



**Global  
Justice Center**

Human Rights Through the Rule of Law

*Putting Democracy Out of Reach:  
How Burma's New Government Violates the  
Law of Nations and Threatens Global  
Peace and Security*

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## Introduction

Recent political moves by President U Thein Sein, representing the new “civilian” government in Burma, must be taken with a grain of salt; the President has no more power to “shift to democracy” than he had in his old job as Burma’s Prime Minister. The world’s parsing of President U Thein Sein’s words is a distraction from examining what the military is now doing within its new “law free zone” and from the fact that the President can do nothing about it.

Senior General Than Shwe and his military cohorts successfully pulled off setting up a “sovereign state,” the Union of the Republic of Myanmar, *which lacks the sovereign powers of a state. Under the new constitution*, the “Defense Services,” ruled solely by the military Commander-in-Chief, is a legally autonomous entity *outside of the sovereign state*. The new “civilian” government has no authority to enforce any domestic law or international treaty against the military, including the Genocide or Geneva Conventions, the Nuclear Non Proliferation Treaty, nor, for that matter, the UN Charter. Only a new constitution, not political rhetoric, can put Burma on the road to change.

The situation “post-election” in Burma is dangerous. The military is flourishing under its new protected status, reinforced by constitutional guarantees of impunity for past and future crimes. Burma’s long-running civil war has exploded with renewed military attacks on ethnic armies and civilians, including the use of rape as a weapon of war. Evidence of the military’s use of chemical weapons against the Shan and Kachin armies is mounting. The military’s purchase of weapons and nuclear technology from North Korea continues unabated. Burma’s relationship with Iran, reinforced with several senior level exchanges, resulted in an ‘economic’ agreement on October 10, 2011, when Deputy Foreign Minister last visited Tehran.

Until Burma is held accountable for its serious breaches of the law of nations, including specific aspects of its new constitution, the risks to global security will increase. No amount of investment in Burma’s natural gas can be worth supporting the resulting income going for the acquisition of nuclear weapons by war criminals who have perpetrated genocide, war crimes, and crimes against humanity.

This briefing paper examines Burma’s “post election” breaches of international law and how they undermine our global legal order:

1. Burma’s constitution, providing for a bifurcated “sovereign state,” is an internationally wrongful act and therefore null and void.
2. Post-election military crimes are escalating in Burma, fueled by guarantees of impunity and a complicit judiciary.
3. Burma’s laundering of war criminals through a sham election process does not create a new “civilian” government.
4. Economic development in any true sense is not possible in Burma given the military’s control of the economy through crimes and corruption.
5. The constitutional guarantee of a “law free zone” for the military, including shielding its nuclear weapons development program, threatens global peace and security.

## **1. The Burmese Constitution Is a *Prima Facie* Breach of the U.N. Charter and Therefore Null and Void**

Burma's constitution, implemented on January 31, 2011, establishes an illegal bifurcation of sovereignty, which precludes real democratic reform. The military is guaranteed dominance in the "civilian government" and granted complete legal autonomy as an entity *outside of* AND *supreme over* the sovereign state of the "Republic of the Union of Myanmar" (Burma).<sup>1</sup> The constitution defines the components of the sovereign state as the executive, legislative, and judicial branches of government, intentionally leaving the military outside of the realm of sovereign state.<sup>2</sup>

President Thein Sein is legally incapable – even if willing – to enforce any laws, civil or criminal, against the military, thus rendering Burma unable to comply with its *erga omnes* obligations to the international community,<sup>3</sup> including under the Geneva and Genocide Conventions<sup>4</sup> and binding U.N. Security Council Resolutions.<sup>5</sup> To reinforce this legal autonomy, the constitution guarantees the military amnesty for all crimes, including genocide, even in criminal courts.<sup>6</sup> Military earning and budget remains secret and not taxed.<sup>7</sup> President Thein Sein has no authority to even visit a military installation without the express invitation of the

Commander-in-Chief Min Aung Hlaing.<sup>8</sup> A military "coup," if necessary to "protect the constitution," is authorized by the constitution.<sup>9</sup> The constitution is a *prima facie* violation of the U.N. Charter<sup>10</sup> and an "internationally wrongful act" arising to the gravity of being a "serious breach of peremptory norms."<sup>11</sup> Under the laws on states' responsibilities, even in absence of any finding by a court or the Security Council, all states are mandated to not recognize the validity of the internationally wrongful act, i.e. the constitution or elections arising therefrom.<sup>12</sup> States must further take all possible measures to ensure that Burma revokes or amends the constitution.

Precedents for treatment of Burma's constitution under international law can be found in the Security Council's mandates for non-recognition of South Africa's apartheid constitution, South Rhodesia's governing regime, and Namibia's elections.<sup>13</sup> The International Court of Justice (ICJ) detailed states' *erga omnes* obligations of non-recognition in its Namibia opinion finding the governing regime invalid, and in an advisory opinion on the Wall in the Occupied Palestinian Territory.<sup>14</sup>

## **2. The Burmese Military Systematically Perpetrates Genocide, Crimes Against Humanity, and Other ICC-Covered Crimes, with the Complicity of the Judiciary**

All states are under a duty to act to end the military's decades long criminal spree and ensure that Burma's top military officers, including those holding the top offices in the "civilian" government, are criminally prosecuted for their past and present war crimes, genocide, and crimes against humanity.<sup>15</sup>

In contrast to Burma, the Security Council referred Libya to the ICC which issued an arrest warrant for Muammar Gaddafi and others, all within a matter of months after the Libyan government's brutal crackdown on protesters.<sup>16</sup>

## **A. States Have a Duty to Stop Burma's Violations of The Genocide Convention, Including the Military's Continuing Crimes of Genocide**

While the global community considers reengagement with the Burmese government, the military's targeted attacks against ethnic minorities are escalating. These attacks are not random; they are part of an ongoing and slow burning genocide and ethnic cleansing policy of the military against the Karen and other ethnic groups in Burma.<sup>17</sup>

Genocide strikes at the heart of our global order, and yet, states – for political, not factual reasons – have ignored that genocide is taking place. Ethnic minorities have been targeted for decades and skirmishes have escalated between the Burmese Military and the Kachin Independence Army (KIA) since June, forcing tens of thousands of refugees to flee in search of the relative security of the border areas.<sup>18</sup> Evidence of the military's targeted attacks against Burmese villagers, including looting, burning, and destroying farms, and raping and enslaving village women, continues to emanate from rural areas.<sup>19</sup>

Non-governmental organizations assessing the human rights situation in Burma estimate that from August 2010 to July 2011 at least 112,000 residents of Burma were displaced from their homes.<sup>20</sup> Physicians for Human Rights concluded, after an emergency investigation in September 2011, that grave human rights violations against ethnic minorities by the government are “systematic and widespread.”<sup>21</sup> While the new regime touts the cautious and modest cosmetic changes to its official policies, at the same time it has intensified its offensives against the ethnic minorities within its borders.<sup>22</sup>

## **B. The Military Continues to Systematically Use Rape as a Weapon of War Against Ethnic Women**

The Burmese military's use of rape as a weapon of war against ethnic women constitutes war

Evidence of military's genocidal crimes is in the public record. Recent jurisprudence, including the ICC appeals court decision reinstating the genocide charges against Sudanese President Omar al-Bashir, have clarified the standard of evidence necessary to arrest an alleged perpetrator of genocide.<sup>23</sup> Under this standard, there exists sufficient evidence in the public record to arrest former Senior-General Than Shwe and others, including the new Vice President Tin Aung Myint Oon genocide charges.<sup>24</sup>

All states are under an existing duty to act both “to punish genocide in Burma” and “to prevent” it.<sup>25</sup> The failure of action on genocide in Burma is all the more shocking given that Burma is now *number one* in the world on the “risk” of genocide indices<sup>26</sup> – the same indices that are designed to trigger action by states and the Security Council. Burma is being monitored by the U.N. Special Advisor on the Prevention of Genocide,<sup>27</sup> but the mandate of the office is limited to providing confidential briefing to the Security Council.

The International Court of Justice in 2007 first held that all states are under a positive duty to act to prevent genocide once a serious risk of genocide is made known --even prior to any official court or U.N. finding.<sup>28</sup> Perversely, the “acts” of the international community are one to reward not apprehend the new regime as evidenced by Burma's intensified diplomatic overtures, including a visit from U.S. Secretary of State Hillary Clinton, and its confirmed Chairmanship of ASEAN for 2014.

crimes, genocide, and crimes against humanity. Thorough documentation of this practice,

including the names and badge numbers of many of the rapists and their commanding officers, dates back nearly two decades.<sup>29</sup> The Secretary-General has cited Burma for violating Security Council Resolution 1820's protections for women in conflict situations<sup>30</sup> and for giving impunity to the Burmese military's ongoing sexual violence against ethnic women in conflict

areas. Yet, Burma's new constitution accords the military constitutional guarantees of immunity, including for using rape as a weapon of war.<sup>31</sup> Reports of sustained sexual violence by the Burmese Army against ethnic Burmese women have surged in the past few months, including rapes of 32 women and girls, 13 of whom were killed.<sup>32</sup>

### **C. Evidence of Continuing Crimes Has Prompted a Call for U.N. Investigation**

The military, post-election, continues to mortar-bomb villages, kill civilians, rape women, force labor, and loot, which are all crimes covered by the ICC.<sup>33</sup> Appendix 1 details the escalating violence against the Kachin, Karen, and Shan ethnic forces. These conflicts have driven tens of thousands of new refugees<sup>34</sup> over the border into Thailand and China.<sup>35</sup>

Of additional and immediate concern is evidence of the military's use of chemical weapons, a detailed accounting of which is attached as Appendix 2. The United States expressed concern about Burma as a "probable" chemical weapons possessor in 2005,<sup>36</sup> and various ethnic groups have reported injuries from chemical weapons over the past decades.<sup>37</sup> Most recently, on October 31, 2011, members of the Kachin Independence Army reported incapacitation through the use of chemical weapons during a Burmese military offensive.<sup>38</sup> On June 8, 2011, a group of insurgent Shan State Army (SSA) soldiers

claimed that some 200 Burmese soldiers bombarded and incapacitated them with chemical-laced shells.<sup>39</sup>

The U.N. General Assembly continues to express "grave concern about ongoing systematic violations of human rights and fundamental freedoms" of the people of Burma, post-election.<sup>40</sup> Tomas Ojea Quintana, U.N. Special Rapporteur on the Situation of Human Rights in Burma, continues to make clear his "belief that justice and accountability measures...are fundamental for Myanmar to face its past and current human rights challenges," and in August 2011 affirmed his call for a Commission of Inquiry ("COI") on human rights abuses in Burma.<sup>41</sup> This call for a COI has, to date, been joined by Australia, Belgium, Canada, the Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Latvia, Lithuania, the Netherlands, New Zealand, Slovakia, the United Kingdom, and the United States.<sup>42</sup>

### **D. The Civilian Judiciary Remains a Key Component of The Military's Criminal Enterprise**

Establishing a rule of law, including civilian access to an impartial judiciary, is a necessary prerequisite for true democratic reform. The constitution thwarts this by establishing judicial qualifications which ensure that the top newly-appointed judges would be those same judges who faithfully carried out crimes by means of court orders<sup>43</sup> at the instruction of former Chief Justice Aung Toe.

The new Chief Justice of the Supreme Court, Justice Tun Tun Oo, who remains on the European Union (EU) sanction list, in his role<sup>44</sup> as former deputy chief justice, was one of three judges who, under orders from Than Shwe, upheld the conviction and continued confinement of Daw Aung San Suu Kyi.<sup>45</sup> Chief Justice Tun Tun Oo and other Chief Judges, including former Chief Judge Aung Toe, are criminally responsible for the arrest and imprisonment orders of political prisoners

resulting in countless murders, rapes, torture, forced labor, and debilitating injuries.<sup>46</sup> These judges must be held accountable for their crimes against humanity and war crimes exactly as were the judges convicted of similar atrocities under the order of Hitler, Saddam Hussein, and Emperor Hirohito.<sup>47</sup>

Political prisoners, some sentenced for up to 65 years, remain a serious concern. Current estimates are that 1,600 prisoners of conscience remain in prisons, with approximately 160 in poor health due to the denial of proper medical care, harsh prison conditions, or torture.<sup>48</sup> The position of President Thein Sein, that there are no “political prisoners”, as such, is rebutted by their summary arrests. Further, in at least one case the court transcript show trumped-up pornography charges against elderly monks and nuns accused of participating in the “saffron revolution” of 2007.

The UN has passed over 15 resolutions condemning Burma’s pre-2011 judicial system for its failure to provide access to due process,

an independent judiciary, and fair trials. In addition, Special Rapporteur Mr. Ojea Quintana has expressed concern about the conditions of detention and the treatment of prisoners, as reports of denial of water and other violations of basic human rights emanate from Burmese prisons.<sup>49</sup> A constitution guaranteeing the Defense Services’ Commander-in-Chief control of all military affairs, and putting all military personnel and police outside the reach of civilian courts, precludes establishment of a rule of law and is an insurmountable obstacle block to real democratic change.<sup>50</sup>

No policy of engagement or development strategy can work without amending the constitution to guarantee civilian control over the military including Supreme Court review for all military trials. All political prisoners must be released and provided redress, including reparations and investigation and prosecution of those persons who perpetrated the crimes of false imprisonment and mistreatment, including judges and jailers.

### **3. Laundering Military War Criminals Through a Sham Election Process Does Not Create a “New Civilian Government”**

The Secretary-General’s Report to the U.N. Security Council on SCR 1820, which cited Burma as one of 11 states in armed conflict using rape as a weapon of war with impunity, makes clear that post-conflict, states must adopt vetting procedures to ensure that even *alleged* perpetrators of rape and other war crimes are excluded from public office:

States must ensure that vetting processes exclude persons against whom there are credible allegations, and evidence of crimes, including sexual crimes; such persons should also be excluded from public institutions, including integrated armed forces.<sup>51</sup>

The military successfully turned this vetting mandate on its head by deliberately crafting the constitution and election process to ensure that

the highest offices in the new “civilian” government would be held by recycled military officers, including perpetrators of rape, torture, genocide, and other heinous crimes. The government’s claim that the 2010 election was “free and fair” defies belief.<sup>52</sup>

Look at the result; twenty-six out of the new Cabinet’s thirty Ministers are Generals who were part of the Security Peace and Development Council (SPDC).<sup>53</sup> The Supreme and Constitutional Courts are occupied by former SPDC generals,<sup>54</sup> and new Vice-President Tin Aung Myint Oo (a former general) is allegedly responsible for spearheading mass atrocities against Kachin soldiers and civilians beginning in 2001, including genocide by mass killing and rape.<sup>55</sup> In November 2011, in order to solidify their

hold on the “civilian” government, the military announced it would seek to amend the constitution to allow parliamentarians to simultaneously hold offices in the Executive Branch, a move which would reduce the number of open seats in the upcoming election.<sup>56</sup>

Full and robust “bilateral contacts” with newly-elected officials from Burma, including judges, will be difficult given governments existing duties to arrest many of the top officials under the doctrine of universal jurisdiction.<sup>57</sup> Although international law provides temporary immunity<sup>58</sup>

from arrest for top officials while in office (such as the President and foreign minister) by other countries, these same officials can be arrested by the ICC or another international tribunal. Recent examples are the arrest warrants issued by the ICC for al-Bashir and Gaddafi.<sup>59</sup>

Although the EU lifted its travel ban on sanctioned military officers who are now “civilian” officials for one year, this does not give them immunity from arrest while visiting EU states or other countries. In fact, lifting the bans heightens the chances for their arrest as it encourages such travel.<sup>60</sup>

#### **4. The Lack of Legal Capacity of the “Civilian” Government to Enforce Any Laws Against Military-Owned Industries Exposes Foreign Investors to The Risk of Being Held Culpable for the Military’s Crimes**

The military’s control over Burma’s economy is solidified by the new constitution, which protects military businesses from oversight from regulatory schemes, dispute resolution mechanisms, or taxation. Only Commander-in-Chief General Min Aung Hlaing has the power to make and enforce laws applying to “all” military affairs, including military-owned

businesses.<sup>61</sup> To be effective, engagement with Burma, including foreign investment, must be grounded upon linking security, justice, and economic measures. A “development only” approach to under-developed countries has been soundly rejected by all major development bodies, including the World Bank.<sup>62</sup>

##### **A. The Military Controls the Burmese Economy**

Burma is a resource-rich country<sup>63</sup> with strong hydroelectric power, natural gas reserves, teak, gold, iron ore, and other valuable minerals.<sup>64</sup> Despite these vast resources, Burma has been categorized since 1987 by the U.N. as a “least developed” country (LDC).<sup>65</sup> LDC status is accorded to those countries with the highest levels of poverty and other indicators of low socio-economic and human development.<sup>66</sup>

The military has reserved most of Burma’s wealth for high-ranking officers and their cronies.<sup>67</sup> Two military-controlled umbrella conglomerates, Myanmar Economic Cooperation (MEC) and the Union of Myanmar Economic Holdings Limited (UMEH),<sup>68</sup> control virtually all of Burma’s revenue, including energy resources, infrastructure development

projects, banking, trading, and agriculture, hotel and tourism, gem and minerals, telecommunications, and transport services.<sup>69</sup> The military’s command over the economy was cited by the United States Congress as the reason for its 2008 ban on jade and other imports from Burma:

The SPDC [the military junta; State Peace and Development Council] owns a majority stake in virtually all enterprises responsible for the extraction and trade of Burmese natural resources, including all mining operations, the Myanmar Timber Enterprise, the Myanmar Gems Enterprise, the Myanmar Pearl Enterprise, and the Myanmar Oil and Gas Enterprise. Virtually all profits from these enterprises enrich the SPDC.<sup>70</sup>



This stranglehold over Burma's natural resources and profits has enriched the military

and its officers and allowed billions to be spent on weapons, all at the expense of the well being of the Burmese populace.<sup>71</sup>

### **B. Foreign Companies Are at High Risk of Being Held Civilly and Criminally Liable for Military Crimes and Corruption**

Burma is one of the most corrupt countries in the world.<sup>72</sup> In practical terms, economic engagement with Burma will require partnerships with criminal and corrupt military-owned enterprises, exposing foreign governments and businesses to serious consequences.<sup>73</sup> This is illustrated by the multimillion dollar settlement resulting from a lawsuit by Burmese villagers under the U.S. Alien Tort Claims Act for the military's use of forced labor, murder, and rape perpetrated on

Burmese citizens during a UNOCAL (Union Oil of California)/military joint partnership in Burma.<sup>74</sup> The U.S. Federal Appeals Court held that UNOCAL's "role in [human rights] violations creates indirect legal liability to victims."<sup>75</sup> The UNOCAL case is one example of how foreign companies can be held liable for their "complicity in the junta's wrongdoing" which will severely limit productive foreign investment in Burma absent true reform.<sup>76</sup>

### **5. The Military's Monopoly over Burma's Nuclear Future Escalates the Threat Burma Poses to Global Peace and Security**

Though Burma does not have current nuclear capability, the military rulers have mineable uranium, billions of dollars,<sup>77</sup> and a "law-free zone" in which to operate,<sup>78</sup> giving them ample resources to become a nuclear state. The military is fixated on using this potential nuclear capability as a bargaining tool on the world stage like its ally, North Korea.<sup>79</sup> The military's legal control over Burma's energy development projects, including nuclear power, is unfettered; the constitution prohibits the "civilian" government from enforcing any Association of Southeast Asian Nations ("ASEAN") or U.N. Security Council Resolutions relating to nuclear non-proliferation.<sup>80</sup>

shortly thereafter, Burma signed an agreement with Russia to acquire a nuclear research reactor.<sup>84</sup> Although this 2001 agreement fell through once the IAEA report found Burma incapable of complying with IAEA standards,<sup>85</sup> since 2002 Russia has been providing intensive trainings in missile and civilian nuclear technology training for Burma's military at fifteen Russian universities.<sup>86</sup> In 2007, Burma signed a new contract to have Rosatom, Russia's atomic energy agency, build a "Nuclear Research Center" in Burma which would include "a pool-type research reactor, and facilities for radioisotope production, neutron activation analysis and silicon doping."<sup>87</sup>

When Burma signed the Treaty on the Non-Proliferation of Nuclear Weapons (the "NPT") in 1992, it obtained a Small Quantities Protocol exemption limiting the International Atomic Energy Agency's (IAEA) inspection authority, which the military has refused to amend.<sup>81</sup> After India and Pakistan's nuclear tests in 1998, Than Shwe, determined that Burma would not be left out of the nuclear playing field,<sup>82</sup> enacted Burma's first Atomic Energy Law (AEL)<sup>83</sup> and,

In 2010, a Burmese army defector turned over extensive evidence from military installations in Burma to the Democratic Voice of Burma (DVB) in Norway.<sup>88</sup> This evidence was analyzed by Robert Kelley, a former senior inspector at the IAEA, who concluded that although it is unlikely that Burma *currently* has the ability to create a nuclear weapons program, the "components being developed by the military

are rarely used outside of the nuclear weapons industry” (the “Kelley Report”).<sup>89</sup>

Even prior to the Kelley Report, the U.S. and other countries expressed growing concerns about Burma’s military and potential nuclear partnership with North Korea.<sup>90</sup> The Washington Post reported that the U.S. received information in 2006 detailing Burma’s plans to pursue a nuclear program with the assistance of North Korea.<sup>91</sup> These concerns are justified further by recent actions; on June 12, 2011, the U.S. Navy for the second time intercepted a North Korean cargo ship bound for Burma, believed to be carrying illegal arms shipments.<sup>92</sup> The Institute for Science and International Security (ISIS), an influential think tank at the forefront of monitoring Burma’s nuclear activities, has reported business deals between Burma’s military and the North Korean Namchongang Trading Corporation, a company which procures dual-use nuclear technology for North Korea, and was involved in providing nuclear reactor components to Syria.<sup>93</sup> ISIS notes that since the global intelligence community missed North Korea’s sale of a nuclear reactor to Syria, “no one is willing to turn a blind eye to the possibility of North Korea selling nuclear equipment, materials, or facilities to Burma.”<sup>94</sup>

The military has reached out also to build an alliance with Iran, as evidenced by high-level exchanges both in Tehran and Naypyidaw since the new constitution was drafted in 2008.<sup>95</sup> In October, Burmese officials met for a second time with Iranian officials to explore grounds for the expansion of commercial and economic cooperation.<sup>96</sup> Against this backdrop, Iran has defied calls to halt its nuclear enrichment program, leading to numerous U.N. sanctions.<sup>97</sup> Most recently, in November 2011, the IAEA reported that credible evidence supported the charges that Iran, despite its repeated public denials, had carried out activities solely related to the development of a nuclear weapon.<sup>98</sup> Further concerns relate to the coordinated attacks on British diplomatic compounds, including the embassy in Tehran, leading the

EU to stiffen sanctions against Iran on December 1, 2011.<sup>99</sup> The world community must question Burma’s true motives given its focus on developing a committed, strong relationship with a rogue regime such as Iran.

The U.N. has implicated Burma as a violator of the Security Council’s sanctions on North Korea, but has yet to note that the new constitution makes it impossible for the “civilian” state of Burma to enforce these or any other Security Council Resolutions relating to North Korea or Iran.<sup>100</sup> These resolutions mandate that U.N. member states implement stricter national controls for the export of sensitive goods and technologies of the nuclear fuel cycle, prohibit trading, shipping, and transfer of money to sanctioned states, and prohibit states from procuring missiles or missile-related items, materials, goods, and technology from sanctioned states. Although the new Burma legislature can enact national laws to implement these Security Council mandates, the civilian government, including the judiciary, is prohibited from enforcing them against the military.<sup>101</sup> Similarly, the “civilian” government is powerless to compel the military, which controls Burma’s nuclear program, to follow Nuclear Non-Proliferation Treaty protocols and allow inspections; all compliance is up to the discretion of the military Commander-in-Chief.

The international community, including states and influential international organizations, must insist that Burma terminate its nascent nuclear weapons programs and abide by international legal sanctions against North Korea and Iran. States must take a leadership role by urging monitoring bodies, including the IAEA and the U.N. Security Council Resolution 1540 and 1874 oversight bodies,<sup>102</sup> to consider how Burma’s constitution is a blatant violation of international law by rendering the state legally unable to comply with its international legal obligations, including Security Council Resolutions, the NPT, and the IAEA Safeguards Agreement.<sup>103</sup>

## Conclusion

The world community must address Burma's serious threats to global peace and security. The minimal, cautious and politically insignificant actions on the part of the new regime should not be rewarded with unconditional reengagement. Burma must be required to abide by international law imperatives, establish a truly open political system, immediately cease ethnic genocide, release all political prisoners, and terminate its nuclear weapons development program. As U.S. Senator Richard Lugar proclaimed, "the sincerity with which a wide range of reforms has been promised by the Burmese government must be judged by whether the words are followed by actions."<sup>104</sup> Burma has not undertaken such critical actions and the international community must not engage with the new regime until Burma makes good on its promises of change. Such actions are the *sine qua non* for real political change and therefore should be the *sine qua non* for recognizing the new regime.

## Appendices:

1. Summary of Violence in Post-Election Burma
2. Summary of Chemical Weapon Attacks on Burma's Ethnic Groups Chronology and Evidence

## Endnotes

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<sup>1</sup>Constitution of the Republic of the Union of Myanmar (2008) [hereinafter Myanmar Const.], at ch. I, arts. 20(b)-(c), 232(b)(iii), 235(c)(ii). Pursuant to ch. VII, art. 340, 341, and 342, of the 2008 constitution power over the military is vested in the Commander-in-Chief (he is defined as the "Supreme Commander of all Armed Forces"). The President's powers is to be exercised in conjunction with the National Defense and Security Council (the "NDSC") which in turn is controlled by the Commander-in-Chief who controls the appointment of a majority of the 11 positions. So while the constitution provides that the NDSC is "led" by the President, in reality, the Commander-in-Chief has direct control of the NDSC. Chapter V, art. 201 provides that NDSC members are (a) The President; (b) Vice-President; (c) Vice-President (d) Speaker of the Pyithu Hluttaw; (e) Speaker of the Amyotha Hluttaw; (f) Commander-in-Chief of the Defence Services; (g) Deputy Commander-in-Chief of the Defence Services; (h) Minister for Defence; (i) Minister for Foreign Affairs; (j) Minister for Home Affairs; (k) Minister for Border Affairs. All these positions are occupied by former generals of the military junta except one vice president. See also ch. III, art. 71(b) and ch. IV, art. 141(b) (one-fourth of the total number of representatives in each legislative body must be active members of the military chosen by the Commander-in-Chief). Pursuant to ch. I, art. 20(b) "The Defense service has the right to independently administer and adjudicate all affairs of the armed forces."

<sup>2</sup>*Id.* at ch. I, art. 11. Article 11 defines "the three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves."

<sup>3</sup> The *erga omnes* doctrine refers to the absolute legal obligations of states towards the international community. See Case Concerning the Barcelona Traction, Light and Power Co. (Belg. v. Sp.) (2d Phase), 1970 I.C.J. 23, at 33 (Feb. 5 1970).

<sup>4</sup>Convention on the Prevention of the Crime of Genocide, art. V, Dec. 9, 1948, G.A. Res. 260(A) (III) A, U.N.Doc A/Res/260(III) [hereinafter "Genocide Convention"]; Burma ratified the Genocide Convention on March 14, 1956. Geneva Conventions Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Burma ratified the Geneva Conventions on August 25, 1992. "As a party to the Genocide Convention and the Geneva Conventions, Myanmar is required to punish perpetrators of genocide and grave breaches of the Geneva Conventions in national courts or tribunals, regardless of the perpetrators' political affiliation or military status. Furthermore, recent developments in customary international law indicate that national laws cannot provide amnesty for crimes against humanity or other serious violations of international humanitarian law." International Center for Transitional Justice, *Submission to the Universal Periodic Review of the UN Human Rights Council*, at 4 (Jan. 2011), available at <http://ictj.org/sites/default/files/ICTJ-Myanmar-Periodic-Review-2010-English.pdf>.

<sup>5</sup>See *Special Research Report Security Council Action Under Chapter VII: Myths and Realities*, Jun. 23, 2008, available at [http://www.securitycouncilreport.org/site/c.gIKWLMTIsG/b.4202671/k.3A9D/Special\\_Research\\_ReportbrSecurity\\_Council\\_Action\\_Under\\_Chapter\\_VII\\_Myths\\_and\\_Realitiesbr23\\_June\\_2008.htm](http://www.securitycouncilreport.org/site/c.gIKWLMTIsG/b.4202671/k.3A9D/Special_Research_ReportbrSecurity_Council_Action_Under_Chapter_VII_Myths_and_Realitiesbr23_June_2008.htm)

<sup>6</sup>Myanmar Const., at ch. V, art. 445 (“No proceedings shall be instituted against the said Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.”); *see also* ch. XII, art. 343.

<sup>7</sup>*See* Irrawaddy Online Magazine, *Military Firms Excluded from Tax Evasion Law*, Jan. 7, 2011, available at [http://www.irrawaddy.org/article.php?art\\_id=20488](http://www.irrawaddy.org/article.php?art_id=20488) and *See* U.S. Department of State, *Investment Climate Statement: Burma*, Mar. 2010, available at <http://www.state.gov/e/eeb/rls/othr/ics/2010/138043.htm> and *see also* Win Min, *Burmese Military Government: Crony Capitalists in Uniform*, VA. REV.ASIANST. 6 (2004), available at [http://www.davidmetraux.com/docs/family/daniel/burma/articles/win\\_min.doc](http://www.davidmetraux.com/docs/family/daniel/burma/articles/win_min.doc)

<sup>8</sup>*See*, Myanmar Const., at ch. I, arts.20 (b). “The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.”

<sup>9</sup>*See*, Myanmar Const., at ch. I, arts.20 (f). “The Defence Services is mainly responsible for safeguarding the Constitution.” And *see also*, Myanmar Const., at ch. XI, arts. 417, 418, & 419: “The Commander-in-Chief of the Defense Services to whom the sovereign power has been transferred shall have the right to exercise the powers of legislature, executive and judiciary”.

<sup>10</sup>United Nations, *Charter of the United Nations*, Oct. 24, 1945, 1 U.N.T.S. XVI, available at [www.unhcr.org/refworld/docid/3ae6b3930.html](http://www.unhcr.org/refworld/docid/3ae6b3930.html) [hereinafter U.N. Charter], at arts.24, 25 and 41.

<sup>11</sup> “A peremptory norm of general international law is a norm accepted and recognized by the international legal community of States as a whole as a norm from which no derogation is permitted...” Vienna Convention on the Law of Treaties, May 23, 1969, art.53, 1155 U.N.T.S. 331.)

<sup>12</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, arts. 29-30, 40-41, UN GAOR, 56<sup>th</sup> Sess. Supp. No. 10, UN Doc. A/56/10 (2001) [hereinafter Draft Articles], available at <http://www.un.org/law/ilc>. For a general discussion of cessation requirements, *see* Shelton, Dinah, *Righting Wrongs: Reparations in the Articles on State Responsibility*, 96 AM. J. INT’L LAW 833 (2002), at 839.

<sup>13</sup> S/RES/554 (Aug. 17, 1984) (the Security Council in regards to South Africa’s apartheid constitution “strongly rejects and declares as null and void the so-called “new constitution” and the “elections””); S/RES/216 (Nov. 12, 1965) (mandating non-recognition of regime in South Rhodesia); S/RES/439 (Nov. 13, 1978) (declaring elections in Namibia “null and void”).

<sup>14</sup>Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, at 12; Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion (2004).

<sup>15</sup> States’ international legal obligations to act on Burma are fully explicated in the Global Justice Center (“GJC”) publication *Burma’s Nuclear Strategy: How Burma’s Military Has Successfully Hijacked Democracy and Made control over Burma’s Nuclear Future a Constitutional Right of the Military* (Jan. 2011) [hereinafter GJC Burma Report], available at <http://www.globaljusticecenter.net/publications/Report/Burma’s-Nuke-Strategy.pdf>. *See also* GJC letter to ICG President Louise Arbour of September 2011, available at <http://www.globaljusticecenter.net/news-events/news/2011/ICGLetter.html>.

<sup>16</sup>*See* ICC-Pre-trial Chamber I issues three warrants of arrest for Muammar Gaddafi available at <http://www.icc-cpi.int/Menus/ICC/Search?qt=gaddafi&la=en>.

<sup>17</sup> Benedict Roger, *A Land Without Evil*, Monarch Books, Oxford, UK & Grand Rapids, Michigan, 2004; Anton La Guardia, *Burma’s ‘slow genocide’ is revealed through the eyes of its child victims*, THE TELEGRAPH, June 24, 2005, available at <http://www.telegraph.co.uk/news/worldnews/asia/burmayanmar/1492726/Burmas-slow-genocide-is-revealed-through-the-eyes-of-its-child-victims.html>. *See also* Motion: *Burma and Karen Refugees*, Statement of Lord Alton, et. al, during House of Lords Debate, Hansards, Col. 1292, Mar. 25, 1998. (“The Karen are unaware that they are suffering from a gradual form of genocide which not only neglects its victims but isolates and targets them.”)

<sup>18</sup>*See* Brutal Reality Behind Junta’s Benign Face, Spectrum; Network for Human Rights Documentation – Burma, Report on the Human Rights Situation in Burma: January – September 2011; United Press International, *Displacement Problematic in Myanmar* (Oct. 25, 2011) [estimating that 112,000 residents were displaced from August 2010 – July 2011].

<sup>19</sup>For one example, on July 5, 2011, soldiers in the Burmese Army’s Light Infantry Battalion 513, while plundering Wan Loi village in the Shan state: raped a 12-year-old Shan school girl in front of her mother, who was struck by a soldier as she tried to protect her daughter; violently attacked a nine-month pregnant Shan woman, threw her to the ground, and raped her; beat, stripped naked, and raped a 35-year old Shan woman in a farm hut. *See* Saw Yan Naing, *Burmese Army Accused in Four Rape Cases in Shan State*, THE IRRAWADDY, July 14, 2011, available at [http://www.irrawaddy.org/article.php?art\\_id=21696](http://www.irrawaddy.org/article.php?art_id=21696) (“Hseng Moon, the coordinator of SWAN, said, ‘Burma Army troops are being given free rein to rape children, the pregnant and the elderly.’”).

<sup>20</sup>See Displacements problematic in Myanmar, United Press International (Oct. 25, 2011) available at [http://www.upiasia.com/Top\\_News/Special/2011/10/25/Displacements-problematic-in-Myanmar/UPI-43741319563008](http://www.upiasia.com/Top_News/Special/2011/10/25/Displacements-problematic-in-Myanmar/UPI-43741319563008).

<sup>21</sup>Physicians for Human Rights, Under Siege in Kachin State, Burma (November, 2011), at 3.

<sup>22</sup>See Thailand Burma Border Consortium 2011, *Displacement and Poverty in South East Burma/Myanmar* (Oct. 25, 2011) available at <http://www.tbbc.org/resources/resources.htm#idps>.

<sup>23</sup>*The Prosecutor v. Omar Al Bashir*, ICC-02/05-01/09-95-OA (2010) (The Appeals Court of the International Criminal Court found that the proof required for genocidal intent sufficient to support an arrest warrant is lower than the proof of intent required at trial, and reinstated an arrest warrant for genocide against Sudanese President Omar Al Bashir).

<sup>24</sup>See Ba Kaung, *Burma's Vice-President Implicated in Kachin Massacres*, THE IRRAWADDY, July 15, 2011, available at [http://www.irrawaddy.org/print\\_article.php?art\\_id=21705](http://www.irrawaddy.org/print_article.php?art_id=21705) (“In his interview with *The Irrawaddy* in Laiza last week, Brig-Gen James Lum Dung—who took up arms against the Burmese troops in 1961 and retired as the KIA regional military commander in 2007—said the killings were a deliberate provocation by the Burmese troops under the supervision of Tin AungMyintOo. . . . “Their motive was to drive our troops out of Shan State,” said James Lum Dung. “Tin AungMyintOo was mainly responsible for these killings.”).

<sup>25</sup> See Juan E. Mendez, Special Adviser to the U.N. Secretary-General on the Prevention of Genocide, Lecture at the Nuremberg Human Rights Center: Prosecution and Prevention of Genocide: Current Developments and Historical Experience (Oct. 6, 2006), at 2, available at [http://www.responsibilitytoprotect.org/files/60\\_Nuremberg.pdf](http://www.responsibilitytoprotect.org/files/60_Nuremberg.pdf) (“Governments are obliged to take all measures within their power to prevent the commission of the crime of genocide, even before a competent court determines that the Convention actually applies to the case at hand.”); see generally Stockholm Declaration on Genocide Prevention, Declaration by the Stockholm International Forum, (Jan. 28, 2004), available at [http://www.aegitrust.org/index2.php?option=com\\_content&do\\_pdf=1&id=94](http://www.aegitrust.org/index2.php?option=com_content&do_pdf=1&id=94) (“We are committed to shouldering our responsibility to protect groups identified as potential victims of genocide, mass murder or ethnic cleansing . . .”).

<sup>26</sup>See GJC, Chart of Global Indices on Risk of Genocide 2011, available at: <http://www.globaljusticecenter.net/GenocideIndicesforBurma2011.pdf>.

<sup>27</sup> See Lawrence Wocher, *Developing a Strategy, Methods and Tools for Genocide Early Warning*, Prepared for Office of the Special Adviser to the UN Secretary-General on the Prevention of Genocide, Sept. 2006, at 12, available at <http://www.un.org/ar/preventgenocide/adviser/pdf/Wocher%20Early%20warning%20report,%202006-11-10.pdf> (relating that Mr. Méndez, Special Adviser to the U.N. Secretary-General on the Prevention of Genocide, said his office was currently tracking situations in Darfur, Sudan; Cote d’Ivoire; Democratic Republic of Congo; Uganda; Myanmar; West Papua, Indonesia; Togo, Guinea Bissau, and Somalia).

<sup>28</sup> See Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 2007 I.C.J. 91, 155 (Feb. 26, 2007).

<sup>29</sup> See Women League of Chin Land, *State-Sanctioned Sexual Violence against Chin Women in Burma* (Mar. 2007); Women and Child Rights Project, *Catwalk to the Barracks*, (July 2005); The Women’s League of Burma (WLB), *System of Impunity* (Sept. 2004); Karen Women’s Organization (KWO), *Shattering Silences* (Apr. 2004); Refugee International, *No Safe Place* (Apr. 2003); Shan Human Rights Foundation (SHRF) and the Shan Women’s Action Network (SWAN), *License to Rape* (May 2002).

<sup>30</sup> See *Report of the Secretary-General Pursuant to Security Council Resolution 1820 (2008)*, U.N.Doc. S/2009/362, Aug. 20, 2009 [hereinafter 1820 Report] (citing Burma as a violator country, noting both the ongoing sexual violence perpetrated against ethnic women in conflict and the longstanding impunity afforded military perpetrators); see also S. C. Res. 1820, U.N. Doc. S/RES/1820, June 19, 2008, at para. 4 (prohibiting any amnesty for rape and other crimes targeting women in conflict).

<sup>31</sup> Myanmar Const., *supra* note 6, at art. 445; U.N. S.C.R. 1820, U.N. Doc. S/RES/1820, June 19, 2008, para.4 (. . .rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation”).

<sup>32</sup>See Kachin Women’s Association of Thailand, *Burma’s Covered Up War: Atrocities Against the Kachin People* (Oct. 10, 2010); Burma: Women used as sex slaves on Kachin frontline, *Zin Linn* (Nov. 4, 2011).

<sup>33</sup> See Human Rights Watch and Karen Human Rights Group, *Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma*, July 12, 2011. (reporting that in January 2011 the military seized approximately 700 prisoner to serve

as slave porters and human mine detectors during the military attacks against rebel armed groups in Eastern Burma.. (available at <http://www.hrw.org/en/node/100194/section/1>; see also Bruce E. Johansen, *Burma (Myanmar): Forced Labor in the World's Last Teak Forest*, Indigenous Peoples and Environmental Issues: An Encyclopedia (2003), available at <http://www.ratical.org/ratville/IPEIE/Burma.html> (In the late 1990's, the regime concessioned off hardwood forests in southern Burma "to increase economic development "with support from the private sector" and indigenous peoples living there were subjected to an "ethnic cleansing" operation involving "burning of villages, rape and torture, forced labor and forced relocations" (quoting *Teak is Torture and Burma's Reign of Terror: Mon, Karen and Karenni Indigenous peoples Threatened in Burma*, Rainforest Relief, Mar. 29, 1997)). Burma has ratified the International Labor Organization (ILO) Forced Labor Convention (Convention 29), SPDC Order 1/99 officially outlaws forced labor, and Article 359 of the new Burmese Constitution "prohibits forced labor." ALTSEAN Burma and the International Federation of Human Rights, *Universal Periodic Review of Myanmar, 10<sup>th</sup> Session*, Feb. 2011, available at [http://www.fidh.org/IMG/pdf/UPR\\_Submission\\_on\\_Burma\\_SUBMITTED.pdf](http://www.fidh.org/IMG/pdf/UPR_Submission_on_Burma_SUBMITTED.pdf).

<sup>34</sup> U.N. High Commission for Refugees (UNHCR), *UNHCR Global Report 2010- Myanmar*, available at <http://www.unhcr.org/4dfdbf56a.html> (stating that Burma is the fifth largest refugee producing country in the world, with approximately 415,700 people fleeing their homes due to conflict).

<sup>35</sup> See "Displacement and poverty in South East Burma/Myanmar", Thailand Burma Border Consortium (TBBC), Oct 2011, available at <http://bit.ly/uVsw5W>

<sup>36</sup> See *Burmese junta uses chemical weapons*, THE SUNDAY TIMES, May 8, 2005, available at <http://www.timesonline.co.uk/tol/news/world/article519966.ece>; *Burma used chemicals on rebels*, BBC News, Apr. 21, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4467471.stm>. See also, Lalit Jha, *US Concerned Over Burma's Role in Weapons Proliferation*, The Irrawaddy, Apr. 7, 2011, available at: [http://www.irrawaddy.org/article.php?art\\_id=21091](http://www.irrawaddy.org/article.php?art_id=21091) (reporting on the U.S. Pacific Command Admiral Robert Willard's testimony before the U.S. House Armed Services Committee expressing his concern for "Burma's role in regional weapons proliferation.").

<sup>37</sup> See *Burmese Army May Have Attacked Shan State With Use of Chemical Weapons* available at <http://voaburmese.wordpress.com/2011/08/17/burmese-army-may-have-attacked-shan-state-with-use-of-chemical-weapons/>; Michael Ireland, *Two Burma Army Soldiers testify to Use of Chemical Weapons* available at <http://www.across.co.nz/BurmachemicalWeapons.html>; Paul Tinder, *Burmese Insurgents say chemical weapons used against them*, June 20, 2011 available at <http://www.bioprepwatch.com/news/248744-burmese-insurgents-say-chemical-weapons-used-against-them>; Zin Linn, *Kachin fighters claim Burma Army using chemical weapons*, Nov. 1, 2011 available at <http://asiancorrespondent.com/68545/burma-must-make-a-judgment-to-end-civil-war-immediately/>.

<sup>38</sup> See <http://www.bnionline.net/index.php/news/kng/11989-burmese-army-resorts-to-chemical-weapon-warfare-against-kachin-rebels.html>.

<sup>39</sup> *Democratic Voice of Burma, Fears mount over chemical weapons use*, June 8, 2011, available at: <http://www.dvb.no/news/fears-mount-over-chemical-weapons-use/16018>. The Burmese government signed the Chemical Weapons Convention in 1993, but is one of only two states which have failed to ratify it. Chemical Weapons Convention Signatories and State Parties, Arms Control Association, <http://www.armscontrol.org/factsheets/cwcsig>.

<sup>40</sup> U.N. General Assembly, *Third Committee Approves Draft resolutions on Human rights Situations in Iran, Democratic People's Republic of Korea, Myanmar*, GA/SHC/4032 (Nov. 21, 2011); U.N. Draft Resolution, Sixty-fourth session, Third Committee, Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives, A/C.3/64/L.36 (Oct. 29, 2010).

<sup>41</sup> See Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar, Mr. Tomas Ojea Quintana, Aug. 25, 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11330&LangID=E>; the original call for a Commission of Inquiry was made in September 2010. See, U.N. Doc. A/65/368, (Sep. 15, 2010). ("UN institutions may consider the possibility to establish a commission of inquiry with a specific fact finding mandate to address the question of international crimes".)

<sup>42</sup> John Pomfret, *U.S. Supports Creation of U.N. Commission of Inquiry Into War Crimes in Burma*, WASH. POST, Aug. 18, 2010. For information on other countries supporting a Commission of Inquiry, including France and the United Kingdom, see U.S. Campaign for Burma, *Countries Supporting a UN-led Commission of Inquiry on Burma*, available at <http://uscampaignforburma.org/countries-supporting-commission-of-inquiry-on-burma>. See also International Federation for Human Rights, *BURMA/MYANMAR: International crimes committed in Burma: the urgent need for a Commission of Inquiry* (Aug. 2009). More recently, on August 12, 2011, twelve U.S. Senators called upon the U.S. Secretary of State to take actions against rape used as a weapon of war in Burma. Diane Feinstein, Key Bailey Hutchinson, et. al, United States Senate letter to Secretary Hillary Clinton condemning rape as a weapon, Aug. 10, 2011, available at <http://msmagazine.com/blog/blog/2011/08/15/newsflash-women-senators-call-for-action-on-rape-in-burma/>.

<sup>43</sup> Myanmar Const., *supra* note 2, at ch. VI, arts.299, 303, 308, 311, 327 and 334. *See also* Mr. Tomas Ojea Quintana, U.N. Special Rapporteur on Human Rights Situation in Burma, *Fourth Core Human Rights Element: Judiciary*, Human Rights Situation in Myanmar, Special 5, 2008; *see also* Win Maung, Law Reporting in Burma: Lack of Transparency, Legal Issues on Burma Journal, No. 8 (Apr. 2001). *See also* Statement by the Global Justice Center and Burma Lawyer Council, *Certain Judges in Burma are Themselves Criminally Liable as Co-conspirators*, Nov. 20, 2008, available at <http://burmadigest.info/2008/11/20/certain-judges-in-burma-are-themselves-criminally-liable-as-co-conspirators>.

<sup>44</sup> Council Common Position 2009/615/CFSP of 13 August 2009 Acts adopted under title V of the E.U. Treaty, Official Journal of the European Union, Aug. 14, 2009.

<sup>45</sup> *See* *President changes his chief justice nominee*, Mizzama News, Feb. 17, 2011, available

<http://www.mizzima.com/news/inside-burma/4895-president-changes-his-chief-justice-nominee.html>

(When an appeals case involving pro-democracy advocate Aung San Suu Kyi, who was accused of violating the terms of her house arrest, was heard before the Supreme Court in Naypyidaw in October 2010, deputy chief justice Tun Tun Oo was on the bench along with Chief Justice Aung Toe).

<sup>46</sup> *See generally* Assistance Ass'n for Pol. Prisoners (Burma), *The Darkness We See: Torture in Burma's Interrogation Centers and Prisons* (2005) (detailing torture in Burmese prisons with accounts from political prisoners).

<sup>47</sup> For precedents on the conviction judges for war crimes, *see* The Justice Case, *3 Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* (Drexel A. Sprecher & John H. E. Fried eds., vol. 3) (1951) (finding Nazi judges guilty of crimes against humanity, and war crimes); *see also* Trial of Lieutenant General Harukei Isayama and Seven Others, 5 Law Reports of Trials of War Criminals (1948) (finding the Japanese English Translation, (Dec.26, 2006), available at [www.law.case.edu/saddamtrial/documents/20070103dujailappellatechamberopinion.pdf](http://www.law.case.edu/saddamtrial/documents/20070103dujailappellatechamberopinion.pdf) (finding Judge Awad Hamed al-Bandar jointly criminally liable for crimes against humanity committed with Saddam Hussein because he used the pretense of judicial "authority and law" to try and then execute civilians). *See also* Amnesty Int'l, *Annual Report: Myanmar 2011*, May 28, 2011.

<sup>48</sup> *See* ICRC resumes its tough prison task in Burma, Zin Linn (July 7, 2011).

<sup>49</sup> *See* Myanmar: UN human rights expert concerned about situation of prisoners of conscience on hunger strike and the healthcare of jailed Buddhist monk, (Nov. 8, 2011).

<sup>50</sup> Myanmar Const., *supra* note 2, at ch. XII, art. 343.

<sup>51</sup> *See* 1820 Report, *supra* note 27, para. 26. In addition to the 1820 Report, Security Council Resolutions 1820 and 1888 recognize that without vetting restrictions, any mandates on judicial reform are meaningless; *see also* SCR 1820, *supra* note 27, para. 3; S.C. Res. 1888, ¶ 3, U.N. Doc. S/RES/1888 (Sept. 30, 2009).

<sup>52</sup> *See* WSJ interview with Mr. Kyaw Hsan Nov. 22, 2011, Wall Street Journal.

<sup>53</sup> *See* Republic of the Union of Myanmar President Office, Formation of New Government, Notification No. 1/2011, Mar. 30, 2011, published in *The New Light of Myanmar*, Mar. 31, 2011. *See* Council Common Position 2009/615/CFSP of 13 August 2009 Acts adopted under title V of the E.U. Treaty, Official Journal of the European Union, Aug. 14, 2009.

<sup>54</sup> Six members of Supreme Court Judges and eight members of Constitutional Tribunal are former judges and officers of SPDC. *See* Republic of the Union of Myanmar, Presidential Office, Order no. 1/2011 and Order No. 2/2011, Mar. 30, 2011.

<sup>55</sup> *See supra* note 24.

<sup>56</sup> *See* USDP MPs Push Constitutional Amendment to Allow Dual Posts, Wai Moe (Nov. 4, 2011).

<sup>57</sup> International Committee of the Red Cross, *The Scope and Application of the Principle of Universal Jurisdiction*, Statement to the United Nations General Assembly, 65<sup>th</sup> Sess., 6<sup>th</sup> Ctte., Item 86, N.Y., Oct. 15, 2010; Roth, Kenneth, *The Case for Universal Jurisdiction*, FOREIGN AFFAIRS (Sept./Oct. 2001; Human Rights Watch, *Universal Jurisdiction in Europe* (June 27, 2006), available at <http://www.hrw.org/reports/2006/06/27/universal-jurisdiction-europe>; The Princeton Principles on Universal Jurisdiction: Joint Declaration of the Princeton University's Program in Law and Public Affairs, Woodrow Wilson School of Public and International Affairs, et. al on Universal Jurisdiction available at <http://www.law.uc.edu/morgan/newsdir/univjuris.html>; *see also* Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation* (AI Index 53/002/2001) available at <http://web.amnesty.org/pagesj-memorandum-eng>.

<sup>58</sup> As the ICJ emphasized in its Congo decision, "immunity . . . does not mean impunity." Case Concerning the Arrest Warrant of 11 April 2000 (*Dem. Rep. Congo v. Belg.*), 2002 I.C.J. 3, at 60 (Feb. 14) [hereinafter the Yerodia Case].

<sup>59</sup> *Supra* note 27; *see also* ICC-Pre-trial Chamber I issues three warrants of arrest for Muammar Gaddafi available at <http://www.icc-cpi.int/Menu/ICC/Search?qt=gaddafi&la=en>. The ICJ specifically noted the continue applicability of criminal proceedings before certain international criminal courts in the Yerodia Case, *id*.

<sup>60</sup> The Council of the European Union, Renewing Restrictive Measures against Burma/Myanmar, COUNCIL DECISION 2010/232/CFSP, Apr. 26, 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:105:0022:0108:EN:PDF>.

<sup>61</sup>Military control country's economy is fully explicated in the Global Justice Center ("GJC") publication *Burma's Nuclear Strategy: How Burma's Military Has Successfully Hijacked Democracy and Made control over Burma's Nuclear Future a Constitutional Right of the Military* (Jan. 2011) [hereinafter GJC Burma Report], available at <http://www.globaljusticecenter.net/publications/Report/Burma's-Nuke-Strategy.pdf>. See also GJC letter to ICG President Louise Arbour of Oct. 28, 2009, available at [www.globaljusticecenter.net/nes-events/news/2009/letter-icg-burma-elections.pdf](http://www.globaljusticecenter.net/nes-events/news/2009/letter-icg-burma-elections.pdf).

<sup>62</sup> World Bank, *World Development Report 2011: Conflict, Security, and Development* (2011), at 5-6, available at <http://www.wdr2011.worldbank.org/fulltext>.

<sup>63</sup> See generally CIA World Factbook, *East and Southeast Asia: Burma*, last updated July 14, 2011, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>; Toshihiro Kudo & Fumiharu Mieno, *Trade, Foreign Investment and Myanmar's Economic Development during the Transition to an Open Economy*, Institute of Developing Economies, Aug. 2007, available at <http://www.ide.go.jp/English/Publish/Download/Dp/116.html>.

<sup>64</sup> In 2008, Burmese exports of natural gas reached over \$2.5 billion (equal to 38% of Burma's total exports that year). U.S. Department of State, *Background Note: Burma, East Asia and Pacific Affairs*, July 28, 2010, available at <http://www.state.gov/r/pa/ei/bgn/35910.htm>. See also Julien Levesque, *Lords of Jade: Mismanaging Myanmar's Natural Resources*, Institute of Peace and Conflict Studies, Mar. 2008, available at [http://www.ipcs.org/pdf\\_file/issue/324228081IPCS-IssueBrief-No60.pdf](http://www.ipcs.org/pdf_file/issue/324228081IPCS-IssueBrief-No60.pdf).

<sup>65</sup> United Nations, *List of Least Developed Countries*, last accessed Aug. 8, 2011, available at [http://www.un.org/esa/policy/devplan/profile/ldc\\_list.pdf](http://www.un.org/esa/policy/devplan/profile/ldc_list.pdf).

<sup>66</sup> United Nations, Office of the High Representative of Least Developed Countries, Landlocked Developing Countries, and Small Island Nations, (UN-OHRLS), *Criteria for Identification and Graduation of LDCs*, last accessed Aug. 12, 2011, available at <http://www.unohrlls.org/en/ldc/related/59/>. LDC status is based on gross national income, human assets and economic vulnerability to external shocks.

<sup>67</sup> See Myanmar Eyed as a Business Frontier, *Wall Street Journal* (Nov. 30, 2011) at B1.

<sup>68</sup> See U.S. Department of State, *Investment Climate Statement: Burma*, Mar. 2010, available at <http://www.state.gov/e/eeb/rls/othr/ics/2010/138043.htm>.

<sup>69</sup> See Win Min, *Burmese Military Government: Crony Capitalists in Uniform*, VA. REV.ASIANST. 6 (2004), available at [http://www.davidmetraux.com/docs/family/daniel/burma/articles/win\\_min.doc](http://www.davidmetraux.com/docs/family/daniel/burma/articles/win_min.doc). In addition, it has been reported that SPDC leaders transferred "ownership of over 1,000 acres of rubber plantations, jade mines and gold mines to junta chief Snr-Gen Than Shwe and his family." Yan Pai, *Than Shwe Acquires State Properties*, THE IRRAWADDY, Apr. 4, 2011, available at [http://www.irrawaddy.org/article.php?art\\_id=21071](http://www.irrawaddy.org/article.php?art_id=21071).

<sup>70</sup> Tom Lanto Block Burmese Jade (Junta's Anti-Democratic Efforts) Act of 2008, U.S. Pub. L. No. 110-286, § 2(10), 122 Stat. 2634, July 29, 2008. See also Human Rights Watch, *Burma: Gem Trade Bolsters Military Regime, Fuels Atrocities*, News Release, Nov. 12, 2007, available at <http://www.hrw.org/en/news/2007/11/11/burma-gem-trade-bolsters-military-regime-fuels-atrocities>.

<sup>71</sup> See David Scott Mathieson, *Burma's Authoritarian Upgrade: 1990-2010* (June 2010), available at <http://www.hrw.org/en/news/2010/06/10/burma-s-authoritarian-upgrade-1990-2010> ("Burma's military government also controls nearly \$5 billion in foreign reserves, accumulated thanks to lucrative natural-gas sales and the use of an accounting trick: for domestic purposes, gas revenues are recorded at the official exchange rate (\$1 to 6 Burmese Kyat) but actual payments are made in U.S. dollars (worth \$1 to 800-1,000 Burmese Kyat at the market rate), the difference being deposited (it is suspected) in offshore bank-accounts."). See also Earth Rights International, *Energy-Insecurity Report*, July 2010, at 19 ("Earth Rights International reported that rather than being used to benefit the people of Burma, portions of the country's natural gas revenue found their way into private bank accounts in two offshore banks in Singapore – the Overseas Chinese Banking Corporation and DBS Group. This revenue and its convenient offshore location would enable the regime to engage in international hard-currency transactions to buy arms and technologies for nefarious purposes.")

<sup>72</sup> Transparency International, *Corruptions Perception Index 2011 Results*, Nov. 2011, available at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2011/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2011/results)

<sup>73</sup> For example, on July, 2011 the English Mining Company Monterrico/Rio Blanco settled a civil suit lodged against it by Peruvian complainants alleging that the company was liable for intentional torts and negligent acts because it participated and was "complicit in the torture [including rape] and mistreatment of protesters by [Peruvian] police." Lewis Gordon, *English Mining Company agrees to compensate Peruvian torture victims*, Statement from Environmental Defender Law Center, July 20, 2011. The settlement came in the wake of hearings on the scope of mistreatment and related evidence of violations, and subsequent decisions by the High Court in London to issue a world-wide injunction freezing £5 million to cover the



plaintiff's damages and costs and to allow a ten week trial against the company to proceed. Guerrero & Orsv. Monterrico Metals PLC & Anor (Rev. 1), Court of Appeal – Queens Bench Division (2009) 2475 Q.B.

<sup>74</sup> See *Doe I v. Unocal Corp.*, 395 F. 3d 932 (9th Cir. 2002).

<sup>75</sup> Rachel Chambers, *The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses*, Hum. Rts. Brief, Vol. 1, Issue 1, Washington College of Law, American University (Fall 2005), at 14.

<sup>76</sup> In a concurring opinion, Justice Reinhardt found that “because the underlying conduct alleged constitutes a violation of customary international law” by Burma’s military government, its partner, UNOCAL, is legally responsible for these violations as a “derivative of that government’s entity.” *Ibid.*, at 963. See also Amanda Kloer, *Chevron, Total Linked to Forced Labor and Killings in Burma*, Change.org, Dec. 17, 2009, available at <http://news.change.org/stories/chevron-total-linked-to-forced-labor-and-killings-in-burma> (detailing a 2009 Earth Rights International report that found Total and Chevron’s joint Yadana pipeline project had generated over \$4 billion for the Burmese government while workers had been subjected to forced labor, beatings and other violations of human rights).

<sup>77</sup> See Robert Kelley, Andrea Scheel Stricker & Paul Brannan, *Exploring Claims about Secret Nuclear Sites in Myanmar*, Institute for Strategic International Studies (Jan.28, 2010). See also Phil Thornton, *The Colour of Money*, BANGKOK POST, Nov. 21, 2010, available at <http://www.bangkokpost.com/news/investigation/207425/the-colour-of-money>. See also Anita Elizabeth Mathew, *Sino-Myanmar Relations and Impact on the Region*, Mar. 3, 2011, available at <http://www.observerindia.com/cms/sites/orfonline/modules/report/ReportDetail.html?cmaid=21511&mmacmaid=21512>. (China has been a major arms supplier for the Myanmar Army. Beijing has provided the regime with over \$ 2-billion worth of weapons and military equipment. In 2010, Myanmar purchased 50 fighter jets from China.)

<sup>78</sup> See *supra* note 12; for a more detailed discussion, see generally GJC Burma Report, *supra* note 22, at 7-10.

<sup>79</sup> See Andrew Selth, *Burma and North Korea: Smoke or fire?*, Australian Strategic Policy Institute Policy Analysis, Aug. 24, 2009, at 8-9. (“Some generals—possibly including regime leader Senior General than Shwe—are clearly attracted to the idea of acquiring a nuclear weapon, in the belief that possession of WMD would give Burma the same status and bargaining power that they believe is now enjoyed by North Korea.”)

<sup>80</sup> For a full description of the constitution and the military’s nuclear monopoly, see generally GJC Burma Report, pp. 7-10, 16-18.

<sup>81</sup> Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161; Signatories and Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, available at <http://www.fas.org/nuke/control/npt/text/npt3.htm>. State Parties to the NPT must comply with International Atomic Energy Agency (IAEA) standards. See International Atomic Energy Agency, *Non-Proliferation of Nuclear Weapons and Nuclear Security: Overview of Safeguards Requirements for States with Limited Nuclear Material and Activities*, June 2006, available at <http://www.iaea.org/Publications/Booklets/Safeguards3/safeguards0806.pdf> (Burma’s safeguards agreement includes a Small Quantities Protocol exemption, which exempts those states that have no nuclear capacity, or plans to develop any, from most of IAEA’s inspection authority.)

<sup>82</sup> See Norman Robespierre, *Nuclear Bond for North Korea and Myanmar*, ASIA TIMES, Oct. 4, 2008, available at [http://www.atimes.com/atimes/Southeast\\_Asia/JJ04Ae01.html](http://www.atimes.com/atimes/Southeast_Asia/JJ04Ae01.html).

<sup>83</sup> The Atomic Energy Law, The State Peace and Development Council Law No. 8/98, June 8, 1998, available at [http://www.blc-burma.org/html/myanmar%20law/lr\\_e\\_ml98\\_08.html](http://www.blc-burma.org/html/myanmar%20law/lr_e_ml98_08.html). The Burmese language version of the AEL can be found on file at the offices of BLC.

<sup>84</sup> Larry Jagan, *Myanmar Drops a Nuclear ‘Bombshell’*, ASIA TIMES, May 24, 2007, available at [http://www.atimes.com/atimes/Southeast\\_Asia/IE24Ae02.html](http://www.atimes.com/atimes/Southeast_Asia/IE24Ae02.html); see also Bertil Lintner, *Burma’s Nuclear Temptation*, Yale Global, Dec. 3, 2008, available at <http://www.yaleglobal.yale.edu/content/burma%E2%80%99S-nuclear-temptation>.

<sup>85</sup> See Thomas Crampton, *Burma Seeks Nuclear Research Plant*, INT’L HERALD TRIB., July, 14 2001; Julian Moe, *US findings on Burma: An overview*, THE IRRAWADDY, Nov. 7, 2003; Platts: Nuclear Fuel, *IAEA probes Myanmar Data, Discourages New Research Reactors*, Aug. 10, 2009 available at [http://www.carnegieendowment.org/static/npp/pdf/myanmar\\_reprint.pdf](http://www.carnegieendowment.org/static/npp/pdf/myanmar_reprint.pdf).

<sup>86</sup> Anton Khlopkov & Dmitry Konukhov, Center for Energy and Security Studies, *Russia, Myanmar and Nuclear Technologies*, June 29, 2011, at 6; see also *Russia Denies Helping Burma Obtain Nuclear Know-How*, RIA News Agency, Moscow, Apr. 11, 2005 and Sharad Joshi, Monterrey Institute for International Studies, *Issue Brief: Playing Politics: How the Regional Context Impedes Confronting Myanmar’s Alleged Nuclear Program*, Feb. 4, 2011..

<sup>87</sup> Press Service of the Federal Agency for Nuclear Energy, *Russia and Myanmar Sign Inter-governmental Cooperation Agreement*, May 15, 2007, available at [http://www.minatom.ru/en/news/4674\\_15.05.2007](http://www.minatom.ru/en/news/4674_15.05.2007), Paul Kerr, *Russia, Burma Sign Nuclear Agreement*, Arms Control Association, June 2007, available at <http://www.armscontrol.org/print/2387>. This contract has not been acted upon allegedly due to disputes regarding IAEA access and financial considerations.

<sup>88</sup> Robert E Kelley & Ali Fowle, *Nuclear Related Activities in Burma*, Democratic Voice of Burma, May 25, 2010, available at:

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<http://www.dvb.no/burmas-nuclear-ambitions/burmas-nuclear-ambitions-dvb-reports/nuclear-expert/9263>.

<sup>89</sup> *Id.*

<sup>90</sup> See *United States Concerned about North Korea's Ties to Burma*, U.S. Department of State, July 22, 2009, available at <http://www.america.gov/st/peacesecenglish/2009/July/20090722135141dmslahrellek4.505557e-02.html&distid=ucs>.

See also Ewan MacAskill, *WikiLeaks Cables Suggest Burma is Building Secret Nuclear Sites*, THE GUARDIAN, Dec. 10, 2010, at 33.

<sup>91</sup> See *Burma pursued nuclear arms with North Korea, senator says*, Wash. Post (Nov. 24, 2011).

<sup>92</sup> David Sanger, *U.S. Said to Turn Back North Korea Missile Shipment*, NY TIMES, June 12, 2011, available at <http://www.nytimes.com/2011/06/13/world/asia/13missile.html> (After refusing four authorized requests to board and inspect, the North Korean crew ultimately returned to its home base after the U.S. raised the issue at an ASEAN meeting in Washington D.C.)

<sup>93</sup> David Albright et al., Institute for Science and International Security, *Burma: A Nuclear Wannabe; Suspicious Links to North Korea; High-Tech Procurements and Enigmatic Facilities*, ISIS Reports, Jan. 28, 2010 available at: <http://isis-online.org/isis-reports/detail/burma-a-nuclear-wannabe-suspicious-links-to-north-korea-high-tech-procureme/>.

<sup>94</sup> *Id.* at 1.

<sup>95</sup> Evidence of this growing Burmese-Iranian military partnership includes then-Deputy Foreign Minister Maung Myint's visit to Iran in March 2010, followed by Iranian Deputy Foreign Minister Mohammad Ali Fathollahi's three-day trip to Naypyidaw in June 2010 for discussions with high-level military officers and Burmese Deputy Foreign Minister visit to Iran on October 2011. This relationship should raise red flags in the international community. See Francis Wade, *Top-Level Iranian Officials in Burma*, Democratic Voice of Burma, June 17, 2010, available at <http://www.dvb.no/news/top-level-iranian-officials-in-burma/10323>.

<sup>96</sup> Iran, Myanmar study expansion of cooperation, October 10, 2011 available at <http://www.irna.ir/ENPrint.aspx?NID=30605357>.

<sup>97</sup> The U.N. Security Council has imposed multiple rounds of sanctions on Iran regarding its nuclear program, see S.C. Res. 1929, U.N. Doc. S/RES/1929 (June 9, 2010). See also S.C. Res. 1887, U.N. Doc. S/RES/1887 (Nov. 30, 2009); S.C. Res. 1835, U.N. Doc. S/RES/1835 (Sept. 27, 2008); S.C. Res. 1803, U.N. Doc. S/RES/1803 (Mar. 3, 2008); S.C. Res. 1747, U.N. Doc. S/RES/1747 (Mar. 24, 2007); S.C. Res. 1737, U.N. Doc. S/RES/1737 (Dec. 23, 2006); S.C. Res. 1696, U.N. Doc. S/RES/1696 (July 31, 2006). Iran has reportedly been collaborating with North Korea, also subject to U.N. sanctions, to develop nuclear weapons technology. Ted Purlain, *North Korea working with Iran on missile program* (Nov. 14, 2011).

<sup>98</sup> See *Iran is building nuclear arms, say UN inspectors*, The Washington Post (Nov. 8, 2011). U.S. Senators have expressed a sense of urgency about instituting harsher measures to prevent Iran from acquiring nuclear weapons. See *Senators upbraid administration officials on Iran*, The Washington Post (Dec. 1, 2011).

<sup>99</sup> *Iran faces increased isolation after attack on British Embassy*, The Washington Post (Nov. 30, 2011); *Europeans stiffen sanctions on Iran after embassy attack*, The Washington Post (Dec. 1, 2011).

<sup>100</sup> See Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009), U.N. Doc. S/2010/571; see also S. C. Res. 1695, U.N. Doc. S/RES/1695 (2006); S. C. Res. 1695, U.N. Doc. S/RES/1695 (2006); S. C. Res. 1718, U.N. Doc. S/RES/1718 (2006); S. C. Res. 1874, U.N. Doc. S/RES/1874 (2009); S. C. Res. 1887, U.N. Doc. S/RES/1887 (2009); S. C. Res. 1928, U.N. Doc. S/RES/1928 (2010).

<sup>101</sup> See generally, *supra* note 2; the Myanmar Const., at ch. I, art.20(b), states that “[t]he Defense services has the right to independently administer and adjudicate all affairs of the armed forces.”; at Ch. VII, art. 343 the Myanmar Const. states that “[i]n the adjudication of Military Justice...the decision of the Commander-in-Chief is final and conclusive.”

<sup>102</sup> Countries are required to submit reports detailing national compliance with Security Council Resolutions 1540 and 1884. For example, see 1540 Committee, List of National Reports by Submitting Member States, available at <http://www.un.org/sc/1540/nationalreports.shtml>.

<sup>103</sup> See generally, *supra* note 84. The IAEA has said that it is looking into reports of Burma's nuclear activity, but ignores the fact that the military cannot be held to any laws under the 2008 constitution. See Ashish Kumar Sen, *IAEA Seeks Permission from Myanmar for Nuke Inspectors to Visit*, WASH. TIMES, Jan 13, 2011.

<sup>104</sup> See *Burma Pursued nuclear weapons with North Korea, U.S. Senator says*, Wash. Post (Nov. 24, 2011).

## Appendix 1:

### Summary of Violence in Post-Election Burma

**Situation:** Armed conflict and serious crimes in Burma, particularly targeting ethnic groups, continue to escalate in the wake of the November 2010 election, subsequent “regime change,” and the January 2011 implementation of Burma’s 2008 constitution.

**ICC Covered Crimes in Burma:** War crimes as defined by the Rome Statute of the International Criminal Court (ICC) include armed attacks, rape, torture, recruitment and use of child soldiers, forced displacement and other forms of persecution. In Burma, these crimes cause tens of thousands of innocent civilians to flee, sometimes over regional borders. They consequently end up hiding in the jungle or in refugee and internally displaced persons camps. Ethnic minorities in Burma are subject to war crimes during attacks whose intent is “to destroy” these groups, in other words genocide. All U.N. Member States have a legal obligation to respond to “prevent” and “punish” a serious risk of genocide. Burma is one of eight “red alert” states listed on the global genocide indices.<sup>i</sup>

While states such as Burma have primary responsibility to prosecute the most serious international crimes, namely war crimes, crimes against humanity and genocide, when a state is unable or unwilling to do so, the ICC has jurisdiction to undertake investigations and prosecutions, including of the highest-level officials.

**Escalating armed conflict in ethnic areas:** Since the 2010 elections tensions have increased between the military junta (the State Peace and Development Council, or “SPDC”), ethnic ceasefire groups, and many ethnic armed opposition groups. Following the adoption of the new constitution in 2008, the SPDC issued an ultimatum to all ethnic ceasefire groups - disarm and participate in the upcoming elections. Ethnic ceasefire groups resisted the SPDC’s demands for disarmament because they believe arms provide leverage in negotiations with the junta and are necessary to protect their people. Many ethnic organizations also voiced their objections over the undemocratic nature of the 2010 elections.

Following the ethnic ceasefire groups’ refusal to disarm, the SPDC appeared to have changed its tactics to end the armed ceasefire groups’ existence by forcing them to form a border security force. Many groups openly refused to comply with the proposed “Border Guard Force” (BGF) and did not disarm. Parallel to the SPDC’s drive to deny ethnic ceasefire groups military capability, the regime continued its military campaign against ethnic armed opposition groups in Eastern Burma. The offensives have systematically targeted the civilian population in ethnic-inhabited areas.

**New Ethnic Alliance Formed:** Twelve ethnic armed opposition groups and political organizations from Burma agreed to form a new coalition, the Union Nationalities Federal Council (UNFC), in February 2011. The alliance includes Rakhine, Chin, Karen, Karenni, Kachin, Lahu, Mon, Pa-O, Palaung, Shan, and Wa groups. The UNFC decided to establish four military regions in Burma with the objective of sharing military resources if the Burma Army attacks any of the coalition members. UNFC members also agreed that individual groups would not hold separate cease-fire talks with the regime. UNFC stated that the coalition was open to any group that supports the alliance’s aim “to establish a genuine union.”

**Crisis deepens in ethnic nationality areas:** Despite the November 2010 election’s illusory promise of an inclusive democratic system, the situation in ethnic nationality areas continues to deteriorate. In addition to the Burma army’s ongoing offensives against armed ethnic non-ceasefire groups, the Burma army has increasingly targeted ceasefire groups who rejected the junta’s Border Guard Force (BGF) scheme. Armed conflict between those groups and the Burma army has led to the displacement of tens of thousands of civilians. The situation for residents living in conflict zones of ethnic States remains grim as the regime prepares to re-launch its inhumane ‘four cuts’ campaign, which seeks to cut off the rebels’ revenues, information, recruits, and food supply.

The following chart details many ongoing post-election crimes/violations that Burma's military continues to perpetrate against civilians in Burma, especially ethnic minorities along Burma's borders.

## ICC Crimes in Post-election Burma

| <b>1. Escalating armed conflict in ethnic areas and the growing risk of genocide</b>  |   |
|---|---|
| <b>Chin State – Arakan Liberation Army (ALA)</b>  | <ul style="list-style-type: none"> <li>▪ <b>Outbreaks of violence follow the election, including on January 3 and March 8, 2011</b>, when the Arakan Liberation Army (ALA) and SPDC clash in Paletwa Township</li> <li>▪ 7 military (SPDC) soldiers and 4 ALA soldiers are killed</li> </ul>  |
| <b>Karen State - Democratic Karen Buddhist Army (DKBA), Karen National Union (KNU), Karen National Liberation Army (KNLA)</b> | <ul style="list-style-type: none"> <li>▪ <b>On election day November 7, 2010 and the days following, violence breaks out</b> between the SPDC and a breakaway faction of the Democratic Karen Buddhist Army (DKBA)</li> <li>▪ <b>More than 27,000 civilians flee to Thailand (the single largest influx of refugees into Thailand in two decades), thousands more to jungles in Southern Karen and Mon States</b></li> <li>▪ <b>Heavy fighting persists between November-July 2011</b></li> <li>▪ <b>Major clashes November 8-9, 2010 in Myawaddy and Three Pagodas Pass</b></li> <li>▪ Several clashes erupt between the state army and Karen National Liberation Army (KNLA), and Karen National Union (KNU) from March-July 2011</li> <li>▪ <b>Clashes between state and joint forces of the DKBA and KNLA in Kyainnseikyi Township begin in April and intensify in May 2011, causing more than 1000 civilians to flee to Thailand (they are forced back to Burma by Thai authorities within days)</b></li> <li>▪ <b>Fighting worsens in Dooplaya and Pa'an districts post-elections</b></li> <li>▪ <b>Daily flow of refugees to Thailand, sometimes number in the thousands</b></li> </ul>  |
| <b>Kachin State – Kachin Independence Organization (KIO)</b>  | <ul style="list-style-type: none"> <li>▪ <b>February 2011, SPDC troops invade a KIO-controlled area near Mansi Township</b></li> <li>▪ <b>On February 7, 2011, KIO's armed wing, Kachin Independence Army (KIA) responds, clashes with SPDC army for the first time since making a 1994 ceasefire agreement</b></li> <li>▪ <b>Regime deploys 12 tanks, 200 soldiers near KIA's headquarters in Laiza</b></li> <li>▪ <b>July 20 KIA prepares to protect Laiza, located on the Sino-Burmese border. KIA settles approximately 6,000 people, mostly ethnic Kachins; more than 10,000 refugees since June 9, 2011</b></li> <li>▪ <b>Throughout July, August and October, fighting continued between the Burma army and the Kachin Independence Army (KIA) in Kachin State and Northern Shan State. The Burma army deployed additional troops, armored vehicles, and heavy artillery to areas surrounding the KIA headquarters in Laiza, Momauk Township, Kachin State. Fighting was reported in Bhamo, Mansi, Mohnyin, Momauk, Myitkyina, and Waingmaw Townships, Kachin State, and in Muse Township, Northern Shan State. In addition, reports surfaced that Burma army forces used chemical weapons against KIA troops during military operations.</b></li> </ul> |
| <b>Mon State – New Mon State Party (NMSP)</b>   | <ul style="list-style-type: none"> <li>▪ <b>Longstanding ceasefire (1995) breaks following elections; tense relations between NMSP and SPDC</b></li> <li>▪ February 4, 2011, state uses newspaper to call NMSP “<b>insurgents</b>” and NMSP says going to “war” with regime</li> </ul>  |
| <b>Shan State – Shan State Army- North (SSA-N)</b>  | <ul style="list-style-type: none"> <li>▪ State and Shan State Army-North (SSA-N) Brigade 1 forces begin <b>fighting February 2011</b></li> <li>▪ <b>SPDC steadily increases its military presence in Shan State by deploying thousands of soldiers near local armed forces sites</b></li> <li>▪ March 21, 2011, the state run newspaper New Light of Myanmar described the SSA-N as “<b>insurgents</b>”</li> </ul>  |

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|  | <ul style="list-style-type: none"> <li>▪ <b>Conflict spreads to ten townships in April 2011</b></li> <li>▪ <b>3,500 troops participate in a state-run military offensive in north-central Shan State, an area populated by 100,000</b></li> <li>▪ Within 3 weeks of the state breaking the ceasefire, <b>65 clashes erupt</b></li> <li>▪ <b><u>Burma’s military targets ethnic civilians, firing mortar bombs at villages, summarily executing villagers, arbitrarily detaining, torturing, looting, and raping, and forcing them to labor and relocate</u></b></li> <li>▪ <b>More than 3,000 flee the violence to hide in the jungle</b></li> <li>▪ <b>May 2011, state army deploys significant troops</b> to fight against the SSA-N, UWSA, National Democratic Alliance Army (NDAA), and Shan State Army-South (SSA-S).</li> <li>▪ May 2011, the SSA-N and SSA-S merge to form a united front</li> <li>▪ <b>Serious violent attacks on innocent civilians and widespread looting force more than 3,000 villagers to seek refuge in the jungle</b> or nearby towns like <b>Mong Su</b>. Still others flee over the Thai border</li> <li>▪ <b><u>Military tortures and kills innocent villagers</u></b> who are unable to flee, or are caught, for <b>“supporting the Shan resistance”</b></li> <li>▪ <b>July 2011, military sends more than 4,000 regime troops from 42 battalions to Wan Hai</b> in Ke See Township to take over the SSA-N headquarters; <b>fighter jets support advancing ground troops as they <u>march through villages, committing atrocities, such as summary execution, rape and mutilation, against ethnic civilians (one villager was found dead and missing his leg and hand.</u></b></li> <li>▪ <b>At least 31,700 villagers from 9 townships flee this violence, beginning March 13,</b> when the state broke its 22 year ceasefire with the SSA-N</li> <li>▪ While some of these <b>villagers flee</b> to Wa-controlled areas or border areas with China or Thailand, most are still <b><u>hiding in the jungle</u></b> where they <b><u>face chronic shortages of food, clean drinking water, shelter and medicine</u></b></li> <li>▪ SSA-N confronts government Infantry units Nos. 286, 9, 12, 131 and Light Infantry units Nos. 501, 502, 503, 504, 505 and 506.</li> </ul> |
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| <h2>2. Rape</h2> |  |
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|----------------------------|---|
| <p><b>Kachin State</b></p> | <ul style="list-style-type: none"> <li>▪ <b>Military perpetrates <u>at least 34 documented cases of rape against women and girls</u> in Burma’s ethnic areas <u>since the November 2010 elections</u></b></li> <li>▪ <b>Women and girls in Kachin and Shan states are systematically targeted, particularly between March-July 2011 during which time <u>at least 30 women and girls were gang-raped during and as part of military offensives against the KIA and SSA</u></b></li> <li>▪ <b>Between June 10-18,</b> as part of its <b>advance on KIA strongholds at the China border,</b> the <b>regime’s troops <u>gang-raped at least 18 women, killing 4.</u></b> The raped girls and women ranged in age from <b>7-50 years old</b></li> <li>▪ One of these women was <b>raped and killed in front of her husband</b> who was forcibly restrained (tied up) and forced to watch, while another <b>woman died at the site from injuries</b> sustained during the rape</li> <li>▪ These <b>rapes spanned 4 townships</b> in Bhamo District, and participating soldiers came from five of the regime’s battalions (Light Infantry Battalion 437 and Infantry Battalions 237, 141, 142, and 139)</li> <li>▪ <b>June 18, 2011,</b> regime troops from LIB 437 caught three families in Dum Bung village, before they were able to flee. <b><u>Soldiers gang-raped six women and girls and then killed 7 children</u></b></li> <li>▪ Also on <b>June 18, 2011</b> in Je Sawn village, in the Man Si township of Bhamo district, regime soldiers from LIB 139 <b><u>gang-raped a 7-year-old girl and her grandmother before killing both of them</u></b></li> <li>▪ October 7, 2011: Burma army soldiers <b>gang-raped three ethnic Chinese women</b> in Myitkyina Township, Kachin State and raped and killed a 19-year-old girl in</li> </ul> |
|----------------------------|---|

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|---|---|
|   | <p>Waingmaw Township, Kachin State on October 18, 2011 Burma army troop raped and killed nine ethnic Chinese women in Kutkai Township, Northern Shan State in October 24.</p>   |
| <p><b>Karen State</b> – Karen Human Rights Group (KHRG)</p>   | <ul style="list-style-type: none"> <li>▪ The ever-present threat of sexual violence becomes a reality for women in Dooplaya and Pa’an on <b>December 22, 2010</b> when a <b>volunteer KHRG researcher confirms Waw Lay villagers’ reports of finding the dead body of an unidentified woman close to the village</b></li> <li>▪ Villagers disclose the body’s discovery – at the <b>Waw Lay village school</b> - after fleeing the area to Thailand’s Phop Phra District</li> <li>▪ The researcher also confirms reports (and gathers photographic evidence) that a <b>second woman’s body had also been found. <u>Both women, apparently between the ages of 20-30 years old, had been raped.</u></b> Identification was difficult because of decomposition</li> </ul>   |
| <p><b>Palaung State</b></p>   | <ul style="list-style-type: none"> <li>▪ <b>February 23, 2011, a 16-year-old girl</b> from the <b>Palaung ethnic group in Shan state is blindfolded and gang-raped by six Burmese soldiers from Light Infantry Battalion (LIB) 574.</b> The patrol attacks as she walks from Hpanlan village in Shan state’s Kunhing township to Nanmawngin village.</li> </ul>   |
| <p><b>Shan State</b> – Shan State Army – North (SSA-N) and –South (SSA-S)</p> <p>Note: Light Infantry Battalion (LIB), Infantry Battalion (IB).</p> | <ul style="list-style-type: none"> <li>▪ In March 2011, regime soldiers perpetrate <b><u>12 rapes against ethnic women as part of its offensive in northern Shan State</u></b></li> <li>▪ In <b>March-April 2011, government soldiers gang-rape at least 11 women and girls</b></li> <li>▪ Beginning <b>April 2011, state army increasingly uses rape of civilians as a tactic in armed conflict</b> against SSA-N (see above under Kachin as well)</li> <li>▪ Within the context of ongoing armed conflict between the state and SSA-N, the regime’s army undertakes a <b>new deterrence tactic: it rounds up women and girls from different villages, forces them to serve as human shields, the women porter military provisions while walking ahead of the troops</b></li> <li>▪ <b>Soldiers</b> from Light Infantry Battalions (LIB) 291 and IB 33 <b>gang-rape 2 women</b> in Nam Lao Village, Tangyan Township, Shan State</li> <li>▪ Soldiers from LIB 131 <b>rape two local women</b> in Wan Pa Tab Village, Kyethi Township, Shan State</li> <li>▪ <b>Soldiers</b> from LIB 291 and LIB 33 <b>gang-rape a 19-year-old girl</b> in Nam Lao Village, Tangyan Township, Shan State</li> <li>▪ <b>Three soldiers</b> from LIB 147 <b>gang-rape a 25-year-old woman</b> in Wan Bang Hom Village, Tangyan Township, Shan State</li> <li>▪ <b>Soldiers</b> from LIB 574 <b>gang-rape a 44-year-old woman</b> in Wan Nawng Tao Village, Mongyawng Township, Shan State</li> <li>▪ <b>Soldiers</b> from LIB 513 <b>rape three Shan women and a 12-year-old girl</b> in Kyethi Township, Shan State</li> <li>▪ <b>Five Soldiers</b> from IB 9 <b>gang-rape a 35-year-old woman</b> in Wan Nar Karng Village, Kyethi Township, Shan State</li> <li>▪ Army soldiers <b>gang-raped three ethnic Chinese women</b> in Myitkyina Township, Kachin State on October 7, 2011.</li> </ul> |
| <p><b>3. Refugees and Internally Displaced Persons</b></p>  |   |
| <p><b>Kachin State</b> – Kachin Independent Army (KIA), Kachin Independence Organization (KIO)</p>  | <ul style="list-style-type: none"> <li>▪ <b>June 9, 2011, violent conflict</b> erupts between regime army soldiers and KIA in Kachin and Northern Shan States</li> <li>▪ <b>13,000 civilians flee</b> the fighting and are displaced</li> <li>▪ <b>Regime army deploys thousands of additional troops</b> in Bhamo and Momauk Townships</li> <li>▪ KIO claims <b><u>conflict has created 10,000 Kachin war refugees in nine days of fighting</u></b></li> <li>▪ Some refugees from this fighting stay in emergency shelters in Laiza and other</li> </ul>   |

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|  | <p>locations near the Sino-Burmese border. Others have taken refuge with far-away relatives</p> <ul style="list-style-type: none"> <li>▪ <b>July 20, 2011 KIA prepares to protect Laiza, located on the Sino-Burmese border. KIA settles approximately 6,000 people, mostly ethnic Kachins</b></li> <li>▪ <b>More than 10,000 refugees arrive since fighting began June 9, 2011</b></li> <li>▪ <b>6,000 more Kachin refugees take shelter</b> at makeshift camps along the China-Burma border</li> <li>▪ On October 25, 2011, the Thailand Burma Border Consortium (TBBC) released “Displacement and Poverty in South Eastern Burma,” their annual survey of the displacement situation in 14 townships in Shan, Karen, and Karenni States and Tenasserim Division. The report found that: <ul style="list-style-type: none"> <li>✦ The populations of the nine refugee camps in Thailand also grew steadily. <b>In August 2010, the total number of refugees TBBC assisted increased from 145,713 in August 2010 to 148,908 in July 2011.</b> TBBC report says that the regime forced 112,000 people to flee their homes between August 2010 and July 2011, <b>the highest number recorded in 10 years.</b></li> </ul> </li> </ul> |
| Karen State  | <ul style="list-style-type: none"> <li>▪ <b><u>On Nov 9, 2010, the day after Election Day, 27,000 civilians flee fighting</u></b> in the face of violent clashes between the state and DKBA. This is the <b><u>largest single influx of refugees in two decades into Thailand</u></b></li> <li>▪ <b>Thousands more seek safety from the post-election fighting</b> in the Southern Karen and Mon State <b>jungles</b></li> <li>▪ <b>Civilians in Myawaddy, Three Pagodas Pass, and in the Dooplaya and Pa’an districts continue to be deeply affected by the violence, sustaining small arms fire</b></li> <li>▪ <b><u>A steady stream of refugees, often numbering 1000 at a time, cross the border into Thailand on a daily basis, entering Mae Hong Song, Tak and Kanchanaburi provinces.</u></b></li> <li>▪ <b>By January 10, 2011, more than 8663 civilians from Burma seek refuge in Tak Province</b></li> <li>▪ <b><u>Members of these communities are subject to sexual violence (rape), torture and executions</u></b></li> </ul>  |
| Shan State   | <ul style="list-style-type: none"> <li>▪ During five months of fighting (February- July 2011) between the Shan State Army-North (SSA-N) and Burmese government troops, more than 30,000 people flee the combat area</li> <li>▪ Many refugees face serious shortages of food and medicine</li> </ul>   |
| <b>4. Child Soldiers (recruitment and use as soldiers and human shields)</b> |   |
| Myanmar/Burma<br>Shan State  | <ul style="list-style-type: none"> <li>▪ From early 2010 to July 2011, <b>305 complaints of children as young as 10 years old being taken and used as child soldiers</b> are lodged with the International Labour Organization (ILO) office in Myanmar/Burma. As a result, 77 children are discharged from the military.</li> <li>▪ <b>242 complaints are left</b> still being screened (before review by the government) or are still under active investigation by the government</li> <li>▪ <b>Children are taken and ordered to accompany Burmese troops as they carry wounded soldiers through volatile areas</b> of Shan State where they are more vulnerable</li> <li>▪ According to residents in Kehsi Mensi, a township near the conflict zone of fighting Burmese and SSA troops, <b>an infantry battalion went through villages in the township on Tuesday (September 13, 2011) recruiting children and other civilians to act as “human shields”</b></li> <li>▪ Child soldier recruitments showed no signs of decreasing after Thein Sein took office.</li> </ul>   |

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|                        | In July 2011, the International Labor Organization (ILO) in Rangoon said it received 424 reports of child soldiers being recruited since January.  |
| <b>5. Forced Labor</b> |  |
|                        | <ul style="list-style-type: none"> <li>▪ At least 1,200 prisoners forced to carry military supplies during offensives in Karen State and Eastern Pegu Division</li> <li>▪ Civilians in Kachin state were forced by the Burmese army to guide combat units and to walk in front of army columns to trigger landmines.</li> <li>▪ It was reported that Regime army soldiers forced an unknown number of residents of Talawgyi, Myitkyina Township, Kachin State, to carry military supplies in October. Burma army troops from IB 41 forced villagers in Mongyaw, Lashio Township, and Northern Shan State, to build fences, fetch water, and act as sentries. In October 16, Burma army troops from IB 29 detained 20 residents of Myitkyina and forced them to carry military supplies.</li> <li>▪ Maungdaw Township, Arakan State, Burma frontier troop (Na Ka Sa) began to force local villagers to do construction work at a military camp in October.</li> </ul> |

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## Appendix 2:

### Chemical Weapon Attacks on Burma's Ethnic Groups Chronology and Evidence December 2011

**Background:** chemical weapons use by Burma's military against several ethnic groups in Burma, including the Shan, Kachin, Karen and Karenni, has been documented since 2005 and rumored since the early 1980s. As testimony to US Congress on June 23, 2011 suggests, to date, there has been no formal investigation into Burma's chemical weapons use.

| 3 June 2011                        | Details of the alleged chemical weapons attack against the Shan  |
|------------------------------------|--|
| Summary                            | <ul style="list-style-type: none"> <li>• Burmese army fired 4 mortar grenades (chemical shells) loaded with chemical gas at 6 Shan State Army-North (SSA-N) soldiers</li> <li>• 4 chemical shells were fired from MA7 mortars at the SSA defense bunker outpost</li> </ul>   |
| Location                           | <ul style="list-style-type: none"> <li>• Attack targeted the SSA-N position in Mong Hsu, in central Shan State in Burma</li> <li>• The mortar grenades landed approximately 90 yards from the SSA defense bunker outpost</li> </ul>  |
| Origin of Command                  | <ul style="list-style-type: none"> <li>• Wire intercepts indicate that the firing order came from the Naypyidaw Central Command, and spanned 3 levels in the chain of command</li> <li>• Commanders names:               <ol style="list-style-type: none"> <li>1. Ya Ma Kha, Divisional Commander, General Aung Kyaw Zaw</li> <li>2. Tang Yan (near Mongshu), Strategic Base Commander, Colonel Than Oo</li> <li>3. Ka La Ya Light Infantry Battalion 291, Transitional Base Commander, Lt. Colonel Thun Naing and No. 2 Regiment Deputy Commander Colonel Ye Zaw Htut</li> </ol> </li> </ul> |
| Launch location                    | <ul style="list-style-type: none"> <li>• The mortar grenades were fired from approximately 4 miles away</li> </ul>   |
| Deaths and injuries to victims     | <ul style="list-style-type: none"> <li>• 6 SSA-N soldiers were attacked</li> <li>• 1 was killed on the scene</li> <li>• 4 were treated for serious injuries ranging from shortness of breath, dizziness, vomiting and rashes</li> </ul>  |
| Medical evidence of chemical agent | <ul style="list-style-type: none"> <li>• Medical testing results obtained during examinations and blood tests conducted during treatment in Thailand of 4 of the 6 Shan soldiers who were hit by the "gas bombs" (mortar shells laced with poison gas)</li> <li>• The c-gas grenades were not the standard riot gear chemicals</li> <li>• Suspected chemical agent is arsenic</li> </ul>   |
| Photo and evidence                 | <ul style="list-style-type: none"> <li>• Photographs of the soldiers' injuries are included in the "War Crimes Report" drafted by the Shan, with assistance from international advisors</li> <li>• There may be video evidence of the attacks against the Shan and Kachin - unconfirmed</li> </ul>   |
| Wire intelligence reports          | <ul style="list-style-type: none"> <li>• 2 signal intelligence reports intercepted and decoded by the SSA and KIA reveal order from top-level to the front line commanders to open fire with c-gas grenades</li> </ul>   |
| Physical evidence                  | <ul style="list-style-type: none"> <li>• clothing was washed following attack and no hair or nail samples were taken</li> <li>• soil samples may still show chemical agent but were not collected immediately following the attack</li> </ul>  |

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|  | <ul style="list-style-type: none"> <li>• gap in time before blood and urine samples obtained from soldiers, diluted and likely unhelpful evidence</li> <li>• further medical testing may document chemical weapon related longer term injuries</li> </ul> |
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| <b>29 October 2011</b>             | <b>Details of the alleged chemical weapons attack against the Kachin</b>   |
|------------------------------------|--|
| Summary                            | <ul style="list-style-type: none"> <li>• Burmese army attacked the Kachin Independence Army (KIA) in Kachin State with chemical weapons, possible c-gas grenades (not confirmed)</li> <li>• The attack involved at least 3 separate shellings of mortar grenades (MA7 mortar poison-laced shells suspected) loaded with chemical gas and followed more than a week of intense fighting</li> <li>• At least 8 soldiers were injured</li> <li>• The KIA captured mortar grenades and are in the process of arranging safe transport for further examination of the chemical weapons involved (2-4 months)</li> </ul> |
| Location                           | <ul style="list-style-type: none"> <li>• Ntap Bum (Kachin State), near Laiza</li> </ul>  |
| Origin of command                  | <ul style="list-style-type: none"> <li>• Wire intercepts</li> </ul>  |
| Deaths and injuries to victims     | <ul style="list-style-type: none"> <li>• At least 8 soldiers</li> </ul>  |
| Medical evidence of chemical agent | <ul style="list-style-type: none"> <li>• Medical</li> <li>• Symptoms: same as in June 3, 2011 attack: dizziness, shortness of breath, rashes, burning,</li> </ul>  |
| Physical evidence                  | <ul style="list-style-type: none"> <li>• splinters of exploded c-gas grenades collected on scene</li> <li>• hair, nail and possibly some clothing samples from KIA soldiers attacked</li> <li>• soil may have been collected for sampling</li> <li>• medical testing was conducted on injured soldiers</li> </ul>  |

| <b>10 November 2011</b>               | <b>Details of the alleged chemical weapons attack against the Kachin</b>   |
|---------------------------------------|--|
| Summary                               | <ul style="list-style-type: none"> <li>• Burmese army attacked KIA in Kachin State with shelling using c-grenades</li> <li>• At least 5, and more likely 10 soldiers were injured</li> </ul>   |
| Location                              | <ul style="list-style-type: none"> <li>• Ga Ra Yang and ShwiNyawngpin Lung Zep village</li> </ul>  |
| Deaths and injuries to victims        | <ul style="list-style-type: none"> <li>• At least 5-10 soldiers injured</li> </ul>   |
| Wire intercepts and intelligence feed | <ul style="list-style-type: none"> <li>• Nov 3 report says SSA-N intercepted and decoded a message from Burmese General Min Aung Hlaing instructing General Soe Win to prepare to use chemical weapons in Kachin state</li> </ul>                                      |
| Medical evidence of chemical agent    | <ul style="list-style-type: none"> <li>• Medical evidence suggests c-gas, but guidance about treatment is only guesswork until the chemicals are identified</li> <li>• Symptomology: same as earlier attacks, incapacitation, vomiting, dizziness, weakness</li> </ul> |
| Wire intelligence reports             | <ul style="list-style-type: none"> <li>• 2</li> </ul>  |
| Physical evidence                     | <ul style="list-style-type: none"> <li>• unclear, but may include hair, nail, clothing and soil samples</li> </ul>   |

| <b>11 November 2011</b> | <b>Details of the alleged accident involving Burmese soldiers handling chemical weapons (source: Kachinland news)</b>  |
|-------------------------|--|
| Summary                 | <ul style="list-style-type: none"> <li>• Burmese soldiers handling chemical weapons in Kachin State were injured when chemical agents exploded immediately after it was fired</li> </ul> |
| Location                | <ul style="list-style-type: none"> <li>• Kachin State, near Namhkam hospital</li> </ul>  |

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|                                    | <ul style="list-style-type: none"> <li>•</li> </ul>  |
| Deaths and injuries to victims     | <ul style="list-style-type: none"> <li>• 90 Burmese soldiers injured, 3 very seriously</li> </ul>                    |
| Medical evidence of chemical agent | <ul style="list-style-type: none"> <li>• Medical symptoms: same as in attacks above</li> </ul>                       |
| Wire intelligence reports          | <ul style="list-style-type: none"> <li>• SSA wire intercepts</li> </ul>  |
| Physical evidence                  | <ul style="list-style-type: none"> <li>• Hair, nail, clothing, soil may have been collected - unconfirmed</li> </ul> |

### Chemical weapons factory “number 12”

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| Physical evidence | <ul style="list-style-type: none"> <li>• Unclear location of chemical weapons factory 12</li> <li>• But suggestion that aerial photo evidence of the factory exists</li> </ul> |
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### Efforts by Shan and Kachin to raise international awareness about Burma’s use of chemical weapons, to trigger investigation, and prevent future attacks

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| Reporting efforts to date                                     | <ul style="list-style-type: none"> <li>• The Shan (State Army-North (SSA-N) through the President and Foreign Ministry of Foreign Affairs of the Federal Shan Government in Exile) have reached out to several NGO, the ICRC, OPCW, and UN organizations, including the Global Justice Center</li> <li>• Outreach includes sharing the War Crimes Report detailing the June 3, 2011 attack and other overviews along with letters during meetings, and via mail</li> </ul>  |
| Assistance requested  | <ul style="list-style-type: none"> <li>• Shan (and other groups) request assistance including to 1) raise international awareness of attacks 2) trigger investigation via the Organization on the Prohibition of Chemical Weapons (OPCW) and/or other oversight agencies</li> <li>• Request to have chemical weapons attacks included in prospective Commission of Inquiry (COI) into crimes in Burma</li> <li>• Seek to prevent similar attacks (Shan or other ethnic groups)</li> </ul>   |
| Results of reporting efforts to date                          | <ul style="list-style-type: none"> <li>• As a state to state governing agency, coordinated with the UN, the OPCW does not respond to requests for assistance from non-state actors unless a state intervenes on behalf of the group; it has not yet replied to the first Shan report</li> <li>• Similarly, the 1540 Committee is governs state rather than non state actors</li> <li>• Reports to the OPCW by the Shan have not generated a reply to date</li> </ul>  |
| Notes   | <ul style="list-style-type: none"> <li>• The Shan recognizes itself as a state and a people, but is not formally recognized by the UN or related agencies as such and so has access to investigative procedures and mechanisms only via third party states willing to act or direct attention by the UN Secretary General who is responsible for non-state actors</li> </ul>  |
| International obligations                                     | <ul style="list-style-type: none"> <li>• Burma has signed but not ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical weapons and on their Destruction (in force 1997) (CWC)</li> <li>• As a signatory, Burma is bound to the CWC principles</li> <li>• UN Secretary General Ban Ki-Moon is responsible for investigating chemical weapons use by CWC non-state parties such as Burma</li> <li>• General Assembly resolutions 37/98 (para D) and 42/37 (para C)</li> </ul> |
| Other efforts underway to document and investigate the attack | <ul style="list-style-type: none"> <li>• The Shan, with international assistance, has engaged in substantial outreach to raise awareness and push for an investigation.</li> <li>• Recently, Western diplomats have begun to take notice and the ICRC in Chiang Mai has met with ethnic group leaders and referred the reports of chemical attacks to headquarters from whom they await a response</li> </ul>   |

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|  | <ul style="list-style-type: none"><li>• Other groups in the UK and US, including the Global Justice Center are assisting the Shan in drafting letters, reaching high-level officials such as Special Representative on the Situation in Myanmar, Tomas Ojea Quintana and US Secretary of State Hillary Clinton</li></ul> |
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Note: other anecdotal evidence includes “yellow rain” falling from the sky following the chemical attacks and reports of other attacks, for a total of 5, beginning June 3, 2011 and escalating in October-November 2011.