

TENS OF THOUSANDS DISPLACED AFTER ELECTION DAY

In the 48 hours after the 7 November vote, clashes between the SPDC Army and a breakaway faction of the Democratic Karen Buddhist Army (DKBA) caused more than 25,000 people in Southern Karen State to seek shelter in Thailand.

On 8 November, SPDC Army and DKBA Brigade 5 forces clashed in Myawaddy, Karen State, which caused around 20,000 civilians to flee across the border into Mae Sot, Tak Province, Thailand.¹ In Three Pagoda's Pass, Karen State - about 150 kilometers south of Myawaddy - SPDC Army and DKBA Battalion 907 forces clashed and caused about 5,000 civilians to flee into Thailand's Kanchanaburi Province. Thousands more are thought to have sought refuge in the jungles of Southern Karen and Mon State.²

At least eight civilians died and around 30 more were injured as a result of the clashes.³ It was also reported that the SPDC Army forcibly recruited around 500 civilians to carry supplies and to participate in the offensive against the DKBA.⁴ Clashes between SPDC Army and DKBA forces were also reported in Kawkareik and Kyainnseikyi, Karen State, when the SPDC Army sent reinforcements to existing forces in Three Pagoda's Pass.⁵ Junta forces shelled the DKBA base at Wah Ley along the Thai-Burma border in Myawaddy Township.⁶

ESCLATION LIKELY, ACCOUNTABILITY UNLIKELY

These incidents add to concerns that the SPDC will expand its offensive against ethnic nationality groups to other parts of the country and that the SPDC's serious international crimes against civilians will increase. Calling on the regime to show restraint will do no good in preventing these crimes as they play a fundamental role in the junta's strategy to dominate Burma's ethnic nationalities.

Further, Article 445 of the 2008 constitution provides blanket immunity for SPDC officials who carried out their duties "according to their responsibilities."⁷ This empowers the military regime to continue committing pervasive human rights abuses, including crimes against humanity and war crimes, with impunity until the SPDC is dissolved.

FURTHER CRIMES

Election preparations have failed to prevent crimes against humanity and war crimes perpetrated by the regime. In fact, Burma's military regime has continued to commit serious international crimes in the months leading up to the elections. As the international community adopted a "wait-and-see" approach to the regime in the lead-up to the elections, in September and October the following crimes by the junta were reported:

Extrajudicial killings

- **4 September:** SPDC Army soldiers from IB 59 shot and killed two Pegu residents, Aung Thu Hein, 23, and Soe Paing Zoe, 19, following an argument over a traffic accident.⁸
- **6 September:** Na Sa Ka personnel from Area 5 in Maungdaw Township, Arakan State, shot and killed two local Rohingya who were fishing in the Naff River.

¹ Nation (09 Nov 10) Panithan: Nearly 20,000 Karen refugees flee into Thailand; AP (08 Nov 10) 15,000 refugees flee Myanmar post-vote fighting

² AAP (09 Nov 10) 20,000 flee fighting on Burma border; Irrawaddy (10 Nov 10) Junta Troops Retake Myawaddy as Residents Return; DVB (11 Nov 10) Burmese army takes DKBA stronghold

³ Irrawaddy (10 Nov 10) Junta Troops Retake Myawaddy as Residents Return

⁴ Irrawaddy (08 Nov 10) DKBA Seizes Major Gov't Offices in Myawaddy; Mizzima News (08 Nov 10) Clashes continue between DKBA faction, junta troops

⁵ Irrawaddy (07 Nov 10) DKBA, Tatamadaw Skirmish in Kawkareik; BNI (12 Nov 10) Fighting Moves Karen Groups into Loose Alliance

⁶ BNI (12 Nov 10) Fighting Moves Karen Groups into Loose Alliance

⁷ Constitution of the Republic of the Union of Myanmar, Article 445

⁸ Irrawaddy (06 Sep 10) Two shot after dispute with soldiers; Mizzima News (07 Sep 10) Pegu enraged after youths shot dead by army officers

- **7 September:** Na Sa Ka personnel in Maungdaw Township, Arakan State, shot and killed an alleged robbery suspect when he entered Rok Nhyo Taung Village.
- **14 September:** SPDC Army soldiers from IB 99 killed a Shan relief worker.⁹

Forced Labor

- **1 October:** SPDC Army soldiers from LIB 325, in Tangyan Township, Shan State, ordered local villagers to build a fence around its new camp.¹⁰
- **3 October:** SPDC Army soldiers from IB 32 forced six local residents to act as porters when the battalion left Three Pagodas Pass, Karen State.¹¹
- **9 October:** SPDC Army soldiers forced six men and four women from Tekpu Village, Htantabin Township, Pegu Division, to porter army rations.¹²
- **27 October:** Na Sa Ka personnel forced more than 100 residents from villages in Maungdaw Township, Arakan State, to start clearing lands confiscated from Rohingya farmers.¹³

Rohingya

The SPDC continued its systematic discrimination of Rohingya in Northern Arakan State, denying them basic and fundamental human rights. The junta subjected Rohingya to arbitrary arrests, restrictions of movement, extortion, torture, and harassment.¹⁴

Imprisonment

- **15 September:** An SPDC court sentenced activists Zin Oo, Zaw Lwin, Kyawza Lin, Htet Ko Lwin, Khin Yi, Aye Min Naing, and San San Maw to an additional 20 years in prison under the Explosives Act. The seven activists had already been sentenced to prison terms ranging from 20 to 38 years under the Unlawful Associations Act and the Arms Act.¹⁵
- **27 September:** An SPDC court in Rangoon's Insein prison sentenced monk Uk Kong Sah to 15 years in prison with hard labor for campaigning against the upcoming elections.¹⁶
- **29 September:** The Akyab District Court in Arakan State sentenced monk U Pyinya Sara to eight years and three months in prison for defamation of religion, possession of foreign currency, and possession and distribution of obscene material.¹⁷

Violence against women

- **3 October:** A man killed an SPDC Army officer from LIB 539 in Taung Min Village, Kyauktaw Township, Arakan State, when the officer attempted to rape his daughter.¹⁸
- **Early November:** An SPDC Army soldier raped a disabled woman in her home in Mong Nawng, Kyethi Township, Shan State.¹⁹
- **7 November:** Four SPDC Army soldiers from LIB 304 based in Matupi, Chin State, assaulted and attempted to rape the wife of a National Democratic Force committee member in Matupi.²⁰

⁹ Free Burma Rangers (29 Sep 10) FBR REPORT: Shan Team Member Gives His Life for Love and for Freedom

¹⁰ SHAN (05 Oct 10) Military junta conducts military training to safeguard polling booths

¹¹ IMNA (05 Oct 10) IB No. 32 forces locals to porter goods

¹² KIC (15 Oct 10) Forced labour by army in Htan Ta Pin township

¹³ Kaladan News (02 Nov 10) Nasaka conscripts villagers for forced labor

¹⁴ Kaladan News (09 Sep 10) Son arrested for mother's attitude in Maungdaw; Kaladan News (20 Oct 10) Nasaka targets Rohingyas for extortion; Kaladan News (27 Oct 10) Nasaka confiscates mobile phones in Maungdaw

¹⁵ DVB (16 Sep 10) 'Activists' jail term extended by 20 years

¹⁶ AFP (28 Sep 10) Jailed for anti-election activity; Irrawaddy (28 Sep 10) Monk Jailed for Anti-Electioneering; DVB (28 Sep 10) Anti-election monk sentenced to 15 years; IMNA (30 Sep 10) Mon monk sentenced to 15 years in Insein Prison

¹⁷ Irrawaddy (29 Sep 10) Arakan Monk Gets 8 Years; DVB (30 Sep 10) Anti-trafficking monk given 8 years; Narinjara News (30 Sep 10) Ashion Pyinya Sara Sentenced to 8 Years and 3 Months in Prison; Mizzima News (30 Sep 10) Arakanese abbot handed eight years in jail on sex charges

¹⁸ Narinjara News (13 Oct 10) Father kills Army officer for raping his daughter

¹⁹ DVB (11 Nov 10) Disabled woman raped by soldier

²⁰ Khonumthung News (10 Nov 10) Soldiers try to rape woman in Chin state

INTERNATIONAL SUPPORT FOR COMMISSION OF INQUIRY

In March 2010, the UN Special Rapporteur on human rights in Burma Tomás Ojea Quintana said that the “gross and systematic” human rights abuses in Burma “were the result of state policy,” and recommended that the UN consider establishing a UN-mandated Commission of Inquiry (CoI). Former UN Special Rapporteurs on human rights in Burma Paulo Sérgio Pinheiro and Yozo Yokota also called for the establishment of CoI.²¹

Since Ojea Quintana’s recommendation, an increasing number of governments have voiced their support for the creation of a CoI, including: Australia, Canada, the Czech Republic, Estonia, France, Hungary, Ireland, Lithuania, the Netherlands, New Zealand, Slovakia, the UK and the US.

In his annual report to the UN General Assembly in October, Ojea Quintana reiterated the need for the establishment of a CoI to investigate allegations of crimes against humanity and war crimes in Burma. Ojea Quintana pointed out that a CoI should be seen as a “possible tool” to help Burma “**to address impunity and prevent future human rights violations,**” rather than a punitive measure against the SPDC.²² Ojea Quintana said the creation of a CoI was even more urgent given “the possibility of impunity” for the SPDC enshrined in the 2008 constitution.²³

Responding to some UN members’ preference for engagement over accountability, Ojea Quintana said: “**This is a false dichotomy. An investigation of this kind would not preclude international engagement with the new government.**”²⁴

The only way to prevent further serious crimes is to convene a CoI to investigate allegations of crimes against humanity and war crimes. The main purpose in establishing a CoI is to obtain the truth about the nature of the violations. The CoI should also make a wide range of recommendations related to justice, reparations, and guarantees of non-recurrence.

The creation of a CoI has a strong preventive value. Holding members of the junta accountable for human rights abuses is important because it may deter future violations, promote respect for the rule of law, and obtain justice for the victims. It could also promote discipline and professionalism by the armed forces and law enforcement officials and improve relations with the civilian population. The creation of a CoI should be considered as part of a long-term effort to end impunity in Burma and provide **a basis for national reconciliation and sustainable peace** in the country because justice is a fundamental part of any process of transition to democracy.

The SPDC has never properly investigated allegations of serious international crimes perpetrated by its armed forces and law enforcement officials. It has ignored 19 UN General Assembly resolutions and 21 Human Rights Council and Commission on Human Rights resolutions. A CoI is a logical progression in light of the SPDC’s failure to implement relevant measures outlined in UN General Assembly Resolution 64/238, which strongly called upon the SPDC to “allow a full, transparent, effective, impartial and independent investigation into all reports of human rights violations and to bring to justice those responsible in order to end impunity for such crimes.”²⁵

Supporting the establishment of a CoI will provide ASEAN and regional governments with increased leverage to push the SPDC to make genuine reforms. ASEAN should not publicly shield the regime from criminal accountability for its serious international crimes. In fact, ASEAN should privately encourage other governments to support the establishment of a CoI as part of its mandate to protect human rights under the ASEAN Charter.

²¹ Irrawaddy (06 Oct 10) Former UN Rights Officials Call for Burma Inquiry

²² UN News Centre (21 Oct 10) UN rights expert calls Myanmar election process ‘deeply flawed’; VOA (21 Oct 10) UN Expert: Burma Conditions for Genuine Elections ‘Limited’

²³ Irrawaddy (19 Oct 10) Election to Offer Little Change: UN Rapporteur

²⁴ IPS (24 Oct 10) Looking Beyond Burma’s 2010 Elections

²⁵ UNGA, 64th session, 64/238. Situation of human rights in Myanmar, 26 March 2010, UN Doc A/RES/64/238