



REPORT ON THE HUMAN RIGHTS SITUATION IN BURMA

January - December 2016



**NETWORK FOR HUMAN RIGHTS
DOCUMENTATION - BURMA**

Cover photo: © KWAT (House burned down by Burma army soldiers
in Munggu town, Shan State)

Published by Network for Human Rights Documentation - Burma
February 2017

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Acknowledgement

We are extremely grateful to the interviewees for their courage in speaking the truth. We are also grateful to the ND-Burma member organizations and their field workers who collected the information at great personal risk.

We would like to express our gratitude to the numerous people and institutions that provided critical support and input for the production of this report. We would also like to thank the Open Society Foundation for their generous financial support, without which this report would not be possible.

Methodology

Fieldworker Situation: ND-Burma members' fieldworkers put themselves at great risk to document human rights violations. Due to security concerns, human rights monitoring cannot take place openly. Thus, a representative sampling of all violations that take place in Burma is not possible. Fieldworkers and the people who communicate with them face security risks even in ceasefire areas, as the military and police often intimidate victims into keeping quiet. If a member of the military or police discovers that a fieldworker is gathering information on human rights violations, that person is at risk of arrest under repressive laws, harassment or even violent retribution. Fieldworkers rely largely on networks of individual contacts for information. Many of these contacts within the fieldworkers' networks are responsible for gaining additional contacts and conducting interviews with individuals, village leaders, and government staff members.

Documentation: ND-Burma has provided training, with assistance from several international human rights NGOs, to fieldworkers of member organizations who collect the information presented in these reports. Fieldworkers collect interviews and other information from ten of Burma's fourteen states and regions. Individual cases are documented depending on opportunity and external circumstances. The cases presented here constitute firsthand accounts of abuse perpetrated by the government military and other Ethnic Armed Organizations (EAOs) during this period. The information supplied by eyewitness observers confirms concerns of widespread government violence perpetrated largely by government forces (military, Border Guard Force (BGF), militia, police etc) with the rest being committed by EAOs.

However, there are some limits to our data collection. Firstly, field-workers of ND-Burma member organizations are unable to collect and document all of the human right violations covering Burma in their entirety due to security restrictions. Secondly, ongoing conflict and conflict-related displacement prevents access to certain areas and results in an underreporting in states where there is armed conflict, including in Kachin and Shan states. ND-Burma does not currently document in Rakhine state and the data therefore does not include human rights violations committed in this region.¹ Finally, a culture of impunity on the part of the military, and fear of retribution makes many victims of human rights abuses reluctant to report violations even when given the opportunity. Additional information stems from media sources as well as NGO reports

Data Management: Fieldworkers from ND-Burma member organizations send documents to their mother organizations, whose staff upload the information to ND-Burma's network database. ND-Burma's data management team organizes each document and has selected reports from events that took place from January to December 2016. Any other information collected during this period regarding historic human rights violations will be saved in order to build a robust record of Burma/ Myanmar's past.

¹ For more information on human rights violations and transitional justice see United Nations A/RES/60/147, 'Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law', Sixtieth Session, 16 December, <http://hrlibrary.umn.edu/instree/res60-147.html>

Executive Summary

- 2016 has seen a dramatic increase in the number of human rights violations with 154 being recorded over the course of the year. This is almost double the number of Human rights violations recorded throughout 2015 (84).
- The most common human rights violation continues to be torture, with 67 cases recorded in 2016. There has also been a large increase in the number of killings, with 28 cases recorded, compared to 11 in 2015.
- The large increase in human rights violations can be ascribed to an escalation in conflict in northern Shan, Kachin and Rakhine states in Burma/Myanmar.²
- More than half of human rights violations took place in Shan State – a region that makes up just over 10% of Burma/Myanmar’s population.³
- A large number of human rights violations recorded have been committed by Burma/Myanmar government forces, namely the military, BGF, militia and police, with the rest being committed by EAOs.
- The number of political prisoners in jail and awaiting trial has significantly decreased since 2015. However, the government’s extensive use of Article 66(d) of the Telecommunications Law has begun to push the numbers up again.
- Under the 2008 Constitution, the army retains a firm grip on state power, complete autonomy over its own affairs and legal immunity. This has allowed government forces to continue to commit human rights violations under the NLD-led government.
- Two notable exceptions are the sentencing of seven Burma/Myanmar army soldiers for killing civilians in Shan state and the sentencing of a Burma/ Myanmar army soldier for killing a Kachin student. ND-Burma believes such cases show there are increasing opportunities to seek justice for victims of human rights violations.

² As outlined in the methodology, ND-Burma does not currently document human rights violations in Rakhine state

³ Military blockades have made it especially difficult to document in Kachin state where the number of human rights violations committed is likely significantly higher.

Overview of human rights violations committed in Burma/Myanmar, Jan – Dec 2016

ND-Burma's report on the human rights situation in Burma for the first half of 2016 flagged a sharp rise in the number of human rights violations being committed in Burma/Myanmar, with 98 recorded in total. Sadly, ND-Burma recorded an almost identical number of human rights violations in the second half of the year, bringing the total number to 154, almost double the amount recorded in 2015 (84).⁴

Torture remains the most common human rights violation, with 67 cases recorded in 2016 compared to 26 in 2015. Killings were once again the second most common human rights violation with 28 cases recorded, compared to 11 in 2015.

The number of arbitrary arrests (12) and instances of destruction of property (11) are also high as these human rights violations often accompany outbreaks of conflict.

Human rights violations documented by ND-Burma: January – December 2016

No.	Human rights violations Category	Number of Bulletins
1.	Arbitrary/illegal arrest/detention	12
2.	Confiscation/destruction of property	13
3.	Disappearance	7
4.	Forced labor	5
5.	Forced relocation	6
6.	Human trafficking	3
7.	Killing	28
8.	Obstruction of freedom of expression/assembly	2
9.	Other sexual violence	1
10.	Rape	8
11.	Torture	67
12.	Use as child soldiers	2
13.	Arbitrary taxation	2
Total		154

⁴ Each human rights violation refers to a specific incident that may have affected a large number of people, therefore the number of human rights violations documented in this report does not correspond to the number of victims - this number is much larger.

Analysis

On 1 April, the NLD took office in the first civilian-led government in Burma/ Myanmar for half a century. Daw Aung San Suu Kyi was sworn in as State Counselor, a role created for her by parliament to bypass a clause in the 2008 Constitution barring her from the Presidency. Following the NLD's landslide victory, which gave the party control of a majority of both upper and lower house parliamentary seats, Daw Aung San Suu Kyi stated that the peace process would be her government's priority as "we can do nothing without peace."⁵

Conflict

However, 2016 saw the intensification of militarized conflict in a number of ethnic nationality areas. This has resulted in a large increase in human rights violations committed by both government forces and EAOs.

Near permanent military lockdowns of conflict affected areas made documentation extremely difficult but the largest number of human rights violations were recorded in Shan state (85) with conflict between the military and EAOs raging on.⁶ Though the number of human rights violations recorded in Kachin state is comparatively low (13), this number very likely does not reflect the true number of human rights violations committed. Reports from local aid organizations have listed a litany of ongoing abuses in Kachin state, including frequent arbitrary arrests and torture of villagers on suspicion of contact with the Kachin Independence Army (KIA).⁷ The escalation of conflict in northern Shan and Kachin states led to the creation in 2016 of the 'Northern Alliance' - made up of the KIA, Ta'ang National Liberation Army (TNLA), Myanmar National Democratic Alliance Army (MNDAA) and Arakan Army (AA) – who have joined forces to fight the military.

In northern Rakhine state, government forces conducted a violent counter-insurgency campaign in following coordinated attacks on three Border Guard posts in Maungdaw Township in early October, leaving nine police officers dead. The attack was allegedly perpetrated by a group of Muslim militants and the incident has further ratcheted up inter-communal tension in the country. There have been numerous reports of extrajudicial killings, torture, rape and arson committed by the army but these have been hard to verify due to a near permanent military lockdown of the area. The situation has received particularly censorious international criticism.

September also saw skirmishes between the Democratic Karen Buddhist Army (DKBA), BGF in Karen state.

The end of the year saw the UN Special Rapporteur on the situation of human rights in Myanmar, Ms. Yanghee Lee, blocked from visiting conflict affected parts of northern Shan, Kachin and Rakhine states to properly conduct her assessment. The Rapporteur's subsequent End of Mission Statement strongly criticized the government's record on human rights and stated that "there is still a long way to go to achieve a society where individuals are free to share what has happened to them, to speak their mind, and to live peacefully without fear."⁸

As 2016 came to a close the peace process looked increasingly fragile with the intensification of conflict destroying the trust and goodwill that could be felt in the afterglow of the first session of the 21st Century Panglong Conference, which was

⁵ South China Morning Post, "We can do nothing without peace": Aung San Suu Kyi vows ceasefire will be top priority, 4 January 2016, <http://www.scmp.com/news/asia/southeast-asia/article/1897945/we-can-do-nothing-without-peace-aung-san-suu-kyi-vows>

⁶ See above regarding the situation in Kachin state

⁷ Kachin Women's Association Thailand, 'A far cry from peace: Ongoing Burma army offensives and abuses in northern Burma under the NLD government', 15 November 2016, <http://kachinwomen.com/wp-content/uploads/2016/11/Far-Cry-From-Peace.pdf>

⁸ United Nations Information Center, Yangon, 'End of Mission Statement by Special Rapporteur on the situation of human rights in Myanmar', 20 January 2017, <http://yangon.sites.uniconnetwork.org/>

held in August. There seems to be an impasse with the military demanding that EAOs who did not sign the Nationwide Ceasefire Agreement (NCA) in 2015 sign before any negotiations take place and EAOs demanding negotiations and the inclusion of all EAOs who were previously barred from the agreement before they sign. Members of the 'Northern Alliance', as well as domestic civil society and international commentators have suggested the Burma/Myanmar army's intensified assaults in northern Shan and Kachin states are designed to pressure non-signatory EAOs into signing the NCA.

Justice

The 2008 Constitution grants the army legal immunity and soldiers are largely able to commit human rights violations with impunity. It also retains the powerful Defense, Home Affairs and Border Affairs ministries and automatic 25% allocation of seats in the parliament which gives it a veto lock over any changes to the Constitution. January saw the passing of the Former President and Security Law, which grants former leaders immunity from prosecution for any "actions" committed during their time in office.

Two notable exceptions to the culture of impunity are the sentencing this year of seven Burma army soldiers who admitted to killing Shan civilians during their military trial and the sentencing of a Burma army soldier at the beginning 2017 for killing a Kachin civilian in Myitkyina last June. However the majority of victims and their families never see justice. January 2017 sees the two year anniversary of the rape and murder of two Kachin schoolteachers who are widely believed to have been killed by Burma army soldiers but whose killers have not been identified.

Following a disappointing first 100 days in office of the government, the International Federation for Human Rights (FIDH) and the Alternative ASEAN Network of Burma (ALTSEAN-Burma) in July released a public statement saying "The long-delayed reforms [...] allow human rights violations, particularly in ethnic minority areas, to continue and foster a climate of impunity among members of the armed forces."⁹

Displacement and blocking of humanitarian aid

The escalation of conflict in several parts of Burma/Myanmar has led to a ballooning in the number of IDPs. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), in December 2016, 98,000 people remained displaced in camps and host villages in Kachin and Shan states and 120,000 in Rakhine state. About 80% are estimated to be women and children. These figures do not include those displaced by the most recent bouts of fighting in 2016 and are therefore an underestimate of the total number of IDPs. Thousands more have been displaced in northern Shan and Kachin states, as well as a further 30,000 in Rakhine State.¹⁰ Figures have been impossible to verify due to government lockdowns in the conflict areas.

Government lockdowns in conflict affected areas also prevented aid organizations from delivering humanitarian aid to IDPs, a tactic in line with their "four cuts" strategy intended to cripple EAOs by cutting off access to food, funds, information and recruitment. This resulted in severe food shortages in conflict affected areas.¹¹

⁹ Myanmar Times, 'Rights groups give NLD poor marks on party's '100 days' record', 13 July 2016 <http://www.mmmtimes.com/index.php/national-news/21347-rights-groups-give-nld-poor-marks-on-party-s-100-days-record.html>

¹⁰ OCHA, 2017 humanitarian response plan, 5 December 2016, p.11, http://reliefweb.int/sites/reliefweb.int/files/resources/2017_myanmar_hrp_final.002.pdf

¹¹ For more information see ND-Burma's briefing 'Pawns in their game: The Blocking of humanitarian aid to Kachin and Shan IDPs', 22 December 2016, <http://nd-burma.org/pawns-in-their-game-the-militarys-blocking-of-aid-to-idps-in-kachin-and-northern-shan-state/>

Political Prisoners and censorship

At the end of 2016 there were 86 political prisoners serving sentences and 107 awaiting trial on political charges.¹² This is a reduction from 2015, when 129 people were in prison on political charges and 408 were awaiting trial. This positive development reflects the NLD's decision to grant amnesty to 235 political prisoners upon taking office in April. However, the new government immediately began to re-imprison journalists, activists and civilians for political reasons under the guise of defamation charges. There are currently 23 individuals who are facing charges under Article 66(d) of the Telecommunications Law, with two having been sentenced. The contentious law has been used enthusiastically by both USDP as well as NLD politicians to jail critics. 73 individuals have been sentenced under Article 17(1) of the Unlawful Association Act and 22 more are awaiting trial. The Act is used with particular vigor against ethnic nationalities; for example AAPP documents a case of 49 young Kachin men, accused of attending KIA militia training, simultaneously arrested on 7 October.

¹² Association for Assistance for Political Prisoners <http://aappb.org/2017/01/monthly-chronology-of-december-2016-and-current-political-prisoners-list/>

Case Studies

1) Kachin villager arbitrarily arrested and tortured by Burma army soldiers

On 14 May around 22:00, Burma army soldiers came to the home of a 51 year old male assistant pastor in Mohnyin district, Kachin State, and accused him of having connections with the KIA. They proceeded to arrest him and take him to their compound where they tortured him for a period of three days.

The villager was forced to sit outside on the ground in the rain while his captors repeatedly slapped him in the face and strangled him. They did not allow him to sleep and did not give him anything to eat or drink, saying that he was a “dead man” and therefore did not need food or water. The victim was not allowed to sleep the entire time he was in detention and four soldiers guarded him constantly. He repeatedly told the soldiers that he knew nothing about the KIA and worked for the church but they told him that if he didn’t confess they would kill him. He was eventually released when another church employee and a local official came to testify that the detained was working for the church and had nothing to do with the KIA.

Since his torture the victim cannot hear from his left ear and has trouble seeing from his left eye. He is on medication to attempt to treat some of the ailments resulting from his torture.

The police came to his house on 8 June to ask more questions about the KIA and he is now frightened to be at home.

He has said “I do not want this kind of thing to happen to other people in the future and I want peace. I want the government to ensure that this kind of thing does not happen again”

“I do not want this kind of thing to happen to other people in the future and I want peace. I want the government to ensure that this kind of thing does not happen again”

Torture victim, Mohnyin district, Kachin State



A Kachin man who was tortured by Burma army soldiers and sustained permanent injuries to his face as a result. (Photo KWAT)

Case 2) Shan villager killed and his family injured by Burma army soldiers

In the early hours of 30 March, troops arrived in Hotag village, Kyauk Mae District, Shan State, where they clashed with soldiers from the Ta'ang National Liberation Army (TNLA). A male villager at home with his wife, two children, mother and grandparents stepped outside as he feared for his family's safety inside the house. He was immediately shot by Burma army soldiers and died outside his home. The victim's grandparents then tried to run from the home but were also shot and injured. Soldiers then opened fire on the house and the victim's mother was injured by bullets which penetrated the walls. Following this incident Burma army soldiers detained the villagers and searched their homes for TNLA soldiers. Before leaving the village they took three hunting guns and a phone from the victim's home.

Case 3) Kachin villagers' houses burnt to the ground by Burma army soldiers in northern Shan State

On 22 May, fighting erupted between the army, militia and KIA in Man Pying village, Kyaukme District, northern Shan State. At 17:30 the army burnt down the house of a married Kachin couple who work as sugar cane farmers, aged 41 and 46 years old. The following day Burma army soldiers burned down a neighboring house of another Kachin couple who work as sugar cane and corn farmers, aged 36. The victims lost all their property in the fire. According to the victims, a military operations commander had been threatening to burn down the village since two of his soldiers were killed in a clash with the KIA in April.

“We are afraid to go back to our village because we fear that it will happen again. We want the government to take responsibility for all that has happened.”

Arson victim, Kyaukme District, northern Shan State



House burned by Burma army soldiers in Munggu town Shan State.
(Photo : KWAT)

The first couple and their children are now living in a neighbor's field and are relying on donations from local aid organizations and individuals to survive. The field is covered in water and the children are being bitten by insects and cannot go to school. This is the second time the villagers have been displaced from their home as a result of conflict as in February 2015, following skirmishes between the military and the KIA, the family fled to Bang War and lived in a tarpaulin tent for three months.

The couple now wants to settle in China as they no longer feel safe in Burma/ Myanmar, but they have been pushed back by Chinese military at the border.

The second couple also has four children and is now living in temporary accommodation in a field and relying on donations for their livelihood. They said in their interview: "Although the fighting has stopped, we are afraid to go back to our village because we fear that it will happen again. We want the government to take responsibility for all that has happened."

Conclusion

The joy following the NLD's victory and establishment of the first civilian-led government in 54 years has vanished. The escalation of conflict between the military and EAOs in a number of ethnic nationality areas has once again been accompanied by horrific human rights violations which are summarily denied by the military and EAOs. Military blockades of conflict areas mean that ND-Burma's documentation is only a snapshot of the true number of human rights violations taking place.

In her end of mission statement, the UN Special Rapporteur on the situation of human rights in Myanmar, Ms. Yanghee Lee, said "It pains me to see when talking to the ordinary people of Myanmar during this visit their feelings of optimism and hope slowly fading just after one year when the whole country was elated with the outcome of the last general elections."

Hope is also beginning to fade in Daw Aung San Suu Kyi, who has been heavily criticized for staying silent in the face of mounting allegations of human rights violations, with some blaming her for Burma/Myanmar consequently entered 2017 in a dark mood. Two Kachin pastors were detained by the military following meetings with journalists to give information on the conflict in Mong Koe, Northern Shan State – they are now in police custody. Nine students, four of them in high school, were sued by the military on defamation charges for performing an anti-war play in Patheingyi, Irrawaddy Region – a peaceful part of Burma/Myanmar. A number of EAO non-signatories are already talking about boycotting the second round of Panglong peace talks - set to be held on 28 February – due to the army's continued assaults.

It seems that the military's continued grip on power, mandated by the 2008 Constitution, prevents Burma/Myanmar from becoming a fully fledged democracy where people do not need to fear they will be murdered, tortured or lose their homes for having the wrong opinions or living in a conflict zone. In interviews with ND-Burma, victims of human rights violations repeatedly say that they want the government to acknowledge what they have suffered and guarantee that it will not happen again, to them or anybody else. This is impossible under the 2008 Constitution, which grants the military immunity and thus allows soldiers to continue to commit human rights violations with impunity. Prior to her government taking office, Daw Aung San Suu Kyi said in a number of interviews that her government would not dwell on the past but on the future, on peace. However many victims of past abuses are unable build a future because of what they have suffered. Torture victims may be unable to work or require medical assistance and victims of sexual violence may require professional psychological care. All victims want recognition of what they have suffered, otherwise they do cannot trust that the abuses will not happen again. The large spike in human rights violations committed over the past year suggests silence does indeed result in recurrence. This makes national reconciliation and lasting peace impossible. In order to find peace, it is time to stop military offensives in ethnic nationality areas, make the peace process more inclusive, and seek redress for Burma/Myanmar's many victims of human rights violations.

Appendices

Appendix 1: ND-Burma documented human rights violation by category and month

Monthly vs. Categories	Arbitrary/ illegal arrest/ detention	Confiscation/ destruction of property	Disappearance	Forced labor	Forced relocation	Human trafficking	Killings	Obstruction of freedom of express/ assembly	Obstruction of freedom of movement	Other sexual violence	Rape	Torture	Use as child soldiers	Arbitrary taxation	Total
January		1				2	2	2			3	1	1	1	13
February		3				1						5			9
May	3			3			3			1	1	29	1		41
June	5	2	4	1	6		10				1	5		1	35
July		2					4				1				7
August			1				2				1	21			25
September	4	2					1					2			9
December		1	2	1			6				1	4			15
Total	12	11	7	5	6	3	28	2		1	8	67	2	2	154

Appendix 2: ND-Burma documented human rights violation by category and state/ region

State & Region Vs. 16 Categories	Arbitrary/ illegal arrest/ detention	Confiscation/ destruction of property	Disappearances	Forced labour	Forced relocation	Human trafficking	Killings	Obstruction of freedom of expression/ assembly	Other sexual violence	Rape	Torture	Use as child soldiers	Arbitrary taxation	Total
Irrawaddy Region						1					5			6
Kachin State		1	2				3			1	6			13
Karen State										2	1			3
Mandalay Region							1				3			4
Megway Region											1			1
Mon State		1				1	1	2		1	3		1	10
Pegu Region						1					12	1		14
Rangoon (Yangon) Region											13			13
Shan State	12	6	5	5	6		22		1	4	22	1	1	85
Tenasserim Region		3					1				1			5
Total	12	11	7	5	6	3	28	2	1	8	67	2	2	154

Appendix 3: ND-Burma documented human rights violations by state/region and month

State & Region Vs. 16 Categories	Irrawaddy Region	Kachin State	Karen State	Mandalay Region	Megway Region	Mon State	Pegu Region	Rangoon (Yangon) Region	Shan State	Tenasserim Region	Total
January			2			7	2		1	1	13
February	3				1		1	1		3	9
May	2	2		2		2	3	8	21	1	41
June									35		35
July		3							4		7
August	1	3	1	1		1	8	4	6		25
September		1							8		9
December		4		1					10		15
Total	6	13	3	4	1	10	14	13	85	5	154

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