



TO RECOGNIZE AND REPAIR

Unofficial Truth Projects and the Need
for Justice in Burma

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Network for Human Rights Documentation - Burma

Contact Address

Network for Human Rights Documentation - Burma

GPO 315, Chiang Mai 50000, Thailand,

M: +66 (0) 8 196 15992

office@nd-burma.org, www.nd-burma.org

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About ND-Burma

ND-Burma formed in 2004 in order to provide a way for Burma human rights organizations to collaborate on the human rights documentation process.

ND-Burma member organizations seek to collectively use the truth of what communities in Burma have endured to challenge the regime's power through present-day advocacy as well as prepare for justice and accountability measures in a potential transition.

ND-Burma conducts fieldwork trainings; coordinates members' input into a common database using Martus, an open-source software developed by Benetech; and engages in joint-advocacy campaigns.

When possible, ND-Burma also collaborates with other human rights organizations in all aspects of its work.

Vision: Seeking truth and justice for a peaceful democratic transition in Burma

Mission: Collaboration on a common human rights database

Short-term goal: Make available high-quality and high-volume data for ND-Burma members and other advocacy groups

Long-term goal: Develop an accurate historical record that can be drawn from for potential transitional justice mechanisms in a future democratic Burma.

Human Rights Documentation

The range of human rights violations in Burma is extensive, and each ND-Burma member organization focuses on certain violations that are particularly relevant to their mission. To provide a framework for collaboration among members, ND-Burma has developed a "controlled vocabulary" of the categories of human rights violations on which the network focuses.

Membership in ND-Burma, as of April 2014, includes:

- Assistance Association for Political Prisoners (Burma)-AAPP
- Burma Issues (BI)
- Chin Human Rights Organization (CHRO)
- Human Rights Foundation of Monland (HURFOM)
- Kachin Women's Association – Thailand (KWAT)
- Lahu Women's Organization (LWO)
- Palaung Women's Organization (PWO)
- Ta'ang Students and Youth Organization (TSYO)

Affiliate Members

- All Arakan Students' and Youths' Congress (AASYC)
- EarthRights International (ERI)
- Equality Myanmar
- Pao Youth Organization (PYO)

Partner Organizations

- International Center for Transitional Justice (ICTJ)
- Benetech
- Human Rights Defenders and Promoters (HRDP)
- Former Political Prisoners (FPPS)

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Another abandoned village; the villagers fled the Burmese army's atrocities
Photo by HURFOM

List of Acronyms

Acre:	<i>The acre is a unit of area used in Burma. One acre is equivalent to 43,560 square feet.</i>
AAPP:	<i>The Assistance Association for Political Prisoners</i>
BP:	<i>Burma Partnership</i>
CBO:	<i>Community Based Organization</i>
CMAN:	<i>Comission Multi-sectorial de Alta Nivel</i>
CVR:	<i>Comisión de la Verdad y Reconciliación-Truth and Reconciliation Commision, Peru</i>
DKBA:	<i>Democratic Karen Benevolent Army</i>
HRD:	<i>Human Rights Defender</i>
HURFOM:	<i>Human Rights Foundation of Monland</i>
ICTJ:	<i>International Centre for Transitional Justice</i>
IDP:	<i>Internationally Displaced Persons</i>
INGO:	<i>International Non Governmental Organization</i>
KIA:	<i>Kachin Independence Army</i>
KNU:	<i>Karen National Union</i>
KWAT:	<i>Kachin Women's Association – Thailand</i>
Kyat:	<i>Burmese currency. 1 USD is approximately 1,000 Kyats</i>
LIB:	<i>Light Infantry Battalion</i>
LWO:	<i>Lahu Women's Organization (LWO)</i>
MNHRC:	<i>Myanmar National Human Rights Commission</i>
ND-Burma:	<i>Network for Human Rights Documentation-Burma</i>
NGO:	<i>Non Governmental Organization</i>
PCP-SL:	<i>Communist Party in Peru</i>
PWO	<i>Palaung Women's Organization (PWO)</i>
TNLA:	<i>Ta'ang National Liberation Army</i>
TSYO:	<i>Ta'ang Students and Youth Organization</i>
TRC:	<i>Truth and Reconciliation Commission in South Africa</i>
UN:	<i>United Nations</i>
UNCAT:	<i>United Nations Convention Against Torture</i>
UTP:	<i>Unofficial Truth Project</i>
USD:	<i>United States Dollars</i>
US:	<i>United States of America</i>

INTRODUCTION

The advance towards a free and democratic Burma has so far done little to account for the crimes of its past. Emerging from a military dictatorship and opening its doors to the outside world has certainly led to an increased focus from the international community on the future of the country. As a result of increased scrutiny by the outside world, the U Thein Sein government has repeatedly reiterated their genuine commitment to improving the human rights situation. Despite government statements to the contrary, the situation for human rights defenders, journalists, farmers, land rights activists and civilians - particularly in ethnic areas - has not improved.

A more open Burma has not meant a freer or safer country for its people. Aggressive and systematic oppression of people still exists and as yet little definitive action has been taken by this government to change this. Their forces have continued to violently quell rebellious action in ethnic areas and ceasefire agreements have so far done little to resolve this. The treatment of ethnic citizens in conflict areas by the government's armed forces is that of a systematic and brutal regime that permits acts of inhumane cruelty and oppression. Peaceful protests are crushed with excessive force, arbitrary arrests and torture in detention are still common and land confiscation is rampant, placing the people concerned in difficult and dangerous circumstances.

Extrajudicial killings and torture of ordinary citizens by government forces is widespread in Burma, while the ongoing problem of land confiscation is still prevalent. This paper focuses on these three areas to demonstrate the need to begin concrete discussions on how the government should be taking responsibility for reparations programs and taking steps to acknowledge and apologize for the crimes of the present and of the past.

The suffering of their citizens is demonstrably a direct result of the actions of this government's forces. Currently it is only civil society, with the backing of some

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နေ့သ ကြား
မကျိုးအုပ်စု - ခေါင်ကမြို့နယ်ခွဲ

*Haunted Signpost: signpost of Village Peace and Development Council
Photo by HURFOM*

INGOs and governments, that are providing essential care for the victims of the human rights abuses. There is little to no government support for local or national commemoration programs. Some have taken place in and around Rangoon, such as the 88 Silver Jubilee celebrations that went ahead with the government support. However this was not a fully funded or emphatically backed event, with the government permitting its implementation but not actively participating in the transitional justice effort. The holding of an event such as this is an important step, but the government must go further in their support for activities of this kind. There needs to be an admission of guilt and an acknowledgment of the crimes of the past for them to truly participate in transitional justice efforts. Military influence still pervades many aspects of the country, with ongoing issues of investment by foreign companies in land mining areas and the continuing expansion of military sites clear examples. It is also important to highlight that the military retain a large amount of power over the country, with the allegedly civilian government still governed by the old military junta attitude.

The holding of these celebrations are very important, but there are other steps that must be taken to ensure the responsibility of the government to make reparations is given primacy. The recommendations made in this paper need to form part of a wider program of transitional justice, implemented by the Government of Burma with the involvement of civil society organizations who are currently trying to account for the harm these gross human rights violations have caused.

METHODOLOGY

Since the founding of ND-Burma in 2004, member organizations have continued to collect and document the experiences of civilians in Burma. The member organizations' documentation workers face great personal risk to travel within the country and interview people from a wide variety of backgrounds. The work they produce is collated and published by ND-Burma, an organization that seeks to unify civil society and ensure human rights violations do not go unreported.¹

ND-Burma publishes reports and periodic updates on the human rights situation in the country.² This paper will utilize the vast body of work member organizations have submitted over the past several years, as well as some reports of human rights violations that have been documented by other groups. Although some violations occurred several years ago, their stories have recently been documented and the harm they suffered has a lasting impact on their lives and the lives of their families to this day.

The documentation of human rights violations is essential to demonstrating the need for victim reparations. Field documentation workers have managed to compile huge amounts of information and personal accounts of torture, land confiscations and extrajudicial killings. It is absolutely essential to ensure these accounts are used to improve the livelihoods of the victims of these violations. The field researchers have been thoroughly trained and are experienced in conducting interviews and documentation. Data is stored via the Martus system and allows for an analysis of secure encrypted information and case files based on the accounts provided by experienced field researchers.

ND-Burma releases periodic reports that highlight some violations recorded by

1 ND-Burma (2014) '*Periodic Report January-June 2014*,' [online] available at: <http://nd-burma.org/reports/periodic-report/report-human-rights-burma-jan-june-2014>

2 ND-Burma (2013) '*Periodic Report July-December 2013*,' [online] available at: <http://nd-burma.org/reports/report-on-the-human-rights-situation-in-burma-july-december-2013>



တပ်မြေ

*Land confiscated by Mawrawaddy Naval Command
Photo by HURFOM*

researchers; for example, in 2014 ND-Burma documented 17 extrajudicial killings, 45 accounts of torture and 55 cases of land confiscations. ND-Burma members have also reviewed information gathered and consulted with each other on the findings. The recommendations that come from this paper are the result of the combined views and experiences of ND-Burma members, representing a united opinion on how transitional justice measures should be implemented. The conclusions within this paper are formulated following analysis of the information gathered through the research process, with the needs and wishes of those most affected by human rights violations reflected in the recommendations made.

For the purposes of this report names gathered through ND-Burma member research will be changed to preserve the anonymity and personal security of those who have given interviews to ND-Burma researchers. For those cases that have been widely exposed in media and through reports by other organizations, the names of those involved have been included. The Unofficial Truth Project (UTP) Bulletins are outlined in the below case examples and are gathered and recorded by ND-Burma's documentation team.





*A victim recounting the abuses of Burmese Army
Photo by Burma Issues*

COUNTRY CONTEXT

Much of the rhetoric surrounding Burma presently discusses the idea of political and social transition, and how reforms geared to these ends have begun to stall. Reforms have certainly been enacted but with very little genuine impact or drastic change in human rights. Indeed, the positioning of Burma as a country in transition is an incorrect one; if a true transition to democracy was occurring, a drastic increase in the amount of substantive change being implemented would be evident.

To remark that a culture of impunity exists protecting government forces from accountability is to drastically understate the situation. The protection the 2008 Constitution affords to the military ensures that soldiers are exempt from facing proper criminal charges for the extrajudicial killings of Burma's citizens.³ The culture of impunity does not only exist, but is a key part of the systematic abuse of the rights of Burma's people. This system is designed to protect the perpetrators of these widespread human rights abuses. The ongoing calls for an open and accountable approach to investigating these crimes will continue to go unheard while impunity for the aggressors exists. Free and independent investigations into these crimes must be a key part of any attempts at national reconciliation.

The reality of the situation is that a genuine transition cannot begin in earnest at this time because of the number of constitutional and governmental barriers still existing. Torture in detention remains permissible, with government promises to sign the United Nations Convention Against Torture (UNCAT) going the way of many of their commitments and remaining unfulfilled. No government recognition of either political prisoners or an acknowledgment of the crimes of the past has yet occurred. Many activists and human rights defenders (HRDs) suffer torture in detention, and the Assistance Association for Political Prisoners (AAPP) holds accounts of their

3 ICTJ (2009) *Impunity Prolonged: Burma and its 2008 Constitution*, [online] available at: <https://www.ictj.org/publication/impunity-prolonged-burma-and-its-2008-constitution>

poor health as a result of their appalling treatment in prison and detention centers.⁴ Peaceful protesters, farmers, journalists, lands right activists and many others are arbitrarily detained and imprisoned for exercising basic human rights. The use of violence against protesters is still a key tactic of government security forces, including the police and the military. Arbitrary detention and torture during detention are still regularly practiced in Burma, with little to no recourse for the victims of these human rights abuses.

The government's official position remains that no political prisoners exist, only criminals – a position that is patently untrue. With arrests continuing, violence still perpetrated against civilians and free speech becomes less and less of a reality, Burma moves further away from really beginning any kind of meaningful transition. This violence is rife in ethnic and rural areas of the country, where the issue of military land confiscation is causing some of the most widespread violations of human rights. It is in these regions that many of ND-Burma's field researchers operate, and acutely highlights the flagrant human rights abuses carried out by government forces.

Land confiscation for military or private use brings with it a huge breadth of social and economic issues that are directly impacting the livelihoods of people in these regions. Land rights activists, farmers and other supporters have all been arrested and imprisoned for supporting those people who are rapidly losing their land to the military. The longstanding implications of land confiscating will be discussed in this paper. A large population of Burma, around 70%, lives in rural area.⁵ Displacement and resettlement have happened and continue to occur in numerous areas of Burma. Interviews with and accounts by villagers highlight how there is no recourse for them to resolve the destruction of their livelihoods.

International Transitional Justice Case Studies

The paper will include three case studies from countries that have begun to implement transitional justice measures. These case studies will also reflect the three main issues this paper discusses.

Colombia has attempted to resolve the issue of land confiscation in a country that hosts the largest internally displaced population in the world. The Victim Law enacted in 2011 is aimed at returning people to their lands, and lands to people. The reparation process has been slow but is instructive as it is a government enacted remedy that is still ongoing. Land confiscation in Burma has led to mass displacement and a huge number of human rights violations. Ongoing government backed removal of land from civilians is a huge obstacle to achieving peace and reconciliation in Burma. The case of Colombia's land restitution efforts demonstrates the need for a government sponsored legal framework to end the destruction of livelihoods that widespread land confiscations cause. However this process also faces several difficulties, with those eligible for recompense still not clearly identified, and

4 For further information see <http://www.aappb.org>

5 Human Rights Foundation of Monland (2014) '*Yearning to be Heard*,' [online] available at <http://www.rehmonnya.org/reports/Yearning-to-be-Heard-word-Eng-Full-Report.pdf>

the process as to who actually qualifies under the outlined criteria remaining unclear. The criteria causes a measure of confusion over the vast ethnic groups in Colombia and does little to ensure all victims of land confiscations and related human rights violations are accounted for.

The Truth and Reconciliation Commission (TRC) in South Africa demonstrates the lengthy and sometimes unsuccessful truth telling process that has been attempted following the end of apartheid. The final report of the TRC was released in 1998 and made sweeping recommendations for providing reparations to the victims of apartheid. At the time of writing the victims are still awaiting financial remedies. The study of the TRC reveals the technical and social barriers that have prevented the TRC from being a resounding success. However as an example of how truth telling processes can help benefit reconciliation, there are many successes to be gleaned from the TRC. The program had an expansive outreach and was a true nationwide effort. Truth telling procedures are an essential part of Burma's future, with many violations and crimes still remaining unacknowledged by the current administration. The principle of the TRC was to recognize the crimes of the past and begin to provide victims with reparations. A process such as this would certainly be applicable to the ongoing situation in Burma, with many interviewees discussing their wish for government apologies and for the true facts of human rights abuses to be publicly acknowledged.

The Truth and Reconciliation Commission in Peru is another instructive example of how comprehensive reparations across a wide spectrum of human rights abuses can be enacted. The Commission was able to establish a report clearly detailing the violations that had occurred throughout years of violent conflict in Peru, with the subsequent process developing a system of reparations for all kinds of victims. The successful implementation of this process is partly due to its ability to establish the facts over what actually happened throughout the years 1980-2000, with the government and the judiciary producing a comprehensive report and an established procedure for identifying eligible victims once the facts had been established.

Field worker situation

It is beneficial to discuss in brief the limitations of the information provided by the field workers and documentation teams. Cultural and social restrictions can often lead to difficulties when discussing a person's experience and current lifestyle. ND-Burma member field workers face challenges when conducting interviews in country. The information gathered is always detailed and influential, giving accounts of the actual events and of the long and short-term impact they have had. However it is essential to discuss the problems in gathering further information, specifically regarding the social situation of the victims and their families. The following challenges have been reported by member organizations as being the most common issues faced by their researchers.

The primary issue that arose was that of security. Due to the inability of most ND-Burma organizations to register in Burma, much of the research work is carried out unofficially. In the current climate this is the only way to carry out this research. This



A victim recounting her experience of human rights violations
Photo by HURFOM

makes it difficult to provide a secure and safe environment to conduct interviews. Beyond security issues for the field reporters, there are security issues for victims of past abuses as well. For the victims living inside Burma, perpetrators are still active in the area where abuses were committed, so informants have to avoid the danger of retaliation from the army for speaking out about abuse. The climate of fear in areas of Burma still exists, particularly in the ethnic regions where many of ND-Burma researchers operate. The presence of military bases in many of these areas heightens fears that those who speak out about past violations will suffer reprisals from government forces as a result.

The concepts of Transitional Justice are relatively new to Burma and carrying out research in more rural parts of ethnic areas often requires a degree of education and discussion. Many participants are initially reticent to participate and repeat information that is traumatic and upsetting to them. It is important to ensure participants in the research understand the principles behind the research, they often take a risk in engaging with researchers and it helps to explain the reasoning behind the interviews. It is important for the well being of the interviewee to explain to them how their participation will help the research and hopefully help progress towards positive change. The need to engage with communities face to face is paramount to ensuring the highest quality of research, which often puts a strain on the researcher's time and resources. It is also often difficult and understandably takes time and patience to discuss highly sensitive and traumatic experiences. The trauma interviewees have experienced makes the interview process difficult for researchers to elicit the necessary information to contribute to the research. The relationship between the researcher and the interviewee is very important to make them feel safe and secure, and this often takes several visits and months to achieve. This is however an essential part of the research process and a necessary commitment to reduce participants' fears.





*Forced Labour still a common abuse found
Photo by HURFOM*

DISCUSSING THREE CATEGORIES OF ABUSE

This paper will focus on the three aforementioned areas and will utilize the case studies recorded by ND-Burma members, as well several cases of extrajudicial killings that have been widely reported in Burma. The chosen cases demonstrate not only the human rights abuses perpetrated by government forces, but discuss how they represent the scale of damage caused by these abuses. The recommendations that conclude this paper reflect the needs outlined by those affected by these abuses.

Extrajudicial Killings

Extrajudicial killing is one of the most flagrant examples of the disregard government forces have for the lives of civilians in Burma. Calls for greater accountability, independent investigations into these murders and justice for those affected go unheeded, with the effectiveness of the Myanmar National Human Rights Commission (MNHRC) often being questioned. While the killing of civilians by government forces is of grave concern, the complete lack of will to find and punish perpetrators is even more troubling. Case studies demonstrate the culture of impunity that is still pervasive for military personnel in Burma, and although the Constitution allows for military tribunals to be transferred to the civilian court system, this is rare in practice and does not ensure those who encourage the systematic killing of Burmese people are brought to trial. The military commanders responsible for these practices have yet to face any sanctions or punishment for allowing this to continue. The killing of civilians is permitted to ensure the military maintain absolute power over the people through fear, intimidation and lethal force – without the threat of accountability for their actions. By allowing this to happen,

the current government are condoning the extrajudicial killing of their own people and must act to bring an end to these murders.

The following case studies discuss the systematic nature of the killing of civilians and a lack of accountability for those responsible.

a. Extrajudicial Killings Case One (EXK1): Ko Aung Kyaw Naing aka Ko Par Gyi, Mon State, September 2014

On September 30, 2014, Light Infantry Battalion (LIB) 208 in Kyaikmayaw Township, Mon State, detained Ko Aung Kyaw Naing aka Ko Par Gyi. Ko Par Gyi was a freelance journalist, in Kyaikmayaw Township reporting on the fighting between the government forces and the Democratic Karen Benevolent Army (DKBA). He was shot and killed whilst in military custody on October 4 after supposedly attempting to steal a gun from one of the guards and escape. His death was confirmed by the military on October 23 in a statement made to the Press Council. Ko Par Gyi was buried in Kyaikmayaw Township before a proper autopsy could be conducted, and not returned to his family. Due to the suspicious circumstances surrounding his death and international and local pressure, President U Thein Sein ordered the Burma National Human Rights Commission (MNHRC) to conduct an investigation into his death on October 30.

Ko Par Gyi's body was exhumed on November 5 and according to eyewitnesses, his body showed visible signs of torture – amongst other ailments, he appeared to have a broken jaw and his skull was visibly caved in. Following an autopsy it was revealed that he was shot five times, once in the chin, twice in the back, once in the thigh and once in the ankle. The MNHRC submitted a report into the death of Ko Par Gyi at the end of November 2014. However, this report was not adequate – for example, not addressing the fact that Ko Par Gyi's body exhibited signs of torture. Ma Thandar (Ko Par Gyi's wife) is not satisfied with the investigation as it is currently being conducted, and she along with international actors, is urging for a transparent and independent investigation into his murder.⁶

Justice and accountability for Ko Par Gyi's death can only occur if a transparent and independent investigation is carried out. The military forces and the government must take responsibility for the unjust murder of Ko Par Gyi if they expect the population of Burma – as well as the international community – to believe that they are making significant progress towards a genuinely democratic state in which perpetrators of human rights abuses are held to account.

Of particular concern in this case is the lack of depth and transparency evident in

6 AAPP (2014) 'October Chronology,' [online] available at: <http://aappb.org/wp-content/uploads/2014/11/AAPP-Monthly-Chronology-for-October-2014ENG.pdf>; AAPP (2014) 'November Chronology,' [online] available at: <http://aappb.org/2014/12/aapp-monthly-chronology-for-november-2014/>

the MNHRC investigation.⁷ Many voiced the opinion that this report not only lacked clarity, but also did not adequately account for the signs of torture and abuse marked on Ko Par Gyi's body. In addition, the report failed to highlight the discrepancies in the accounts regarding allegations of Ko Par Gyi's actions during detention. There was no clearly independent investigation into his killing, a fact borne out by the lack of accountability faced by those who caused his death.

b. Extrajudicial Killings Case Two (EXK2): Ja Seng Ing, Kachin State, September 2012

On September 13, 2012 in SutNgai Yang Village, Hpakand Township, Kachin State, residents of SutNgai Yang Village reported that soldiers from Light Infantry Battalion 389 arrived at the village. At 4pm as the soldiers were getting ready to leave the village, there was an explosion injuring many of the soldiers. In an interview with a Kachin Independence Army (KIA) officer by the MNHRC, it has been established that it was KIA soldiers who remotely detonated the bomb. Following the bomb, the soldiers began to indiscriminately open fire in the village for around one hour. Ja Seng Ing, along with her classmates and teacher, were returning from school to the village when the bomb was detonated. When the soldiers started firing their guns they took shelter behind the kitchen of a house at the bottom of a hill, which lead to SutNgai Yang. When the shooting subsided the soldiers called for them to come out of hiding. They followed the orders at which time the soldiers began to fire again, a bullet hitting Ja Seng Ing in the hip. Several eyewitnesses have stated that Ja Seng Ing was not near the explosion in the village, but rather that the soldiers were responsible for her death by shooting her. When Ja Seng Ing was finally allowed to be taken to the hospital it was determined that she would need surgery. Before her operation, the surgeon was taken to the nearby Army camp. On his return he performed the surgery but Ja Seng Ing died during the operation. The surgeon claimed that he never removed a bullet, or any kind of foreign object from her body and he does not know what caused the injury. He claimed that there was no post mortem conducted in order to determine what caused her death. Three days after her death, her father was paid 100,000 Kyat in compensation at the nearby army base. The military forces claim that Ja Seng Ing was killed due to the explosion.

After her death, her father Brang Shawng sent letters of complaint to President U TheinSein and the MNHRC. The letters called for there to be an investigation into her death, and steps taken to make sure that similar incidents do not take place in the future. In February 2013 an officer in the military made an official complaint against Brang Shawng, stating that he was making false allegations against military forces. As a result he has had to appear in court more than 45 times defending himself against Article 211 of the Penal Code.⁸ Brang Shawng recently accepted a fine for his comments, but continues to vigorously defend his stance.

An impartial independent investigation must be carried out in order to establish what

7 For more information see: Amnesty International (2014) *Myanmar: Ensure Independent and Impartial Investigation into Death of Journalist* [online] available at: <https://www.amnesty.org/en/documents/asa16/028/2014/en/>

8 Burma Partnership (2014) 'Who Killed JaSengIng?' [online] available at: <http://www.burmapartnership.org/2014/12/who-killed-ja-seng-ing/>

မဂျာဆိုင်းအိန်နှင့်သက်ဆိုင်သော သက်သေအထောက်အထားများ



မဂျာဆိုင်းအိန်၏ နိုင်ငံသားစိစစ်ရေးကတ်ပြား



သေဆုံးသွားသော (၉)တန်းကျောင်းသူ မဂျာဆိုင်းအိန်



*Ja seng Ing, Shot dead by Burmese Army
Photo by KWAT*

မဂျာဆိုင်းအိန်အားသေနတ်ဖြင့် ပစ်သတ်ခဲ့သော အခင်းဖြစ်သွားရာနေရာ

happened on September 13, 2012 and to bring those accountable to justice. If after the investigation has taken place it is determined that the army are responsible for her death, Brang Shawng must be retroactively cleared of all charges. Brang Shawng simply exercised his human rights and asked to know what happened to his daughter and see a measure of accountability brought to those responsible.

c. Extrajudicial Killings Case Three (EXK3): Sumlut Roi Ja, Kachin State, October 2011

On October 28, 2011, military forces from Light Infantry Battalion 321 abducted Sumlut Roi Ja, her husband and her father from Hkaibanf Village, Momauk Township, Kachin State. Their abduction was based on the accusation that they were affiliated with the Kachin Independence Army (KIA). Sumlut Roi Ja's father and husband managed to escape the capture but due to a heavy guard presence surrounding Sumlut Roi Ja, she was unable to flee with her family. She has not been seen since this event and is presumed dead. Since the abduction, her family has filed multiple petitions urging the military and civilian authorities to either disclose her whereabouts and fate, or to open an investigation into the events that took place on October 28, 2011. To date, investigations have been refused and the Supreme Court of the Union rejected the notion that the army detained her, stating that such evidence did not exist. Military forces furthermore deny that the event ever happened.⁹

This case is a prime example of violence against civilians, arbitrary detention and what we have to assume was extrajudicial killing. The ongoing efforts of her family to have this case investigated are the starting point of reparations for the forced disappearance and presumed murder of Sumlut Roi Ja. The government needs to recognize her disappearance and conduct a transparent investigation into her abduction, ensuring that those responsible are brought to justice and the truth is established. Her current location, dead or alive, is of utmost importance to her family who would like the opportunity to either welcome her home or finally lay her to rest.

d. Extrajudicial Killings Case Four (EXK4), Kachin State, December 2011(KWAT)¹⁰

On December 2, 2011, two women were heading towards JaPu Village when they noticed ten soldiers from Burmese Infantry Post Light Infantry Battalion (LIB) 318 wearing KIA military shirts surveying the area. They hid from them and when they thought the soldiers had moved on, they left their hiding place. As they left they were ambushed from behind, with the victim receiving a fatal shot to the breast. Her friend managed to escape without being harmed and went straight to her husband to tell him what had happened. This event demonstrates the violent tendencies of the military forces and exhibits how innocent civilians are targeted during times of conflict.

9 Burma Partnership (2014) *Burmese Government Urged to Investigate the Enforced Disappearance of Sumlut Roi Ja* [online] available at: <http://www.burmapartnership.org/2014/10/burmese-government-urged-to-investigate-the-enforced-disappearance-of-sumlut-roi-ja/>

10 ND-Burma reference: UTP Bulletins Case 43, ID number: B-C8q9fMSnTRC75HmtPuG3w



*Sumlut Roiija, Killed by Burmese Army
Photo by KWAT*

The victim worked on the Burmese border with China and also had a sugar cane company. She was the breadwinner of the family. Her death has led to her family facing depression, financial and health issues. The soldiers responsible for her death have not been held accountable – a source of frustration and dismay for her family. According to her elder brother, the government needs to take responsibility for her death, and they need to pay compensation to make up for the suffering caused due to the brutality of the armed forces.

e. Extrajudicial Killings Case Five (EXK5), Kachin State, December 2011 (KWAT)¹¹

Around 9am on December 26, 2011, three men were arrested as they entered JaPu Village. The fourth member of their group would have also been arrested had he not fallen behind. After seeing his friends being arrested he turned around immediately and escaped. The soldiers saw him and fired bullets at him, but he escaped unharmed. Within an hour of the arrest, two of the men's wives had heard of their husbands' detention. It was not until January 29, 2012 that their wives learnt more about what happened. They were informed by local residents that their husbands and the third detainee had been killed by the soldiers. When they had been arrested, one man was in possession of a gun, with the soldiers accusing them of being KIA members, even though they were in actual fact only civilians.

Following these killings, one of the families gave an account of the problems they are now facing. The victim earned the money for the family and therefore the family now has financial issues resulting in his children stopping their education in 2012. His wife does not believe the government to have the interests of civilians in mind, and believes they will not help her in order to finance her children's education and as a result wants to request money from other civilians. Further, before his death he was able to provide food for the family, but now his wife earns between one and two thousand Kyats only – and with six children to feed food is sparse. She does not currently live with her children and is constantly anxious about them and has developed depression. Her health has been poor for five years and although she has a good relationship with others in her community, she received no special medical help to treat her health issues. His wife wants to open a law suit and see an investigation carried out in order to determine the truth and make those responsible accountable. She would also like a memorial for her husband, the construction of a tomb for him with an inscription on the tomb about his sacrifice.

f. Extrajudicial Killings Case Six (EXK6), Kachin State, November 2011 (KWAT)¹²

On November 15, 2011, soldiers from a government Battalion were posted in Gang Dau Yang Village. A resident of Jahta Village asked the head of the Battalion if he could take paddy to Gang Dau Yang Village. He was given permission and he left. Regardless of the approval of the military forces for him to leave Jahta village, he was shot at by troops. He was hit in the chest and instantly killed.

11 ND-Burma reference: UTP Bulletins Case 44, ID number: B-H19OE3f6woPgM17HI7tvFw

12 ND-Burma reference: UTP Bulletins Case 8, ID number: B-oE05tQSsEjgqs45IawVM8A

Before his death, the victim was earning around 5000 Kyat per day as a hired driver. Following his death his family suffered with financial issues. His wife could not afford to send their daughter to school anymore so her education ceased. His wife would like the government to take responsibility for her husband's death and would, if possible, like some form of commemorative gesture.

Torture Cases

Accounts of torture during police and military custody are widespread. Torture occurs in several forms, particularly in accounts given by political activists in prisons, police cells, immigration and detention centers. The other most widespread accounts of torture are those of military violence against civilians in ethnic territories. Ongoing armed struggle causes civilians to live in a constant state of insecurity, and makes them vulnerable to the brutality carried out by government forces. Some of the accounts ND-Burma members have recorded demonstrate the extent of the suffering inflicted on civilians in ethnic areas. There are accounts of systematic and practiced torture methods being utilized, with many fake confessions to false crimes extracted using these methods. The scars of this kind of treatment go far beyond the physical, with ongoing mental abuse and poor health leading to a deteriorating economic position, and the stigma of false accusations against villagers carrying results evidenced by many different types of lasting harm.¹³

a. Torture Case One (TC1), Pegu Region, January 2014 (AAPP)¹⁴

Following a raid of Burmese Military Light Infantry Battalion (LIB) 509 by the Karen National Union (KNU) Battalion 7 from Brigade 3, TC1 was arrested for his involvement in the raid in Sis Kwin Village in Pegu (Bago), Pegu Region in June 2004. Following his arrest, upon arrival to the prison he was beaten and endured brutal torture during interrogation – including standing in stress positions with a nail under the heel, beating, punching, kicking, bending of the body into a motorbike riding position, poking of the skin with a lit cigarette, usage of high voltage currents, covering the body with poisonous animals, being tied upside down from the ceiling, blindfolding and hooding, dripping water onto the head, persistent beatings with the edge of a ruler, rolling an iron pipe down the shins, and being made to listen to the voices of relatives from an adjacent room being forced into making a confession.

In addition to this he was not supplied with sufficient amounts of food and was interrogated without sleep for 10 days. No health care was provided, even after he suffered from Hepatitis B, coronary artery disease, and hypertension. Afterward he was charged under Section 17 (1)/17 (2) of the Unlawful Association Act, LaNa 2 (1)(A) for illegally possessing a firearm, and Section 122 (1) under Punishment for

13 Fortify Rights (2014), *'I Thought They Would Kill Me' Ending Wartime Torture in Northern Burma*, [online] available at: http://www.fortifyrights.org/downloads/Fortify%20Rights_Burma_9_June_2014.pdf

14 ND-Burma reference number: UTP Bulletins Case Number 6, ID number: B-15Uo.zlWJivC6KWe.6vtlw

High Treason. He was sentenced with capital punishment on September 6, 2004 by Shwe Kyin Township court and Pegu Region Court, which was later reduced to 48 years imprisonment. He was released from Insein Prison on January 8, 2014 and continues to suffer from auditory problems in the right ear as a result of the torture he endured in the detention center. His wife separated from him and he remarried during incarceration. He is currently living with his friend who supports him; however he is unable to receive proper medical treatment due to financial restraints.

b. Torture Case Two (TC2), Ho Main Village, Shan State, January 17 2014 (PWO)¹⁵

On January 17, 2014, five villagers from Ho Main Village, Nam San Township Northern Shan State, were accused of being affiliated with the Ta'ang National Liberation Army (TNLA) and were beaten by Light Infantry Battalion (LIB) 502 and 506. The military had come from Namhsan Township and there was an incident of gunfire between them and the TNLA near the Ho Nam village. Four of the soldiers were killed, and as a result the army arrested and tortured innocent villagers.

According to a witness, "Soldiers came to our village and asked the village head about the TNLA and the men, proceeding to then torture them. One man has many injuries from the torture. Three were also accused of TNLA connections and were beaten. One man was left with a scar on his shoulder and another was arrested and beaten until about 6pm, as his brother is a TNLA soldier. He refused to show the military a picture of his brother which is why he was arrested."

Another villager stated that at around 4pm, around 100 government soldiers brought the village head and one villager to the monastery where soldiers hit and beat them with their guns on their hands, legs head and torso. The soldiers ordered that 15 villagers should be ready by the evening to serve as porters.

This case demonstrates the continuing use of arbitrary detention, torture and forced labor of innocent civilians. The government needs to make those responsible accountable for the events that took place, compensate the individuals involved, and make a formal apology. The use of civilians as porters for the army is absolutely unacceptable, both as a reprehensible form of forced labor and for the risk it puts to a person's life.

c. Torture Case Three (TC3), Di Ma Area, Shan State, October 2011 (KWAT)¹⁶

On October 1, 2011, a male living in Di Ma area went to Nawng Wa to look after his cows. While searching for his livestock, he ran into military forces. They tied him with rope and took him to a hilly area. After taking him there, the soldiers asked him where he kept his gun and started to beat him with logs. They then tied him to a big tree in a remote area. Due to the beatings his he was in great pain and as it grew dark mosquitoes started biting him. He was deprived of food for the whole day.

15 ND-Burma reference number: UTP Bulletins Case 7, ID number: B-pqEi2w9of9znTmXS0ANVa

16 ND-Burma reference number: UTP Bulletins Case 17, ID number: B-oCrW1VHVG6.5jDWOHuzARA

On October 2, the soldiers continued to torture him. On October 3, they started to search for the gun near Seng Ja camp, but were unable to find anything. On October 4, they tortured him again, tied a plastic bag around his face and poured water on it to simulate drowning and beat him with their guns. They then tied his whole body with rope and dragged him to Seng Hawm river. They would place him in the water and then take him out again multiple times. Following this torture, they thought he was dead so put him in some bushes, covered him with dry leaves and left him. On October 5 two people from Di Ma Village were passing through the area when they heard screaming. They went back to the village to inform the others about what they had heard. On October 6 at around 6am these villagers searched the area. At 10am they found him and took him to their home for treatment.

The soldiers in this case had no evidence that this individual was in possession of a firearm but still detained and tortured him. The government should make accountable those soldiers responsible for this act of brutality and compensate any medical bills he may have incurred. The torture utilized here is not ad hoc or random, but a systematic practiced process that causes long lasting damage to the victim and grossly violates their basic human rights. The complete and utter lack of accountability in these cases serves to underline the dangers of the culture of impunity under which the military operate. There is no recourse for civilians who have suffered so, with no assistance to cover medical costs or acknowledge the unjust suffering inflicted upon them.



d. Torture Case Four (TC4), Kachin State, January 2012 (KWAT)¹⁷

TC4 was arrested in Ta Law Gyi Village by Captain Aung Kyaw Oo of Light Infantry Battalion (LIB) 37. He was then taken to the monk's compound in Ta Law Gyi Village where he was tortured for 22 days. Following this, the authorities took him to the Military interrogation Unit office where he was tortured for 6 more days. After declining an offer to become part of the Burmese Army, he was sent to jail for 1 year.

¹⁷ ND-Burma reference number: UTP Bulletins Case 4, ID number: B-otymodVOnEo.8.ycGnkjca

The interviewee originally lived in Jinghpaw block in Ta Law Gyi Village. In late December 2011, when conflict broke out, he moved to Shwe Zet IDP camp in Myitkyina. In January, he briefly returned to his village, at which point he was arrested by Aung Kyaw Oo, captain of LIB 37. He was arrested around 11 pm by a troop of around 20 soldiers. He was blindfolded, turned around in order to disorientate him, and was then threatened with a firearm and a knife. That evening he was taken to the monk's compound in Dalaw Village. He was interrogated there, and was accused of being a KIA spy and supporter. He was tortured in a number of ways during his detention, including having his legs bound together, being deprived of food for long periods of time, having his thighs sliced open by a hot knife, having his face covered with a plastic bag to simulate suffocation, and being stabbed in the chin with a knife. They also beat him, and he still has scars today. He was kept at the monk compound for 22 days before being transferred to the Military Interrogation Unit Office.

Before the war started, the family had a number of different small enterprises, including a small shop in their house, a butcher shop and a small stall in the morning market. With this work, they had around 10,000,000 kyats in their family. But after the arrest, the Burmese soldiers captured their cows and buffalos and killed them. They also took grain and other stores from their house. The family, therefore, is now facing financial difficulty. They have also found it difficult to travel in the country since his arrest. He suffers from chronic pain throughout his body during the cold season. He has received no medical help from outside organizations. He would like to get the support of an organization to help his family for their children's education and also for their health needs. He also requests that the government should, before punishing individuals, find out the truth. If it is possible, the government should undertake a memorial event for this incident.

Land Confiscation Cases

Land confiscation is not new to Burma, yet recent years have seen a dramatic rise in the frequency of cases. The increasing influence of large international corporations investing vast amounts of money in Burma is directly impacting the human rights situation in the country. The confiscation of land by government forces causes mass displacement and often collective arrests or indictments. There are currently 77 farmers in prisons for alleged offences relating to land confiscations.¹⁸ The use of police, military and other government force to support the investors is typical of the military attitude that still prevails over much of Burma, with crony money and interests helping to protect these businesses and remove obstacles to their investments.¹⁹ These obstacles have included farmers, their families and their communities, with mass displacement of people and the subsequent economic and social damage causing upheaval for communities across Burma.

18 According to AAPP figures, correct as of April 2015

19 Karen Human Rights Group (2015), *Losing Ground: Land conflicts and collective action in eastern Burma*, [online] available at: <http://www.khrg.org/sites/default/files/losinggroundkhrg-march2013-fulltext.pdf>

a. Land Confiscation Case Two (LC1), Tarchileik Township, May 2014(LW0)²⁰

On May 8 2014, Captain Soe Min from Light Infantry Battalion (LIB) 571 based in Tar Lay sub-Township, Tarchileik Township, Tarchileik District confiscated a mango farm in Naw Po Shaw village, Tar Lay sub-Township, Tarchileik Township, Tarchileik District in order to grow an army-owned eucalyptus farm. Naw Po Shaw village is located along the army camp where LC1's holds land of approximately one acre. Captain Soe Min is reported to have said that "one must sacrifice anything for the state". LC1 is currently allowed to pick mangos but once he sells them, the military have stated that they will cut all of the mango trees. A sign reading "owned by the army" has been placed in front of the farm.

The interviewee does not have proper documentation stating ownership of the farm, therefore he cannot legally make a case. If he were to sell the farm at its current price he would be able to gain two million Baht (approximately 65,000 USD). Even though it is nominally a mango farm, pineapple, ground nut, and long beans also grow on this land. Without this farm the victim and his family will lose their only source of income and face great difficulties, including financing the children's education. He stated that he believed people's land cannot be confiscated in such a manner and that it is essential that the army compensate them. Because the land was taken, the family are experiencing difficulties surviving, and will probably have to move elsewhere.

b. Land Confiscation Case Three (LC2), Mon State, January 2014 (HURFOM)²¹

On 2nd January 2014, the Military Advanced Training School No.(4) in Waekalee, in Thanbyuzayat Township, Mon State announced its plan of extending the size of its base by 300 acres, in order to increase taxation of surrounding rubber plantations. The military plans to tax residents 108,750 kyat in 2014, and residents who cannot pay will be banned from their plantations. In the past ten years, the military training school has already extended its base in Waekalee by around 400 acres. Including this most recent plan of expansion, the military will have extended its base by a total of 700 acres. The Waekalee military training school had stopped collecting taxes from 2012-2013, but now, the military is attempting to extend the size of its base in order to increase the tax of local residents in early 2014.

The impact on local economies has lead to long term lasting damage on the community, with the inflated taxation ensuring villagers are unable to pay, losing the right to work will lose the right to work their previously cultivated plantations as a result.

20 ND-Burma reference number: UTP Bulletin Case 7, ID number: B-tpdOoSDja2GDrEyE6rQ1TQ

21 ND-Burma reference number: UTP Bulletins Case 1, ID number: B-Qa2uyyoDLHv6397gL83OFA

c. Land Confiscation Case Three (LC3), Mon State December 2014 (HURFOM)²²

Residents of Panga village reported that Lt. Col Myit Hlaing from Light Infantry Battalion (LIB) 315, located to the west of Waekale village in Thanbyuzayat Township, called 20 local rubber plantation owners and detained some throughout the day on December 10 in an attempt to coax signatures that would release private lands for military use. According to field researchers, members of the battalion physically guided the hands of seven plantation owners who could not read or write, in order to generate the desired signatures. The other 13 landowners included the interviewee who said they read and understood the consequences of the agreement and declined to sign.

“The document said that residents [who signed] agreed to grant their plantations to the battalion in order to expand the [military] camp,” said a 39-year-old local resident. “Seven plantation owners signed the agreement because they cannot read and are elderly. For [the rest of] us, we understood the reasons [for making us sign] and so we refused even though they [tried to] force us. For me, the troops let me go home after two hours because I told them that [my] plantations belong to my parents and were not mine [to give away].”

The LIB 315 established its base in the area after the New Mon State Party (NMSP), the predominant ethnic Mon resistance group, signed a ceasefire agreement with the government in 1995. Since that time, Panga villagers have reported that roughly 360 acres of local rubber plantations were surveyed and confiscated by the battalion.

In order to continue cultivating their plantations, former landowners were allegedly forced to pay annual fees ranging from 450 kyat to 700 kyat per rubber tree, and some said yearly costs were upwards of 70,000 kyat. Residents described how in 2011 the military troops sold many of the seized plantations to businesses that now have hired laborers tapping the trees or razing the groves to plant new crops. In an attempt to seek restitution for the 360 confiscated acres, a Parliamentarian from the Mon State Parliament submitted the cases in a letter of appeal to the union-level government. Villagers suspect that Lt. Col Myit Hlaing’s urgent push for signatures indicates concern that an impending legal decision could return the seized plantations to their former owners.²³

The underhand tactics employed by the army to elicit these signatures and claim the land are unfair ways to remove people’s land. The heightened taxation and the complete lack of restitution for these land grabs make it impossible for the residents there to get a fair outcome. There needs to be a course of action available to civilians in these situations so as the military cannot wantonly exploit people for their own gain.

22 ND-Burma reference number: UTP Bulletins Case 2, ID number: B-gHdcJEjauE9NyvrFWOBH7A

23 Human Rights Foundation of Monland (2014), *Villagers held briefly by LIB No. 315 to coerce land grant signatures*, [online] available at: <http://rehmonnya.org/archives/3025> [Accessed: 21st April 2015]





*A victim Recounting the abuses of Burmese Army
Photo by Burma Issues*

IMPACT OF HUMAN RIGHTS VIOLATIONS

To say that a culture of impunity exists around government forces and agents in Burma is to drastically understate the situation. The power the 2008 Constitution affords to the military ensures that soldiers are exempt from facing proper criminal charges for the extrajudicial killings of Burma's citizens. The culture of impunity does not simply exist but is a key part of the systematic abuse of the rights of Burma's people. This system is designed to protect the perpetrators of these widespread human rights abuses. The ongoing calls for an open and accountable approach to investigating these crimes will continue to go unheard while impunity for the aggressors exists. Free and independent investigations into these crimes must be a key part of any attempts at national reconciliation.

The impact of the aforementioned abuses inflicts a great deal of harm to many aspects of people's lives. The systematic abuse by government forces has placed many people in a position of poor health and dire economic circumstance. They lack access to any kind of free basic health care, with organizations such as AAPP and The U Win Tin Foundation providing a limited amount of this care to former political prisoners. The situation in ethnic regions is even more concerning, with ongoing armed conflicts, ineffective ceasefires and the constant threat of violence hanging over civilians living in these areas.

Much of the rhetoric surrounding Burma presently discusses the idea of a transitional stage in country's polity, and how the reforms have begun to stall. This is an incorrect assumption. The reality of the situation is that a meaningful transition is not being fully realized because of the number of constitutional and government barriers still existing. Torture in detention is permitted with the promises to sign United Nations Convention Against Torture (UNCAT) going the way of many

government commitments and going unfulfilled. No government recognition of either political prisoners or an acknowledgment of the crimes of the past has ever taken place. Many activists and human rights defenders (HRDs) suffer torture in detention and the Assistance Association for Political Prisoners (AAPP) holds accounts of their poor health and ongoing conditions as a result of their appalling treatment in prison and detention centers.²⁴ The government position remains that no political prisoners remain, only criminals – a position that is patently untrue. As arrests continue and free speech becomes less and less of a reality, Burma moves further away from beginning this transition. The treatment of civilians in ethnic areas by government forces also indicates how there is no fear of reprisals, and no source of redress for victims to get a measure of accountability for those responsible. This attitude needs to change and the persecution and physical abuse of Burma's civilian population must be ended. The culture of impunity surrounding the military and their disproportionate level of military control in reforms has to be removed.

Land confiscations themselves destroy local economies, livelihoods and have led to many arrests, indictments and imprisonments. The long-term impacts of these ongoing land confiscations are not immediately visible and yet they can be surmised quite simply. The hard work and time that goes into cultivating the land for farming means those livelihoods are destroyed by the removal of their lands. The harm from the loss of income extends to the future well being of their families. The concerns raised through ND-Burma research demonstrate how the loss of land diversely impacts the local economy and devastates sources of income which families and communities have cultivated over many generations. The adverse ongoing effect of this lack of income seriously harms the future of the farmers, their families and their communities. Forced expansion of military bases does little to encourage the idea at the local level that a Burma respectful of the civil liberties of its people is taking root. Many villagers have raised the issue of compensation and showed their dissatisfaction with the offers being made. The villagers and farmers are acutely aware of the value of their land and their produce, and the offers they have been made are derisory in comparison.

Providing education for family members and meeting basic living costs are two main areas that suffer as a result of land confiscation. This is particularly true when farmers are imprisoned for taking part in protests against those responsible for the confiscation. Freedom of speech for these farmers is constantly threatened, and they have been indicted on mass in recent months. At the time of writing, the AAPP currently estimates 77 farmers are in prison, with a further 1135 having been charged and awaiting sentencing.²⁵ Their arrests are for alleged offences including, but not limited to, trespassing, property damage and holding illegal assemblies. The fact that their lands are forcibly removed and farmers are subsequently imprisoned for challenging this removal, shows how little respect the government and the military really have for the rights of people in Burma.

Much of the ND-Burma documentation focuses on the removal of land not only for private investment, but also for military use. Land confiscations and military

24 For reports on the history of torture in Burma see AAPP online library at: <http://aappb.org/category/books/>

25 For latest updated political prisoner numbers see www.aappb.org

expansion result in the mass displacement of farming and rural communities, with the subsequent losses already mentioned. The loss of income and sustainable economies in these rural areas is of huge detriment to the future livelihoods of these communities, with the effects of displacement extremely damaging to the community as a whole. Unfair taxation and a lack of reasonable compensation for both the land and future earnings lost all contribute to the gross human rights violations perpetrated by land confiscations. In addition, protests are often met with violent crackdowns and the arrest and imprisonment of farmers and land activists attempting to reclaim the confiscated land. There must be a consideration of the long-term harm caused by land confiscation and if the land cannot be returned in the same state as when it was removed, fair compensation must be provided.



Hopeless life, a victim speaking out various violations committed by Burmese troops
Photo by HURFOM





A Funeral of victim shot dead by Burmese army in Shan State

Photo - TSYO

TRANSITIONAL JUSTICE

Transitional justice is an attempt to address the impact of past human rights violations to create a more peaceful, democratic and inclusive future. This is implemented through measures intended to provide accountability and transparency during transitions, provide redress for victims of past human rights abuses, and promote stable and sustainable peace and democracy. The UN defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reparations.”²⁶ The measures used to promote transitional justice generally fall into the categories of criminal prosecutions, truth seeking measures, reparations programs and institutional reforms to prevent recurrence.

Transitional justice is based on principles established in international and domestic law, including the right of victims to a remedy, and the principles of state responsibility to protect the human rights of its citizens. Transitional justice also draws on principles of gender, ethnic and religious equality, participation, inclusiveness, and consultation. These principles have been applied to varying degrees with varying degrees of success in many countries across the world.

Transitional justice processes often consist of many different measures, using a combination of truth, accountability, reparation and prevention of recurrence to address the full impact of wide-scale violations. In best practice, these measures should be designed in full consultation with victims and other stakeholders based on a thorough understanding of the local context and of international experience. Distinct measures in the same country should be coordinated to promote efficiency and prevent overlap and redundancies. In the case of countries such as Burma where the transition is ongoing, care must be taken to sequence activities based on short-

26 *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, Report of the Secretary-General UN Doc. No. S/2004/616 (Aug 23, 2004).

term opportunities while considering long-term goals. To account for the various needs arising through this transition, it is important to recognize the different transitional justice approaches that can be applied in tandem. One action does not resolve all issues, therefore the recommendations made below take into account both the current situation in Burma and the future measures that could be taken when further progress in the transition has been made. It is important to note that some transitional justice measures have been taking place in Burma, but are carried out by civil society groups. Any potential future program of reparations and recompense must come from the Government of Burma and not from outside groups or from civil society.

Societies coming out of conflict and repressive governance cannot afford to ignore past violations, as they continue to impact the present through mistrust in government and between groups of citizens, contribute to impunity leading to more violations, and cause ongoing suffering for the victims and their families. Transitional justice is linked to rule of law and peace building through its role in building trust, reforming judicial and security institutions, and establishing mechanisms for redressing grievances and peacefully settling disputes.

The Government of Burma, despite their supposed transition to a quasi civilian government in 2011, still retains many members of the former military regime, with the abuses of civilians still ongoing as the case studies above demonstrate. Many of those in positions of influence and power in the new government were a part of the military junta that so brutally oppressed their people. The current regime has not ended these human rights abuses.

In the interests of a future united and free country, the current government needs to acknowledge these human rights abuses, both in the distant past and those that are still ongoing. The following discusses international standards regarding the right to remedies and reparations. This chapter also includes some brief case studies of transitional justice efforts in Colombia, South Africa and Peru.

A. The Principles of Reparations

Reparations principles are outlined by the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the Basic Principles)*, adopted through the United Nations (UN) Resolution Number 60/147 in, 2005. Reparations address the impact that massive violations had on victims, from physical injury to lack of trust in government. Reparations must be provided by the government, not through the private sector, civil society or international community. Well-designed reparations programs include the government's acknowledgement that the violations occurred and were wrongful, and represent a renewed commitment to providing for and protecting all citizens. Despite the transition in Burma, violations were still carried out by the government and therefore the obligation rests with the government to undertake a comprehensive

program of repayments and reparations.

The principles of reparations below outline this requirement.

The UN General Assembly, on 16 December 2005 adopted the Basic Principles on the Right to a Remedy outlining the rights to remedy and reparations. This Resolution clearly lays out the obligations of the State to ensure reparations are made for the harm suffered from massive human rights violations. The Basic Principles include the right of a victim to access justice and to receive reparations, stating that:

“Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided under international law:

- a. equal and effective access to justice;
- b. adequate, effective and prompt reparation for harm suffered; and
- c. access to relevant information concerning violations and reparation mechanisms.

Reparations should be granted in reference to the loss or harm the person has suffered, and may include monetary compensation, health care, education, access to justice, restitution of land, return of professional licenses, memorialization, and other measures. Types of reparation include the following:

- *Restitution*: Returning, as much as possible, to the situation before the violation. This includes return of the victim’s original land, passport or professional license.
- *Compensation*: Payment for damages caused by the violation. This includes paying the value of confiscated land, or a payment of money to victims of political imprisonment or other violations.
- *Rehabilitation*: Assistance to overcome the impact of the violation, including health care for physical injuries or mental problems, education for former child soldiers who were not able to attend school, or employment training.
- *Symbolic*: Measures by government to recognize and apologize for the violations, including official apologies, building monuments and other memorials in the name of victims, or establishing a public holiday on the anniversary of a major incident.
- *Community*: While most reparations are given to individual victims or their families, in cases where there are an unmanageable amount of victims or where communities themselves suffered harm (for instance, destruction of religious or educational sites), any of the above types of reparations may be given at a community level. Sometimes a combination of community and individual reparations are given”.

Reparations are distinguished from development aid and humanitarian assistance from NGOs because they are given because of the violation that the victim experienced, in order to address the impact of that violation. The *government* must provide, sponsor or create the program as an acknowledgement of wrongdoing and responsibility to repair. Simply giving compensation without an acknowledgement of wrong doing or an apology is likely to be received as a bribe in exchange for the victim's silence.

Although civil society support for victims is crucial, particularly in the short term, the provisions and recommendations that this report contains cannot adequately be provided by civil society, NGOs, INGOs or independent bodies regardless of how many resources they have. To promote justice and reconciliation, the government must acknowledge its responsibility as an institution to repair the damage caused. The efforts at mental health counseling, medical care and restoring people's livelihoods have so far come from civil society with the support of international organizations. These can help address the challenges victims face, but are insufficient. To be meaningful, a program of reparations must have the support of the government, and include an open acknowledgment of the government's responsibility to the people and an admission of wrongdoing.

The following case studies are included to show the efforts previously taken at enacting systems of reparation and accountability. These efforts include direct government involvement and a running theme of encouraging open and accountable dialogue.

B. Case Studies

a. Case study 1: Colombia and Law 1448, The Victim Law

Colombia's Victim Law, Law 1448, was passed under the government of President Juan Manuel Santos in June 2011, with provisions implemented in January 2012. The Law is aimed at addressing the mass displacement and stealing of land seen during the ongoing internal armed conflict in Colombia. The Colombian conflict is one of the longest ongoing conflicts in the world and has generated the world's largest population of internally displaced people. Between 1985 and 2013, over 4.8 million people were forced to abandon approximately 6 million hectares of land.²⁷ Despite ongoing negotiations between the government and main armed groups, conflict and human rights violations continue in many parts of Colombia. The present government refuses to acknowledge that paramilitary successor groups continue to operate, often in collusion with security forces, and in this atmosphere of impunity, human rights defenders, journalists and land rights activists are continually subject to intimidation and human rights abuses.

The Victims' Law was a milestone in official recognition of the victims and impacts

²⁷ Human Rights Watch, "The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia", 2013, [Online] available at: <http://www.hrw.org/sites/default/files/reports/colombia0913webwcover.pdf>

of armed conflict in Colombia, and in the rights the Law granted victims. Once a person was recognized as a victim, through a process created by the law, that victim was entitled to social services that included education, healthcare and psychological support systems. Recognized victims also received preferential rights to housing subsidies, job training, and some government jobs.

While the Victim's Law addressed victims of all serious human rights violations and violations of humanitarian law, there were specific provisions to address loss of land. All "owners, possessors and other users of land" who were forced to leave their land because of the conflict were entitled to restitution of the same land or, in a narrow range of cases where that was not possible, equivalent land or monetary compensation. The cases covered by these provisions included not only displacement from fleeing conflict, but also where businesses, armed groups and others used the context of violence to force land owners to give up or sell their land. Importantly, the law grants legal documents of ownership in addition to possession, and gives the current occupants the burden to prove that their ownership is legitimate, instead of forcing victims to prove that they were wrongfully dispossessed.

The Victim Law has had some measure of success since its implementation. Between January 1, 2012 and December 31, 2013, over 200,000 people received reparations from the Victims Unit; whilst by the end of 2013 there were over 54,000 registered land restitution claims.²⁸ However, there have been challenges to the implementation of the law, and criticisms of its basic structure. Not everybody who has suffered and lost land is considered eligible for restitution under this law, with complications arising when discussing the distinct ethnic groups present in Colombia. The Ministry of Defense is ultimately responsible for determining which land can be returned, and it has limited eligible land to land within "secure zones" away from ongoing conflict. The law also assigns responsibilities to a complicated array of government agencies and institutions, with no one body responsible for overall implementation. This allows each agency to pass around blame when the law is not successfully implemented.

Furthermore, many have alleged that the lack of protection for returnees and lack of accountability for members of armed groups and other powerful local interests who threaten reprisals for retaking land have weakened the implementation of the law. Less than 1% of the displaced have returned to their places of origin since the implementation of the law. Even most of those who have received legal title to their land have not returned due to threats of reprisals. There have been at least 50 murders linked to attempts to lawfully repossess land, and over 500 death threats.

Finally, even those who do successfully and safely return to their land face challenges in effectively using that land. Since the reparations to which victims are entitled include only the physical land (and legal title), there is no recovery for the houses, crops and other investments in the land that were lost. Even though victims have preferential access to government subsidies for building housing and improving on land, it is not enough to allow returned farmers to provide for themselves and their families while making the investment in resources, time and inputs necessary to grow

28 Foreign & Commonwealth Office, "Corporate report: Colombia – Country of Concern", 2014, [online] available at: <https://www.gov.uk/government/publications/colombia-country-of-concern/colombia-country-of-concern>

and sell crops. Moreover, in an environment of conflict and poverty without decent roads, access to markets, irrigation systems and other infrastructure, the land itself is not sufficient.

Colombia's experience holds lessons for Burma in how to address land confiscation. The implementation challenges demonstrate that policymakers need to consider the entire context and understand what might prevent a victim from participating, and what the consequences of participation might be. In this case, implementation during an armed conflict without accountability for perpetrators of land confiscation means that the same power dynamics that led to dispossession have prevented victims from reclaiming land.

Finally, in designing a reparations program, the entire impact of the violation needs to be considered, not only its most obvious elements. While returning land may be a positive step, it does not return the farmer to his position at the point of confiscation, when he had a house and crops growing on land his family had often spent generations developing. The same issues have risen in Burma in regards to land confiscation, and in attempts to encourage IDPs and refugees to return to new "model villages." Financial compensation for the value of the land itself, or new land, or a new home without sufficient land around it, are not sufficient for people to be able to provide for themselves and their families.

b. Case Study 2: South Africa and the Truth and Reconciliation Commission

The systematic abuse and segregation of South Africa's non-white population was carried out under a system of legislation enacted by the National Party, following their election in 1948. What followed was a sustained and lengthy period where the non-white population were forced to live, work and exist in segregation from the white population. Although the oppression of the black population of South Africa was not a new phenomenon, the legislative oppression of the majority of the population escalated the situation, with apartheid continuing for the better part of 50 years. In 1994 a new constitution was drafted which enfranchised black South African's and other racial groups in the country. Elections in 1994 resulted in a coalition government with a non-white majority and Nelson Mandela as President; which was the start of the official end of the apartheid regime.²⁹

Following the fall of the apartheid regime, it became clear very quickly that respect for the law could and would not be successfully instilled into the nation unless there was the acknowledgment of the human rights abuses that took place, and the beginning of discussions to provide restorative measures and reparations to victims of abuse. As a result the new government created a Truth and Reconciliation Commission (TRC), based on prior commissions in Latin America but with significant adaptations to the local context.³⁰ The TRC's aim was to allow victims to speak out without being forced into legal proceedings such as cross

29 History (2015), *Apartheid*, [online] available at: <http://www.history.com/topics/apartheid> [Accessed: 21st March 2015]

30 Lovell, F (1999) 'Reparations Policy in South Africa for the Victims of Apartheid' *Law and Democracy*

examination³¹, to produce a record of the human rights abuses that took place and to make recommendations for reparations.³² As well as hearing from the victims, the TRC heard from perpetrators in a controversial process of granting amnesty from prosecution in exchange for a full confession of political crimes. In general, blanket amnesties for international crimes are inconsistent with international law. The TRC therefore used conditional amnesties as a compromise in order to elicit confessions from perpetrators and provide some justice for victims without what many in South Africa feared would be vengeful and divisive criminal trials. The legacy of this amnesty process is contentious, particularly since there have been very few prosecutions of those who did not apply for amnesty or whose applications were rejected.

One challenge the designers of the TRC faced was the long time period of apartheid, and the many violations experienced during daily life by almost all blacks in South Africa. Due to this, the council created a narrow definition of a gross violation of human rights and what a victim was for its purposes. The definitions are as follows:

1. Gross Violation of Human Rights

- A. The killing, abduction, torture or severe ill-treatment of any person, or
- B. Any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (A).

Victim:

- A. Someone who has suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights
- B. Suffered as a result of a gross violation of human rights or
- C. Suffered as a result of an act associated with a political objective for which amnesty has been granted.³³

This definition excluded the violations experienced in the imposition of apartheid and daily life under its restrictions, focusing on the most serious violations suffered in the fight against apartheid. Further to this they created a cut-off date. Only people subject to victimization after 1 March 1960 were entitled to appear before the TRC

31 Andrews, P (2004) 'Reparations for Apartheid's victims: The Path to Reconciliation' *DePaul Law Review*, 53 (3) 1155-1180

32 Amnesty International/Human Rights Watch (2003) *Truth and Justice: Unfinished Business in South Africa*, [online] available at: <http://www.amnesty.org/en/library/asset/AFR53/001/2003/en/40a54501-d73e-11dd-b024-21932cd2170d/af530012003en.pdf>

33 United Nations (2008) *Rule-of-Law Tools for Post-Conflict States: Reparations Programs* [online] available at: <http://www.ohchr.org/documents/publications/reparationsprogrammes.pdf>

and seek reparations.³⁴

2. Reparations and the TRC

The Reparations Committee of the TRC was mandated to explore ways reparations could be given and to advise the government the appropriate steps that should be taken in order to compensate the victims.³⁵ The TRC faced several difficulties, including the unfortunate reality that South Africa does not have the financial means to give all the victims reparations commensurate with their losses, and that many development needs competed for resources during the post-apartheid era. With those limitations in mind, the Reparation Committee proposed a reparation and rehabilitation policy with five parts, detailed below:

1. Urgent Interim Reparations

Delivering reparative measures to victims who urgently need it, including those who would not be able to live without it. This includes victims, their relatives and dependents who have urgent medical, emotional, educational and/or symbolic needs.³⁶

2. Individual Reparation Grants

The final reparation grant which will be made available to each victim or divided between relatives or dependents who applied for the reparations if the victim is dead. The amount given depends on a formula which looks at the suffering caused by the gross violation, an amount to acknowledge the suffering caused by the gross violation that took place, an amount to enable access to services and facilities, and an amount to subsidize daily living costs.³⁷

3. Symbolic Reparations

Legal and administrative interventions. These reparations are directed at restoring the dignity of victims and survivors of gross human rights violations. This includes measures to facilitate the communal process of commemorating pain and celebrating the victories of the past.³⁸

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- 34 Lovell, F (1999) 'Reparations Policy in South Africa for the Victims of Apartheid' *Law and Democracy*
- 35 Andrews, P (2004) 'Reparations for Apartheid's victims: The Path to Reconciliation' *DePaul Law Review*, 53 (3) 1155-1180
- 36 Truth and Reconciliation Commission, Truth and Reconciliation Commission of South Africa, Report 5 ch1:7, vols *Cape Town TRC 1998* [online] available at: <http://www.justice.gov.za/trc/report/>
- 37 Truth and Reconciliation Commission, Truth and Reconciliation Commission of South Africa, Report 5 ch1:9, vols *Cape Town TRC 1998* [online] available at: <http://www.justice.gov.za/trc/report/>
- 38 Truth and Reconciliation Commission, Truth and Reconciliation Commission of South Africa, Report 5 ch1:16, vols *Cape Town TRC 1998* [online] available at: <http://www.justice.gov.za/trc/report/>

4. Community Rehabilitation Programs

Rehabilitation programs established at the community and national levels in order to help communities with post-traumatic stress disorder (PTSD).³⁹

5. Institutional Reform

Recommendations around institutional, legislative and administrative measures designed to prevent the recurrence of human rights abuses in the future.⁴⁰

The final report, released in 1998, made recommendations for reparations, including monetary and symbolic events. Progress has been made in terms of symbolic reparations in the form of monuments, museums and the publicity of the hearings of the TRC itself; however, monetary reparations are still a work in progress.

When the final report of the TRC was released in 1998, the government stated that they would pay a total of around 23,090,000 USD in reparations to around 20,000 victims who had applied for interim reparations. A large proportion of these victims and/or victims' families have yet to see the money they were promised.⁴¹ In 2001 the government announced that it would set aside an additional estimated 40 million USD for final reparations, however it never stated when this money would be distributed to the victims. In 2001 a government spokesperson announced that legislation stating the framework for reparations could not be introduced until 2002. In 2002 it was announced the policy had been developed but nothing could be done until there is a final list of victims and report from the TRC. The victims of the apartheid are still waiting for this money to be distributed.⁴²

The South Africa Case Study demonstrates the benefits of a government's willingness to be open and accountable for the crimes of the past, whilst attempting to implement legal measures to ensure that reparations are made to victims. Through the TRC, victims chose to testify about their experiences, many in public hearings that were broadcast throughout the country and summarized in weekly news features. In fact, according to some analysts, one of the greatest contributions of the TRC to reconciliation may have been exposing white South Africans to the brutal violence of apartheid. In terms of its effect on victim healing – a major goal of the Commission – the record is more mixed, as many victims were traumatized and did not have sufficient psychosocial support. Many who participated were also frustrated

39 Truth and Reconciliation Commission, Truth and Reconciliation Commission of South Africa, Report 5 *ch1:7, vols Cape Town TRC 1998* [online] available at: <http://www.justice.gov.za/trc/report/>

40 Truth and Reconciliation Commission, Truth and Reconciliation Commission of South Africa, Report 5 *ch1:7, vols Cape Town TRC 1998* [online] available at: <http://www.justice.gov.za/trc/report/>

41 Amnesty International/Human Rights Watch (2003) 'Truth and Justice: Unfinished Business in South Africa,' [online] available at: <http://www.amnesty.org/en/library/asset/AFR53/001/2003/en/40a54501-d73e-11dd-b024-21932cd2170d/af530012003en.pdf>

42 Amnesty International/Human Rights Watch (2003) 'Truth and Justice: Unfinished Business in South Africa,' [online] available at: <http://www.amnesty.org/en/library/asset/AFR53/001/2003/en/40a54501-d73e-11dd-b024-21932cd2170d/af530012003en.pdf>

at the lack of material reparations.⁴³

The TRC also demonstrates the way that one country tried to resolve the tensions between the need for accountability and the difficulty in holding trials when there are hundreds of thousands of perpetrators, and between the need to recognize and assist victims when there are massive numbers of victims and few resources.

However the case study is also instructive in demonstrating how these processes are not, and should not be treated as, quick fixes. A reasonable time frame for the payment of reparations was set in this case, and at the time of writing victims are still waiting to receive the reparation payments. 12 years have passed since the need for a victims list was discussed. As things stand the post-Mandela governments have let the TRC process fall by the wayside. This demonstrates the very real dangers of these programs. It is essential to have a monitoring system and fixed mechanisms that ensure future attempts in Burma go ahead. The excuse given for this is that no victim list has been decided upon and therefore it is not possible to decide who should receive the compensation. This position demonstrates that despite a change of government bringing a change of attitude, there is no guarantee that the process will be smooth. Identifying the list of possible victims eligible to receive compensation should have been an initial requirement of the development of this law – it is not a reasonable basis on which to deny people compensation. Further engagement with civil society during the development of this law may have resulted in a clearer idea of victims' experiences and needs.

c. Case Study 3: Comprehensive Reparations in Peru

One of the most comprehensive reparations programs in recent years has been that of Peru. The internal conflict raged there from 1980 to 2000. On 17 May 1980 the Communist Party in Peru (PCP-SL) revolted against the Peruvian government by burning ballot boxes in Chuschi, Ayacucho. In the twenty years following this incident the conflict between the government and the PCP-SL and other insurgent groups led to massive violations of human rights. Between 1983 and 1985 extrajudicial executions, forced disappearances, torture and sexual violence against women were very common. The highest number of deaths occurred between 1983 and 1984 but due to the huge ethnic divides throughout Peru these deaths went almost unnoticed. 1989 saw the armed forces begin a new strategy – they began to distinguish between friendly, neutral and enemy populations. This did lead to the reduction of human rights violations in the emergency zones. However, it also resulted in planned human rights violations, positioning Peru as the world leader in the forced disappearances of people⁴⁴ with more than 69,000 people either being

43 Tristan Anne Borer, *Reconciling South Africa or South Africans? Cautionary Notes from the TRC*, 8 *African Studies Quarterly* (Fall 2004); Therese Abrahamsen and Hugo van der Merwe, *Reconciliation through Amnesty? Amnesty Applicants' Views of the South African Truth and Reconciliation Commission*, Center for the Study of Violence and Reconciliation (2005).;

44 Advocates for Human Rights (2013) *Overview of the Conflict* [online] available at: http://www.theadvocatesforhumanrights.org/brief_history_of_the_conflict2

killed or forced to disappear, assumed dead.⁴⁵

The Comisión de la Verdad y Reconciliación (CVR) (Truth and Reconciliation Commission) was established in 2001 and gave the Peruvian judiciary information that was essential for the prosecution and convictions of key figures responsible for the perpetration of human rights violations, former President Alberto Fujimori and the leader of the central rebel insurgent group Abimael Guzman. In the field of transitional justice this particular CVR is known for its successful execution of the analysis of twenty years of violence and authoritarian rule.⁴⁶ The Peruvian government has provided a detailed account of the violence, the causes of the violence, and those most affected.⁴⁷ The CVR was set up to not only establish the truth about the events occurring between 1980-2000 but also to provide accountability and reparations for the victims as well as contributing to the foundation of national reconciliation. The extremely comprehensive final report was issued in 2003.⁴⁸

In 2004 the Comisión Multi-sectorial de Alto Nivel (CMAN) (High Level Multi-sectoral Commission) was established which was responsible for following up on state actions and policies in peace, collective reparations and national reconciliation. In 2005 a fuller version of the Plan Integral de Reparaciones (Comprehensive Reparations Plan) was approved. This plan defined beneficiaries of reparations to include victims of displacement, arbitrary imprisonment, torture, rape and kidnapping as well as members of the military, the police and self-defense committees who suffered injuries due to the conflict. Relatives of victims could also be eligible. Some of the relatives were themselves indirect victims – children born from rape, children who had been conscripted by self-defense committees, those who had been indicted under unfounded terrorism/treason charges, and so on.

Although this plan was passed into law in 2005 it has only been partially implemented. The law gave responsibility for the coordination of the policy to Comisión Multi-sectorial de Alto Nivel (CMAN) (High Level Multi-sectoral Commission), established in 2004. This led to the creation of a reparations council which was given the task of building a registry of all categories of victims. The registry was divided into two lists – individual beneficiaries and collective beneficiaries. The distinction is based on whether the displacement suffered occurred either on an individual or collective basis. Collective beneficiaries are groups of peasants and indigenous communities who were affected by the violence, as well as displaced people who were unable to return to where they came from. This law however included a provision not in the CVR recommendations which excluded

45 International Centre for Transitional Justice (2013) Victims of Peru's Internal Conflict Still Await Reparations, [online] available at: <https://ictj.org/news/victims-peru-civil-war-still-await-reparations>

46 International Centre for Transitional Justice (2013) *Ten Years After Peru's Truth Commission*, [online] available at: <http://www.ictj.org/news/ten-years-after-peru-truth-commission>

47 Correa, C (2013) *Reparations in Peru: From Recommendations to Implementation*, International Centre for Transitional Justice, [online] available at: http://www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf

48 Martinez, M (undated) *Peru's Painful Mirror*, International Centre for Transitional Justice, [online] available at: <http://www.ictj.org/perus-painful-mirror/>

members of allegedly subversive organizations from being defined as victims and therefore getting benefits, regardless of whether they had endured human rights abuses during the conflict. As of yet there has been no legal discussion on how to make this exclusion of certain groups work with the fact that the government is required to identify the groups who can receive reparations without discriminating.⁴⁹

There are seven different programs that have been established in order to try and provide redress for victims:

<p>1. Restitution of Civil Rights</p>	<p>It includes declarations of absence due to the enforced disappearances of individuals that give the families of the disappeared the ability to exercise their civil inheritance rights.</p> <p>Also includes restoring the civil rights of those who had been unduly indicted or prosecuted for terrorism or treason; getting rid of the criminal records of victims; providing civil records to those who had lost all legal documentation; restoring the inheritance rights of victims, and; removing fees and taxes which were imposed on the implementation of reparations established for each case.</p>
<p>2. Education</p>	<p>Directed at those whose education was interrupted due to the violence, children of victims, and those who were forcibly removed. For adults it takes the form of literacy programs, access to primary and vocational education, the waiver of tuition fees, access to books and transportation to and from school.</p>
<p>3. Health Care</p>	<p>Directed at those whom have faced physical or psychological consequences as a result of the violence endured. Priority on serving children, women and the elderly and establishing community health care initiatives.</p>
<p>4. Collective Reparations</p>	<p>Helping families, peasant communities, indigenous communities, settlements and other communal organizations and families who had to resettle in a different location. For example rebuilding the infrastructure of basic services and communal properties, and training members of the community to be able to access economic opportunities effectively.</p>
<p>5. Symbolic Reparations</p>	<p>Apologies from representatives of the state, ceremonies that promote the reach of the CVR and commemorations of victims.</p>

49 Correa, C (2013) *Reparations in Peru: From Recommendations to Implementation*, International Centre for Transitional Justice, [online] available at: http://www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf

6. Promotion and Access to Housing	Directed at those individuals who had their homes destroyed as a result of the conflict. The aim was to provide support for reconstructing rural houses; supporting the regulation of property rights and assisting in the resettlement of displaced persons.
7. Economic Reparations or Compensation	Apologies from representatives of the state, ceremonies that promote the reach of the CVR and commemorations of victims.

With regard to the restitution of civil rights, there have been pros and cons to the establishment of these reparations. 1,896 victims have been officially registered as missing, which has given the relatives of these missing persons the opportunity to exercise their rights; for example, the right to obtain a judicial declaration of absence. Unfortunately however this process can be long and expensive if a lawyer is needed. The system is further not necessarily accessible to all victims, especially those who live in rural areas or distant from cities or towns. On a positive note however, there has been a general policy imposed to improve the registration of victims – especially in rural areas – which has simplified the requirement needed to be able to register, and which offers free registration. By 2012, 91.6% of children under the age of seventeen were registered in comparison to 2008 where the number was only 27.5%.⁵⁰

The ‘Education’ reparations have however been limited and in 2008, a decree limited these reparations to those people who had to actually leave school as a result of the conflict.⁵¹

In order to receive the Health Care reparations, victims have to have registered for health insurance. There is a significant difference in the way physical and psychological health reparations have been administered with psychological initiatives far exceeding physical ones. The Ministry of Health created a reparations program regarding mental health for the ten areas most affected by the conflict. Since the establishment of this program 27,739 victims have been given mental health care.⁵²

The fourth program, ‘Collective Reparations’ was implemented from 2007-2011. 440 rural settlements were chosen to receive 100,000 Soles (US \$37,000) each. Other communities benefited from these reparations in the years leading up to 2011. In the five years in which the collective reparation programs were implemented, approximately 165 million Soles (US \$63 million) was allocated to 1,672 projects in 1,649 communities. In 2013 it was established that a total of 1,946 communities have benefited from the reparations. While this number may sound substantial, it is actually very small when one compares it to the 5,697 communities which were registered by the CVR as being seriously affected by the conflict and in need of reparations.⁵³

50 *Ibid*

51 *Ibid*

52 *Ibid*

53 *Ibid*



A victim recounts the abuse of Burmese Army
Photo by HURFOM

Regarding the fifth point, this type of reparation has been relatively successful; monuments have been built across the country, and the government has planned the erection of a museum in order to commemorate and remember the conflict violence and the victims. One of the most important aspects of this form of reparation was the promise made by the government to search for the remains of those who disappeared during the conflict. Unfortunately efforts have stalled and not as much progress has been made as was initially expected.⁵⁴

The ‘Promotion and Access to Housing’ policies are yet to be defined. In reality the groups of victims who have received reparations are those whose families are related to the police and armed forces staff killed.⁵⁵

The CVR recommended that the compensation be dispersed among the victims as the “Economic Reparations or Compensation” in the form of two-fifths to widows or permanent partners of victims, two-fifths to children of victims, and one-fifth to parents of deceased victims. Victims over the age of fifty years old should receive the equivalent of one-half of their minimum salary. The program has been criticized by human rights organizations and civil society regarding how the amounts were allocated. The government further rushed into the payments and only paid 1021 victims. There was no clarity on how the program would actually be executed, highlighting the fact that this was really only intended to be a short term initiative.⁵⁶

The CVR gave a strong analysis of the human rights violations that took place. From this description of the different reparation programs intended to be implemented, it is clear that although some progress has been made, there are also shortcomings. One should take note, however, of the success of the health program – especially regarding mental health. Conflict can result in severe psychological issues, although the program has not reached every single direct or indirect victim of the conflict, its success is promising for future mental health reparations. This example can and should be drawn upon as an example of a way in which to incorporate health reparations in to Burma.

The CVR process also demonstrates the need for civil society engagement in transitional justice efforts. With real collaboration and discussion there could be much time saved and a clearer recognition of how and when to undertake substantive compensation initiatives. The efforts in Peru also clearly exemplify the dangers of attempting to do too much soon. Many of the measures implemented in the country had great success initially, but seem to have lost momentum over the years. It is important to recognize what is possible in Burma now and what a long-term plan for reparations and reconciliation will be.

54 *Ibid*

55 *Ibid*

56 *Ibid*

CONCLUSION

The above findings demonstrate some of the human rights violations that continue to be perpetrated by the Government of Burma against their own people. Despite the changes that have happened in the country since the quasi-civilian government took power, the research carried out by ND-Burma members demonstrates how little actual progress has been made that impacts civilians. The experiences recorded by ND-Burma field researchers shows the continuing suffering these grave violations of people's basic rights have caused.

The following recommendations are based on the combined experiences of ND-Burma members, their researchers and the people who discussed their experiences. These recommendations seek to outline ways in which the Government of Burma can begin to make amends for the crimes of the past and account for the harm caused throughout years of brutal military rule. The experiences of the people of Burma at the hands of government forces are essential to formulating effective and appropriate measures of reparations.





Fleeing IDPs, the villagers fled the Burmese Army's atrocities
Photo by HURFOM

RECOMMENDATIONS

The members of ND-Burma have experience in gathering and analyzing the experiences of civilians living throughout the country. The human rights abuses documented above are only a part of the systematic and widespread violation of people's basic human rights. This paper has focused on some of the suffering people have gone through at the hands of military and government forces. Torture and extrajudicial killings are in themselves abhorrent acts of cruelty and abuse that have not stopped in Burma. Land confiscation is rampant nationwide and had lead to numerous issues for people who lose their lands, as demonstrated by the cases above.

The parallels drawn with the three international case studies are clear, and it is important to recognize global efforts to address past crimes. Burma is still facing many ongoing issues and conflicts that contribute to the perpetuation of these gross violations of human rights.

ND-Burma member organizations have made several recommendations of how the Burma government must provide reparations to those people. Firstly, however, it is essential to make clear that the responsibility for protecting civil liberties and the rights of the individual must fall at the feet of the government. Civil society is filling the gaps in caring for the victims of these human rights abuses. Before we can discuss the application of the recommendations this paper supports, the government must recognize these crimes and establish accountability and transparency for them. The current administration and political and social system is littered with members of the former military regime, with the push for national reconciliation constantly thwarted by their presence. Only with a genuine political will to account for the crimes of the past can we begin to make future reparation and reconciliation efforts. The aforementioned backsliding and stalling of reforms is a widely held opinion of the current state of this supposed transition. The current government and the international community need to recognize that before a meaningful transition can begin to take effect, an acknowledgement of past and ongoing crimes needs to be

forthcoming.

Abuses are, as demonstrated by the case examples, still ongoing. While we are not anticipating the acknowledgments and truth telling procedures needed to happen in 2015, the kinds of reparations that the three case studies discuss are instructive of the steps the Government of Burma should be taking now to begin this process.

In addition to the burden of responsibility on the government, it is still essential to encourage and solicit the support of the international community in implementing transitional justice measures.

A Truth Commission in some form must involve international experts and independent observers to ensure the validity of this process. As seen in previous efforts, Truth Commissions and other truth telling procedures necessitate an international presence. If they do not become involved, the process is likely to struggle. The MNHRC is supposed to retain the power to independently investigate human rights abuses in Burma and encourage punishment for the perpetrators. There must be an independent investigation process, one supported by the government but completely independent of their influence. Fear and intimidation must not be allowed to block the essential need for truth and accountability in any investigation. A legal framework to permit independent and transparent investigations is the only way to ensure the military influence that pervades Burma's polity does not impede accountability for the crimes of the past.

ND-Burma members have jointly made the following recommendations.

Constitutional reforms need to be made by the Government of Burma:

- A central component of the government's reform process must include constitutional reform that addresses the needs of ethnic minorities, as well as the development of an independent judiciary as a means of safeguarding human rights and tackling the culture of impunity regarding gross human rights abuses and war crimes
- The government must provide accessible and transparent mechanisms for civilians to complain of violations of their rights. Such mechanisms should ensure follow-up procedures and provide adequate protection from retaliation of military personnel for individuals or groups who file complaints, with the case of Brang Shawng a prime example of the way in which the military oppress legitimate attempts to expose human rights abuses ⁵⁷
- The government must initiate constitutional and judicial reform to remove the provisions which protect the army from any criminal investigations

57 Fortify Rights (2015) 'Myanmar: Overturn Wrongful Conviction of Brang Shawng, [online] available at: <http://www.fortifyrights.org/publication-20150218.html>.

Reduce the military presence in conflict and ethnic areas

- Decrease militarization across the country. The government must demilitarize all former conflict areas by reducing troops and removing army camps/bases to signify a genuine commitment to transition to peace
- In the short term, provide secure complaint mechanisms for civilian populations who are affected by increasing military presence, providing the aforementioned accountability for these violations
- The government must facilitate the safe, voluntary return of all war affected IDPs to their communities

Reparations, rehabilitation and reintegration program to be provided by the Government of Burma:

- Acknowledge and apologize for the abuses that led to human rights violations and forced displacement, encouraging the building of trust between perpetrators and victims
- Establish a program to ensure reparation, rehabilitation and reintegration of victims of human rights violations caused by both armed conflict, political struggle and the oppression of basic civil liberties
- Establish programs to provide better livelihoods, education, and healthcare, and account for any other suffering caused as a result of human rights violations
- For those IDPs who choose to return, ensure that programs account for losses suffered as a result of human rights violations, such as restitution for lost property and income
- Establish an awareness program for communities who have suffered human rights violations and for those who perpetrated them; help to ensure non-recurrence of human rights violations through education and capacity building
- Recognize the suffering of victims and initiate the memorialization process

Recommendations to the international community:

- In efforts to establish a Truth Commission in Burma, international involvement will be invaluable in providing capacity, expertise and mediation, as well as financial support where possible
- The international community should apply sufficient pressure on the Government of Burma to seek truth and reconciliation, through raising this issue in discussion with political and military leaders, and through other opportunities the international community has to engage with the Government of Burma

- The international community must utilize measures of leverage such as economic sanctions to encourage the Government of Burma to acknowledge crimes of the past and address these violations. This will ensure transitional justice measures become part of international community mandates when working for change in Burma
- Remaining economic sanctions should only be lifted following a demonstrable improvement in the human rights situations, including acknowledgments of the past human rights violations and evidence of efforts being made to address these
- Urge and encourage government efforts at enacting reparation policies and programs for all victims. These programs must be undertaken in conjunction with civil society and with an open and accountable approach

These recommendations, while not exhaustive, demonstrate the opinions of ND-Burma members, formulated after many years of researching and interviewing victims of human rights violations in Burma. The findings in this paper directly influence the recommendations made within, and reflect many opinions and stances from the people of Burma. Transitional justice measures such as these are a key part of Burma's transition to democracy; however, it is important to reiterate that a meaningful transition has not yet even begun. Despite rhetoric to the contrary, a democratic transition cannot begin before the government acknowledges the crimes of the past and the ongoing abuses their forces carry out in Burma. The information gathered by this research highlights a real lack of trust between the people and the government, a tangible barrier to making any real progress towards national reconciliation. The first step towards making this a meaningful transition and beginning to build trust is the Government of Burma publicly acknowledging past violations and recognizing their responsibility to make amends for the suffering caused. A continuing refusal to realize their culpability for these crimes ensures the atmosphere of distrust and hostility endures.

The transitional justice measures must also be accompanied by key changes in the country, such as reforms of the Constitution and the justice system. Ending ongoing arrests of peaceful public protesters and developing a true respect for free speech and rule of law are also essential steps to be taken. It is important that these transitional justice recommendations are a component of any program of national reconciliation, while it is also imperative that continuing abuses end immediately. Simply permitting civil society memorials and government influenced truth commission may give the impression of a government committed to making real change, while masking the fact that civil liberties are still vastly restricted and nothing is being done to prevent the crimes of the present. For true national reconciliation to occur, the Government of Burma must first acknowledge and apologize for the crimes of the past. Recognizing the suffering of past victims and implementing memorial measures are found to be key to the desires of those who have suffered human rights violations in Burma.

As the transitional case studies demonstrate, one of the key problems with transitional justice measures has been time. These programs have existed for years without the reparation payments or compensation reaching the people. It is

unacceptable that the Burma government should be allowed to implement national transitional justice programs simply to appease the wishes of the international community. If Truth Commissions, laws to address land confiscation cases, and government sponsored programs of rehabilitation and reparations are to occur, then they must do so with the full and genuine commitment of the Government of Burma.

The views and experiences of the people of Burma are aptly documented and expressed through civil society, with the international community acting as a watchdog and facilitator of these programs. These programs must have a genuine impact for the people, without them becoming a pawn of the government to give an outward impression of progress. Apologies and acknowledgments are essential steps, as the opinions of those who participated in the research demonstrate. The genuine will of the Government of Burma to make real lasting change by bringing these crimes to light is essential. To begin to bring a measure of accountability and solace to victims of human rights violations there must be a concerted effort from the ruling government to improving the lives, livelihoods and personal security for the people of Burma.

ND-Burma members have interviewed and recorded the experiences of civilians living in Burma. Those experiences, challenges and sufferings must be the basis for transitional justice measures that ensure support and reintegration for victims of appalling human rights abuses. Their interests and needs are the very principle of transitional justice, and should be at the forefront of the government's consideration. The Government of Burma must acknowledge these accounts of extrajudicial killings, torture and mass displacement caused by land confiscation, and take responsibility for these crimes. Acknowledging and utilizing these experiences as a basis from which to develop transitional justice programs is a key step towards achieving true national reconciliation in Burma.

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TO RECOGNIZE AND REPAIR

Unofficial Truth Projects and the Need for Justice in Burma

The need for a truly open and accountable government in Burma is essential to addressing the human rights violations in the country, both in the past and in the present. The research paper seeks to demonstrate the experiences of people in Burma in three key areas of human rights abuses: Extrajudicial Killings, Torture and Land Confiscations.

The paper will utilize research carried out by ND-Burma member organizations, who are skilled and experienced in conducting research and interviews with people living in Burma.

The findings and experiences analyzed within this paper will form the basis for recommendations that reflect the principles of transitional justice and seek to improve the human rights situation and support the push towards national reconciliation and a free democratic future for Burma.



NETWORK FOR HUMAN RIGHTS DOCUMENTATION - BURMA

GPO 315, Chiang Mai 50000, Thailand - Mobile: +66 (0) 8 196 159 92
office@nd-burma.org, www.nd-burma.org