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HUMAN RIGHTS WATCH

“UNTOLD MISERIES”

Wartime Abuses and Forced Displacement in Kachin State

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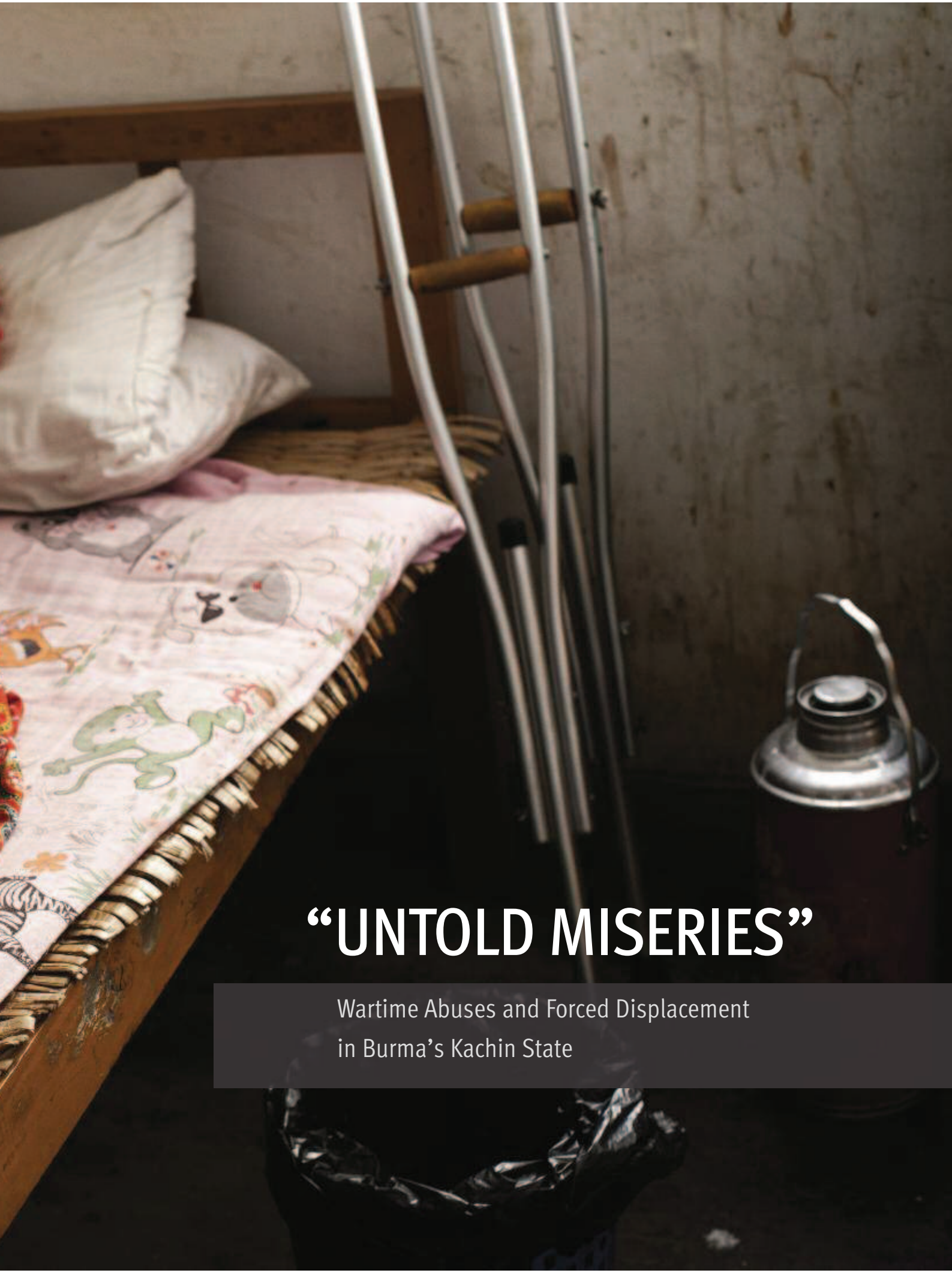
Map of Burma

Summary and Key Recommendations

Human Rights Watch | March 2012

A displaced Kachin mother of three, 45, recuperates from an injury from a KIA antipersonnel mine in a hospital in Maijayang. She and her husband were injured on December 19, 2011, unaware that mines had been planted on their farm.



“UNTOLD MISERIES”

Wartime Abuses and Forced Displacement in Burma’s Kachin State

They pointed the knife against my stomach and they put it on my brother's throat.... We were asked repeatedly where the KIA [Kachin Independence Army] is and in which house the weapons are hidden, and then the soldier said, "If you don't show us and don't give us the answers then you will be killed and your hands will be cut off." And then we were tied up.

—"Mung A.," 16, tortured and forced to porter with his 14-year-old brother on the front lines in Kachin State, November 2011

Soldiers would come and take the women and bring them from tent to tent. We were so afraid and we couldn't watch the whole night. The next morning, the women couldn't walk right. They seemed like they were in pain. They walked hunched over. And they were crying.

—"M. Seng," 23, forced to porter on the front lines for 19 days, November 2011

In his March 2011 inauguration speech, Burmese President Thein Sein emphasized the importance of ending Burma's several ethnic armed conflicts, declaring that more than 60 years of ethnic warfare in Burma were due to "dogmatism, sectarian strife, and racism." Burma's ethnic minorities had, he said, experienced "the hell of untold miseries."

An IDP camp known as Border Post 8, where approximately 2,000 displaced people fled in November 2011 when the Burmese army attacked their villages and razed homes. At an elevation of 2,300 meters, residents endure temperatures as low as -1 degrees Celsius and have received no humanitarian aid.

Crops planted by internally displaced Kachin outside their makeshift camp in Maijayang. Food is inadequate as the Burmese authorities have largely hindered humanitarian access to the camps in Maijayang.

KIA soldiers on the frontlines in the KIA's eastern division.
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Despite his words, the miseries continue for the ethnic minority Kachin population in Burma's northern Kachin State. After 17 years of a ceasefire in Kachin State, the Burmese armed forces launched offensive military operations in June 2011 against the rebel Kachin Independence Army (KIA), leading to a humanitarian crisis affecting tens of thousands of civilians, against whom the Burmese army is committing serious abuses. Military operations by both sides have continued despite a presidential request that the army cease attacks against the KIA and only fire in self-defense.

Over the last six months of 2011, Human Rights Watch travelled twice to areas in Kachin State, visiting nine camps for internally displaced persons (IDPs), and to areas in China's Yunnan province where refugees have fled. This report draws on more than 100 interviews conducted during those visits with displaced persons, refugees, and victims of abuses, as well as KIA representatives, Burmese army deserters, and humanitarian aid workers. We have continued monitoring events on the ground and have conducted follow-up research through March 2012.

Kachin civilians described to Human Rights Watch how Burmese army soldiers have attacked Kachin villages, razed homes, pillaged properties, and forced the displacement of tens of thousands of people. Troops have deliberately and indiscriminately fired on Kachin civilians with small arms and mortars. According to one 40-year-old Kachin woman, for example, soldiers on November 10, 2011, "shot mortars into our village three times.... So we fled." A Burmese army deserter described how his battalion deliberately shelled Dingga village with 81 mm mortars so that inhabitants would run away. "It was intended that way," he said.

Displaced Kachin children collect water from the village well in KIA-controlled territory in Hpunlum Yang, Kachin State, January 29, 2012.

A displaced Kachin woman explaining how the Burmese army fired upon her and her three grandchildren on two occasions while they fled for safety. "When we ran the soldiers shot at us," she said. "We were really afraid. We just ran and hid. There were many mosquitos and we were all wet in the rain, and everyone was crying."

Soldiers have threatened and tortured civilians during interrogations for information about KIA insurgents, and raped women. The army has also used antipersonnel mines and conscripted forced labor. Children as young as 14 have been tortured and forced to serve as army porters, including on the front lines.

The KIA has also been involved in serious abuses, including using child soldiers and antipersonnel landmines. Human Rights Watch found no tangible signs that the authorities in the KIA or the Kachin Independence Organization (KIO)–the KIA's political wing–are seriously addressing either practice.

At a time of significant political progress in Burma, the dire human rights and humanitarian situation for Burma's Kachin people has received inadequate domestic and international attention. Approximately 75,000 men, women, and children have fled their homes since June 2011, most seeking refuge in some 30 camps for the internally displaced along the China border in KIA-controlled areas. After fighting began, thousands of civilians hid from the Burmese army in the jungle, some for up to two months, before continuing via rugged mountain terrain to makeshift camps. Their numbers have steadily grown since June.

The shortfall of humanitarian aid for the internally displaced population has pressured families to return to insecure villages in order to gather belongings or tend to animals and fields, risking encounters with hostile Burmese army forces and exposing them to antipersonnel mines that have been laid by both parties. Burmese army soldiers have fired upon civilians, including children, threatened them, and abducted them for forced labor. Many villagers have returned home only

A KIA officer visits his displaced family at their temporary shelter outside Laiza, Kachin State, January 29, 2012.

At an IDP camp outside Laiza, swelling to accommodate new arrivals, Kachin displaced persons arrange firewood.

The KIA's proclaimed capital, Laiza, which is directly split in half by the border with China's Yunnan province in the background.

A Kachin medical doctor treating civilian and military victims of antipersonnel mines in the KIA's eastern division holds a Burmese army landmine. He told Human Rights Watch that mine-related casualties are on the rise: "The difference between Kachin and Burmese landmines is that the KIO mine blasts shrapnel inside the body, whereas the Burmese one is not shrapnel, but a blunt force explosion, usually taking an entire limb."

Maru Maw, 70, was forced by the Burmese army to porter in November 2011 with his son and daughter-in-law. The army opened fire on him and his son as they escaped: "A soldier was shooting at us. We kept jumping and tumbling down. My body still hurts from it." His daughter-in-law Sumlut Roi Ja did not escape and has not been seen since.

Children learn a traditional Kachin dance at a makeshift school in an IDP camp outside Laiza staffed by volunteer teachers. Most displaced children have not attended school since the conflict began and those whose parents are working lack daytime supervision.

to find that the army has already destroyed or confiscated their property and belongings.

Many abuses documented in this report constitute serious violations of international humanitarian and human rights law, including deliberate or indiscriminate attacks on civilians, unlawful killings, torture and ill-treatment, the use of child soldiers, and the use of abusive forced labor in conflict zones. In addition, both parties to the conflict are using antipersonnel mines—indiscriminate weapons that do not distinguish between civilians and combatants. Their placement throughout Kachin State will complicate any future repatriation of IDPs and refugees, and threaten civilians who return to areas that have not been cleared.

Those responsible for ordering or participating in the abuses documented in this report should be impartially investigated and prosecuted, and disciplined as appropriate. All parties to the conflict need to take effective measures to end abuses by their forces, ensure humanitarian access, and permit an independent international mechanism to investigate abuses by all sides.

A robust humanitarian aid effort from government-controlled territory to KIO-controlled areas has been effectively blocked by Burmese authorities. The government only granted relevant United Nations agencies access to areas of significant need in December, six months after it started military operations. Even then, access has been very limited. On December 12, the UN Office for the Coordination of Humanitarian Affairs (OCHA), the UN High Commissioner for Refugees (UNHCR), and the UN Children's Fund (UNICEF)

Displaced Kachin women receive training in basic management skills and financial planning by local aid group Wunpawng Ninghtoi ("Light of Kachin"). Burmese authorities to date have authorized one UN visit to camps surrounding Laiza, but otherwise have refused humanitarian access to KIA-controlled areas.

visited Laiza, the KIA's proclaimed capital on the Burma-China border, where several IDP camps are located. The UN agencies delivered an initial aid installment to displaced persons. However, the amount of aid delivered was minimal and they were unable to visit several areas that are home to tens of thousands of IDPs, including areas around the border town of Maijayang. To date, the government has not allowed further UN aid deliveries.

Local civil society organizations have delivered considerable aid in government-controlled areas, but they have been constrained by limited funding and capacity, and in some instances, by government obstruction to access unauthorized areas where there is a population in need.

In KIO-controlled areas, the KIA and networks of local Kachin organizations have tried to meet growing humanitarian needs, but international support for civilian-led relief organizations operating in KIO areas has been sporadic and inadequate. The overall situation is expected to further deteriorate as the monsoon season approaches in May.

The developments in Kachin State stand in stark contrast to hopeful human rights developments in lowland Burma in recent months. After more than 50 years of repressive military rule, the government that took office in March 2011 has, among other things, released hundreds of political prisoners including many prominent activists, student leaders, and monks, eased media restrictions, and passed laws on freedom of assembly and labor union formation. However, hundreds of political prisoners remain behind bars, the justice system lacks independence, and the military maintains significant political control.

It is essential that support for recent reforms not lead to international complacency about the serious human rights violations still plaguing Burma. Legal and political changes are only beginning to make headway and there is a long way to go before all Burmese benefit from them. Among those who have seen little improvement to date are many ethnic minority populations, with conditions considerably worsening in Kachin State. As long as ethnic minority populations continue to suffer abuses, Burma's prospects for reconciliation and development will be stifled.

As a 58-year-old Kachin farmer told Human Rights Watch: "We are restricted, we are abused, and we are not free. The life of the Kachin people is very miserable now."

A female Kachin minister leads a group of displaced persons in prayer outside a makeshift IDP camp in Maijayang in the KIA's eastern division.

METHODOLOGY

This report is largely based on 112 interviews conducted by Human Rights Watch from July 2011 to February 2012, primarily in the conflict zones of Kachin State and in China's Yunnan Province. In June, July, and November 2011 Human Rights Watch visited nine camps for internally displaced persons (IDPs) in Kachin State and six unrecognized camps for Burmese refugees in border towns and remote jungle areas of Yunnan.

China and Burma do not allow nongovernmental human rights organizations to freely conduct research or monitor human rights concerns inside their borders. As a result, obtaining and verifying credible information presents great challenges.

Interviews were conducted with victims and witnesses of abuses, internally displaced persons and refugees, aid workers, Burmese army deserters, and representatives of the Kachin Independence Army (KIA), including two child soldiers. All children were interviewed in the presence of guardians. When possible, and in a majority of cases, interviews were conducted on a one-on-one basis. In addition to the 112 interviews, additional interviews were conducted with displaced persons and refugees in a group setting, and with foreign aid workers and in-country contacts via telephone. We also spoke with other sources in Burma, Thailand, and China who provided firsthand information about the conflict or conditions experienced by displaced populations. In preparing this report, Human Rights Watch wrote to both the Burmese government and the Kachin Independence Organization (KIO) with specific questions to enable them to respond to specific allegations. As of this writing, no responses were received.

We conducted interviews primarily in the Jinghpaw Kachin language or other Kachin dialects, with Kachin to English interpretation. In a few cases, we conducted interviews in English. In both the body of the report and in footnotes, we have generalized locations of interviews in Burma and China to provincial and state levels so that those interviewed and their families cannot be easily identified. We have used pseudonyms for all Kachin civilians and child soldiers named in this report, unless otherwise indicated. In some cases other identifying information has been withheld in the interest of security.

All those interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the data would be used. All interviewees were told they could decline to answer questions or end the interview at any time. All provided oral consent to be interviewed. None received compensation.

The nine IDP camps visited by Human Rights Watch are located in the central and eastern divisions of territory controlled by the KIO. In these areas, KIA was providing humanitarian aid as the implementing party for the KIO. For this and other reasons, some interviewees may have been reluctant to share information concerning the behavior of the KIA.

In addition to the research described above, we referenced a number of secondary sources including United Nations reports, academic studies, published books, previous Human Rights Watch reporting, and other nongovernmental organization reports.

KEY RECOMMENDATIONS

THE BURMESE GOVERNMENT SHOULD:

- **Take all necessary steps to ensure that the Burmese armed forces act in compliance with international humanitarian law, in particular acting to minimize harm to civilians and civilian property.**
- **Investigate credible allegations of laws-of-war violations—including deliberate or indiscriminate attacks on civilians, extrajudicial killings, rape and other sexual violence, torture, unlawful use of porters, use of child soldiers, and pillage—and appropriately prosecute those responsible, regardless of rank or position.**
- **Support an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the armed conflicts in Kachin State and elsewhere in the country.**
- **Request the United Nations Office of the High Commissioner for Human Rights to establish an office in Burma with a standard protection, promotion, and technical assistance mandate.**
- **Provide the United Nations and national and international humanitarian agencies safe, sustained, and unhindered access to all areas of internally displaced populations, and make a long-term commitment with humanitarian agencies to authorize relief, recovery, and eventual development support to populations in need.**
- **Ensure that returns of displaced persons and refugees take place in accordance with international standards, on a voluntary basis with attention to the safety and dignity of the returning population.**

THE UNITED NATIONS, ASEAN, ASEAN MEMBER STATES, AUSTRALIA, CHINA, RUSSIA, THE UNITED STATES, THE EUROPEAN UNION, JAPAN SHOULD:

- **Publicly and privately call on the Burmese government and ethnic armed groups to end violations of international human rights and humanitarian law during military operations.**
- **Support an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the conflicts in Burma.**
- **Support the establishment of a United Nations Office of the High Commissioner for Human Rights office in Burma with a standard protection, promotion, and technical assistance mandate.**
- **Press the Burmese government to establish a mechanism to provide prompt and adequate compensation for victims of abuses by its security forces.**
- **Publicly call on all parties to the conflict to facilitate access by domestic and international humanitarian agencies to both government and KIA-controlled areas of Kachin State and northern Shan State, and other areas in the country where populations are at risk.**
- **Provide needed support to local and international humanitarian agencies impartially providing assistance in ethnic conflict areas and those administering cross-border aid. Press the Burmese government and KIO to allow them full access to populations in need.**

Detailed Map of Kachin State

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I. Armed Conflict in Kachin State

Brief Political History of the Kachin

Kachin State is Burma's northernmost state, bordering China to the east, India to the northwest, and Burma's Sagaing Division to the west and Shan State to the south. Situated in the foothills of the Himalayas, the area is home to rugged mountain terrain and is flush with natural resources, including precious gems and stones, timber, minerals, and several important rivers that sustain local livelihoods and ecologies.

The Kachin people descend from Indo-Tibetan origin and in Burma most reside in Kachin State and northern Shan State.[1] Like most of Burma's rural populations, the Kachin are predominantly agrarian, with some still practicing highland swidden agriculture, so-called slash-and-burn farming, as opposed to the wet rice cultivation more common in lowland areas. For centuries the Kachin region has also had active commercial trade with China.

Burma is one of the world's most ethnically diverse countries. Its estimated 56 million people comprise 135 officially recognized ethnic races, including the largely Buddhist, Burmese-speaking Burman majority. Non-Burman ethnic groups live predominantly in highland areas and are culturally and linguistically distinct from each other and from ethnic Burmans, who traditionally have resided in lowland, central Burma. The non-Burman ethnic nationalities comprise approximately 40 percent of the population and inhabit 56 percent of national territory, although internal borders over time have become increasingly porous. The Kachin are predominantly Christian Baptists and Roman Catholics.

Political and ethnic disputes in Burma date back to the pre-independence era. In 1946, the Burman political leadership began negotiations for independence from Britain, which had been the colonial ruler since 1824, except during the Japanese occupation in World War II. Their leader, Aung San (father of democracy leader Aung San Suu Kyi), sought to include in the political process the ethnic nationalities that were under the British administration. The Kachin, along with the Chin and Shan ethnic groups, participated in the Panglong conference organized by Aung San, and they agreed to sign the Panglong Agreement of February 12,

[1] There are smaller pockets of ethnic Kachin in China, Tibet, northeast India, and in Western countries where Kachin refugees from

1947.[2] The agreement guaranteed the establishment of a federal union and autonomy for the ethnic states, and even the 1947 constitution drafted after Panglong and promulgated in September 1947 met some of the demands of the ethnic groups. The spirit and content of Panglong, however, were never realized. This failed effort and the assassination of Aung San and six of his ministers on July 19, 1947, set the stage for the ensuing civil conflict.

Burma gained independence from Britain in January 1948. Soon after, several armed conflicts broke out between ethnic armed groups and Burma's newly independent central government. Armed opposition movements, some pre-dating independence, soon formed in all of the country's seven ethnic states. The objectives of the ethnic armies varied, ranging from secession to achieving autonomy and rights in a federal, democratic Burma.[3] While there are existing ceasefire agreements in most of the country's ethnic areas, after nearly 50 years of abusive military rule following a 1962 coup, several of these conflicts persist to the present, including in Kachin State.

Armed Conflict and Abuse in Kachin State: 1961-1994

The ethnic Kachin have been living with armed conflict for at least 34 of the last 50 years. In 1961, Kachin nationalists took up arms against the Burmese military government in response to what many saw as growing subjugation by the Burman political establishment. The Kachin Independence Army (KIA) today is Burma's second largest non-state ethnic armed group.[4] Its political wing, the Kachin Independence Organization (KIO), maintains a civilian administration that governs considerable swathes of territory, acting as a parallel state with departments of health, education, justice, and relief and development, among other civic programs.

Kachin State has been a fierce battleground since the founding of the KIO in 1961, with periods of armed conflict among several armed groups. The KIA was for a time fighting simultaneously against the Burmese government and the now defunct, but formerly

[2] See Matthew J. Walton, "Ethnicity, Conflict, and History in Burma. The Myths of Panglong," *Asian Survey*, vol. 48 (6), December 2008, pp. 889-910.

[3] This includes the Kachin, Wa, Karen, Shan, Karenni, Pa-O, Arakan, Chin, and Mon ethnic nationalities, as well as an array of ethnic militias with localized political and economic agendas, some of which have participated in criminal activity, for example opium production and the narcotics trade.

[4] The United Wa State Army is Burma's largest non-state armed group with an estimated 20,000-25,000 fighters.

China-backed, Communist Party of Burma (CPB).[5] After a ceasefire between the KIA and the CPB in 1976, the two groups joined forces against the Burmese army, and the CPB became a ready source of weapons and ammunition for the KIA from China. Civilians suffered the brunt of these conflicts, enduring casualties, abuses, and displacement.

In 1989, the CPB disbanded in a mutiny that drove more than 300 ousted party leaders into China and led to the creation of four new ethnic armed groups in Burma, including the United Wa State Army (UWSA), Burma's largest non-state army.[6] The UWSA entered into a ceasefire with the Burmese government the same year.[7] The ceasefire reportedly permitted some former CPB leaders and their factions to develop the opium and heroin trade in Burma's northern territories.[8] Opium and heroin production in Burma increased dramatically, doubling between 1986 and 1996, and the former CPB became the "most heavily-armed drug trafficking organization in Southeast Asia."[9]

The disbanding of the CPB, the KIA's principal weapons provider at the time, helped precipitate the formal ceasefire that was negotiated between the KIO and Burmese military government in 1993 and 1994. The KIO and the government signed the ceasefire agreement in Myitkyina, the capital of Kachin State, on February 24, 1994, granting the KIO political autonomy over a Special Region in Kachin State. The agreement called for a range of political, economic, and legal ties between the Burmese and Kachin authorities. These involved, for example, a dramatic increase in the exploitation of natural resources and enabling some latitude for the expansion of humanitarian assistance and development in the area, although development would remain negligible for many years to come. The KIO and the central government agreed that certain areas would be under exclusive Burmese government or KIO control, and other areas would be shared territory.

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5 The CPB and its armed wing were founded by Aung San and others and were instrumental in cooperating with the Japanese to push the British out of Burma, and then in cooperating with the British in pushing out the Japanese, and then in securing Burma's independence, which Aung San did not live to see, having been assassinated in 1947.

6 Bertil Lintner, *Burma in Revolt: Opium and Insurgency Since 1948* (Chiang Mai: Silkworm Books, 1999), p. 363-368; See also Bertil Lintner, "Myanmar's Endless Ethnic Quagmire," *Asia Times Online*, March 8, 2012, http://www.atimes.com/atimes/Southeast_Asia/NC08Ae02.html (accessed March 8, 2012).

7 Ibid.

8 Bertil Lintner, "Drugs and Economic Growth: Ethnicity and Exports," in R.I. Rotberg, Ed., *Burma: Prospects for a Democratic Future* (Washington D.C.: Brookings Institute Press, 1998), p. 166.

9 Bertil Lintner, *Burma in Revolt: Opium and Insurgency Since 1948* (Chiang Mai: Silkworm Books, 1999), p. 368.

While the 1994 ceasefire agreement put an end to the fighting, it was not a peace agreement, and did not bring an end to human rights abuses by either party. The KIA retained its arms and continued to forcibly recruit and use child soldiers, and the Burmese army continued to procure forced labor and confiscate land, among other abuses.[10]

Human Rights Abuses Pre-1994

By 1994, the armed conflict in Kachin State had taken an immense human toll. Tens of thousands of displaced Kachin lived in camps along the Burma-China border, tens of thousands lived as unrecognized refugees in China, and, according to the KIO documents from the time, at least 60,000 Kachin were internally displaced in Kachin and Shan States.[11] Following the ceasefire agreement, a significant resettlement effort was undertaken by the KIO.

Many Kachin villagers interviewed by Human Rights Watch described painful histories of abusive forced labor, torture, killings, rape, property destruction, land confiscation, and other abuses by the Burmese army before and after the 1994 ceasefire. The Kachin also spoke of past instances of religious repression, which have contributed to collective fears of persecution and widespread feelings of ethnic and religious discrimination among displaced Kachin communities. Several civilians told Human Rights Watch how their villages were burned to the ground by the Burmese army in the 1970s, 1980s, and early 1990s.

In 1991, the Burmese military government stepped up its campaign against the KIA. At the time, Human Rights Watch reported how the Burmese army targeted civilians suspected of being affiliated with the KIA, forcibly relocated large numbers of Kachin civilians to Burmese military-controlled territory, and committed abuses including summary executions, rape, torture, forced portering, and destruction of property.[12] By 1994, an estimated 60,000 Kachin were internally displaced in Kachin State and northern Shan State, an estimated 20,000 had fled into China, and approximately 4,000 had fled into India.[13] International agencies such as the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross were at the time not allowed to operate on any of Kachin State's borders.[14]

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[10] It is not uncommon to meet older KIA fighters today who have served and fought for decades, since their youth.

[11] Kachin Independence Organization, *Kachin Resettlement Report* (1995).

[12] Human Rights Watch, *World Report 1992* (New York: Human Rights Watch, 1992), Burma chapter, pp. 347-48.

[13] Ibid., p. 348; Ashley South, *Mon Nationalism and Civil War: The Golden Sheldrake* (New York: Routeledge, 2005), p.167.

[14] Human Rights Watch, *World Report 1992,* p.348.

These abuses continue today, and they underline the generational challenges to ethnic reconciliation and human rights progress that lie ahead. The longstanding pattern of abuses by the Burmese army also explains why in the current conflict villagers were quick to flee as sounds of fighting approached their villages. They understandably feared further abuse at the hands of Burmese soldiers.

Events Preceding Renewed Armed Conflict in 2011

In 2008, Burma's military government announced that all armed groups under ceasefire agreements would have to transform into a Border Guard Force (BGF) under the direct control of the Burmese army, as stipulated in the 2008 Constitution. The KIO rejected the proposal, stating that it would not transform itself into a BGF without a political solution to the underlying causes of ethnic tension and conflict.

In 2009, while sporadic negotiations and private communications continued between the KIO and the Burmese government, the KIA began a voluntary recruitment program to increase its standing army.

In October 2010, after months of rising tensions, the Burmese authorities searched a KIA liaison office in Mohnyin Township, Kachin State, and took two KIA officials into custody, which the Kachin interpreted as a provocation. Days later, and for the first time since 1994, the Burmese state-run media referred to the KIA as "insurgents" as opposed to a "ceasefire group," blaming the group for a landmine blast that killed two people in Pingyaing village, Kachin State.[15]

Despite previous promises ensuring Kachin participation in the planned November 2010 national elections, the Burmese government subsequently barred Kachin from registering political parties or independent candidates, removed pro-KIO candidates from the ballots, and effectively barred from voting tens of thousands of Kachin in KIO-controlled areas.

The elections were the first in Burma in 20 years. They followed a constitutional referendum in 2008, widely discredited at the time, that the government considered an integral step in the transition to a "discipline-flourishing genuine multi-party

[15] "KIA Mine Kills Two, Injures One," *The New Light of Myanmar*, October 15, 2010, p. 8.

democracy."[16] The constitution ensured continued military control under a civilian façade, allotting 25 percent of parliamentary seats automatically to the military. The carefully orchestrated general elections on November 7, 2010, were neither free nor fair, and ushered in a government dominated by former and current military officers. The new government officially formed in March 2011, and consists of a bicameral national parliament and 14 regional and state assemblies.

In his inaugural speech, President Thein Sein, a former general, committed his administration to "national unity," a phrase previously used by Burmese leaders to justify abusive military operations, repression, and militarization in ethnic minority areas. "Lip services and talks are not enough to achieve national unity," he declared. However, unlike previous leaders, he did not refer to the many ethnic armed groups as "destabilizing elements" or as threats that needed to be "stamped out." Rather, he acknowledged ethnic armed conflict as a problem attributable to "dogmatism, sectarian strife, and racism," noting that the ethnic peoples had been "going through the hell of untold miseries."[17] This was unprecedented government rhetoric, instilling a measure of hope, or what many observers have referred to as the basis for "cautious optimism."[18]

The post-election period has been marked by several noteworthy changes. The parliament has enacted laws regarding the right to form labor unions and to hold demonstrations, though it is unclear whether they will be implemented in ways that meet international standards. Government officials and parliamentarians have debated formerly taboo topics such as political prisoners, land confiscation, and ethnic conflict, and media restrictions have been eased.[19] Most notably, prominent political prisoners were released in October 2011 and January 2012 after years of domestic and international pressure.[20]

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[16] Human Rights Watch, "Q&A on Elections in Burma," November 3, 2010, p. 5., http://www.hrw.org/news/2010/11/02/qa-elections-burma (accessed March 4, 2012).

[17] Ministry of Foreign Affairs, Government of the Republic of the Union of Myanmar, "President U Thein Sein Delivers Inaugural address to Pyidaungsu Hluttaw," March 30, 2011, http://www.mofa.gov.mm/news/March2011/30-3-2011.html (accessed January 10, 2012).

[18] See, for example, "Cautious Optimism for Burma's Future: Aung San Suu Kyi," Agence France-Presse, September 18, 2011; see also "Burma: Promises of Change, But Abuses Continue," Human Rights Watch news release, January 24, 2012, http://www.hrw.org/news/2012/01/23/burma-promises-change-abuses-continue(accessed March 4, 2012).

[19] "Burma: A Year After Elections, Rights Concerns Persist," Human Rights Watch news release, November 3, 2011, http://www.hrw.org/news/2011/11/04/burma-year-after-elections-rights-concerns-persist.

[20] "Burma: Political Prisoners Released," Human Rights Watch news release, January 12, 2012, http://www.hrw.org/news/2012/01/13/burma-political-prisoners-released (accessed March 4, 2012). At the time of writing, numerous political prisoners remain locked up.

Renewed Armed Conflict in Kachin State: June 2011-Present

The Burmese government began a major military offensive in Kachin State on June 9, 2011, ending 17 years of ceasefire with the KIA.[21]

Several events preceded the onset of the armed conflict. On June 8, 2011, the KIA detained three Burmese soldiers after they entered KIO territory fully armed and unannounced, contrary to the ceasefire agreement. The following day around 3 a.m., Burmese army Battalions 437 and 438 attacked a small KIA contingent at its post in nearby Sang Gang, opening fire and capturing KIA soldier Chang Ying, 31, from the local KIA liaison office.

On June 10, a prisoner exchange agreement was made between the KIA and the Burmese northern commander: the detained Burmese soldiers were to be exchanged for Chang Ying. The KIA reportedly released the two Burmese soldiers to the custody of a Burmese army battalion, and the Burmese army reportedly handed over Chang Ying's personal effects, including his weapon, but not his person. On June 11, the Burmese army unexpectedly handed over Chang Ying's body to the KIA, reportedly claiming that he died from wounds sustained in battle. The KIA publicly asserted that Chang Ying was apprehended from the local liaison office, not the battlefield, and that his body showed signs of having been tortured.[22] Graphic photographs of the alleged torture circulated widely on the internet and throughout Kachin State.

Following these initial attacks, the conflict rapidly escalated. The KIA destroyed several bridges, apparently to obstruct supply lines, laid antipersonnel landmines around the perimeters of its territory, maintained a defensive posture, but then commenced ambush attacks against Burmese convoys. Meanwhile, the Burmese army commenced offensive attacks, laid landmines in areas patrolled by KIA units, and committed several additional battalions to the area– exact troop figures are unavailable. The Burmese army quickly captured key Kachin military outposts in an apparent attempt to encircle KIA strongholds in Laiza, Maijayang, and in northern Shan State, areas long controlled by the Kachin army. In the ensuing months, the KIA subsequently lost control of a significant amount of territory that it had previously controlled and administered.

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[21] For an overview of the conflict and casualties on both sides, see Samuel Blythe and Hkawn Nu, "A thorn in Myanmar's side," *Jane's Terrorism and Security Monitor*, January 2012.

[22] Kachin Independence Organization, "Press Release on Chronology of Events of Armed Conflicts in Kachin Conflict," June 20, 2011.

It is not clear whether the Burmese army military attacks were ordered after the June incidents or were planned well in advance. Human Rights Watch spoke to several Kachin civilians who said they witnessed Burmese army troops moving clandestinely in KIA-held areas weeks before the conflict began, transporting soldiers in unmarked vehicles and wearing civilian clothes over their uniforms.[23] Human Rights Watch could not confirm these accounts.

Major Infrastructure Projects in Northern Burma

Kachin State is rich in lucrative natural resources. Private and state-owned Burmese and Chinese enterprises are heavily invested in resources such as jade, copper, gold, iron ore, coal, and timber. There are also sizable Chinese-led agricultural investments in Kachin State as part of an opium substitution program of the Chinese government.[24] The largest projects in northern Burma in terms of capital inputs and expected earnings are several hydropower dams and dual oil and gas pipelines in conflict-ridden territory in Kachin State and northern Shan State. Below are brief descriptions of large-scale investments in Kachin State, which both the Burmese authorities and the KIA have acknowledged form part of the backdrop to the current conflict.[25]

Taping Hydropower Dam No. 1

The fully functioning Taping No. 1 hydropower dam and the planned Taping No. 2 hydropower dam nearby are on the Taping River in Kachin State. Construction of the dams began in 2007. Taping No. 1 entered into production in February 2011, but became inoperable in June 2011

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[23] See, for example, Human Rights Watch interview E.C., Yunnan Province, China, August 2011. "They came to the village house and there was a small shop. They pretended they were waiting for some of their friends, and when it got dark they still didn't go and they said they would sleep there. We prepared the floor for them and when they took off their clothes we saw they were Burmese soldiers. This was a couple weeks before the fighting started. The next day they left and went towards Bhamo. They were wearing Burmese soldier uniforms underneath their clothes. When they took off their clothes and we saw their uniforms we were really afraid. The shop owner didn't dare sleep at home and came and slept at my house." Several other villagers reported to Human Rights Watch that in the weeks prior to the beginning of the conflict they witnessed Burmese army soldiers poorly disguised in plain clothes transporting packages between Loi Je and Bhamo, through KIA territory.

[24] The opium substitution program is a program of the Chinese government, offering subsidies, tax waivers, and import quotas for Chinese companies invested in northern Burma. Transnational Institute, *Financing Dispossession: China's Opium Substitution Program in Northern Burma*, February 2012, http://www.tni.org/briefing/financing-dispossession (accessed March 6, 2012).

[25] Apart from the major development projects, the conflict in Kachin State has adversely affected local Kachin jade traders and a number of small to medium-sized Chinese-owned jade businesses. In November 2011, a 28-year-old Kachin jade trader told Human Rights Watch: "All roads are blocked now. The road between Mitkyina and Laiza is blocked. The road between Maijayang and Bhamo is blocked. And also the Mitkyina to Kanpaiti road is blocked. So it's not easy to reach the China side. Now to do business we have to travel many days. The travel costs are higher now." Human Rights Watch interview Titus, Kachin State, Burma, November 20, 2011.

after the Burmese army attacked KIA-controlled territory in Sang Gang and Bum Seng villages near the dam sites, and Chinese workers fled from the work site.[26]

Both the government and the KIA have at times linked the fighting to their respective interests in the dam. The state-controlled media, for example, said the Burmese army's 2011 offensive was an effort to consolidate power in the area and provide security for the hydropower dam.[27] In response, the KIO denied that the dam was ever under threat,[28] but indicated that it was uncomfortable with the evolution of the project. In February 2009, the Burmese authorities reportedly destroyed the local KIA outpost in the area of the dam, which was promptly rebuilt by the KIA.[29] Furthermore, the KIO claimed the operating company and the Burmese government agreed to construct the dam in KIO territory without first consulting or seeking approval from the KIO or local communities.[30]

Myitsone Hydropower Dam

The Myitsone dam is the largest of seven multi-billion dollar dams planned on the Mali, N'Mai, and Irrawaddy Rivers in Kachin State, and since 2010 it has been a subject of significant public opposition.[31] On September 30, 2011, President Thein Sein suspended

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[26] See Burma Rivers Network, "Dapein Dam Construction," http://www.burmariversnetwork.org/dam-projects/tarpeindapein.html#5 (accessed February 4, 2012); "Burma: Army Committing Abuses in Kachin State: Government Forces Pillage Villages, Use Forced Labor in Renewed Fighting," Human Rights Watch news release, October 18, 2011, http://www.hrw.org/news/2011/10/18/burma-army-committing-abuses-kachin-state (accessed March 4, 2012).

[27] "Tatmadaw columns inevitably counterattack KIA troops for their threats and armed attacks," *The New Light of Myanmar*, June 18, 2011.The article concludes, "The only objective of the Tatmadaw in launching attacks on KIA is just to protect its members and an important hydropower project of the nation without even a single intention of aggression or oppression."

[28] "Burma: Army Committing Abuses in Kachin State: Government Forces Pillage Villages, Use Forced Labor in Renewed Fighting," Human Rights Watch news release, October 18, 2011.

[29] See "KIO-junta lock horns over Taping hydropower projects," Kachin News Group, March 25, 2009, http://www.kachinnews.com/news/763-kio-junta-lock-horns-over-taping-hydropower-projects.html (accessed March 4, 2012).

[30] See, for example, Human Rights Watch interview F.Z., Kachin State, Burma, November 12, 2011, and Human Rights Watch interview D.B., Kachin State, Burma, August 7, 2011.

[31] Leading up to Thein Sein's suspension of the dam, domestic opposition to the project came to a head. Environmental groups in Burma and in exile, media outlets in Burma and in exile, academics, analysts, pro-democracy leader Aung San Suu Kyi, parliamentarians, and others vocally opposed the dam. Those primarily from lowland Burma rallied around the concept that the dam was contrary to the "national interest," and the issue received unprecedented attention in formerly restricted Burmese media outlets. See, for example, a series of unprecedented editorials published under the article" Myitsone Dam Project will not Discarded anyhow Despite Objections from Any Sources," *Eleven Media Group*, September 14, 2011, http://www.burmanet.org/news/2011/09/14/eleven-media-group-myitsone-dam-project-will-not-be-discarded-anyhow-despite-objections-from-any-sources-electric-power-minister-%E2%80%93-aung-khinmya/ (accessed March 4, 2012). see also "Time to Seize the Moment," *The Myanmar Times*, vol. 31, no. 608, January 2 - 8, 2012, http://www.mmtimes.com/2012/news/608/news60803.html.

the project on the grounds that it was contrary "to the will of the people."[32] Neither his decision to suspend the project nor the unprecedented public outcry against the proposed dam from within lowland Burma made mention of the Kachin conflict, but KIO officials had independently raised objections to the project and cited it as a potential spark for conflict.

Tensions over the project had been building for some time. For several years previously the Myitsone dam had elicited wide public opposition, including by local communities who were displaced by the project and resettled by the government.[33] These communities sought a cancellation of the dam because of fears for the environmental and social effects, and because their interests were not taken into account or protected in the proposed plans.[34]

Concerns about the dam gained added attention in 2011 when a 2009 independent environmental impact assessment of the project—which detailed adverse social and environmental impacts of dam construction and recommended against moving forward with the project—was leaked in full.[35] Soon after the assessment was leaked, an edited version of it appeared, dated March 2010; key findings and disagreeable recommendations in the leaked version had been deleted.[36]

At this writing it remained unclear whether the Burmese government's September 2011 suspension of the project would be made permanent.

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[32] See "Burma: Army Committing Abuses in Kachin State: Government Forces Pillage Villages, Use Forced Labor in Renewed Fighting," Human Rights Watch news release, October 18, 2011, http://www.hrw.org/news/2011/10/18/burma-army-committing-abuses-kachin-state (accessed March 4, 2012).

[33] Since 2005, local Kachin activists have monitored the project. Local community leaders took the formidable risk of sending open letters in opposition to the project, while affected communities circulated anonymous educational leaflets, held riverside Christian prayer services, and published critical reports in Burmese, Kachin, and English languages. For example, the Kachin Development Networking Group released several publications regarding the social and environmental impacts of the Myitsone dam and other dams planned on the Irrawaddy River, available at www.kdng.org/publication.html (accessed January 10, 2012).

[34] Kachin Development Networking Group, *An Update on the Irrawaddy Mytisone Dams Project*, October 14, 2011, http://kdng.org/publication/164-an-update-on-the-irrawaddy-myitsone-dams-project-.html(accessed March 4, 2012).

[35] Biodiversity and Nature Conservation Association, *Environmental Impact Assessment (Special Investigation) on Hydropower Development of Ayeyawady River Basin Above Myitkyina, Kachin State, Myanmar*, October 2009. Copy on file with Human Rights Watch.

[36] See "Burma Rivers Network Response to...Comments on Myitsone Dam," Burma Rivers Network, October 4, 2011, http://www.burmariversnetwork.org/resources/publications/13-publications/701-burma-rivers-network-response-to-china-power-investment-corporation-comments-on-myitsone-dam.html (accessed March 4, 2012); see also "China Power Ignored Internal Report Calling for Dam Cancellation," *The Irrawaddy*, July 15, 2011, http://www.irrawaddy.org/article.php?art_id=21703 (accessed March 4, 2012).

The Burma-China Oil and Gas Pipelines

Since June 2011, the fighting between the KIA and the Burmese army has spread to neighboring northern Shan State, where the Burmese government also has several economic interests, including dual transnational oil and gas pipelines to China. The projects pass through territory long occupied by the KIA, as well as areas occupied by ethnic Shan militias.[37]

The 500-mile-long gas and oil transport pipelines are currently under construction from western Burma to the China border. The long-conceived projects will help China expand the economy in landlocked Yunnan Province while generating billions in revenue for the government of Burma. The oil transport pipeline in particular will enable the Chinese government to import oil shipments from Africa and the Middle East, bypassing the Strait of Malacca, an essential oil shipping lane that is vulnerable to security threats and, in theory, a potential blockade.[38] Both projects establish Burma as a location of geopolitical importance.

Many observers are concerned, based on previous projects, that Burmese security forces will be involved in illegally confiscating land, forcibly displacing residents, using unnecessary force against villagers, and forcibly conscripting villagers for projects related to pipeline construction and maintenance.[39] The pipeline area in northern Shan State between Hsipaw and the China border is considered particularly problematic due to its passage through territory contested by armed ethnic groups. A mix of Kachin, Shan, Burmese, and ethnic Chinese populate the remote region, and sections of it have traditionally been occupied by the KIA's 4th Brigade and other non-state armed groups.[40]

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37 Renewed fighting between the Shan State Army-North and the Burmese army in northern Shan State began in 2011 after the Shan State Army-North joined the Shan State Army-South in its opposition to the Burmese government's demand that the groups disarm or join a Burmese army-controlled border guard force. The Burmese army also initiated attacks against the KIA's 4th Brigade located in northern Shan State in the areas the pipelines will traverse.

38 Associated Press reported on China's concern that the lane was a shipping chokepoint that could threaten China's oil imports, stating, "the U.S. is the only power with sufficient naval forces to enforce a blockade of the 900-kilometer waterway that borders Malaysia, Singapore and Indonesia." Associated Press, "China Aims to Safeguard Its Oil Imports," *The Wall Street Journal*, October 7, 2005.

39 "Burma: Natural Gas Project Threatens Human Rights" Human Rights Watch news release, March 24, 2007, http://www.hrw.org/news/2007/03/23/burma-natural-gas-project-threatens-human-rights (accessed March 4, 2012); See also the Shwe Gas Movement, www.shwe.org (accessed March 4, 2012) and EarthRights International, www.earthrights.org (accessed March 4, 2012).

40 In the late 1990s, a similar scenario unfolded in Burma's Tenasserim Division during construction of the Yadana and Yetagun pipelines from Burma's Andaman Sea overland to Thailand. The Burmese army moved into the proposed pipeline corridor, which resulted in fighting in the area between ethnic Karen rebels and the Burmese army. The army responded to attacks from the Karen forces with torture, extrajudicial killings, and other rights violations against villagers in the area. EarthRights International, *Broken Ethics: The Norwegian Government's Investments in Oil Companies Operating in Burma*

In August 2011, local sources told Human Rights Watch that Burmese authorities had visited the pipeline areas with Chinese businessmen, and that the authorities had already physically designated the area the pipelines will traverse, planting red flags in the ground.[41] Fighting in the area in August reportedly caused villagers to flee.[42]

In September 2011, the Burmese army launched a major offensive in the area of the pipeline corridor in northern Shan State, heavily shelling and capturing areas formerly occupied by the KIA's 4th Brigade, including its headquarters in Loi Kang. Thousands of villagers fled; the accounts of several interviewed by Human Rights Watch are included in Chapter II below. In January 2012, local sources told Human Rights Watch the Burmese army was reinforcing its troops in the northern areas the pipelines are to traverse.[43]

(Myanmar) (Chiang Mai: ERI, December 2010), pp. 26-27. The pipelines have subsequently been linked to forced labor, killings, rape, land confiscation, and other abuses. The Yadana project was the subject of high-profile legal actions brought by affected villagers in European and US courts. Official court documents are made available by EarthRights International, a party to the lawsuit. See EarthRights International, *Doe v. Unocal*, http://www.earthrights.org/legal/doe-v-unocal (accessed March 4, 2012).

41 See, for example, Human Rights Watch interview E.H., Yunnan Province, China, August 2011. He said: "They haven't officially occupied the area yet, they just marked it with red flags where the pipeline will go. The Chinese people came for that and the Namhkan police took them around and gave them security. That was earlier this year…Between Mandown and Namtu townships there is Maimo village and in that area there was fighting recently. The Kachin, Shan, and Burmese soldiers are all there and the pipeline will be going through that village. When they see each other they just shoot at each other. It started last month. All the villagers fled. About 100 fled and went to Namtu township."

42 Ibid.

43 See also "Troops Deployed to Guard Pipeline," *Democratic Voice of Burma*, January 27, 2012, http://www.dvb.no/news/troops-deployed-to-guard-china-pipeline/19961 (accessed March 4, 2012).

II. Burmese Army Abuses in Kachin State

Torture and Forced Labor of Children

In mid-October 2011, Mung A., 16, and his brother Yaw B., 14, were sleeping at a friend's house in Mangpang village when Burmese army soldiers entered the residence around 11 p.m. Mung A. told Human Rights Watch:

> They [the soldiers] shouted, "You must know where the KIA soldiers are because you are Kachin!" When we answered we didn't know, again and again, they threatened us with a knife. They pointed the knife against my stomach and they put it on my brother's throat....We were asked repeatedly where the KIA are and in which house the weapons are hidden, and then the soldier said, "If you don't show us and don't give us the answers then you will be killed and your hands will be cut off."[44]

Shortly thereafter, the soldiers tied the boys up with their hands behind their backs and secured them with a rope hanging from the ceiling, interrogating them for at least two hours. Yaw B. told Human Rights Watch:

> They beat us when we said we didn't know. They slapped us. Then they tied us up.... After we were untied we were taken to Ja Ing Yang village. There were over 10 of us. We were Kachin, and some were Shan.[45]

The boys said they were then forced to work as porters for the military. Mung A. told Human Rights Watch, "A soldier asked us if we wanted to join the Burmese army or wanted to be killed. I told a lie and said that I would join the army. Then the soldiers were about to leave, so we were untied and taken to Ja Ing Yang."[46]

The soldiers forced the boys to carry supplies for the Burmese army in the conflict zone. Yaw B. said, "We carried rice and some other things, like snacks, cookies, and packages of cigarettes."[47]

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[44] Human Rights Watch interview Mung A., Yunnan Province, China, November 2011.

[45] Human Rights Watch interview Yaw B., Yunnan Province, China, November 2011.

[46] Human Rights Watch interview Mung A., Yunnan Province, China, November 2011.

[47] Human Rights Watch interview Yaw B., Yunnan Province, China, November 2011.

According to Mung A. and Yaw B., over the course of four days, the soldiers took them to two villages with 10 other ethnic Kachin and Shan porters, and then to the jungle, stopping in Shadan Pa village, northwest of the KIA's proclaimed capital Laiza on the China border, before moving on. Mung A. said:

> We saw the soldiers rob abandoned shops and houses, and they destroyed some of the belongings of the villagers. They pushed over wardrobes and completely destroyed buildings....They also destroyed and robbed the shops in [Shadan Pa] village, and then we stayed the night there. We stayed two nights in Shadan Pa village.[48]

According to Yaw B.:

> Some of the group was left at that village [Shadan Pa], and some were taken to the jungle... I was taken to the jungle. I was carrying things for four days. There was fighting [between the KIA and the Burmese army] with the group we left behind [on the fourth day of portering]. On the fifth morning we escaped. The fighting wasn't very far away, we could hear it and see it over the hill.[49]

Mung A. also recounted hearing and seeing a battle between the KIA and the Burmese army at the location the porters left behind:

> After we left Shadan Pa, there was fighting there. We heard the fighting, it wasn't very far away, and we were told by the Burmese army officers that there was fighting nearby. There were other people carrying things for the soldiers back there. We don't know what happened to them.[50]

Mung A. and Yaw B. escaped on the fifth day. Mung A. told Human Rights Watch, "When we were sure there were no soldiers, we ran away."[51] The boys ultimately fled to China, where Mung A. is now employed making charcoal, earning 40 Yuan (US$6) per day for a Chinese businessman.

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[48] Human Rights Watch interview Mung A., Yunnan Province, China, November 2011.

[49] Human Rights Watch interview Yaw B., Yunnan Province, China, November 2011.

[50] Human Rights Watch interview Mung A., Yunnan Province, China, November 2011.

[51] Ibid.

The Burmese army has been responsible for numerous human rights violations since armed conflict resumed in Kachin State in June 2011. It has forced men, women, and children to serve as porters in the front lines of the fighting, at grave risk. It has deliberately attacked ethnic Kachin villages, killing civilians, engaging in torture and other ill-treatment of detainees, and committing rape and other forms of sexual violence. Violent threats have often been made with ethnic slurs. The Burmese army has pillaged and razed homes and destroyed civilian property, impacting immediate and long-term food security. The Burmese army–as well as the KIA (see next chapter)–has used antipersonnel landmines that have caused dozens of deaths and seriously wounded many others. Children under 18 have been conscripted into Burmese army ranks.

The Burmese government has not seriously investigated allegations of abuse in Kachin State or taken action to prevent further abuse. In February 2012, Win Mra, the chairman of the National Human Rights Commission told journalists at a news conference in Bangkok that the newly created commission had decided investigations into the conflict zones were "not appropriate at this present point in time.... With the establishment of the peace [between the government and the KIA], other problems like human rights violations and atrocities supposed to be committed against ethnic groups will also recede into the background."[52]

In December 2011, Kachin State Chief Minister U La John Ngan Seng told reporters that national and state governments would "thoroughly" investigate whether either side to the conflict had been responsible for murder, torture, rape, and other abuses in villages in Kachin and northern Shan states.[53] "We are going to carefully assess the veracity of the 'evidence' of these incidents, whether it is firm and definite," he told the *Myanmar Times*.[54] At this writing, no report had been issued regarding any investigation.

Also in December, a four-person team from the national human rights commission visited IDP camps, churches, and other locations in Myitkyina, Waingmaw, and Bhamo, and interviewed IDPs. In a statement of findings to the state media, the national commission highlighted humanitarian needs and praised the government's humanitarian efforts in

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52 "'No Probe Into Ethnic Abuse:' Rights Body" Agence France-Presse, February 15, 2012, http://www.dvb.no/news/no-probe-into-ethnic-abuse-burma-rights-body/20255 (accessed March 4, 2012).

53 Soe Than Lynn, "Govt Pledges to Investigate Kachin HR Abuses," vol. 31, no. 606, December 19 - 25, 2011, http://www.mmtimes.com/2011/news/606/news3160605.html (accessed March 4, 2012).

54 Ibid.

areas it controlled. It did not, however, report on forced displacement or human rights abuses by the Burmese army that have been widely documented by other parties.[55]

Attacks on Civilians and Civilian Objects

Kachin civilians described to Human Rights Watch incidents in which Burmese army soldiers attacked civilians and villages. Some said the soldiers fired on them with small arms when they were fleeing their village. Others said their villages, with no known KIA presence, were shelled by mortars from government positions. Eighteen villagers interviewed by Human Rights Watch reported experiencing threats and intimidation from Burmese army soldiers; seven of them reported that Burmese army soldiers threatened them with death or injury, and two said they were threatened by soldiers who said the army treated all Kachin as KIA and thus as valid military targets.[56]

A 35-year-old woman from Daw H'Pum Yang village told Human Rights Watch how on June 17 Burmese army soldiers opened fire on her home while she and her children were inside:

> While I was taking a shower, the Burmese army soldiers came and fired a machine gun. My children had to jump down from the hut in the farm, and I had to hide to not be shot.... The soldiers had guns they were holding.... They were standing and shooting. They came to the paddy field. If we didn't flee, we'd have been shot dead, because the bullets hit the ceiling.[57]

Burmese soldiers in early June twice fired on a 62-year-old Kachin woman and her three young grandchildren in Sang Gang village. She told Human Rights Watch:

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[55] "Myanmar National Human Rights Commission Issues Statement," *The New Light of Myanmar*, December 14, 2011, p. 9.

[56] See Human Rights Watch interviews E.G, B.A, B.D., D.F., B.E, B.F.,D.G, B.B, D.H., D.I., E.C, Ah Hkaw, F.F., I.C., I.F., I.I, A.Z., and A.E., all in 2011. For cases of villagers being threatened as military targets, see Human Rights Watch interviews E.G., Ah Hkaw, F.F., I.F., I.I., A.Z., and A.E.. Numerous other villagers reported their family members had been violently threatened as military targets by Burmese army soldiers before they fled. See also Physicians for Human Rights, *Under Siege in Kachin State, Burma*, November 2011, www.physiciansforhumanrights.org(accessed March 4, 2012); see also, "Aid urgently needed for refugees fleeing spreading fighting and 'orders to rape' in Kachin State," Kachin Women's Association Thailand news release, July 19, 2011, http://www.kachinwomen.com/advocacy/press-release/37-press- release/65-aid-urgently-needed-for-refugees-fleeing-spreading-fighting-and-orders-to-rape-in-kachin-state.html(accessed March 4, 2012); "WLB launches a short film 'Bringing Justice to Women' demanding the accountability of Burma's military for war crimes and crimes against humanity," Women's League of Burma news release, 2011.

[57] Human Rights Watch interview F.F., Kachin State, Burma, November 16, 2011.

> In the morning when we were cooking rice, we heard gunfire and we left our food and went to the field. When we ran the soldiers shot at us. We were really afraid. We just ran and hid. There were many mosquitoes and we were all wet in the rain, and everyone was crying.[58]

She said that after two days in the jungle without basic provisions, they decided to return home to get food, at which point they were fired upon a second time. "We had already left the house and were on our way out of the village … and the soldiers opened fire on us [again]," she said. "No one was hit. When the soldier opened fire it made me shake and I didn't know what to do. We just ran."[59]

A Kachin farmer, 51, from Sang Gang told Human Rights Watch that a government soldier shot at him on June 12, despite it being clear he was unarmed:

> The soldier and I were [approximately] 50 meters apart, and between us was a small stream. The soldier said nicely, "Brother, come, come," and I pretended to come and then suddenly ran, and the soldier shot at me two times. I hid for one hour near where I escaped. After one hour it was getting dark and I ran. I was afraid of the Burmese.[60]

A Kachin woman, 48, explained to Human Rights Watch how on June 13 the Burmese army fired upon Kawng Ra Zup village, which sits in a valley below a mountaintop Burmese army post. "The Burmese soldiers shot their guns, so we were really afraid," she said. "We don't know what they were aiming at."[61]

A 27-year-old Burmese soldier who defected from Infantry Battalion 142 (IB 142) explained to Human Rights Watch the army's practice of firing mortars into villages to deliberately disperse civilians:

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[58] Human Rights Watch interview C.E., Kachin State, Burma, August 5, 2011.

[59] Ibid.

[60] Human Rights Watch interview C.A., Kachin State, Burma, August 5, 2011.

[61] Human Rights Watch interview B.A., Kachin State, Burma, August 4, 2011.

> In May, I joined the battalion [142] and the conflict started in June. I witnessed the firing of mortars by senior soldiers.... They were 81 mm [mortars] usually. The village was down the mountain, and the soldiers fired into the village and the villagers fled. It was intended that way. It was Dingga. I did not hear of civilian casualties there.[62]

Numerous villagers reported mortar shells exploding in their village in Burma, prompting them to flee. A 40-year-old Kachin woman told Human Rights Watch: "The soldiers shot mortar shells into our village three times. The shells landed in our village around November 10, so we fled.... The mortar shells in our village came from the Burmese post. We could see their direction."[63]

She described how army soldiers threatened her and other villagers:

> They said that we villagers are KIA, and that the KIA are villagers, and that's why they shot at us. The Burmese soldiers said for us not to cross a certain area or they'll shoot us. "We'll shoot everyone, young or old, man or women, we don't care," they said. "If your grandparent is a KIA, we will kill the parents and grandchildren too," one soldier said. "We will kill three generations."[64]

A 40-year-old man from Maru told Human Rights Watch how Burmese soldiers threatened to shoot and kill him and others in his village: "Many mortar shells were fired into the village and the soldiers told us that if we went near the village they'd shoot us. 'You Maru villagers, we'll shoot you all,' they said. So we fled."[65]

A 35-year-old Kachin woman told Human Rights Watch, "The Burmese soldiers always think that all Kachin are KIA, they think like that. It would be very bad for us if we were still in our village."[66]

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[62] Human Rights Watch interview Than Tun, Kachin State, Burma, November 13, 2011.
[63] Human Rights Watch interview A.E., Yunnan Province, China, November 2011.
[64] Ibid.
[65] Human Rights Watch interview A.Z.,Yunnan Province, China, November 2011.
[66] Human Rights Watch interview I.H., Yunnan Province, China, November 2011.

Torture, Beatings, and Other Ill-Treatment

> First they beat him, and then they put a bag over his head and tied it tight around his neck.... When his head was covered with plastic, they poured the water, and the plastic was close on his nose and mouth and he couldn't breathe. Even though he couldn't speak, they kept asking if he was a soldier. They kept beating him severely.
> – "Mae Nu," 40, who witnessed Burmese army soldiers torture an 18-year-old man, Kachin State, November 15, 2011

Kachin civilians, including children, told Human Rights Watch how Burmese army soldiers violently threatened and tortured them in attempts to elicit information about the KIA or confess to KIA links.[67] The Burmese army's use of such tactics in its counterinsurgency operations in ethnic conflict areas has been documented for decades.[68]

On September 26, 38-year-old Mae Nu, her family, and other villagers fled Loi Kang village in northern Shan State, a predominantly Kachin village and the site of heavy fighting between the KIA and the Burmese army. While passing through Nam Hsa village they encountered Burmese soldiers preparing to fight the KIA, heading in the direction from where they were coming. Mae Nu said she saw the soldiers handcuff an 18-year-old man in the group, beat him severely, and "waterboard" him—a form of mock execution in which the victim is brought close to drowning. She said:

> They beat him harshly. I saw this with my eyes. It was after I was interrogated.... I told one of them that he's not a soldier, that he just

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[67] Human Rights Watch interviews in 2011, A.E., B.A., B.B., B.D, B.E., B.F., D.F., D.I., E.C., and Ah Hkaw.

[68] Documentation of abuses such as torture of ethnic minorities became increasingly well documented by international organizations after 1988, the year the government violently suppressed a nationwide pro-democracy uprising, killing thousands of civilians. The growing body of documentation included reports from ethnic areas. See Martin Smith, "Ethnic Groups in Burma: Development, Democracy, and Human Rights," Anti-Slavery International, 1994, p. 64; See also, US State Department Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices," *Burma*, 1991; UN Economic and Social Council, *Report on the situation of human rights in Myanmar,* 1993, p.46. For accounts of torture by the Burmese government as reported by the United Nations since 2002, see Harvard Law School International Human Rights Clinic, *Crimes in Burma*, May 2009,http://www.law.harvard.edu/news/2009/05/28_burma.html (accessed March 4, 2012); For more recent Human Rights Watch reports including documentation of abusive counterinsurgency methods by the Burmese army in ethnic areas, see Human Rights Watch, *Burma: "We are Like Forgotten People": The Chin People of Burma: Unsafe in Burma, Unprotected in India*, January 2009, http://www.hrw.org/de/reports/2009/01/27/we-are-forgotten-people-0 (accessed March 4, 2012); Human Rights Watch, *Burma: "They Came and Destroyed Our Village Again": The Plight of Internally Displaced Persons in Karen State*, June 2005, http://www.hrw.org/reports/2005/06/09/they-came-and-destroyed-our-village-again (accessed March 4, 2012).

> finished his high school last year. I explained like that. One soldier shouted back, "You Kachin people will be destroyed and finished. We will kill you all and none will be left." I was scared. After that, I explained more and more that he wasn't a soldier. Finally they let us all go.[69]

M. Seng, who was forced to porter for the Burmese army in October and November, told Human Rights Watch how the authorities questioned him violently: "They asked us many questions ... and they slapped and punched us.... They asked us one by one.... If we answered in a way they didn't like, they would punch and kick us. I was punched three times while I was answering."[70]

M. Seng said that soldiers confiscated his motorbike key, forced him onto a military truck with eight civilian men and two civilian women, and drove out of town. The truck drove them to a field, at which point the group was forced to walk up a mountain to "a place where Burmese soldiers were gathering."[71]

> When we arrived [at the mountaintop] they said, "Take off all your clothes," and we had to take off all our clothes. They asked us many questions ... and they slapped and punched us. The soldier kicked me in the ribs, my left ribs, and [it] still hurts there. He pointed his gun at me. I was lying down on the ground, on my back, and he pointed the gun at my neck. The soldier was going to shoot me. A guy who had two chevrons [a lieutenant] on his shoulder stopped him and told him not to kill me. "You shouldn't do that," he said. A soldier with three chevrons [a sergeant] on his sleeve was pointing the gun at my neck, and a two [lieutenant] stopped him.[72]

In the cases of Mung A., 16, and his brother Yaw B., 14, (see section on Torture and Forced Labor of Children) Burmese army soldiers allegedly tied the boys' hands behind their backs, attached their hands to a rope hanging from the ceiling, and interrogated

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[69] Human Rights Watch interview Mae Nu, Kachin State, Burma, November 2011.

[70] Human Rights Watch interview M. Seng, Kachin State, Burma, November 19, 2011.

[71] Ibid.

[72] Ibid.

them for information about the KIA for at least two hours, threatening them with death and mutilation.[73]

A 26-year-old Kachin man originally from Gwang Lung in Shan State explained to Human Rights Watch how Burmese army soldiers in Loi Je, a town near the China border, took him to a local administrative office, interrogated him, beat him, and stole money he was planning to use for a down payment on a motorbike. He told Human Rights Watch:

> Two soldiers grabbed each of my arms and asked if I was from Maijayang [a KIA-controlled border town]. When I said no, they said I was lying. They said I was a KIA soldier. I said, "No, I am not."... They kicked me on my side and it made it very difficult for me to speak. If there weren't a soldier on each side of me, holding each arm, I would have fallen. They took my wallet.[74]

Kachin civilians commonly reported ill-treatment in the form of violent threats by Burmese army soldiers. A 60-year-old farmer who fled Zinlum on July 23 told Human Rights Watch how soldiers interrogated and threatened him on a daily basis, suspicious of his family's ties to the KIA:

> The soldiers shot their guns four times to the ground and threatened me and asked, "Where is your son? What is he doing?" I can't speak Burmese well. I just told them I didn't know.... The soldiers would come in the daytime. Everyday [in July] they came and asked me questions and interrogated me, sometimes once, sometimes twice.[75]

A villager from Zinlum told Human Rights Watch:

> We were afraid to live in the village so we went to hide in the jungle one mile from the village.... When we were going back and forth secretly, the

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[73] Human Rights Watch interview Yaw B., Yunnan Province, China, November 2011; Human Rights Watch interview Mung A., Yunnan Province, China, November 2011.

[74] Human Rights Watch interview I.F., Kachin State, Burma, November 21, 2011.

[75] Human Rights Watch interview B.E., Kachin State, Burma, August 4, 2011.

> Burmese soldiers saw us and told us next time they saw us they were going to shoot us. After that, no one went back.[76]

A Kachin woman from Hka Ya, 36, told Human Rights Watch:

> Before we left, when we lived in the house, the Burmese soldiers sometimes came in and asked what type of Kachin we were, who our relatives are, why we didn't leave when the others left. They came and asked these questions. I was very afraid when they came and asked questions. I was afraid they would kill us.[77]

A 70-year-old woman from Num Lang told Human Rights Watch:

> When the villagers refused to work [for the Burmese army] in the fields, they were beaten or arrested. That was happening since before the conflict started, and once the conflict started, many people were interrogated. The Burmese soldiers threatened us, saying they're going to arrest us and burn down the village because of the war with the KIA.... I was threatened and interrogated many times. [78]

A Kachin woman from Sang Gang, 58, explained her fear of Burmese soldiers in her village:

> If we went to live in our village, we think we'd be beaten and tortured by the soldiers. There are many civilians in our village sympathetic to the KIO, so if we went back and stayed we would be killed.[79]

Rape and Sexual Violence

According to the September 2011 report by UN special rapporteur on human rights in Burma, Thomas Ojea Quintana, "Allegations of abuses against civilian populations throughout Kachin State include reports of 18 women and girls having been gang-raped by

[76] Human Rights Watch interview E.G., Yunnan Province, August 2011.

[77] Human Rights Watch interview D.I., Yunnan Province, China, August 2011.

[78] Human Rights Watch interview Ah Hkaw, Kachin State, Burma, November 13, 2011.

[79] Human Rights Watch interview C.D., Kachin State, Burma, August 5, 2011.

army soldiers, and of four of those victims being subsequently killed."[80] Human Rights Watch spoke to a witness of multiple rapes and sexual violence, and community members confirmed the practice. Community-based organizations have reported numerous rape cases since the conflict began. The Kachin Women's Association Thailand (KWAT) reported 37 rape cases in the first two months of the conflict, in which 13 of the victims were allegedly killed.[81] In November 2011, based on the accounts of escaped porters, KWAT reported that four women were being held as "sex slaves" by Light Infantry Battalion (LIB) 301 at the Mu Bum Burmese army post near the China border.[82]

M. Seng, whose description of his violent interrogation is above, told Human Rights Watch that he witnessed several cases of rape and sexual violence in October and November during the three weeks the Burmese army forced him to work as a porter. He said that on October 17, Burmese army soldiers began rounding up Kachin civilians in Myitkyina, the capital of Kachin State, waving them down from the roadside. He said soldiers detained 18 Kachin men and 2 women, transported them out of town, and forced them to walk to a mountaintop. Once they arrived at a clearing, soldiers forced them to remove all their clothing and stand naked in single file line. He said:

> The soldiers touched [the women's] breasts, and they touched their necks very slowly, and they pointed sharp knives on the women's necks.... On October 19, the soldiers started sleeping with the women. At that place, on that night, those two women had to sleep with all the officers.... They all raped them.... I couldn't count them all. They all raped them. They were doing it in front of us. They had small tents. They put the women in the tent, and then forced them to go from tent to tent. We were sleeping outside. We had no tents. Soldiers would come and take the women and bring them from tent to tent. We were so afraid and we couldn't watch the whole night.... After we left the first mountain, the women had to sleep with a

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[80] UN General Assembly, "Report of the Special Rapporteur on the Situation of Human Rights in Myanmar," A/66/365 (September 16, 2011), p. 10.

[81] Kachin Women's Association Thailand, *Burma's Covered Up War: Atrocities Against the Kachin People*, October 2011, http://www.kachinwomen.com/advocacy/press-release/37-press-release/86-report-exposes-atrocities-in-burmas-newest-war.html (accessed March 4, 2012).

[82] "The Burmese Army Must Immediately Release Four Women Held as Sex Slaves Near Kachin-China Border," Kachin Women's Association Thailand news release, November 4, 2011, http://www.kachinwomen.com/advocacy/press-release/37-press-release/88-urgent-appeal-from-kwat.html (accessed March 4, 2012).

> three-star officer [captain]. When we arrived at the second mountain, the women had to bathe. We had to carry the water for women to shower. They had to bathe naked in front of the three-star. First, the three-star had a shower and while he was taking a shower, the women were forced to pour water on him. After he was finished, he made the women take showers. He said, "You have to take a shower or I will shoot you." It was just in front of us.... The soldiers would say things like, "You Kachin women like Burman penises very much, don't you. All the Kachin women like our penises."[83]

Than Tun, 27, told Human Rights Watch he was arrested in early 2011 by the Burmese authorities while driving in Thasi, Magwe Division, in central Burma. He said he was held at the local police station for an unspecified amount of time, then transferred to a local army office and effectively forced to join the Burmese army. He spent four months in training in Magwe and Shwego, and three months with Infantry Battalion 142 on deployment in the conflict zones in Kachin State before he deserted on September 10, 2011. He told Human Rights Watch a soldier from his battalion admitted to their superior officer and described in detail his participation in a gang-rape of a young Kachin women on June 13, 2011, in the area of Ahlaw Bum. Than Tun said:

> I know this because [name withheld] admitted it. He admitted that he and three other soldiers raped her. On that night, his sentry duty was supposed to be from midnight to 2 a.m., but he came back at 4 a.m. When asked where he had been, he admitted it. I was there at the time, when he was being questioned. It was the second commander questioning him.[84]

Than Tun told Human Rights Watch he witnessed the mother of the rape survivor come to the battalion to complain to the commander about the case. He said, "The mother of the lady came and complained at the army camp the next day. [Name withheld] was a unit commander. He admitted to it before the [survivor's] mother came."[85]

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[83] Human Rights Watch interview M. Seng, Kachin State, Burma, November 19, 2011.

[84] Human Rights Watch interview Than Tun, Kachin State, Burma, November 17, 2011.

[85] Ibid.

Than Tun said that the battalion's lieutenant colonel determined that only one of the four soldiers involved would take responsibility:

> He ordered that the first who raped her would be the one to take responsibility. I was there when he said that. So [name withheld] had to take responsibility. After he was ordered to do so, he admitted when the officers interrogated him. There is a rule—if they want to go to civilian prison and get out of the army, then they have to go to prison for three years, but if they want to go to the army prison it's only one year. He chose the option to be in prison in the army for one year. The sentence depends on the crime. It's a military court. He got some mercy because of his family; because he has a family.... Before I had heard about these types of [rape] cases but they weren't my colleagues, so I didn't believe it.... The girl's family was provided with rice and oil. They moved to [village withheld] after the rape.... They moved because of dignity.[86]

Forced Labor

The Burmese army has long used forced labor in its military operations, often without payment and often under abusive conditions in violation of international humanitarian law. Even before it began its major offensive in Kachin State in June, the Burmese army conscripted men, women, and children for abusive forced labor. Human Rights Watch interviewed 12 Kachin who were forced to work for the Burmese army, including three men and two children, aged 14 and 16, who were porters on the front lines. One was a porter for 19 days; two said Burmese soldiers opened fire on them and other porters when they attempted to escape.

In early June, Titus, a 28-year-old jade trader, was traveling on business through Yawyung village in Kachin State when Burmese army soldiers stopped him. He told Human Rights Watch:

> Ahead of me around eight men were already stopped. After me, four or five motorcycle drivers were also stopped. They asked me my name and they wrote it down.... They took my national registration card and they also took

[86] Ibid.

> my motorbike and money.... "We are hiring you," [the soldiers said]. "We will give you money. We urgently need labor." There was no option to refuse the work. They would have beaten me if I said I didn't want to do the work. Two or three men said they didn't want to do it, and they were beaten. They were bleeding from their faces and they fell down to the ground.[87]

Titus described how the group was forced to walk an hour to the jungle, where they met with approximately 60 soldiers and 9 other porters:

> There were around 20 porters [in total], including 7 [ethnic] Shan men. This included 9 men who had been porters for many, many days before us. They told us they didn't know how long we would have to be with them and they said we had to find a way to escape. We didn't know when we'd be free.[88]

Titus said that for several days, soldiers forced the men to porter military supplies through the mountains of Kachin State. "We had to carry bullets and mortars and also rations," he said. It was the rainy season, and they were given makeshift plastic tarps for shelter to sleep, and minimal amounts of food.[89]

Maru Maw, 70, from Hkaibawn village, in a KIA-controlled area of Kachin State, told Human Rights Watch he was shucking corn with his son and daughter-in-law on October 28 when three Burmese army soldiers suddenly approached, pointed their weapons at them, and forced them to carry the corn through the jungle toward the Mu Bum Burmese army post. He said:

> At that point they tied my son and they made him walk in front of them. My daughter-in-law, my son, and I had to walk in front of them. After we walked for a while they tied my daughter-in-law, and me and my son too. They tied my left hand and connected it to my son's right hand with a long string. We

[87] Human Rights Watch interview Titus, Kachin State, Burma, November 20, 2011.
[88] Ibid.
[89] Ibid.

> walked in a line with two soldiers on each side and four soldiers behind us. We carried three big bags of corn. We had about ten bags total.[90]

Maru Maw and his son eventually escaped by jumping into a ravine, and the army opened fire on them. He told Human Rights Watch:

> A soldier was shooting at us. We kept jumping and tumbling down. My body still hurts from it. Two times the soldiers shot at us. The first time they were shooting many times, nonstop. When we landed in the valley, we started to run.... We ran to the village. It was very near.[91]

Maru Maw's daughter-in-law, Sumlut Roi Ja (her real name), did not escape. Aged 28, she had a 16-month-old daughter still breastfeeding at the time she was taken into Burmese army custody—Maru Maw and his wife now look after the child.

Days after this incident, several villagers began scouting the Mu Bum outpost from the hillside and through binoculars, occasionally catching sight of what they believe to be Sumlut Roi Ja at a mountaintop clearing controlled by soldiers. According to Hkaw Lwi, a humanitarian worker in the area, "The figure would look in the direction of her village every morning before disappearing from sight for the rest of the day."[92] A video filmed on November 2, 2011, by local women from Wunpawng Ninghtoi ("Light of Kachin"), a local nongovernmental organization, shows the blurry figure believed to be Sumlut Roi Ja.[93] The family wrote to the Kachin State government in November to try to secure Sumlut Roi Ja's release. A court hearing was held in Naypyidaw on February 23, inquiring into her whereabouts, and two Burmese army officers reportedly testified their units did not detain Sumlut Roi Ja.[94]

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[90] Human Rights Watch interview Maru Maw, Kachin State, Burma, November 21, 2011.

[91] Ibid.

[92] Human Rights Watch interview Hkaw Lwi, Kachin State, Burma, November 21, 2011.

[93] Wunpawng Ninghtoiis a local civil society network, the members of which include agricultural organizations, church groups, and women's organizations. With initial support from a small group of foreign donors and nongovernmental organizations, the group has led the IDP and refugee relief effort in the KIA's eastern division and on the China side of the border, where an estimated 10,000 unrecognized Kachin refugees are located.

[94] "Burmese Army Officers Deny Arrest of Missing Kachin Woman," *Mizzima News*, February 28, 2012, http://www.mizzima.com/news/inside-burma/6664-burmese-army-officers-deny-arrest-of-missing-kachin-woman.html (accessed March 6, 2012).

In describing his experience as a porter, M. Seng told Human Rights Watch how he had to carry mortar shells and belts of bullets in boxes, while others had to carry "landmines and mortar rounds ... rice and other things. We couldn't eat everyday. Some days the soldiers ate dry rations and when they ate dry rations, none of us porters could eat, but when they cooked we could have some food." Portions on good days were minimal, he said. On the days without food, he and the other porters survived on mustard seeds and tree bark.[95]

M. Seng told Human Rights Watch that after 19 days he escaped with four other Kachin men who were also porters, and that during their escape, Burmese soldiers pursued them through landmine-infested jungle and shot at them from behind:

> We realized that if we didn't run, we'd be shot, so four of us followed after him [a porter fleeing]. The soldiers saw us and fired their guns but no bullets hit us. No landmines exploded either...The soldiers followed after us and were shooting. Bullets hit the trees but we didn't get hit. After we got a little far, we heard two explosions behind us. Landmines.[96]

A 36-year-old mother of six children who fled Lusupa village, a government-controlled area, told Human Rights Watch how she and other Kachin villagers, including children as young as 14, were commonly forced to porter for the Burmese army prior to when she fled her village on June 13, 2011. She said: "Sometimes the Burmese soldiers take us into the jungle. Recently the soldiers took villagers for one day to carry their rations and other belongings. And sometimes we have to use our motorbikes to carry things for the soldiers.[97]

A 33-year-old woman told Human Rights Watch that prior to hostilities in June she was forced to carry provisions up a two-mile road to a Burmese army outpost while she was six-months pregnant. She said:

> I had to do forced labor for the Burmese soldiers many times.... [Before the fighting began] we carried rice and other things to [the Burmese army] post and walked back. It took three hours. The path is very steep, we had to climb

[95] Human Rights Watch interview M. Seng, Kachin State, Burma, November 19, 2011.
[96] Ibid.
[97] Human Rights Watch interview D.F., Yunnan Province, China, August 2011.

> the mountain and it was difficult to reach. From morning to evening we had to do it twice. The food we brought ourselves and we ate. They didn't feed us.[98]

Several other villagers interviewed by Human Rights Watch described experiences of forced labor and other ill-treatment prior to the hostilities, and said that was an important reason they fled as soon as the fighting erupted. A 48-year-old woman from Kawng Ra Zup described how every villager had to work for the soldiers in the last year; they were not paid and could not refuse to do the work.[99] A Kachin carpenter explained to Human Rights Watch how the army frequently forced him to work to build infrastructure.[100] Ah Hkaw, a 70-year-old internally displaced woman from Num Lang village in Kachin State, told Human Rights Watch that she witnessed soldiers routinely conscript civilians for labor in her village before and after the armed conflict started in June. Villagers were forced to work on the army's local paddy fields, she said, which were confiscated from local villagers three years ago under threat of fine or jail if they refused.[101]

Extrajudicial Killings

Human Rights Watch documented the extrajudicial killings of at least three Kachin civilians—including one four-year-old child—by Burmese soldiers in June and November, and received information and accounts about other unlawful killings that could not be independently verified.

On June 15, Burmese army forces entered Hang Htak village in Man Je Township searching for suspected KIA members and supporters. A soldier shot and killed Dashi Lu, 52, and her four-year-old grandson Lahpai Zau Di Lawn in their home at close range as they tried to flee.[102]

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[98] Human Rights Watch interview B.B., Kachin State, Burma, August 4, 2011.

[99] Human Rights Watch interview B.A., Kachin State, Burma, August 4, 2011. ("And they hit our village head with their guns and they punched and kicked him. They knocked him out. From the road to the post we had to carry rice. We could not refuse to do the work. We weren't paid anything.")

[100] Human Rights Watch interview D.H., Yunnan Province, China, August 2011. ("I am a carpenter and I know how to make cement and how to build houses. When the army needs a weapons store and flagpole and boundaries, they ask me to work on these things. Everything they need, they ask me, but they never pay me the full amount…I cannot refuse to do this work. Sometimes they ask when I am very busy, but I have to do it.")

[101] Human Rights Watch interview Ah Hkaw, Kachin State, Burma, November 13, 2011.

[102] Human Rights Watch interviews with community aid workers, nongovernmental organizations, and villagers, July-August 2011. See "Burma: Army Committing Abuses in Kachin State: Government Forces Pillage Villages, Use Forced Labor in Renewed Fighting," Human Rights Watch news release, October 2011, http://www.hrw.org/news/2011/10/18/burma-army-committing-abuses-kachin-state (accessed March 4, 2012).

On June 17, credible local sources told Human Rights Watch that a group of soldiers allegedly shot and killed Nhkum Zau Bawk, a farmer and day laborer, in Kawng Gat Ban Ma village as he stood unarmed with a group of friends at a cemetery. Local authorities reportedly provided financial compensation to the man's family (200,000 Kyat, or US$200), but no legal action was taken against the perpetrator.[103] According to a community leader:

> Where he was staying was not far from the military base in Myitkyina, only about one mile away. The security team saw about five people at a gathering in the cemetery. They must have assumed they were KIA and opened fire, killing Nhkum Zau Bawk. Nowadays if soldiers see a group of people, and if they are Kachin, they always suspect at least some of them are KIA. They don't investigate, they just assume some are KIA and respond harshly.[104]

Several human rights organizations have documented killings of Kachin civilians by the Burmese army since the conflict began. On a fact-finding mission to Namlim Pa village, the organization Partners Relief and Development documented the Burmese army killing of a man aged 34, and three children, including a 17-year-old and an 8-year-old boy.[105]

Destruction of Property

The Burmese army has pillaged and razed villages in Kachin State since the fighting began, confiscating and destroying civilian property. Civilians told Human Rights Watch they ventured back to their homes after fleeing only to find widespread property destruction. Eighteen people told Human Rights Watch about the pillaging of their homes and villages.

For decades, undersupplied Burmese army soldiers have pillaged ethnic villages to provide for themselves. In 1998, Burma's War Office declared a policy of economic self-reliance for local units of the Burmese army, largely out of economic necessity to accommodate the burgeoning military, which went from 180,000 soldiers in 1998 to approximately 300,000 in the mid-1990s.[106] This prompted local army units to confiscate resources (food, animals,

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[103] Human Rights Watch interview E.I., Kachin State, Burma, September 13, 2011.

[104] Ibid.

[105] Partners Relief and Development, *Crimes in Northern Burma*, November 2010, http://www.partnersworld.org/usa/index.php?option=com_content&view=article&id=162 (accessed March 4, 2012).

[106] Mary P. Callahan, "Of Kyay-zu and Kyet-su: Tthe Military in 2006," in Trevor Wilson and Monique Skidmore, eds., *Myanmar: The State, Community and the Environment* (Canberra: Asia Pacific Press, 2007), pp. 46-48.

cash, labor, and land) from the civilian population.[107] The impact of this policy have been exacerbated by armed conflict and displacement across much of Burma's rural ethnic areas.[108] Army commanders have ordered villagers in their area of authority to provide food—usually rice and livestock—to feed the troops. Villagers under threat of violence, detention, or being conscripted for labor have little choice but to comply.[109]

The Burmese army has also long engaged in the destruction of villages and means of livelihoods of civilian populations in ethnic conflict areas to deprive insurgents of support from the local population and to punish communities suspected of supporting armed groups.[110] Pillaging and destruction of villages directly impacts the food security of the civilian population, which largely comprises subsistence farmers. It also tends to force them to seek food and resources from insurgent groups. There is no accountability of officers and soldiers committing these abuses.

Villagers described to Human Rights Watch the pillaging of their villages by Burmese army units. A Christian pastor, 65, who fled his village on June 10 told Human Rights Watch:

> The soldiers took all of our belongings. They took 18 motorbikes, one rice mill, and all the buffalo, pigs, chickens—everything. Some people were going to build a house and the soldiers took all their materials. I don't know how many soldiers are there now, but when the fighting started there were 500 soldiers who came, and now they are living in the village. They are living in our houses.[111]

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[107] See, for example, Matthew F. Smith and Naing Htoo, "Energy Security: Security for Whom?" *Yale Human Rights and Development Law Journal*, Yale Law School, vol. 11, 2008: pp. 237-39.

[108] See Center on Housing Rights and Eviction, "Displacement and Dispossession: Forced Migration and Land Rights in Burma," December 2007, http://www.burmalibrary.org/show.php?cat=2173 (accessed March 4, 2012). The report also argues that control of land is a key strategy of the Burmese military and a means of promoting its ongoing expansion.

[109] See, for example, Human Rights Watch, *Burma: "We are Like Forgotten People": The Chin People of Burma: Unsafe in Burma, Unprotected in India*, January 2009, pp. 68-70, http://www.hrw.org/de/reports/2009/01/27/we-are-forgotten-people-0 (accessed March 4, 2012).

[110] See, for example, Human Rights Watch, *Burma: "They Came and Destroyed Our Village Again": The Plight of Internally Displaced Persons in Karen State*, June 2005, p.9, http://www.hrw.org/reports/2005/06/09/they-came-and-destroyed-our-village-again (accessed March 4, 2012).

[111] Human Rights Watch interview C.Z., Kachin State, Burma, August 5, 2011.

A 58-year-old woman who fled her home in Sang Gang told Human Rights Watch that her family had lost nearly all of their personal effects after the Burmese army entered her village on June 9:

> My friends and I [secretly] returned to the house to give the pigs and chickens some food, and when we arrived all the houses [in the village] were messy and [ransacked]. We were very afraid and we wanted to take our food but we could not. Some villagers were in the jungle. We joined them … and then came here [a displaced persons camp]. When I think of our belongings, I feel so much pain. We have tried so hard to collect our things and to save money and to build a house and collect what we need to build our lives.[112]

A 62-year-old woman who fled Sang Gang as Burmese soldiers shot at her twice, along with her three grandchildren, told Human Rights Watch what she found when she got home:

> The next day we returned to the village and found all our belongings were destroyed. We had closed all the doors but they were destroyed. All our wooden clothes boxes were destroyed. All our belongings were thrown everywhere.[113]

Shopkeeper M. Nan, 22, told Human Rights Watch how the Burmese army entered the predominantly Kachin village of Hkasang Yang in northern Shan State on September 26. She and others fled to the jungle and settled on a nearby mountaintop, providing them with a clear vantage point of their village. She said:

> We could see around 200 Burmese soldiers based in our village and taking our things and our food and the goods from the shops. They were also killing our chickens and pigs. The traditional Kachin clothes are made with silver—they are very expensive—they took these kinds of traditional clothes too. They took everything from my shop.[114]

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[112] Human Rights Watch interview C.D., Kachin State, Burma, August 5, 2011.

[113] Human Rights Watch interview C.E., Kachin State, Burma, August 5, 2011.

[114] Human Rights Watch interview M. Nan, Kachin State, Burma, November 15, 2011.

A 35-year-old woman from Daw H'Pum Yang village told Human Rights Watch how on June 17 the Burmese army opened fire on her home while she and her children were inside. She said, "After that, we left the hut and when I came back everything we had was stolen, like mobile phones and clothing and food, everything, even the tractor vehicle and the fuel. The soldiers were very close. We could see them."[115]

The vast majority of Kachin are Christian. A 65-year-old Kachin villager from Sang Gang told Human Rights Watch that when the fighting started in June the Burmese army uprooted a large Christian cross from a hilltop regarded by the villagers as sacred, and used it as a stand for their weapons. The villagers had planned to eventually construct a church on the site. He said, "We villagers made a large cross for the [proposed] church [on the hilltop], and the Burmese soldiers took it out of the ground and used it to prop up their big machine guns."[116]

Other human rights groups have documented how in November and December the Burmese army razed homes and Christian churches in several villages in Kachin State, including Namlim Pa, Dawhpum Yang, Dingga, Namsang Yang, Aungja, and Sanpai villages, leading thousands to flee to improvised camps on the border or in China.[117] A local humanitarian worker who was guiding villagers as they fled to a remote area of the China-Burma border told Human Rights Watch, "On [November 9], the Burmese army burned down … Aungja village. Now there are about 1,300 people from 21 villages heading to the border."[118]

Child Soldiers

The Burmese army has recruited and used children as young as 14 years old in its armed forces. Several former child soldiers have deserted the army in Kachin State in recent months.

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[115] Human Rights Watch interview F.F., Kachin State, Burma, November 16, 2011.

[116] Human Rights Watch interview C.Z., Kachin State, Burma, August 5, 2011.

[117] See, for example, Partners Relief and Development, *Crimes in Northern Burma: Results from a Fact-Finding Mission to Kachin State*,November 2011, http://www.partnersworld.org/usa/index.php?option=com_content&view=article&id=162 (accessed January 10, 2012); Free Burma Rangers, *Kachin State- Burma Army Burns and Loots Homes in Wai Maw District Kachin State, Burma*, November 15, 2011; "Burma: Kachin churches attacked, women raped, and civilians killed by military while regime talks of reform," Christian Solidarity Worldwide, news release, October 21, 2011; Francis Wade, "Images Show Scorched Earth in Kachin War," *Democratic Voice of Burma*, December 19, 2011; "Troops Raze Villages, Locals Flee," *Democratic Voice of Burma*, November 11, 2011.

[118] Human Rights Watch interview A.I., Kachin State, Burma, November 18, 2011.

Human Rights Watch has previously documented the recruitment and use of child soldiers by the Burmese army and non-state armed groups.[119] The forced recruitment of children commonly occurs when Burmese military recruiters accost unaccompanied children in train stations, on the streets, or at other public locations. Children are commonly asked to produce a national ID card, and upon their failure to produce the card, they are typically given two options: serve jail time or enter the army. Burmese military recruiters target children in order to meet unrelenting demands for new recruits due to continued army expansion, high desertion rates, and a lack of willing volunteers. Uniformed members of the army recruit soldiers, as do plain-clothes civilian "recruiters"—men who profit from the forced recruitment of soldiers to fulfill army officers' recruitment quotas. According to former International Labour Organization (ILO) Liaison Richard Horsey, it is "easier for these agents to trick or force children to join up, rather than convincing an adult to do so."[120]

In the 2007 report *Sold to be Soldiers,* Human Rights Watch documented how a military staffing crisis led to the forced recruitment of children who were sold to the army by recruitment brokers and commonly abused throughout the course of their training and time in the military.[121]

S. Thu, 19, who is half Kachin and half Karen, and now works for the KIA, explained how soldiers at a bus station forcibly recruited him into the Burmese army when he was 15 years old, in his village in Hpaya Pyo, Pegu Division (Region). He told Human Rights Watch:

> I was trying to buy a bus ticket. [Burmese soldiers] checked for an ID card, and because I didn't have a card I was sent to the Pegu police station for a month. Then I was told, "You can join the army or be imprisoned, so you should join the army, because if you are imprisoned you will have a black mark on your record." I was convinced and joined.[122]

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[119] Human Rights Watch, *Sold to be Soldiers: The Recruitment and Use of Child Soldiers in Burma*, October 2007, http://www.hrw.org/en/reports/2007/10/31/sold-be-soldiers (accessed March 4, 2012); Human Rights Watch, *My Gun Was as Tall as Me: Child Solders in Burma*, October 2002.

[120] Richard Horsey, *Ending Forced Labour in Myanmar: Engaging a Pariah Regime* (Routledge: New York, 2011), p. 137.

[121] Human Rights Watch, *Sold to be Soldiers*.

[122] Human Rights Watch interview S. Thu, Kachin State, Burma, November 13, 2011.

S. Thu then underwent basic military training for four months and was assigned to Light Infantry Battalion 348 in Mogok Township, Kachin State. In February 2011, after four years in the army, he deserted, citing economic hardship from salary confiscation and displeasure at the practice of arbitrary taxation of villagers, in which he took part. He said:

> The officers kept all of our salary and when we complained, we were accused of disobeying the officers. I had to sell my uniforms sometimes to get money.... If we were assigned in a gate [road checkpoint], we asked money from the civilians. I didn't realize [the impacts of that on local people] before. That's the thing I didn't like.[123]

S. Thu explained that his most challenging personal hardship as a child soldier—from age 15 to 18—was physical abuse by senior officers. "The most difficult time for me [as a child soldier] was that I had to stay close to the commander of the battalion. Whenever he was drunk I'd be abused and beaten, sometimes badly."[124]

Lian C., a 21-year-old ethnic Chin from Hakha, Chin State, has been serving in the KIA. Both of his parents were members of a small Chin non-state armed group and were killed by a Burmese army ambush when he was 10 years old. He and his sister were raised by his uncle and other "adopted parents"—close friends of the family. By the time Lian was 17, he was working in a "gambling house"—a local casino—in Tongmani, Kachin State, which is a well-known gold mining area. He told Human Rights Watch:

> I went with my friend [to Myitkyina], but when we arrived the army took us. We were forced to join the Burmese army against our will. When I was conscripted I was asked my name, but I didn't mention my name correctly. I was sent to basic military training in Byi Duang. When we finished basic military training I was deployed and assigned to a battalion in Dani [in northwestern Kachin State], IB 238. I was 17.[125]

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[123] Ibid.

[124] Ibid.

[125] Human Rights Watch interview Lian C., Kachin State, Burma, November 13, 2011.

Lian C. explained that harsh punishments and a lack of adequate food were the principal hardships for a child soldier in the Burmese army. He told Human Rights Watch, "I deserted because I faced a lot of beatings and hardships in the army. That's why. I couldn't stand it.... I just wanted to work for the family and live an ordinary life."[126]

Lian C. deserted the army in 2010, went back to his village, and, after the Kachin conflict started in June 2011, he traveled to Laiza, where he says he witnessed the plight of internally displaced populations and decided to join the KIA.

UN agencies such as the ILO have consistently reported on the forced recruitment of child soldiers by the Burmese government.[127] According to Burma's Ministry of Foreign Affairs, 110 child soldiers were released from the army in 2010, and of those, 40 were released in response to complaints lodged under the ILO's complaints mechanism for the elimination of forced labor.[128] The same year, the ILO received 201 complaints of forced recruitment of children, a significant increase over the 86 complaints filed in 2009.[129] Considering these figures, the UN secretary-general's 2011 report on children and armed conflict noted that "the patterns of recruitment of underage children into the [Burmese army] did not alter significantly."[130]

The ILO reported to Human Rights Watch that in 2011 it received 236 complaints of underage forced recruitment, and that 57 child soldiers were released or discharged in response to ILO complaints. In the same year, the ILO documented 20 cases of alleged underage recruits (below 18 years of age) who were imprisoned for desertion, and 3 cases of underage imprisoned deserters who were released from prison. It also issued 81 "protection letters"—a document intended to protect a child from arrest for desertion while the investigation into their recruitment is in progress—to underage recruits who had run away from the military.[131]

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[126] Ibid.

[127] See, for example, reports by the UN secretary-general to the Security Council on children and armed conflict, S/2002/1299 (November 26, 2002), S/2003/1053 (October 30, 2003), S/2005/72 (February 9, 2005), S/2006/826 (October 26, 2006), A/65/820–S/2011/250 (April 21, 2011).

[128] UN secretary-general's report to the UN General Assembly on children and armed conflict, A/65/820–S/2011/250 (April 21, 2011), p. 10.

[129] Ibid.

[130] Ibid. p. 24.

[131] Human Rights Watch email correspondence with ILO Liaison Officer Steve Marshall, February 25, 2012.

Antipersonnel Landmines

Burma has one of the highest landmine casualty rates in the world. In 2011, it was one of only three countries worldwide where government forces are confirmed to have used antipersonnel mines, and the only country where both state and non-state armed groups used them in 2010-2011.[132] The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, also known as the Mine Ban Treaty, comprehensively prohibits antipersonnel mines and requires their clearance and assistance to victims. As of January 31, 2012, 159 states were party to the treaty. Burma has not acceded to the treaty.

In March 2011 the chair of Burma's National Democratic Force (NDF), an opposition political party, informed the International Campaign to Ban Landmines (ICBL) that his party supported the mine ban, and that the NDF would raise the issue in parliament.[133] In February 2011, a former commander-in-chief of the Burmese army stated to the ICBL that, "Mines must be banned according to both humanitarianism and religion in a civilized world," and pro-democracy leader Aung San Suu Kyi called on all combatants to "cease the way of mines" and all groups to "start to ban landmines in their operations without waiting for their opponent to start to do it."[134]

Human Rights Watch interviewed a KIA soldier who lost a leg to a Burmese army landmine, two Kachin doctors treating KIA patients injured by landmines at the front lines, forced porters who carried landmines to the front lines for the Burmese army, and displaced Kachin civilians who complained about landmines in their villages in Kachin State.

Dr. La A., a professionally trained, Kachin medical doctor providing treatment to front line survivors in KIA-held territory, told Human Rights Watch, "The difference between Kachin and Burmese landmines is that the KIO mine blasts shrapnel inside the body, whereas the

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[132] International Campaign to Ban Landmines, *Landmine Monitor 2011*, p. 1, http://www.the-monitor.org/index.php/publications/display?url=lm/2011/ (accessed March 4, 2012).

[133] ICBL meeting with Dr. Than Nyein, Chairman, NDF, and other central committee members of the NDF, Yangon, March 2, 2011. The NDF obtained some seats in Myanmar's new parliament, elected in October 2010. International Campaign to Ban Landmines, *Landmine and Cluster Munitions Monitor*, Myanmar/Burma, October 30, 2011, http://www.the-monitor.org/custom/index.php/region_profiles/print_profile/330#_ftnref4 (accessed March 4, 2012). Human Rights Watch is a founding member of the ICBL.

[134] Statement by Aung San Suu Kyi, Yangon, 28 February 2011. The full statement is available at www.burma.icbl.org (accessed March 4, 2012). International Campaign to Ban Landmines, *Landmine and Cluster Munitions Monitor*, Myanmar/Burma, October 30, 2011.

Burmese one is not shrapnel, but a blunt force explosion, usually taking an entire limb."[135] Dr. La A. said he has treated over 20 KIA fighters wounded by landmines since June 2011, "and they have been from both Kachin and Burmese landmines… Most have accidentally stepped on landmines or accidentally set them off."[136]

KIA soldier Brang Mai, 32, described how on October 17 he was on a patrol with his regiment in Momauk when he stepped on a Burmese army landmine. Brang Mai lost his left leg from below the knee and sustained other minor injuries from the blast. He told Human Rights Watch, "Seven people in front me already passed, and then I stepped on it. After one hour I was vomiting a lot.... It took three days to reach here [KIA hospital]."[137] The attending physician told Human Rights Watch the injuries sustained appeared to be from a Burmese army landmine.

Brang Mai told Human Rights Watch the Burmese army uses "five or six different types of landmines, and they often leave a bullet or weapon to lead us in, and when we pick it up the landmine explodes, and so does the shell left behind."[138]

[135] Human Rights Watch interview Dr. La A., Kachin State, Burma, November 16, 2011.
[136] Ibid.
[137] Ibid.
[138] Ibid.

III. Abuses by the Kachin Independence Army

Child Soldiers

> I have friends in Myitkyina but they are in school. I guess I would go back to school if someone would support my education.
> – "Maru P.,"16-year-old KIA soldier, Kachin State, November 14, 2011

Human Rights Watch documented the use of child soldiers by the KIA. The recruitment of children is unlawful under international law whether or not the child enlisted voluntarily or was forcibly conscripted.

For decades the KIA forcibly recruited children into their ranks and deployed them on the front lines.[139] Human Rights Watch was unable to independently confirm whether forcible recruitment is still occurring. However, the KIA still accepts children under the age of 18 to join its army and uses them in combat operations.

When interviewed by Human Rights Watch, Larip M. was a 15-year-old soldier in the KIA. In November 2010, when he was 14, he took a bus from his home in Myitkyina to the KIA's headquarters in Laiza. He told Human Rights Watch, "I always wanted to be a soldier. When I first arrived, I was sent back. And even before and after the basic military training I was told to go back and continue my education."[140]

Larip M. entered basic training on October 29, 2010, after being refused twice by the KIA:

> We have to shoot guns in the basic military training before we graduate. When I shot the gun it was the first time for me.... There were many people in my training class. They all had to learn.[141]

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[139] Human Rights Watch, "My Gun Was As Tall As Me": Child Soldiers in Burma, October 2002, pp. 147-150, http://www.hrw.org/reports/2002/10/16/my-gun-was-tall-me (accessed March 4, 2012).
[140] Human Rights Watch interview Larip M., Kachin State, Burma, November 14, 2011.
[141] Ibid.

Upon graduation from basic training, Larip M. says he was not issued a gun due to his age, and mostly performs administrative tasks and cooking for senior soldiers in Laiza.

Maru P. told Human Rights Watch how he moved from a Kachin village in northern Shan State to Laiza after the Burmese army killed his father. He joined the KIA on October 10, 2010, when he was 15-years-old. He says his mother approved of him becoming a soldier and asked KIA officers to let him join. "The officers said I was still young, but that if I was very interested and want to fight the Burmese army, we will let you."[142]

He lived at an army base in Laiza for about two weeks before beginning three months of basic military training. He told Human Rights Watch:

> We had to learn how to shoot, how to walk, how to live, how to behave and live in the jungle, and other things. It was three months long. There were over 200 in the training. Most were older but I had some friends my age in the training.... I don't have my own gun and cannot carry one because they think I am too young. I mostly prepare meals for officers and send letters back and forth.[143]

Wearing his green KIA-issued uniform, he told Human Rights Watch other child soldiers were sent home. "They were told to go back because they are too young. They told me to go back too but I have so much hatred against the Burmese army so I insisted on staying. I kept insisting."[144]

Maru P. is determined to remain a soldier in the KIA but he claims KIA soldiers spoke to him about returning to school. He said, "Even if I go to school, it is not attractive to me anymore. I just want to fight Burmese army soldiers. But when the political situation becomes stable I will think of going back to school. The officers have talked to me about that."[145]

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[142] Human Rights Watch interview Maru P., Kachin State Burma, November 14, 2011.

[143] Ibid.

[144] Ibid.

[145] Ibid.

Human Rights Watch spoke to KIA leadership about its use of child soldiers. A senior KIA general acknowledged the use of child soldiers in the KIA. He emphasized the KIA's commitment to end the practice, adding that the KIA does not actively recruit children:

> We do have some child soldiers, and we are trying to find solutions. They are coming for many reasons, so we need to settle it. We are preparing pamphlets about child rights and child soldiers to be taught in schools.... We do not recruit child soldiers. Yes, there are a few [even under age 15].[146]

There is currently no child soldier demobilization and reintegration campaign underway in KIA-controlled areas.

Landmines

Burma was one of four countries in the world in 2011 in which non-state armed groups are confirmed to have used antipersonnel mines.[147] In interviews with Kachin civilians, Kachin physicians, and KIA leadership and soldiers, Human Rights Watch confirmed the KIA continues to manufacture and use antipersonnel landmines, and that the KIA has inadequately mapped the locations of the landmines it has planted.[148] Moreover, two confidential sources independently estimated that as of November 2011, more than 40 KIA soldiers had died since June from injuries sustained by accidentally detonating their own KIA-manufactured landmines in the field or in training sessions.[149] Kachin medical doctors confirmed accidental injuries and deaths were mounting.

A KIA soldier for 22 years was recovering from shrapnel wounds when he explained to Human Rights Watch how on November 15, 2011, one of his trainees was killed by accidentally detonating a KIA landmine. He said: "When I was giving an introduction on how to handle a landmine, somebody behind me made a mistake and a mine exploded in his hands, injuring me too. The one who switched the mine, he died. It happened at Hpagawn [in Kachin State]. It happened yesterday."[150]

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[146] Human Rights Watch interview F.Z., Kachin State, Burma, November 12, 2011.

[147] ICBL, *Landmine Monitor 2011*, p. 1.

[148] Each team is said to have one person whose responsibility is to map the locations of landmines, although confidential sources communicated a lack of confidence in the comprehensiveness and accuracy of the current systems.

[149] Human Rights Watch interviews, Kachin State, Burma, November 2011.

[150] Human Rights Watch interview H.F., Kachin State, Burma, November 16, 2011.

Human Rights Watch was unable to confirm civilian deaths from KIA landmines. On October 15, 2010, the Burmese government accused the KIA of being responsible for two landmine fatalities and injuries sustained by one survivor in Pingyaing village, Kachin State.[151] Following the incident, the KIO reportedly compensated the victims' families and released a statement that warned the public of additional mines in the area, stating that they had planted landmines in the area as a result of increased tensions with the Burmese government.[152]

An ethnic Maru woman from Zinlum village in KIA-controlled territory of Kachin State told Human Rights Watch that since the conflict began in June 2011, the KIA has planted landmines around her village. She said the KIA also encouraged her community to remain in their village to keep the Burmese army from taking the area:

> There are many landmines around our village from the KIA, because near the village is a Burmese post, so the KIA put landmines around our village. We're afraid of these. The KIA also told us that if we didn't stay in the village, our village would be destroyed, so they said we needed to stay. KIA told us which areas to avoid because of landmines, they warned us, but for us villagers, we get food and vegetables from the forest, so this was very difficult.[153]

This woman and nearly her entire community fled to China on November 10, 2011.

Two civilians forced by the Burmese army to porter on the front lines reported that their captors used demining equipment to detect and disarm KIA landmines. A 23-year-old forced porter told Human Rights Watch:

> The officers ... searched out the KIA's landmines. The machine they had would beep when it came to a landmine. And when they saw a landmine, the soldiers carried a different instrument and they would take out the mine. They had two soldiers who were mine searchers. Some landmines exploded just a minute after they took it out from the land.[154]

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[151] "KIA Mine Kills Two, Injures One," *The New Light of Myanmar*, vol. XVIII, no. 177, October 15, 2010, p.8.

[152] "Kachin group gives funds to mine victims' families," *Mizzima*, 18 October 2010, www.mizzima.com (accessed March 4, 2012); *Landmines and Cluster Munition Monitor*, October 30, 2011.

[153] Human Rights Watch interview A.E., Yunnan Province, China, November 2011.

[154] Human Rights Watch interview M. Seng, Kachin State, Burma, November 19, 2011.

IV. Protecting Internally Displaced Kachin in Burma

Plight of Displaced Persons

Since the conflict in Kachin State began in June 2011, at least 75,000 ethnic Kachin have fled their homes and villages to avoid the fighting between the KIA and the Burmese army, and Burmese army abuses. This figure includes approximately 20,000 internally displaced Kachin in Burmese government-controlled areas in towns such as Myitkyina, the state capital, and Bhamo; approximately 45,000 internally displaced who fled to KIA-controlled territory nearer to the Burma-China border; and approximately 10,000 who fled to China, where most live as unrecognized refugees in squalid, improvised town and jungle camps.[155]

Humanitarian needs of internally displaced persons (IDPs) in Burma include food and other necessities, such as medicine, blankets, warm clothing, firewood and fuel, and adequate shelter. Problems are particularly severe where population density is high, as in several camps visited by Human Rights Watch. In November, a local civilian aid worker told Human Rights Watch:

> The immediate needs and long-term needs are food and food security. That is, the immediate provision of food to IDPs, and the provision of adequate food for a longer period of time.… Shelter is another big problem now, and medicine. In [the largest camp outside Laiza] there's a huge camp but no hospital. We are trying to build a 15-bed hospital. It's a small clinic. Doctors are not there. Only small-qualified nurses trained here. They can only provide basic medications. Also it is winter. It is very cold.[156]

These needs have become more acute in recent months. On-site health care in the camps or in locations available to camp residents is insufficient, nutrition needs of children and pregnant women are not being met, and there is, at the time of writing, a need for better data about humanitarian conditions and needs.

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[155] UNOCHA reported to Human Rights Watch in March 2012 that there were approximately 20,000 IDPs in government controlled areas; RANIR reported to Human Rights Watch in March 2012 that there were approximately 45,000 IDPs in KIO-controlled areas; and reliable sources in Yunnan report to Human Rights Watch that there are at least 10,000 Kachin refugees in China.

[156] Human Rights Watch interview F.A., Kachin State, Burma, November 12, 2011.

Food Security

Food security for the displaced Kachin population remains a priority concern. Since the conflict began, the KIO has provided approximately three cups of rice per person per day to the growing IDP populations, along with other food items, such as oil. In the KIO's eastern division, Wunpawng Ninghtoi has been the primary donor of food aid. But many villagers report food shortages and are worried about what is to come.

A 38-year-old woman from Loi Kang village, now living in a remote camp along the Burma-China border, told Human Rights Watch she was concerned about the immediate provision of food aid in the IDP camps, as her family has no other source of sustenance. "We got rice and oil from Wunpawng Ninghtoi and also some warm clothes, but I worry that if the supplies for us stop coming and if there is not enough food.... I am very worried about that."[157]

Long-term food security is a concern due to the timing of the initial fighting between the Burmese army and KIA, which began in early June: planting season. Tens of thousands of people were forced to flee their homes and farms at the very time they were meant to plant their crops, which will have a serious impact on food security for large swathes of the population. The Kachin traditionally plant in June and harvest in November, before the cold winter months. Outside an IDP camp in Laiza, a local aid worker told Human Rights Watch, "When the people started farming in the rainy season they had to leave their village because the [Burmese] army attacked. Some of them left behind their farmland and ploughs."[158]

A 70-year-old displaced woman from Bum Seng village told Human Rights Watch in early August: "We couldn't plant anything because the war started."[159] She said that only 3 of 38 families in her village were able to plant their rice before the fighting started. "This means we'll have a serious problem.... We don't know what to do. If we cannot go back, we will try our best to survive. Either way we won't have rice."[160]

Other families were able to plant rice, in many cases at great personal risk, but they had to flee before the November harvest. A 28-year-old mother of two from Ja Kai village told Human Rights Watch that her family waited to flee until the fighting was immediately upon their

[157] Human Rights Watch interview H.A., Kachin State, Burma, November 15, 2011.

[158] Human Rights Watch interview F.A., Kachin State, Burma, November 12, 2011.

[159] Human Rights Watch interview D.Z., Kachin State, Burma, August 6, 2011.

[160] Ibid.

village to ensure they could plant their crops: “When the fighting started in Bum Seng on June 9, we heard the bombs and gunfire. We didn’t run until two weeks later. We were planting our rice and we wanted to finish that.”[161] This family, like thousands of others, is now living in an IDP camp near the China border, unable to return to their farm to harvest their crops.

In November, a woman from Loi Kang, Shan State, told Human Rights Watch, "I couldn’t harvest my paddy field before I fled, I just had to go. This is the same for the whole village. What will we do?"[162] She was able to stay in her village until early November, when the fighting neared and she had to flee for safety.

Nevertheless, some people displaced by the conflict are attempting to return to their villages to harvest rice at great personal risk. A local civilian aid worker explained to Human Rights Watch:

> Now is the harvesting time. Some planted their rice and paddies, and some dare to sneak back and collect their harvest, but it is not guaranteed they will be able to bring that harvest back to their families. Some [donors and officials] will say, “They are harvesting in their farmland, why should we provide them food?” Well, most aren’t able to go and harvest their paddies because they didn’t plant rice, and even those who return to their village to harvest, there are no guarantees they’ll be able to bring that back to the IDP camps, let alone survive the trip. That’s why we have to think about their food security.[163]

Humanitarian Access

The biggest protection issue currently faced by the growing internally displaced population in KIA-controlled Kachin State is their ability to access humanitarian aid, which reflects continuing barriers to delivery of aid by community-based organizations and national, international, and UN agencies.

When the conflict began, local, ad hoc Kachin-led organizations in KIA-held areas formed to provide aid to the growing numbers of displaced persons arriving sporadically in newly

[161] Human Rights Watch interview A.I., Kachin State, Burma, August, 2011.
[162] Human Rights Watch interview G.H., Kachin State, Burma, November 15, 2011.
[163] Human Rights Watch interview F.A., Kachin State, Burma, November 12, 2011.

formed camps located outside Laiza and in remote areas of the KIO's eastern division. In the camps outside Laiza, this included the Refugee Action Network for IDPs and Refugees (RANIR), which describes itself as a network of organizations committed to coordinate relief for the populations displaced by the conflict, with a non-exclusive membership including civil society organizations as well as KIO-affiliated organizations. Wunpawng Ninghtoi, an independent network of civil society and church groups, was formed in the KIO-controlled eastern division after fighting began to coordinate independently funded aid delivery to at least six IDP camps. The civil organizations Kachin Women's Association and Kachin Women's Association of Thailand, members of both RANIR and Wunpawng Ninghtoi,[164] have also provided emergency aid coordination; both are located on the ground in Kachin State.

Financial and capacity support for these groups has been negligible. For instance, according to Wunpawng Ninghtoi, the only sustained support it received during the first six months of the conflict came from Norway-based Partners Relief and Development, with one-time grants from other Western organizations. Kachin churches and civilians in China, Burma, and abroad contributed generously and swiftly to the aid efforts along the Burma-China border, but these amounts were also inadequate relative to the needs. In Maijayang, private Chinese landowners donated housing that was formerly lived in by staff of a local Chinese-owned casino.

In government-controlled areas, the UN Office for the Coordination of Humanitarian Aid (OCHA), UNHCR, UNICEF, the World Food Program (WFP), several international and local nongovernmental organizations, local Kachin churches and other organizations have attended to the emergency needs of approximately 20,000 IDPs in 70 locations in five townships. These pockets of IDPs are located in areas within the administrative control of the central government, and OCHA and WFP have operated in these areas with the authorization of the Burmese authorities.

A September 2011 inter-agency rapid needs assessment conducted in government-controlled areas, entitled "Kachin Rapid Assessment/1: Humanitarian Partners in Kachin," was coordinated by OCHA and implemented by local, national, and international partner

[164] Wunpawng Ninghtoi is also a member of RANIR.

organizations.[165] The assessment explains the situation at the time of approximately 6,000 Kachin IDPs. It describes the living conditions of IDPs as "challenging," the humanitarian needs as "urgent," and that there are "major needs yet to be covered" in the relief effort, with respect to shelter, health, non-food items, food access and food security, water, and sanitation.

A December 2011 inter-agency assessment noted that due to greater humanitarian access in certain government-controlled areas, "IDPs in Myitkyina and Waingmaw have been receiving more assistance than those in other townships," namely than those in KIA-controlled areas, but also including Bhamo and Mansi in government-controlled territory.[166] The assessment noted the sharp increase in the number of IDPs, as well as the funding shortages of UN agencies, to say nothing of the funding shortages of local Kachin organizations operating in the conflict zones. According to the December report, "The UN's advocacy efforts continue to deliver assistance to all IDPs including those in Laiza and in other locations along the border with China. The number of displaced and needs are rapidly increasing and partners have mobilized all existing stocks and funds available."[167]

UN agencies had long sought to ensure a sustained relief effort in KIA-controlled territory along the Burma-China border. In early December, after months of negotiations, the Burmese government granted a UN team humanitarian access to KIA-controlled areas. On December 12, a convoy of two trucks carrying basic household and shelter items on behalf of the UN reached camps for internally displaced persons near Laiza.

Prior to this access, from June to December, the Burmese authorities had in effect obstructed UN agencies from delivering aid to the tens of thousands of IDPs behind the front lines. Since December, no further access has been granted. OCHA notes, "the UN's advocacy efforts continue."[168] According to humanitarian aid workers in Burma's former capital Rangoon, humanitarian access has not been obstructed by outright government or military denials, but rather through stalled responses, requests that receive no reply, and

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[165] UNOCHA and humanitarian partners, "Kachin Rapid Assessment / 1: Humanitarian Partners in Kachin," September 2011. The assessment was conducted by UNOCHA, MSS, KBC, KURM, MCC, MDM, Metta, Shalom, Swissaid, UNDP, WC, and WV (acronyms listed as printed). A data support team comprising MIMU, OXFAM, UNHCR, UNI, CEF, UNOCHA, and WFP provided training and technical support.

[166] UN-OCHA with Humanitarian Country Team Partners, "Myanmar: Displacement in Kachin State," December 28, 2011, p.1.

[167] Ibid.

[168] Ibid.

in other indirect, subtle ways. To date, there has been no written agreement between the authorities and OCHA with respect to the delivery of aid in KIA-controlled Kachin territory.

The government's longstanding unwillingness to allow domestic and international humanitarian agencies to provide assistance in KIA and other rebel-controlled areas has deterred some humanitarian groups from seeking formal approval from the Burmese authorities to access certain areas. These agencies, all with an interest in expanding humanitarian space, have expressed concern that even making such requests could result in government reprisals against their other officially approved projects in the country.

A foreign aid worker with a legally registered humanitarian organization operating in Burma told Human Rights Watch, "The way it works here is that no one [from the government] directly says 'no,' but if you go, you lose your MoU [Memorandum of Understanding] and authorization to work elsewhere."[169] Other aid workers confirmed that their inability to access certain areas is not part of an explicit, formal policy of the government, but it is well understood among aid groups. Currently, the government has not clarified the actual conditions under which it will grant or deny humanitarian access to conflict zones.

The KIO has also rejected the delivery of humanitarian aid. In early December, the KIO refused humanitarian aid packages including rice, clothing, and non-food items from the Kachin State Rescue and Resettlement Committee, a Kachin State member of the Burmese parliament, and the government Myanmar Red Cross Society.[170]

The nascent National Human Rights Commission has had an uneven start in examining IDP issues in Kachin State. A four-person team from the commission visited camps, churches, and other locations in Myitkyina, Waingmaw, and Bhamo in Kachin State to assess the situation of IDPs, and issued a full-page statement of findings in the December 14 edition of *The New Light of Myanmar*.[171] The commission highlighted humanitarian needs, including the psychological plight of displaced children and the fact that the displaced left their material

[169] Human Rights Watch interview with Rangoon-based aid worker, September 13, 2011.

[170] "KIO Refuses Gov't Relief Donations to Refugees," *Mizzima*, December 14, 2011, http://www.mizzima.com/special/kachin-battle-report/6279-kio-refuses-govt-relief-donations-to-refugees.html (accessed March 4, 2012).

[171] "Myanmar National Human Rights Commission Issues Statement," *The New Light of Myanmar*, December 14, 2011, p. 9.

possessions behind, as well as the dangers posed by landmines.[172] At the same time, it failed to report on forced displacement or human rights abuses by the Burmese army that have been widely documented by others, such as forced labor and the pillaging of villages. Much of the statement praised the government's humanitarian efforts.[173]

Also in December, Kachin State Chief Minister U La John Ngan Seng told reporters that national and state governments would "thoroughly" investigate whether either side to the conflict has been responsible for murder, torture, rape, and other abuses in Kachin and northern Shan States.[174] "We are going to carefully assess the veracity of the 'evidence' of these incidents, whether it is firm and definite," he told the *Myanmar Times*.[175] It is not known whether any investigations took place and no report has been issued.

In February 2012, Win Mra, the chairman of the Myanmar National Human Rights Commission told journalists at a news conference in Bangkok that the newly created commission had decided it would not investigate allegations of abuses in the ethnic armed conflict areas.[176] Win Mra claimed that such investigations were not appropriate at this point due to the government's efforts to negotiate ceasefires.

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172 Ibid.

173 Ibid.

174 Soe Than Lynn, "Govt Pledges to Investigate Kachin HR Abuses," *Myanmar Times*, December 19-25, 2011, http://www.mmtimes.com/2011/news/606/news3160605.html (accessed March 4, 2012).

175 Ibid.

176 "'No Probe Into Ethnic Abuse:' Rights Body" *Agence France-Presse*, February 15, 2012, http://www.dvb.no/news/no-probe-into-ethnic-abuse-burma-rights-body/20255(accessed March 4, 2012).

V. International Humanitarian and Human Rights Law

International humanitarian law, commonly referred to as the laws of war, imposes legal obligations upon parties to an armed conflict to reduce unnecessary suffering and to protect civilians and other non-combatants.[177] All armed forces involved in an armed conflict, including non-state armed groups such as the KIA, are obligated to abide by international humanitarian law.[178] Individuals who deliberately or recklessly commit serious violations of international humanitarian law can be prosecuted in domestic or international courts for war crimes.[179]

International humanitarian law limits permissible means and methods of warfare by parties to an armed conflict and requires them to respect and protect civilians and captured combatants. The fundamental tenets of this law are "civilian immunity" and "distinction."[180] These tenets impose a duty at all times during the conflict to distinguish between combatants and civilians, and to target only combatants.[181] Also protected are civilian objects, which are defined as anything not considered a military objective.[182]

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[177] International humanitarian law on the treatment of civilians and other non-combatants during non-international armed conflicts (civil wars) can be found in article 3 common to four Geneva Conventions of 1949 (Common Article 3), to which all states, including Burma, are parties. Common Article 3 applies to "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties." International humanitarian law on the conduct of hostilities is set out in the Hague Regulations of 1907 and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978. Protocol I, which provides the most detailed and current codification of the conduct of hostilities during international armed conflicts, is not directly applicable to the conflict. The Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II) on non-international armed conflicts is also not directly applicable because Burma is not a party to the protocol. The legal analysis applied in this report often references norms enshrined in Protocols I and II, but as an important codification of customary law rather than as a treaty obligation. Customary humanitarian law as it relates to the fundamental principles concerning conduct of hostilities is now recognized as largely the same whether it is applied to an international or a non-international armed conflict.

[178] See generally the discussion of the applicability of international humanitarian law to non-state armed groups in International Committee of the Red Cross (ICRC), Henckaerts & Doswald-Beck, eds., *Customary International Humanitarian Law* (Cambridge: Cambridge Univ. Press 2005), pp. 497-98.

[179] Ibid., rule 158, citing the 1949 Geneva Conventions and other international treaties.

[180] FIX FONTSICRC, *Customary International Humanitarian Law,* chapters 1 and 2, citing Protocol I, articles 48, 51(2), and 52(2).

[181] ICRC, *Customary International Humanitarian Law,* rules1 and 7, citing Protocol I, art. 48 ("Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives").

[182] ICRC, *Customary International Humanitarian Law,* rule8, citing Protocol I, art. 52(2) (Military objectives are combatants and those objects that "by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage").

Prohibited are direct attacks against civilian objects, such as homes, places of worship, hospitals, and schools, unless they are being used for military purposes.[183]

Humanitarian law prohibits deliberate attacks against civilians and indiscriminate attacks. An attack is indiscriminate when it strikes military objectives and civilians or civilian objects without distinction. Prohibited indiscriminate attacks include area bombardment, which are attacks by artillery or other means that treat as a single military objective a number of clearly separated military objectives located in an area containing a concentration of civilians and civilian objects.[184] The use of antipersonnel landmines, which do not discriminate between civilians and combatants, would also be considered indiscriminate. Also prohibited are attacks that violate the principle of proportionality: attacks that are expected to cause incidental loss of civilian life or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated from the attack.[185]

Humanitarian law requires that the parties to a conflict take constant care during military operations to spare the civilian population and to "take all feasible precautions" to avoid or minimize the incidental loss of civilian life and damage to civilian objects.[186] These precautions include doing everything feasible to verify that the objects of attack are military objectives and not civilians or civilian objects, and when circumstances permit giving "effective advance warning" to civilians prior to attacks.[187] They must also avoid locating military objectives near densely populated areas and endeavor to remove a civilian population from the vicinity of military objectives.[188] This obligation is considered

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183 ICRC, *Customary International Humanitarian Law*, rule 8, citing military manuals and official statements.

184 ICRC, *Customary International Humanitarian Law,* rules 11-13, citing Protocol I, art. 51(4-5).

185 ICRC, *Customary International Humanitarian Law,* rule1, citing Protocol I, art. 51(5)(b). The expected danger to the civilian population and civilian objects depends on various factors, including their location (possibly within or near a military objective), the accuracy of the weapons used (depending on the trajectory, the range, environmental factors, the ammunition used, etc.), and the technical skill of the combatants (which can lead to random launching of weapons when combatants lack the ability to aim effectively at the intended target). See also ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949,* (Geneva: Martinus Nijhoff Publishers, 1987), p. 684.

186 ICRC, *Customary International Humanitarian Law,* rule 15, citing Protocol I, art. 57. In its commentary on Protocol I, the ICRC states that the requirement to take "all feasible precautions" means, among other things, that the person launching an attack is required to take the steps needed to identify the target as a legitimate military objective "in good time to spare the population as far as possible." ICRC, *Commentary on the Additional Protocols*, p. 682.

187 ICRC, *Customary International Humanitarian Law,* rule 20, citing Protocol I, art. 57(2). If there are doubts about whether a potential target is of a civilian or military character, it "shall be presumed" to be civilian. Protocol I, art. 52(3). The warring parties must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective. ICRC, *Customary International Humanitarian Law,* rule 19, citing Protocol I, art. 57(2).

188 ICRC, *Customary International Humanitarian Law,* rules 22-23, citing Protocol I, arts. 58(b) and 58(a).

especially relevant "where military objectives cannot feasibly be separated from densely populated areas."[189]

The presence of civilians in the vicinity of the fighting obligates warring parties to take steps to minimize harm to civilians. Belligerents are prohibited from using civilians to shield military objectives or operations from attack; "shielding" refers to deliberately using the presence of civilians to render military forces or areas immune from attack.[190]

Humanitarian law also requires the humane treatment of civilians and captured combatants. It prohibits violence to life and person, particularly murder, mutilation, cruel treatment, and torture.[191] It is also unlawful to commit rape and other sexual violence; targeted killings of civilians who are not directly participating in the armed conflict; or engage in pillaging and looting.

International law prohibits torture and other cruel, inhuman, or degrading treatment or punishment. Torture is defined under international law as any act intentionally inflicting "severe pain or suffering, whether physical or mental" on a person for such purposes as obtaining "information or a confession," as punishment, or in order to intimidate or coerce.[192] Torture and other ill-treatment are prohibited as violations of both international humanitarian law[193]and international human rights law.[194] It is also considered a violation of customary international law,[195] which as a crime of universal jurisdiction that can be prosecuted anywhere in the world.[196]

Sexual violence, including rape, is a human rights violation defined as any non-consensual or coercive sexual act by a state actor, including "all forms of sexual threat, assault,

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189 ICRC, *Customary International Humanitarian Law*, p. 76.

190 Ibid., rule 97, citing art. 51(7).

191 Common Article 3 to the 1949 Geneva Conventions.

192 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987, art. 1.

193 See, for example, Common Article 3 to the 1949 Geneva Conventions; Protocol II, art. 4(2).

194 See, for example, Universal Declaration of Human Rights, art. 5; Convention against Torture; Convention on the Rights of the Child, art. 37(a) ("No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment").

195 ICRC, *Customary International Humanitarian Law,* rule 90.

196 Ibid., rule 156.

interference and exploitation."[197] Sexual violence is prohibited under customary international law and international human rights law, including by the Convention on the Elimination of All Forms of Discrimination against Women, to which Burma is a state party.[198] Sexual violence is also prohibited under international humanitarian law.[199]

The Burmese army's use of forced labor in conflict zones violates international humanitarian and human rights law, as well as Burma's domestic law. Common Article 3 to the 1949 Geneva Conventions provides for the humane treatment of persons under the control of an armed force.[200] The laws of war prohibit the use of uncompensated or abusive forced labor, including work directly related to the conduct of military operations or that would oblige them to take part in military operations.[201] As a member of the International Labour Organization (ILO), Burma is obligation to uphold the ILO core conventions, which prohibit the use of forced labor.[202] Burma's domestic law likewise prohibits forced labor and criminalizes its procurement.[203]

International humanitarian law and human rights law applicable in Burma prohibit the recruitment and use of children as soldiers. Customary international humanitarian law prohibits all parties to a conflict from recruiting and using all children below the age of 15.[204] This standard is also reflected in the Convention on the Rights of the Child.[205] Burma's relevant national law, the Regulation for the Persons Subject to the Defense Services Act,

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197 Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, "Sexual Violence Against Refugees: Guidelines on Prevention and Response," (1995);see also Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, entered into force July 1, 2002, art. 8(2)(e)(vi).

198 Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. Burma ratified the Convention in 1997.

199 ICRC, *Customary International Humanitarian Law,* rule 93; Protocol I, art. 75(2); Protocol II, art. 4(2).

200 Common Article 3 to the Geneva Conventions of 1949.

201 See ICRC, *Customary International Humanitarian Law*, rule 95, citing Fourth Geneva Convention, arts. 40 and 95.

202 ILO Declaration on Fundamental Principles and Rights at Work, 86th Session, Geneva, June 1998 ("All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely … the elimination of all forms of forced or compulsory labour.").

203 Union of Myanmar, The State Peace and Development Council, Letter No. 04/Na Ya Ka (U)/Ma Nya, November 1, 2000, "Subject: Prohibiting Requisition of Forced Labour," available at http://www.mol.gov.mm/8.Home/Home_link/spdc(Eng).pdf(accessed January 10, 2012). On October 27, 2000, the Ministry of Home Affairs, under the direction of the State Peace and Development Council (SPDC), issued Order Supplementing Order No. 1/99, rendering the requisition of forced labor illegal and making the use of forced labor a criminal offense.

204 ICRC, *Customary International Humanitarian Law*, rule 136, citing Protocol II, art. 4(3)(c) ("children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities").

205 Convention on the Rights of the Child, G.A. res. 44/25, U.N. Doc. A/RES/44/25, adopted November 20, 1989, entered into force September 2, 1990, art. 38.Burma became party to the convention in August 1991.

prohibits the recruitment of children under the age of 18 to be soldiers.[206] Furthermore, the KIA's internal regulations prohibit the recruitment and use of child under the age of 18.[207]

International humanitarian law also holds parties to the conflict responsible for ensuring that the humanitarian needs of the war-affected population are met. Starvation of the civilian population as a method of warfare is prohibited,[208] as is destroying objects indispensible to the survival of the population.[209] Humanitarian relief must be able to reach civilian populations in need food, medicine, and other items essential to their survival. During an internal armed conflict, if the government is unable to meet this obligation fully, it must allow impartial humanitarian agencies to do so on its behalf. Parties to a conflict must allow and facilitate rapid and unimpeded passage of impartial humanitarian relief for civilians in need.[210] They need to ensure the freedom of movement of humanitarian relief personnel, and only in cases of military necessity may their activities or movements be temporarily restricted.[211]

Individuals who deliberately or recklessly commit serious violations of international humanitarian law are responsible for war crimes.[212] These include deliberate or indiscriminate attacks on civilians, torture, sexual violence, use of child soldiers, and abusive forced labor in conflict zones. Individuals may also be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, aiding, or abetting a war crime. Commanders and civilian leaders may be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes and took insufficient measures to prevent them or punish those responsible.[213]

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206 Burma's State Peace and Development Council informed Human Rights Watch in writing on July 17, 2002, that under article 65 of the Defense Services Act, the punishment for recruiting children is a court martial that may hand down a sentence of up to seven years' imprisonment. Letter from the Permanent Mission of the Union of Myanmar to the United Nations, New York, to Human Rights Watch, May 8, 2002.

207 Human Rights Watch interview F.Z., Kachin State, Burma, November 12, 2011.

208 ICRC, *Customary International Humanitarian Law*, rule 53, citing Protocol II, art. 14.

209 Ibid., rule 54, citing Protocol II, art. 14.

210 Ibid., rule 55, citing Protocol II, art. 18(2). See also, UN Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), noted in Comm. Hum. Rts. res. 1998/50, rule 25 (All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.").

211 ICRC, *Customary International Humanitarian Law*, rule 56, citing Protocol I, art. 71(3).

212 Ibid., p. 554.

213 Ibid., Rule 153.

The UN Guiding Principles on Internal Displacement provide authoritative standards for the obligations of governments to internally displaced persons. Under the principles, the authorities are to provide displaced people "at a minimum" with safe access to essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation.[214]

[214] UN Guiding Principles on Internal Displacement, rule 18.

VI. Recommendations

To the Burmese Government

- Take all necessary steps to ensure that the Burmese armed forces act in compliance with international humanitarian law, in particular acting to minimize harm to civilians and civilian property.
- Investigate credible allegations of laws-of-war violations—including deliberate or indiscriminate attacks on civilians, extrajudicial killings, rape and other sexual violence, torture, unlawful use of porters, use of child soldiers, and pillage—and appropriately prosecute those responsible, regardless of rank or position.
- Support an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the armed conflicts in Kachin State and elsewhere in the country.
- Request the United Nations Office of the High Commissioner for Human Rights (OHCHR) to establish an office in Burma with a standard protection, promotion and technical assistance mandate.
- Provide the United Nations and humanitarian agencies safe, sustained, and unhindered access to all areas of internally displaced populations, and make a long-term commitment with humanitarian agencies to authorize relief, recovery, and eventual development support to populations in need.
- Ensure that returns of displaced persons and refugees take place in accordance with international standards, on a voluntary basis with attention to the safety and dignity of the returning population. Particular attention should be given to the issues of antipersonnel mine action, including mine-risk education; demarcation of mine contaminated areas; and prompt humanitarian demining. Sustainable solutions for return and reintegration should be sought in consultation with displaced communities, and should provide for options to settle in areas other than their original villages.
- Establish a domestic mechanism to provide prompt and adequate compensation to all victims of abuses by the security forces.
- Ensure that all individuals who are charged with criminal offenses relating to the ethnic armed conflicts in Kachin State and elsewhere receive trials in courts that

are independent, competent, and impartial; civilians should only be prosecuted by civilian courts.

- Immediately demobilize children under the age of 18 from the armed forces in accordance with Burmese law.
- Initiate humanitarian mine-clearance programs and provide expanded assistance to landmine survivors.
- Take all necessary steps to end the practice of using forced porters in armed conflict areas. Immediately release civilians conscripted by the military as porters without pay or in conflict areas. Cooperate with the International Labour Organization (ILO) to compile a complete list of all conscripted porters, including information on their fate or current whereabouts, and provide this information to their families.
- Grant the ILO and the United Nations Country Task Force on Children in Armed Conflict access to areas controlled by the KIA and other non-state armed groups for the negotiation of a joint action plan that would permit identification, intervention, reintegration, monitoring, and verification regarding the use of child soldiers.
- Call a meeting of the National Defense and Security Council to abolish the War Office's 1998 policy of economic self-reliance for local army units.
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol on the involvement of children and armed conflict; ILO Convention No. 105 concerning the Abolition of Forced Labor; ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; and the Rome Statute of the International Criminal Court.
- Provide criminal sanctions for the recruitment and use of children in violation of international law.

To the Burmese Parliament

- Pass a resolution calling on the government to support an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the ethnic armed conflicts in the country.
- Commission a transparent, independent, and public audit of the budget and spending of the armed forces.

- Pass a resolution urging the president to promptly sign the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction.
- Pass legislation that would bring the National Human Rights Commission in line with the Paris Principles on national human rights institutions in order to establish it as an independent and effective institution.

To the Commander in Chief of the Armed Forces of Burma

- Take all necessary measures to end violations of the laws of war by the Burmese armed forces, particularly deliberate or indiscriminate attacks on civilians, extrajudicial killings, rape and other sexual violence, torture, unlawful use of porters, use of child soldiers, and pillage.
- Cooperate with investigations of credible allegations of laws-of-war violations, and cooperate with prosecutions of those responsible, regardless of rank or position.
- Support an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the armed conflicts in Burma.
- Immediately cease the practice of using forced civilian porters in combat zones and permit independent verification of these activities.
- Immediately end the practice of forced labor of civilians, by all military units in any capacity, in line with orders issued in 1999 and 2000—Order No. 1/99 and Order Supplementing Order No. 1/99, respectively.
- Initiate humanitarian mine clearance programs and provide expanded assistance to landmine survivors.
- Immediately investigate allegations of commanding officers withholding wages of subordinates and encouraging army personnel to pillage civilians' properties and means of subsistence.
- Provide a transparent accounting to the parliament of the military's budget and spending.

To the National Human Rights Commission

- Support and work with an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the armed conflicts in Kachin State and elsewhere in the country.

- Conduct impartial investigations of credible allegations of serious human rights violations throughout the country and particularly in ethnic conflict areas.
- Support the passage of legislation in parliament that would bring the commission in line with the Paris Principles on national human rights institutions in order to establish it as an independent and effective institution.

To the Kachin Independence Organization

- Cooperate with an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the armed conflict in Kachin State.
- Take all necessary steps to ensure that KIA forces act in compliance with international humanitarian law, in particular acting to minimize harm to civilians and civilian property and treating captured enemy combatants humanely.
- Investigate credible allegations of laws-of-war violations—including use of antipersonnel landmines and child soldiers—and take appropriate disciplinary measures against those responsible, regardless of rank or position. Provide prompt and adequate compensation to all victims of abuses by KIA forces.
- Provide the United Nations and humanitarian agencies safe, sustained, and unhindered access to all areas of internally displaced populations under KIO control, and make a long-term commitment with humanitarian agencies to authorize relief, recovery, and eventual development support to populations in need.
- Immediately demobilize children under the age of 18 from the KIA in accordance with Burmese law and KIO regulations.
- Initiate humanitarian mine-clearance programs and provide expanded assistance to landmine survivors.
- Ensure that returns of internally displaced persons and refugees will take place in accordance with international standards, on a voluntary basis with attention to the safety and dignity of the returning population. Particular attention should be given to the issue of antipersonnel mine action, including mine risk education; demarcation of mine contaminated areas; and prompt humanitarian demining. Sustainable solutions for resettlement should be sought in consultation with displaced communities, and should provide for options to resettle to areas other than their original villages.

To International Humanitarian Agencies and the Donor Community

- Expand support and cooperation with local community-based organizations, particularly those with direct access to ethnic conflict areas.
- Continue to seek increased humanitarian access from the Burmese government and ethnic opposition groups to all areas of ethnic conflict.
- Press the Burmese government and KIO to act in accordance with their international legal obligations, particularly with respect to the laws of war and humanitarian access.
- Provide reproductive and sexual health services for survivors of sexual assault, particularly in Burma's ethnic conflict areas.
- Support the initiation of humanitarian mine-clearance programs and provide expanded assistance to landmine survivors.

To the UN Country Team and Burma-based UN Agencies

- Expand support and cooperation with local community-based organizations, particularly those with direct access to ethnic conflict areas.
- Continue to seek increased humanitarian access from the Burmese government and ethnic armed groups to all areas of armed conflict.
- Press the Burmese government and KIO to act in accordance with their international legal obligations, particularly with respect to the laws of war and humanitarian access.
- Commence regular and systematic monitoring and reporting on the human rights situation in Burma, including in ethnic conflict areas
- Report incidents or information on forced labor to the ILO, including the unlawful use of civilian porters.

To the International Labour Organization

- Seek to expand activities outside Rangoon to monitor forced labor and the recruitment and use of child soldiers in conflict areas.
- Strengthen the ILO operation in Burma to ensure both the effective application of the Supplementary Understanding Forced Labour Complaints Mechanism (2007), which includes access to legal redress for complainants, and enhanced monitoring and reporting mechanisms on the different categories of forced labor.

- Support civil society groups and families in assisting forced porters and child soldiers, including in their safe return, access to legal redress, and protection from reprisals.
- Press the government for immediate ratification of ILO Conventions No. 105 and No. 182.

To the Governments of Australia, China, Russia, United States, European Union, and Japan, and ASEAN Member States

- Publicly and privately call on the Burmese government and ethnic armed groups to end violations of international human rights and humanitarian law during military operations.
- Support an independent international mechanism to investigate alleged violations of international human rights and humanitarian law committed by all parties to the conflicts in Burma.
- Support the establishment of a United Nations Office of the High Commissioner for Human Rights office in Burma with a standard protection, promotion, and technical assistance mandate.
- Press the Burmese government to establish a domestic mechanism to provide prompt and adequate compensation for victims of abuses by its security forces.
- Publicly call on all parties to the conflict to facilitate access by domestic and international humanitarian agencies to both government- and KIA-controlled areas of Kachin State and northern Shan State, and other areas in the country where populations are at risk.
- Provide needed support to local and international humanitarian agencies impartially providing assistance in ethnic conflict areas and those administering cross-border aid. Press the Burmese government and KIO to allow them full access to populations in need.

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“UNTOLD MISERIES”

Wartime Abuses and Forced Displacement in Kachin State

When Burmese President Thein Sein took office in March 2011, he said that over 60 years of armed conflict have put Burma’s ethnic populations through “the hell of untold miseries.” Just three months later, the Burmese armed forces resumed military operations against the Kachin Independence Army (KIA), leading to serious abuses and a humanitarian crisis affecting tens of thousands of ethnic Kachin civilians.

“Untold Miseries”: Wartime Abuses and Forced Displacement in Kachin State is based on over 100 interviews in Burma’s Kachin State and China’s Yunnan province. It details how the Burmese army has killed and tortured civilians, raped women, planted antipersonnel landmines, and used forced labor on the front lines, including children as young as 14-years-old. Soldiers have attacked villages, razed homes, and pillaged properties. Burmese authorities have failed to authorize a serious relief effort in KIA-controlled areas, where most of the 75,000 displaced men, women, and children have sought refuge. The KIA has also been responsible for serious abuses, including using child soldiers and antipersonnel landmines.

Human Rights Watch calls on the Burmese government to support an independent international mechanism to investigate violations of international human rights and humanitarian law by all parties to Burma’s ethnic armed conflicts. The government should also provide United Nations and humanitarian agencies unhindered access to all internally displaced populations, and make a long-term commitment with humanitarian agencies to authorize relief to populations in need.

Displaced Kachin civilians living in temporary shelter in KIA-controlled territory in eastern Kachin State, wait for rations of rice and cooking oil, January 26, 2012. Over 1,000 civilians have fled their homes to this area to escape the fighting between the Burmese army and the KIA.

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