly Displaced Mon Villages
SPDC Relocation sites
SPDC Army Bases
Free Fire Zone
Ethnic Ceasefire areas
Dam construction site
Township Boundaries
Small Towns
Major Cities
Dirt Road
Sealed Road
Rivers

Thailand Burma Border Consortium
What I saw corroborated what has been documented in all the Human Rights Reports. Nearly all the villages I came across had been burnt to the round with two exceptions; internally displaced people were hiding in the jungle everywhere: they appeared very weak and numbed. They were thin and suffering from malnutrition, though did not appear to be actually dying of starvation. Killings appeared random but seen in a wider context were
probably selective and expressive of overall policy; there was a clear attempt to target pastors and Christian churches for destruction.

Three points need to be made: firstly when I asked people if I could interview them they usually answered in bewildered agreement, saying that they would die anyway; secondly, in some of the villages I met Burman democracy activists and soldier deserters living peacefully with the villagers; (my meetings with these Burman refugees was not stage managed and they were clearly living safely with the villagers); thirdly, the sustained campaign of destruction had created a degree of despair and resignation expressed in the Karen phrase, Dying Alive; they were being destroyed, not usually through outright direct violence, but through a combination of factors which synergistically amounted to massive weakening of body and spirit. Their general plight is best summed up by the Karen Human Rights Group:

_In thousands of interviews conducted by the Karen Human Rights Group since 1992 with villagers who have fled their homes, approximately 95% say they have not fled military battles, but rather the systematic destruction of their ability to survive (my underline) caused by demands and retaliations inflicted on them unilaterally by the SPDC military._ ("Suffering in Silence," Universal Publishers, KHRG, p.23)

KAREN CASE STUDY

Their destruction has been well documented, but the following taken from northern Karen state (Burma Issues: Food Scarcity and Militarisation) will provide a typical example in microcosm. The area consists of five villages in a river valley in northern Karen State.

**FOOD**

_In October 1997 one village was burnt down with 22 houses destroyed. The villagers fled into the forest with very little food. The Burma army remained in the village for a week. At the time operation the rice was ripe and some people had already begun harvesting. The villagers also raise various livestock, such as cattle and pigs, so that they have to fence off all the fields to prevent the animals from getting in and destroying the crop. The Burma army deliberately broke down these fences to let the animals in to damage both the crops still standing. About 30% of the grain left in the fields was destroyed by the animals (eating it, walking over it etc) as can be seen in the photographs. As for the rice stores, all those found were entirely destroyed by the troops throughout the group of villages. Altogether, 71 stores were burnt down, totaling 3692 baskets of un-husked grain. (Information specifically gathered by investigator)."

**HEALTH**

_The villagers were forced to flee and stay under trees and palms. They had no chance to reconstruct their houses as military activities are continuing close to their lands. As it was the cold season so they faced a lot of illnesses such as fevers and colds. There were no medicines available. Both children and elderly were specially prone to illness._
Here we can see in a typical example the combined activities of positive and negative violence. The positive violence is expressed in the systematic burning of the villages. (This is often accompanied by the burning to death of those inhabitants who cannot flee) and the destruction of 71 rice stores. The negative violence is expressed by creating conditions in which the food stock is destroyed. The soldiers do not destroy the growing rice directly: they break down the fences so that the wild animals do it for them. In both cases the rice stock is destroyed. Another tactic used to destroy food indirectly is to corall the villagers in during crucial times of the rice growing season. Keeping them inside their villages during harvesting time for three weeks will ensure the destruction of the crop and their ensuing malnutrition. Preventable deaths inevitably result from such conditions.

The level of intentionality here is either level 1:
The perpetrator carried out the crime with full knowledge of all material elements (i.e. he fully knew what was going on) and by his purposeful will to bring about the desired result) (he wanted to destroy the victims) or level 2:
The perpetrator while not wishing, however, certainly knows that he cannot reach his military aims without killing innocent villagers (i.e. while not wishing to kill innocent villagers he knows it is inevitable).

The alleged intention is to destroy resistance fighters, and to do that requires destroying their civilian base. If that is the case, the level of intentionality is level 2, itself sufficient to justify a charge of Crime Against Humanity taken in the context of the actions being part of a widespread and systematic campaign against a civilian population.

If however the intention is to destroy the civilians themselves, the level of intentionality is level 1.

The answer depends on understanding the systematic widespread destruction of food in a wider context. If the intention is just to deny a civilian base to ethnic resistance fighters, then the following questions need to be asked:

- Why are civilians, including pastors, women and children often directly killed in the process?
- Why are women frequently raped during the process?
- Why are no medicines provided in these areas where the infant mortality rate is 30% and the maternal mortality rate 25 times the Thai average?
- Why are medicines and health clinics systematically destroyed?
- Why, once forcibly concentrated into camps, physically far removed from resistance forces, are they continually subjected to life threatening conditions?
- Even if the intention is primarily to destroy the resistance fighters, those fighters opposing an ideology of racial hegemony are protected by International Law as are the non combat civilians.
- Even if the intention is to destroy the resistance, what is the purpose of destroying the resistance?
- Why is a policy of wholesale nationwide Burmanisation, of which the counter-insurgency campaign forms a part, being inflicted on the whole country?

Moreover, the policy of Burmanisation continues to be implemented in areas which have been subjugated, therefore proving that Burmanisation is not restricted to the counter insurgency campaign.
15.62 INFlicting CONDITIONS OF LIFE CALCUlated TO BRING ABOUT DESTRUCTION: THE MOSLEM EXPERIENCE

The following is taken from the Karen Human Rights Group report, *The Persecution of Moslems in Burma May 2000* and has been selected because this group faces a uniquely destructive form of Persecution.

Most Moslems originally came from India, or what is now BanglaDesh, during the period of colonial rule. However, they have lived in Burma for hundreds of years and as a consequence of a great deal of intermarrying, most are racially mixed and speak Burmese. Many Burmese dislike them because they are associated with colonial rule when the British brought many into Burma to work in the Civil Service and businesses, especially as hated moneylenders. Many Burmese call them "Ka La" which means Indians, thus converting a religious identity into a racial one. Whichever definition is used, they still comprise an identifiable protected group in terms of the Genocide definition, being either a religious group, or an ethnic, or racial group.

The Moslems of Burma endure the same deliberately inflicted conditions of life endured by other ethnic nationalities and the political opposition, e.g., extortion, killing, forced labour, arbitrary arrest etc. However, the degree of persecution they suffer is unique for a number of reasons, including specific, official State-sponsored persecution, such as the following:

- No Right To Citizenship. Moslems are denied the right to citizenship. Burma’s 1982 citizenship law limits the rights of citizenship to those who can prove that their ancestors were resident in Burma prior to 1823 and the first British annexation in 1824. For most ethnic groups such as Shan, Burmans and Karens this is not enforced because they are considered indigenous, but Moslems are frequently denied citizenship. Thus Moslems are specifically discriminated against, even more severely and formally than other ethnic nationalities.

- No identity cards. The fact that they are denied citizenship means that they are denied identity cards. In 1990 the format of the national identity cards was changed and must show the bearer’s ethnicity and religion. Moslems who applied for new cards since then have been denied them based on the citizenship law. In this sense they are discriminated against more strongly than foreign residents who can be given Foreign Registration cards which allow them to live legally in the country. Moslems being denied citizenship and identity cards have been made illegal. However, those Moslems who have converted, or been forced to convert to Buddhism, are given identity cards.

Without identity cards the Moslems experience the following:

- They are unable to travel, or find it very difficult to do so. Identity cards are checked at military and police road blocks throughout Burma, and Moslems are targeted. People who do not have identity cards are sent back from where they came unless they pay expensive bribes. Journeys, especially long journeys, are thus in effect impossible for Moslems. Even if they do get to their destination, the law in Burma states that all visitors to a place must register with the local authorities when they arrive. A person needs an identity card to register. This means that Moslems are unable to visit anyone. The penalty for having unregistered guests is arrest and interrogation for both guests and hosts. A strong possibility resulting from being arrested is being sent as a forced porter to the front lines or being forced to join the army, both life threatening conditions. The denial of the identity card is an effective way of criminalizing an entire religious group which can then be used for any purposes.
• Without identity cards, Moslems cannot sit entrance examinations for University or Technical College. This means that they cannot obtain tertiary education even if it exists.

• Without identity cards Moslems cannot work for a private employer.

• Without identity cards, they cannot work for the Civil Service or the Military or, in the rare cases they do, they cannot get a senior post.

• If they do get day labouring jobs, or low grade factory work, they are constantly stopped by soldiers and police at check points and thus are constantly late for work and forced to spend their low wages in bribes.

• Moslems are discriminated against even more intensely than other religious or ethnic groups. In recent years, when Burmese troops have occupied Karen areas they sometimes evict all Moslems from an entire area and take the land for army camps. For example, in February 1997, when Burmese troops occupied Kyaikdon, a principal trading station on the Han Thayaw river in Karen’s Dooplaya district, they burned down the Moslem school, then blew up and bulldozed the mosque. They tore up the copies of the Koran and scattered them in the village streets.

• Moslems have to do forced labour like other ethnic groups, but receive even harsher treatment. Porters who are unable to carry their loads are beaten and killed, or left beside the trail to die. One Moslem described porters being killed by injection. (Interview#7, 10/01 KHRG "The Persecution of Muslims".

• Moslems are persecuted for their religion. Mosques are forced to close and nobody is allowed to build new ones or repair the outsides. Sometimes Mosques are destroyed as occurred south of Myaing Gyi Ngu where the DKBA destroyed the Mosque with a big bulldozer.

• A marriage tax has been established in Rakhine State when a Moslem marries a non Moslem.

• A Moslem marriage partner loses all property rights in the event of divorce or separation.

• State-instigated violence frequently occurs against Moslems in order to deflect criticism from the Junta. In Taungoo on May 16, 2001 for instance, a Moslem mosque teacher had his eyes cut out after he refused to worship the monks and he later died. The Junta uses the violence instigated by its agents provocateurs, often disguised as monks, as an excuse to intervene to "Restore order" and punish the victims with more repression.

• Beyond the scope of this report, 250,000 Moslem Rohingyas fled from west Burma into Bangla Desh to flee State sponsored Persecution. On their return, in a repatriation co-ordinated by UNHCR, which appeared not to meet either the criteria of safety, or dignity, as required by refugee law, they found much of their land had been confiscated and given to Burman settlers.

ANALYSIS

The persecution of Moslems in Burma is unusually severe in that it is more official, explicit and State sponsored than any of the other forms of Persecution. The citizenship laws prevent Moslems from getting identity cards, which, in effect, means they can be systematically persecuted, in their own country. This persecution is both widespread in that it affects all Moslems throughout Burma, and is also systematic in that the citizenship laws and denial of
identity cards are expressions of Junta policy. It is also clearly discriminatory in intent targeting Moslems specifically. It would appear to be a clear example of The Crime Against Humanity of Persecution, systematically weakening a religious group to the point that its long term viability is undermined.

In addition, the Persecution of the Moslems requires a different conceptual framework from those applied to the other violations which have been described either as political (fascism v democracy), or ethnic (Burmans v non Burman peoples). This Persecution is primarily religious. The Junta, for example, uses the ethnic Karen Buddhists (the DKBA) to persecute the Moslems, many of whom are ethnic Karen: they are forced to build and pay for pagodas, make Buddhist altars, become vegetarians, fined for eating meat, or for raising animals, or even for catching fish.

However, the question has to be asked as to whether the campaign against Moslems amounts to more than Persecution, (a denial of fundamental human rights) and becomes, through a combination of measures, a way of inflicting conditions of life in which they cannot survive on a long term basis and, in the ICTR's words, suffer slow destruction as a result of cumulatively inflicted conditions:

_They forced us to work [for nothing]. At first I had a bullock cart and cattle but I sold them and worked. After that our bullock cart was gone and our cattle were gone. We had nothing to eat but they forced us to go and work. They forced us to go and work every day._ (Interview #10, 10/01 KHRG, “The Persecution of Muslims”)

_In Karen State, it is becoming increasingly difficult for Muslim villagers to survive in their villages. The constant forced labour and the fees that have to be paid to avoid the labour have left many of the villagers impoverished and starving. They do not have any time to farm their fields or to do their work to get money to buy food. Many villagers end up selling everything they have in order to buy food to eat and pay the forced labour fees . . . the added persecution which Muslim villagers face simply makes the burden unbearable. The Muslim villagers try to stay on in their villages for as long as they can, but once everything is sold and the food has run out, they are forced to flee to somewhere else._ (my underline, ibid)

Moreover, since, in this case, identity is conceived as religious rather than ethnic, the measures taken which force the religious group to change its religious identity in order to survive, in effect forcibly transfers Muslims from one religious group to another. This could be considered to be genocidal since the basis of the group’s identity, its religion, is destroyed. The measures are, in effect, inflicting religious genocide. In this case of genocide, outright physical destruction would not be necessary as in the case of racial or ethnic genocide where victim status is immutable: you cannot change your ethnic or racial identity. However, measures inflicted to force a group to change its religious identity, by imposing conditions in which it cannot survive, could be understood to be genocidal, even though the members go on physically living. This is analogous to the assimilationist principle accepted as an expression of genocide in the Convention Convention 2 (e): _Forcibly transferring children of the group to another group_. Sustained systematic persecution intended to force a religious group to become part of another religious group could be understood as a form of forced assimilation, analogous to the crime of forcibly transferring children. In that case, the children are not physically destroyed but, in effect, are forced to change their identity in the same way that those forced to convert to Buddhism remain physically alive, but have their religious identity, their primary method of self-representation, permanently changed.

In addition, State sponsored Persecution of Moslems, depriving them of all fundamental rights, and in many cases their means of subsistence, amounts to causing serious bodily and mental harm within the context of destroying them as a group. (We should not let the fact that a few rich Moslems are allowed to go to Mecca, or travel freely through payment of bribes, disguise the fact that the overwhelming majority of Muslims face intense persecution).
The question thus has to be raised as to whether a policy systematically pursued by the State on a widespread basis over decades to destroy the physical, cultural and religious life of a religious group, aggravated by State instigated bouts of communal violence, amounts, over time, to the destruction of the group justifying the charge of genocide. It is clearly not sudden immediate destruction, but may meet the ICTR’s definition *creating conditions which lead to a slow death*, and more arguably the act of genocide, 2 (b), *causing serious bodily and mental harm.*

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**15.63 DESTRUCTION BY INFLECTING CONDITIONS OF LIFE CALCULATED TO BRING ABOUT DESTRUCTION: THE MON EXPERIENCE**

*Internal Displacement in Mon State, 2004*
Although the Mon have signed a ceasefire with the Junta, they still suffer human rights violations, including extortion and forced labour. However, perhaps the most serious threat to their long term viability as a group is the policy of systematic land confiscation. This is potentially life threatening to people who are subsistence farmers and who have few other skills. The confiscation and colonisation of land removes the very basis of subsistence, and does this in a way which is permanent.

The fact that a group which has signed a ceasefire continues to experience such fundamental violations and threats to its physical existence again suggests that the policy of the Junta goes well beyond the Four Cuts counter insurgency campaign. If it was limited to counter-insurgency, why would it inflict violations against a ceasefire group, including confiscation of the agricultural land upon which its long term survival depends? The following examples of recent land confiscation has been collected by the Mon Human Rights Group.
<table>
<thead>
<tr>
<th>Year</th>
<th>Locations</th>
<th>Confiscated by</th>
<th># Of Acres</th>
<th>Type of land</th>
<th>Value of lands and plantations (in Kyat)</th>
<th>Cases #</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>Letpan Village, Kyaikmayaw Township</td>
<td>Lt. Col. Moe Myint Aye</td>
<td>50</td>
<td>Paddy farmland</td>
<td>??</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Kawswe Village, Kyaikmayaw Township</td>
<td>Lt. Col. Mya Kyin Sein, No. MI</td>
<td>100</td>
<td>Paddy Farmlands</td>
<td>??</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Kyaikmayaw Township</td>
<td>Township authorities</td>
<td>365</td>
<td>Paddy</td>
<td>??</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Kamortkanin and Taung Bon village, Ye</td>
<td>IB No. 61, LIB No. 343 and IB No. 106</td>
<td>150</td>
<td>Paddy</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ye Town</td>
<td>MI No. 5, IB No. 61, LIB No. 343</td>
<td>100</td>
<td>Palms and Rice fields</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>West of Ye town</td>
<td>IB No. 61 and LIB No. 343</td>
<td>50</td>
<td>Salt fields</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>West of Thanpyuzayat town</td>
<td>Township authorities</td>
<td>100</td>
<td>Rubber</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>East of Thanpyuzayat town</td>
<td>Township authorities</td>
<td>300</td>
<td>Rubber</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>West of Kamawet village, Mudon township</td>
<td>Township authorities</td>
<td>50</td>
<td>Ranch</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Thaton Township</td>
<td>LIB No. 44</td>
<td>4000</td>
<td>Uncultivated lands, orchards, rubber, paddy</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Than-hlae and Krone-sot villages, Pa-an township</td>
<td>Township authorities LIB No. 22</td>
<td>200</td>
<td>paddy</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Near Nabu village, Kawkareik township</td>
<td>LIB No. 547, LIB 548, LIB No. 549</td>
<td>500</td>
<td>Paddy</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kyonedoe and Thingan-ninyaung villages, Kawkareik township</td>
<td>LIB No. 547, LIB 548, LIB No. 549</td>
<td>200</td>
<td>Paddy</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kyonedoe and Thingan-ninyaung villages, Kawkareik township</td>
<td>LIB No. 547, LIB 548, LIB No. 549</td>
<td>250</td>
<td>Uncultivated land</td>
<td>4</td>
<td></td>
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<tr>
<td></td>
<td>Kaw Bein Village, Kawkareik township</td>
<td>Police officer, Than Hteik Shein</td>
<td>5</td>
<td></td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kaw Go village, Kawkareik township</td>
<td>Police officer. Segeant Ba Thein</td>
<td>5</td>
<td></td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kharit-kyauktan village, Kawkareik township</td>
<td>Police Officer, Min Thu</td>
<td>5</td>
<td></td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>near Warbogone village, Kawkareik township</td>
<td>LIB No. 284</td>
<td>100</td>
<td>Paddy</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Singu village, Yebu township</td>
<td>LIB No. 410</td>
<td>50</td>
<td>paddy</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yebu village, Yebu township</td>
<td>LIB No. 406</td>
<td>60</td>
<td>paddy</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>3090</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>Kwethelin village, Yebu township</td>
<td>Command No. (8)</td>
<td>6 families</td>
<td>Properties</td>
<td>10 mil.</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Hangan and Koe-mile, Ye township</td>
<td>IB No. 61</td>
<td>300</td>
<td>Plantation and paddy</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Aru-taung and Kundo villagers, Ye Township</td>
<td>LIB No. 343?</td>
<td>800</td>
<td>Plantation and paddy</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>1100</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2000</td>
<td>Northern Ye township</td>
<td>LIB No. 343?</td>
<td>100</td>
<td>Plantation</td>
<td>9.75 mil.</td>
<td>8</td>
</tr>
<tr>
<td>Year</td>
<td>Location</td>
<td>MOC/LIB No.</td>
<td>Area (mil.)</td>
<td>Product</td>
<td>Population (mil.)</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------</td>
<td>-------------</td>
<td>------------</td>
<td>----------</td>
<td>-------------------</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Ye town</td>
<td>MOC No. 19</td>
<td>31</td>
<td>Plantation</td>
<td>4.25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tamort-Kanin village, Ye Township</td>
<td>LIB No. 588</td>
<td>329</td>
<td>Rubber and orchard</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kun-duu and San-khala, Ye township</td>
<td>LIB No. 587</td>
<td>500</td>
<td>Rubber, Betel nut and limes</td>
<td>68.6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>San-pya and Don-phee villages, Ye township</td>
<td>LIB No. 587 and No. 588</td>
<td>400</td>
<td>Uncultivated and plantation</td>
<td>19</td>
<td></td>
</tr>
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</table>

**Total** 1713

<table>
<thead>
<tr>
<th>Year</th>
<th>Location</th>
<th>MOC/LIB No.</th>
<th>Area (mil.)</th>
<th>Product</th>
<th>Population (mil.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>Tu-nyaing and Son-hnit-thar village, Ye township</td>
<td>LIB No. 586</td>
<td>500</td>
<td>Rubber</td>
<td>49.8</td>
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<tr>
<td>2002</td>
<td>San-pya and Done-phi villages, Ye township</td>
<td>MOMC No. 19, Brigadier Ye Win</td>
<td>300</td>
<td>Rubber, betel nut, orchard</td>
<td>30 mil.</td>
</tr>
<tr>
<td></td>
<td>Set-thaw, Do-ma, Kalort-tort and Ah-bit villages, Mudon township</td>
<td>Southeast Command</td>
<td>200</td>
<td>Rubber</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Yaung-daung and Kwan-hlar villages, Mudon township</td>
<td>IB No. 210</td>
<td>64</td>
<td>Paddy</td>
<td>16</td>
</tr>
</tbody>
</table>

**Total** 1064
**Total** 6417

Although there are fewer acts of positive violence in Mon safe areas, there are widespread violations outside them which causes the Mon to flee into these physically very restricted havens. This means the "safe areas" become very overcrowded, with less than minimal food and medicines available, which in turn leads victims to flee into Thailand where they run the risk of social disintegration and long term destruction through assimilation. They are particularly vulnerable because, as subsistence farmers, they find it difficult to adapt to new working conditions in Thailand. Meanwhile, areas of original habitation inside Burma from which they have fled are taken over and colonized by Burmans. The lesson of the Mon ceasefire agreement does not suggest that ceasefires ensure the long term sustainability of the group. On the contrary, the Mon experience indicates that continuing indirect methods of destruction undermine the argument that what is being inflicted is simply a counter insurgency operation: they suggest an underlying intention to destroy ethnic groups.
CHAPTI

INFLICTING CONDITIONS OF LIFE CALCULATED TO BRING ABOUT PHYSICAL DESTRUCTION OF THE GROUP IN WHOLE OR IN PART

COMPARISONS AND CONTRASTS BETWEEN LOWLAND BURMAN AND UPLAND, EASTERN ETHNIC AREAS: THE LOWLAND MAINLY BURMAN EXPERIENCE
16.1 INTRODUCTION

There is, of course, no doubt that most of the people of Burma are suffering very poor conditions of life inflicted by the military dictatorship. At the time of writing I have just returned from a border clinic. A skeletal child was brought in looking as though she had just arrived from an African famine. When I asked her ethnic group, I was told she was Burman. They don't care who dies, said the ethnic Karen nurse feeding her. It is, however, important to identify and clarify how the infliction of destructive conditions impact differently on Burman and ethnic areas.

16.2 LOWLAND BURMA

The people of lowland Burma, mostly Burmans, suffer from deliberately inflicted suffering in many ways. Food shortages inflicted as a result of junta policy have been comprehensively described in the study Food Scarcity and Militarisation (pub. Feb.1999), by Burma Issues. Although the policy seems to have been liberalised recently in lowland Burma, it is unclear how it is really operating at the time of writing. Moreover, this report is not a work of journalism, but an analysis that seeks to understand the effect of policies which have been inflicted over past decades.

16.3 GOVERNMENT ECONOMIC "POLICIES"

The government's main interests lie in feeding the military and civil service, and keeping inflation under control. Yet, civil servants have seen dramatic falls in real wages, and due to high prices of commodities, government employees have been unable to meet the basic cost of living. Bribery and corruption are endemic, as necessities for survival. Rations and wages to military units are deliberately reduced or non-existent thus stimulating the military to prey on and plunder the civilian population. Inflation has exponentially increased. Sundry labourers who have their income generation interrupted even for a day are unable to feed themselves. The deteriorating social conditions can be directly linked to the presence of food scarcity. Children leaving school and working to supplement their family's income, begging, petty theft, increasing numbers of unmarried mothers and sex workers can all be connected to the worsened economic conditions. There has been a general breakdown of trust among community members, causing a loss of traditional values of mutual assistance and support. (ibid).

We can see here desperate conditions inflicted on the people by government policies. The effect of some of these policies can be life-threatening, e.g. laborers being unable to feed themselves if their income is stopped even for a day. However, there is not an intention to destroy the people as such through these policies. The intention is to feed the militarized State. Nevertheless, the military pursues its policies in the full knowledge that it leads to immense suffering for the people, and is likely to contribute to malnutrition, which in turn is likely to lead to preventable deaths.
16.4 PADDY PROCUREMENT SYSTEM

Although as stated, the policy toward rice appears to have been liberalised and the situation may have improved in lowland Burma, this Report is concerned with identifying violations, including violations of fundamental economic rights, inflicted over the past decades. It is not a work of journalism. It is thus felt appropriate to identify the main ways in which rice policy has impacted destructively on Burmese farmers.

Paddy farmers are implicitly taxed on their crops per acre through a forced government procurement system, regardless of factors such as severe floods in past years which have destroyed fields. There is increasing evidence that the rate of paddy collected from villagers in many areas is increasing. (ibid)

This is systematic State sponsored theft of food implemented on a widespread basis on such a scale that it is also likely to leads to widespread malnutrition and preventable deaths. (See UNICEF's publication A Silent Emergency). Again, however, the underlying intention appears to be to divert resources to the military, not to destroy the group as such.

• POLICIES TO INCREASE PADDY YIELDS

Programs to increase paddy yields have proven inappropriate in certain areas. Losses are incurred and loans from administration have to be taken out to finance machinery and fertilizer and repaid with interest. If farmers do not carry out the instructions, they risk having their land confiscated. The summer rice production programme clearly illustrates the effects of government policies on the people. It has been imposed on villages with sometimes disastrous results by regional and local authorities with production the military regime reaps most of the benefits, as surplus paddy exported to targets to meet. Where programmes to increase yields have been successful, earn foreign exchange, rather than feed the populace.

Again this policy of forced increased production with accompanying land confiscation is systematic and widespread, but is not intended to destroy the farmers as a group as such: it is intended to divert resources to feed the militarised State, and is carried out in the knowledge that it will lead to landlessness and consequent extreme, probably life-threatening poverty for large sections of the community. This appears expressive of intent level 2, i.e., people reduced to penniless day labourers may possibly die as a result of such a policy.
16.5 CONFISCATED FARMLAND AND LANDLESSNESS

Uncompensated agricultural land-confiscation practices are widespread. The law does not protect anyone from land confiscation, and on the contrary, provides ample powers to administrative authorities to conduct the practice at will. Small land-holding farmers are often forced off their land over time as their acreage is insufficient to make working the land and providing the paddy quota a viable prospect. Landlessness is a rapidly increasing phenomenon among people working in the agricultural sector.

This practice is clearly life threatening, especially for subsistence farmers. However, it appears not intended to be targeting a particular group for destruction as such, but again to increase the military’s power.

15.6 FORCED LABOUR

As in the ethnic areas forced labour is demanded of the population across all parts of the country, although usually much less than in the ethnic areas. The rapid extension of irrigation systems, for example, has been achieved through a large increase in the government’s use of uncompensated peoples contributions which erode people's ability to earn their own incomes.

Here again there appears to be no intention to selectively target the Burman group as such for forced labor. On the contrary, there is an intention to select ethnic people instead. The use of forced portering of Burmans is, however, widespread and systematic and thus a Crime Against Humanity of Enslavement or Severe Deprivation of Physical Liberty. The intention appears once again to increase the power of the militarised state. However, Burman porters are additionally used as victims and agents in the war against internally displaced ethnic peoples and on development projects.

15.7 ARBITRARY TAXATION

The burden of taxation on the lowland villagers is so great, arbitrary and random that it seriously weakens, in conjunction with the other measures identified, the victim lowland population.
15.8 HEALTH EFFECTS

As a result of government policies, which have massively diverted resources to the military away from civilians in general, Burma in general experiences the following problems:

One of the highest infant and maternal mortality rates in Asia;
One third of the country has no access to clean water and sanitation;
Nearly half of primary school children are malnourished;
With only one doctor per 12,000 people the national health care system does not extend to even half the country; preventable illnesses continue to be the main causes of unnecessary death and ill suffering (Martin Smith, "Fatal Silence," ch. 11, p.2).

Health clinics are usually devoid of stocks and what medicines exist have to be bought expensively. The widespread malnutrition experienced by Burman people means that they are vulnerable to disease and illness, which means the absence of medicines interacts synergistically with malnutrition to weaken victims. The absence of medicines, doctors and properly equipped hospitals is the direct responsibility of the military dictatorship, which has chosen to inflict a policy of below minimal provision of health services to its people. It is important to emphasise that this is not just a serious situation as regards health facilities. The service barely exists in much of Burma, creating what UNICEF calls A Silent 'Emergency leading the country to be ranked ranked 190 out of 191 countries, just above Afghanistan, in terms of health provision. The hospital in Myawaddy, for example, has reportedly far fewer medicines than the refugee health clinic established just over the border in Mae Sot.

This state of affairs is the result of government policy. It has specifically chosen to spend approximately 40% of its budget on the military, maintaining an army of around 4-500,000, and buying expensive military equipment like MIG fighters. This surreal skewing of resources is on such a scale and is so intentional that it represents a deliberately inflicted crime involving at least intent level three, criminal negligence defined by the Rome Statute as:

The perpetrator does not wish to kill civilians, but in being aware of this danger is prepared to approve of it if it should happen i.e. he fully accepts the possibility to approve of deaths occurring as a result of his action.

The denial of provision of medical services may even express intention level two, where the perpetrator certainly knows that he cannot reach his aims (i.e. in this case a militarized, Burmanised society) without inevitably killing innocent civilians, i.e., reducing health provision to such a sub-minimal level that significant numbers of preventable deaths inevitably result.
15.9 IMPRISONMENT AND TORTURE

For many years as part of its policy of persecution of the democratic opposition, the Junta has imprisoned and tortured democracy activists. The use of torture in prisons is routine according to the former UN Special Rapporteur, Rajsoomer Lallah in his 1998 Report. The mainly Burman prisoners, estimated to be about 1,500 in number are, however, normally registered (after the initial dangerous process of interrogation) and receive visits from the Red Cross and their families. There is some evidence to suggest their conditions have improved. The widespread and systematic nature of the imprisonment and torture expresses the Crime Against Humanity of Imprisonment and the Crime Against Humanity of Torture. Nevertheless, Burman prisoners do not seem to be specifically killed or tortured to death in large numbers in contrast to the situation identified in the Altsean Report on prisoners in ethnic areas ("Uncounted: political prisoners in Burma's ethnic areas," p.1, pub. 2003) where 22% of ethnic prisoners were found to have been killed.

15.10 MURDER

The killing of the members of Aung San Suu Kyi’s convoy on May 30 in a State sponsored ambush amounts to a Crime against Humanity of Murder when understood within the context of the killings of other democracy activists and the sustained systematic persecution of the National League for Democracy. However, such murder of civilians is routine, widespread and arguably systematic in ethnic internally displaced areas. (See for example the mass killings identified by Amnesty International in Shan State in its Report, "Atrocities in Shan State").

15.11 FORCED RELOCATION

Widespread, systematic forced relocations have been inflicted on the largely Burman population of lowland Burma. In Fatal Silence (p.67), Martin Smith quotes from an unpublished report by Habitat (the UN Center for Human settlements) that by 1990 1.5 million people, or 4% of Burma's population at that time, had been affected by displacement, including 16% of the urban population. Of this number, 250,000 people were compulsorily removed from Rangoon to the satellite towns of Hlaingthayr and Shepyithar since 1989.

The motive behind such relocations sometimes appears expressive of political persecution, the relocated areas of Rangoon having been centres of opposition to the Junta, whereas in other areas, such as Bagan, it appears the reasons appear to have been primarily economic, e.g., to clear the area for tourists. Martin Smith points out that little or no consideration was given to the social and health implications of the breakup of so many long standing communities and states:

Forced relocation and poor housing conditions away from the main job centers have contributed to their high levels of unemployment, poverty, malnutrition, family separation and increases in illegal abortions and sexually transmitted diseases . . . many of these factors can be attributed to resettlement policy, (ibid).

He describes the forced relocation of mainly Burman people in 1989/90 as follows. Significantly, he explicitly identifies political Persecution as an underlying motive:
An even more sinister development was the forcible relocation during 1989/90 of thousands of working class city dwellers from towns across the country, including Rangoon, Mandalay and Taunggyi, into the malaria infested countryside. Here they were resettled in isolated and ill prepared new towns. Ostensibly, they were squatters being rehoused under well organized slum clearance schemes, but in reality many were well-established communities in the strategic heart of the country that had played a leading role in supporting the democracy uprising. They were to pay a heavy price for their support. Diplomats who were initially kept well away from the new towns, estimated as many as 500,000 civilians were moved under armed guard and dozens of elderly people and children died. (My underline, "Burma, Insurgency and the Politics of Ethnicity," ch.1, pp. 22, 23).

A number of points need to be made: this is both widespread (half a million people) and systematic, i.e., it is a State organized forced relocation programme. It was done with the knowledge that some people would inevitably (intent level 2), or at least possibly (intent level 3), die as a result of the actions, since people were dumped into malaria infested countryside and ill prepared towns. (In my own experience of talking to forcibly displaced Burmans, the villagers were relocated from their homes with no warning, and were only provided with some concrete and tarpaulins. Their homes were then destroyed, nothing remaining but the few shattered foundations they secretly showed me.) The underlying intention behind the programme appears to have been political persecution in that these people had supported the democracy uprising. However, in terms of legal conceptualization this action could not be termed genocidal. It was inflicted on people who might have, or had, supported the democracy movement, so the underlying intention was not ethnic or religious, but political persecution. Moreover, there appears to have been no intention that the victims should die as a result of the forced relocation. They were not relocated to destroy them. However, the callousness, speed and scale of the forced relocations suggest that the authorities were quite prepared to accept that people would either inevitably (intent level 2) die, or that they would possibly (intent level 3) die as a result of their actions. As one UNICEF consultant stated:

The forced displacement of an already vulnerable group of low income population, who had suffered from chronic poverty, to an area with extremely poor sanitation and living conditions with little or no job opportunities gives rise to a sequence of socio-economic problems, such as unemployment, abandoned wives and children, induced abortion, increased exposure to STDs/AIDS and malnutrition, which needs to be addressed promptly. Q Boyden, "Myanmar Children in Especially Difficult Circumstances," Rangoon, UNICEF, 1992, p.32).

Martin Smith again describes the serious ill health caused by the forced relocation programme throughout Burma generally:

Many doctors believe that in several parts of Burma, the continuing high incidence of such serious health problems as malnutrition, malaria, diarrhoea and various water-born diseases can be directly attributed to government policies of civilian resettlement or forced relocations . . . (my underline, “Fatal Silence”, p.11)

He is stating that such deliberately inflicted conditions lead to serious ill health, and by implication, to preventable deaths.

This causal connection is made quite explicit when he says:

One of the primary causes of such poor health in these areas -the government's resettlement policy itself-remains unaddressed. (ibid, p.68)

The poor health in lowland Burma is in effect a result of policy, not necessarily intended, but a knowingly accepted as an inevitable side effect. The scale and the organization of the forced relocation policy of mainly Burman people associated with political opposition, and the resultant ill health and preventable deaths resulting from it, suggest that it is so widespread.
and systematic as to justify the charge of *Crime against Humanity of Forcible Transfer of Population* as defined by the Rome Statute Article 7 (d):

1. The perpetrators deported or forcibly transferred without grounds under international law, one or more persons to another State or location, by expulsion or coercive acts.

2. Such person or persons were lawfully present in the area from which they were so deported or transferred.

3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In all the above activities, we can see the existence of policies which are widespread and systematic and amount to persecution of civilians generally, and especially those who might have been, or potentially become, associated with democracy. However, people in lowland Burma are not routinely killed in the way ethnic people are in the internally displaced areas. Moreover, there is no evidence, with the notable exceptions of the Depayin and the 1988 massacres, of an intention to physically destroy the democracy supporting civilian population in lowland Burma as such. It does, though, demonstrate an intention to persecute and weaken them, while accepting that some may possibly die as a result of persecutory policies. Thus it would not be appropriate to apply the term genocide to the forced relocation and persecution of people in lowland Burma. The widespread and systematic nature of the relocations taken in the context of an overall policy of persecution, however, suggests *Crimes against Humanity* can be legitimately cited.

The criminality involved in the *Crime Against Humanity of Forcible Transfer of Population* lies both in the act of commission, the positive violence, (i.e. people are forcibly relocated) and also in the act of omission, the negative violence, (i.e. facilities below a necessary minimum are provided in resettled areas e. g a small milk tin of rice is sometimes provided). Moreover, this negative violence appears to be intentionally inflicted against ordinary civilians, (particularly those associated with the democracy movement), rather than because of any objective lack of resources, or budget constraints. The fact that sophisticated medical equipment is provided for the military officer class clearly shows supplies and equipment are indeed available, and that the non-provision of even basic medical services and equipment for people in relocated lowland areas is therefore the result of policy decisions which intentionally fail to allocate resources to the people:

*Military hospitals, according to Martin Smith (“Fatal Silence,” ch. 2, p. 24) are well supplied with medicines and most have modern equipment and . . . have been equipped with computerized blood testing and other expensive equipment.*

(We should note, however, that it is now reported that even military hospitals are currently lacking in basic medicines and equipment.) It should be pointed out that the lack of services provided to ordinary mainly Burman people, especially in relocated sites, is clearly not the fault of health workers. Burma has fine people, especially in the medical field, trying to do a good job in the most difficult circumstances. There is obviously no intention on the part of these people, often government employees, to participate in a process which leads to ill health or death, either indirectly or directly. Neither are they guilty of negligence. However, the actions and intentions of these dedicated people is not the subject matter of this report which
focuses on that *Policy taken at the highest level* which systematically inflicts on the people of Burma generally below minimal health services.

16.12 CONCLUSION ON THE LOWLAND BURMAN EXPERIENCE

The military dictatorship must be held accountable for committing *Crimes against Humanity*, entailing legal responsibility, against its own mainly Burman population, but the level of intention underlying the food, forced relocation and health policies is that of accepting the *possibility, or inevitability*, of deaths occurring as a result of such policies, rather intending to destroy people directly. The two exceptions to this are the 1988 killings and, arguably, the Depayin massacre, where the Junta deliberately and intentionally killed mainly Burman political activists in full awareness of all the circumstances. In the case of lowland Burma we remember intention level three, (accepting the *possibility* of deaths resulting from actions) is sufficient to justify a charge of *Crime against Humanity*, if the alleged crimes are *widespread* or *systematic* or both.
CHAPTER 17: LEVELS OF INTENTIONAL!!
UNDERLYING DESTRUCTION: A COMPARISON AND CONTRAST BETWEEN CONDITIONS INF LOWLAND BURMA, AND AREAS OF ETHNIC
INTERNAL DISPLACEMENT: THE ETHNIC EXPERIENCE
17.1 INTRODUCTION

In addition to the measures inflicted on the general civilian population outlined in the previous chapter, additional discriminatory ones are specifically inflicted on the ethnic peoples, particularly in internally displaced areas. Thus the following violations are different from the previous ones in two ways: firstly, the victim group is different, being mainly ethnic, not Burman; secondly, the scale is greater and, thirdly, the underlying intention appears to be to destroy ethnic internally displaced people, not just armed resistance.

The following section provides examples of destruction inflicted by the Burman dominated Junta army in Karen areas during 2002. It should be pointed out, however, that the destruction cited here describes only a small proportion of the massive, widespread decades long destruction. This is because it is often difficult to access and record all the evidence, especially in the case of killings. It should also be stressed that the evidence below is only a six-month selection of violations committed in Karen State in a conflict which has been going on for decades. Before examining the detailed destruction inflicted in Karen State in 2002 we should see this in the wider context of the destruction of food throughout the eastern ethnic areas in 2002 recorded by the Thai Burma Border Consortium:
17.2 EXAMPLE OF DESTRUCTION INFLICTED IN KAREN AREAS IN SIX MONTHS PERIOD

Summary Report on Human Rights Violations by SPDC and DKBA Troops, in KNU Areas

During the Period from January - December 2002,

Thaton District

Number of Persons subjected to Forced Labor: 1,428 persons
Persons shot to death without reason: 4 persons
Persons arrested & tortured without reason: 14 persons
Persons wounded: 1 person
Chickens looted: 111 chickens
Ducks looted: 19 ducks
Goats looted: 8 goats
Pigs and quantity of pork looted: 22 pigs 44.5 Viss of pork
Paddy confiscated: 5,200 baskets
Rice confiscated: 40.5 baskets
Sticky rice: 1 Pyi
Cash extorted by force: 2,334,000 Kyat
Value of property looted: 24,500 Kyat
Tonnage of logs confiscated or destroyed: 570 logs (118 tons)
Timber planks: 168 pieces (16 tons)
Timber poles for house building: 128 poles
Roofing thatches confiscated: 31,065 pieces
Bamboo poles confiscated: 2,888 poles
Sawmills burnt down: 1 mill
Bullock carts commandeered: 26 carts
Waxy gourds confiscated: 3 baskets
Beans confiscated: 3 baskets
Gourds confiscated: 30 number

Number/Quantity of looted:

Cooking pots: 13 pots
Spoons: 15 spoons
Dinner plates: 16 plates
Sugar: 15 Viss
Coffee creamer: 5 packages
Tapioca grains: 1.5 Viss
Machetes: 4 machetes
Sling bag: 1 bag
Clothes: 34 pieces
Blankets: 4 pieces
Fish paste: 5 Viss
Onion: 8 Viss
Chilli: 7 Viss
Sesame oil: 8 Viss
Cheroots: 3 packages
Dry cell batteries: 6 sets
Cradle: 1 cradle
Gold ring: 1 ring
Toungoo District

Persons subjected forced labor 2,544 persons
Persons shot to death without reason 2 persons
Persons arrested & tortured without reason 83 persons
Person wounded 2 persons
Chickens & meat looted 7 chickens + 16 Viss of meat
Ducks looted 1 duck
Pigs and quantity of pork looted 2 pigs + 20 Viss of pork
Rice confiscated or destroyed 90.3 baskets
Cash extorted by force 396,100 Kyat
Value of property looted 115,120 Kyat
Roofing thatches confiscated 10 pieces
Bamboo poles confiscated 1,640 poles
Landmines planted against villagers 10 landmines
Trucks commandeered 60 trucks

Number/Quantity of items looted:
- Gold ring
- Meal carrier
- Watches
- Cassette tape player
- Video deck
- Portable electrical power generator
- Stove tripods
- Air rifle
- Clothes
- Cooking pots
- Machetes
- Liquor
- Concentrated juice
- Cheroots
- Fish paste/dried fish
- Cookies
- Cooking oil
- Sugar cane cake

- 1 ring
- 1 M carrier
- 10 watches
- 1 tape player
- 1 video deck
- 1 generator
- 1 tripod
- 1 air rifle
- 2 number
- 2 cooking pots
- 3 machetes
- 13 bottles of liquor
- 6 bottles
- 500 cheroots
- 9 Viss
- 18 packages
- 1 bottle
- 2 Viss
**Nyaunglaybin District**

Persons subjected to forced labor  1,000 persons  
Persons shot to death without reason  1 person  
Persons wounded  5 persons  
Chickens looted  291 chickens  
Pork looted  30 Viss of pork  
Paddy looted  168 baskets  
Rice looted  4 baskets  
Cash extorted  221,500 Kyat  
Value of items looted  273,800 Kyat  
Farm huts burned down  1 farm hut  
Houses burnt down  10 houses  
Church building burnt down  1 church building  
Valuable items looted:  
- Silver chain  2 chains  
- Blankets  35 blankets  
- Yarn bobbins  28 yarn bobbins  
- Clothes  57 number  
- Sandals  1 pair  
- Muzzle loader gun  1 muzzle loader  
- Trays  47 trays  
- Cooking pots  92 cooking pots  
- Machetes  45 machetes  
- Dinner plates  87 plates  
- Spoons  45 spoons  
- Fishing nets  6 nets  
- Honey  3 bottles  

**Mergui-Tavoy District**

Persons subjected to forced labor  356 persons  
Persons shot to death without reason  2 persons  
Persons seized and tortured  5 persons  
Chickens looted  2 chickens  
Ducks looted  7 ducks  
Cattle looted  43 cattle  
Paddy looted  1,725 baskets  
Cash extorted by force  760,400 Kyats  
Rice fields confiscated  5,000 acres  
Seed beetle nuts confiscated  155,500 nuts  
Houses burnt down  1 house  
Bullock carts commandeered  106 carts  
Boats commandeered  118 boats  
Building items looted:  
- Roofing thatches  3,200 pieces  
- Bamboo  2,000 bamboo  
- Split bamboo  1,200 pieces  
- Timber tons  17 tons  
- Logs  40 logs  
- Diesel oil extorted  18 gallons  
- Dried beetle nuts  73 Viss  
- Gold chain looted  1 chain
### Papun District

<table>
<thead>
<tr>
<th>Category</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons subjected to forced labor</td>
<td>567 persons</td>
</tr>
<tr>
<td>Persons wounded</td>
<td>1 person</td>
</tr>
<tr>
<td>Persons executed without reason</td>
<td>7 persons</td>
</tr>
<tr>
<td>Persons seized and tortured</td>
<td>11 persons</td>
</tr>
<tr>
<td>Cash extorted by force</td>
<td>28,000 Kyat</td>
</tr>
<tr>
<td>Value of items looted</td>
<td>80,000 Kyat</td>
</tr>
<tr>
<td>Timber poles seized and destroyed</td>
<td>350 poles</td>
</tr>
<tr>
<td>Bamboo poles seized and destroyed</td>
<td>6,550 poles</td>
</tr>
<tr>
<td>Thatch seized and destroyed</td>
<td>8,400 pieces</td>
</tr>
<tr>
<td>Houses burnt down</td>
<td>5 houses</td>
</tr>
<tr>
<td>Rice barns burnt down</td>
<td>3 rice barns</td>
</tr>
<tr>
<td>Paddy seized and destroyed</td>
<td>240 baskets</td>
</tr>
<tr>
<td>Chickens killed and eaten</td>
<td>26 chickens and 24 Viss</td>
</tr>
<tr>
<td>Pigs killed and eaten</td>
<td>2 pigs</td>
</tr>
<tr>
<td>Ducks killed and eaten</td>
<td>1 duck</td>
</tr>
<tr>
<td>Goats killed and eaten</td>
<td>1 goat</td>
</tr>
<tr>
<td>Cheroots looted</td>
<td>1 packet</td>
</tr>
<tr>
<td>Flashlights looted</td>
<td>1 flashlight</td>
</tr>
<tr>
<td>Machetes looted</td>
<td>2 machetes</td>
</tr>
<tr>
<td>Honey</td>
<td>12 bottles</td>
</tr>
</tbody>
</table>

### Dooplaya (Kawkareik) District

<table>
<thead>
<tr>
<th>Category</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons subjected to forced labor</td>
<td>105 persons</td>
</tr>
<tr>
<td>Persons seized and tortured</td>
<td>5 persons</td>
</tr>
<tr>
<td>Persons executed without reason</td>
<td>1 person</td>
</tr>
<tr>
<td>Persons wounded</td>
<td>3 persons</td>
</tr>
<tr>
<td>Women raped</td>
<td>1 woman</td>
</tr>
<tr>
<td>Cash extorted by force</td>
<td>169,000 Kyat</td>
</tr>
<tr>
<td>Kyat</td>
<td>4,000 Baht</td>
</tr>
<tr>
<td>Value of items looted</td>
<td>255,000 Kyat</td>
</tr>
<tr>
<td>Looted paddy / rice:</td>
<td></td>
</tr>
<tr>
<td>Paddy</td>
<td>2,590 baskets</td>
</tr>
<tr>
<td>Rice</td>
<td>6.6 baskets</td>
</tr>
<tr>
<td>Domesticated animals killed and eaten</td>
<td></td>
</tr>
<tr>
<td>Chickens</td>
<td>50 chickens</td>
</tr>
<tr>
<td>Chicken eggs</td>
<td>32 eggs</td>
</tr>
<tr>
<td>Ducks</td>
<td>21 ducks</td>
</tr>
<tr>
<td>Pigs &amp; pork</td>
<td>4 pigs and 30 Viss of pork</td>
</tr>
<tr>
<td>Buffaloes</td>
<td>6 buffaloes</td>
</tr>
<tr>
<td>Oxen</td>
<td>2 oxen</td>
</tr>
<tr>
<td>Building items confiscated</td>
<td></td>
</tr>
<tr>
<td>Bamboo</td>
<td>3,250 bamboo</td>
</tr>
<tr>
<td>Timber planks</td>
<td>230 planks</td>
</tr>
<tr>
<td>Roofing thatches</td>
<td>1,700 pieces</td>
</tr>
<tr>
<td>Land tillers commandeered</td>
<td>8 land tillers</td>
</tr>
<tr>
<td>Valuables looted</td>
<td></td>
</tr>
<tr>
<td>Gold chains</td>
<td>1 gold chain</td>
</tr>
<tr>
<td>Item</td>
<td>Quantity</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Gold earrings</td>
<td>1 pair</td>
</tr>
<tr>
<td>Gold ring</td>
<td>1</td>
</tr>
<tr>
<td>Silver coins</td>
<td>2</td>
</tr>
<tr>
<td>Fishing nets</td>
<td>1</td>
</tr>
<tr>
<td>Flashlights</td>
<td>2</td>
</tr>
<tr>
<td>Dry cell batteries</td>
<td>6 sets</td>
</tr>
<tr>
<td>Machetes</td>
<td>2</td>
</tr>
<tr>
<td>Blankets</td>
<td>1</td>
</tr>
<tr>
<td>Clothes</td>
<td>2</td>
</tr>
<tr>
<td>Cradle</td>
<td>1</td>
</tr>
<tr>
<td>Sling bag</td>
<td>2</td>
</tr>
<tr>
<td>Cooking pots</td>
<td>2</td>
</tr>
<tr>
<td>Watch</td>
<td>1</td>
</tr>
</tbody>
</table>

**Pa-an District**

<table>
<thead>
<tr>
<th>Category</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons subjected to forced labor</td>
<td>79 persons</td>
</tr>
<tr>
<td>Persons wounded by landmines</td>
<td>1 person</td>
</tr>
<tr>
<td>Persons executed without reason</td>
<td>1 person</td>
</tr>
<tr>
<td>Persons seized and tortured</td>
<td>1 person</td>
</tr>
<tr>
<td>Persons wounded</td>
<td>3 persons</td>
</tr>
<tr>
<td>Women raped</td>
<td>1 woman</td>
</tr>
<tr>
<td>Cash extorted by force</td>
<td>1,678,000 Kyat</td>
</tr>
<tr>
<td>Value of items looted</td>
<td>20,700 Kyat</td>
</tr>
<tr>
<td>Confiscated Paddy/Rice:</td>
<td></td>
</tr>
<tr>
<td>Paddy</td>
<td>5 baskets</td>
</tr>
<tr>
<td>Rice</td>
<td>8.6 baskets</td>
</tr>
<tr>
<td>Domesticated animals killed and eaten:</td>
<td></td>
</tr>
<tr>
<td>Pigs</td>
<td>2 pigs</td>
</tr>
<tr>
<td>Chickens</td>
<td>93 chickens and 32 Viss of meat</td>
</tr>
<tr>
<td>Oxen</td>
<td>1 oxen</td>
</tr>
<tr>
<td>Goats</td>
<td>5 goats</td>
</tr>
<tr>
<td>Imperial ducks</td>
<td>1 duck</td>
</tr>
<tr>
<td>Confiscated land</td>
<td>200 acres</td>
</tr>
<tr>
<td>Items destroyed by burning:</td>
<td></td>
</tr>
<tr>
<td>Houses</td>
<td>1 house</td>
</tr>
<tr>
<td>Huts</td>
<td>8 huts</td>
</tr>
<tr>
<td>Buffaloes/Cattle pens</td>
<td>10 pens</td>
</tr>
<tr>
<td>Straw piles</td>
<td>5 piles</td>
</tr>
<tr>
<td>Miscellaneous items looted:</td>
<td></td>
</tr>
<tr>
<td>Mono sodium glutamate</td>
<td>1 package</td>
</tr>
<tr>
<td>Chili</td>
<td>25 Viss</td>
</tr>
<tr>
<td>Cheroots</td>
<td>5 packets</td>
</tr>
<tr>
<td>Cookies packages (large)</td>
<td>30 packages</td>
</tr>
<tr>
<td>Dinner plates</td>
<td>30 plates</td>
</tr>
<tr>
<td>Coffee creamer</td>
<td>23 packages</td>
</tr>
<tr>
<td>Liquor</td>
<td>2 bottles</td>
</tr>
<tr>
<td>Sandals</td>
<td>3 pairs</td>
</tr>
</tbody>
</table>

Word & Abbreviation: KNU = Karen National Union (Political wing of the Karen resistance); SPDC = State Peace and Development Council (Military dictatorship of Burma); DKBA = Democratic Kayin Buddhist Army (A puppet army of the SPDC); Baht = Name of Thai currency.


17.3 COMMENTARY ON KAREN DESTRUCTION

Three points need to be stressed about the above. Firstly, the information above expresses an extraordinarily comprehensive process of planned methodical destruction, which defies the categorizations produced by the limited, single stranded rationality of western legal concepts. You cannot divide these violations up into neat categories, or subcategories of Crimes against Humanity or specific defining Genocidal activities: they represent a woven tapestry of death. The following testimony from a Junta defector expresses this complex, confused tangle of violations in a single short testimony:

There was an offensive in Mawchi, Kayah State. When we entered a village there we shot all the villagers because we thought them our enemies. We took all their pigs and chickens, all the livestock, every usable piece of equipment and all household goods. Then we burnt the village. We took all women and raped them, and finally murdered them. (Images Asia: Aye Myinyt: December 1995).

The destruction of apparently minor items, e.g., thatching panels, sandals, cooking pots is as expressive of a policy of destruction of the civilian population, as the more extreme examples of killing. They express a clear intention to inflict conditions in which people cannot survive. In addition, the confiscation of land of subsistence farmers, with no other skills or form of income, is a form of permanent destruction, forcing the group to flee, and probably disintegrate in the long term.
17.4 THE SYSTEMATIC DESTRUCTION OF PADDY STOCKS AND PLUNDER OF RICE

This involves not just institutionalized, unjust procurement, as in the case of lowland Burma, or the provision of food well below a minimum needed in lowland areas where people have been forcibly concentrated, but massive, widespread, organized, systematic destruction of food, decade after decade, which intentionally leads to severe, widespread malnutrition and consequent preventable deaths. The fact that large scale, immediate, mass starvation is generally avoided is in spite of the Junta policies, not because of it.

This systematic destruction is not carried out against the predominantly Burman, civilian farming population where the purpose is not destroy the civilian groups, but redirect food supplies from civilians to the military. In lowland Burma, the Junta readily accepts some might possibly die as a result of its actions. In the ethnic areas, it ensures that ethnic victims will certainly die as a result of total destruction of the physical basis of life, including food. The distinction between possibly and certainly is crucially important in terms of law. Possibly would exclude genocide: inevitably, while certainly not in itself proof of genocide, would indicate a level of intentionality commensurate with it.

THE SYSTEMATIC DESTRUCTION OF CROPS IN THE FIELDS

This does not happen in lowland Burma. Every effort there is made to increase yields, even though the intention is to appropriate it from the farmers to provide export earnings to entrench and strengthen the Junta.

While I was in eastern ethnic Burma, it was harvest time and the villagers were being rounded up to beat down the rice crop with long bamboo canes, not to harvest the crop, but destroy it. Moreover, crops are often destroyed by the crime of omission—not letting the villagers out at key times so that crops rot, or are destroyed by animals.

17.5 THE SYTEMATIC DESTRUCTION OF ANIMALS

Again this does not appear to happen in lowland Burma. In the ethnic areas of eastern Burma, however, animals are destroyed relentlessly, both to feed the deliberately non-provisioned soldiers, and as a way of denying food and support to the ethnic villagers. Many of the dead animals are not eaten at all (see photograph), indicating that the prime intention is to inflict starvation, rather than feed soldiers. Moreover, some methods express seriously depraved, pathological behaviour: animals, such as buffalos have their eyes gauged out and are then left alive to wander and bellow in relentless pain. The intention appears to be to spread despair amongst the civilian population and contribute to serious mental and physical suffering.
17.6 SYSTEMATIC DESTRUCTION OF HOMES AND PLUNDER OF CONTENTS

The destruction and plunder of 2,500+ villages has not occurred in lowland civilian Burma. The intention behind the mass forced relocation programmes in lowland Burma seems to have been to strengthen political control of the population, and to facilitate "economic development", such as tourism, not to destroy the population as such. In lowland Burma, there is no mass destruction of all means of subsistence, 'just" forced displacement into conditions where little or nothing is provided. In the eastern ethnic areas, however, there is a clear intention to destroy the civilian population by actively wiping out the whole physical basis of life, including such apparently innocuous items as cooking pots and roofing leaves.

17.7 DIRECT KILLING

The direct killing of civilians, with some very important exceptions such as Depayin and the 1988 uprising, is not widely inflicted in lowland Burma, apart from exceptions such as the killing of delta Karen in 1991. In the ethnic areas it is well documented, routine and carried out not only in the free fire zones, but also even in the camps where people are forcibly concentrated.

17.8 RAPE AND SEXUAL VIOLENCE

Rape appears not to be carried out on a widespread or systematic basis in lowland Burma as it is in the eastern areas, (e.g. see Shan Women's Report "Licence to Rape," the Karen Women's Organisation's Report "Shattering Silences" and the Women's League of Burma's "Question of Impunity.") The involvement of army officers involved in gang rapes, mass rapes and rapes on military property, the denial of the crime and failure to suppress and punish perpetrators, suggests sexual violence is condoned and, possibly, an expression of policy. Moreover, consistent and numerous testimonies indicate a probable underlying intention to use forced, or coerced, impregnation as a method of inflicting biological genocide by imposing measures intended to prevent births within the group. This kind of widespread sexual violence appears not to occur in lowland Burma.
17.9 FORCED RELOCATION

Although forced relocation has been inflicted on the Burman population on a widespread, systematic scale, it is not now as widespread or systematic as the forced concentrations of ethnic populations into camps in eastern Burma, as evidenced by the existence of about 176 forced relocation camps. These camps differ in certain important respects from the relocation sites established in lowland Burma.

- Victims are selected on the basis of their ethnicity;
- People are *essentially detained* (UN Special Rapporteur, Rajsoomer Lallah, Myanmar : Report on Human Rights, Sept. 1998. para.52) in these camps, often only allowed in or out under special conditions with permits. This is not the case in lowland Burman relocation sites;
- Conditions in the camps are worse in that not only are the people victims of acts of omission, i.e. of not having minimal resources provided, but they are also victims of acts of commission e.g. Rape is a regular feature (Rajsoomer Lallah, ibid): people are murdered and some camps in Shan State have also been shelled by artillery, as have the Karen refugee camps in Thailand. The conditions in these camps express an intention to create conditions in which people cannot survive, differing from lowland Burma where it is accepted that people may possibly die as a result of gross negligence;
- Unlike in lowland Burma, the forced displacement is almost a continuous process sometimes involving, as the bar charts show, multiple displacements in a single year creating conditions which make life unsustainable in the long run.

17.10 FORCED LABOUR

Although certainly inflicted on Burman people on a widespread basis, ethnic people appear to be particularly targeted.

17.11 CONFISCATION OF LAND

This is carried out on a widespread, systematic scale, both in lowland Burma, and the ethnic areas. In ethnic areas, the effects mean that the very survival of ethnic groups is put at risk since as subsistence farmers their lives without land is unsustainable and there are few opportunities for employment. The amount of land confiscated has not been fully documented but these are some examples:

- In Mon State the army has recently confiscated 2000 acres of land from villagers in northern Ye township, a so called ceasefire area, for construction of artillery battalions and military bases. The army had already confiscated, without compensation, more than 100 acres of farmland in southern Ye, and 2,050 acres in northern Ye, in 2000-1 for military purposes.
• In Southern Shan State about 48,000 villagers have been forcibly relocated and lost their lands without compensation in a massive forced relocation of Wa from the north of the State to the south, (see maps on page 2 and 16 and list of villages into which the Wa were forcibly relocated pages 39-42).

• In Karenni State, 2,400 acres of paddy fields were confiscated in Demaso township alone. In Ngwe Daung town and Daw Lya Ku village 96.13 and 73.56 acres of farmland were confiscated. In 1998 on August 25 these villagers were ordered to give up a further 3,840 acres of farmland. (Karenni Farmers Union Statement, 01/98/1998)

Systematic, widespread land confiscation is encouraged in ethnic areas by the fact that rations and payment are often not made by the senior commanders in Rangoon, and troops in the field are thus on their own, encouraged and licensed, in effect, to take over land and grow cash crops for income. In contrast, troops in lowland Burma appear to be paid and fed. Land confiscation contributes to the destruction of ethnic groups in the following ways:

• It removes the physical basis of subsistence permanently from ethnic groups;
• It forces them to flee from the area because they cannot survive. Moreover, because they are subsistence farmers they find it very difficult to do alternative work;
• Those remaining are forced to work on slave labour projects often on their own confiscated land and endure conditions which lead to exhaustion, ill health and sometimes eventual slow death;
• The transferred, confiscated land is colonized by ethnic military Burmans and their families in population transfers modeled, according to Martin Smith, on the Israeli settlement system;
• Due to these population shifts, any future election will reflect a pro Burman/military way of thinking in such areas, rather than an ethnic/democratic one, thus increasing the possibility of eventual legitimization of the racist regime and its policies.

We need to distinguish between the land confiscation in lowland Burma from poor Burmans to military Burmans which, while depriving the former of the means of subsistence, does not threaten the existence of the ethnic Burman people as such: it is intended to divert resources away from the civilians to the military, the land, in effect, being stolen from poor Burmans by rich Burmans. The same policy, targeted against ethnic peoples, shifts the very basis of subsistence, land, permanently from one ethnic group to the Burman ethnic group, and is thus an important contribution to destroying the ethnic group's capacity to survive in the long term. The underlying intention is thus more than "mere" diversion of resources: it is diversion of resources with the underlying intention of creating conditions in which ethnic civilians lose their fundamental resource base, and are forced, at the very least, to become dispersed. They cease, ultimately, to be sustainable as distinct groups. Why else would the food and livestock of ethnic people be destroyed, rather than used and exploited as in lowland Burman Burma, but to render ethnic peoples' lives unsustainable?
17.12 DENIAL AND DESTRUCTION OF HEALTH SERVICES

As stated in the section on lowland Burma, Martin Smith has pointed out that:

_The Burmese government has for many years demonstrated a negligence that threatens the health- and indeed the lives-of many of its people._ (Martin Smith, "Fatal Silence," ch. 4, p.29).

However, while as a result of policy decisions, health services in lowland Burma are below minimum requirement, and thus may well be an expression of advertent negligence resulting in much _avoidable mortality_ (thus meeting the minimum intention level three required for a charge of a _Crime Against Humanity_), clinics, medicines and health workers are not, deliberately and specifically destroyed, as in the ethnic, internally displaced areas of eastern Burma. This indicates that whereas in the former there may be an acceptance that people may _possibly_ die as a result of policy (expressive of intent level 3), in the ethnic areas there is evidence of an intention to ensure people _will_ die, not just _inevitably_ as an unwanted side-effect (level 2), but as an intended policy objective (intention level 1).

The difference between the ethnic and Burman areas is that in lowland Burma minimum necessities may not be provided, whereas in ethnic areas where the internally displaced have escaped into free fire zones, they are actively destroyed. This is a fundamental difference in intention, expressive of a distinct and significant move from limited volition level 3, or 2 in the lowland context, to full volition and full cognition level 1 in the ethnic internally displaced areas.

The above needs, however, to be qualified. Health clinics are sometimes reportedly put up in ethnic minority and internally displaced areas. However, they do not usually include any medicines and are usually not manned by health personnel. Taken in conjunction with an active policy of destruction of clinics and medicines, and the non-provision of medicines in sites of forced concentration, we can infer that these clinics are probably established for cosmetic propaganda reasons only. Moreover, medicines provided by organizations such as UNICEF are, reportedly, stolen by officers and their containers filled with false or below standard substitutes. There has, however, been one report this year from a reliable source which states clinics are being set up in Karenni villages occupied by the army and that some medicines are being provided.

Nevertheless, the destruction of medicines and medical facilities, as opposed to their non-provision, is shown by the following two sets of examples: in the first, a number of health clinics were destroyed in 2002 as reported by the Trauma Care Foundation of Burma. (In this case names of villages and clinics have been withheld for security reasons but are available):  

1. _In May 2002, the SPDC made an offensive into the - district with the DKBA. The aim of the SPDC attack was to destroy Karen IDP villages, the Trauma Care Clinic - and other clinics (my underline) and ABSDF camps. On May 1 2002 two Karen villages near TCBF clinic were burned down by the SPDC. About 400 IDP’s, including a 2 year old baby, escaped to Thailand. One of the villagers, aged 42 years old stepped on a landmine, while escaping from Thailand on 3.5.02. He was saved and treated by a TCFB trained advanced medic, — and the victim was taken to - clinic. The TCFB supported Trauma Care clinic and the —Prosthosis workshop were burned down on 5 May 2002. . . On the 7 May, the SPDC continued burning down Karen villages along the Salween river, the ABSDF headquarters ABSDF’s Clinic and CFI clinic._
The SPDC planted about 50 (MMI-anti personnel landmines) after they burnt down villages, clinics and ABSDF camps.

COMMENTARY

These actions are expressive of intention level one, i.e., the perpetrators knew what they were doing and fully intended to cause the consequences of their actions. The health clinics were destroyed with the full knowledge and intention people would inevitably die as a result of such actions.

However, the definition of the perpetrators and victims' identity is particularly complex in the above example.

The actions were inflicted by the Burman dominated army destroying all forms of opposition to a centralised Burmanised State. It has, however, co-opted Karen Buddhists to help it inflict the policy. The DKBA is not, however, an independent army, but operates under the overall control of the Burman dominated army, inflicting a policy of Burmanisation on Christian, Animist, and Moslem Karen. However, in the above examples the DKBA and Burman dominated army destroy the health clinics of the Burman ABSDF (as well as the Christian Karen). We thus have Buddhist Karen and Burman military destroying Christian Karen and democratic Burmans by inflicting conditions in which they cannot survive through, amongst other things, the destruction of health clinics. Thus, we find ethnic democratic mostly Buddhist Burmans (ABSDF) victims of ethnic Buddhist Karen (DKBA).

The apparent complexity does not, however, undermine the underlying reality of two destructive paradigms continuously operating at the same time; the vertical axis expresses systematic destruction by a military dictatorship, with co-opted ethnic groups, of democratic forces; the horizontal axis expresses the systematic destruction of ethnic opposition forces by the Burman dominated army and co-opted ethnic groups, in this case the DKBA.

The following hospital /clinics were systematically destroyed by the SPDC and DKBA in Pa-an District, Karen State, (1998-2003).
17.13 DESTRUCTION OF HEALTH CLINICS

THE FOLLOWING IS REPORT ON THE DESTRUCTION OF THESE CLINICS IN PAAN DISTRICT KAREN STATE COMPILED BY KAREN RESEARCHERS

**Tarae Klar Clinic and Klee Po Klo Mobile clinic**

In 1998 attacked several villages that were Mae La Ah, Mae Keh, Mah Oo Pu, Tarae Klar, Kyi Poe Kee, Mae La Ah Kee and some others, forced over 2000 Karen hill tribe people to cross the border into Thailand. There were 9 villages were burned down by those attacks including 2 clinics. There were Tarae Klar clinic and Kle Po Klo clinic. The operation was called Aung Moe Hein military operation.

The Tarae Klar mobile clinic with the Tharae Klar village was burned down by those attacks. The clinic received the assistance from KNU-Health and Welfare Department and the medics from KNLA no. 22 Battalion 7 Brigade while are beneficial to those 12 villages with 400 families. The area is located 100 km north of Myawaddi (Opposite site of Maesot, Tak, Thailand) Thai-Burma border. The area is also called Takarae Township, Pa-an district. (In SPDC called Hlaing Bwe Township.)

**Kle Po Klo mobile clinic** also was attacked by the same military operation which came from the northern part. In the Klee Po Klo village, SPDC's reinforcement forces DKBA burned a church, a clinic and a pastor's house. The 2 clinic could access 20 people a day and more serious cases were sent to Mae Sot or referred to local Thai hospital by the arrangement of medics. The clinic is located 150 Km north of Myawaddi (Maesot) and 20 km inside Karen State. It's beneficial to all of the 3 villages, which were located nearby Klee Po Klo village.

While most of the women and children remained along the Thai River bank both day and night, many of the men returned during the day to their field and livestock in Burma. After two weeks, Thai officials asked the villagers to relocate to the Mae La Refugee camp. Unfortunately, Mae La camp is located away from this village's homes, fields, and livestock. Moreover, Mae La camp is very crowded and refugees are not allowed to venture outside of the camp to find work. For those reasons, the villagers, instead formed their own camp. In September 1998, these villagers moved to the border in Burma and formed an unofficial refugee camp called Mae La Po Hta.
Mae La Po Hta Camp and Mae La Po Hta Clinic

It was located just across the Moei River and in the Pa-an district of Burma. This meant that the camp was only two hours away from SPDC troops and that it was dangerous for villagers to venture too far from the camp because landmines were planted all around the area. The camp is located about 150 km north of Myawaddi just opposite the Thai village of No Boe in KNU (Karen National Union) area. In the beginning, Mae La Po Hta camp consisted of approximately 2000 internally displaced Karen people but the population gradually grew to over 4500 because the SPDC’s military troops still continue to raid and attack small village inside Burma. Because the Mae La Po Hta camp is inside Burma the camp is not eligible for support from major international Relief Organizations and only the Burmese Border Consortium (BBC) was able to provide salt and rice supplies.

The SPDC's violent attacks that drove over 4500 people to the Mae La Po Hta Camp also disrupted the limited health services that the former jungle communities were able to provide. The Mae La Po Hta clinic was able to heal 60 people daily in OPD and 12 people in IPD by the arrangement of their Karen Health and Welfare department and Dr. Cynthia Maung (Mae Tao Health Workers) provide health care to the camp. The literacy level of those people is quite low, believing in superstition may be quite strong and skills re essentially limited to basic agriculture needs.

Firstly the KHW and MHW workers could hardly try to increase the health status of those who originated from former jungle communities. Most of the babies died due to malnutrition and diseases such as Acute Respiratory Tract Infection and Gastroenteritis. Four of the women died of malaria, one woman died from severe Anemia and one woman died from post-morten hemorrhage. At least 15 women had their babies delivered by a TBA in each month. Anthony Parasi (NGO) provides the camp's water supply for drinking and cooking. However the water supply for sanitation is not provided.
Whatever it is, the Maternal and Child Health Program, Training of Traditional Birth Attendants (TBA’s) and education of parents concerning child health and nutrition were implemented by the arrangement of Dr. Cynthia, in 1999. Education facilities are provided by Asian Tribal Ministries (ATM) and various other non-government organizations. There are in fact 3 primary schools and all about 200 students, health care program staff also teaches people how to read and write the Karen language.

But the hope of the people who were involved in those programs to improve the health and educational condition were destroyed by SPDC’s another repeated attacks.

1/4/2000, 15:00 PM, the joint operation of Division 77, under control of no.772 Tactical Command, Lib-343, Lib-106, from the southern, under control of no.1 Strategically Command, Lib-8, Lib-339 from northern with the strength of DKBA both side, strategically attacked the Maela Po Hta Camp. All of their strength was nearly 1000 and burned down the camp. They set many landmines around the camp and left from the place.

By those attacks all the camps were destroyed and burned down and 1 villager from Noe Boe (Thailand) was killed while he came back to search for his lost of buffalo and another villager stepped on a SPDC’s landmine while he returned to search household goods.

All the villagers crossed the Moei River and stayed in the monastery (Noeboe) and St. Gabriel chapel. Then, Thai security asked the people to move from the riverbank to the abandoned seventh- Day Adventist Mission School in Mae U Su village after 4 days, until May 10, 2000. The people remained in Mae U Su village. Because Mae U Su is located near the river, many of the people feared that SPDC would cross into Thailand and attacked them. Thai security forces protected the village and the people were asked not to light candles or fires at night.
With over 4000 displaced people, there was no safe water supply and not enough toilet facilities. Space in Mae U Su was limited and many people had to make shelters in the fields with plastic covers. Some villagers relocated to other villager to live with friends or relatives. At that time those people were provided the medical assistance from the MSF and health workers of Mae Tao were already at the temporary camp. So, they could be provided emergency health care to the refugees.

In May 2000, Thai officials and the UNHCR decided that the people would be moved from Mae U Su to Mae La camp. This decision was then announced to the refugees. Not wanting to go to Mae La Camp which was far away from their home, many who had stayed in Mae U Su returned to the Burmese side by themselves, while other families scattered around neighboring villages in Thailand. On May 10, Thai officials and UNCHR with the assistance of BBC and KRC organized and escorted only 91 families (477) people from Mae U Su to Mae La camp. Over 3500 people were still scattered around. Thai officials announced that if people did not arrive at Mae La Camp by May 18, they would be arrested. Medics and KNU started locating the scattered villagers while the local Thai and Karen officials discussed how to handle the situation.

During this period, BBC did not provide rice to scattered people and many of the people sold everything they owned in order to avoid starving. The Thai district officer agreed to send rice to Mae La Camp but this rice was not to leave outside Mae La camp and was not able to reach the scattered villagers. After discussing with various officials for many times, it was decided to form a new camp on the Burmese border to be called Ler Per Herl Camp.

**Ler Per Herl Camp and Ler Per Herl Mobile Health Clinic**

On June 25, 2000, 1748 people were relocated to Ler Per Herl camp. BBC continued to provide emergency rice supplies to Ler Per Herl camp and donated funds were used to establish a safe water supply and to build a church and a monastery. The Mae Tao Clinic also continued to provide medical supplies and to fund the medic's basic living needs, purchase vegetable seeds and agricultural tools which were sent to the camp to assist the villagers in starting their own food supply and purchase a boat that camp could use in case of emergency evacuation situation.

So, the clinic was built and started to heal OPD (60) people daily and IPD 12 people always. The Ler Per Herl Camp relocated with Ler Per Herl, Klay Po Klo, Klay Moe Kee, Loh Lah Lay, Mae Kae, Kyi Po Kee and Mae La Ah Kee villager which were all about 305 families and 1707 population. It's located north 150km of Myawaddy (opposite site of Maesot) on the west bent of Moei River, Hlaing Bwe Township, Pak-an District.

According to the systematically planed strategy with strong intention to exterminate Karen people on July 9, 2000, SPDC began assaulted attacks again to the camp with their IB-81, and DKBA Mee Tauk, no-1 Battalion 999, strength all about 200 soldiers. July 9, 2000, Thai officials did not allow Ler Per Herl refugees to cross the Thai border but they had to allow them only on 9 July when the SPDC started their attack again. The SPDC burned the camp but it rained and all camp structures survived except for one part of the school and 3 houses were burned. On 12 July 2000, the refugees returned to Ler Per Herl Camp again when the situation calmed down to normal.
Another attack on 2001 rainy season, all the villagers crossed the river because of the information received that the SPDC will come to destroy again. On 28/8/2001, LIB-81 and LIB-6 and DKBA 555 Pah Dae attacked the camp but only 2 houses were burned because it was raining. Then the people tried to re-establish their communities while the health workers provide their service to their people in whatever situation that they had to face.

**Finalized extermination of SPDC’s well-planed** schemes.

The information received by the health workers was that the SPDC would come and destroy the camp again. 
25/12/2002, the health workers moved their clinic materials and all of the goods to Thai side and waited with the refuges for the time when their attack would start. 
26-27/12/2001, SPDC Launched mortar shells to the camp but they didn’t reach the camp because the camp was camped a distance away from their post. 
28/12/2001, there was fighting between the SPDC and DKBA combined troops and KNLA soldiers, who retreated and the SPDC's combined troops was able to enter the camp and burned down all the houses and the Ler Per Herl Clinic, a monastery, a school and a church. The troops were Division 66, under control of no. 663 tactical command, IB-1, led by Capt. Aung Myint and Capt. Thoung Mya Oo, and DKBA 999 led by Kya Inn and 555 Led by Pa Day. So, all the houses and Ler Per Herl Clinic, church, a school and a monastery were completely destroyed by the SPDC's systematic attacks on 03:00 PM, 28/12/2001.

**Freedom Hospital no.1**

The hospital was located 80 km north of Myawaddi (opposite site of Maesot, Tak, Thailand) and set on no, 7 Brigade headquarter in 1999. The hospital hopes to provide the health care for the Mapalee valley, which is inside 10 km west of the hospital. It gives much medical assistance to some people who live in Thailand nearby border and migrant workers who were living spread about in the farms of Thai farm owners. 
It was built by the assistance of CFI (Christian Freedom International) and with one operation room and established provided health care from February 1999. It accesses 20 inpatients and 20 OPD patients from Thee Wah Po, Nya Mu Po, Wah Klu Pu, Htee Wah Klee, Poe We, Thit Ner Oo Pwa, Day Law Tu. Most of the patients who are seriously injured or ill are accessed as inpatients or sent to Maesot Hospital (Thailand) according to their condition. It had TBA training from the trainees from Mapalee valley's villagers.
But the Freedom Hospital no.1 could not give its services to the poor Karen people for long because, on 14/4/1999, the SPDC military operation was made by Division no (33), no.-332 tactical command, with the strength of (6) Battalions which were LIB-116, LIB-119, LIB-120, LIB-310, IB-76 and IB-61 and DKBA (200) men led by Kya Inn 999, from northern and Cit Thu from southern part of no.7 Brigade, all about the strength of (1200) entered to attacked it, the Freedom Hospital no.1 was destroyed by heavy artillery shells from the SPDC's troops posted there. All the hospital's material, instruments and medicine were able to move safely in Thai side but the provision of medical assistance to the villagers was stopped.

**Htee Kae Clinic**

Htee Kae clinic is called after the name of Htee Kae IDP village. The villagers were relocated from Taw Oak, Htee Wah Klee, Htee Chara in Maepalee valley, Naung Hein, Baw Kong, Htee Swa, Inn Shee, Win Boat in Tanaicha township (SPDC called Myawaddi Township and some others places by the various kinds of oppression as forced labor, force relocation and atrocities.

The villagers relocated to the place have set up villagers all about 67 families. The Htee Kae clinic also id founded by the fund of CFI and established to give health care for those people who lined in the village and some people who live in Thailand nearby border and migrant workers who were living spread about in the farms of Thai farm owners.

In year 2000, the clinic also opened the Basic Medical Training Course with 20 trainees by the arrangement of KHWG and BMA. The clinic also provides material and Child health program (MCHP) and child immunization to the villagers.

On 12/4/2002. 8:00 am, the SPDC LIB-105 under control of no.77 Division, troops and DKBA 999, special Battalion lead by Kadone, all the combined strength about 300 men, rapidly arrived with 2 six wheels trucks and 2 ten wheels trucks, arrested some villagers who were cutting the bamboo poles to build a primary school in the jungle and commanded them to show the way to the village.

10:00 am, the combined troops (SPDC and DKBA) arrived the village, the fighting between them and KNLA guerrilla happened for a few minutes. Then the SPDC and DKBA entered into the village and looted household goods from houses and looted medical equipment medicine. Medical instrument and all the medic's trainees personal properties and goods. The property could cost 400000 Bahts.
Most of the villagers were away from village and the medic trainees and health workers also away, because they were celebrating the water festival somewhere. So, nobody died in the attack. The villagers and some health workers who remained in the village safely crossed the Moei River when they heard the sound of fighting. But all the things were destroyed or looted. 50 houses were burned down and one villagers stepped on a landmine while he tried to gather his house hole goods at night. They shot fowls and cooked at the hospital place. After that they took everything and arrested 6 peoples as hostages while they left the place but laid many landmines in the village area. So, the clinic health care for villagers and the Basic Medical Training Course were also destroyed for the village's suddenly disappeared.

**Pa Nwe Po Kee Mobile Health Clinic**

After the Htee Kae Clinic was destroyed, 10 families were moved to the Mae La refugees Camp. The remained families were spread out along the border as migrant workers an illegally stayed at the Thai bank. The villages called Kanansu, Noepadoh, Asee Hone, Tai Oh Kla which are located on the border line, east bank of Moei river and most migrant workers are illegal workers who work in the farms along the border of Thai farm owners. Some villagers stayed in the Pa Nwe Po Kee area as IDPs also.

So, the Pa Nwe Po Kee Clinic was set up on those area funded by CFI. It also the continued provision of medical assistance to Htee Kae Clinic. The clinic began to provide to supply on January, 2002, health assistance for 15 people OPD and 6 people IPDs. About 200 families around those villagers and IDPs places received much benefit from the clinic.

On 8/7/25002, the SPDC Division no.22, under control of no-221 tactical command, LIB-202 and DKBA 999 special Battalion, all about strength of 300 soldiers suddenly attacked those area and burned down the KNLA no. 101 Battalion's headquarter, and the Pa Nwe Po Kee Clinic was also burned down with the houses around those area.

Since there, the health care assistance provided by the clinic was destroyed by SPDC troops until now.

**Naw Ter Kee mobile health clinic**

The clinic is located 100 km inside from border line, 100 km south-east region of Hlaing Bwe Town, Pa-na district, Karen state. It's located in Ta Kreh township, Pa-an district while SPDC's under control is called Hlaing Bwe township, Pa-an district. It's formed of 8 medics who mobile around along the Pee Ta Ka and Noe Kwe village tracts while other 2 medics remained in the IPD clinic to heal any patents. The clinic effectively healed 14 villages, 735 families, 4770 population in those area. They are Naw Ter Kee village, Tha Waw Htaw Kaw, Koe Por Nwer Roe, Htee Wah Ker, Mow Po Wah, Tha War Ta Kaw, Hta Der Kick, Thawaw Koe, Kawtha Raw, Ta Ku Kraw, Naw Ter Hta, Naw Den, Hter Bu, Noe Kwee villages. The clinic also gave their service to IPD, 10 people always and 70 people OPD daily.
The people who are living in the area, primarily came from traditional background origination from agriculturally-based villages with 1 middle school and 2 primary schools but no clinic could be established. So the Naw Ter Kee mobile health clinic established in year 2000, and it was beneficially provided health care for those Karen people there. They could provide treatment of common diseases and minor injuries and give immunization for children under 5 years and prevention program.

On 28/10/2003, no 12 The Military Command Headquarter, under control of no.2 tactical command, LIB-545. LIB-547. LIB-549.LIB-230 and DKBA led by Pan War (100) men, all about 600 strength made a military operation and entered into the area where the clinic is located and completely destroyed the houses all around and the clinic at 6:10 am. The person who was responsible to burn to clinic was Maj. Kyaw Kyaw Oo, company commander of LIB-548 which was based in Nabu with the strength of DKBA Pan Wah, no.2 Battalion and no.4 Battalion of DKBA. So, there were no health case at the moment and those villagers consisting 4770 population could meat with problem for health care.

Remark: We can't take photo about the Naw Ter Kee Mobile Clinic because of the landmines that were set by SPDC.
<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Clinic/hospital</th>
<th>Date of destroyed</th>
<th>Location</th>
<th>Perpetrators</th>
<th>Number of patients that had been healed</th>
<th>Cost of destroyed materials</th>
<th>Kind of clinic</th>
<th>Place</th>
<th>Funded by</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tarae Klar Clinic</td>
<td>5/8/1998</td>
<td>100KM north of Myawa RDD</td>
<td>LIB-9, Divisionn(44)</td>
<td>999 led by Mee Tauk</td>
<td>20 people/day</td>
<td>30000</td>
<td>OP D</td>
<td>Takre Township, KNU Pa-an District</td>
<td>KHWG</td>
</tr>
<tr>
<td>2</td>
<td>Klah Po Klo Clinic</td>
<td>15/8/1998</td>
<td>150KM north of Myawa RDD, 20km</td>
<td>LIB-118, Division(44)</td>
<td>555 Pd Day</td>
<td>20 People/day</td>
<td>30000</td>
<td>IPD</td>
<td>Takre Township, KNU Pa-an District</td>
<td>KHWG</td>
</tr>
<tr>
<td>3</td>
<td>Mae La Po Hta Clinic</td>
<td>1/4/2000</td>
<td>150KM north of Myawa RDD</td>
<td>Under control of no.772 &amp; no. 1 Strategic Comman d</td>
<td>DKBA 999, Mee Tauk and 555 Pd Day</td>
<td>OPD60 people/day IPD 12 people always</td>
<td>evacua ted</td>
<td>OP D</td>
<td>Takre Township, KNU Pa-an District</td>
<td>KHWG &amp; MTHW</td>
</tr>
<tr>
<td>4</td>
<td>Ler Per Hehl Mobile Health Clinic</td>
<td>28/12/2001</td>
<td>40KM north of Maw Pokey</td>
<td>No.663, T actual comman d, IB-1 Division 66</td>
<td>Kya Inn led by his 555 &amp; 999 combi ned troops</td>
<td>OPD60 people/day IPD 12 people always</td>
<td>evacua ted</td>
<td>IPD</td>
<td>Takre Township, KNU Pa-an District</td>
<td>KHWG &amp; MTHW</td>
</tr>
<tr>
<td>5</td>
<td>Freedom Hospital no.1</td>
<td>28/12/2001</td>
<td>60KM north of Myawa RDD</td>
<td>Division 33, no. 332 Tactical comman d</td>
<td>999 led by Kya Inn from northe rn &amp; Chit Thu, Southe rn</td>
<td>OPD60 people/day IPD 12 people always</td>
<td>evacua ted</td>
<td>IPD</td>
<td>Takre Township, KNU Pa-an District</td>
<td>CFI</td>
</tr>
<tr>
<td>6</td>
<td>Hee Kae Health Clinic</td>
<td>13/4/2000</td>
<td>30KM north of Myawa RDD</td>
<td>Div.77/no. 771 Tactical Comman d, LIB-105</td>
<td><em>FILTERED</em></td>
<td>20 people/day IPD 5 people always</td>
<td>400,000 Baths</td>
<td>IPD</td>
<td>Tanaicha Township, KNU Pa-an District</td>
<td>NHEC &amp;CFI</td>
</tr>
<tr>
<td>7</td>
<td>Pa Nwe Po Kee Clinic</td>
<td>8/7/2000</td>
<td>20KM north of Myawa RDD</td>
<td>Division 22, LIB-202 and IB-97</td>
<td>999 Spl.bat talion</td>
<td>20 people/day IPD 5 people always</td>
<td>50,000 Baths</td>
<td>IPD</td>
<td>Tanaicha Township, KNU Pa-an District</td>
<td>CFI</td>
</tr>
<tr>
<td>8</td>
<td>Naw Ter Kee Mobile Health Clinic</td>
<td>28/10/2003</td>
<td>100KM south-east of</td>
<td>Maj. Kyaw Kyaw</td>
<td>999, no. 2&amp; 3</td>
<td>OPD70 people/day IPD 10 people</td>
<td>evacua ted</td>
<td>IPD</td>
<td>Tanaicha Township, KNU Pa-an District</td>
<td>CIDKP</td>
</tr>
</tbody>
</table>

The clinics / hospitals which were destroyed by SPDC and DKBA in Pa-an district
17.14 COMMENTARY ON DESTRUCTION OF CLINICS AND HOSPITALS IN PAAN DISTRICT

Firstly, the scale of provision of health facilities in Paan district indicates that the resistance cannot be dismissed as terrorists, or even insurgents: where Karen resistance forces had control of territory in the past, a systematic attempt was made to provide people with medical services.

Secondly, the destruction of health facilities in this area expresses a level of destruction which is systematic, manifest and widespread.

Thirdly, the destruction expresses a policy which fully intends to destroy health clinics as such. The destruction of clinics does not occur as an unintended by product of a counter insurgency campaign. The clinics are specifically selected for destruction. This destruction therefore expresses intent level one, i.e., full volition.

Fourthly, the destruction is carried out with full knowledge of the circumstances. The Junta and DKBA soldiers are fully aware of what they are doing when they destroy the clinics because they know they are clinics and know they are doing this as part of the wider policy of inflicting total destruction.

In conclusion, we can infer that the destruction of medical facilities is expressive of a Crime against Humanity both in terms of it being widespread and systematic. The destruction perpetrated in this one area is replicated throughout the ethnic resistance areas of eastern Burma, and has been going on for decades. Moreover, the destruction expresses a level of intention that goes well beyond that identified by Martin Smith in *Fatal Silence as Negligence*, when he was describing the effects of the Junta's general health policy. In addition, this intentional widespread and systematic destruction of health facilities is clearly far more serious than the non-provision of health facilities inflicted on the population of lowland Burma. This is a different order of crime characterized by a much higher level of culpable intentionality.

However, what is the real intention underlying the comprehensive, systematic destruction of health facilities? On the one hand, it can be argued that it is intended to destroy the resistance by denying them health facilities and supplies. However, comprehensive, systematic destruction of health facilities inevitably contributes to ethnic civilians dying. Martin Smith identified numbers dying in the border areas as about 10,000 people a year.
17.15 CONCLUSION ON THE LEGAL SIGNIFICANCE OF DESTRUCTION OF HEALTH CLINICS

The destruction of health facilities, and widespread sexual violence, express activities different in scale and intention from either the exploitation and subjugation inflicted on lowland Burma, or from the counter insurgency campaign known as The Four Cuts. The destruction of medical clinics and infliction of sexual violence are intended, we can infer, to destroy civilians, not armed resistance. The civilians are targets because of their ethnicity and where they are living. The actions described above, taken in conjunction with the policy of widespread, systematic destruction of all physical infrastructure, suggests genocidal activity 2(c) is occurring:

deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part.

The part in this case is the ethnic civilian Karen population of Paan district, itself part of the wider Karen population of eastern Karen State in which health facilities have been systematically destroyed.

(We must remember, again, that genocidal activity 2(c) requires no proof of result, only that an intention can be inferred from circumstantial evidence (ICTR) to destroy the group. Moreover, we must remember the fact that many ethnic civilians survive because of aid from Thailand, or because they escape into refugee camps in Thailand. Their survival is not, however, intended by the Junta; the fact that many survive cannot exculpate the Junta from responsibility for attempting this form of genocidal activity).

17.16 PLUNDER, EXTORTION AND ROBBERY

While in lowland Burma excessive taxation, extortion, confiscation and corruption exist on such a scale as to constitute massive State sponsored theft, in the ethnic areas violent, widespread, systematic plunder and destruction is the norm. In the former the intention is to steal from the civilian population to increase the power of the military officer class; in the latter it is not only to do that, but also to destroy the physical basis of life of the ethnic people.
17.17 IMPRISONMENT AND DEPRIVATION OF LIBERTY: CONTRASTING ETHNIC AND BURMAN EXPERIENCES

Surreally, there are no ethnic prisoners in the internally displaced areas of eastern Burma because generally outside agencies not allowed to go there to report on them. There are, therefore, according to conventional viewpoints, only about 1,500 political prisoners in Burma who are practically all Burmans. Such an understanding ignores, however, the existence of 352,000 mainly ethnic people, (deprived of their liberty, concentrated into the life threatening conditions of forced internment camps, and described by the former Special Rapporteur, Rajoomer Lallah Q.C. in his 1998 report, para. 52, as effectively detained,) as being worthy of consideration as prisoners.

However, the Crime Against Humanity of Imprisonment is also synonymous with the Crime Against Humanity of Severe Deprivation of Liberty: thus international law recognizes these people forcibly concentrated into camps as prisoners, even if Amnesty International and the International Committee of the Red Cross does not.

Although appalling and life-threatening relocation programmes have been inflicted in lowland Burma, the forced concentration and detaining of people into life threatening conditions in camps does not occur in the same way. Both groups may suffer the crime of Forcible Transfer of Population, but the underlying motive is different: Burmans may be forcibly transferred to develop tourism, and/or to remove potential political opposition, (triggering intent level 3, i.e., the possibility that people may die as a result of the actions); ethnic peoples are forcibly concentrated into camps simply because they are ethnic people, as part of an overall policy to destroy ethnic opposition by subjugation, exploitation and assimilation. This is expressive of intent level 1.

In addition to the 350,000+ people forcibly concentrated into camps, there are many ethnic people held not just in camps but in primitive, more restricted conditions, even worse than prisons, whose existence has been almost completely unrecorded until now. (See “Uncounted: political prisoners in Burma's ethnic areas: A Report,” by Burma Issues and Altsean-Burma, August 2003).
17.18 CONDITION OF ETHNIC PRISONERS IN INTERNALLY DISPLACED AREAS

The above report seeks to address the extraordinary, sustained, conscious disregard surrounding the existence and treatment of these ethnic prisoners in internally displaced areas:

... the repeated call for the release of political prisoners in Burma, make no reference to the thousands (my underline) of ethnic villagers who have been subjected to politically motivated arrest and detention, (ibid. p. 48)

It details 46 cases of ethnic prisoners.

It breaks down the cases as follows:

- 51% of cases included torture, including such activities as tying a man's penis round his neck in full view of villagers and, in another case, leaving someone else in a hole with red ants;
- 91% of cases involved arbitrary detention;
- 22% of victims were "extra judicially" (my inverted commas) killed;
- 40% were arbitrarily detained in a military base;
- 40% were detained in their village;
- places of detention included military bases, temples, chicken coops and holes in the ground.

Four points need to be made to distinguish the situation and fate of ethnic prisoners from the mainly Burman political prisoners:

- Numbers. There are probably thousands of ethnic prisoners compared to the one thousand five hundred mainly Burman political prisoners;
- Official non existence. They are unregistered, unrecorded and unvisited;
- Their fate is much worse than mainly Burman political prisoners. Although the latter are frequently tortured, it is much less likely that they are actually killed as in this sample, where no fewer than 22% of the ethnic prisoners have been killed.
- The very high death rate of ethnic prisoners echoes the reports of the fate of ethnic Karen prisoners in lowland prisons after the 1991 Bogolay massacres. Both illustrate a discriminatory intention not just to imprison and torture (the Burman experience), but to inflict life threatening conditions on ethnic victims.

The number should also include the 350,000+ forcibly concentrated into camps who have been described by the former Special Rapporteur as effectively detained.

The question has to be asked why have Human Rights organizations like Amnesty International, and world media colluded for years with the myth that there only about 1,500 Burman political prisoners? Reports on prisoners appear to be very seriously flawed: operating within the framework imposed by the Junta, agencies exclude the vast majority of prisoners from their consideration and, inadvertently, collude with the Junta's cover-up of what is going on in the eastern internally displaced areas. They accept the Junta's dictat not to go to the places of most severe suffering for "Security reasons," and thus, in effect, contribute to the denial of the existence of these hundreds of thousands of essentially detained people.
Internally displaced people deprived of their liberty, either in concentration camps, hiding in the jungle, or incarcerated in unofficial makeshift prisons, are victims of the Crime Against Humanity of Severe Deprivation of Liberty inflicted by a State imposing ideological hegemony. The fact that they are victims of a racial policy of Burmanisation, or that there may be a presence of armed resistance, in no way reduces their status as victims or prisoners. On the contrary, their ethnicity, being the principal grounds of their incarceration and torture, suggests genocidal activity triggering the principle of Universal Jurisdiction. If it does not, at least the scale and systematic nature of the activity expresses a number of Crimes against Humanity.

17.19 CONCLUSIONS ON ETHNIC AND BURMAN EXPERIENCES

Thus we can see that in this particular category of conditions of life being deliberately inflicted on the lowland Burma and the ethnic areas of the east, significant differences exist, particularly since in the ethnic areas crimes of commission, involving active destruction are more evident. Moreover, the scale of destruction and its systematic nature, is significantly worse in the ethnic areas.

The measures taken to destroy homes, food, medicines, land and all means of subsistence express an intention to destroy the internally displaced ethnic people as such. Moreover, the fact that the deliberate deprivation of food, medicine and clean water compounded by sexual violence, extortion and forced labour takes place in Junta controlled camps, leading to conditions which are life threatening, and which force the inmates to escape for their survival, indicate an underlying intention to destroy ethnic civilians particularly convincingly.

The conditions of life inside the camps, being below minimal conditions necessary for survival, destroy inmates slowly and go well beyond the requirements of a counterinsurgency campaign. The life threatening conditions in the camps, as opposed to outside the camps where outright destruction is inflicted, are mainly inflicted through the crime of omission. They thus appear to be non-violent. It was, however, to take into account this silent, slow, insidious method of destruction that the Genocide Convention defined genocide in article 2 (c):

Deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part.

Although the Genocide Convention does not require evidence of completion (i.e. actual numbers of people destroyed, only according to William Schabas, evidence of intent to create the conditions), to justify a charge of attempting genocide, or for two of the defining acts of committing genocide, it is clear that numbers of preventable deaths, including an infant mortality rate of nearly 30% and a high high maternal mortality rate; the selective and mass killing of ethnic people, and the 10,000 annual deaths resulting from the conditions inflicted in border areas, all express death rates much higher than in lowland Burma and the Thai refugee camps. We can infer, these conditions are likely to throw light on that inexplicable slump in birth rates of ethnic peoples identified by Martin Smith, and to the actual collapse in population levels in certain areas.
CHAPTER 18:
BIOLOGICAL GENOCIDE:
IMPOSING MEASURES INTENDED TO PREVENT
BIRTHS: BURMAN AND ETHNIC EXPERIENCES
18.1 DEFINITION OF BIOLOGICAL GENOCIDE

The genocidal activity of imposing measures intended to prevent births has been defined by the Rome Statute in Article 6 (d) as follows:

**Elements**

1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

In essence, biological genocide prevents the group from being able to reproduce within itself.

18.2 JUNTA EXPRESSION OF BIOLOGICAL GENOCIDE

An explicit expression of the Junta's way of thinking about sexual relations and national identity is expressed in its extraordinary attacks on Aung San Suu Kyi for having married a foreigner. The attacks go far beyond racist diatribe. She is accused of being a race destructionist, i.e. she is destroying her race by having children with a foreigner. In addition, the Junta's institutionalized racial attitudes to sexual union between different races is expressed in its 1998 law forbidding Burmese people from marrying foreigners, and in the requirement of Rohingyas to have a very expensive marriage licence to marry a non-Rohingyan.

Although the accusation against Suu Kyi is superficially ludicrous, the accusation is an alarming, but clear expression, of racist and sexist thinking likely to be sympathetic towards notions of biological genocide. Aung San Suu Kyi is being accused not just of betraying her country for having married a foreigner: she is accused of destroying her race because she had children with a foreigner, of being a "Race destructionist." In the mindset of the Junta, Aung San Suu Kyi, a biologically Burman woman, by having children with a foreigner, is destroying the race. It is not difficult to see that such a mindset's attitude to sexual relations between a Burman and a foreigner would be similar to how sexual relations between men and women of different races within Burma are viewed. If a Burman woman having children with a foreigner (even if she is the daughter of Burma's independence hero) is destroying the Burman race, then Burman men impregnating ethnic women, whether violently, coercively or "legally" through "marriage," are also race destructionists, but in this case possible agents of a State programme intended to reduce births within ethnic groups in order to inflict biological genocide.

The underlying intention behind this form of genocidal activity has a already been identified in the evidence section. The alleged "Top Secret" document expressed a policy to destroy the Shan race through sexual violence by inducing, coercing or forcing Shan women to give birth to Burman babies. The intention to prevent births within the group is explicitly described in the alleged document as an aggressive campaign to dilute racial blood by taking foreign women who are not Burman.

However, it is significant that the document refers not just to Shan women, but foreign women who are not Burman. The document describes other ethnic peoples as " Foreign," supporting ethnic peoples' belief that they are separate peoples from Burmans, thus implying the validity of their claims to statehood or autonomy. Foreign peoples are, by the very nature of the word, inhabitants of another State.
18.3 CONSISTENT TESTIMONIES ON BIOLOGICAL GENOCIDE

The document also refers to *Luring and possessing Shan and other foreign women*. This is clearly a widespread campaign of ethnic destruction intended not only to destroy the Shan's capacity to reproduce, but other nationalities as well. This belief has also been expressed by women from other ethnic nationalities:

*A Burmese soldier who is a private can be promoted to lance corporal if he marries an educated Chin woman. He can be promoted to be a sergeant clerk if he can marry a post-graduate Chin woman. He can be promoted to an even higher rank, a second lieutenant. Moreover, the soldiers forced their wives to practice Buddhism and if they are successful in doing that they can get an even higher rank. CINT, 199 "Gathering Strength," Images Asia, 2002.*

A similar story is told by a Kachin woman:

*The Burmese government is trying to wash out the Kachin. The government gives secret order to the Burmese [Burmans], rewarding them with money for marrying Kachin women. If you get them pregnant, you get a certain amount of reward, if you marry a chief’s daughter, you get a certain amount. There are different amounts also for educated women and "Ordinary" girls, (ibid)*

Another similar testimony is given by a Rakhine woman:

*The Burmese military are trying to implement their Burmanisation policy. They are trying to marry Rakhine women. I saw so many army men marrying Rakhine women. Many Rakhine women are speaking Burmese in the army camp. Their husbands want then to speak Burmese. Their children too. They don’t like to follow the Rakhine traditions. That is Burmanisation policy. There are many forced marriages too. They try to seduce Rakhine women, they marry them and force them to follow the Burmese traditions. Their children also claim that they are Burman, (ibid)*

The "Top Secret” policy document, we remember, advocates abandonment of women once they have given birth:

*Even if it should come about that we individuals, have permanently to abandon the Shan State, we must leave behind our own flesh and blood, our progeny, and those related to us.*

This encouragement of abandoning women is something frequently described by ethnic women and echoes the Top Secret document which encourages Burman men to impregnate Shan women even if you have to leave Shan State permanently and leave your progeny behind. The use of the word *permanently* is significant: it is (implicitly) simultaneously encouraging impregnation and abandonment to effect maximum biological, social and psychological destruction. As a Chin woman says:

*They don’t really love them, they don’t want to really marry them. They want to destroy and spoil our Chin women. So they stay with them, and then they leave and they leave these women behind in Chin state. A lot of people are left behind, a lot of soldiers leave just when the girls become pregnant. So they don’t really marry them, they get them pregnant and leave then behind,(ibid).*

Other Chin tell of the systematic targeting of Chin girls for marriage to Burmese soldiers. They are then put through military training and forced to fight Chin resistance fighters. *(Rhododendron, vol. 3, Dec 2000, interviews with refugees in Guam, p.17)*

The same stories are also told by the Karen and Karenni.

The selection of women victims for coerced sexual violence with the intention of impregnating them appears to be systematic: soldiers are not rewarded if they “marry” Burman women in the same way. Such behaviour appears intended to destroy the group as a
viable biological entity. In this case the sexual violence is intended to produce children as a means of destroying the group's ability to reproduce within itself. The result of this policy of destroying races through forced, or coercive, interbreeding (the scientific/animal connotations of the word are appropriate), whether it be through systematic or widespread rape, or subtler methods advocated in the Top Secret document, is a form of biological genocide. This is because in Burma, when births are registered, children take the nationality of their fathers, grow up speaking Burmese, and are classified as Burmans. The offspring, whether from rape, coerced relationships or forced marriages are Burman; moreover, those women who have given birth, are left socially ostracized by their traditional societies, their capacity to reproduce within their ethnic group effectively terminated. In addition, the traditional ethnic husbands of wives who have been violated by Burmans sometimes reject them: the women may thus not have children in the future.

The above form of alleged biological genocide appears not to be inflicted in lowland Burma areas on a widespread basis. Sexual violence may occur, even condoned sexual violence, but not with any intention of preventing Burmans from reproducing.

The above allegations of a racial policy to biologically assimilate non-Burmans appears also to include encouraging sexual relationships between non-Burman races in the belief that children from such inter racial marriages will conceive of themselves as Burmese, rather that non Burman.
CHAPTER VI

VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW:
GRAVE BREACHES OF THE GENEVA CONVENTIONS

19.1 CROSS BORDER ATTACKS ON REFUGEE CAMPS
Human Rights violations on the scale and duration of those inflicted by the Burmese military Junta can be characterised as a threat to International Peace and Security. UN Security Council Declaration of 12 February 1999 (S/PRST/1999/6) recognised that:

*Systematic violations of human rights and human needs of civilian populations in armed conflicts constitute a threat to international peace and security.*

Moreover, when these violations are additionally inflicted on defenceless refugees across an international frontier, the situation ceases to be an internal conflict and becomes international, thus triggering the application of The Geneva Conventions, particularly *grave breaches of the Geneva Conventions*, which the International Committee of the Red Cross has a particular responsibility to address.

*The Special Rapporteur is aware that, since 1995, the refugee camps along the border have been prone to attacks by troops allegedly supported by the Tatmadaw.* (Report on "Situation of Human Rights Myanmar", Rajsoomer Lallah, Q.C., July 1998, para.54)

The attacks on the refugee camps have been widespread. Several have been destroyed by being shelled, mortared and burnt down.

Moreover, their systematic destruction is shown by the involvement of both the DKBA and the Junta army, evidenced for example by:

### 19.2 INVOLVEMENT OF THE JUNTA AND DKBA IN CROSS BORDER ATTACKS

*In March 1998, a Tatmadaw message was intercepted which ordered the DKBA to attack Beh Klaw (Mae La) camp.* (Professor D. Ball, "Factionalism and ethnic insurgent organizations," Strategic and Defence Studies Centre, Australian National University, working paper 356, p. 22, pub. 2001)

### 19.3 INCITEMENT TO DESTROY CHRISTIANS

In addition, Martin Smith describes how the Junta played a role in inciting attacks across the international frontier and that the incitement involved specifically rousing hatred amongst Buddhist Karen against the Christian Karen living in refugee camps. State media, namely *The New Light Of Myanmar* and the military controlled radio station in Myawaddy, were instrumental in rousing and disseminating this hatred, expressive of Junta complicity in inciting religiously motivated criminal attacks on mainly Christian refugee camps across the border:

*In early 1995, the New Light of Myanmar carried a 33 part series of articles entitled, "Whither KNU", denigrating the Karen nationalist movement with a carefully woven mixture of fact and fiction. Most KNU soldiers are in fact Buddhists, but the main thrust of these articles was to accuse the KNU's President, Bo Mya, and Christian zealots within the KNU movement of plotting anti-Buddhist discrimination and atrocities. To ensure these allegations reached the widest possible audience, many of these reports were also carried on State radio (including the newly-inaugurated Myawaddy station of* 48
the Burmese armed forces or Tatmadaw) and in June 1995 they were reproduced in book form in both Burmese and English speaking versions.

The attempt to foster the Karen split took a further serious turn when the refugee population in Thailand also appeared to be targeted. Pamphlets and letters were circulated, in the name of the DKBO, in villages and Karen refugee camps along the Thai-Burma border, ordering all Buddhists among the refugees to return to Burma and threatening reprisals against any families who did not immediately move to a resettlement area . . .

"Those who still remain in the refugee camps will be considered as anti-Buddhist KNU and will be destroyed" (my underline) warned one widely circulated letter.

These threats were then followed by a campaign of crossborder raids by DKBO units, which are still continuing on official camps inside the Thai border in which at least 30 Karens or Thai nationals were killed and dozens of refugees were kidnapped back to Burma. In the process, three refugee camps were destroyed and several former KNU officials were taken prisoner (Martin Smith, pub. Article 19, "Fatal Silence," ch. 6, pp. 62, 63).

The careful intentional planned nature of this incitement is expressed in words like: carefully woven mixture of fact and fiction and the attempt to foster split; the seriousness of the underlying intent is evidenced by the incitement that the Christian leadership was plotting anti-Buddhist atrocities. The explicit intention is destruction (will be destroyed) and the underlying motive (victims selected on the grounds of being anti-Buddhist KNU) is outright, total, physical destruction of non Buddhists:

All those who still remain in the refugee camps will be considered as anti-Buddhist KNU and will be destroyed. (Quoted by Amnesty International, "Myanmar: No Place To Hide," London 1995, p 10).

The selection criteria for destruction is thus explicitly religious and one can deduce that the victim groups are Christians, Animists and Moslems, since these are the only non Buddhist Karen religious groups.

19.4 VICTIM GROUPS OF CROSS BORDER ATTACKS

This group of non Buddhist Karen in the refugee camps represent a distinct entity as defined by international law:

Geographically, they are a distinct entity in that they are physically isolated from both Burma and surrounding Thailand, not even being allowed out of the camps; Racially they are a distinct entity in that they are different from Thais and Burmans; In religious terms, the non-Buddhist Karen targeted for destruction in the refugee camps are distinct entities, different from Buddhist Karen, Burmans and Thais.
19.5 MOTIVE AND INTENT BEHIND THE ATTACKS ON THE REFUGEE CAMPS

The motivation of the attacks is the opposite of ethnic cleansing (violent expulsion of a group from a territory so that it can be taken over by one homogenous group). The motive is to force them back:

*We have attacked and razed the camps. If we did not do so, then the refugees would not return home. All will have to return* ("The Nation", Bangkok, 1 May 1995).

The question is why are they wanted back? Why is it so urgent to force them back that the Junta and DKBA carry out massive cross border attacks, risking international condemnation and threatening to kill all who remain on selective religious grounds? Professor Desmond Ball of the University of Canberra asserts that it is *to establish a civilian support base for the DKBA* (Working Paper 356, "Factionalism and ethnic insurgent organizations", p. 23), but that begs the question about what *the civilian support base* is needed for? Moreover, what actually is a *civilian support base*? On the basis of the evidence of the internally displaced people on the other side of the border, a *civilian support base* is an alarmingly bland euphemism for the deliberate subjugation and exploitation of hundreds of thousands of ethnic people in unsustainable conditions.

The refugees in the camps were faced with a choice between two forms of destruction: either remain in the camps and be destroyed directly, or be destroyed slowly and indirectly, by being forcibly deported into the unsustainable living conditions inside Burma from which they had previously fled.

19.6 LEGAL CONCEPTUALISATION OF THE ATTACKS ON REFUGEE CAMPS

The fact that the Junta and its DKBA proxy army did not succeed in fully inflicting their objectives cannot be used as an excuse for exculpating them from responsibility for attempting to carry out what was, in effect, acts of genocide against religious groups. The intention to destroy a distinct religious group(s) living within a distinct physical area (the border refugee camps) was there: they only failed because of the presence of the Thai army, and the concern of the International Community, factors beyond their control.

The attempt inflict genocide, as opposed to committing it, requires, we remember, no proof of result, only evidence that a *substantial step* (William Schabas, "Genocide in International Law," Rome Statute, Article 25) has been taken.

The destruction of a number of refugee camps; resulting in deaths, abductions and thousands of refugees made homeless; across an international frontier; by shelling, mortaring and invading by proxy armed groups and troops of a neighbouring State; involving premeditated attempts to kill medical workers and a systematic act of a gang rape of a medical worker; supported and publicly incited by a foreign State as part of the massive, widespread, systematic, long term racial policy known as Burmanisation; this destruction of the refugee camps and attempted forced violent repatriation of victims specifically selected on account of
their religion, in terms of scale, organization and target group, can be described as a significant contribution to a substantial step in the attempt to commit genocide against a substantial part of the non-Buddhist Karen ethnic group living in eastern Burma.

19.7 DETAILS OF THE ATTACKS ON THE REFUGEE CAMPS

Professor Ball of the University of Canberra described the attacks on the refugee camps as follows:

The DKBA units have no compunction against crossing the border into Thailand or attacking Thai citizens as well as Karen refugees on the orders of the Tatmadaw and on their own volition. According to the most authoritative account, DKBA groups made more than 150 violent incursions into Thailand in the period from February 1995 to April 1998 sometimes involving organized forces of over 100 soldiers and sometimes just handfuls of soldiers on looting expeditions resulting in at least 79 recorded deaths.

The first massive raids took place in February -May 1996, soon after the fall of Manerplaw and Kawmura and the flight of more than 10,000 new Karen refugees into Thailand. Several camps, including Shoklo, Kler Kho, Kler Thay Lu, Klay Mu Hta and Mae La (Beh Klaw) were completely or partially destroyed. DKBA leaders stated that the attacks would continue until all Karen refugees had returned to Burma. Some of the raids were motivated by revenge and a desire to capture or kill KNU/KNLA leaders who had also fled the camps. More generally they were intended to terrorise the refugees into returning to Burma in order to provide a civilian support base for the DKBA and to deny such a base for the KNLA; they were also intended to put pressure on Thai authorities to induce them to forcibly repatriate refugees.

The attacks ceased during the 1995 wet season, and when they resumed in late 1995 and 1996 they were much smaller and more concerned with looting and extortion. The SLORC was trying to negotiate a ceasefire with the KNU, and evidently thought this had more chance of getting refugees to return than destruction of camps.

In January 1997 the DKBA attacked Huay Kaloke and Huay Bone and some of Mae Lae and rendering more than 10,000 people homeless. These attacks each involved more than 100 DKBA and Tatmadaw troops in separate but simultaneous raids; they could not have been organized and the transportation of the troops and supplies arranged, without the direction of the SLORC.

In February -March 1998, three large camps were again attacked-Huay Kaloke, which was almost completely burned down again, Mae La, and, for the first time, Maw Ker. The attack on Mae La was supported by mortar fire from a Tatmadaw base across the border. These attacks seemed to have been designed mainly to persuade the Thai authorities that the Karen infighting was too unbearable and they should send the refugees back. ("Factionalism and Ethnic Insurgent Organisations", Working paper 356, Australian National University, Strategic and Defence Studies Centre).

Witnesses reported seeing Burmese army insignia and hearing Burmese being spoken by attackers as reported in the following article.

19.8 EYEWITNESS ACCOUNT
Richard Humphries described what he saw for the Japan Times, "Myanmar's Karen minority: an easy target in a borderless world" (April 22 1998) after an attack on Huay Kalok refugee camp on March 11 1996:

The devastation reminded me of World War Two photos of firebombed cities. Everywhere was white ash with patches of smouldering wood and cinders. A few half burned upright wooden posts remained here and there, giving the place a haunted look... on the way back I was shown all that was left of the small camp hospital- a microscope, melted in the fire. The instrument had been used to protect refugees from disease. It now seemed the attackers were at war with health care and recognised contagion as an ally.

19.9 SIGNIFICANCE OF SPECIFIC ATTACKS ON MEDICAL WORKERS AND EQUIPMENT INSIDE THE REFUGEE CAMPS

The attacks involved specific attempts to kill foreign health workers and destroy medical equipment and facilities. During the attack on Shoklo camp in January 1996 DKBO guerrillas demanded, Where are the foreign doctors? (Martin Smith, "Fatal Silence," p.64). Smith goes on to describe what then happened:

Dr. Francois Nosten and an Australian colleague, who run an internationally renowned malaria research programme supported by Mahidol University in Bangkok and Oxford University in the UK, narrowly escaped by hiding for the night in a bunker, but Dr. Nosten's malaria clinic and a nearby MSF hospital were looted of both medicines and equipment. Having failed in his attempt, the DKBO offered a 400 US dollars reward for help in the capture of any foreign aid worker (ibid).

This is legally significant. The deliberate selective targeting of health personnel and their facilities in a refugee camp, including in this case a world renowned malaria specialist, confirms reports of specific targeting of health personnel across the border, and expresses again an intention to destroy not just civilians as such, but to kill medical personnel and destroy medicines specifically. Medical personnel and equipment are specifically selected for destruction, it can be inferred, because of their capacity to sustain the life of ethnic refugees, especially as one of them is a world renowned malaria specialist in an area where malaria is a leading cause of death. Normally, foreigners in Thailand (as opposed to ethnic internally displaced Burma where they would be immediately targeted for destruction) would not be selected for killing. Moreover, the offer of a four hundred dollar award, an enormous sum in the context of rural Burma, indicated that the killing of doctors is an expression of serious policy, is premeditated and intentional. In addition, the MSF hospital and medical supplies in Shoklo refugee camp were looted.

The attacks on medical personnel continued later the same year when a Dutch malaria research worker was raped in the same refugee camp by five armed men identified by the Thais as soldiers from the Burmese 22 Light Infantry Division, stationed at Yebu on the opposite side of the border from the attack. ("The Bangkok Post," 11 April 1996, "The Nation," 14 April 1996.)

Here we have the gang rape of a foreign medical worker operating inside a refugee camp inside Thailand by uniformed soldiers of the Burmese army. What is this act and what is the intention underlying it? We can infer she was targeted on the grounds she was a woman, a medical worker and a foreigner. The violence was thus intended and not a spontaneous burst of repressed sexual energy, or an act intended to humiliate or punish. Sexual violence was intentionally used to abuse her, we can infer, because of her capacity to relieve suffering and save lives of those non Buddhist Karen refugees targeted for destruction in the refugee camps by the DKBA and their Junta Burmanising masters. The act was genocidal in that it was
intended to contribute to the destruction of the non Buddhist Karen refugee group, since the
destruction of skilled medical personnel and their supplies disproportionately contributes to
the destruction of the target victim group over and above that of other people. This can be the
only explanation for the intention as to why medical personnel and equipment were
selectively targeted in the camp for destruction, and, moreover, why they are generally
targeted for destruction throughout the internally displaced areas.

The premeditated attempt to kill a foreign doctor, Mr Nosten, and the systematic gang rape of
a foreign medical research worker in a refugee camp inside Thailand can in no way be
considered to be the acts of a counter insurgency campaign, or even the unintended abuses
resulting from such a campaign. They express a policy deliberately intended to destroy life by
eliminating doctors, medical personnel and supplies in order to inflict conditions in which the
group targeted for destruction, in this case the non- Buddhist Karen, cannot survive.
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DESTRUCTION OF DAW KAW VILLAGE,
KARENNI STATE:
AN INTEGRATED CASE STUDY
20.1 REASONS FOR CHOICE

This case study has been chosen for the following reasons:

It is one of the very few times that a direct attack on a village in Burma has been filmed and is thus of considerable historical and legal significance;
The raw video footage is available and can be seen on the accompanying film;
The camera man who took the footage (a medic present in the village during the attack) was, and is, available for interview, and has verbally contextualised and explained the film;
The attack integrates in a single incident a number of factors focused on separately elsewhere in the report.

However, the attack on the village was different from most attacks on ethnic villages in one important respect: firstly, there were ethnic Karenni resistance fighters present who, in this case, defeated the attacking Burmese army. This is why the footage shows captured Burmese soldiers at the end. However, the presence of resistance fighters in an attacked village is rare, and it is even more unusual for an attacking Burmese force to have been driven off. The attack is thus very atypical in this respect. However, the village was totally destroyed on the following day by an overwhelming Burmese force as normally occurs.
20.2 BACKGROUND TO THE ATTACK

The attack took place on February 12, 2000 around 5.30 p.m. on the village of Daw Kaw about ten minutes walk west of the larger village of Dawtcha, which is west of the Pong river, south west of the Karenni capital of Loikaw, and about one day's walk east of the town of Demaso.

Sketch map of Daw Kaw village
20.2 THE ATTACK ITSELF

On the morning of the day in question, a medical team from Thailand had arrived in the village with an escort of resistance fighters. (Typically, the village had no doctors or nurses, no health clinic and no medicines of any kind. Medicines, as in other parts of eastern Burma, are routinely looted or destroyed.)

The medical team had been providing assistance to the villagers at the school (B) when it was attacked by Light Infantry battalion 72 under the command of General Maung Maung Soe, accompanied by soldiers from the Karenni splinter group, the KNDP.

The Junta's soldiers attacked by firing mortars and small arms fire into the village and proceeded to enter the village down the street marked C. The woman seen fleeing from her house screaming was in the street D.

The Junta's soldiers meeting unexpected resistance retreated, but, in the course of attacking the village, they killed two villagers and eighteen houses were burnt down as a result of mortar fire. One junta soldier and two KNDP soldiers were captured, hence the ease with which the attacking forces were identified.

On the day following the attack, the Junta's forces returned, attacked and looted the village, killed villagers, and extorted money.
20.4 LEGAL ANALYSIS

The attack took place as part of the widespread and systematic attack on the civilian population of Karenni State, where approximately one third of the population had been forcibly displaced when the events occurred.

The intention of the attack was, apparently, to destroy the medical team and medicines being provided to the villagers. The attack was thus not a military attack aimed at destroying resistance forces; (if the Junta soldiers had known that an escort of 70 Karenni resistance fighters was present with the medical team the attack would not have occurred, as they numbered only about 40 in strength).

The attack was accompanied by indiscriminate small arms and mortar fire in which 18 houses were burnt to the ground and two villagers killed. These actions were clearly intended to kill villagers directly. By firing mortars and small arms fire into the village, the perpetrators clearly meant to engage in the action and knew the consequences (i.e., death and wounding would occur) in the normal course of events. The action clearly meets the criteria of level one, namely full intention and knowledge. The village was, moreover, totally destroyed on the following day.

The destruction of this village is one example of the destruction of about 2,500 other villages throughout eastern Burma.

The motivation for the attack, to destroy the medical services of the village, was part of a deliberate systematic policy to deliberately inflict conditions of life calculated to bring about the destruction of at least a very substantial part of the Karenni population by depriving them of minimum medical support necessary for survival. Evidence of genocidal intent is evident in this incident, because the intention was to destroy the medicines and medics who had come to provide basic assistance to the civilian population of the village. It was not to eliminate resistance fighters because their information was there were no resistance fighters present: it was to destroy the villagers by ensuring that no medicines or services would be available. That destruction can be seen as the implementation of the outright destruction of civilians which is an extension of the policy of cultural destruction and assimilation known as Burmanisation.
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WESTERN BURMA

21.1 INTRODUCTION
Although the situation in western Burma lies mainly beyond the scope of this Report, reference is now made to the plight of these groups because the violations inflicted on them are consistent with those inflicted on the minorities in the east. Moreover, they help to establish and confirm that the persecution of ethnic peoples is inflicted on a nationwide basis in a comprehensive and manifest pattern.
21.3 RELIGIOUS PERSECUTION OF THE CHIN

As stated, the case of Chin State, in the far west of the country, lies largely outside the scope of this report and it has not been possible to personally verify or double check the violations cited by the Chin Human Rights Group. However, the violations cited are numerous, and consistent with those cited by other ethnic peoples. The US Department of State's "International Religious Freedom Report on Burma" (2003) identified Burma as "A country of particular concern" and the persecution of Christians in Chin State provided specific evidence of this. Moreover, the case of Chin state confirms our understanding of the religious dimension of the persecution and Buddistization of religious minorities identified and described in the sections on Moslems and Christian Karen. The Chin are 85% Christian and they define themselves in terms of religion as well as ethnicity. The persecution of an ethnic minority overwhelmingly from one religion in which destruction and assimilation of that religion is an act of policy raises the question, as in the case of the religiously motivated attacks on the Karen refugee camps in Thailand, of whether destruction of religious, as well as ethnic, groups is being inflicted in Burma.

21.4 SELECTIVE KILLING OF CHIN

The Chin Human Rights Group Report on the Religious Persecution of Chin includes the following:

a) Selective killing of religious figures.

Rev. Luai Thang was found dead in a river on August 1993 with his arms broken and badly cut a few weeks after being beaten up by Junta troops. Pastor Zang Kho Let was reportedly tortured to death on August 2 1993. Headman Zang Kho Ngam and farmers Ngan Kham and Thasung Kho Lun were tortured to death. Zang Kho Ngam was buried alive.

21.5 INFLICTING MENTAL AND BODILY HARM ON THE CHIN

b) Causing serious bodily and mental harm

In addition to the Junta's general policy of providing cheap whisky (known as "army whiskey") to facilitate crimes, it is reportedly being used in Chin state to psychologically and physically destroy the population:

Chin State is a dry State in which alcohol is prohibited. The SPDC exploits this situation by bringing in large quantities of crude alcohol-industrial spirit or methylated spirits. They sell this, especially targeting the youths and young adults. This type of alcohol can be lethal, destroying the liver and the brain. The use of this dangerous, addictive substance is exploited by the SPDC to strike at the roots of Chin Christians: it is sold on Sunday mornings when the people would be going to Church. Instead, those who are hooked on alcohol become drunk and disorderly. Thus the use of alcohol is used to replace religious worship, weaken family solidarity and undermine cultural cohesion. It is designed to destroy the spirit and spirituality of the Chin people. (Baroness Cox of Queensbury, Introduction to CHRG, "Report on Religious Persecution," p.6)

We remember that the ICTR judged that this form of genocidal activity (2 b causing serious bodily and mental harm to the group) need not be permanent or irredeemable.
21.6 INFlicting INDIRECT DESTRUCTION ON CHIN

c) Deliberately Inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part.

About 60,000 Chins have fled into India as refugees from conditions in which they reportedly cannot survive in Chin State. (Chin Human Rights Group Report)

21.7 FORCIBLY TRANSFERRING CHIN CHILDREN

d) Forcibly transferring children of the group to another group

The report cites children being sent to monasteries in Rangoon to become novice Buddhists:

As recently as February 2003, five children between the age of 8 and 17 managed to run away from the monasteries in Rangoon to reunite with parents. They said they had been forced to become novice monks and to follow the teachings of the Buddha. (CHRG Report, p.10)

Testimony given by Rev. Dr. Cham Awi describes: Orphans and other children from poor family backgrounds in rural areas often targets for being converted to Buddhism. They are lured away from their parents under false pretences only to make them novice Buddhists. Chin Christians have for long time endured these kinds of injustices. (CHRG Report, p.42)

Such reports need to be seen in the context of selective forced or coerced recruitment of ethnic children into the army. The infliction of destruction through assimilation, we remember, rather than through outright destruction, is explicitly expressed in the Genocide Convention.

21.8 INFlicting BIOLOGICAL GENOCIDE ON CHIN

e) Imposing measures intended to reduce births within the group.

The report, in line with many others from ethnic areas, also accuses the Junta of a systematic policy of covert biological genocide designed to reduce the number of births within the group:

The regime also encourages Burman soldiers stationed in Chinland to marry Chin girls and to convert them to Buddhism, using rank and promotion as an incentive (ibid. p.134).
21.9 A POLICY OF COMPREHENSIVE PERSECUTION AND DESTRUCTION

The report includes an SPDC pamphlet outlining a comprehensive policy of destruction:

*Missionaries, Honourable Monks, Cleansing Organisation The facts to attack Christians*

1. To attack Christian families and the progress of Christians.
2. To criticize against the sermons which are broadcast from Manila, Philippines.
3. To criticize God as narrow minded and egotistical who himself claimed that “There was no god except eternal God”.
4. To be against corrupted youth and inappropriate fashion.
5. To criticize the teaching of Christians wherever it has penetrated.
6. To criticize Christianity by means of pointing out its delicacy and weakness.
7. To stop the spread of the Christian movement in rural areas.
8. To criticize by means of pointing out it is not salvation but purchased by blood.
9. To counterattack by means of pointing out Christianity’s weakness and overcome this with Buddhism.
10. To counter the Bible after thorough study.
11. To criticize that “God loves only Israel but not all races.”
12. To point out ambiguity between the two testaments.
13. To criticize on the point that Christianity is partisan.
14. To criticise Christianity’s concept of the Creator and compare it with scientific concept.
15. To study and access the amount given to offerings.
16. To criticize the Holy spirit after thorough study.
17. To attack Christians by means both of non violence and violence.

21.10 LEGAL ANALYSIS

As so often when trying to understand how the above activities and pamphlet can be conceptualised legally, the answer appears to lie somewhere between Persecution and Genocide. The measures are clearly intended to weaken the religious group and as such suggest the Crime against Humanity of Persecution. However, the activity described in item 17 expresses intentional physical destruction of a religious group, a genocidal activity. Moreover, forcibly changing religious identity can be understood as inflicting serious mental harm, and the forced conversion of children an expression of the forcible transfer of children.
21.11 WESTERN BURMA: THE CASE OF THE ROHINGYAS

The Rohingyas are found mainly in northern Rakhine State.

20.12 ROHINGYAS AND INSTITUTIONALISED PERSECUTION

They are both an ethnic and a religious group and are, as such, protected by The Genocide Convention. As stated in the section on policy, they are victims of institutionalised persecution by virtue of the fact they have been rendered stateless by Burma's 1982 Citizenship laws. Within this overall framework of institutionalised persecution They suffer discrimination on the basis of their ethnicity. (Amnesty International, "The Rohingya Minority: Fundamental Rights Denied", 2004)

21.12 METHODS OF PERSECUTION

The Report describes the persecution taking the following forms:

• Subjection to very severe restrictions on travel to the point that it becomes difficult for them to find work, trade or get medical treatment;
• Confiscation of land;
• Forced labour, often on their own confiscated land;
• Forced evictions;
• Extortion;
• Relentless taxation.

21.13 EFFECTS OF PERSECUTION

Although these are violations suffered by many ethnic groups, they are, in the case of the Rohingyas, inflicted with a thoroughness and relentlessness which makes their synergistic effects unusually destructive. They have resulted in two exoduses from the country, one in 1978 involving 200,000 people, and one in 1991-2 involving 250,000 people. Their desperation is expressed by the fact that they fled into one of the poorest countries on earth, Bangladesh, only to be coercively forced back into Burma with the connivance of the UNHCR.

21.14 ECONOMIC PERSECUTION

The Amnesty Report concluded that this level of Persecution has resulted in conditions which are not just psychologically damaging, but physically weakening as well:

The combination of all these practices makes it impossible for Rohingyas to enjoy their right to an adequate standard of living (ibid, p.16).

The judgement that the combined measures inflicted may result in an inadequate standard of living may understake the destructive effects, and fail to address the level of intention underlying the persecution and motives for it. The Report itself includes testimony of a man whose son died directly as a result of the punitive travel restrictions which permit day labourers to work for only 8 days in a month. This suggests a deliberately inflicted poverty level well below that normally understood to be an inadequate standard of living.
21.15 INFERRED BIOLOGICAL PERSECUTION

It is, however, the particular policy of imposing very heavy taxes on those wishing to get married that suggests there is something more sinister at work than extortion and persecution.

In recent years, particularly during 2003, the authorities have begun to demand large amounts of money from people who ask permission to get married. The authorities also appear to have limited the number of permissions given each year. In some cases people have had to wait three years to get permission, even after paying large sums of money, and they had to go to the NaSaKa camp several times to get it.

In general, most Rohingya couples must pay a substantial amount of money to the NaSaKa varying from 50,000 kyat to 300,000 kyat. Usually the bride and groom must pay the same amount of money. After payment, permission is not always given. This restriction is especially serious for poor people, who are unable to obtain such large amounts of money. Amnesty International received credible reports that in some villages there have been no marriages at all during the year because of this restriction.

In the cases cited below all the couples were over the age of 18. (ibid, pp.15,16)

A number of points can be deduced from the above violations:

• Firstly, this is not arbitrary corruption, but State policy. The victims have to go to a State military camp under the direct military command of Western Military Command headquarters in Sittwe to get permission to marry and also pay bribes to gain this permission;
• Secondly, its motive appears more than extortion. The fact that permission to marry is not always given even after the payment of large bribes suggests the policy is intended to actually prevent marriages within the Rohingya ethnic group;
• Thirdly, the amount of the bribe required effectively excludes ordinary Rohingya from getting married;
• Fourthly, State policy, especially land confiscation, has reduced over half their population to the status of desperately poor day labourers, making payment of such bribes impossible;
• Fifthly, preventing marriage between traditional Muslim people will result in them not having children because such people do not have children out of wedlock.

We can justifiably infer that a policy intended to make it very difficult to get married in such a traditional religious ethnic community may also contribute to lowering birth rates and thus indirectly contribute to preventing births within the group. (2d)
21.16 WESTERN BURMA: THE CASE OF THE NAGAS

SAGAING DIVISION
21.17 INTRODUCTION

The Nagas inhabit a remote region in the north west of the country. Many of them are Christians. They are thus a protected group in two senses. They suffer the usual violations inflicted on the ethnic peoples of Burma such as:

- Forced labour on roads, dams, military bases and pagoda building;
- Extortion;
- Persecution.

However the level of persecution raises questions again as to whether what is being inflicted is intended to physically destroy this religious, ethnic group, rather than just subjugate them.

21.18 FORCED CONSCRIPTION

Forced conscription into the army appears to specifically target ethnic Nagas, including children:

Encouraging young boys to attend the Ye Nyunt schools is another way that the military enlists people into the army. Ye Nyunt centres are basically military-sponsored boarding schools set up to channel children and adolescents into the army. Many children are orphans. In Sagaing Division there are two Ye Nyunt schools, one in Khamti and one in Kalaymo. Each year students who fail their exams in the Ye Nyunt schools have to join the Tatmadaw. ("All Quiet on the Western Front", Images Asia, Jan. 1998)

This, in effect, suggests forced or coerced transfer of children from an ethnic group into the Burmanised, Burmanising army. While the suffering inflicted may be no worse than that inflicted on Burman children, its effect is to contribute to the destruction of ethnic identity through forced assimilation, consonant with the definition of Genocide 2(e):

forcibly transferring children from the group to another group

That ethnic Naga appear to be specifically targeted for forced conscription into the army as evidenced by the following order taken from the Naga hills (ibid):

Stamp Date: 23-10-95

No. 3 Company

To: Chairman/Secretary

Xxx village

Subject: To send new recruits immediately

Regarding the above subject, we have been repeatedly instructed by the Strategic Command that your village send new recruits according the quota set by Township LORC. You, village LORCs must co-ordinate quickly, get new recruits by any means and send them immediately.

Therefore, any village which cannot provide new recruits must hire them and send them. The recruits to be hired must be Naga nationals. This order must be carried out and co-ordinated among the Village LORCs in order to send them by November 10 to Laeshi camp. I inform you that if you fail, it will be your responsibility, [sd] No.3 Company
The allegations that ethnic peoples are targeted for forced recruitment and put into the front line in combat are numerous and consistent and confirmed by UN General Assembly Resolutions. For example, Shan News, September 14, 2004, carried a report from a Lahu source asserting that Lahu villagers are being forcibly recruited and put into the front line.

21.19 INFLICTION OF DRUGS:
CAUSING SERIOUS MENTAL AND BODILY HARM

The Persecution of the Nagas is exacerbated by the role of drugs in the area. The Images Asia Report asserts that, as elsewhere in Burma,

_There are persistent reports from throughout Chin State and Sagaing division of authorities' collusion in both production and transportation of opium and heroin._ (ibid, p.60)

This involvement by the Junta can be either direct or indirect:

_Currently in confined areas there are two major types of growers in the north-west: small local growers, who must pay hefty fines to the local authorities to continue their operations, and growers who tend more extended fields, often commandeered and controlled by the authorities for profit._ (ibid, p.59)

The Report also points out that:

_Authorities responsible for small scale eradication programs in Chin State are generally corrupt and wilfully ineffective_ (ibid, p.58)

The use of the adverb, _wilfully_, expresses intentional involvement.

This complicity in drugs locally is replicated throughout Burma:

_Since the SLORC seized power in 1988, the production of opium from which heroin is refined, has risen to over 2,030 metric tons annually, amounting to 60% of the world's supply according to the United States General accounting Office/National Security and Internal Affairs Division, "Drug Control: US Heroin Program Encounters Many Obstacles in Southeast Asia" (GAO/NSIA-96-83) March 1996, p.3)

21.20 JUNTA CULPABILITY

It is inconceivable that a state with a pervasive Military Intelligence capable of penetrating all spheres of life is not complicit with a drug trafficking operation responsible for supplying 60% of the world's market. The recent resignation of Major Zaw Win, deputy head of the Military Intelligence, and the demise of Khin Nyunt, in connection with a major drug find in the Andaman sea, suggests how institutionalised this involvement is.
Institutionalised complicity in the drug trade on such a scale, not a few rotten apples as the UN would have us believe, with large numbers of victims suffering directly from its effects, and from resultant AIDS, suggests the Junta either intends to inflict severe mental and physical harm on these groups, or, at least, accepts that suffering and death will inevitably occur as a result of its activities. The former suggests, if deliberately inflicted on ethnic peoples, the crime of genocide\(^2\) (b):

*inflicting severe mental and physical suffering.*

Such an activity could also be considered to be the *Crime against Humanity of inflicting inhumane acts* (Article 7 (1) (k):

*The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.*
CHAPTER 22:
CARTOGRAPHICAL CLEANSING
22.0 CARTOGRAPHICAL CLEANSING

The maps of Burma have changed and become Burmanised. State names have been changed to remove any association between States and their indigenous people; some towns and villages appear to have simply been erased, while others have been expanded.

Maps reflect demographic changes which naturally occur naturally all over the world. What raises concern in Burma's case is that the changes may be occurring along ethnic lines and may express the results of decades of violations. For example, many Karen villages and communities appear to have been removed from modern maps of the Delta, while small Burman settlements have been included and expanded. Some local Karen from the Delta no longer recognise the new Junta maps I have shown them. The issue is, however, complicated by the fact that map reading is not a common skill for Burmese people, something compounded by the lack of language skills.

22.1 INTERPRETATIONS OF MAP CHANGES

There are three ways we can interpret these map changes: the Junta is just covering up, or erasing from public view, the real nature of ethnic nationality populations in order to exaggerate its own sense of Burman numerical superiority. In this scenario the ethnic people still exist in reality; another possibility is the people have indeed been forced to flee, and the maps are simply expressing an objective reality; or, alternatively, the maps are expressing the fact that ethnic communities have remained in the areas, but have become assimilated. The new Delta maps, for example, do not appear to display Karen villages in precisely those areas where most people were killed, or forcibly relocated, in and after 1991.

22.2 SIGNIFICANCE OF CARTOGRAPHICAL CHANGES

The Junta maps may provide objective evidence of the physical destruction of substantial parts of ethnic peoples. In short, cartographical cleansing may reflect ethnic cleansing.

However, very unfortunately, a detailed study of the issue, comparing and contrasting the old British maps with the modern Burman ones, has not been possible during the course of writing this report, because of the difficulty of getting access to the older maps. It is hoped that this important work can be completed in the future.
23. **THAI POLICY**

In general, Thai policy has changed from one of ambivalence to active suppression of the Burmese democracy movement.

23.1 **THAI ACTIONS**

- Stigmatizing and scapegoating the refugees as job stealers, drug traffickers, disease carriers, and threats to national security;
- Criticising the UNHCR for providing refugees at risk with letters of personal concern, despite the fact that forced repatriation of refugees has led to some of them being killed, raped, tortured and imprisoned in the past;
- Strongly criticising the UN Human Rights Commissioner responsible for defending human rights activists;
- Facilitating the so-called Bangkok process, something which appears designed to legitimize the present Junta and invalidate the 1990 election;
- Suppressing democracy activists.

**THE ATTACKS ON REFUGEE CAMPS**

Allegations have been made about a lack of adequate protection during the attack on March 10, 1998 on Huay Kaloke refugee camp. Reportedly,

- Thai soldiers supposed to guard the gate on the west side of the camp had left;
- Attacks came from the east side opposite Burma so if the trucks had come from Burma they would have had to have driven along the paved road all the way round the outside of the camp, then across fields to arrive on the camp's west side;
- There appears to be a consistent pattern of lack of protection by the Thai authorities suggestive of acts of omission: reports suggest there was no effective resistance by Thai forces, who abandoned their checkpoints and withdrew from camps well before the attacks;
- Thai authorities have given credence to Junta denials of their involvement in attacks on the refugee camps despite evidence to the contrary.

**THAI COLLUSION AND FORCED REPATRIATION**
In addition to failing to protect refugee camps, it appears there has been active involvement in forced repatriation by certain sections of the Thai army. The following is taken from the Karen Human Rights Group Report "Suffering in Silence".

The 1997 military operation in the area of our village is [was] being conducted by Div.44, LIB 81, using about 1000 troops commanded by Win Nyunt. We left, which is near the border on March 30. We had to sleep for three nights before we arrived in Thailand. We left because the Burma army troops arrested and interrogated people, tortured them and forced people to serve as porters and guides. Because of all these oppressions we fled. Many villagers were in abject misery at the time we left, as they had no time to do any other work than that imposed upon them by the troops. The villagers of,-,-, and - villages had to provide them with labour and bullock carts for roadworks.

The Burma army soldiers shot and ate livestock such as buffaloes, cows and pigs belonging to the villagers at random and as they pleased. They also confiscated rice and carried it elsewhere, as well as the villagers belongings, which they sold, making a lot of problems for villagers.

The Thai military authorities forcibly repatriated 1000 refugees who entered Thailand. (Approximately 2000 people fleeing the Burma army offensive in Kya-Inn Kyoi Township entered Umphang District of Thailand. They were denied entry to refugee camps in the area and on the 15 November troops of the Thai Army 3 division carried out a pre-dawn raid on a temporary site housing about 1000 of the number, forcing them back into Burma. Most of the people scattered throughout the jungle and returned to Thailand in small groups, however some reportedly were located by the Burma army and forced back to low-land areas.) While the refugees were leaving the camp at Lay Htaw Khoh village, the Thai soldiers burnt up all of the rice stored in the bin there. It seems like the Thai army and Burma army have some sort of understanding between them. While the Thai army evicted the refugees, the Burma army were waiting in the direction they were fleeing.

The above suggests active involvement, rather than mere negligence.

23.2 ACTS OF OMISSION
We remember that acts of omission, if deliberate and leading to life threatening conditions, are serious violations of international law.

*The actus reus of an offence may be either an act of commission or omission* (William Schabas, "Genocide in International Law," CUP, p. 156). He provides an example from the ICTR in its Kambanda judgement where the perpetrator failed to protect an orphanage from attack:

Jean Kambanda acknowledges that on 3 May 1994, he was personally asked to take steps to protect children who had survived the massacre at a hospital and did not respond. On the same day, after the meeting, the children were killed. He acknowledges that he failed in his duty to ensure the safety of the children and then population of Rwanda.

Additionally, the ICTY found in its Prosecutor v Kovacevic and Drljaca Case (No IT-97 —24, 13 March 1997) that the accused did *By their omissions, commit genocide.*
23.3 ISSUE OF DEVELOPMENT INDUCED DISPLACEMENT

A number of major dams and development projects are now proposed located on the Salween river in areas of internal displacement. And close to the border. Significantly, the dam sites are inhabited by ethnic nationalities where there is still limited armed resistance, e.g., central Shan state, and northern Karen State.
Potential Dam Sites on the Salween River

The dams will probably be built with forced labor, flood vast areas of ethnic States permanently, and make it very much more difficult for resistance forces to travel and operate. Moreover, their building would involve roads and other infrastructure leading to further colonization and militarization by ethnic Burmans. The dams would thus make a major contribution to the destruction of ethnic peoples under the guise of development. For example:

- the dictatorship would accrue revenue through taxation to further fund its military stranglehold;
- ethnic people would probably be forced to provide the slave labour;
- future resistance in the areas affected would become even more difficult;
- the areas would become colonized by ethnic Burmans and their families, brought in to facilitate the "Development".
So far the dam proposed in central Shan State is in the most advanced form of development. According to Earth Rights International the Tasang dam (see map) would be likely to generate a capacity of at least 3,300 megawatts at a cost of at least 3 billion US dollars. It would be the tallest dam in South East Asia, being at least 188 metres high. The flood area caused by the dam would cover at least 640 square kilometers.

The dams in Karen and southern Karenni States on the Thai border will likewise flood vast areas of land in ethnic areas and make it difficult for resistance forces to cross.

23.4 CONCLUSION

The Thai policy of initiating projects in current conditions may contribute to further displacement and subjugation of ethnic peoples, rather than providing them with a beneficial form of development.
THE THREAT TO INTERNATIONAL PEACE AND SECURITY
24.1 INTRODUCTION

Human rights violations of a certain gravity and scale are now understood to threaten the peace and security of mankind. Crimes against humanity and Genocide thus require an international response to suppress and punish them not just to protect victims, but to protect the international order which depends on respect for these fundamentals of law. The Burmese Junta may represent a threat to international peace and security for the following reasons:

24.2 VIOLATION OF INTERNATIONAL LAW

In addition to violations inflicted on its own people, the junta's actions may represent a threat to international peace.

24.3 THE ARMED THREAT

Although the United Nations accepts that there is a connection between widespread and systematic human rights violations and threats to international peace and security, there are signs that this threat in Burma's case may not be just in terms of violative conduct against its own people, but against it neighbours, particularly Thailand. Burma's arms build up is far in excess of what is needed for limited counter insurgency operations; warfare has become an institutionalized way of life. In particular, there have been allegations of a military connection with North Korea. A report cited the Junta is considering buying missiles from North Korea with a weapons of mass destruction capability in exchange for drugs, rice and teak. (See "UN Wire Report," Burmanet, April 9, 2004). Other Reports cite North Korean planes landing regularly in Magwe division. Burma is also reported to be buying a nuclear reactor from Russia. The US Senate Foreign Relations Committee has expressed serious concern over the situation and monitors the situation.
24.4 INTERNATIONAL CHEMICAL WARFARE TRAINING

The following intercept is an example of the recruitment of officers to participate in chemical warfare training abroad.

"Tx  HQ Intelligence Service, Rangoon  22.08.2002  20.02
Rx  Myitikyina, Kutkai, Muse, Laokai, Taunggyi, Keng Tung, Tha Chilek, Moulmein, Kawthaung, Myawadi, Maungdaw. For officers ranking Major upward.

1. All officers and civilian who has been selected for chemistry study in foreign country. Need verification of personal record, family record inclusive their relatives. Send all detail to the HQ Intelligence Service not later than 30/08.2002.
2. Additional record to be verified.
   A. Personal record of the selected person and their brothers, sisters.
   B. Personal record of the parents and their brother, sisters.
   C. Record of their wives and wives brothers, sisters.
   D. Record of wife’s parents and brothers, sister of wife’s parents.

COMMENTARY

It is reasonable to infer that this is not just training in chemistry. The invitation comes from HQ Intelligence in Rangoon and is addressed only to officers of the rank of Major and above. This is therefore a serious military initiative activated by policy makers operating at the highest level. The "chemistry training" invitation originates from Military Intelligence HQ, formerly headed by Khin Nyunt.

The vetting procedure is extraordinarily extensive, even by the standards of a paranoid military State. Even the sisters of wives’ parents must be vetted. This secrecy suggests the initiative is extremely sensitive.

The training is to be conducted in "a foreign country." Given that the training in Nuclear Physics is being carried out in Russia; that China is a major arms supplier, and that links have been established with North Korea, it is reasonable to assume that it is likely to be carried out in one of those countries.

Given the large number of military bases to which the message has been sent, it would appear that this is an initiative of some seriousness involving considerable resources of the State.

The significance of the message is that it confirms a probable chemical warfare programme; that this programme is likely to be sophisticated, training being provided in a foreign country, and that accusations by victims of chemical warfare will have to be taken seriously.

In Burma's case, with its history of widespread and systematic human rights violations, and its specific targeting of ethnic peoples, the issue of a chemical warfare capability becomes one of the utmost gravity, since it is likely that such a form of warfare would be used to inflict further violations on ethnic peoples. Moreover, we already know chemical weapons were probably used in the attack on the Karen community in Bogolay township in 1991. In another attack, the chemical 24, D (used at four times its permitted concentration and tested by Thai Office of Narcotics Control Board laboratory) was sprayed over a wide area of Shan State, leading to deaths, and the destruction of crops and animals.
24.5 THREAT TO THAILAND

Despite the apparent targeting of ethnic peoples for this kind of warfare, the Burman military dictatorship, once in total control of the country, and probably "legitimized" by a bogus election colluded in by its neighbours, is unlikely to be satisfied with simply subjugating, assimilating and destroying its own democratic and ethnic opposition. International indifference has rewarded its infliction of systematic violence to the point at which it may become emboldened to threaten its neighbours, especially its traditional enemy, Thailand.

The hostile attitude of the military dictatorship to Thailand is expressed in the publication of a series of articles titled "Didn't say . . . can't stay long". Designed to create the right attitude to its eastern neighbour, the book is a compilation of slurs intended to incite contempt and hostility towards its Thailand. We find in it both a racist disgust towards refugees and contempt for their Thai hosts, the latter being accused of involvement in a breeding programme to undermine the Burman race.

24.6 THE THREAT OF DRUGS

This is not the place to attempt to unravel the complexities of the Junta's involvement in the drug trade. However, the report by the Thai border patrol police in connection with the motive behind the forced displacement of the Wa expresses a high level of institutional involvement; the Thai Office of Narcotics Control Board has identified a senior figure in the Junta facilitating the movement of the leading drug baron Lo Hsin Han, and Burmese army defectors have described to me involvement, at Lt. Colonel level, in the growing, refining and production of opium, and protection of drug convoys. Moreover, it is clear that those ethnic splinter groups working with the Junta such as the Wa, the Karen DKBA and the Karenni KNPLF are involved in the drug trade. The situation goes well beyond the "bad apple" theory proffered by a UN drug control officer, and is best summed up by Shelby Tucker who points out there exists:


The drug trade undermines international peace and security by destroying the social fabric of surrounding societies such as China and Thailand, and the wider international community. Additionally, drugs and arms interconnect. One report alleged drugs from the Golden Triangle were intercepted on a North Korean ship off the coast of Australia.
Ch

LEGAL CONCEPTUALISATION:
25.1 REVIEW OF THE FACTS

Before we embark on the legal conceptualization of these violations, it is important to remember that they are based on evidence collected by UN Special Rapporteurs and organizations like Amnesty International, Human Rights Watch, Refugee International, the US State Department and ethnic Human Rights Groups, like the Karen Human Rights Group, the Shan Human Rights Group and the Shan Women's Action Group for well over a decade. Moreover, I have observed the situation directly on the ground. The truth of the violations is not in doubt. They are, we remind ourselves, in the former Special Rapporteur's words:

So numerous and consistent . . . as to be the result of policy taken at the highest level entailing legal and political responsibility (My underline, "Myanmar, Report on Human Rights," Sept. 1998).

What is at issue is not their veracity, but how they can be conceptualized, with reference to International Humanitarian Law, specifically The Geneva Conventions, Crimes against Humanity and Genocide.

25.2 VIOLATING ARTICLE THREE OF THE GENEVA CONVENTIONS

As stated, the conflict in eastern Burma, with the important exception of the organized State sponsored attacks on the refugee camps, is an internal armed conflict. Such a conflict was defined by the ICTY in its Tadic decision as:

protracted armed violence between governmental authorities and organized armed groups.

Article Three of the Geneva Conventions is thus applicable. In essence, it protects persons taking no active part in hostilities in internal conflicts.

The Burman military dictatorship is guilty of treating all those ethnic civilians in the free fire zones and areas where they have been forcibly concentrated inhumanely and, in particular, for inflicting:

Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture and outrages upon personal dignity in particular humiliating and degrading treatment.

The ICTY, it should be noted, has convicted people of violating Article Three of the Geneva Conventions in former Yugoslavia.

The Burmese dictatorship has killed civilians, physically ill-treated them and caused serious mental and physical suffering through terrorization and violence towards individuals and their families. Additionally, it has inflicted rape and sexual violence against women and girls.
Moreover, the widespread and systematic violence inflicted on the ethnic peoples express the following Crimes Against Humanity:

**Murder**, for the numerous acts of intentional and reckless killing;
**Extermination** for the destruction of parts of ethnic eastern peoples, through amongst other activities, systematic and widespread destruction of food and medicines;
**Deportation and forcible transfer of population**, for the forcible expulsion of hundreds of thousands of Shan, Wa, Karen, Karenni and Mon from their homes and their forced concentration into camps;
**Imprisonment and Severe Deprivation of Liberty**, for the detention of hundreds of thousands of people in camps;
**Torture**, for the widespread physical and mental suffering inflicted on the ethnic and Burman people;
**Rape and sexual violence** for the state tolerated, condoned and probable encouragement of violence against ethnic women;
**Disappearance**, for the organized selective killing and forced disappearance of anyone suspected of having contact with resistance forces;
**Persecution** for the multiple crimes committed against the ethnic people and the democratic opposition;
**Infliction of other inhumane acts** not identified specifically in the above.

Specifically, the **Crime against Humanity of Persecution** includes targeting a group and grossly and systematically trampling upon the fundamental human rights of the victim group. (ICTY, Kupresic et al, Judgement, para.751)

The evidence suggests there exists a policy to persecute the democratic opposition, and to deprive ethnic people of fundamental rights, expressive of a **Crime Against Humanity of Persecution**, both against the democratic opposition.

The systematic destruction of essential resources of about 520,000 internally displaced ethnic people resulting in large numbers of preventable deaths expresses the **Crime against Humanity of extermination** may have been inflicted on substantial parts of ethnic peoples.

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**25.4 INFLECTING GENOCIDE**

The Junta can, arguably, be accused of attempting and even committing genocide particularly by inflicting indirect destruction as defined by The Genocide Convention 2 c) and clarified in the following judgements and codifications.
25.4 INFLICTING INDIRECT DESTRUCTION BY ACTIVITY 2 C

Genocide activity 2(c) has been defined by the ICTR, in its Prosecutor v Alfred Musema, Judgement 27 January, 2000, ICTR-96-13-T) as:

The means of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part, include subjecting the group of people to subsistence diet, systematic expulsion from homes and deprivation of essential medical supplies below a minimum vital standard.

The same Tribunal also defined the activity as inflicting:

Conditions which lead to a slow death e.g. lack of proper housing, hygiene, medical care, or excessive work or exhaustion. It includes methods of destruction which do not immediately lead to death of members of the group, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, provided this would lead to destruction of the group in whole or in part. (ICTR, Prosecutor v Kayishema and Ruzindana Judgement, 95-5-T, 21 May, 1999).

The Rome Statute succinctly codified this form of genocide as:

The deliberate deprivation of resources indispensable for survival, such as food or medical services or systematic expulsion from homes (Rome Statute, Article 6 c, footnote 4).

25.5 CONDITIONS IN EASTERN BURMA EXCEED QUALIFYING CRITERIA FOR GENOCIDE DESCRIBED BY THE ICTR AND THE ROME STATUTE

These conditions inflicted on the internally displaced in eastern Burma meet, and more than met, the situation of the hundreds of thousands of internally displaced people living in the free fire zones in Shan, Karenni and Karen State, and, arguably, those forcibly concentrated into camps. They exceed the stated qualifying conditions because:

25.6 DENIAL AND DESTRUCTION OF SHELTER

Firstly, if one takes the issue of shelter, the Rome Statute states systematic expulsion from homes, and the ICTR states withholding sufficient living accommodation. In the case of eastern Burma the ethnic people are not just expelled from homes and not provided with sufficient living accommodation: their homes are completely destroyed and burnt to the ground. Moreover, every attempt to rebuild homes results in further total destruction. For example, one village I stayed in had been burnt to the ground five times. Shelter is totally and repeatedly destroyed in the free fire areas. In the forced relocation camps, although not usually subjected to active destruction, nothing is usually provided. This destruction and denial of shelter is in the free fire zones is more grave and destructive than the Tribunal's withholding sufficient living accommodation.
25.7 DENIAL AND DESTRUCTION OF MEDICAL SERVICES

Secondly, if one takes the issue of medical services, the ICTR cites lack of proper medical care, and the Rome Statute deprivation of medical services indispensable for survival. Amongst the internally displaced in the free fire zones of eastern Burma, the destruction of medical services is systematic and total, considerably worse than embraced by the words lack of or deprivation. Dr Cynthia Maung of the Mao Tao clinic has described even the plastic gloves of a midwife being destroyed. You can be shot for carrying medicines in the ethnic areas of eastern Burma. Thus the comprehensive systematic destruction inflicted in the free fire zones actually transcends the criteria established by international law. They may, however, accurately describe the conditions inflicted in the less severe conditions of the forced relocation sites.

25.8 DENIAL AND DESTRUCTION OF FOOD

Thirdly, the definition of genocide as subjecting the group to a subsistence diet, or not providing food indispensable for survival, actually understates the destruction and denial of food inflicted on the internally displaced in the free fire zones in eastern Burma. Food in these areas is systematically and comprehensively destroyed to such an extent that the population is weakened and substantial numbers of preventable deaths occur. The provision of very limited food in the relocation sites may be also be described as subjecting the group to a subsistence diet, though here also the food conditions are actually worse than those required to meet the above genocidal conditions as defined by the ICTR. No food, rather than a subsistence diet, is actually provided after a few weeks.

Thus, in the areas of food, medical services and shelter, the conditions inflicted in the internally displaced in the free fire zones of eastern Burma are worse that those identified in judgements and codifications describing the act of genocide, 2 c). In the relocation sites the above descriptions approximate to what is inflicted, accurately defined as below a minimum necessary.

What is inflicted is a low intensity, slow form of genocide in which a number of factors, in addition to food, shelter and medical services, interact synergistically to create conditions in which substantial parts of ethnic peoples can no longer survive.

25.9 LOW INTENSITY GENOCIDE

It should be pointed out that genocidal activity, as expressed in activity 2(c) of The Genocide Convention, was worded precisely to take into account this form of low intensity, slow form of genocide. The specific conditions it was written to address was not the outright physical destruction in the Nazi extermination camps, but the slow destruction of Jewish communities in ghettos though starvation and denial of resources necessary for survival, similar to the conditions inflicted on the internally displaced people: this interpretation of activity 2 (c) has now been confirmed by judicial case law of the two ad hoc Tribunals.
25.10 ISSUE OF SURVIVAL OF ETHNIC PEOPLE

The fact that ethnic internally displaced people survive in the free fire zones is not intended by the Junta: it is because their knowledge of jungle plants, along with very limited supplies from Thailand, plus some successful attempts to grow food in very remote places, and limited supplies from Thailand, sustain some form of minimal subsistence. It is not, however, the intention of the Junta to enable them to survive. On the contrary, the intention is to prevent their survival by destroying their means of subsistence. All the UN, Amnesty and grass roots human rights groups identify conditions deliberately inflicted which make it impossible for the internally displaced to physically survive. This is expressed by the Karen in their own words "Dying Alive", the paradoxically terrifying situation they find themselves in, in which they are dying but alive, alive yet dying.

25.11 EXISTENCE OF AN EXPLICIT AND INFERRED INTENTION TO ATTEMPT TO COMMIT GENOCIDE

The existence of an underlying intention to destroy ethnic groups, in addition to the violations cited, can be seen in the explicit statement of intent expressed in the alleged Top Secret document advocating coercive impregnation. Although, as stated before, the veracity of this document is in doubt, we can nevertheless infer the existence of a policy from the widespread systematic violations targeting ethnic people.

The ICTR's Kayishema and Ruzindana Judgement clearly stated intent need not be explicitly expressed to prove a case of genocide. It can be inferred from circumstantial evidence:

*Intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action. In particular . . . evidence such as the physical targeting of the group or their property; the use of derogatory language towards members of the targeted group; the weapons employed and the extent of physical injury; the methodical way of planning, the systematic manner of killing.*

The above words and deeds are applicable in Burma's case.
Ch

OBJECTIONS TO GENOCIDE
26. OBJECTIONS TO GENOCIDE

Despite the overwhelming evidence of widespread, systematic violations which are ethnically targeted, there are a number of strong objections which can be made to the allegation of attempted, or committed, genocide in Burma's case. We must remember, in particular, that an allegation of genocide requires evidence of an explicit, or inferred, intention to destroy an ethnic people physically in whole or in part, in addition to evidence of specific violations.

Serious, persuasive arguments that suggest genocide might not be occurring must be carefully considered before trying to reach a conclusion on this emotive, inflammatory issue which has such important legal, and possible, practical consequences.

26.1 OBJECTION 1: COUNTER-INSURGENCY

As stated, it can be argued that what is happening is a counterinsurgency campaign, not a campaign intended to physically destroy ethnic, civilian people as such. This is a central issue. The understandable ambiguity, even contradictoriness, of Burma watchers on this point is best illustrated by Martin Smith when he tries to understand the underlying intention behind the Four Cuts campaign. Since he is probably the best informed person on this issue, it is worth quoting and analysing in detail two of his accounts of activities inflicted by the Burma army. His first assessment is from the army's point of view; the second from the ethnic victims' point of view.

Assessment 1

In the army's defence, the only "excuse" [his inverted commas] for the callous scale of this violence against civilians can be that, rather as US soldiers found in Vietnam, in the dense, malaria ridden forests and mountains of SE Asia, it is impossible to distinguish friend from foe. Unable to speak local languages and dialects, predominantly Burman prisoners and Tatmadaw deserters have described to me the mounting fear and anger in their units as they sustained a steady toll of casualties through mine attacks, sniper fire and the occasional ambush by a largely unseen enemy. Outwardly friendly villagers are often the only local inhabitants they see for months on end. They say it thus takes only one insurgent attack for even the most well-intentioned soldier [my underline] to regard all villagers as supplying intelligence and recruits to their enemy's side. ("Burma, Insurgency and the Politics of Ethnicity", ch.13, note 40).

The implication here is clearly that human rights violations are the unintended results of unbearable conditions. The reference to Vietnam is significant: while human rights violations were undoubtedly inflicted there, there was no intention on the Americans' part to inflict genocide. The intention was to separate communist guerrillas from civilians. However, we must note the crucial difference between Vietnam and eastern Burma: in Vietnam the Americans were fighting primarily a political war against ideological opponents; in eastern Burma the Junta army is primarily fighting ethnic opposition, not political opposition. In the latter case, the distinction between civilians and resistance is much harder, perhaps impossible, to make than in an ideological war.

Martin Smith limits the description of the violence to callous, i.e., deeply insensitive, rather than intentional. Reasons for the callousness are given as follows: firstly, operating in dense, malaria ridden forests and mountains implies that the enemy frequently cannot be seen clearly, and that the soldiers, themselves exhausted and often sick, can thus all too easily make mistakes; the absence of interpreters makes communication impossible; armed attacks make reprisals inevitable; it is suggested such violence is an understandable response to unbearable provocation; villagers, the only locals met with directly, are perceived as deceitful collaborators and, therefore, legitimate targets. It short, from this point of view, it is both
comprehensible and excusable that even the most well intentioned soldier can end up in a state of mind believing all villagers are enemies, and act accordingly.

The analysis has much to commend it; one could add that not only is there evidence that the violence may not always be intentional; there is also evidence of active intention not to participate in atrocities by some courageous Burmese soldiers, and even commanders. Martin Smith, we note, does not analyse the policy underlying these violations, just the predicament of the soldiers enforcing it.

Assessment 2 (Para.1)

However, an alternative view is given by the same writer, in the same chapter, of the same book, when describing the actions of the military from the victims' point of view:

Villagers reports of such attacks, though rarely recorded in the world outside, are legion from all corners of Burma since the Four Cuts began. One bedraggled party of 220 Karen refugees I saw arriving at the Thai border with their meagre belongings in 1987 gave eyewitness details of how government soldiers had killed 31 of their relatives, apparently at random, since the Four Cuts campaign was officially introduced amid such fanfare in the vicinity of their homes in the Shwegyin hills in 1975. "Each year three, four or five villagers have to die", said Pah La Hai, a 43year old hill farmer. "The Burmese soldiers shoot them without reason. They kill all the villagers. No one must stay there any more".

Firstly, Smith makes clear here the extraordinary widespread nature of the violations and their numerosness. They are legion from all corners of Burma. Secondly they are disregarded by the world’s media, being rarely recorded in the outside world. These two facts underlying the reality of the situation in ethnic Burma are established first of all. He then cites the escape of 220 ethnic Karen, civilian refugees and reports that 31 of them had been killed apparently at random. However, he crucially, but characteristically, blurs the essential question of intention behind the killings, stating they occurred, apparently at random. The expression at random excludes systematic policy, but is immediately undercut by the adverb, apparently. Apparently at random suggests the possibility (or probability?) that beneath the apparent surface, the killings may not have been random, but intentional. This possible/probable intentionality is then strongly supported by his eyewitness's quotation:

Each year three, four or five villagers have to die.

Have to (assuming he is using the verb correctly, which is always debatable in Burmese translations) explicitly expresses compulsion from without, something in other words which is systematic and inflicted by the State, something, in other words not carried out by confused soldiers acting in confusion and impulsively, as the previous assessment suggested.

The witness then goes on to state that the Burmese soldiers shoot without reason . . . No one must stay there. The witness himself is, however, contradictory because his assessment that no one must stay there, coming immediately after three or four or five villagers must die, is itself a reason for the killing. The reason for the killing, it is implied, is that ethnic people live in non subjugated ethnic areas, and must therefore leave. It is their very ethnicity rooted in their ancestral lands which is the reason why they must be killed and forced to leave. It is not a commitment to a political ideology. The villager, then, significantly, adds that they will kill all the villagers, (something obviously not random and not an unintended spontaneous overreaction), but the result of (a premeditated) policy decision. A mass killing of defenceless, ethnic civilians is clearly in excess of the requirements of a counterinsurgency campaign: indeed it is the opposite of such a campaign which seeks to "The win hearts and minds" of civilians. The Four Cuts policy, as Smith has described it, is not intended to kill ethnic civilians as such, but to separate fighters from civilians with the intention, thereby, of
destroying armed resistance. This description and the eye witness account, however, like so many others given by survivors, is describing something much more serious than counter insurgency. Systematic, selective killing of ethnic civilians targeted solely on account of their ethnicity as part of a policy to force them into the unsustainable conditions of the relocation camps or free fire zones, threatens the lives of entire groups of people.

Smith continues:

Even more graphically, with a television crew from Britain's Channel Four, in December 1989 I secretly filmed a Burmese army unit systematically looting a civilian Karen village at Sitkaya, which it had entered, with guns blazing, the day before. At least seven villagers were killed, 20 were captured and over 200 escaped, including several wounded women and children, by swimming across the Moei river into Thailand. Those arrested were promptly press-ganged into front line porter service carrying supplies for their army captors. Local Karen leaders insist that such scenes are identical to those they experienced 20 years earlier in the Delta. For the Tatmadaw in the four Cuts campaign there is no such thing as an innocent or neutral villager. Every community must fight, flee or join the Tatmadaw. (my underline).

COMMENTARY

Firstly, there can be no doubt about the veracity of this. This is not a second hand account. Martin Smith saw and filmed it himself. Secondly, he makes quite clear this is not an operation mounted against resistance fighters: it is an attack on A civilian Karen village. Moreover, the destructive looting is systematic, i.e., not the confused actions of the traumatized, confused, callous soldiers of assessment 1. Seven villagers, in this defenceless civilian Karen village, were killed and several women and children were wounded. It is implied that they were knowingly and intentionally killed, and were clearly identifiable as unarmed defenceless civilians, not resistance fighters. It is unlikely women and children, particularly, could be confused with resistance fighters. Despite the implication behind the words, guns blazing, that this was indiscriminate, arbitrary slaughter (i.e. killing anyone in the village), we must remember, standing back, that this was part of a premeditated plan. The apparently arbitrary killings were arbitrary only in the sense that individual victims were randomly selected; the group, however, was not randomly selected but targeted on the grounds of its ethnicity. Ethnicity was the determining factor.

The apparent arbitrariness of killings needs to be constantly balanced by the understanding that they take place within a context which is not arbitrary, but systematic. The killings are a result of the overall policy to use the former UN Special Rapporteur's words. This relationship between apparent, arbitrary, individual destruction within an overall premeditated, systematic plan conforms to the definition of genocide by the ICTY as described earlier.

Smith's conclusion is significant:

For the Tatmadaw in the Four Cuts campaign there is no such thing as an innocent or neutral villager. Every community must fight, flee or join the Tatmadaw.

The allegation here is that the Tatmadaw implementing the Four Cuts policy, sees every ethnic community as the enemy. (We note his use of the word community. Victims are targeted on the basis of their membership of an ethnic group, not as individuals). As a result, the ethnic people have three options: to fight against impossible odds (and die); flee into unsustainable conditions (and probably die slowly); or join the army and become an agent of ethnic destruction and/or a victim of Burmanisation (and be destroyed culturally). All three options involve destruction.

Assessment two is very different from assessment one; in the former, soldiers, even well Mentioned soldiers, cannot distinguish between friend and foe because of physical conditions,
attacks and language barriers: in the latter, it is not that they cannot distinguish between friend and for; they intentionally do not try to, and consider all ethnic people to be the enemy and thus legitimate targets for destruction.

The difference between the two viewpoints is crucial and fundamental to an understanding of the nature of the intention underlying the violations. What Martin Smith is describing in example 1 are non-systematic, but widespread violations resulting from confused actions of soldiers at a local level who do not intend to destroy ethnic peoples as such; in 2, the destruction of ethnic peoples as such is clearly intended:

For the Tatmadaw in the Four Cuts campaign there is no such thing as an innocent or neutral villager.

Assessment 2, describing the killing of ethnic civilians followed by forced fleeing, exactly matches that definition of genocide by the ICTY in its Jelisic judgement (IT-95-10-T):

Genocide may be considered to be selective killing of a group of people that leads to their destruction through such methods as deportation or forced fleeing.

Ultimately a judgement must be made on these two viewpoints. However, in the light of the scale, systematic nature, and duration of the violations, it seems the Special Rapporteur’s 1998 conclusion that the violations are the result of policy was right. The specific violations committed may appear chaotic, unintended and random when viewed in isolation, but seen within a wider context, they appear to express policy. The activities go well beyond counter insurgency: systematic, widespread rape; an alleged policy of forced impregnation; deliberate starvation; shelling of internees physically corralled into camps; massive, sustained physical destruction of all the necessities of life; systematic, premeditated, repeated mass killings of ethnic victims; sustained, widespread confiscation of land; massive proposed permanent flooding of land; destruction of medical services; failure to provide medical services. These actions go beyond the requirements of counter-insurgency. This prevalence of violations in areas in which victims have been physically separated from all resistance is expressed in the following breakdown of violations in different geographical areas (TBBC Report, Internal Displacement, p.43, pub. Oct. 2004):

This inflection of violations on victims in areas of no conflict was also significantly pointed out by the current UN Special Rapporteur, Mr Sergio Pinheiro, in his address to the UN Nations General Assembly in October 2004 when he drew attention to:
Counter insurgency measures or presence of large contingents of the armed forces not involved in counter insurgency.

Counter insurgency measures by forces not involved in counter insurgency seems to be a contradiction in terms. However, the special Rapporteur appears to be condemning activities which go well beyond, and cannot be justified, as counter insurgency. This implication is strongly supported by his observation of large numbers of troops not in counter insurgency areas. The former UN Rapporteur, Mr Rajsoomer Lallah Q.C., referred to a scorched earth policy, expressive of wholesale, total destruction which clearly targets the civilian ethnic population by inflicting total destruction of the physical basis of life.

Moreover, the physical destruction takes place within the wider context of cultural destruction known as Burmanisation, an explicit policy to destroy the cultures of ethnic peoples, including their key self representation of themselves through language, and replace them with a Burman one. This involves a two-stage process identical to Raphael Lemkin's original definition of genocide. It can now be taken account of (ICTY, Kristic Judgement, August 2001) when considering genocide.

26.2 OBJECTION 2: ETHNIC CLEANSING
Secondly, it may be claimed that what is going on is ethnic cleansing, i.e., violent expulsion of ethnic peoples with the intention of taking over and colonizing their lands, not a policy and strategy intended to destroy them as such. Ethnic cleansing as so defined, however, does not appear to be being inflicted in eastern Burma. With the apparent exception of some Shan and Rohingyas, ethnic peoples are not being forced, or "encouraged", to leave Burma: on the contrary, violent measures are taken to keep them in and prevent them escaping into Thailand. This was vividly brought home to me in the autumn of 2000. A group of unarmed villagers and their families were trying to make their way to Thailand. They were surrounded by the Burma army and fired at in sustained bursts to force them to stay inside Burma, not to leave it.

Moreover, the Burma army appears to want the refugees repatriated in order that they can be subjugated, exploited for slave labour and biologically and culturally absorbed and assimilated into The greater Burman race. This is consonant with the behavior of Burman kings in the past, people on whom Senior General Than Shwe apparently models himself. (About 30,000 Mon after their defeat in the 11 century by King Anawratha were taken into slavery and assimilated). Coerced impregnation is clearly not ethnic cleansing, i.e. violently expelling people out of the country: it is intended to destroy through biological assimilation and absorption. With the exception of the Moslems, destruction through assimilation and absorption, not expulsion, appears to be the policy.

OBJECTION 3: Fourthly, it can be argued that some soldiers within the Burma army appear not to want to destroy ethnic civilians or inflict human rights violations. This is a serious objection and merits considerable reflection. The following intercept expresses the divisions in the Burman dominated army and shows a Divisional Commander opposed to a killing of a civilian by a Light Infantry battalion:

INTERCEPT

Sent from Kun-Hing 05.09.02 12.30
Receiver Taunggyi

1 2002 Sept Date 05 time 10.30 Tai (Shan) special area 3, Division 7, liaison officer 2 Lt. Jia Laeng Pang came to our base and report over the event from 2002 September date 01 one squad of IB 294 came in the area under the responsibility of their Division 7 without informing them in advance. The force came through Ban Hawng Luk, Ban Jaeng, Pan Wi, Nam Kai, Ban Loang Jam, Ban Pang Takit, Doi Mui and Ban Li.They took the chickens and pigs and forced the villagers not to report the case to anybody.
2. They caught one villager from Pang Takit as porter and killed that man on the 3 rd. They made the indictment that the man try to take the rifle from the soldier 33. We are investigating the case to find the truth.
4. The 7 Division Commander, U Sai Fah is very unhappy with the behaviour of IB 294 and said that it should not happen in the future.

The message expresses very confused command control: a squad of soldiers, while not acting under the command of the divisional commander, steals pigs and chickens without his authority. They then kill a porter and we learn the Divisional Commander is very unhappy with this and says it should not happen in the future. The soldiers' activity, therefore, appears not to be systematic and is indeed disapproved of. However, a number of points should be made.

Although the Divisional Commander expressed unhappiness and ordered the acts should not be repeated, he still bears responsibility because he:

Failed to take all necessary and reasonable measures within his or her powers to prevent or repress their commission or to submit the matter to the relevant authorities for investigation or prosecution. (Rome Statute, Article 28).
However, he probably fails to take effective action because specific violations are expressive of the overall policy which exhort that *All internal destructive elements be destroyed*. For anyone to take effective action to repress or punish the violations would be to go against the overall policy where, as the UN report stated, *Impunity is the essential factor*. The "Policy" of impunity, which sustains and legitimises the violations, seems to make it impossible for anyone, whether it be a soldier on the ground, or a Divisional Commander, to openly challenge and correct the culture of officially sanctioned, violative conduct.

However, it must be stated some soldiers sometimes courageously attempt to mitigate suffering. Some soldiers from the Burma army provided advance warning to survivors of the Delta massacre to help them escape; sometimes soldiers actually intervene to stop killing (as defectors have described to me in Karen State) and suffering; sometimes brutal violations will take place without the authority of officers, even against their express wishes, as in the case of the burning of the two toddlers in Karen State.

There follows an example of an order from a commanding officer to his men not to participate in forced labour. However, although it refers to rape it does not condemn the activity or investigate it, but denies it.

*Sented from HQ Artillery Command 909 (Keng Tung) 05.09.02*

*Receiver GAGMaSaSaka and units under command*

1. Foreign radio stations announced bad news over Myanmar and damaged the refutation of our army very much. It is not true at all.
2. The news was over army operated against the law, conducted human right violations and raped the Shan women.
3. Forced Labour. Forced the villagers to do heavy work are not true too.
4. From now on, all units under our command must do the job carefully. Don't ask the villagers to build the military bases. If villagers are not ready willing to do, don't force them. Send the copy of this radio to evry units concerning.

*Answer confirm reception of this order.*

This is clear confirmation of a desire to stop forced labour.

In addition to these two intercepts there is the additional important one (March 11 2005) quoted at the beginning of chapter 14, accepting culpability for over 9000 cases and a commitment to end impunity.

Thus there is explicit evidence of some commanders not wishing to inflict violations. This strongly suggests that some of the violations may not be systematic. However, such statements do not negate the overall policy taken at the highest level intended to Burmanise the non Burman peoples. The multiple destruction of 2,500 villages and the imposition of life threatening conditions on one to two million internally displaced people resulting in about 10,000 deaths a year for decades is not the product of recklessness, negligence or confusion *(being unable to distinguish friend from foe)*, but the result of intentional policy. Moreover the policy itself is a violation. Thus the fact that there may be unwillingness at some levels to inflict violations does not prevent them from being what they are, expressions of policy, not unwanted side effects of a counter insurgency campaign. The not infrequent heroic attempts to mitigate the deliberately inflicted destruction is not evidence that destruction is unintentional: rather the reverse. Any attempt to oppose the violative conduct from within the Burman dominated army places such people in danger; defectors must themselves flee into life-threatening conditions where they are mercilessly hunted by their former colleagues, or else end up living in extreme insecurity in Thailand, where they cannot even be afforded refugee status. In topsy turvy Burma, the violative conduct is the system, while reluctance to enforce it, or suppress, or punish it, places a person at severe risk. However, the significance
of the just received intercept (March 11) will have to be considered taken in conjunction with
very recent reports of less destruction of villages.

26.3 OBJECTION 4: OFFERS OF REPARATION

Another objection is that offers of reparation and compensation are occasionally made to
victims suggesting that violations are not systematically inflicted from above, (see "System of
Impunity", pub. Women's League of Burma, p.19, Sept. 2004) However, the motivation
behind such offers would appear to be the desire to conceal evidence by bribing victims to
remain quiet. Such offers only serve to reinforce state complicity in crimes. They do not
appear express a genuine desire to show remorse and put matters right.

26.4 OBJECTION 5: PROVISION OF LIMITED MEDICAL SERVICES

Another objection to the charge of genocide is the apparent attempt to provide some medical
services and development for ethnic peoples, actions which would certainly be incompatible
with a policy of genocide or systematically inflicted violations. Significantly the Human
rights Documentation Unit Yearbook 2001-2002 (p.535) states;

At each of the large sites there is evidence of an intention to provide health care to IDP’s either at a
health facility inside the site or at a nearby health centre. In practice, however, given the general
constraints to the public health system, services were not utilised well.

Evidence of an intention to provide health care would be incompatible with a charge of
attemping or committing genocide. The Report, however, goes on to qualify the above
statement by pointing out:

With facilities both under-equipped and under-supplied, health care providers were often left to do the
best they could. In some of them other sites, such as Htee Poh and Mar Kraw Shay, refugees said there
were no health facilities at all.

It describes conditions in the relocation sites with lack of proper shelters, pure drinking water, and
little food or medicine contributing to many deaths from starvation and illness.

Thus we have a situation where ethnic people have been forcibly relocated into unsustainable
conditions and many have died as a result. This clearly meets intent level 2, i.e. that people
will inevitably die as a result of the inflicted conditions, thus expressive of a Crime Against
humanity of Forcible Transfer of Population. The question, as always, is whether there is an
additional underlying intention to destroy all or part of the group. This can probably only be
answered by considering the issue in the wider geographical and historical context

Arguably, so inadequate are the provisions, so violent and systematic the violence used in
forced relocation, and so ethnic are the victim groups that sporadic, below minimum,
provision of medical care and other resources, would appear to be merely cosmetic. Health
clinics, for example, normally do not have any medicines in them; when vaccines and medical
aid comes, it is usually provided by foreign organizations like UNICEF or Medicins Sans
Frontiers, not the Burman dictatorship. The contents are reported to have usually been taken
out and replaced with bogus medicine. However, there is an important exception to this. A
very reliable researcher last year reported that the Junta has begun to set up temporary clinics
in villages in Karenni State, and invite people for treatment, and provide medicines. This is at
odds with all other information on destruction of medical care facilities, but evidence of
provision of genuine care must be taken seriously, and, if true, and this report appears to be so, contradicts an allegation of committed, or attempted genocide.

It is also important, however, to remember that Genocide definition 2(c), as now defined by the Rome Statute, does not require that no food, medicines or housing, etc., be provided, but that:

\[ \text{deliberate deprivation of resources indispensable for survival is inflicted,} \]

or, as the ICTR ruled,

\[ \text{reducing of essential medical services below a minimum requirement. (ICTR, Prosecutor v Akayesu, Judgement, 96-4-T, 2, September 1998).} \]

The situations faced by the ethnic internally displaced people, both in the free fire zones, and the sites of forced concentration in eastern Burma meet these criteria of below minimal requirement. Moreover, the systematic destruction of food, medical supplies, facilities and homes express a policy not just to provide services below a minimum requirement, but to ensure nothing is available, or in the words of the UN General Assembly Resolution of 2001, to deprive \[ \text{ethnic victims of all means of subsistence. (My underline).} \]

The UN General Assembly Resolution on Burma (2001) found the Junta guilty of destruction and omission of resources necessary for survival even above the threshold criteria justifying the charge of genocide activity 2(c) as defined by the ICTR. The UN General Assembly words describing the situation in Burma as:

\[ \text{Deprivation of all means of subsistence} \]

is, in fact, actually more grave than than the ICTR's Akayesu Judgement:

\[ \text{below a minimum requirement.} \]

However, it must be accepted that a genuine intention to provide, or allow medical supplies to be delivered, would not be compatible with attempting, or committing, genocide. The existence of Medecins Frontiers in Karenni State, for example, would seem to be evidence of an intention to bring some medical care to local non Burman people, and thus contradict evidence of genocidal intention. A Karenni medical specialist, however, stated that much of this medical help goes to Junta troops and not to local people, suggesting that the NGO may simply be being used as a method of supporting the local army. There does, however, appear to be some evidence of NGO's effectively providing assistance to local ethnic people tolerated by the military dictatorship which, if sincerely meant, would undermine any allegation of genocidal intent.

There also appear to be examples of genuine development aid supporting ethnic peoples outside conflict areas which is tolerated by the Junta. An example of this would be the programmes delivered by the Metta Development Foundation, located mainly within Kachin areas which appear to be a sincere and significant contribution to the development of ethnic Kachin. Although it has not been possible to directly and personally inspect these programmes, it is reliably reported that they are genuinely beneficial. The existence of such programmes, although limited in scope, contradict the widespread, systematic destruction of ethnically targeted civilians in internally displaced areas, and must be seen as providing evidence of a lack of intention to inflict genocide on ethnic people generally.

However, we need to remember that genocide only requires evidence to destroy a group \textit{in part}. The 526,000 internally displaced ethnic civilians represent a substantial \textit{part}, suffering
conditions which have been deliberately inflicted to destroy them. Additionally, it must also be remembered that Burmanization continues to be inflicted in non internally displaced areas: ethnic people, away from conflict, continue to suffer from indirect means of destruction and assimilation.

26.5 OBJECTION 6: MIXED ETHNIC IDENTITY OF PERPETRATORS AND VICTIMS

In addition, some would object that the Junta army is multi-ethnic and so, by definition, the charge of genocide is not applicable. In particular, soldiers drawn from ethnic groups, particularly Chin and Kachin, appear to have played a disproportionately prominent role in the violent suppression of the mainly Burman democracy uprising in 1988, and were apparently used for similar purposes on other occasions. Karen soldiers were also used to fight and put down Burman communist forces. Thus non-Burman soldiers have sometimes played an important role in destroying mainly Burman groups. However, this issue of whether the ethnicity of perpetrators and victims must be distinctly different to justify the application Genocide, was clarified in the case of the Hutus and the Tutsis in Rwanda by the Special Rapporteur of the Human Rights Commission, Mr. Degni Segui, as follows:

The third condition, on the other hand, requiring that the ethnic group should be targeted as such, raises a problem, because the Tutsis are not the only victims of the massacres, in which Hutu moderates have not been spared. But the problem is more apparent than real, for two reasons: Firstly, many witnesses confirm that the screening carried out at roadblocks to check identities was aimed essentially at Tutsi. Secondly and above all the main enemy identified is still the Tutsi who is the inyenzi (cockroach) to be crushed at all costs. The Hutu moderate is merely a supporter of the main enemy, and is targeted only as a traitor to the ethnic group, which he dares to oppose.

Allowing for the important proviso that scale and speed of killing in eastern Burma in no way approximates to the immediate mass slaughter which occurred in Rwanda, there are important parallels to be drawn between the above statement and an assessment of genocide in eastern Burma. Democratic Burmans are sometimes targeted by the mainly Burman dictatorship, just as moderate Hutus were by extremist Hutus. That does not answer the point that ethnic soldiers have played a role in perpetrating crimes against Burmans. However, while ethnic soldiers may have been involved in perpetrating crimes, they were controlled, manipulated and directed by an overwhelmingly Burmanised officer class and an exclusively Burman ruling dictatorship, just as subjugated peoples, such as Ukrainians were used by the Nazis to inflict Genocide and Germanisation in occupied Europe. The great majority of Burmese victims are ethnic peoples: for example, the 2,500 villages destroyed in eastern Burma are all ethnic villages. There may be a few ethnic Burman democratic activists hiding there, but that is not the reason why the ethnic villages are destroyed. It is essentially because of the non Burman ethnic identity of the inhabitants. Moreover, the Karen resistance are described by the Junta troops as roundworms, strikingly similar to the description of Tutsis as cockroaches, or the Nazis use of the term rats for Jews. All these terms dehumanize human beings and are intended to incite a desire to destroy.

Other examples of mixed races being involved in perpetrating genocide can be cited: the Yugoslav army responsible for human rights violations was theoretically the army of the Federal Republic of Yugoslavia, but, in fact, it was overwhelmingly Serb dominated and implemented Serbianisation. Likewise, the Junta army is an overwhelmingly Burman dominated army, its officer class almost exclusively so, implementing a policy of Burmanisation.
In the case of the Nazis, we remember, they began their liquidation of opposition by destroying the German democratic opposition first, and then used a number of co-opted nationalities to inflict genocide against a number of multi-ethnic victim groups. In other words, the perpetrators of the Nazi genocide were multi-ethnic, as were its victims. Nevertheless, the overall policy was carried out to promote and implement Germanization, even though it began by destroying the German opposition.

The reason why some ethnic victims of such a policy collaborate with the policy, indeed internalize it, and then, apparently, willingly enforce it, (apart from the obvious one of being bribed and allowed/encouraged to produce and traffic in drugs,) can partially be explained by Freud’s defence mechanism of unconsciously identifying with the aggressor.

An example of this was expressed to me by someone describing a Mon woman serving in the Burman dominated army. She was proud to be a Mon in the Burma army because the Mon had been responsible for having created Pagan and for much of Burmese culture. The Mon had indeed helped to build Pagan for their Burman conquerors: 30,000 had been forced to work as slave labourers and many had died in the process. Mon culture has since to a considerable extent been destroyed and assimilated. This woman, in other words, had identified with her Burman conquerors and then introjected their value system so that her valuation of herself was dependent on the degree to which she could see herself as being part of a subject people that had contributed to Burman supremacy; the greater the subjugation to the oppressor, the greater her self esteem became, because she judged herself, not in terms of how much she lived her culture, but in terms of how much she had abandoned her culture and contributed to, and been assimilated into, the “superior” Burman one. In other words, she was, paradoxically, proud of herself for being Mon precisely because she had abandoned her Mon culture in the name of the “superior” Burman one. It was no longer necessary for her to speak Mon. Such a notion was absurd to someone who was so effectively Burmanised that her identity depended precisely on the degree to which she had been assimilated, not on the degree to which she had retained cultural integrity.

This was introjective identification in action: firstly, identifying with the aggressor; secondly introjecting the aggressor's culture, and then actively inflicting it as its ardent exponent. Interestingly, but not surprisingly, given the psychological dynamics involved, she identified much more strongly with the Junta’s policies than her ethnic Burman military husband.

The vignette illustrates that after the initial stage of actual physical destruction is complete, Burmanisation may involve a process of psychological, as well as physical and biological assimilation. In such a policy, outright total physical elimination of all ethnic opposition is not necessary; the process can be completed through absorption and assimilation, crushing, then reconstituting. In such a process where the aggressor’s culture has become internalized by the victim, proving genocide becomes difficult, since the victim seems to endorse the aggressor, or even becomes the aggressor.

The situation of this Burmanised Mon is however, very different from some other groups, such as the Wa, or the DKBA, who have simply been co-opted as the Junta’s expendable accomplices and then corrupted with drugs, business deals and offers of limited autonomy, rather than subjected to assimilation.

26.6 OBJECTION 7: CHAOS

Another objection to the existence of Genocide or a Crimes against Humanity is that what is going on is not planned, but a botched, underfunded military campaign which, through ill
discipline and lack of proper control, has become bogged down in a chaotic, brutal mess. This is undoubtedly partially true, but there is nevertheless evidence of a systematic pattern of discernible behaviour to indicate the existence of a policy taken at the highest level. It entails not just cultural destruction, but the imposition of conditions in which ethnic peoples cannot survive as distinct entities in the long term. This is a policy, not a haphazard collection of random events. We remember the ICTY’s judgement that an apparently arbitrary act can nevertheless be inflicted as part of a meaningful, pre-meditated plan.

26.7 OBJECTION 8: FAULTY OR DISTORTED INFORMATION

A further objection to genocide is that information and judgements are sometimes wrong, exaggerated or based on misinterpretations. This may, in fact, sometimes be true. Martin Smith cites an example in “Fatal Silence” (p. 43):

For example, in 1993, after several hundred villagers suddenly died in a number of localities in south eastern Burma due to symptoms that included severe diarrhoea, rumours became rife that the Tatmadaw was using biological weapons dropped from the air. Samples were smuggled out by Western journalists for testing by British defence experts at Porton Down, but the results were inconclusive. The SLORC has always denied the allegations. Some analysts, by contrast, believe that a more plausible explanation is the recent spread of a new strain of cholera, known as Vibrio cholerae 0139 or Bengal cholera which is extremely virulent.

In another example, inmates of the Shadaw forced relocation camp in Karenni State and others in central Shan State allege their drinking water was deliberately poisoned, in the first case directly by chemicals, and in the second, more indirectly, by poisoned rats being dumped into the water supply.

It is difficult to determine the level of intentionality underlying such actions. They could be caused by negligence, ignorance or recklessness. Other reports expressed fears of a compulsory sterilisation campaign in central southern Shan State where women of child bearing age have been encouraged to be "Injected" by uniformed military doctors, but it has been impossible to test the contents of the injections, or verify the accusations.

It is probable that in the context of widespread, systematic destruction of peoples on the basis of their ethnicity, it is inevitable that sometimes exaggeration and misinterpretations may occur. However, such exaggerations by victims, if indeed they are, appear not to be deliberately intended to deceive. In general, the actions and the underlying intention of the Junta have tended to be understated, rather than exaggerated.

Additionally, to complicate matters, there appears to be a well authenticated example of black propaganda of serious disinformation spread by the Junta with the intention of discrediting human rights groups. This involved the report in the autumn of 2002 of a massacre of 64 people in a monastery during a religious service in Shan State. Three separate witnesses arrived in Thailand with the same story, one with it written down. All confirmed a Junta artillery attack on defenceless worshippers on a full moonlight night in a monastery compound. The story emerged at about the time the UN Special Rapporteur was going to Burma. The reports turned out to be entirely false, but had it been widely disseminated, the Junta would have been able to take members of the international community to the intact monastery and disprove the report, thus gaining a major propaganda coup. Thankfully examples of such black propaganda, exaggerating or making up such human rights violations, are rare, but they cannot be discounted. Victims and human rights groups are vulnerable to being duped by such deceit.
26.8 OBJECTION 9: SURVIVAL OF ETHNIC PEOPLE OUTSIDE IDP AREAS

It can be argued that certainly outside conflict areas ethnic people are not just not being destroyed, but survive. Indeed Martin Smith asserts in "Time for Change" that:

Cease fire groups report that tolerance by the authorities of local schools run in minority languages as well as official acceptance of ethnic culture and literature associations has generally improved. For example, despite some obstructions by local officers, the Mon literacy and Buddhist culture training committee reported that 46000 students took part in summer school Mon language classes during 2000. Similarly, over 27000 Shan students were reported to have attended Shan language classes in 14 townships that same year. Kachin, Karen and other minority groups also try to run such classes, although they have to be at weekends, in holidays and out of school time.

Professor David Seekins also points out that some limited cultural activities are allowed:

The army in Shan State has allocated the Shans and other ethnic minorities a very constricted national identity centred on costumes, crafts and folk dances. ("Disorder in Order," pub. White Lotus, ch 2. p. 49)

Such activities would suggest that not only is there no physical destruction going on, but that even the cultural destruction implicit in Burmanisation is not occurring in all areas and, may even be being reversed. However, set against this is the evidence of significant, outright, large scale physical destruction, i.e. the slump in birth rates and population levels of ethnic peoples in certain areas; the fact population levels would be much higher amongst ethnic people if they were increasing at the Burman average (Martin Smith again); the apparent decline in relative population levels between Burmans and ethnic peoples in subjugated areas such as the Delta; the forced displacement of over a third of Karenni State, with about one third of the State totally depopulated; 300,000 Shan forcibly displaced with population levels collapsing to a third of what they previously were in certain areas, with infant mortality rates in the eastern part of the State five times below that of some areas of the Burman lowland average. Moreover, as the plight of the Mon shows, extensive land confiscation, forced labour, rape and extortion continue, even though a cease fire exists (e.g. see "The Mon Forum," issue no.10, October 2004.) This continuing persecution and physical destruction of the Mon suggests that the process of Burmanisation is not stopped by cease fire agreements and that the process is something that goers well beyond a counter-insurgency campaign intended to defeat armed resistance. This ongoing persecution and indirect destruction of the Mon puts summer schools, costume displays and carefully choreographed folk dances into perspective. At the time of writing there are reports of the Junta attempting to close down thirty schools run by the New Mon State Party suggesting that even the very limited cultural tolerance of language may not be genuine. In Karen areas Amnesty International reports that inhabitants still have to flee from deliberately inflicted unsustainable conditions even though they live away from any areas associated with resistance:

Most of the Karen workers to whom Amnesty International spoke did not live in areas of counter-insurgency activity, and so reported fewer human rights violations at the hands of the tatmadaw. However, they had not been able to survive at home because of the excessive fees levied on them, "Rice taxes" in kind and other economic hardships. ("Myanmar: Lack of Security in Counter Insurgency Areas," 2002).

Evidence suggests quite clearly ("Internal Displacement," TBBC, p.43) that it is in the Junta controlled relocation sites where the greatest prevalence of violations occurs, something implied by the current UN Special Rapporteur, Mr Paulo Pinheiro, in his report to the UN this year in October 2004. Additionally, the violations are clearly systematic. The area of
fewer violations is actually the free fire zones where victims are "merely" vulnerable to being shot on sight ("Internal Displacement," TBBC, p.42):

*Ironically, the most effective protection against human rights abuses appears to be hiding from sight in the forest, (i.e. in the free fire zones).*

### 26.9 OBJECTION 10: SURVIVAL OF ETHNIC PEOPLE IN IDP AREAS

Another objection is that ethnic people in conflict areas are generally surviving. This is true, but it may because of The Junta's actions. The ethnic people are surviving despite the Junta's policies, not because of them. This is firstly because of aid from Thailand and the ethnic people's hardy resourcefulness; secondly because of the incompetence, low morale and lack of resources of Junta troops who are operating in areas of low population density where there is no or minimal infrastructure. The Nazi and Serb genocides took place in areas where fast genocide was possible because of a developed infrastructure, e.g. roads, railways, airports, phones etc. The fast Rwandan genocide was inflicted in a very densely populated small area which made it easy to carry out large scale massacres. In eastern Burma neither conditions pertain. Very poorly paid, fed and equipped Junta conscripts have to walk through vast areas of sparsely populated mountainous jungle. It is simply not physically possible to quickly wipe out very large numbers of people in such conditions because such numbers do not exist, and the technology is not available to destroy them. The failure to successfully complete genocide, however, does not absolve the Junta from the charge of attempting to inflict the crime, or with having successfully destroyed so many people that it can be held responsible for actually having committed it in relation to the destruction of a *part* of the people. (We remember Martin Smith's estimate of *ten thousand* dying a rear for decades; *millions of homes and lives shattered*; the former SLORC Chairman, Saw Maung's estimate of deaths running into *millions.*)

### 26.10 OBJECTION 11: POLITICALLY UNACCEPTABLE
The final objection to the allegation of genocide is not legal, but human and political. The term may be simply too inflammatory and insensitive to use. To do so might split the opposition to the Junta into irreconcilable Burman and non Burman camps.

26.11 CONCLUSION ON GENOCIDE AND/OR CRIMES AGAINST HUMANITY

The answer to this dilemma is not easy and it is partly caused by the drafters of The Genocide Convention which excluded political groups from protection.

In answer to the above objection, it can argued, firstly, that it is imperative to tell the truth irrespective of political sensitivities; secondly, that only a well founded charge of genocide is likely to achieve the twin objectives of delivering humanitarian assistance, and protecting internally displaced victims.

On the other hand, alleging Crimes against Humanity would unite opposition groups and be much easier to prove. In addition, the Crime against Humanity of extermination involving the destruction of parts of groups, directly or indirectly, through, amongst other activities, denial of food and medicine, would be relatively easy to prove and would not incite divisiveness. Whether, however, the category would carry such weight as to lead to effective action to protect the internally displaced, and democracy activists suffering torture and imprisonment, is open to question.

The answer partly depends on the force of the body of law known as Crimes against Humanity. A hopeful sign of the emerging significance of this body of crime, and its practical applicability, is that it is the likely legal framework to be used in the prosecution of perpetrators of the horrific acts committed in Cambodia in which 1.7 million people died. If those responsible for the deaths of so many people in that country can be convicted of Crimes against Humanity, this category of crime may take on a significance comparable to Genocide and will carry an equally strong obligation to prevent and punish it.
A FINAL ASSESSMENT ON GENOCIDE
27.1 AFFIRMATION OF GENOCIDE

Despite the impossibility of carrying out proper scientific studies and the difficulty of identifying explicit expressions of intent, it is concluded that what is occurring in eastern Burma may amount to a crime of attempted and committed genocide of considerable part of the Karen, Karenni and Shan people. However, unlike some other genocides, such as those in Rwanda and the Holocaust, this one is much slower, much more indirect and is being inflicted in conditions of low population density, lack of infrastructure. Moreover, it has not been completed. It nevertheless employs methods specifically targeting hundreds of thousands of ethnic civilians on the grounds of their ethnicity, primarily through genocide activity 2 (c), defined by the ICTR as ways which:

Lead to a slow death e.g. lack of proper housing, clothing, hygiene, medical care or excessive work or exertion. It includes methods of destruction which do not immediately lead to death of members of the group, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, provided this would lead to the destruction of the group in whole or in part. (ICTR, Prosecutor v Kayishema and Ruzindana, 95-5, T, May 1999.)

27.2 SPECIFIC METHODS USED IN EASTERN BURMA:

Genocide may be considered to be selective killing of a group of people [i.e. those ethnic victims identified as killed in Human Rights Reports over previous years] that leads to the destruction of the wider group [in this case the internally displaced groups of ethnic Shan, Karen and Karenni] through such methods as deportation or forced fleeing (Prosecutor v Jelisic, IT-95-10-T) and deliberate deprivation of resources necessary for survival (ICTR, IT-95-5-T paras. 115-118) creating circumstances which lead to a slow death of that part of the group which can be considered to be a distinct entity living in a limited geographic zone or even municipality (ICTY, Krstic Judgement, 2001, para. 560).

These measures are, arguably, augmented by an alleged policy to assimilate and absorb ethnic peoples into the Burman race through an alleged coerced and violent state sponsored policy involving impregnation of ethnic women.

The first part of the above definition is illustrated in the case study of the Dooplaya massacre which took place in the context of the wider destruction of Karen people in Karen State: the ten civilians (nearly all women and children and all ethnic Karen) were selectively killed because they had fled orders forcibly concentrating them into a camp (selective killing of a group of people); this led to the survivors fleeing to Thailand (forced fleeing) or others fleeing into free fire zones (where there is a deliberate deprivation of resources necessary for survival leading to slow death) and the killings took place in the context of the wider destruction of the eastern hill Karen (a distinct entity of about a million) living in Karen State of eastern Burma, itself a geographic zone. The group in this case were all ethnic Karen, a protected group under the Genocide Convention.

Exactly the same definitions can be applied to the selective killings of Karenni and Shan peoples in the wider context of forced fleeing or forcible transfer of population into situations, whether they be free fire zones or places where victims have been forcibly concentrated, where resources have been deliberately reduced below a minimum necessary for survival.

In Karenni State specific groups have been targeted for destruction in a widespread manner, particularly those in the north east of the state.
In general, the form of genocide being attempted in eastern Burma is not immediate mass killing: it is closer to the genocide inflicted on the Armenians. The reason for this is that while initial numbers of ethnic people selectively killed is small, the survivors are forced to flee into conditions in the free fire zones and the forced relocation camps which destroy them slowly and indirectly.

27.3 SURVIVAL OF ETHNIC PEOPLE AND INTENTIONALITY

The fact that the Junta has not completed genocide is not evidence of there being no intention to do so: the act has not been completed because of factors outside the Junta’s control: internally displaced have been able to escape to Thailand in their hundreds of thousands; they have been able to eke out an existence inside the jungles because limited aid has reached them from Thailand; the Junta’s army is itself incompetent, unmotivated, not fed or paid adequately, often unwilling to fight and destroy civilians and operates in conditions of minimal infrastructure. All these factors reduce the Junta’s ability to destroy ethnic peoples. They do not, however, negate the fact that physical destruction is the probable intended policy objective underlying the crushing of those resisting the cultural and biological homogenisation process known as Burmanisation.

27.4 THE CHARGE OF ATTEMPTED GENOCIDE

The attempt to commit genocide is now be defined by William Schabas and the Rome Statute as an activity requiring a substantial step to have been taken:

*The attempt to commit genocide occurs when the offender commences its execution by means of a substantial step.* (RSICC/C, Article 25, (3), (f).

It is formally submitted that the violations cited in UN Reports and Human Rights organisations, inflicted on internally displaced people, effected by, amongst other things, selective killing of ethnic civilians; the destruction of about 2,500 ethnic villages and deprivation of all means of subsistence; contributing to large numbers of preventable deaths each year and, in certain areas, to population collapses, expresses, in effect, that a substantial step in a planned process of the attempted and/or committed destruction of substantial parts of ethnic peoples has been inflicted.

27.5 CRIMES AGAINST HUMANITY OF EXTERMINATION AND PERSECUTION

If doubt remains about the level of underlying intention, the destruction, both in its widespread aspects; its systematic nature and methods used, can certainly be described as the *Crime against Humanity of Extermination* and the *Crime against humanity of Persecution.*
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EAR SUMMATION
The following flow chart expresses an approximate chronological account of the process of destruction. The destructive activities do not, of course, necessarily follow the order of behaviour outlined below exactly, nor are all the events below inflicted. The flow chart does express an approximate chronological description of events.

1. physical attack
2. selective and mass killing
3. forced concentration
4. extortion
5. forced labour
6. starvation
7. infliction of preventable deaths
8. sexual violence
9. forced impregnation
10. confiscation of land
11. colonisation
12. cultural destruction
13. biological assimilation
14. extinction
29.1 VIOLATIONS THE RESULT OF POLICY AT HIGHEST LEVEL

As stated, this report is premised on the former UN Special Rapporteur's, Rajsoomer Lallah Q.C. conclusion that the:
These violations are . . . the result of policy taken at the highest level.

The current most generally accepted expression of legal responsibility is expressed in:

29.2 ARTICLE 28 OF THE ROME STATUTE:
RESPONSIBILITY OF COMMANDERS AND OTHER SUPERIORS

a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where,

1. That military commander or person either knew or owing to the circumstances at the time should have known that the forces were committing or about to commit such crimes.

2. That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

b)

1. The superior either knew or consciously disregarded information which clearly indicated that the subordinates were committing or about to commit such crimes;

2. The crimes concerned activities that were within the effective responsibility and control of the superior; and

3. The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Superiors are thus guilty if one, or more than one, of the following applies:

Knew;
Should have known;
Consciously disregarded the information;
Failed to investigate.

29.3 KNOWLEDGE
The ruling Junta is guilty on all four counts including the highest level of responsibility i.e. that it knows about the violations. The UN Special Rapporteur’s conclusion to his 1998 Report concluded that *The violations were the result of policy taken at the highest level entailing legal and political responsibility.*

In other words, a policy which is taken is consciously adopted and implemented. The SPDC highest level of command, the ruling Junta, therefore knew, and indeed knows, about the Human Rights violations; moreover the violations are the policy or *the result* of policy, of consciously arrived at planned decisions.

The intercepts quoted earlier regarding rape in Shan State and destruction of internally displaced and food stocks are explicit expressions of conscious disregard and failure to investigate in the first example, and full knowledge and intention to destroy the physical basis of life in the second. In the specific case of torture, Amnesty International has described it as institutionalised in Burma’s political culture.

**CONSCIOUS DISREGARD**

The Ruling Junta is also guilty of consciously disregarding the information in that it has rejected all Human rights Reports including those submitted by the UN Special Rapporteurs.

**FAILURE TO INVESTIGATE**

It has also failed to investigate properly any of the allegations of human rights violations: its punishment of perpetrators has been minimal.

**SHOULD HAVE KNOWN**

Even if the ruling junta’s claims that it did not know about the violations were accepted, it can still be held culpable because it is responsible for the overall policy of Burmanisation and its implementation: it should therefore have known or knows about the violative conduct of its forces.
CHAPTER 30: CHARGES
30. CRIMES AGAINST HUMANITY

This report, in conjunction with the illustrative footage in the film *Dying Alive*, finds sufficient evidence exists to justify a judicial investigation of the Burmese military dictatorship for the following *Crimes against Humanity*, as defined by the Rome Statute of the International Criminal Court, allegedly committed against the civilian population of Burma in general, and some of the non Burman people in particular:

*Article 7 (1) (a) The Crime Against Humanity of Murder*, including, but not restricted to, the systematic murder of Burmese civilian democracy activists of Daw Aung San Suu Kyi’s convoy on May 30, 2003; the systematic, widespread mass murder of Burmese civilian democracy activists in 1988; the systematic, mass murder of Karen civilians in the 1991 delta massacre, and the systematic, mass and selective murder of non Burman civilians throughout eastern Burma for decades.

*Article 7 (1) (b) The Crime against Humanity of Extermination* for the direct, and indirect, killing of substantial parts of eastern, ethnic, internally displaced peoples, using methods which include, inter alia: systematic expulsion and destruction of homes; systematic destruction of food; systematic destruction of medical facilities and medicines; intentional failure to provide minimum essentials for life, including food, clean water, shelter and medical supplies for those who have been forcibly concentrated into camps.

*Article 7 (1) (d) The Crime Against Humanity of Deportation or Forcible Transfer of Population* for the widespread and systematic forced transfer of civilians, inflicted both on Burman and ethnic peoples.

*Article 7 (1) (e) The Crime Against Humanity of Imprisonment or other Severe Deprivation of Physical Liberty* for the widespread and systematic imprisonment of Burmese civilian democracy activists and the forced relocation of hundreds of thousands of Burmese civilians in lowland Burma; moreover, this crime, especially *The Crime of Severe Deprivation of Physical Liberty* particularly and specifically applies to the hitherto largely ignored plight of hundreds of thousands of ethnic peoples forcibly concentrated into camps in eastern Burma, or trapped in free fire zones, deliberately denied access to less than minimum provision of food, clean water, shelter and medical supplies, and forcibly isolated from the International Community.

*Article 7 (1) (f) The Crime Against Humanity of Torture* routinely inflicted in a widespread and systematic manner on democracy activists and ethnic peoples.

*Article 7 (1) (g) - 1 The Crime Against Humanity of Rape* inflicted on a widespread, and possibly systematic basis, particularly against ethnic women in eastern regions.

*Article 7 (1) (g) - 4 The Crime Against Humanity of Forced Pregnancy* allegedly committed against ethnic women in a widespread and, arguably systematic manner, intended to change the ethnic composition of groups.

*Article 7 (1) (g) The Crime Against Humanity of Sexual violence* for sexual crimes committed through the use of force, or the the threat of force, or coercion, against the women of Burma, particularly ethnic women.

*Article 7 (1) (h) The Crime Against Humanity of Persecution* committed against both democracy activists, including the National League for Democracy, and ethnic and religious groups.
Article 7 (1) (i) The Crime Against Humanity of Enforced Disappearance of Persons, particularly the crimes committed by death squads operating in Karen State under the direct control of the Military Intelligence.

Article 7 (1) (k) The Crime Against Humanity of other inhumane acts, including systematic humiliation and mutilation inflicted on the democratic opposition and ethnic peoples not specifically identified in the above list of crimes, which are intended to degrade and destroy political and ethnic opposition by inflicting severe mental and physical suffering.

30.1 ATTEMPTING AND/OR COMMITTING GENOCIDE

In addition to the above Crimes Against Humanity committed against the general civilian population of Burma, it is also asserted that sufficient evidence exists to carry out an investigation of the military dictatorship for attempting and committing a low intensity form of genocide, genocide by attrition, against a significant and considerable part of the ethnic peoples of eastern Burma, within the overall context of the Crime against Humanity of Persecution, known as Burmanisation.

The victim groups include the internally displaced ethnic people trapped in free-fire zones, and the ethnic people forcibly concentrated into camps.

This form of low intensity genocide is inflicted in the following ways:

- selective and mass killing of some non Burman people;
- infliction of serious mental and bodily harm, particularly through widespread, and arguably systematic, sexual violence and torture;
- inflicting conditions of life calculated to bring about physical destruction of parts of the Karen, Karenni and Shan ethnic groups particularly by infliction of positive violence through systematic expulsions from homes, destruction of food and medicines in free fire zones, and non-provision of less than minimal provision of food, clean water, medicines, sanitation and hygiene in areas where the displaced have been forcibly concentrated;
- allegedly imposing measures to prevent births within the ethnic groups by coerced or violent impregnation of ethnic women, or abandonment of them, once impregnated;
- forcibly transferring children, particularly ethnic children, into the Burmanising army.

Taking into account and drawing on the wording of The Genocide Convention; its subsequent clarification and codification in the Rome Statute; the interpretation and application of The Convention by the two UN Security Council mandated Tribunals for Rwanda and the former Yugoslavia; the description and analysis of the facts as described by UN General Assembly Resolutions and Reports of the UN Special Rapporteurs for Human Rights; by Amnesty International; by grass roots organisations and by extensive personal reconnaissance in depth, the following definition of attempting to commit genocide is submitted as being, arguably, an applicable, comprehensive and accurate description of what is being, and has been inflicted on the internally displaced civilian ethnic Karen, Karenni and Shan peoples of eastern Burma.

For the sake of clarity and to conform to the definitions of genocide as defined in Case Law, the assessment is divided into three parts. The genocide allegedly being attempted involves a two stage process: the first stage involves direct killing and forced fleeing as described in
paragraph 1; the longer, slower stage, involving methods of indirect destruction, is described in 3; the requisite criteria to justify the application of attempting genocide in terms of geographical area, numbers, and distinguishing characteristics of the victim group, is described in 2.

30.2 DETAILED FINAL DEFINITION

Thus, paragraphs 1 and 3 need to be seen as complementing each other, synergistically, within the spatial and numerical criteria identified in 2.

1. Selective killing and widespread violence inflicted on ethnic peoples that lead to the destruction of the these groups through such methods as forced fleeing or deportation, including forcible transfer of population, (ICTY, Prosecutor v Jelisic, IT-95-T);

2. involving those parts of ethnic groups of Shan, Karen and Karenni which can be considered to be distinct entities living in the geographic zone of eastern Burma and in specific municipalities (ICTY, Prosecutor v Krystic, Judgement, August 2001);

3. while forced to flee or be forcibly transferred, endure deliberately inflicted conditions, including, but not restricted to, the deliberate deprivation of resources indispensable for survival, such as food, medical services and systematic expulsion from homes (Rome Statute Article 6 (c) footnote 4); and conditions which lead to a slow death, e.g. rape, starving, reducing medical services below a minimum, withholding sufficient living accommodation, intended to lead to the long term slow destruction of part of the group. (ICTR, Prosecutor v Kayishema and Ruzindana, Judgement 95-5-T, 21, May 1999.)

These conditions inflicted on the internally displaced people are additionally aggravated by widespread and systematic extortion, land confiscation, sexual violence, plunder, development induced displacement and population transfer.
CHAPTER 31: DEFENCES
31. NO DEFENCE OF OFFICIAL POSITION

There is no defence under International Law for the crimes of Genocide, Crime against Humanity and War Crimes for the following individuals and groups as expressed in the Rome Statute:

The Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it in and of itself, constitute a ground for reduction of sentence. (ARTICLE 27)

A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces. (ARTICLE 28.)

The crimes identified in this report, and by other human rights organizations, are alleged to have been committed by the Burma army, or by splinter groups under its de facto control, such as the DKBA. There can be no defence offered either in terms of position or responsibility. The ruling Junta is directly responsible and accountable for the crimes committed over the previous decades. As impunity has been cited as the primary cause of the human rights violations, it is logical that to end the violations the ruling junta must be prosecuted.

The following could, however, be offered as defences in the case of Burma.

31.1 DISORIENTATED STATE OF MIND

A defence for excluding criminal responsibility can be claimed for mental disease, or intoxication. The issue is relevant to Burma since drugs and alcohol (army whisky) appear to play an important role in facilitating human rights violations. For example, witnesses claim alcohol was made available to the people who attacked Aung San Suu Kyi's convoy. How is responsibility affected when perpetrators have taken alcohol, or drugs, before or during, the infliction of human rights violations?

The Rome Statute states that criminal responsibility is excluded for intoxication:

Unless the person has become voluntarily intoxicated under such circumstances that he knew or disregarded the risk, that as a result of intoxication, he or she was likely to engage in conduct constituting a crime.

In the context of widespread, systematic violations, the provision of large amounts of "array whisky" and drugs in the field, and their voluntary acceptance suggests they are used to facilitate criminal activity. Indeed, the bizarre violence of much behavior suggests deranged mentality produced by alcohol and drugs deliberately provided to facilitate such activity.
31.2 ACTIONS ARE ARBITRARY NOT SYSTEMATIC

The fact that individual actions may appear to be arbitrary cannot be considered in itself to be a defence. The fact that individual acts can appear arbitrary but nevertheless also be considered to be acts of genocide was confirmed and clarified by the ICTR thus:

For the crime of genocide to occur, the Mens rea [the specific intention] must be formed prior to the commission of the genocidal acts. The individual acts themselves do not require premeditation; the only consideration is that the act should be in line in furtherance of the genocide act. (Prosecutor V Kayishema and Ruzindana, Judgement 21 May 1999, ICTR-95-IT-para. 91)

The crucial point is that the individual acts do not require premeditation. Although many of the acts of destruction in eastern Burma are clearly premeditated and express policy, even those which appear arbitrary can, in fact, according to the above judgement, be considered to be acts of Genocide or Crimes against Humanity. This important judgement, supported by the ICTY, suggests killings which may appear individually to be arbitrary may be meaningful acts of policy.

Although the situation on the ground in the mountainous, jungle conditions of eastern Burma is often confusing, the overall policy of destruction is not: it is clearly planned and intentional. Thus, while some individual soldiers and commanders may inflict violations arbitrarily their individual actions are part of a wider policy and can be understood as being in line with the furtherance of the that Policy taken at the highest level.

Thus apparent arbitrariness, or acts justified as reprisals, or the reluctance of some commanders or soldiers on the ground to inflict violations, do not undermine the existence of an overall, premeditated policy. The violations inflicted by the ruling Junta are the policy. Occasional reluctant individual officers and soldiers are not evidence of a lack of systematic policy, but rather, in fact, the reverse: they are incapable of stopping, preventing or punishing the crimes because the crimes are the policy.

31.3 CONFUSION OF IDENTITY OF PERPETRATORS AND VICTIMS

The fact that destruction is not always inflicted along ethnic lines in internally displaced areas cannot deny the application of the charges of attempting, or committing genocide. Victims are almost all ethnic peoples. Perpetrators, while using non Burmans, often violently co-opted, at low levels in the army, are nevertheless inflicting a racial policy of Burmanisation and a political policy of centralisation. Crimes against Humanity protect all victim groups in Burma, including resistance forces.

In conclusion, despite the fluidity and complexity of the situation both sets of crime are applicable.
CHAPTER 32:
THE ISSUE OF ENFORCEMENT
32. INTRODUCTION: AMNESTY AND/OR PROSECUTION

This is not the place to examine in detail the advantages and disadvantages of an amnesty and its possible application to Burma. However, there is a fundamental difference between an Abraham Lincoln type of amnesty granted to combatants who have fought honorably on opposite sides of a civil war (in the interests of the tranquility of the Commonwealth), and one given out of fear to a criminal State which has committed, or attempted, Genocide and perpetrated Crimes against Humanity.

32.1 THE INTERNATIONAL OBLIGATION TO PROSECUTE CRIMES AGAINST HUMANITY AND GENOCIDE

The relationship between international law and the State's right to grant amnesty is quite clear. The State is a continuous legal entity. This means the State's legal responsibility continues even after a change of government. As a result, the State cannot legally annul its own crimes committed against its own subjects. (Geoffrey Robertson, "Crimes Against Humanity," pub. New Press, 2000).

A transitional government in Burma could not, therefore, legally grant amnesty to the military Junta for crimes of Universal Jurisdiction, such as Genocide and Crimes against Humanity without itself violating international law. Amnesties given to perpetrators of such deeds by frightened, or blackmailed, governments cannot be upheld by international law. This is particularly true of the crime of torture, where the Human Rights Commission has ruled that amnesties provided for acts of torture:

are generally incompatible with the duty of states to investigate such acts; to guarantee prosecution of such acts within their jurisdiction; and to ensure they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible. (HRC, General Comment on Article 7, 44 Session, 1992).

Moreover, if amnesties are provided by frightened, or intimidated, transitional governments, they are not binding on other States, which may apply the doctrine of Universal Jurisdiction to any perpetrator who comes within their borders.

In addition, the supremacy of the international law was established in the 1969 Vienna Convention on the Law of Treaties. This forbids the use of domestic laws to override international obligations.

Psychologically, reconciliation cannot happen without justice and remorse by perpetrators. Without them, transitional justice is a contradiction in terms. There has been no sign of remorse on behalf of the Junta, and no action, as yet, to end impunity. Prolonged, laudable programs on peace building and transitional justice amongst the democratic opposition have had no effect, whatsoever, on undermining the violative regime's grip on power.
32.2 INTERNATIONAL RESPONSIBILITY TO PROSECUTE

Finally, the crimes alleged to have been committed by the military dictatorship may no longer be purely an internal Burmese matter: the crimes inflicted violate the fundamental laws of mankind. As such, the international community has a duty and obligation to punish those responsible. In light of the fact that the opposition may be too weak, divided, under-resourced, or ignorant, to apply the law, the initiative may have to come, as in the case of General Pinochet, from the international community itself.
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A FRAMEWORK FOR ACTION:
THE EGG MODELS
A model of humanitarian protection known as The EGG has been developed by the ICRC. It is used by a number of agencies to analyse and address States afflicted by human rights abuses and describes corrective action. The model offers laudable, humane and rational programme of action, but is inappropriate in Burma's case.

The model proposes a series of responses which are interdependent, non-hierarchical and simultaneous, the three activities being contiguous in the diagram, fitting snugly together into the horizontal egg. The pattern of abuse is marked with a cross but is embedded in healing activities which enclose it in a series of mutually reinforcing, multifaceted activities comprised of responsive, remedial, and environmental action. The model affirms three levels of protection:

A) Responsive action which is defined as any activity undertaken in connection with an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it, and or alleviating its immediate effects;
  • convincing authorities concerned, through dialogue, to take the same measures;
  • providing direct services to the victims of the abuse by being present in the affected areas, displaced camps, places of detention etc;
  • registering them;
  • carrying out transfers/evacuations
  • providing information and communication;
  • alleviating victims' immediate suffering by means of appropriate material assistance; medical assistance; restoring maintaining family links; psychological care and assistance; helping to ensure respect for judicial rights of the individual by providing legal assistance to persons who are the object of judicial proceedings and support for their families.
COMMENTARY

This model does not really meet Burma's needs because the ruling Junta is, in essence, a criminal organisation responsible for the violations. It is not the judicial rights of individuals which must be protected, but entire groups of victimised peoples. In Burma, it is physically impossible for aid agencies to properly access the internally displaced to carry out the above activities. Where international agencies have gained some limited access, local people have often been put seriously at risk.

B) Remedial Action is action which is taken to restore people's dignity and ensure adequate living conditions subsequent to a pattern of abuse, in particular by:

• pressuring the authorities concerned, through public disclosure, into taking the required measures;
• convincing the authorities concerned, through dialogue, to take the same measures;
• providing direct services to the victims of the abuse;
• responding to victims needs by means of appropriate assistance;
• promoting justice for victims and ensuring due process of law for perpetrators;
• taking a lessons learnt approach to strengthening environment building activities;
• supporting and protecting organizations, governments and NGO's etc working to defend rights.

COMMENTARY

This is difficult to implement in Burma, not least because international agencies have accepted Junta restrictions not to work in precisely the areas where the overwhelming majority of victims exist. Even in lowland Burma, the egg's area of potential remedial action, the violative framework is dominant. The failure of international organisations to honour any of the above was expressed by their deafening silence after the assault on Aung San Suu Kyi's convoy in May 2003. None of the above measures, I understand, were implemented. The Red Cross limited its response to confirming the Junta's assertion that Suu Kyi was not fasting; the UN Special Envoy helped the Junta by asserting she was fine and in good spirits.

C) Environment building means fostering a social, cultural, institutional and legal environment conducive to respect for the rights of the individual, in accordance with the letter and spirit of the relevant bodies of law.

• Promoting the drafting and adoption of treaties and the implementation of customary international law and non treaty based standards;
• Promoting the implementation at the national level of relevant international law;
• Promoting a fair system of justice that provides for the punishment of, and reparations following violations of human rights law and international humanitarian law;
• Creating a public culture consistent with human rights and humanitarian values;
• Promoting knowledge of, and respect for human rights and humanitarian values and principles among all groups concerned;
• Helping to develop and establish organizations, both governmental and non governmental at the national and international level, capable of enhancing respect for human rights and humanitarian law;
• Creating and consolidating mechanisms at the international level for the implementation of international law.
COMMENTARY

None of the above has been, or can be implemented in Burma. Behind the platitudinous exercises of constructive engagement, the systematic destruction of substantial parts of ethnic peoples continued and the assault on Suu Kyi's convoy planned. Those responsible for the assault were promoted. In the face of the failure of the international community to implement any of the above and the Junta's, systematic infliction of violations the above is inapplicable.

The model may be applicable to a society which is primarily healthy, and capable of responding to rational, humane, remediable treatment. The *Pattern of abuse* identified inside EGG 1 is small, physically limited to one area and enclosed by expanding, healing circles of constructive activity. The model does not express a situation in which almost the whole egg is diseased. In Burma, the *pattern of abuse*, (or rather violation) is widespread and systemic, and fills most of the egg, rather like the tentacles of advanced cancer spread throughout the whole body. The model thus makes the mistake of much reporting on Burma. It sees the violative conduct as a limited and unintended by-product of policy, rather than expressive of the policy itself. Because of this, it expresses unrealistic emphasis and hope about constructively engaging with the endogenous, if-restorative powers within the egg.

The fundamental inappropriateness of the approach is expressed in its choice of words: it seeks to remedy abuses, i.e. acts which are not expressions of State policy. The UN Reports condemn violations, i.e. acts which are formal transgressions, the results of systematic State policy. Remedial action assumes the existence of a basically healthy State. It cannot be effective where the State inflicts violations as policy.
33.1 EGG TWO: THE BURMESE EGG

An egg expressive of Burma's real situation would contain divided yolks representing the internal NLD and the ethnic opposition, enclosed in a violative framework. There is some minimal limited space available for international agencies, provided they do not do anything to challenge the structure of the Burmanising State.

The two yokes are surrounded, divided and attacked: in the ethnic peoples' case, the yolk is violated by genocidal activity, itself enveloped within a system of Persecution known locally as Burmanisation; the NLD's yoke is violated by imprisonment and torture within a framework of Persecution. The two yokes are not allowed to communicate with each other.
The whole egg is encased in a virtually non-porous, militarized shell of racist paranoia permitting few healthy influences in, and preventing little access out, for the encircled yokes.

Within the egg there are some small, possibly healthy, spaces occupied by NGO's and UN agencies. They may play a limited role in alleviating suffering, but probably, indirectly, help sustain the violative structure of the egg itself. They appear to do little to provide nutrients to the embattled yolks because foreign aid does not, on the whole, reach the NLD and displaced non Burman groups. Ultimately, like food which gets absorbed by the tumour rather than healthy tissue, NGO's and the UN may simply prolong and strengthen the "Life" of the egg, helping to contribute, ultimately, to the death of the trapped, potential democratic/ethnic chicks.

The rejection of the ICRC/NGO EGG model is not intended to be negative, but realistic. Arguably, much more harm will continue to be inflicted on the people of Burma if well meaning, rational people from the enlightened, international community, often seconded on short term contracts, are manipulated into participating in constructive engagement which merely strengthens the shell of the egg, by conferring legitimacy on the military dictatorship, at the expense of its yokes.

What the international community needs to do is find ways of cracking open the egg to enable a Federal democracy hatch. This, as anyone who has watched a mother bird aiding the hatching of her egg knows, requires co-ordinated action; just the right amount and force of tapping from the outside timed to coincide with the actions of the chick struggling to emerge from the inside. In political parlance, a judicious mixture of external and internal action.
RECOMMENDATIONS:
A FRAMEWORK FOR ACTION
34. HATCHING DEMOCRACY

The Junta will only change if it is forced to change. Bluntly, that means the international community and the United States, in particular, must make a policy commitment for regime change in Burma, involving careful coordination with all sections of the democratic opposition, and establishing the co-operation, or at least neutrality, of Thailand and China.

34.1 SANCTIONS

General Tapping. The egg must be hit with sanctions and, if necessary, cracked open with humanitarian intervention, grounded in, and justified by, International Humanitarian Law.

34.2 FREEZING ASSETS

The Junta's assets abroad could be seized.

34.3 PRACTICAL MEASURES TO REDUCE GRIP ON POWER

The Junta's grip on power could be weakened by additional measures.

34.4 TRAINING IN POLITICAL LEADERSHIP AND ADVOCACY

Additional training and education could be provided to help the people of Burma participate in, and draft, a Democratic Federal Constitution appropriate to the country's needs. Such a Constitution should achieve a balance of power between lowland Burman and non Burman peoples, and protect the rights of minorities within non Burman States, including Burmans.

Multi ethnic advocacy teams, hopefully including Burman and non Burmans, should be established and trained to present violations, with supportive material, to the international community, including jurists, with the objective of ending impunity.
34.5 ACTIVATING THE NASCENT RESPONSIBILITY TO PROTECT

The emerging acceptance of the principle of the responsibility to protect citizens in failed States has been best expressed by the Secretary General of the United Nations, Kofi Annan:

*The time has come to translate the rhetoric of conflict prevention into concrete action.*

In general, despite the principle of state sovereignty being enshrined in the UN Charter, it is now generally accepted that crimes of a certain gravity and seriousness violate the UN Charter and threaten the Peace and Security of Mankind. (See the code of crimes drawn up by the International Law Commission 1995). Such crimes justify and require action to prevent and punish them:

*Perhaps the single most significant development in the law is the notion that international peace and security may be threatened by human rights violations within the borders of a sovereign state even where there is no perceptible or realistic impact on neighbouring States. The implicit philosophy is that gross human rights violations anywhere are a threat to peace and security everywhere. . . Genocide must be deemed a threat to international peace and security, within the meaning of Chapter 7 of the [UN]Charter.* (William A. Schabas, "Genocide in International Law," CUP, p.498/9, pub. 2002).

The violations inflicted on the people of Burma on such a scale, and over such an extended period of time, arguably threaten international security, because they have had *perceptible and realistic impacts on neighbouring States*, namely: Thailand, where there has been systematic destruction of refugee camps, and the facilitation of drug production and trafficking by the regime; northwestern India, which has had to deal with the flight of tens of thousands of refugees and a vast expansion of drugs; Bangladesh, one of the poorest countries in the world, which has had to deal with the influx of over 200,000 refugees on two separate occasions, something well beyond its capacity to cope with.

William Schabas's above judgement that human rights violations of a certain gravity and scale represent a threat to international security has been endorsed by the International Law Commission:

*The tragic events in Rwanda clearly demonstrated that the crime of genocide, even when committed primarily in the territory of a single State, could have serious consequences for international peace and security.* (International Law Commission Report, May-July 1996, p.87)

The plight of the Burmese people presents the International Community with a real challenge, a test case, as to if, and how, international law can be implemented; the government of the Netherlands, with its special concern and responsibility for upholding and implementing international law, and Sweden, which in 2004 took a leading role in hosting the Conference on Preventing Genocide, (where Myanmar was specifically cited as a country at grave risk of the crime), have a particular, special responsibility to enforce law.
34.6 SPECIFIC COURSES OF ACTION

There are a number of possible courses of action open to the International Community to end impunity in Burma, and bring assistance and protection to the internally displaced ethnic peoples. All are problematic, but to do nothing in the light of all the evidence collected; the apparent terminal failure of UN attempts to broker a transition to democracy and gain access to the internally displaced; the ongoing destruction of ethnic peoples and continuing persecution of the democratic opposition, is unacceptable.

34.7 PROSECUTION BY INDIVIDUAL, OR GROUPS OF COUNTRIES,

Firstly, prosecution of alleged criminals within Burma itself is clearly not feasible in the foreseeable future, as the Junta is itself responsible for inflicting, or at the very least, condoning the violations. The endless recommendations to the Junta which accompany most reports are, at best, fruitless, and at worse contribute to the debilitating illusion that there is a responsible, responsive government in Burma willing to change. However, international prosecution by outside bodies is both feasible and justifiable.

Individuals suspected of having violated Article 3 of The Geneva Conventions or having committed Crimes Against Humanity, or Genocide, are obliged to be arrested and tried in a foreign country. General Pinochet, a former head of State, was arrested, held and charged in the United Kingdom at the request of a Spanish judge for crimes of torture committed in Chile, thirty years previously.

Crimes against Humanity and Genocide are now accepted as having Universal Jurisdiction in the world. The establishment of the International Criminal Court is evidence of the International Community’s determination to put this into practice. Moreover, in the specific cases of torture, slavery, racial discrimination and genocide, the International Court of Justice has ruled that they unequivocally apply, erga omnes, to all countries irrespective of whether they have acceded to the Rome Statute or not. There is no doubt that the former two crimes are, and have been, inflicted in Burma. Torture has been condemned as widespread and systematic in all UN Resolutions on Burma and Amnesty International has even alleged it is “Institutionalised”. (“Myanmar and the institution of torture”).

The word institutionalised indicates it is even more embedded in the culture than suggested by the word systematic: institutionalised expresses that it is part of the foundations upon which the State is based. A State founded upon torture and dependent on it for its survival can and should be prosecuted under international law. In addition, forced labour has been specifically condemned by the ILO, an affiliated UN body, as a modern form of slavery and as a crime against humanity.
34.8 SUBMISSION OF A CASE OF ATTEMPTED, AND/OR COMMITTED, GENOCIDE TO THE INTERNATIONAL COURT OF JUSTICE

Secondly, under Article 9 of The Convention on the Prevention and Punishment of the Crime of Genocide a contracting party to The Convention can submit a case to the International Court of Justice, asking it to rule on whether genocide is being, or has been, committed, or attempted in Burma:

Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Burma signed and acceded to The Convention, and did not reserve on Article 9.

The above action was taken by Bosnia Herzegovina against former Yugoslavia; the Court ruled broadly in favour of the former.

The value of such an approach is that it would place the spotlight of world opinion on what is happening in Burma; increase pressure on the regime and legitimize humanitarian relief operations by the International Community.

RESPONSIBILITY AND OBLIGATION OF ALL SIGNATORY NATIONS TO PREVENT AND PUNISH GENOCIDE

The legal grounds exist for any State, whether directly connected or not to the situation in Burma, to bring a case to the International Court of Justice:

The fact that the prohibition of genocide is an erga omnes norm may entitle a State with no direct interest to sue for failure to prevent and punish the crime. (“Genocide in International Law,” William A. Schabas, CUP, p. 443).
34.9 UN ACTION

Article 8 of *The Convention on the Prevention and Punishment of the Crime of Genocide* states:

> Any Contracting Party may call upon the competent organs of The United Nations to take such action under the Charter of The United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any other acts enumerated in article 3.

a) The UN Security Council could be asked to establish an enquiry, or as Mr Pinheiro expressed it "a judicial mechanism," to investigate human rights violations in Burma;

b) The UN Security Council could refer the issue of Burma to the International Criminal Court (it can legally do this even though Burma has not signed the Rome Statute) or the International Court of Justice;

c) The UN Secretary General could be asked to bring the matter to the attention of the Security Council for action;

d) The Security Council could be by-passed and the issue of Burma could be raised and acted on by the General Assembly, provided a two thirds majority could be established.

34.10 AD HOC TRIBUNAL

Alternatively, given the attack on Aung San Suu Kyi’s convoy; the bugging of the present UN Special Rapporteur; his admission of *a potentially terminal setback*; his present banning; the decade long annual UN reports citing systematic and widespread violations, including of the Geneva Conventions and the identification of *impunity as being the essential factor* in the violations, the Security Council could consider by-passing an enquiry and establish a special ad hoc UN Tribunal on Burma on the lines of those established for the former Yugoslavia or Rwanda. The establishment of such a Tribunal would be in accordance with, and a natural consequence of, rejection by Burma of demands by the UN General Assembly to end impunity for over a decade.
34.11 ENFORCING THE RESPONSIBILITY TO PROTECT

The following criteria justify implementing the principle of the responsibility to protect the internally displaced ethnic people in Burma:

A) UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS

For example:

RESOLUTION on 1 December, 2003, para.4 (c) specifically, explicitly and urgently called for immediate access for United Nations and International Humanitarian Organisations to the most vulnerable groups of the population, i.e. the internally displaced people:

Calls on the government of Myanmar to immediately secure the safe and unhindered access to all parts of Myanmar of the United Nations and International Humanitarian Organisations so as to ensure the provision of humanitarian assistance and to guarantee the most vulnerable groups of the population.

B) THE GRAVITY AND SCALE OF THE VIOLATIONS

The moral obligation to provide protection for humanitarian relief and protection to people suffering Crimes Against Humanity overrides the claims of national sovereignty. This was asserted by the Secretary General of the United Nations in his millennium address to the General Assembly:

. . . surely no legal principle-not even sovereignty-can even shield Crimes Against Humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community.

It is now arguable that as a result of interventions, legally sanctioned or not, in, Cambodia, East Timor, Sierra Leone, Uganda, Grenada, northern Iraq, Bosnia and Kosovo, this duty and obligation to protect is now part of international customary law, something given additional credibility by the recommendations of The International Commission on Independence and State Sovereignty.

C) APPLICABILITY OF THE SPECIFIC CRITERIA DEFINED IN THE "REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY" (2001)

This Report identified the following criteria which should be met when exercising the right of intervention in the affairs of a Sovereign State.
1. THE JUST CAUSE THRESHOLD

1. Military Intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

A. large scale loss of life, actual or apprehended, with genocidal intent or not which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or
B. large scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

We note the use of the word or. The criteria identified in A, and especially in B, are clearly met in the case of Burma where the violations are the result of both deliberate State action (shown as positive violence in this report) and advertent neglect (negative violence) as also demonstrated in this report.

It should be noted the Commission does not require proof of genocide to justify intervention.

2. A LAST RESORT

Secondly it justified intervention as a last resort. The Precautionary principle Last Resort (2 B.)states:

Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.

In Burma, all avenues for peaceful transition, ending impunity and gaining access to the internally displaced have been explored and exhausted: the 1990 election is still annulled; the leader of the largest elected party and Nobel Peace Prize winner attacked and imprisoned, despite her release having been negotiated by The UN Secretary General's Special Envoy, and her unconditional release being accepted by the Junta; the UN Special Rapporteur for Human Rights has been bugged and effectively prevented from entering the country; human rights violations have been inflicted on such a scale that the ILO, a UN affiliated body, accused the Junta of being responsible for a Crime Against Humanity; people co-operating with international agencies have been intimidated, victimised and in certain cases sentenced to death; hundreds of thousands of people have been displaced; rape and sexual violence is at a minimum condoned and inflicted on widespread scale; the alleged pragmatist and conduit to the international community, Khin Nyunt, is in jail Amnesty International summed up the situation in 1998 thus:

In spite of widespread documentation of these abuses by Amnesty International and other non-governmental organisations, and calls by the United Nations and intergovernmental bodies [for over a decade] to put an end to such practices, the SPDC still allows the tatmadaw to act with impunity. ("Myanmar: Exodus from Shan State", p.9, para. 1)

The situation, seven years later, is now even worse.
3. REASONABLE PROSPECT OF SUCCESS

The Commission also required that any action to protect should have a reasonable chance of success:

_There must be a reasonable chance of success in halting or averting the suffering which has caused the intervention, with the consequences of action not likely to be worse than the consequences of inaction._ (Precautionary principle D)

Acting to protect the internally displaced in Burma would have popular support from the majority of the population if such action was clearly explained as intended to protect victims, and restore the overwhelming will of the people, (both Burman and ethnic) as expressed in the 1990 election. Intervention would thus not be imposing democracy, but restoring it. Intervention of this kind would have greater legitimacy than most other actions carried out in the post war world. However, such intervention would require the most careful preparation and would have to be co-ordinated, guided and led by Burman and non Burman groups operating in close co-operation with each other. A genuine Federal Democratic Constitution, protecting the rights of all peoples, including Burmans, would have had to be drafted acceptable to most sections of the country before such action could be undertaken.

Any intervention to provide humanitarian relief and restore democracy would have to be sincerely motivated to be justified and all troops removed within a specified date.

4. RIGHT TO EXERCISE THE DUTY TO PROTECT

In the very last resort, if the inflicted suffering is serious enough, and if the Security Council has failed to take appropriate action, as it has in most cases since its founding, action can be taken by a group of countries, or even an individual country. The Commission justified such action thus:

_If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:_

1. _Consideration of the matter by the General assembly in Emergency Special session under the Uniting for Peace Procedure; and_

2. _Action within an area of jurisdiction by regional or sub-regional organizations under the Chapter 8 of the Charter, subject to their seeking subsequent authorization from the Security Council._

_The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibilities to protect in conscience shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation—and that the stature and credibility of the United Nations may suffer thereby._

Moreover, in the last resort, it argues there is a legal obligation and duty to intervene in genocidal circumstances such as exists in Burma, even without Security Council authorization:

_Arguably, humanitarian intervention without Security Council authorization could be legally permissible as a result of the treaty based obligation to prevent genocide in Article 1 of the Genocide Convention and the customary norm it reflects, even without Security Council authorization. If the duty to prevent genocide is a peremptory norm or jus cogens norm, then it trumps any incompatible_
5. JUSTIFICATION OF THE RESPONSIBILITY TO PROTECT

The violations inflicted on the people of Burma generally, and the ethnic people in particular, violate the three fundamental sets of crimes upon which the international order is based: all three entail universal jurisdiction. They are:

The Geneva Conventions, (Common Article 3);

The Crime of attempting and/or committing Genocide;

Crimes against Humanity.

Action by concerned states is specifically justified and obliged in the particular case of preventing and punishing acts attempting or committing Genocide. It is argued in this report that a particular form of indirect slow genocide defined in Article 2 c) may be being committed: if the evidence for committing Genocide is not conclusive, it is argued that an attempt has been made to inflict genocide, commensurate with the Rome Statute's definition that a substantial step has been taken.

The obligation to prevent its completion is clearly expressed in The Convention's very name; The Prevention and Punishment of the Crime of Genocide.

Secondly, the sustained violations of The Geneva Conventions, particularly Common Article 3, one of the cornerstones of International Law and accepted by the whole international community, oblige a response to end impunity;

Thirdly, the infliction of Crimes Against Humanity, particularly, amongst others, the crimes of rape, sexual violence, torture, murder, forced labour and the forcible transfer of population and persecution of ethnic, religious and political groups, justify action to prevent and punish perpetrators.

Infliction of these crimes justify prosecution of perpetrators, and require action to protect victims.
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Intercept 1: Sept 21, 2002: Cover up and reprimand of rape of Shan women.
Intercept 2: August 22, 2002: Invitation for Chemistry Training abroad for military officers of Major and above.
Intercept 4: Rejection of Forced Labour.
Intercept 5: Reprimand on killing.
Intercept 6: Admission of widespread violations and culpability, March 2005


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ROME STATUTE DEFINITION OF GENOCIDE

ARTICLE 6 GENOCIDE

Article 6 (a)
Genocide by killing

Elements
1. The perpetrator killed (see footnote 2) one or more persons.
2. Such person, or persons, belonged to a particular national, ethnical, racial, or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b)
Genocide by causing serious bodily or mental harm

Elements
1. The perpetrator caused serious bodily or mental harm to one or more persons. (See footnote 3)
2. Such person or persons belonged to a particular national, ethnical, racial, or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (c)
Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements
1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial, or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life calculated to bring about physical destruction of that group, in whole or in part, (see footnote 4)
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (d)
Genocide by imposing measures intended to prevent births

Elements
1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial, or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (e)
Genocide by forcibly transferring children

Elements
1. The perpetrator forcibly transferred one or more persons. (See footnote 5)
2. Such person or persons belonged to a particular national, ethnical, racial, or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Footnote 2: The term killed is interchangeable with the term "caused death."

Footnote 3: This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

Footnote 4: The term "conditions of life" may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes. (My bold)

Footnote 5: The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.
APPENDIX 2

GENEVA CONVENTION

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

http://www.canlii.org/ca/sta/g-3/part60908.html -Canadian legal information institute
APPENDIX 3

ROME STATUTE

Article 7 Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

   (a) Murder;
   (b) Extermination;
   (c) Enslavement;
   (d) Deportation or forcible transfer of population;
   (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
   (f) Torture;
   (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
   (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
   (i) Enforced disappearance of persons;
   (j) The crime of apartheid;
   (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

   (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

   (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

   (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

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

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

APPENDIX 4


The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international cooperation is required,

Hereby agree as hereinafter provided:

Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

Article 3

The following acts shall be punishable:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.
Article 4

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article 5

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article 6

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article 9

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article 10

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article 11

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 12

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article 13

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a process-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article 14

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article 15

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective. Article 16

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article 17

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

(a) Signatures, ratifications and accessions received in accordance with article 11;

(b) Notifications received in accordance with article 12;

(c) The date upon which the present Convention comes into force in accordance with article 13;
(d) Denunciations received in accordance with article 14;
(e) The abrogation of the Convention in accordance with article 15;
(f) Notifications received in accordance with article 16.

Article 18

The original of the present Convention shall be deposited in the archives of the United Nations. A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XL.

Article 19

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

*New York, 9 December 1948*

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APPENDIX 6

Declarations and Reservations to the
Convention on the Prevention and Punishment of the Crime of Genocide

DRAFT

A total of thirty of the 132 nations which are party to the Genocide Convention have made reservations, declarations and understandings.

Since 1989, eleven countries have withdrawn reservations to Article IX, concerning submission of disputes to the International Court of Justice. As of October 3, 2000 28 counties continue to have active reservations. Many countries have registered objections to these reservations, some nations objecting to a reservations from a specific nation and some nations refusing to accept any of the reservations.

| Summary of Reservations, Declarations and Understandings |
|---|---|---|---|---|---|---|---|---|
| II | IV | VI | VII | VIII | IX | XI | XII |
| Definiton of Genocide | Respon | Individuals | Tribun | Extrad | Prevent | Suppres | Submiss | Signatu | Non-self |
| | | | | | | | | | |
| | | | | | | | | | |
| Number of reservations, declarations and understandings | 1 (USA) | 1 (Philippines) | 6 | 5 | 1 (Myanmar) | 16 | 13 |
| Number withdrawn | | | | | | | | |

599
Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession. The symbol # indicates an "understanding". Empty brackets "[]" indicates that a reservation was withdrawn, see date on the left.

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**Albania**

(Reservation to Article IX withdrawn July 19, 1999) As regards article IX: The People's Republic of Albania does not consider as binding upon itself the provisions of article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the Convention shall be referred for examination to the International Court at the request of any party to the dispute. The People's Republic of Albania declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the People's Republic of Albania will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

As regards article XII: The People's Republic of Albania declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

**Algeria**

The Democratic and Popular Republic of Algeria does not consider itself bound by article IX of the Convention, which confers on the International Court of Justice jurisdiction in all disputes relating to the said Convention.

The Democratic and Popular Republic of Algeria declares that no provision of article VI of the said Convention shall be interpreted as depriving its tribunals of jurisdiction in cases of genocide or other acts enumerated in article III which have been committed in its territory or as conferring such jurisdiction on foreign tribunals.

International tribunals may, as an exceptional measure, be recognized as having jurisdiction, in
cases in which the Algerian Government has given its express approval.

The Democratic and Popular Republic of Algeria declares that it does not accept the terms of article XII of the Convention and considers that all the provisions of the said Convention should apply to Non-Self-Governing Territories, including Trust Territories.

Argentina

Ad article IX: The Argentine Government reserves the right not to submit to the procedure laid down in this article any dispute relating directly or indirectly to the territories referred to in its reservation to article XII.

Ad article XII: If any other Contracting Party extends the application of the Convention to territories under the sovereignty of the Argentine Republic, this extension shall in no way affect the rights of the Republic.

Bahrain

Reservations:

"With reference to article IX of the Convention the Government of the State of Bahrain declares that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the express consent of all the parties to the dispute is required in each case."

"Moreover, the accession by the State of Bahrain to the said Convention shall in no way constitute recognition of Israel or be a cause for the establishment of any relations of any kind therewith."

Bangladesh

Declaration:

"Article IX: For the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all parties to the dispute will be required in each case."

Belarus

(Reservation to Article IX withdrawn April 28, 1989)

The Byelorussian SSR declares that it is not in agreement with article XII of the Convention and
considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories.

**Bulgaria**

(Reservation to Article IX withdrawn June 29, 1992)

As regards article XII: The People's Republic of Bulgaria declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

**China**

Declaration:

1. The ratification to the said Convention by the Taiwan local authorities on 19 July 1951 in the name of China is illegal and therefore null and void.

Reservation:

2. The People's Republic of China does not consider itself bound by article IX of the said Convention.

**Czech Republic**

(Reservation to Article IX withdrawn April 26, 1991)

**Finland**

(Reservation to Article IX withdrawn January 5, 1998)

**Hungary**

(Reservation to Article IX withdrawn December 8, 1989)

The Hungarian People's Republic reserves its rights with regard to the provisions of article XII which do not define the obligations of countries having colonies with regard to questions of colonial exploitation and to acts which might be described as genocide.

**India**

"With reference to article IX of the Convention, the Government of India declares that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case."

603
Malaysia

Reservation:

"That with reference to article IX of the Convention, before any dispute to which Malaysia is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of Malaysia is required in each case."

Understanding:

"That the pledge to grant extradition in accordance with a state's laws and treaties in force found in article VII extends only to acts which are criminal under the law of both the requesting and the requested state."

Mongolia

(Reservation to Article IX withdrawn July 19, 1990)

The Government of the Mongolian People's Republic declares that it is not in a position to agree with article XII of the Convention and considers that the provisions of the said article should be extended to non-self-governing territories, including trust territories.

The Government of the Mongolian People's Republic deems it appropriate to draw attention to the discriminatory character of article XI of the Convention, under the terms of which a number of States are precluded from acceding to the Convention and declares that the Convention deals with matters which affect the interests of all States and it should, therefore, be open for accession by all States.

Morocco

With reference to article VI, the Government of His Majesty the King considers that Moroccan courts and tribunals alone have jurisdiction with respect to acts of genocide committed within the territory of the Kingdom of Morocco.

The competence of international courts may be admitted exceptionally in cases with respect to which the Moroccan Government has given its specific agreement.

With reference to article IX, the Moroccan Government states that no dispute relating to the interpretation, application or fulfilment of the present Convention can be brought before the International Court of Justice, without the prior agreement of the parties to the dispute.

Myanmar

"(1) With reference to article VI, the Union of Burma makes the reservation that nothing contained in the said Article shall be construed as depriving the Courts and Tribunals of the Union of jurisdiction or as giving foreign Courts and tribunals jurisdiction over any cases of genocide or any of the other acts enumerated in article III committed within the Union territory.

"(2) With reference to article VIII, the Union of Burma makes the reservation that the said article shall not apply to the Union."
Philippines

"1. With reference to article IV of the Convention, the Philippine Government cannot sanction any situation which would subject its Head of State, who is not a ruler, to conditions less favorable than those accorded other Heads of State, whether constitutionally responsible rules or not. The Philippine Government does not consider said article, therefore, as overriding the existing immunities from judicial processes guaranteed certain public officials by the Constitution of the Philippines.

"2. With reference to article VII of the Convention, the Philippine Government does not undertake to give effect to said article until the Congress of the Philippines has enacted the necessary legislation defining and punishing the crime of genocide, which legislation, under the Constitution of the Philippines, cannot have any retroactive effect.

"3. With reference to articles VI and IX of the Convention, the Philippine Government takes the position that nothing contained in said articles shall be construed as depriving Philippine courts of jurisdiction over all cases of genocide committed within Philippine territory save only in those cases where the Philippine Government consents to have the decision of the Philippine courts reviewed by either of the international tribunals referred to in said articles. With further reference to article IX of the Convention, the Philippine Government does not consider said article to extend the concept of State responsibility beyond that recognized by the generally accepted principles of international law."

Poland

(Reservation to Article IX withdrawn October 16,1997)

As regards article XII: Poland does not accept the provisions of this article, considering that the Convention should apply to Non-Self-Governing Territories, including Trust Territories.

Portugal

(Reservation to Article VII withdrawn Stember 16,1999)

Declaration:

The Portuguese Republic declares that it will interpret article VII of the [said Convention] as recognizing the obligation to grant extradition established therein in cases where such extradition is not prohibited by the Constitution and other domestic legislation of the Portuguese Republic.

Romania

(Reservation to Article IX withdrawn April 2,1997)

As regards article XII: The People's Republic of Romania declares that it is not in agreement with article XII of the Convention, and considers that all the provisions of the Convention should apply to the Non-Self-Governing Territories, including the Trust Territories.
Russian Federation
(Reservation to Article IX withdrawn March 8, 1989)

The Union of Soviet Socialist Republics declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

Rwanda

The Rwandese Republic does not consider itself as bound by article IX of the Convention.

Singapore

Reservation:

"That with reference to article IX of the Convention, before any dispute to which the Republic of Singapore is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the Republic of Singapore is required in each case."

Slovakia

(Reservation to Article IX withdrawn April 16, 1991)

Spain

With a reservation in respect of the whole of article IX (jurisdiction of the International Court of Justice).

Ukraine

(Reservation to Article IX withdrawn April 20, 1989)

The Ukrainian SSR declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

United States of America

Reservations:

"(1) That with reference to article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case."
(2) That nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States."

Understandings:

"(1) That the term "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such' appearing in article II means the specific intent to destroy, in whole or in substantial part, a national, ethnical, racial or religious group as such by the acts specified in article II.

(2) That the term "mental harm’ in article II (b) means permanent impairment of mental faculties through drugs, torture or similar techniques.

(3) That the pledge to grant extradition in accordance with a state's laws and treaties in force found in article VII extends only to acts which are criminal under the laws of both the requesting and the requested state and nothing in article VI affects the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside a state.

(4) That acts in the course of armed conflicts committed without the specific intent required by article II are not sufficient to constitute genocide as defined by this Convention.

(5) That with regard to the reference to an international penal tribunal in article VI of the Convention, the United States declares that it reserves the right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate.”

Venezuela

With reference to article VI, notice is given that any proceedings to which Venezuela may be a party before an international penal tribunal would be invalid without Venezuela's prior express acceptance of the jurisdiction of such international tribunal.

With reference to article VII, notice is given that the laws in force in Venezuela do not permit the extradition of Venezuelan nationals.

With reference to article IX, the reservation is made that the submission of a dispute to the International Court of Justice shall be regarded as valid only when it takes place with Venezuela's approval, signified by the express conclusion of a prior agreement in each case.

Viet Nam

1. The Socialist Republic of Viet Nam does not consider itself bound by article IX of the Convention which provides the jurisdiction of the International Court of Justice in solving disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention at the request of any of the parties to disputes. The Socialist Republic of Viet Nam is of the view that, regarding the jurisdiction of the International Court of Justice in solving disputes referred to in article IX of the Convention, the consent of the parties to the disputes except the criminals is diametrically necessary for the submission of a given dispute to the International Court of Justice for decision.

2. The Socialist Republic of Viet Nam does not accept article XII of the Convention and considers
that all provisions of the Convention should also extend to Non-Self-Governing Territories, including Trust Territories.

3. The Socialist Republic of Viet Nam considers that article XI is of a discriminatory nature, depriving a number of States of the opportunity to become parties to the Convention, and holds that the Convention should be open for accession by all States.

Yemen

In acceding to this Convention, the People's Democratic Republic of Yemen does not consider itself bound by article IX of the Convention, which provides that disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice at the request of any of the parties to the dispute. It declares that the competence of the International Court of Justice with respect to disputes concerning the interpretation, application or fulfilment of the Convention shall in each case be subject to the express consent of all parties to the dispute.
Resolution adopted by the General Assembly

[on the report of the Third Committee (A/56/583/Add. 3)]

56/231. Situation of human rights in Myanmar

The General Assembly,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter of the United Nations and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable human rights instruments,

Aware that, in accordance with the Charter, the United Nations promotes and encourages respect for human rights and fundamental freedoms for all and that the Universal Declaration of Human Rights states that the will of the people shall be the basis of the authority of government, and therefore expressing its grave concern that the Government of Myanmar has still not implemented its commitment to take all necessary steps towards democracy in the light of the results of the elections held in 1990,


1Resolution 217 A (III).
2Resolution 2200 A (XXI), annex.
Commission decided to extend for one year the mandate of its Special Rapporteur on the situation of human rights in Myanmar.

Recalling also the observation made by the former Special Rapporteur that the absence of respect for the rights pertaining to democratic governance is at the root of all major violations of human rights in Myanmar,

Still gravely concerned about the human rights situation in Myanmar, especially the suppression of the exercise of political rights and freedom of thought, expression, association and movement in Myanmar, and about restrictions placed on Aung San Suu Kyi and other members of the National League for Democracy, inter alia, on their freedom to function and to communicate with the outside world,

Gravely concerned that the legal system is effectively used as an instrument of oppression, inter alia, through the intimidation and detention of lawyers,

Recognizing that the systematic violations of civil, political, economic, social and cultural rights by the Government of Myanmar have had a significant adverse effect on the health and welfare of the people of Myanmar,

Welcoming the three visits to Myanmar by the Special Envoy of the Secretary-General during the past year, and the visits by the Special Rapporteur, as well as by the high-level team of the International Labour Organization, and the cooperation extended to them by the Government of Myanmar,

Cautiously encouraged by signs of progress in the ongoing political process in Myanmar, as reported by the Special Rapporteur, especially the release of political prisoners and the relaxation of some of the constraints governing the operation of legal political parties, but still concerned at the slow speed of the process,

1. Expresses its appreciation to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar for his interim report\(^5\) as well as his oral presentation;\(^6\)

2. Welcomes the assistance extended to the Special Rapporteur by the Government of Myanmar during his exploratory visit in April 2001 and his first fact-finding mission in October 2001, which enabled him to establish direct contacts with the Government and all other relevant sectors of society, and calls upon the Government to continue to cooperate with

\(^5\) See A/56/312.
\(^7\) A/56/505.
the Special Rapporteur, to allow him to conduct further field missions, without preconditions, and to implement fully his recommendations;

3. Also welcomes the report of the Secretary-General on the visits to the country of his Special Envoy for Myanmar, strongly endorses his efforts to help facilitate the national reconciliation process among all interested parties in Myanmar, and encourages the Government of Myanmar to establish a constructive and regular dialogue with the Secretary-General in order to make better use of his good offices;

4. Deplores the continued violations of human rights in Myanmar, including extrajudicial, summary or arbitrary executions, enforced disappearances, rape, torture, inhuman treatment, forced labour, including the use of children, forced relocation and denial of freedom of assembly, association, expression, religion and movement;

5. Welcomes the initiation of confidence-building contacts between the Government and Aung San Suu Kyi, General-Secretary of the National League for Democracy, and hopes that such talks will be extended at an appropriate time to include, among others, representatives of ethnic minorities, thereby facilitating broad-based and inclusive national reconciliation and the restoration of democracy;

6. Expresses its concern at the slow progress in the talks between the Government of Myanmar and Aung San Suu Kyi, General-Secretary of the National League for Democracy, and urges that the increasing development and progress of the confidence-building measures ensure the irreversibility of the process towards democracy;

7. Recognizes the steps taken by the Government of Myanmar to allow some political functions to be resumed by the opposition, including the reopening of some branch offices of political parties and the cessation of the negative media campaign, but expresses deep concern at the unnecessary and discriminatory stringent restrictions that continue to hamper political parties’ freedom of assembly, association, expression, information and movement, as noted by the Special Rapporteur, as well as at the use by the Government of intimidatory methods such as arbitrary detention and abuse of the legal system, and calls for an early restoration of political rights and freedoms;

8. Notes the dissemination of human rights standards for public officials through a series of human rights workshops, and encourages the Government of Myanmar to widen participation in these workshops to ensure that this information, and its practical implementation, can benefit all citizens of Myanmar;
9. Also notes the establishment by the Government of Myanmar of a national human rights committee, and encourages it to bring this committee into conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights annexed to General Assembly resolution 48/134 of 20 December 1993 (the Paris Principles);

10. Welcomes the release from detention of a number of democratic political activists, and strongly urges the Government of Myanmar to release all remaining detained political leaders and all political prisoners, including journalists, to ensure their physical integrity and to permit them to participate in the process of national reconciliation;

11. Notes with satisfaction the continued cooperation with the International Committee of the Red Cross, allowing the Committee to communicate with and visit detainees in accordance with its modalities of work, and hopes that the programme will be pursued further;

12. Welcomes the reopening of most university courses, but remains concerned that enjoyment of the right to education continues to be limited, often for political reasons, by the reduction in the length of the academic year, the division of the student population and its dispersal to distant campuses and the inadequate allocation of resources;

13. Strongly urges the Government of Myanmar to take urgent and concrete measures to ensure the establishment of democracy in accordance with the will of the people as expressed in the democratic elections held in 1990 and, to this end, to extend the talks initiated with Aung San Suu Kyi, General-Secretary of the National League for Democracy, to encompass a genuine and substantive dialogue with all the leaders of political parties and of ethnic minorities, with the aim of achieving national reconciliation and the restoration of democracy, and to ensure that political parties and non-governmental organizations can function freely, and, in this context notes the existence of the committee representing the People's Parliamen;

14. Recalls the resolution adopted by the International Labour Conference at its eighty-eighth session, held from 30 May to 15 June 2000, recommending that international organizations reconsider any cooperation with Myanmar and that Governments, employers and workers take appropriate measures to ensure that the Government of Myanmar could not take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry established to examine the observance by Myanmar of the International Labour Organization Convention concerning forced or compulsory labour (Convention No.29) of 1930;
15. Welcomes the recent visit to Myanmar undertaken by the high-level team of the International Labour Organization, with the objective of assessing the practical implications and impact of measures taken by the Government to eradicate the practice of forced labour and the cooperation that was extended to the team by the Government of Myanmar;

16. Notes with regret that the conclusion of the high-level team was that there was only moderately positive evolution in the situation, since there have been only uneven efforts to disseminate the orders, since the orders have not been observed by the military at the local level and since, despite widespread instances of forced labour, there have been no criminal prosecutions, and that much more will have to be done to address adequately the situation, including movement towards national reconciliation;

17. Strongly urges the Government of Myanmar to implement, in close cooperation with the International Labour Organization, concrete legislative, executive and administrative measures to eradicate the practice of forced labour, in conformity with the relevant recommendations of the Commission of Inquiry, and, in this context endorses the recommendations of the high-level team, including the establishment of a long-term representation of the International Labour Organization in Myanmar and the creation of an ombudsman, and encourages the Government of Myanmar to pursue the dialogue with the Director-General of the International Labour Organization to this end;

18. Deplores the continued violations of human rights, in particular those directed against persons belonging to ethnic and religious minorities, including summary executions, rape, torture, forced labour, forced porterage, forced relocations, use of anti-personnel landmines, destruction of crops and fields and dispossession of land and property, which deprives those persons of all means of subsistence and results in large-scale displacement of persons and flows of refugees to neighbouring countries, with negative effects for those countries, and an increasing number of internally displaced persons; (My bold and underline)

19. Urges the Government of Myanmar to end the systematic enforced displacement of persons and other causes of refugee flows to neighbouring countries and to create conditions conducive to their voluntary return and full reintegration in conditions of safety and dignity and to allow the safe and unhindered access of humanitarian personnel to assist in the return and reintegration process;

20. Deplores the continued violations of the human rights of women, especially women who are internally displaced or belong to ethnic minorities or the political opposition, in
particular forced labour, trafficking, sexual violence and exploitation, including rape; (My bold)

21. **Strongly urges** the Government of Myanmar to implement fully the recommendations made by the Committee on the Elimination of Discrimination against Women, in particular the request to prosecute and punish those who violate the human rights of women, and to carry out human rights education and gender-sensitization training, in particular for military personnel;

22. **Deplores** the recruitment of children as soldiers, in particular children belonging to ethnic minorities, (My bold) and strongly urges the Government of Myanmar and all other parties to the hostilities in Myanmar to end the use of children as soldiers;

23. **Notes** that the Government of Myanmar is starting to address the growing incidence of infection with the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), while recognizing that much still needs to be done, particularly in the area of HIV/AIDS prevention, and urges the Government of Myanmar to recognize fully the severity of the situation and the need to take necessary action against the disease, in cooperation with all relevant political and ethnic groups, and through the development of the United Nations joint plan of action on HIV/AIDS, to be delivered through non-governmental organizations or international agencies with a view to reaching the communities most affected and most vulnerable to HIV/AIDS infection;

24. **Urges** the Government of Myanmar to promote and protect the human rights of people living with HIV/AIDS and guard against the marginalization and discrimination that they may experience and to ensure that the health-care system receives sufficient funding to enable health workers to provide the highest possible standard of health care;

25. **Expresses its grave concern** at the high rates of malnutrition among pre-school-aged children, which constitutes serious violations of their rights to adequate food and the highest attainable standard of health and may have serious repercussions for the health and development of the affected children;

26. **Strongly urges** the Government of Myanmar to ensure full respect for all human rights and fundamental freedoms, including economic and social rights, and to fulfil its obligation to restore the independence of the judiciary and due process and to end the impunity of and bring to justice any perpetrators of human rights violations, including members of the military, and to investigate and prosecute alleged violations committed by government agents in all circumstances;
27. Requests the Secretary-General to continue his discussions on the situation of human rights and the restoration of democracy with the Government of Myanmar, to submit additional reports to the General Assembly during its fifty-sixth session on the progress of those discussions, and to report to the Assembly at its fifty-seventh session and to the Commission on Human Rights at its fifty-eighth session on the progress made in the implementation of the present resolution;

28. Decides to continue its consideration of this question at its fifty-seventh session.

92nd plenary meeting
24 December 2001

APPENDIX 8

Victims of Depayin Massacre*
(taken from: The Ad Hoc Commission on Depayin Massacre, pp. 48-62,
Legal Issues on Burma, Journal No. 15, August 2003.)

Acronym
CEC - Central Executive Committee
CRPP - Committee Representing Peoples Parliament
Div - Division
NLD - National League for Democracy
PP - Political Prisoner
Tsp - Township
MP - [Member of] Parliament

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-Sentenced to 3 years and 3 months
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-Arrested on May 26, 2003
-Arrested on July 19 [2003]
-Charged under Article 325, 336
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<tr>
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<tbody>
<tr>
<td>117</td>
<td>USan</td>
<td>Secretary, Singu NLD</td>
<td>Singu, Mandalay Div.</td>
<td>Sentenced to 2 years on July 20, 2003</td>
</tr>
<tr>
<td>118</td>
<td>U Saw Tun</td>
<td>Lawyer</td>
<td>Kutoh Myauk, Monywa</td>
<td>Setenced on July 10, 2003</td>
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<tr>
<td>119</td>
<td>Win Aung, Dr.</td>
<td>NLD Organizer</td>
<td>Khin Oo</td>
<td>Arrested</td>
</tr>
<tr>
<td>120</td>
<td>Win Ko</td>
<td>Mandalay North East</td>
<td>Shwe-bo</td>
<td>Severe Injured</td>
</tr>
<tr>
<td>121</td>
<td>Win Kying</td>
<td>NLD Youth Mandalay</td>
<td>Shwe-bo</td>
<td>Arrested</td>
</tr>
<tr>
<td>122</td>
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<td>Shwe-bo</td>
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<tr>
<td>125</td>
<td>Ye Ye</td>
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<td>Severe Injured</td>
<td></td>
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<tr>
<td>126</td>
<td>Zaw Aung</td>
<td>NLD Youth Mandalay</td>
<td>Shwe-bo</td>
<td>Arrested</td>
</tr>
<tr>
<td>127</td>
<td>Zaw Khin @Zaw Lay</td>
<td>U Hla Myint</td>
<td>Severe Injured</td>
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<tr>
<td>128</td>
<td>Zaw Lin, U</td>
<td>Civilian Mandalay Mandalay Div.</td>
<td>sentenced to 3 years and 3 months</td>
<td>Arrested with the accuse of throwing stones to the Security men</td>
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<tr>
<td>129</td>
<td>Zaw Tun</td>
<td>Sai-pyin-gyi Tsp.</td>
<td>Shwe-bo</td>
<td>Arrested</td>
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<tr>
<td>130</td>
<td>Zaw Win Tun</td>
<td>U Pyone Cho 27 NLD (Youth) Maha Khanti</td>
<td>Arrested</td>
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</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Father's Name</td>
<td>Age</td>
<td>Occupation</td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------</td>
<td>-------------------</td>
<td>-----</td>
<td>---------------------------------------------</td>
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<tr>
<td>1</td>
<td>Aung Shwe, U</td>
<td>UPoe Koon</td>
<td>8</td>
<td>MP (Mayangon-1), Rangoon Div.</td>
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<tr>
<td>2</td>
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<td>UHoke Sein</td>
<td>7</td>
<td>MP (Myinmu-1), Sagaing Div.</td>
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<td>3</td>
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<td>U Bo Shin</td>
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<td>4</td>
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<td>UBa Thaw</td>
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<td>MP (Kyauk Paduang-10, Mandalay div.)</td>
</tr>
<tr>
<td>5</td>
<td>Hla Maung, U</td>
<td>U Po Titt</td>
<td>6</td>
<td>MP (Kyar Inn Seikkyi), Kern State, (CRPP)</td>
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<tr>
<td>6</td>
<td>Hla Pe, U</td>
<td>U Maung Hsai</td>
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<td>MP (Mawlamyine Gyune), Irrawaddy Div., CEC</td>
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<td>7</td>
<td>Kyi Maung, U</td>
<td>UPhoe Thein</td>
<td>3</td>
<td>MP (Bhan Tsp.-2) Rangoon Div., Former PP</td>
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<td>Lun Tin, U</td>
<td>U Tun Lin</td>
<td>8</td>
<td>MP (Moulmein-1) Mon State, CEC</td>
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<tr>
<td>9</td>
<td>Lwin, U</td>
<td>U Ba Tha</td>
<td>7</td>
<td>MP (Thongwa), Rangoon, NLD treasurer</td>
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<tr>
<td>10</td>
<td>Maung Maung Latt, U@ Hlaing Ni, Dr.</td>
<td>UHla Myaing</td>
<td>5</td>
<td>MP (Thakata-1), Rangoon Div.</td>
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MPs detained and Disappeared after May 30
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<th>Occupation</th>
<th>Add ress</th>
<th>Remark</th>
</tr>
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<td>Hla Min, U</td>
<td>U Aung Hlaing</td>
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<td>MP (Kawthaung), Chairperson, (Tensasserim Div.), Former PP</td>
<td>Rangoon</td>
<td>Released</td>
</tr>
<tr>
<td>2</td>
<td>Myint Thein, U</td>
<td>U Aung Kyi</td>
<td>5</td>
<td>MP (Kyakmayaw-1), Mon State</td>
<td></td>
<td>Released</td>
</tr>
<tr>
<td>3</td>
<td>Sow Win, U</td>
<td>U Kyin Syne</td>
<td>5</td>
<td>MP (Pegu 1sp.), National Party for Democracy, (CRPP)</td>
<td></td>
<td>Released</td>
</tr>
<tr>
<td>4</td>
<td>Thein Oo, U</td>
<td>U Ye Baloo</td>
<td>5</td>
<td>MP (Oaktwin-1), Pegu Div.</td>
<td></td>
<td>Released</td>
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</table>
### APPENDIX 9

**LISTS OF POPULATIONS OF VILLAGERS FROM NORTHERN WA AREA RESETTLED IN THE SOUTH**

<table>
<thead>
<tr>
<th>Township</th>
<th>Southern Mong Hsat area (Mong Yawn)</th>
<th>Eastern Mong Hsat area (Mong Turn)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># houses</td>
<td># People</td>
</tr>
</tbody>
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*SOURCES: Assistance Association for Political Prisoners (Burma) UPDATE: August 2, 2003 (AAPP)*

**NAME**  

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Father's Name</th>
<th>Age</th>
<th>Occupation</th>
<th>Address</th>
<th>Remark</th>
</tr>
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<tbody>
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<td>1</td>
<td>Aung Thein Myint</td>
<td></td>
<td></td>
<td>NLD(Youth)</td>
<td>Natmauk</td>
<td>Released (22 July, 2003)</td>
</tr>
<tr>
<td>2</td>
<td>Aung Thu Win</td>
<td></td>
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<td>2nd Year student</td>
<td>Monywa</td>
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<td>Aye Aye Mar, Daw (F)</td>
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<td>NLD Women's Branch</td>
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<tr>
<td>6</td>
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<td>Khin Pa Pa Tun (F)</td>
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<td></td>
<td></td>
<td>Mandalay</td>
<td>Released (22 July 03)</td>
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<tr>
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<td>Khin Thein Soe, Daw (F)</td>
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<td>9</td>
<td>Khin Win, U</td>
<td></td>
<td></td>
<td>Chairperson</td>
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<td>Released (22 July, 2003)</td>
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<td>10</td>
<td>Kyaw Aung</td>
<td></td>
<td></td>
<td>NLD Secretary, Mand. North West</td>
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<td>Released</td>
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<td>11</td>
<td>Kyaw Thaung</td>
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<td></td>
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<td>Released (15 June 03)</td>
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<tr>
<td>12</td>
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<td>Treasurer, NLD Women's Branch</td>
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<td>13</td>
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<td>Secretary, Yenangyuang</td>
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<tr>
<td>14</td>
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<td>Organizer, Yenangyuang</td>
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<tr>
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<td># houses</td>
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<td>----------</td>
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<td></td>
<td></td>
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<tr>
<td>Mae Yawn</td>
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<td></td>
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<tr>
<td>MeeDuKo</td>
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<td>800</td>
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<td>Mae BuNoi</td>
<td></td>
<td>750</td>
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<tr>
<td>Total</td>
<td>4,140</td>
<td>29,703</td>
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### Central Mong Hsatarea (Hsai Khao, Kawng Mutan)

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<td>Ban Hoong</td>
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<tr>
<td>SaiKhao</td>
<td>80</td>
<td>500</td>
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<tr>
<td>KawnMutdan</td>
<td>60</td>
<td>350</td>
</tr>
<tr>
<td>Ban Mai</td>
<td>70</td>
<td>450</td>
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<tr>
<td>Hart Pa</td>
<td>200</td>
<td>1,300</td>
</tr>
<tr>
<td>Ar Shor</td>
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<td></td>
</tr>
<tr>
<td>Julu</td>
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<td>350</td>
</tr>
<tr>
<td>WinNe</td>
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<td>300</td>
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<tr>
<td>BanHai</td>
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<td>200</td>
</tr>
<tr>
<td>WiangWai</td>
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<td>380</td>
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<td>Total</td>
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### Western Mong Hsatarea (San Kang)

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<td>310</td>
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<td>BooLoo</td>
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### Southeastern Mong Ton area (Mae)

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<tr>
<td>HoYawd</td>
<td>300</td>
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</tr>
<tr>
<td>MakHinKaun</td>
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<tr>
<td>Total</td>
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### Central Mong Hsatarea (TangSeng)

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<td>720</td>
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<td>LaWuLong</td>
<td>800</td>
<td>4,400</td>
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<td>Mon Mai</td>
<td>50</td>
<td>320</td>
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<td>Total</td>
<td>950</td>
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<table>
<thead>
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</thead>
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<td>1,300</td>
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<tr>
<td>MorkZili</td>
<td>65</td>
<td>330</td>
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<tr>
<td>WanMai</td>
<td>55</td>
<td>350</td>
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<tr>
<td>HaoLee</td>
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<tr>
<td>PhaKhe</td>
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<td>250</td>
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<tr>
<td>Total</td>
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<td>18,080</td>
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## Southern Mong Ton area (Bong Ba Khern—Mon K awd)

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<tr>
<td>NongWai</td>
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<td>1,330</td>
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<tr>
<td>NaYan</td>
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<td>239</td>
</tr>
<tr>
<td>Bong Ba Khem-Talun</td>
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<td>1,407</td>
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<td>BangKheAungLong</td>
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<td>1,855</td>
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<tr>
<td>NaKaLan</td>
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<td>927</td>
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<td>NamKhen</td>
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<td>332</td>
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<tr>
<td>NaMaLwin</td>
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<td>281</td>
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<tr>
<td>Pang Ma Ok</td>
<td>190</td>
<td>950</td>
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<tr>
<td>HuaOr</td>
<td>586</td>
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</tr>
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<td>Mong Kyawd area</td>
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<td><strong>Total</strong></td>
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## Tachilek township

<table>
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<td>Paliaw</td>
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<td>930</td>
</tr>
<tr>
<td>KengLarp</td>
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<td>1,900</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>530</strong></td>
<td><strong>3,450</strong></td>
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