

HUMAN RIGHTS IN BURMA (MYANMAR)

**Human Rights Watch/Asia
(formerly Asia Watch)**

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Human Rights Watch/Asia was established in 1985 to monitor and promote the observance of internationally recognized human rights in Asia. Sidney Jones is the executive director; Mike Jendrzeczyk is the Washington director; Robin Munro is the Hong Kong director; Therese Caouette, Patricia Gossman and Jeannine Guthrie are research associates; Cathy Yai-Wen Lee and Grace Obama-Layat are associates; Mickey Spiegel is a research consultant. Jack Greenberg is the chair of the advisory committee and Orville Schell is vice chair.

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This report was written by James A. Goldston, an attorney who serves as the Orville Schell Fellow at Human Rights Watch for 1989-90. It was edited by Patricia Gossman, Research Associate at Asia Watch. Others who contributed significantly were Kenneth Roth, Robert Goldman, Aryeh Neier, Jemera Rone and Holly Burkhalter.

The report is based largely on a fact-finding mission to Burma and Thailand undertaken in April 1990 by Mr. Goldston, as well as on information obtained in Thailand by Sidney Jones, Executive Director of Asia Watch, in May 1990.

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I. INTRODUCTION

Burma's people go to the polls on May 27, 1990, in the first election to be held in the country in thirty years. However, human rights violations are so widespread and restrictions on political expression so severe as to render impossible a free and fair election. An Asia Watch mission to Burma and Thailand in April 1990 confirmed that the Burmese military authorities continue to engage in a consistent pattern of gross human rights abuses both in the interior and along the border. In Rangoon and other major cities, political dissidents have been jailed or placed under house arrest, torture of political detainees is widespread, martial law remains in effect throughout most of the country, criticism of the military is banned, and hundreds of thousands have been forcibly relocated to outlying areas lacking basic amenities. In its recent offensive against ethnic minority guerrilla forces on the Thai border, the Burmese army has indiscriminately killed or wounded hundreds of civilians and looted or burned homes and private property. Thousands of civilians have been compelled to serve as porters for the army. As such, they are brutally mistreated and are forced to carry supplies or to serve as human mine-sweepers. Porters have been shot or beaten for trying to escape, and those who become exhausted or ill are routinely left to die.

A. Recommendations

During our visit to Burma in April, Asia Watch received credible reports that the pro-democracy opposition parties may win substantial popular support on election day, despite concerted efforts by the government to manipulate the outcome. However, Burma's military authorities have pledged to retain control of the government -- no matter the election outcome -- until a new constitution is drafted, a process that could take years, if it takes place at all. Even an opposition victory in the polls may mean little in terms of real political reform in Burma, or restoration of fundamental human rights.

Until the government of Burma takes steps to ensure the protection of human rights for its citizens, other governments should refrain from expanding trade relations with Burma or renewing programs of economic assistance. Rather, international scrutiny of human rights conditions should continue following the May 27 election. So long as the Burmese government continues to engage in systematic and gross violations of the rights of its citizens, the proper posture of the international community towards Burma's military regime is one of condemnation.

In light of these considerations, Asia Watch sets forth below the minimal steps which the Burmese government must take to end its systematic gross violation of internationally recognized human rights, as detailed in this report. We call on the Burmese government to adopt these measures immediately, and we urge the international community not to renew or strengthen economic or military ties with the government of Burma until these steps are taken:

*** Release from jail or house arrest all persons who have been detained for the peaceful expression of their political views, including opposition leaders Aung San Suu Kyi, U Nu, and U Tin Oo, and allow all Burmese to participate freely in peaceful political activity.**

*** Establish independent impartial investigations into all reports of torture, disappearances and extrajudicial executions, and prosecute those responsible for such abuses, including members of the armed forces and police responsible for the massacre of 1000-3000 demonstrators in 1988.**

*** Abolish the practice of incommunicado detention, and establish safeguards against**

torture, including the right of habeas corpus and access to prisoners for family members and lawyers. The government should also maintain a centralized register of prisoners and allow lawyers and the public access to the list.

*** Suspend the use of military tribunals to try civilians and permit civilian courts to conduct trials in accordance with internationally recognized standards of due process.**

*** Withdraw restrictions on basic civil liberties such as freedom of speech, freedom of association, and freedom of the press, including restrictions on access for foreign journalists.**

*** Abolish the army practice of forced recruitment and abuse of civilian porters.**

*** Establish independent investigations into reports of army abuses in the border conflict, including the arrest, torture and summary execution of suspected guerrilla sympathizers, indiscriminate attacks on civilians, and the looting and burning of private property, including houses and crop areas.**

*** Permit international organizations that operate confidentially, and international relief organizations to undertake the full range of their protection activities in Burma.**

B. Background

An army coup d'etat in 1962 ended Burma's 14-year post-colonial experiment with democracy. A "Revolutionary Council" made up of leaders of the coup arrested then Prime Minister U Nu, suspended the constitution and parliament, and installed General Ne Win with full executive, legislative and judicial power. The first public protests against the new regime organized by students at Rangoon University in July 1962 ended abruptly when the head of the riot police, Sein Lwin, ordered his troops to open fire on demonstrators, killing hundreds. It was a scene that would be repeated.

For the next 26 years, the military regime under Ne Win presided over the impoverishment of what was once one of the most productive lands in Southeast Asia. The new government party created by Ne Win, the Burma Socialist Program Party (BSPP), expounded an isolationist ideology he christened "The Burmese Way to Socialism." Political parties, other than the BSPP, were banned and civil administration delegated to a number of People's Councils controlled by the army and the party -- a system that was formally institutionalized by a highly-controlled "referendum" held in 1973. Burma's outspoken press was nationalized, and scores of journalists and publishers jailed for sedition. Burma's powerful secret police, or Military Intelligence Service (MIS), and later the Directorate of Defense Service Intelligence (DDSI), maintained elaborate surveillance on potential dissidents. In 1966, all foreign correspondents were expelled, a move which effectively closed off the country from outside scrutiny for the next 22 years. Anti-government protests were rare. When they occurred, as they did during the funeral of U Thant, the former Secretary General of the United Nations in December 1974, the government used brutal force to suppress them, calling in the riot police to shoot to kill.

The Massacres of March 1988

The events that launched Burma's pro-democracy movement began with a brawl between students and local residents in a tea shop in a suburb of Rangoon on March 12, 1988. As clashes continued

the next day, riot police opened fire on the students, injuring dozens and killing at least one student, Maung Phone Maw. Demonstrations broke out at universities throughout the city, culminating on March 14 in a march by some 5000 university and high school students. The riot police, under Sein Lwin, broke up the march, beating to death as many as 100 students, and arresting hundreds.

On March 17, the police stormed Rangoon University campus, arresting an estimated 1000 students. In one incident, 41 students who had been packed inside a police van suffocated. In the weeks that followed, released detainees brought back stories of torture and rape in prison. Demonstrations and clashes between riot police and students continued for the next several months.

The Massacres of August 1988

On July 23, 1988, Ne Win abruptly resigned as head of state,¹ naming as his successor the head of the hated riot police, Sein Lwin. The appointment ignited new protests throughout the country. Martial law was declared on August 3, but the demonstrations continued to build. A nationwide strike called for August 8 brought some 100,000 people out in the streets of Rangoon and thousands more in cities across the country. At 11:00 that night the army moved in, opening fire on the unarmed crowds and killing at least 1000. Journalists and other eyewitnesses reported that the soldiers fired indiscriminately into the center of the crowds, and aimed to kill. Many of the dead were shot in the back as they tried to run away. Eyewitnesses also described the bayonetting of demonstrators, including children, by army troops. Soldiers were said to have removed bodies and cremated them in secret. Doctors, nurses and other staff at Rangoon General Hospital were shot when they refused to hand over fleeing demonstrators, and when hospital staff pleaded with the troops to stop shooting.

The September 18 "Coup"

On August 12, Sein Lwin resigned, and one week later was replaced as president and BSPP chairman by the only civilian in Ne Win's inner circle, Dr. Maung Maung. Protesters rejected the appointment, however, and again took to the streets. On August 24 martial law was lifted, and for the next three weeks, the army and police were withdrawn from the cities as civil administration throughout the country all but collapsed.

On September 18, as some 300,000 people demonstrated in Rangoon, the army again assumed power under General Saw Maung, another close associate of Ne Win, who was proclaimed Chairman of the State Law and Order Restoration Council, or SLORC. During the next several days, crack troops swept back into the cities, shooting indiscriminately into crowds of demonstrators and into occupied houses. Although the final death toll may never be known, eyewitnesses estimate that 1000-3000 people were killed between September 18-21. An unknown number of people arrested then have "disappeared" and are believed to have been summarily executed. Some ten thousand students fled to the Thai border following the crackdown.

The SLORC quickly took measures to prevent any resurgence of opposition activity. Martial law regulations promulgated in September and October 1988 prohibited gatherings of more than five persons

¹ It is generally believed that Ne Win has wielded power from behind the scenes since his resignation, and that the reshuffling of official leaders which took place both before and after the September 18 "coup" amounted to no more than cosmetic changes.

in the streets, or fifty indoors. All "organizational activities, speeches, propaganda and subversive literature aimed at dividing the Defense Forces" were banned. Hundreds of persons were arrested under the State Protection Law of 1975, and the Emergency Powers Act²; in the vast majority of cases, they were detained for the peaceful expression of their political views. A number of student activists who returned from the Thai border were arrested, some of whom have since "disappeared."

The Elections

Almost immediately upon assuming office, the SLORC declared its intention to hold "multi-party elections," as soon as several conditions were met, including the "restoration of law and order." On September 27, 1988, the SLORC promulgated the "Political Parties Registration Law," and in the weeks that followed, hundreds of "parties" formed.³ Along with the other new parties, the government BSPP registered under a new name -- the National Unity Party (NUP).

Among the opposition parties, the National League for Democracy quickly emerged as the strongest. Headed by Aung San Suu Kyi, the charismatic daughter of Burma's nationalist hero, Aung San, the party attracted crowds of tens of thousands at rallies in early 1989. The size of the gatherings, and the vehemence with which Aung San Suu Kyi criticized Ne Win and the Saw Maung regime, prompted SLORC authorities to launch a major crackdown against the opposition from July 1989. Thousands of party leaders and student activists were arrested; NLD leaders Aung San Suu Kyi and U Tin Oo were placed under house arrest. Both were ultimately disqualified from running. On December 22, 1989, U Tin Oo was sentenced to 3 years hard labor after a trial by a military tribunal on charges of "inciting public unrest;" "sending false reports to foreign organizations and leaders;" and "engaging in agitation aimed at the disintegration of Defense Forces." On December 29, former Prime Minister U Nu was placed under house arrest after he refused to dissolve his declared interim government. Members of his League for Democracy and Peace party were also placed under restriction orders under the 1975 Act to Protect the State From Destructive Elements. U Nu also has been barred from contesting the election.

The Border War

For forty years, Burma has been torn by war between the central government and several different insurgent forces composed principally of members of the country's numerous ethnic minorities. Since 1984 the Burmese army has waged intensive counter-insurgency campaigns against these armed opposition groups, including minority movements fighting for greater autonomy in the Karen, Kachin, Karenni, Shan and Mon States. The predominantly peasant population has suffered greatly in this conflict. The army has imposed strict controls on the lives of the local villagers, often relocating whole villages into fenced settlements and placing them under strict curfew. Rice farmers who violate curfew to tend their

² The State Protection Law provides for detention for up to three years without charge or trial for actions deemed by the authorities to "endanger the peace of most citizens or the security and sovereignty of the state." The Emergency Provisions Act of 1950 provides for prosecution for "spreading a false news item or a rumor to excite disaffection," or for committing an act "with intent to cause alarm among the people" or "to cause disintegration of the moral character of the people using methods that cause harm to the security, the law and order and rehabilitation of the state."

³ The large number of "parties" that formed was probably due to the fact that doing so provided a way for people to discuss politics, and also to obtain scarce rations of gasoline and get a telephone installed.

fields have been taken into custody and tortured, or summarily shot by the security forces.

In 1988 the Burmese army launched a sustained and powerful offensive against the Karen, Karenni and Mon guerrilla armies located along the Thai border. As this military push continued into early 1990, several guerrilla strongholds were overrun, as the insurgents were increasingly forced onto the defensive. The Burmese army's thrust has substantially reduced ethnic guerrilla control over the lucrative black market trade in the border region and, some observers believe, significantly altered the military balance of power. In April a top Karen official acknowledged that "this may be the worst situation in forty years." Tens of thousands of ethnic minority residents have been forced from their homes by the fighting; over 40,000 have sought refuge in Thailand.

II. HUMAN RIGHTS IN THE INTERIOR

A. Imprisonment and Harassment of Political Opponents and Restrictions on Political Expression

Martial law, nighttime curfew, restrictions on free speech, free press and free association, and extraordinary constraints on campaigning have rendered impossible a free and fair election on May 27, 1990, no matter how accurately the votes are counted. In mid-April SLORC Secretary Major-General Khin Nyunt confirmed that the army will retain control of the government following the election until a new constitution is drafted, a process which many observers believe will take more than one year. In describing the campaign, one party leader commented, "All party members are pressed down by SLORC. The government has announced that we are free to speak, but in reality we have no freedom."

One western diplomat claimed that Insein Jail in Rangoon holds close to 40,000 prisoners, double its normal capacity. An opposition political party representative estimated the number of political prisoners nationwide at about 6,000. Others have placed the number at anywhere from 2,000 to 20,000. Many of these persons have been tried by military tribunals without access to defense counsel or the public. These tribunals have been empowered to conduct summary trials which suspend legal safeguards and deny the right of judicial appeal. In most cases, detainees have been tried and imprisoned for the peaceful exercise of their fundamental rights of free speech and association. Some are being held indefinitely; others have been sentenced to specific terms.

In addition to detention and torture (see below), other, more subtle means have been used to harass and intimidate the political opposition. According to diplomatic sources, lawyers have received threats for offering to represent persons charged with political crimes. Even when lawyers have been permitted to act as counsel, some have reportedly been warned that too vigorous a defense will result in a more severe punishment for the client or a jail term for the lawyer. Landlords have reportedly been pressured not to rent space to opposition political parties. One source in Rangoon reported that 62 civilian judges have been relieved of their duties in the past year by army-controlled Law and Order Restoration Committees for setting bail and refusing to exceed the legal maximum sentence in cases involving political prisoners.

According to diplomats in Rangoon, the family members of a number of candidates have been interrogated and candidates' financial records have been inspected. At least one prospective candidate for the National League for Democracy was reportedly visited by agents from the National Intelligence Bureau, who informed him they would have to audit his financial records. He decided not to run and no

audit was conducted.

On February 23, 1990, the SLORC Election Commission issued regulations which have prevented political parties from campaigning freely. Order No. 3/90 ("Order Relating to the Right to Assemble and Campaign") restricts the parties' ability to "assemble and deliver speeches" by stipulating that such assemblies take place at "a prescribed place," and only with government permission. It outlaws "processions and chanting" and "processions and slogan shouting" when the meeting is over. Speeches are limited to three hours, and must be delivered between 6 a.m. and 6 p.m. The use of loudspeakers is restricted to "what is actually needed." Although the speeches need not be submitted in advance to the Minister of Home and Religious Affairs for scrutiny, township subcommissions have been told that they must scrutinize "summaries" of speeches beforehand. Order 3/90 provides for imprisonment for up to three years or a fine of 5000 kyat (US\$750) for anyone making a speech, or publishing material which contravenes the following prohibitions:

impair the country's independence, sovereignty and integrity; ... impair the integrity of the Union and the unity and solidarity of the national races; ... denigrate or impair the dignity of the State Law and Order Restoration Council and the law and order restoration councils at different levels and the government; ... cause the disintegration of the Defense Services or impair the dignity of the Defense Services; ... undermine security, the prevalence of law and order and regional peace and tranquility; ... incite and cause racial or religious conflicts; ...incite or impair the peaceful pursuit of education; ... incite the Defense Services, People's Police Force, or public service personnel so as to prevent them from discharging their duties, to oppose the government, and to protest.

The restrictions are so broadly defined as to make any opposition candidate's speech subject to criminal penalties.

Other restrictions on speech and assembly have been used to prevent opposition groups from functioning freely. Martial law regulations promulgated in September 1988 prohibit gatherings of more than five persons in the streets, or fifty indoors. Congregating, walking, marching in procession, chanting slogans, delivering speeches, agitating and creating disturbances in the streets by a group of more than five people are also banned.

Despite government assurances that members of political parties have not been arrested for "engaging in politics," current martial law regulations define a number of political activities as criminal offenses. For example, political parties are restricted from publishing and distributing documents freely. Documents critical of the SLORC or of other government bodies are banned. At a press conference held by the SLORC on December 1, 1989, a government official denounced documents published by the youth wing of the NLD because they were distributed without permission. Other publications are condemned because they contain references to organizing "student unions," or because they contain material aimed at "insulting" government bodies or at "creating an unstable situation."⁴

The atmosphere prevailing in Rangoon during the Asia Watch visit in April 1990 was one of fear and

⁴ Rangoon Domestic Service in Burmese, December 1, 1989, in *Foreign Broadcast* Information Service (FBIS), December 5, 1989.

intimidation. As a former military associate of General Ne Win put it, "The word 'home' and the word 'safe' do not have the same meaning here as in other countries. They come to your house and just say, 'Please come along,' and you can't ask, 'Why are you here?' You just go." Soldiers and military vehicles are ever-present in Rangoon. Footbridges over streets with little traffic and newly constructed fences in the middle of major thoroughfares have led some observers to conclude that the army is well prepared to respond quickly to any future disturbances. Large red and white billboards throughout Rangoon and in other cities proclaim the virtue of the military and equate dissent and opposition with treason: "Tatmadaw [the army] and the People cooperate and crush all those harming the Union;" "Tatmadaw and the people in eternal unity; anyone attempting to divide them is our enemy;" "Crush all destructive elements."

"The army is totally in control now," one small businessman in Rangoon told Asia Watch in April. "They don't want protests of any kind. They are allowing the election, but their kind of election. The election may be technically fair, but it will certainly not be free."

Asia Watch has learned of the following incidents:

*** According to one source interviewed by Asia Watch, during the election campaign, candidates for office from Botahtaung township in east Rangoon were prohibited from giving public speeches at any outdoor site except the Burma Navy Compound. As of mid-April, only the government-supported National Unity Party had accepted the invitation to hold a rally in the compound.**

*** The leader of a pro-democracy party told Asia Watch that in April one of its candidates sought to gather together representatives of 36 parties. According to this party leader, in mid-April military intelligence officials came to the candidate's house and demanded that he put his request in writing, sign it, and provide a photograph of himself.**

*** A lawyer who serves on the executive committee of an opposition party told Asia Watch that the party's offices were under 24-hour surveillance. "I tell you only 5% of what I know," he said, "because if I tell you even 25%, I will be arrested."**

*** In the last several months at least 60 candidates for the elections have been detained without charge under martial law regulations. They include six opposition candidates arrested on February 8, 1990: U Thein Han, a lawyer and a candidate for the NLD from Pabedan Township; Dr. Maung Zaw, the NLD chairman in Sanchaung Township; U Kyaw Min, a member of the Central Executive Committee of the NLD; U Zaw Pe Win, the chairman of the Burma United Democratic Party; U Tin Soe, a candidate for the NLD from Kyauktada Township; and U Htwe Myint, a candidate and a Central Executive Committee member from the Democratic Party. On February 11, U Sein Hla Oo, the NLD candidate for Insein Township, and Dr. Khin Tun, president of the National Thamathamada (the "Right Way"), were arrested.**

Following their arrests, Zaw Pe Win and Khin Tun were taken to the Minglagoon office of military intelligence. They were reportedly transferred to Insein Jail in March, where they were tried incommunicado before a military judge. Neither man had access to defense counsel at trial. Both were reportedly sentenced to three years' imprisonment for threatening to provoke a riot by their call for Suu Kyi's release.

Thein Han was also sentenced to three years imprisonment and, along with Zaw Pe Win and Khin Tun, was in Insein Jail in mid-April.

According to press reports, 34 candidates from the NLD, the Democracy Party for a New Society, and the Union of National Democratic Parties were arrested between April 28 and May 8 in Irrawaddy Division. According to state-run radio, they were arrested in separate incidents on charges ranging from "delivering speeches without permission," to "holding party meetings and singing party songs for donations at a traditional ceremony."

B. Torture of Detainees

Persons held in detention centers have reportedly been subjected to torture, including beatings, electric shock, sleep deprivation, cigarette burns and being forced to stand neck-deep in water. Asia Watch met with several university and high school students in Rangoon in April, two of whom reported having been mistreated in detention in recent months. One student was detained for one day in March by military intelligence unit 6. His interrogators, who accused him of having links with the rebels and with foreign reporters, punched him repeatedly in the head and chest before releasing him. Two others students, who had been arrested for four days each last December, received threats of harm to themselves and their families.

A former political prisoner who was released from Insein Jail in the late 1980's told Asia Watch that a telephone crank is used on a daily basis to apply electric shocks to the genitals and other parts of the body of both political and common prisoners. At one point during his imprisonment, the person witnessed the application of electric shock to more than one hundred monks who had been arrested for political agitation. "It shatters you. It really does," he said. "You come to a stage where you say, 'What the hell do you want? I'll sign it.'"

In May 1990, Asia Watch interviewed a former British prisoner, Paul Key, who was detained in Burma between February 8 and May 4, 1990, after illegally entering the country from Bangladesh. Although he was not tortured himself, Key told Asia watch that he saw prisoners at Maungdaw detention center who had been subjected to severe beatings and electric shock. In one case, a young man, aged 20, who had been brought to the detention center, was taken out by military intelligence personnel for three days of interrogation. When he was returned to the cell, the man said that he had been given electric shock to his head and back. Electrode marks -- dark circles with a well-defined corona -- were clearly visible on the man's back. The young man had been captured with an armed Arakanese guerrilla group.

Prisoners associated with insurgent groups and Muslim prisoners are most often maltreated, according to Key. Other Muslim Arakanese prisoners were also subjected to electric shock to the head, back and genitals, or severely beaten. Prisoners also described having their heads bound in plastic and submerged under water, and having water dripped slowly on their heads. "Trusted" prisoners were used by the prison authorities to beat other prisoners, using a 2 1/2 foot rope whip. In one case Key observed, a prisoner was forced to crouch and was then kicked in the kidneys until he lost consciousness.

Prisoners at Maungdaw are reportedly kept under 24-hour lock-up, except when performing prison labor. Many of them suffer skin diseases and other ailments, though no medical care is provided. Key also described conditions at Sittwe prison, where overcrowding is severe, with 25 prisoners forced to live in cells no larger than 25 feet by 25 feet. However, prisoners work outside and are permitted to receive books and medical care. Prisoners at Sittwe are commonly punished by being shackled with leg irons, which they are forced to wear for 10-15 days at a time.

C. Forced Relocations

Diplomats have estimated that as many as 500,000 persons have been forcibly moved from their homes since 1988, 150,000 to 200,000 in Rangoon alone. Four resettlement sites have been established in the capital. The Burmese government has characterized these measures as standard economic development tools to clean up the cities and provide housing to squatters.

The government has contended that the relocations are designed to provide safe, clean housing with amenities for persons who previously lacked them. Reports that many of the new sites lack adequate housing, water, electricity and health facilities, and that some of the persons moved previously enjoyed reasonable accommodations, suggest, at the very least, that the government has not, to date, achieved its stated goals.

Furthermore, the government of Burma has failed to satisfy minimal standards of reasonableness in carrying out these forced relocations. Article 148 of the Burmese Constitution of 1974 grants every citizen the right to "settle and reside in any place within the State according to the law," and Article 161 provides that each citizen's "property and residential buildings lawfully earned ... and other lawful possessions shall be protected by law."

Asia Watch believes that these relocations are intended at least in part to serve a military and political control purpose. International human rights and humanitarian law limits the power of governments forcibly to move people from their homes. In situations of internal armed conflict, under Article 17 of Protocol II of the Geneva Conventions, forcible relocation for reasons related to the conflict may only take place to protect the security of the civilians involved or for imperative military reasons. That standard is inapplicable to the relocations underway in Burma.

Outside of the military conflict context, Article 12 of the Universal Declaration of Human Rights provides, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ... Everyone has the right to the protection of the law against such interference ..." Article 12 requires that, especially in the absence of emergency circumstances caused by armed conflict, no relocation should proceed prior to public notice and hearing of the plans, with the opportunity for affected citizens to present evidence before an impartial judicial body. The government should provide transportation and other assistance to facilitate the process of relocation. Those who are forced to leave their homes should be free to reside anywhere outside the zones directly affected by the relocation. Compensation should be provided. Persons who live in the relocated zones should be permitted to return to their homes following the termination of any emergency which may have served as the justification for relocation.

Under such standards, the Burmese government's forced relocations fall short in several respects.

*** The government has provided insufficient notice -- often one to two weeks -- and no opportunity for affected citizens to contest the relocation. Residents expressing opposition to the moves have been ignored or arrested for expressing their views.**

For example, on March 22, 1990, the government ordered the residents of Lut Lat Ye Independence Ward in Ahlone township -- a neighborhood of over 300 families -- to dismantle their homes and move to Hlaing Thaya, a relocation site across the Rangoon River from downtown Rangoon. Independence Ward was a working class neighborhood dating from the late 1940's, which had a tradition of opposition to

government policies. In a letter to the local army-controlled Law and Order Restoration Council, eleven heads of households from the neighborhood appealed the order to move. All were reportedly arrested. In early April, fire trucks and special police vehicles arrived in the Ward and ordered residents to commence dismantling their homes. The few persons who protested were arrested. The rest complied with the order. By April 10 the neighborhood had been reduced to rubble.

*** Persons being relocated have been compelled to move to one of a few government-selected sites. A large number of those forcibly relocated have been persons squatting on religious or other property. Although many of these persons lacked adequate housing in their original locations, some have been compelled to move to areas which also suffer from sub-standard housing, as well as an absence of basic amenities such as water and electricity. Moreover, many of these persons have reportedly been moved far outside city centers, where opportunities for regular employment are fewer than in the cities.**

*** In many cases, no compensation has been provided for the loss of original property. According to western diplomatic sources, a significant portion of those moved originally owned their own homes. Many of these persons have not been compensated for the land or the property which has been taken from them. Substantial numbers have been forced to pay, at varying rates, for the new property and any new materials they must purchase to build their new homes.**

Asia Watch spoke with one man who had been forced to move in January, 1990 from Insein township in Rangoon to Hlaingthaya, eight to ten miles away and accessible only by ferry. The man explained that he and other residents of Insein township were given less than one month's notice by military authorities that they would have to move. When he protested to one military official that he had title to the land and the house upon it, he was told that the military owned all the land in the area, and that almost 10,000 households would have to leave. The man was afforded no opportunity to present his argument in court or to any non-military authority. The man's new house, built with the same materials from his old house, is smaller than the original. There are no medical facilities in the area. Moreover, the man reported that many persons in Hlaingthaya are without work, and are worse off than when they were living in their original neighborhoods.

*** The compulsory nature of the relocation process, as well as the failure to provide notice and the harsh response of the authorities to opposition, raises serious questions as to the sincerity of the government's professed intentions. The timing of the relocation program gives cause for further concern. Although the Burmese government had previously carried out relocations in Rangoon to three satellite towns -- South Okkalapa, North Okkalapa and Thaketa -- in the late 1950's, the current wave of relocations commenced shortly after nationwide protests in 1988. Several factors suggest that, in selecting certain areas for relocation, the government has targeted neighborhoods known for their residents' anti-government sentiment.**

According to diplomats in Rangoon, many of the neighborhoods targeted for relocation were those which gave widespread support to the 1988 protests. Housing and facilities are reportedly superior in sites set aside for government and military officials who have been moved. Observers have suggested that this may represent an effort to bolster support for the regime among civil servants.

Furthermore, irregularities in the voting registration process have been reported from some of the new relocation sites. In some cases, persons have reportedly experienced difficulties re-registering as voters in their new homes. One opposition party leader estimated that the forced relocation to four new

satellite towns in Rangoon would result in the disenfranchisement of 20,000 voters.

D. Failure to Prosecute Those Responsible for the Shooting of Peaceful Demonstrators in 1988

To date, not a single member of the armed forces or police has been convicted or even prosecuted for involvement in the shooting of at least 1000 peaceful demonstrators during 1988. To the contrary, the government has continued to defend the actions of its forces as necessary to restore order and prevent dissension. Asia Watch calls on the government of Burma to acknowledge its responsibility for the killings of 1988 and to initiate criminal prosecutions of those implicated.

III. PORTERING

The Burmese army uses thousands of civilians to carry supplies, including food and ammunition. Porters are dragged from their homes in the middle of the night or abducted from street corners in broad daylight. They may serve for a few days or a few months at a time. Many serve only once. Others, however, have been compelled to work for the army on more than twenty separate occasions. As porters are transported from their homes through the jungle to the border areas of conflict, they are exposed to a range of hazards, ranging from disease and malnutrition to land mines and guerrilla fire. Porters who become sick or tired are frequently left behind or killed. Many who try to escape are shot.

The government of Burma does not dispute that portering is widespread, but contends that porters are paid for their services and are not mistreated. Colonel Thein Myint, of the office of the military attaché in Washington, D.C., told Asia Watch that porters are provided daily wages and rations, and that porters or their families are compensated for injuries or death incurred during portering. The Embassy of Burma in Washington D.C. has stated that porters are "well paid and well provided for." According to the Embassy, porters' wages are paid out of the discretionary funds under the control of each local army commander.

According to Colonel Myint, some porters serve voluntarily, and others are drafted. The method of compulsion varies from township to township, but generally, he explained, when a commander arrives at a township, soldiers contact the township authorities, "and they arrange the amount we need."

"We cannot do without porters," Colonel Myint said. "We have no helicopters; we have no machinery. We use mules, horses, oxen to transport rations. And we use man labor." Colonel Myint denied that porters are physically abused or left in the jungle to die: "We live together with porters as our brothers. We never leave them behind. We treat them as our relatives."⁵

A. As Practiced in Burma, Portering Contravenes International Law

The power of a lawfully constituted government to conscript civilians for service in the armed forces is broad. However, it is not unlimited.

It is the conclusion of Asia Watch that Burma's systematic recruitment of civilians for non-military

⁵ Interviews with Soe Win, First Secretary, Embassy of Burma, Washington, D.C., May 14, 1990; Colonel Thein Myint, Office of the Military Attache of Burma, Washington, D.C., May 14, 1990.

labor service is inconsistent with its international legal obligations. The evidence we have gathered contradicts the assertions of Burmese government representatives that many porters freely offer their services and are paid. In the vast majority of cases, porters are compelled to serve; they do not serve voluntarily. Moreover, porters are rarely, if ever, paid for the work they perform.

The government of Burma, like other governments, is obliged to respect internationally recognized human rights and is internationally responsible for violations of those rights committed by and attributable to its armed forces. Further, the present nature of hostilities in Burma is that of a non-international, i.e. internal, armed conflict governed by Common Article 3 of the Geneva Conventions and customary international law.⁶ Although Burma is one of the few countries in the world which has signed neither the Geneva Conventions nor the Additional Protocols,⁷ the International Committee of the Red Cross has held that the provisions of Common Article 3 possess the character of *jus cogens*, a peremptory norm of international law, and thus are binding on all authorities claiming to exist in international law.⁸

In addition, Burma has ratified International Labor Organization Convention No. 29, which obliges all signatory governments to "suppress the use of forced or compulsory labour in all its forms within the shortest possible period."⁹ "Forced or compulsory labour" is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹⁰

⁶ Common Article 3 to the four Geneva Conventions provides:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for."

⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of victims of Non-International Armed Conflicts (Protocol II).

⁸ See R.K. Goldman, "International Humanitarian Law and the Armed Conflicts in El Salvador and Nicaragua," *The American University Journal of International Law and Policy*, Vol. 2, No. 2, Fall 1987, at 542 n.7.

⁹ ILO "Conventions, ratified by member states, create binding obligations. . . ." Henkin, Pugh, Schachter, Smit, *International Law: Cases and Materials* (1987) at 1403.

¹⁰ ILO Convention No. 105 outlaws the use of forced labor for purposes of economic development, political

1. ILO Convention No. 29 prohibits compulsory labor for the transport of persons or goods, i.e. portering.

Article 18 of the Convention specifically outlaws forced portering: "Forced or compulsory labour for the transport of persons or goods, such as the labour of porters or boatmen, shall be abolished within the shortest possible period." Burma ratified the Convention in 1930. It has had 60 years to comply with its obligation to abolish the practice of forced portering. On this ground alone, portering is inconsistent with Burma's international obligations.

Even if it were determined that Burma is not obliged to abolish compulsory portering, ILO Convention No. 29 mandates that, in the transitional period prior to abolition, any forced labor by porters be conducted in conformance with certain specified standards. Burma is in flagrant violation of these requirements. Thus, the Convention provides that, until compulsory portering is abolished, ratifying governments must promulgate regulations specifying, among other things, a) that the workers must be medically certified or that the employer is responsible for ensuring their physical fitness; b) the maximum load to be carried; c) the maximum distance from their homes the workers may be taken; d) the maximum time period they may be taken; and e) the persons who may demand this form of labor and to what extent.¹¹ No such regulations have been promulgated by the Burmese government. Indeed, there exists no legislation of any kind authorizing or regulating the conscription of porters.

ILO Convention No. 29 further provides that "Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour."¹² Forced labor of any kind must be "remunerated in cash at rates not less than those prevailing for similar kinds of work" in the area of employment or recruitment, whichever is higher.¹³ Overtime must be compensated for "hours worked in excess of the normal working hours," and a weekly day of rest is required.¹⁴ Finally, no forced labor may be undertaken until the government has determined that it is impossible to obtain paid voluntary labor to carry out the particular tasks at issue.¹⁵

coercion or education, as a means of labor discipline, as punishment for strike participation, or as a means of racial, social, national or religious discrimination. The government of Burma has not to date ratified Convention No. 105.

Article 8 of the International Covenant on Civil and Political Rights further provides that "No one shall be required to perform forced or compulsory labour." The government of Burma is not a signatory to the Covenant.

¹¹ See Article 18. Article 18 continues: "The competent [government] authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered, but also of the nature of the road, the season and all other relevant factors, and that, where hours of journey in excess of the normal daily journey are exacted, they shall be remunerated at rates higher than the normal rates."

¹² Article 11.

¹³ Article 14.

¹⁴ Article 13.

¹⁵ Article 9.

Burma is in compliance with none of the above requirements. Asia Watch has met with persons compelled to perform porter duties who are of an apparent age of less than 18 and others who are of an apparent age of more than 45. The use of children to porter supplies in or to combat areas also violates customary law rules of civilian immunity and Common Article 3. In addition, this practice infringes Article 4(3)(c) of Protocol II, which provides that "children below the age of fifteen years shall neither be recruited in the armed forces or groups not allowed to take part in hostilities."¹⁶

As noted above, Asia Watch met with scores of escaped porters, not one of whom reported having been compensated. Several porters reported walking for more than seven days in a row without a day's rest. Finally, there exists no evidence that the Burmese government has ever sought to obtain voluntary paid labor to perform porters' duties.

2. Porterage fits into none of the exceptions to the definition of "forced or compulsory labour" which are set forth in the Convention.

Article 2 of ILO Convention No. 29 excludes from the definition of "forced or compulsory labour" the following:

"(a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character; ... (d) Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population. ..."

Porters do not perform "work of a purely military character." Porterage service is not "exacted in virtue of compulsory military service laws." Finally, there is no emergency of the kind envisioned in the Convention which might justify compulsory recruitment of civilians. Accordingly, ILO Convention No. 29, as interpreted in light of international humanitarian law, bars Burma from forcibly impressing civilian porters into non-military service.

a. Porterage service is not "exacted in virtue of compulsory military service laws."

There is no Burmese legislation authorizing conscription of porters.¹⁷ Although Article 171 of the Constitution of 1974 obliges every citizen to "undergo military training" and "undertake military service for the defence of the State," there exists no implementing legislation with respect to the method of porters' recruitment, the means of their payment, or the duration of their service. In the absence of any legislation authorizing conscription of porters, individual commanders have assumed virtually unlimited discretion to recruit and treat porters as they wish. Many porters are seized at random from train stations, markets or their homes. They may be seized by army soldiers, police officers or civilian government officials acting on the army's behalf. In many if not most cases, the families of porters are not informed where their relatives have been taken. Often, porters are provided little or no notice of their departure or destination. Although

¹⁶ Although Burma has not ratified Protocol II, and thus its terms do not bind the government, its rules provide authoritative guidance on the conduct of hostilities by the parties to the Burmese conflict. *See infra*.

¹⁷ Asia Watch telephone interview with Soe Win, First Secretary, Embassy of Burma, Washington, D.C., May 14, 1990.

Burmese government officials report that individual army commanders are allotted money for the payment of porters, no porter with whom we spoke reported having been paid. The extra-legal status of portering is an invitation to discrimination which the requirement that recruitment be undertaken "in virtue of compulsory military service laws" does not tolerate.

b. Porters do not perform "work of a purely military character."

The overwhelming proportion of the work performed by porters is not of a military nature. Rather, it involves manual labor: carrying loads of rice or ammunition.¹⁸ Porters do not wear uniforms; they do not, in contrast to soldiers, receive compensation for their work; and they do not carry weapons or participate in combat. Unlike soldiers, porters are not distinguished by rank or seniority; they are all treated as manual laborers.

By contrast, soldiers are regularly, if poorly paid, for their military service. Soldiers generally receive more substantial daily rations than porters, who receive insufficient amounts of rice and fish paste. Although injured porters are left behind to die, wounded soldiers are sometimes carried by other soldiers or porters and provided with medical care. Porters are beaten or shot far more frequently than soldiers.

Porters are occasionally used to shield combatants from attack in violation of the prohibition in customary international law against using civilians as shields. Porters have been made to walk in front of soldiers and risk their lives when it is believed that an area has been mined. And some escaped porters have reported that colleagues have been made to dress in army uniforms and patrol an area while unarmed to serve as walking targets for the guerrillas.¹⁹ The non-military character of porters' work is consistent with international humanitarian law's characterization as "civilians" members of labor units who work for and travel with the army. Insofar as the internal armed conflict in Burma is governed by Common Article 3 and customary international law, we must look to those international humanitarian principles to determine whether porters are to be characterized as civilian or military personnel. Furthermore, in seeking to apply those principles to the Burmese conflict, Protocols I and II to the Geneva Conventions, although not directly applicable, do contain rules providing authoritative guidance on the conduct of hostilities by the parties to that conflict.

Two seminal principles of customary international law are the prohibition against attacks against civilian populations, and the complementary requirement that the warring parties distinguish civilians

¹⁸ Some porters are compelled to dig trenches; however, these are often for the exclusive use of soldiers, and porters are not uncommonly prohibited from using them for their own protection. The digging of trenches thus serves to underline the distinction between soldiers, who engage in combat, and porters, who do not.

In addition, Asia Watch has received reports of civilians being seized from rural villages and forced to serve as guides. On some occasions villagers have been tied together with rope around their necks and hands behind their backs, and have been tied to trees at night to prevent their escape.

¹⁹ Article 51 of Protocol I -- which we cite as an authoritative rule even though Protocol I would not apply to the Burmese conflicts -- provides: "The parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations."

The practices of shielding also violate the command of Common Article 3 -- which has the force of customary law and does apply to the Burmese conflicts -- that non-combatants be treated humanely.

from combatants at all times.²⁰ Under international laws of war analysis, porters are considered to be civilians, not combatants. Thus, Article 50(1) of Protocol I provides:

"A civilian is any person who does not belong to one of the categories of persons referred to in Art. 4(a)(1), (2), (3), and (6) of the Third Convention and in Art. 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian."

Article 4(a)(4) of the Third Geneva Convention, sets forth a category of persons who are, by the terms of Protocol I, civilians -- that is, they are not in any of the categories which Protocol I defines to be the exclusive province of non-civilians. Included in this category are "[p]ersons who accompany the armed forces without actually being members thereof, such as ... members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany..."²¹

Porters carry food and ammunition for the use of soldiers; they are effectively labor units for the army. In addition, porters work, not only with the authorization of the armed forces, but under their compulsion. Accordingly, porters performing labor for the Burmese army are civilians, under the definitions of Article 50(1) of Protocol I and Article 4(a)(4) of the Third Geneva Convention.²²

c. There is no emergency sufficient to justify impressment of civilian labor as it has been undertaken in Burma.

International human rights law sets forth fundamental guarantees which apply even during a state of exception; they cannot be suspended under any circumstance. Among these are the right to life and the

²⁰ These have been codified in the "basic rule" of Article 48 of Protocol I, which provides: "In order to ensure respect for and protection of the civilian population, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objects and accordingly shall direct their operations only against military objectives." Article 51(2) further provides, "The civilian population as such, as well as individual civilians, shall not be the object of attack."

²¹ See M. Bothe, K.J. Partsch, W.A. Solf, *New Rules for Victims of Armed Conflicts* (1982) at 293 ("the term 'civilian' ... includes not only the peaceful population who are not directly involved in a Party's military effort but also the following: (a) Persons directly linked to the armed forces, including those who accompany the armed forces without being members thereof, such as ... members of labour units, or of services responsible for the welfare of the armed forces ...").

²² The Additional Protocols take full account of the fact that "in any army there are numerous important categories of soldiers whose foremost or normal task has little to do with firing weapons. These include auxiliary services, administrative services, the military legal service and others, ..." all of whom, by virtue of their status as members of the armed forces, are combatants. International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987) at 515. However, porters -- members of civilian labor units -- are different. Thus, "the civilians who generally accompany armies in the field [including members of labor units] ... are covered by the Third Convention, Arts. 4A(4)(5) and are classified as civilians under Art. 50(1) of Protocol I..." M. Bothe, K.J. Partsch, W.A. Solf, *New Rules for Victims of Armed Conflicts* (1982) at 240 n.25.

prohibition against torture, cruel or degrading treatment, and slavery.²³ In addition, Common Article 3's requirement that non-combatants be treated humanely applies at all times.

With respect to standards that can be lawfully suspended during an emergency, the authorities are obliged to exercise their extraordinary powers over citizens only to the extent strictly required by the exigencies of the situation.²⁴

The impressment of civilians into porter service has been widespread in Burma for several decades. According to a Burmese Embassy official, porters have been commonly used in Burma "since colonial days."²⁵ Burma has not been in a state of emergency -- an "exceptional situation of crisis or emergency"²⁶ -- for four decades or more. Moreover, the absence of any legislation authorizing the practice of portering, and the arbitrary nature of the recruitment process in practice, raise grave suspicions as to whether the impressment of civilians has been undertaken only to the extent strictly required by the exigencies of the situation.

In addition, although the State Law and Order Restoration Council declared martial law upon taking power in September, 1988, it seems unlikely that the post-coup situation in Burma could be characterized as an emergency for the purpose of requiring portering. Since September 18, 1988, the State Law and Order Restoration Council has promulgated several rules which, in piecemeal fashion, have effectively overruled the prior constitutional order.²⁷ Nonetheless, the Constitution of 1974 has never been formally suspended

²³ See International Covenant on Civil and Political Rights, Article 4(2) (expressly prohibiting derogation from certain obligations).

²⁴ See International Covenant on Civil and Political Rights, Article 4 (derogations permitted "to the extent strictly required by the exigencies of the situation").

²⁵ Asia Watch interview with Soe Win, First Secretary, Embassy of Burma, May 18, 1990.

²⁶ *Lawless v. Ireland* (1961) (European Court of Human Rights) (emergency in context of European Convention of Human Rights refers to "an exceptional situation of crisis or emergency") (quoted in Henkin, Pugh, Schachter, Smit, *International Law: Cases and Materials* (1987) at 1004).

²⁷ SLORC Declaration 1/88, promulgated September 18, 1988, declared that "the Tatmadaw [the armed forces] has, for the welfare of the people, assumed the responsibilities of the state organs to implement" the maintenance of law and order, the provision of food, clothing, shelter and transportation, and the holding of multiparty elections. SLORC Announcement No. 2/88, issued the same date, abolished existing governmental organs, including the People's Assembly, the State Council, the Council of Ministers, the Council of People's Justices, the Council of People's Attorneys, the Council of People's Inspectors, and all state/divisional, township, and ward village people's councils. SLORC Order 2/88, promulgated the same day, September 18, 1988, established a nationwide curfew from 10:00 p.m. to 4:00 a.m. and prohibited public assembly of five or more persons. On October 19, 1988, SLORC Order 8/88 barred political parties from making "personal attacks on any individual person or any particular political party," and provided that "it is forbidden to organize and agitate, give talks, spread false and malicious rumours and write such materials with the intention of bringing about disintegration of the Tatmadaw."

On September 24, 1988, SLORC Declaration No. 6/88 provided that "[a]ll laws existing on 18th September 1988, the date on which the State Law and Order Restoration Council took charge of the sovereign powers of the State, shall remain in force until and unless repealed."

or abolished, and no formal state of emergency has ever been declared.²⁸

Finally, the military takeover in September of 1988 was prompted, not by armed insurrection, but by largely peaceful demonstrations and protests by thousands of citizens. The armed ethnic insurgencies along Burma's border had been ongoing for 40 years prior to 1988; they did not escalate in the months before the coup.

B. Forced Recruitment

Burmese government officials do not know the number of civilians serving as porters for the army.²⁹ It is clear, however, from Asia Watch's interviews with escapees that many thousands have been arbitrarily selected and forced to engage in portering. The Burmese army employs substantial resources and an extensive transportation network to move civilians from towns and villages to the front lines of battle.

Some persons report having been compelled to serve as porters more than 20 times in the past few years on a regular rotating basis. Their villages are required to meet a pre-set quota of persons, and the village headmen are responsible for ensuring that the quota is met. Some porters estimate having spent from one-fourth to one-half of the past two years carrying loads for the army. Villagers have fled some areas to avoid having to serve. Land in other villages has reportedly lain fallow, as many residents are off serving as porters rather than working in the fields.

Cases

Asia Watch interviewed scores of escaped porters who described how they were abducted and forced into service for the army.

* Ze,³⁰ a 26-year-old fisherman from Kaw Saung, Mon State, was returning home from fishing with eight other men at 6 p.m. on January 18, 1990, when they were surrounded by about twenty soldiers and captured. The nine men were taken to Megui, where they spent the night in a military barracks. The next day, all nine were sent to Moulmein by ship, where they were held in custody at the 62nd battalion headquarters along with 700 captured persons. After three days, Ze and 300 others were sent to Ye by train, where they were held in the army barracks. The following day, they were led out by soldiers of the 101st battalion and began marching to the jungle.

²⁸ Asia Watch interview with Soe Win, First Secretary, Embassy of Burma, Washington, D.C., May 15, 1990. Article 76 of the Constitution provides that the "Council of State may declare a state of emergency and promulgate martial law in specified areas or in the entire State, if an emergency affecting the defence and security of the State should arise." Although the Council of State did declare a state of emergency in several areas of the country in mid-1988, this declaration was lifted prior to the military coup in September.

Article 4 of the International Covenant on Civil and Political Rights permits derogation from certain obligations in "time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed."

²⁹ Asia Watch interview with Soe Win, First Secretary, Embassy of Burma, Washington, D.C., May 14, 1990; interview with Colonel Thein Myint, Office of the Military Attache of Burma, Washington, D.C., May 14, 1990.

³⁰ Many of the names have been changed to protect the parties.

*** Maung, a 26-year-old Shan farmer from Kaw Saung, Mon state, was sleeping at his parents' home when soldiers from the 101st battalion of the Burmese army entered his house at about 10 p.m. one night in January 1990 and took him away. He was taken to Megui, where he was placed in an army building with 300 others. The following day, all 300 were sent to Moulmein by ship and from there to Ye by train before beginning an operation with soldiers of the 101st battalion.**

*** Naing, a 27-year-old day laborer from Kyaik Maraw, Mon state, was working in a rice paddy field in the afternoon of January 27, 1990 with five other men, when sixty soldiers from the 31st battalion surrounded them and took them on an army vehicle to the army barracks in Kyaik Maraw. The next day, they were taken to the 31st battalion headquarters in Thanbyuzayat, where about 1000 persons were being held. The following day, the 1000 were transported by train to Mawkanin, where they were divided into two groups. One went with the 31st battalion, the other with the 106th battalion on a portering operation.**

*** Oo, a 23-year-old day laborer of Burman nationality from Rangoon, came to Moulmein on January 27 to visit a friend. In Mudon, a town near Moulmein, soldiers captured him and seven others, and took them to the 31st battalion headquarters in Thanbyuzayat. There they were held with 400 others. Later that day, all 400 were taken to Mawkanin by train. The following day, Oo left with the 106th battalion on a portering operation.**

*** Zin, a 24-year-old farmer, was grabbed by soldiers of the 101st battalion on January 29, 1990 at about 9 p.m. while he was just outside the railway station in Ye. He was placed on a truck with 20 other men and driven to the 61st battalion headquarters in Ye. Upon arrival, soldiers ordered all the men into a building in which 200 were already being held.**

At about 5 a.m. the next day, the men were awakened and told to form a line. Soldiers inspected the physical condition of the men and selected the strongest first, dividing them into three groups. The strongest were made to carry heavy ammunition; another group carried rice; a third group carried medicines and small bullets. At 8:30 a.m. they were led off by soldiers of the 101st battalion.

*** Min, a 32-year-old farmer from Bok Pyin, Megui district, Mon state, was walking in the street with a friend to the market in Bok Pyin at about 3 p.m. on January 2, 1990, when he was grabbed by soldiers from the 103rd battalion of the Burmese army. His friend managed to run away. Min was placed inside an unfinished government building with more than 100 other men. At 2 a.m. the men were transferred to the town of Megui by boat. They arrived at 4 p.m. on January 3. Army trucks took the men to the 101st battalion base in Megui. When Min arrived at the base, each of ten buildings he saw was filled with others in custody. Inside the barracks the detainees were permitted to go to the bathroom only at gunpoint.**

After three days, about 1000 prisoners were transferred by ship to Moulmein, where they arrived on January 7. All were then taken in army trucks to the 62nd battalion base in Mudon. The trucks had army insignia on the outside, and uniformed soldiers drove them. The prisoners stayed for four days at the 62nd battalion base, before being moved by rail to Ye on January 11. The men were stuffed tightly into railway cars normally used to carry animals. They left Mudon at 8:30 a.m. and arrived in Ye at 4 p.m. The prisoners spent the night at a chestnut farm surrounded by soldiers. At 6 a.m. on January 12, the prisoners were divided into three columns and began marching on a portering operation.

*** Myint, a 32-year-old farmer from Bok Pyin, was told by the village headman on about January 9,**

1990 that the army had demanded that the town provide porters. On January 12, about 100 young men were called to the house of the village headman, and 30 were selected to serve, five from each part of town. Myint was taken to Megui and joined Min (see above).

* Hle, a 20-year-old farmer from Palaw, was arrested by policemen in that town one evening early in January 1990. He was held in the police station with 15 other men, but was never charged with a crime. At 2 a.m. he and the others were taken by boat to Megui, where they were transferred to the 101st battalion headquarters, from which they later began a portering operation.

* Kaw, a 30-year-old bricklayer from Moulmein, came home from work on January 6, 1990, had dinner and went to see a movie. At 9:30 p.m., as he left the movie, the village headman in the Sitwe Taung quarter of Moulmein seized Kaw and took him to the police station. The next day, an army vehicle took Kaw to the 31st battalion in Thanbyuzayat, where he was held with 300 porters. After three days, soldiers took the 300 to the 106th battalion compound in Mawkanin, where they began their portering operation.

* Tan, a 26-year-old bricklayer from Moulmein, returned from work to the Say Kyo quarter on January 26, and was stopped by soldiers in an army truck. He was placed in the truck and taken to the 104th battalion in Moulmein, where he spent the night with 50 others. The next day the 50 were transported to the 31st battalion headquarters in Thanbyuzayat, and from there they went to Mawkanin by train. They were kept in a school in Mawkanin which was surrounded by soldiers. From Mawkanin they began a portering operation with the 106th battalion.

* A 37-year-old farmer from Mesame village in Hlaingbwe township, Karen state, told Asia Watch that he had been compelled to serve as a porter more than twenty times, for periods ranging from ten days to one month. Most commonly, soldiers came into town with no notice, demanding able-bodied men. Those with substantial sums of money were able to pay someone else to serve in their stead. Village headmen often assisted soldiers in recruiting porters.

The frequency of porter service has meant that "people have very little time to work for themselves, so there is very little food in my village." He estimated that, in the past year, he has spent fully one-half of his time serving as a porter. There were 300 families living in his village one year ago; today there are fewer than 100, he said.

* A 28-year-old farmer from Kwile, Karen state, said that he had been a porter ten times in the past year, approximately five days each time. Porter service has been a fairly regular phenomenon in his village since 1984. Thus, fields nearby have lain fallow, as farmers lack the time to work them or leave the area out of fear. According to him, regular rotations require five-day service every month or so. Generally, only men are recruited. However, women must serve when the army stages emergency call-ups on short notice. Households which cannot supply men must offer money.

* A 44-year-old farmer from Teneblaw village, Hlaingbwe township, Karen state, said that porter service has been "routine work" for him for some time. For the past two years he has been compelled to serve every other week. There are approximately eighty households in his village. According to this man, at any one time a member of every household is serving as a porter in the Burmese army.

The recruitment system is relatively systematized, but relies ultimately on force. Generally, the village headman tries to meet the quota set by the military. If he is unsuccessful, soldiers come into town

and grab people.

*** A 27-year-old farmer from Yaphee village, Hlaingbwe township, Karen state, said that in early March 1990, army soldiers came to her house, where she lived with her parents. They ordered her to come with them. When she refused, one soldier approached her and struck her once on the back with a wooden stick. "It was just once," she said, "but it hurt enough to make me go." She quickly left with the soldiers, and served as a porter for twelve days. Her parents were not forced to serve.**

*** According to porters from the area, Lawpita village, Kayah state, has provided porters for the Burmese army on a regular basis throughout the past year. They estimated that, on seven occasions in the past year, the village had provided on average 80 men to serve as porters. The village has about 160 houses with 700 residents. On occasion, individuals were allowed to make payments to soldiers in place of serving. However, the going price of 2000 kyats (about US\$ 300 at the official rate, US\$40 or less on the black market) is well beyond the means of most residents.**

*** Three male farmers in their mid-30's from Lawpita village said that, at about 4 p.m. on April 6, 1990, they were called to the village headman's house, where they found the headman and several Burmese army soldiers. The headman told the three that they were to serve as porters. The three were not permitted to return to their homes to advise their families of their whereabouts.**

*** A 44-year-old farmer and a 30-year-old farmer were also recruited to porter in Lawpita on April 6, 1990, but they were taken from their homes. Late at night army soldiers knocked on their doors and yelled at the men to come out with their blankets.**

*** A 25-year-old Karen farmer reported that he had recently been compelled to serve in a local militia to defend his village in Kawkareik township, Karen state. For the past several months Burmese army soldiers had compelled him and other residents of the village to participate in military training and to act as security guards for the village. None of the participants was given weapons. Many villagers fled rather than serve in the militia.**

*** A 14-year-old boy was captured by army soldiers in Kamamaung on March 26, 1990. While serving as a porter, the boy had to carry very heavy loads, and was given insufficient amounts of rice to eat. In late April, following his escape, his parents were still unaware of his whereabouts.**

*** The following testimony was taken in Rangoon in December 1988: Maung Kway and a street vendor friend were picked up by a mixed army and police posse at the junction of Fraser Street and Sule Pagoda Road in downtown Rangoon at about 9 a.m. on October 15, 1988. Maung Kway was taken to the police station, where he was asked to give his name and other basic information in a room full of men. The police accepted bribes from about 13 of the men, who were then hidden upstairs in the family quarters. The rest were herded into a truck, made to put their arms over their heads and prohibited from looking out. Maung was taken to City Hall, where some 2,000 others were being held. All the porters were taken to Insein Jail and placed in the women's wing. At the jail the police took from Maung 50 kyats and his watch. Later that night Maung and over 1,000 of the detainees were placed in 12 army trucks and driven to Pa-an. Their hands were bound together, and they were not allowed out of the truck for any purpose. They were given a small quantity of rice and fish paste, but no water.**

By sunset on October 16, they reached the village of Hlaingbwe, Karen state. There were already

2,000 others in custody in the football field of an army camp. After sleeping on the floor that night, they were given some rice and dahl the next morning, then divided into groups of 10 to begin portering.

C. Physical Mistreatment of Porters

The Burmese army engages in systematic violations of customary international human rights law and the rules of armed conflict in its treatment of porters. As demonstrated in the examples below, the Burmese army commonly breaches the customary law principles embodied in Common Article 3 of the Geneva Conventions through the following practices:

- * summary execution or cruel and inhuman treatment of porters who try to escape;**
- * failure to collect and care for porters who become sick or wounded in the course of their portering duties;**
- * placing porters at risk by forcing them to walk into conflict areas or areas presumed to be mined.**

Even if porters are considered to be armed combatants, they are protected against torture or cruel, inhuman or degrading treatment or punishment.³¹

Cases

1. Killings of Porters: Summary Executions

*** Naing, a 27-year-old day laborer from Kyaike Maraw, Mon state, was captured by army soldiers on January 27, 1990. Several days later he left on an operation with soldiers of the 31st battalion, and was forced to carry an .81 mm. mortar shell on a march through the jungle. During the march, one porter became ill and was left behind by the column.**

When the column arrived at Sidaung Mountain, a porter who Naing knew as a resident from a town outside of Moulmein could no longer carry his load. As Naing watched, soldiers beat the porter to death. Later on in the jungle march, Naing witnessed the execution of three porters, who were shot dead when they tried to escape.

When the column reached Three Pagoda Pass, Naing was ordered to collect rice and dig trenches. He escaped in March when a forest fire broke out in the jungle.

*** Soe Win, a man of just over 30 from a village in Karen state, became ill in March 1990 as he was serving as a porter with soldiers of the 1st battalion, 66th division in the Burmese army. After some time in the jungle, his urine turned red, and he had great difficulty walking. While his column was climbing a hill, Soe Win collapsed. A soldier came over to Soe Win, bent down, and squeezed his neck with his hands, then picked up a rock and struck him on the head six times. Finally, the soldier pushed Soe Win down the side of the hill, where he was left to die. Two fellow porters saw Soe Win at the bottom of the hill lying motionless and apparently not breathing, as the column moved on. According to these witnesses, Soe Win's family knew nothing of his death.**

³¹ "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 5, Universal Declaration of Human Rights. Also see text of Common Article 3 of the Geneva Conventions, *supra*.

* A man from Kyaikto, Mon state, who was conscripted near the end of March 1990, reported that, in early April, he and seven other porters were ordered to walk down to the bank of the Salween River to obtain water for the soldiers. While standing on the bank, six of his companions jumped into the river and tried to swim across. One soldier, standing five yards from the bank, fired at the men in the water. Three of the men were shot dead. The other three escaped.

2. Porters Left to Die: Failure to Collect and Care For

* Sergeant Tan Chin Zan, 34, a Burmese army soldier who had been captured by the Mon State Army after being shot in the right leg on February 8, 1990, was interviewed by Asia Watch while he was recovering at the Kwai River Christian Hospital in Sangklaburi, Thailand. Sergeant Zan had served in the 99th battalion under Major Chin Kon Man. He said that he personally knew of at least five porters who had been left to die of starvation or had been shot dead by Burmese army soldiers. In addition, he said, porters may have "bad luck" and step on land mines.

* One escaped porter who had been captured in Ye told Asia Watch that, in early February 1990, as his column was marching in the jungle, one porter became weak and had to be supported by others as he walked. When the column began to climb Taung U mountain, the man became unable to walk at all, and collapsed, as the column of soldiers and porters passed him by. He was left to die where he fell.

3. Soldier Left to Die

As noted above, international human rights principles guarantee the life and security of all persons, including a government's own combatants. In addition, international norms protect all persons against cruel, inhuman or degrading treatment or punishment.

* Nay Lin, 17 and 1/2 years old, of Burman nationality, was born in Kyaikto, Mon state. He started training with the Burmese army when he was 15, in June 1987, after he had finished elementary school. Nay Lin served for two years with the 17th battalion, 55th division of the Burmese army.

During repeated fighting for a week in August 1989, Nay Lin's column was provided only bamboo shoots to eat, and he became ill. He grew weak and fell behind his column while marching in the jungle. Despite urgings from his commander, Thun We, the 2d section commander of the 3rd company, 3rd platoon, 17th battalion, Nay Lin continued to lag behind and could walk only with great difficulty. Finally, the commander approached Nay Lin, punched him and kicked him. "If you hit me again," Nay Lin protested, "I will lose more energy." The commander stripped Nay Lin of his rifle, and then left him in the jungle to die.

Nay Lin was found by Karenni rebel troops. He subsequently underwent an operation for lung damage at Mae Sot hospital.

When Asia Watch interviewed him several months later, Nay Lin still appeared gaunt and thin.

4. Beatings and Physical Abuse

* Ze, a 26-year-old fisherman from Kaw Saung, was captured there by army soldiers on January 18, 1990. After several transports, he left on January 23 from Ye with soldiers of the 101st battalion. They spent eight days marching in the jungle, sleeping in the open at night. Ze had to carry about 24 kilograms of fish paste. Other porters were carrying rice and ammunition. According to Ze, porters who were not able to carry their load were beaten by soldiers, and those who became ill were left behind with no medicines or

medical treatment. At one point along the way, Ze became so exhausted that he could not continue carrying the fish paste and collapsed. A soldier came up to him and kicked him several times until Ze continued walking.

When the column arrived at Three Pagoda Pass, Ze and other porters were ordered to dig trenches for the soldiers, to collect rice for them from the fields, and to crush the rice paddies. During this time Ze received only a small amount of rice each day; it was not sufficient. On March 13 Ze managed to escape.

* Maung, a 26-year-old Shan farmer from Kaw Saung, was with Ze on the above operation, where he carried rice. He was given very little rice himself; once, when he asked for more, he was hit by a soldier. According to Maung, those who could not carry provisions were beaten by soldiers. One man was beaten to death. Two others collapsed from exhaustion and hunger and were left in the jungle to die. At Three Pagoda Pass Maung was made to collect bamboo to help soldiers construct reinforcements for their trenches.

* Three men conscripted for porter service in the Burmese army on April 6, 1990 were sent to Loikaw, Kayah state. There they were placed in a room with about 100 others to spend the night. No one was allowed to leave, for any reason. At some point during the night, the three men saw one of the other detainees try to leave the room to go to the bathroom. Apparently soldiers thought he was trying to escape. According to the three men, one soldier grabbed the man and, in front of the assembled porters, beat him repeatedly with his rifle. Following the beating, the man had blood on his nose and mouth, and his face was swollen.

* A 20-year-old farmer from De Maw Soe township, Kayah state, was captured by soldiers of the 112th battalion, 55th division, 3rd company of the Burmese army on April 6, 1990. Three days later, during a march, the farmer, who was carrying ammunition and rice, grew tired and began to lag behind. A sergeant major stepped back from the column and punched the farmer twice on the side of the head, knocking him to the ground, then kicked him twice. The farmer managed to continue walking until he escaped from the army several days later.

* Zin, a 24-year-old farmer who served as a porter, said that, in the course of his duties, he had seen soldiers beat a porter who tried to escape from Kyang Ywa village, the first Mon village, Mon state, in late January. He did not know the name of the man, but knew that the man also came from Ye. He saw the man run from the column and saw soldiers follow him and capture him. Two soldiers then hit the man with the butts of their rifles and kicked him.

* Min, a 32-year-old farmer from Bok Pyin, Megui district, Mon state, was captured by soldiers from the 103rd battalion of the Burmese army on January 2, 1990 in Bok Pyin and transferred to Megui. He and a number of other porters were held inside the barracks of the 101st battalion for three days. During that period five men tried to escape, but only four succeeded. The fifth was dragged back into the building, where a soldier punched him repeatedly in the head with his fist.

On January 12, after transfer to Ye with about 1000 other porters, Min set off on an operation with soldiers of the 101st battalion. Soldiers and porters were divided into three columns. One soldier walked alongside every three porters. Min carried a 35-kilogram sack of rice. Other porters carried mortar shells, rice and ammunition. For four nights they slept in the jungle.

On about January 16, when fighting broke out with Mon rebels, soldiers went to the higher land, and porters stayed low. One porter's left ear was blown off by an exploding mortar shell. Soldiers tied the porter's head with a bandage.

When the fighting ended, both soldiers and porters climbed to the top of a hill. There the porters spent the night surrounded by soldiers. After three more days of marching through the jungle, fighting again broke out with Mon rebels. Min saw a porter shot dead by rebel fire. Another porter was injured in both thighs when hit by rebel fire; soldiers tied his legs with bandages.

A few days later, fighting again ensued near the top of a hill as army soldiers marched toward the Mon headquarters at Nama Kok village. Three porters were killed when they were hit by an exploding mortar shell. Min saw the bodies, which were covered with blood, shortly after the explosion.

The army march continued through the night until, by the following morning, soldiers and porters arrived at a rice paddy farm near the Mon headquarters. Fighting broke out once again. The two sides were so close that porters had no cover at all. A soldier ordered Min to dig trenches, but he refused at first, because bullets were flying so close to his head. The soldier kicked him three times, and he began to dig.

As Min worked, five other porters were digging alongside him while the fighting proceeded, with soldiers standing just over them to prod them along. As the six porters dug, fifteen soldiers stood about 50 feet away, firing their rifles and taking fire from Mon rebels. During the exchange, which lasted an hour, no porters were injured.

For the next month Min and other porters dug trenches and carried wood for the soldiers in the area of the Mon headquarters, to help fortify the Burmese army position. Min knew of seven porters injured during subsequent rounds of fighting between the army and Mon rebels.

*** A farmer of about 50 years of age from Panebo, Karen state, was serving as a porter during the latter part of 1989 near Takaw, Karen state. One day when he had not received enough food, he reached for a little rice cake at the bottom of a bowl. The man was severely reprimanded. A soldier smashed the butt of a rifle into the man's back several times. Two days later, when the man returned home, he coughed up blood repeatedly, according to his wife.**

*** Win, 29, was captured by army soldiers March 29, 1990 near the train station in Martaban, Mon state. Several days later, while marching in the jungle, Win became so exhausted that he could no longer carry his load. A soldier kicked him six times in the chest and smashed the butt of a rifle into his chest several more times. Another soldier came up to Win, placed a gun just next to his right ear, and fired it repeatedly. In late April Win still experienced pain and difficulty when breathing and could not hear in the right ear.**

*** A man seized by army soldiers for porter service in late March in Thaton, Mon state, reported that, in the course of his portering, a soldier kicked him in the chest and struck him in the back with the butt of a rifle five or six times.**

*** A 22-year-old man from Rangoon was captured by the Burmese army while he was in Kyaikto, Mon state, on March 31, 1990. After several days of continuous walking, the man became exhausted. At one point, he stopped by the side of the Salween River and dropped his bundle. "Where are you from?" a soldier**

asked him. "Rangoon," he replied. "Rangoon," the soldier said. "That's where they want democracy." With that the soldier struck the man with a piece of wood on the left side of the head, and then kicked him, knocking him off the bank and into the river. As the man began to float down the river, he heard soldiers fire five shots at him, but he was not hit. He swam to the other side.

5. Exposing Porters to Undue Risk of Death or Injury

As noted above, international humanitarian law prohibits the parties to an armed conflict from directing the movement of civilians in order to shield military operations from attack.³² Burmese soldiers violate this principle when they order civilian porters to walk in an area believed to be mined for the purpose of shielding combatants.

In addition, the parties to the conflict are under an affirmative obligation to "endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives. . . ."³³ Civilians who voluntarily accompany the armed forces assume the risk of collateral civilian injuries which may result from attacks against military objects. However, international humanitarian norms require that the parties "protect the civilian population and civilian objects against the collateral effects of attacks."³⁴ The Burmese army directly contravenes this requirement by preventing porters from leaving areas of conflict. This is a violation regardless of whether the purpose of the army's prohibition is to shield the military unit from attack. In such a case, porters have not assumed the risk of collateral injury, because they are not free to leave. By exposing porters to the hazards of guerrilla fire, crossfire or land mines, the government of Burma also violates the "humane treatment" injunction of Common Article 3 of the Geneva Conventions, as well as the customary law principle of civilian immunity and the requirement to distinguish civilians from combatants at all times.

Cases

Mine Injuries

Zin, a 24-year-old farmer, was captured by soldiers of the 101st battalion on January 29, 1990 in Ye. The next morning he was forced to carry a 35-kilogram sack of rice (enough to feed one person for 60 days). At 8:30 a.m., the porters were led off by soldiers of the 101st battalion. Sixty porters in his group carried rice. One soldier walked along beside every five porters. The soldiers and porters walked until noon, when they arrived at Kyang Ywa, a Mon village. There they stopped for two hours, and Zin and the other porters were fed.

He believes there were about 400 porters in the marching column. A soldier told him not to be frightened if fighting took place: "We have plenty of manpower -- 1000 soldiers and porters together."

At 2 p.m. the column began marching again. From this point on, they marched for a few days and by-passed all villages, following only jungle paths. They passed through a very hilly region, and then

³² See Article 51, Protocol I.

³³ Article 58, Protocol I.

³⁴ M. Bothe, K.J. Partsch, W.A. Solf, *New Rules for Victims of Armed Conflicts* (1982) at 371.

approached two mountains, Taung U and Myin Taung.

After the column had climbed over Taung U mountain, and just as it was beginning to ascend Myin Taung, a small skirmish with Mon rebels broke out on February 3 for about thirty minutes. Two soldiers and a porter were injured in the fighting. None of the porters had weapons, and most took shelter during the exchange.

The column slept on the side of Myin Taung that night and spent one more night after that in the jungle (February 4).

The next day, February 5, from 9 a.m. to about 2 p.m., fighting again took place with the rebels. During the fighting Zin was ordered, along with four other porters, to look for water for the soldiers. Several soldiers followed behind the five porters as they descended down the mountain side. It was at this point that Zin stepped on a mine. "The mine exploded and I couldn't see anything," he related. "I felt only heat and pain." The mine burned the cheeks on his face and left about 25 burn marks on his left chest, stomach and left arm. In mid-April the skin on his right thigh, right foot, right ankle and right lower leg was still burned. The movement of three fingers on his left hand -- the pinky, ring and middle fingers -- was permanently impaired. More than two months after the incident, he could not put any weight on his right foot.

Minutes after the explosion, Zin began to regain his vision. He could see blood all over his body, and thought he was dead, but discovered he could walk, with difficulty. He sucked water from a nearby banana tree, and began to walk. He went about two miles, at which point his eyesight became blurred from the blood loss. He heard someone speaking in Mon and cried out. Two Mon soldiers came to him, and shortly thereafter a doctor gave him two injections. He was taken to the general hospital at Nam Koke Mon headquarters in Three Pagoda Pass on February 6.

Zin said that he did not know who had left the mine that exploded. Mon sources said that their forces did place land mines in certain areas around Three Pagoda Pass, but could not confirm if this included the area where Zin was injured.

A 37-year-old farmer from Mesame village in Hlaingbwe township, Karen state, reported that, during his most recent period of porter service in December 1989, a neighbor of his, Pa Mo Lay, a farmer in his early 20's, died when he stepped on a mine while serving as a porter. This farmer said that he had seen porters beaten who tried to escape; others, he said, have had their heads pushed under water as a form of torture. "If you decide to escape," he explained, "you better close your eyes and run without looking back; because if they ever catch you, your fate will be unthinkable."

Two men from Bilin, Mon state, each about 40, were captured by Burmese army soldiers on March 30, 1990. On April 4, when they were one day's walk from Papun, Karen state, the column of soldiers and porters took a short rest. The two men sat down for a few minutes. As they both rose to continue walking, a mine exploded, ripping the intestines out of one man's body and killing him. The other man was not injured.

**** Injured by Crossfire***

The following testimony was taken in Rangoon in December, 1988: Maung Kyaw was captured on Saturday, October 15, 1988 and brought to an army camp in Hlaingbwe, Karen state, where there were some 2,000 porters already waiting. About 1,200 porters were divided into groups of ten and each given six

mortar shells to carry, three on each end of a bamboo pole across their shoulders. They walked all day, on the flat land to begin with, then uphill, escorted by one soldier for every two porters. When two porters ran away, their companions were beaten for not having stopped them. They stopped for the night in the open with three soldiers on guard while the others did the cooking. The porters were given very little food. Karen villagers occasionally provided food along the way.

Maung Kyaw, the weakest of his group, was unable to climb the first hill. The soldiers cursed him, saying, "You were strong enough when you were shouting for democracy." He finally managed to continue by taking off his waistcloth and using it as a pad for his head. The porters were given no water, so they soaked their clothes in streams as they crossed so as to be able to suck the fabric.

The following day the path became more slippery. Some porters slipped into ravines; others in desperation deliberately jumped to their death. The soldiers had to carry the loads of those who died. They warned the porters not to run away, saying they would only get blown up by mines or have their heads cut off by Karens.

At this point the porters were made to walk ahead of the soldiers. Two stepped on mines; each lost a leg. They were both left by the road.

The following day the column came to a village with a monastery of about twenty monks. Porters who had been wounded or could not continue were left here. Maung Kyaw tried unsuccessfully to break his wrist with a rock in order to be able to stay at the monastery.

After a day's rest, Maung Kyaw's column continued marching, carrying 60-pound loads of rice, rocket launchers, and ammunition. Sharp rocks in the streams they crossed lacerated their feet.

Three days later they reached the front at Methawaw. For ten days at Methawaw, porters and soldiers came under frequent fire from the Karens. Porters were made to dig trenches and cut down trees. Although there were doctors and some medicine at the front, the porters were given nothing to eat; they had to survive on what they found growing in the jungle. They suffered from dysentery, temporary kidney failure and malaria. While at Methawaw, Maung Kyaw was hit by shrapnel in his thigh.

When the time came to carry the wounded back, Maung Kyaw told the soldiers that he had no strength to carry anyone. He was told to do so or he would be left at the front to die. The return journey took three days; no doctors accompanied the column to care for the wounded.

When they reached the village with the monastery, Maung Kyaw was not permitted to return to Rangoon. Rather, he had to repeat the journey to the front three times, carrying food there and carrying the wounded back. After the third time, when he was still denied permission to leave, Maung Kyaw and six others escaped to a Karen refugee camp. After two days there, the seven tried to walk home, but ended up in the village with the monastery. Along the way they passed several bodies of dead or wounded porters. At the monastery, a friendly army officer discharged Maung Kyaw and the six porters with him.

Maung Kyaw walked back to Hlaingbwe, where there were about 1,000 porters in various conditions of collapse. He was given blood transfusions in the hospital there, and then headed back to Rangoon.

IV. VIOLATIONS AGAINST CIVILIANS IN RURAL AREAS

A. Killings

*** *Summary execution***

One night in January 1990, several Burmese army soldiers went to the house of Mahka Laypa, a farmer over 50 years of age in a village near Kamamaung, Karen state, and took him out of town for use as a guide. The next morning neighbors found Mahka Laypa's body just outside the village. It had a bullet wound in the back.

*** *Killing of Five Civilians***

On the morning of December 23, 1989, Zeta, a 34-year-old woman, was inside the house of her brother, Nin, with twelve relatives and neighbors in Lawpita, Kayah state. At about 7 a.m., Burmese army soldiers passed by the back of her house and, upon seeing persons inside, fired their weapons, spraying bullets indiscriminately at the inhabitants. Five civilians were killed, six were injured, and two escaped unharmed. All thirteen persons in the house were Karens. According to eyewitnesses, there were no rebels in the village at the time of the shootings.

Zeta was shot in the left breast. The scar left by a gunshot wound was still visible in April, 1990. She was also wounded in both legs, and a bullet lightly grazed her head. Three of her daughters were injured as well. An eight-year-old was shot in the left side of the chest and in the foot. The 14-year-old was shot in the right forearm. The 16-year-old was shot in the breast and the stomach. After being wounded, all four ran outside the house and hid until the soldiers left the area.

In the meantime, Soe, Zeta's sister-in-law, was shot dead by the soldiers. Two of Soe's daughters were injured. Three friends -- a middle-aged woman, a pregnant woman and a 15-year-old girl -- were also killed in the incident. A man of over 40 was taken from the house by the soldiers and executed. His body was found eight days later in a clearing outside the village.

Zeta's husband and her 12-year-old daughter, also in the house at the time of the attack, were not hit. A neighbor who saw soldiers shoot into the house reported that they were from the 11th battalion. After the soldiers left the area, several Thai traders who had come across the border brought the wounded to Mae Sot hospital.

*** *Killing of Four Traders***

In December 1988, in a jungle on the Puchaung River in Kayah state, ten soldiers from the 54th battalion of the Burmese army came upon four Karenni traders returning from selling their wares in Thailand. The soldiers stopped the traders and demanded they turn over their money. When the traders resisted and tried to run, the soldiers shot them dead, then took their money. According to a former soldier in the 54th battalion, the money was subsequently divided among the killers and their army officers.

*** *Execution of two suspected rebels***

Maung Saungye, 20, a farmer from Panebo village, Hlaingbwe township, Karen state, used to walk around his village, gathering donations for Buddhist religious celebrations. In the morning one day in early March 1990, Burmese soldiers entered the house of Maung Saungye and encountered him drinking with a friend, Palu Deh, 25, also a farmer. Soldiers grabbed both men and took them out of the house. Maung Saungye's body was discovered shortly afterward. He had been shot in the head. Palu Deh was

taken to a nearby military garrison, where he was reportedly stabbed to death with a knife. Villagers later saw his body.

Relatives reported that soldiers had previously accused Maung Saungye, who was frequently carrying money, of collecting tax revenue for the Karen rebels.

*** *Shooting of Three Civilians***

In early 1990, Burmese soldiers reportedly shot Maw Kay, 24, from Ko Kya, Kawkareik township, Karen state, in the bladder, fatally wounding her. Maw Kay's mother-in-law and her one-month-old son were also wounded in the attack. At the time of the killings, Karen guerrillas were on the outskirts of the village, and army soldiers were inside the village where the shootings occurred.

B. Burning, Looting and Theft

Under international customary law, civilian objects are protected; they shall not be the object of attack or of reprisals. Moreover, indiscriminate attacks -- which may be expected to cause damage to civilian objects which would be excessive in relation to the concrete and direct military advantage -- are prohibited. Houses and other dwellings, schools and places of worship, are presumed, in cases of doubt, not to be used by an adversary to make an effective contribution to its military action.³⁵

Furthermore, pillage is specifically outlawed by Art. 4(2)(g) of Protocol II. Such pillage is prohibited "whether organized or resulting from isolated acts of indiscipline."³⁶

The Burmese army commonly breaches these international humanitarian norms when it steals money or other personal property from villagers or their dwellings, and when it burns or intentionally destroys houses or agricultural areas.

A 32-year-old farmer from a village 10 kilometers from Kamamaung, Karen state, was in the village in January 1990, when Burmese army soldiers were patrolling the area. Soldiers came into the village and forced a resident to serve as a guide. Soldiers left the village and, nearby, engaged Karen rebels in fighting. Following the exchange, army soldiers returned to the village.

The next day, Burmese soldiers re-entered the village and set fire to several houses. Most residents had left by then. The farmer stated that, standing on a hill just outside the village, he saw soldiers set fire to four houses. After all the soldiers left, villagers returned to stop the fire from spreading.

* A 28-year-old farmer from Kwile, Karen state, reported that approximately 85 houses were burned by Burmese army soldiers in Kwile in November 1989. According to the farmer, the fire began during fighting between the army and Karen rebels just outside of Kwile. Some houses were apparently hit by indiscriminate fire from both sides.

By nightfall, however, the fighting had ceased, and only army soldiers remained in Kwile. Soldiers reportedly set fire to most of the houses burned, including the farmer's, that night.

³⁵ See Protocol I, Articles 51(5), 52.

³⁶ M. Bothe, K.J. Partsch, W.A. Solf, *New Rules for Victims of Armed Conflicts* (1982) at 642.

*** On November 15, 1989 soldiers of the 54th battalion of the Burmese army launched an operation in Kayah state. That day, soldiers from the battalion, led by Major Than Zin, entered De Law village on the west bank of the Salween River. As the soldiers arrived, most residents ran from their homes and fled the village. Soldiers ran through the abandoned houses, grabbing silver coins and other personal property. Officers in the battalion were subsequently apprised of the looting; reportedly, no one was punished.**

C. Physical Abuse of Civilians

According to a former Burmese soldier previously with the 54th battalion, soldiers from that battalion entered De Law village, Kayah state, on November 15, 1989. On the orders of Major Tin We, second commander in charge of the column, several soldiers seized three civilian men and began to interrogate them about their possible involvement with the rebels. When the men failed to provide any information regarding links with the rebels, Major Tin We ordered that the men be beaten. Soldiers beat the men with the butts of their rifles on their heads and backs. One civilian was stabbed in the arm with a bayonet.

V. VIOLATIONS BY THE GUERRILLAS

International humanitarian law applies with equal force to government and insurgent forces, requiring that the guerrillas, like the government army, distinguish between civilian and military targets and minimize harm to civilians.

A. Indiscriminate Attacks Against Civilians

Two rebel leaders conceded, in interviews with Asia Watch, that their forces have engaged in attacks on transportation vehicles, bridges and government offices where civilians have been located, and that civilians have been killed and wounded in such attacks. Rebel leaders argue that the Burmese government bears the blame for any harm to civilians resulting from such attacks, because its army uses civilians as shields when soldiers travel on civilian trains or allow civilians to enter military areas.

Apart from forced portering described above, Asia Watch has been unable, to date, to substantiate any such use of civilians to shield government forces from attack. Such shielding would, of course, be illegal. Nonetheless, even if such practices on the part of the Burmese army are confirmed, this does not relieve the guerrillas of their responsibility to distinguish between civilian and military objects of attack and to minimize harm to civilians as far as possible. The guerrillas must refrain from attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Nai Shwe Kyin, president of the New Mon State Party and commander in chief of the Mon National Liberation Army, acknowledged to Asia Watch that the Mons do kill civilians in some cases, but that such killings are the inevitable result of a guerrilla war. "We lament that," he said, "but it is unavoidable." Moreover, he explained, it is the policy of the Mon army to blow up trains on which Burmese army soldiers are riding, whether or not civilians are on such trains. He stated that he did not know whether civilians have been on trains in the past which have been the targets of Mon attacks.

Similarly, Ba Thin, General Secretary of the Karen National Union, told Asia Watch that the Burmese army uses government and private civilian transport facilities to transport troops, and that these facilities often carry civilians as well. When the Karen rebels attack these vehicles, "it is unavoidable" that civilians will

die. "We are fighting against the enemy," he contended, "and we cannot know who is who."

Such conscious ignorance appears to fall short of the rebels' obligation to determine the location and number of civilians who may suffer incidental harm from attacks on military objects; to minimize, to the extent possible, the harm to civilians; and to refrain from attacks which may be expected to cause excessive civilian injury or death.

B. Mines

Mon army commander Nai Shwe Kyin said that civilians may have died or been injured by land mines set by the Mon forces. In general, Asia Watch was told, most guerrilla mines are laid near their military camps. Asia Watch is unable to confirm whether the guerrillas on some occasions mine areas frequented by civilians without providing adequate warning, or whether they fail to remove mines after they have served their military objectives.

C. Forced Conscription

Asia Watch received reports from several sources that some rebel forces engage in forced recruitment of porters. It has been alleged that some of the Burmese students who fled to the border following the 1988 protests were provided with a few, antiquated weapons and little training, and that some effectively served as shields. We note that the coerced induction of civilians into portering or military service for a guerrilla army violates the provision in common Article 3 of the Geneva Conventions that persons "taking no active part in the hostilities . . . shall in all circumstances be treated humanely." The extreme hazards of injury or death resulting from land mines or enemy fire in the Burmese conflict preclude characterization of conscription for portering service as humane.

D. Execution of Captured Soldiers

Officials of the Karen National Union told Asia Watch that the KNU does execute captured Burmese army soldiers and spies, but that such executions take place only after a trial before a mixed military-civilian tribunal. The KNU's Deputy Minister of Justice explained that tribunals in such cases are composed of five persons: two military personnel, two civilian Karen government officials and the chairman, a representative of the Ministry of Justice. Karen officials said that the accused in such cases do not have defense counsel -- because "nobody would talk for them" -- but they are allowed to present evidence in their own behalf. Persons in the area where the crime charged was committed offer testimony to the tribunal.

According to the Deputy Minister, the KNU criminal code of 287 articles, promulgated in 1974 and amended in 1982, places the choice of punishment for the convicted "totally in the discretion of the tribunal." In practice, he said, the punishment "depends on what the group [to which the accused belonged] has done to the people." Those who have been "hard to capture" are "usually given death." In the first four months of 1990, the KNU has held two such tribunals of captured soldiers; one was sentenced to death, and the other was released. One official said that a crime for which executions are commonly ordered is passing information to the Burmese army.

Common Article 3 of the Geneva Conventions prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Such standards are violated by the execution of persons who have not been afforded defense counsel, and whose punishment has resulted, not from their own actions, but from the actions of a group of which they are a part.

VI. U.S. POLICY

The U.S. has played a positive role in condemning forthrightly and publicly the egregious human rights violations committed by Burma's military government. Following the military crackdown in 1988, the U.S. government suspended all aid and loans to the Burmese regime, which at that time amounted to approximately \$16 million. The terminated aid included an unsuccessful U.S. program for opium eradication, at a cost of \$6 million to \$8 million per year, and a military training program amounting to \$265,000. Effective in 1989, the U.S. government also suspended Generalized System of Preferences (GSP) benefits to Burma under labor rights provisions of U.S. trade law, the 1974 Trade Act, as amended. In July 1989, the U.S. Embassy in Rangoon also made public information confirming the widespread torture of political detainees in Burma, and the 1989 State Department report on Burma is a scathing indictment of the country's human rights record.

Asia Watch is concerned about reports that the U.S. Drug Enforcement Administration (DEA) may be considering restoring its anti-narcotics program in Burma. On April 1, 1990, *The New York Times* cited Senator Daniel Patrick Moynihan's statement criticizing contacts between the DEA and the Burmese government and describing the DEA policy as being "at odds" with the State Department. In testimony before the Subcommittees on Asia and Pacific Affairs and Human Rights and International Organizations on May 9, 1990, David Lambertson, Deputy Assistant Secretary of State for East Asian and Pacific Affairs stated that the State Department has no plans to resume narcotics control assistance to Burma. Asia Watch believes that no U.S. government assistance of any kind should be reinstated until the Burmese government ceases its systematic repression of basic human rights.

While the U.S. response to the continuing human rights violations in Burma has been appropriately strong, the U.S. government could take further measures in two key areas to demonstrate its commitment to human rights in Burma. First, the U.S. should encourage other countries -- particularly Burma's neighbors in Southeast Asia -- to refrain from expanding their investment in and economic links with the Burmese regime. Second, U.S. officials in Thailand should respond more swiftly and aggressively to the needs of Burmese refugees in that country.

Pressuring Other Countries

In December, 1988, the Thai government became the first country to break the international diplomatic blockade against the Burmese regime following the crackdown against pro-democracy protesters with a visit by then-army commander General Chavalit Youngchaiyuth. Since then, Thailand has provided sorely needed foreign exchange to the government of Burma through the purchase of numerous logging and fishing concessions. As Burma's neighbor, Thailand sets an important example for Singapore, Malaysia, South Korea and other Asian countries eager to capitalize on the Burmese government's need for foreign investment and trade.

Observers have reported that Thailand and Burma have recently begun to cooperate militarily. During the recent Burmese army offensive, Thai authorities reportedly allowed Burmese forces to attack rebel command posts from within Thai territory. In addition, the government of Thailand has not publicly objected to the Burmese army's indiscriminate shelling of Thai towns near rebel-controlled territory.

Asia Watch urges the Bush Administration to make a more concerted effort to pressure countries that have re-established relations with Burma, including Thailand, to demonstrate greater concern for the

Burmese government's human rights policies and practices. In this regard, Asia Watch supports Amendment 1521 to the Miscellaneous Tariff Act, which would prohibit the importation of products originating in Burma, including those goods which pass through a second country. The embargo would not only underline U.S. condemnation for the Burmese regime; it would also send an important signal to other countries that have pursued trade relationships with Burma, including Thailand, South Korea, Malaysia and Singapore.

Burmese Refugees in Thailand

By the end of April 1990, as a result of military repression in the cities and the Burmese army's most recent offensive against ethnic rebels along the Thai border, over 40,000 refugees had fled into Thailand. This includes 28,000 Karens in a dozen camps north and south of Mae Sot, Tak province, Thailand; 3,000-5,000 Karenni and some Pa-O refugees located in four camps in the Mae Hong Son area; 7,000-10,000 Mons living in four camps near Three Pagoda Pass; and over 2,000 ethnic Burmans, many of whom are students. Although thousands of students initially went to the border following the massive crackdown in the interior in 1988, most of these students have since fled to Bangkok. Others have joined ethnic rebels in fighting the Burmese army, or have returned to Burma.

The rapid influx of Burmese student refugees into Bangkok following the fall of several rebel camps in late 1989 and early 1990 has severely tested the capacities of the United Nations High Commissioner for Refugees (UNHCR). The UNHCR now estimates that there are about 2,000 students, monks and members of ethnic minority groups from Burma in Bangkok. According to the UNHCR legal office in Bangkok, as of February 28, 1990, 280 Burmese had been accepted for refugee status by the UNHCR, and 503 applicants were still awaiting interviews. In mid-April the UNHCR, which has been interviewing some 15 persons per day, indicated that approximately 500 Burmese would be recognized by the end of April, with another 500 applications still pending.

To date the Thai government has considered all of these refugees to be illegal immigrants. Following the 1988 crackdown and the flight of Burmese students to the border, Thai officials deported more than 150 Burmese refugees to Burma from a repatriation center in Tak province. This violated the prohibition on refoulement in international law. When concerns were raised regarding the involuntary nature of these repatriations, the Tak center was closed on March 31, 1989.

Despite the closure of the Tak center, the Thai government continues on occasion to deport students and other refugees to Burma. Although Thailand has, in response to international pressure, sent many of the deportees to areas along the border not controlled by the Burmese army, such "safe" locales -- from which the deportees may then return to Bangkok -- are rapidly diminishing as the Burmese military advances southward along the border.

According to international relief officials, Thai authorities have also detained between 200 and 300 Burmese immigrants in Suan Phlu detention center in Bangkok. As of mid-April, among the detained were 43 Burmese students -- some of whom had been recognized as refugees by the UNHCR. Burmese students living in Bangkok report frequent surveillance of their activities by persons they believe to be affiliated with the Burmese government.

Although Thai officials have prevailed upon the UNHCR not to grant Burmese students letters formally recognizing them as refugees, the Thai government has to date failed to provide its own documentation to ensure that those with a well-founded fear of persecution are not returned to Burma.

The U.S. should continue to pressure Thai authorities to refrain from deporting Burmese refugees, and to provide protection for civilians who have been forced to flee the border conflict and seek refuge in Thailand.

The U.S. government has provided limited assistance to the Burmese refugees. In early 1990, the U.S. Congress appropriated \$250,000 for relief for Burmese student refugees. Of that amount, \$200,000 is to be sent to the students through the International Rescue Committee; the remainder has been designated for the Burma Relief Center in Chiang Mai. The U.S. should also push for full access for the UNHCR, international relief organizations and international organizations that operate confidentially to provide assistance and protection for Burmese refugees in Thailand.

As of April the U.S. Embassy in Bangkok reported that it had received 30 Burmese applications for resettlement to the United States. Of these, five persons had been sent to the U.S. under the humanitarian parole provision; two others had been approved for resettlement, but had not yet departed; one had been rejected for resettlement, but an application for humanitarian parole was still pending; several cases were pending; and eight to ten had "not met the criteria."

Asia Watch calls on the Bush Administration to accelerate the process of resettling Burmese refugees in the United States by taking more rapid and favorable action on their applications for assistance than has been the case to date.