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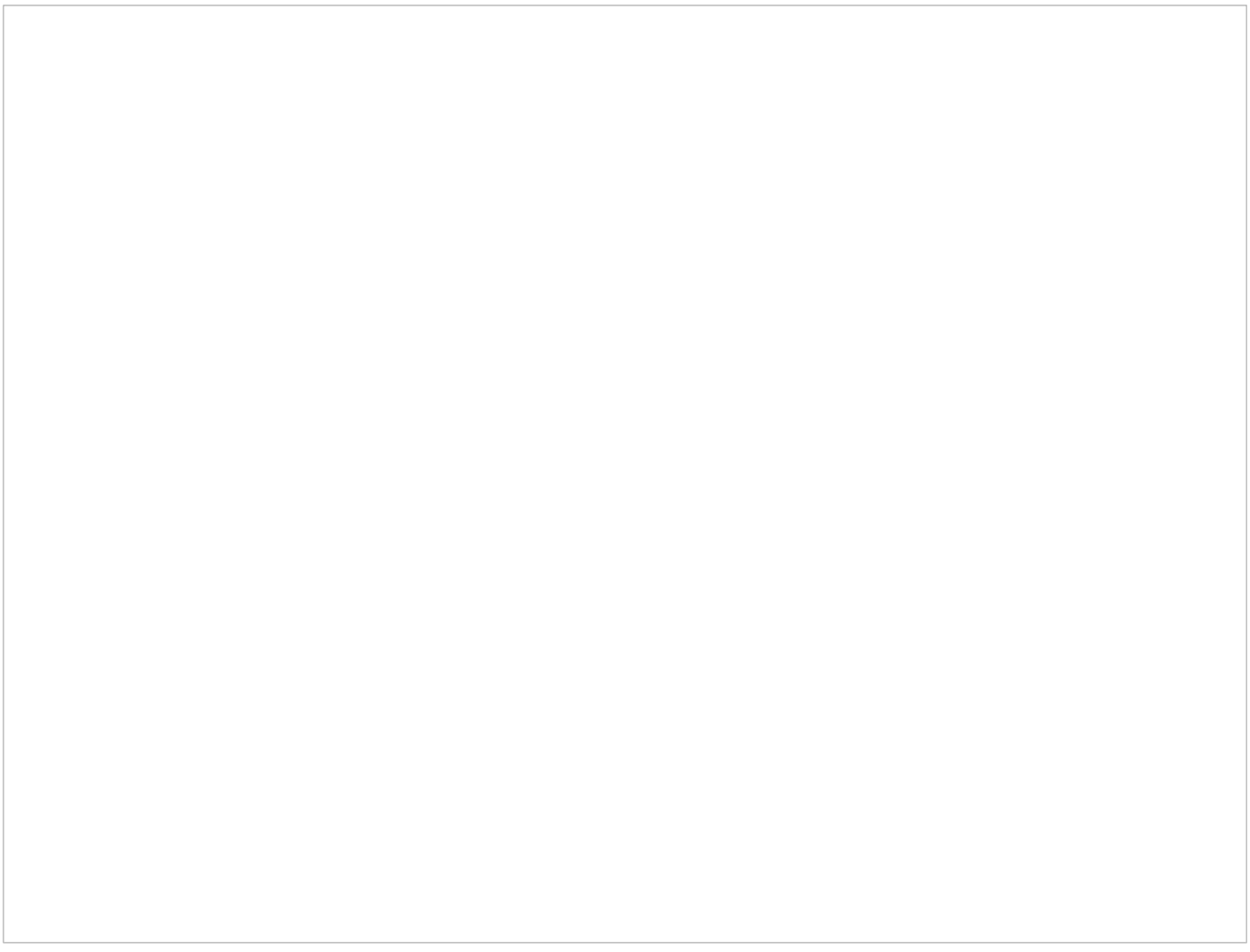
Convict Porters on the Front Lines in Eastern Burma



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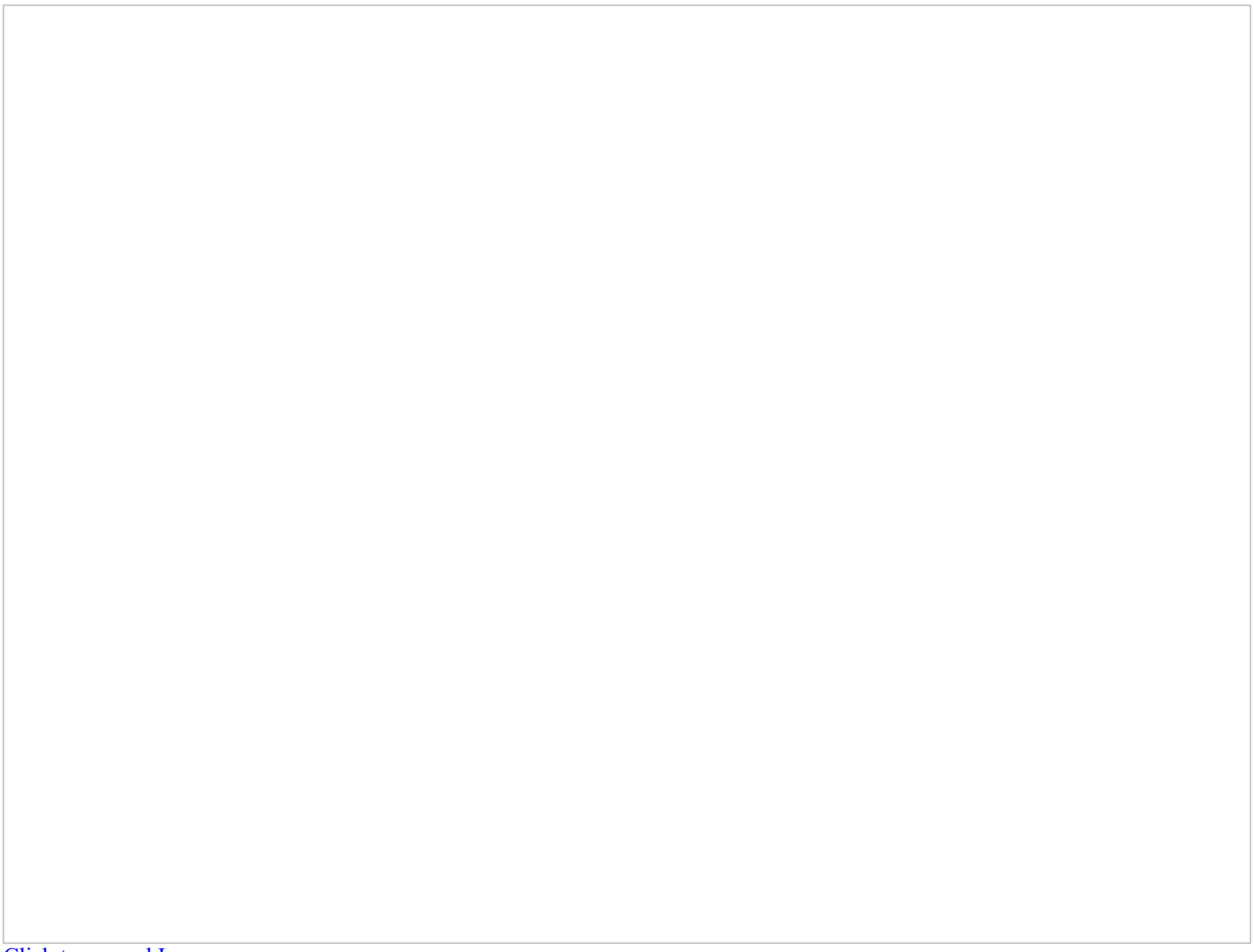
Burmese army column with several convict porters moves through a village in Karen State. 2011 Free Burma Rangers



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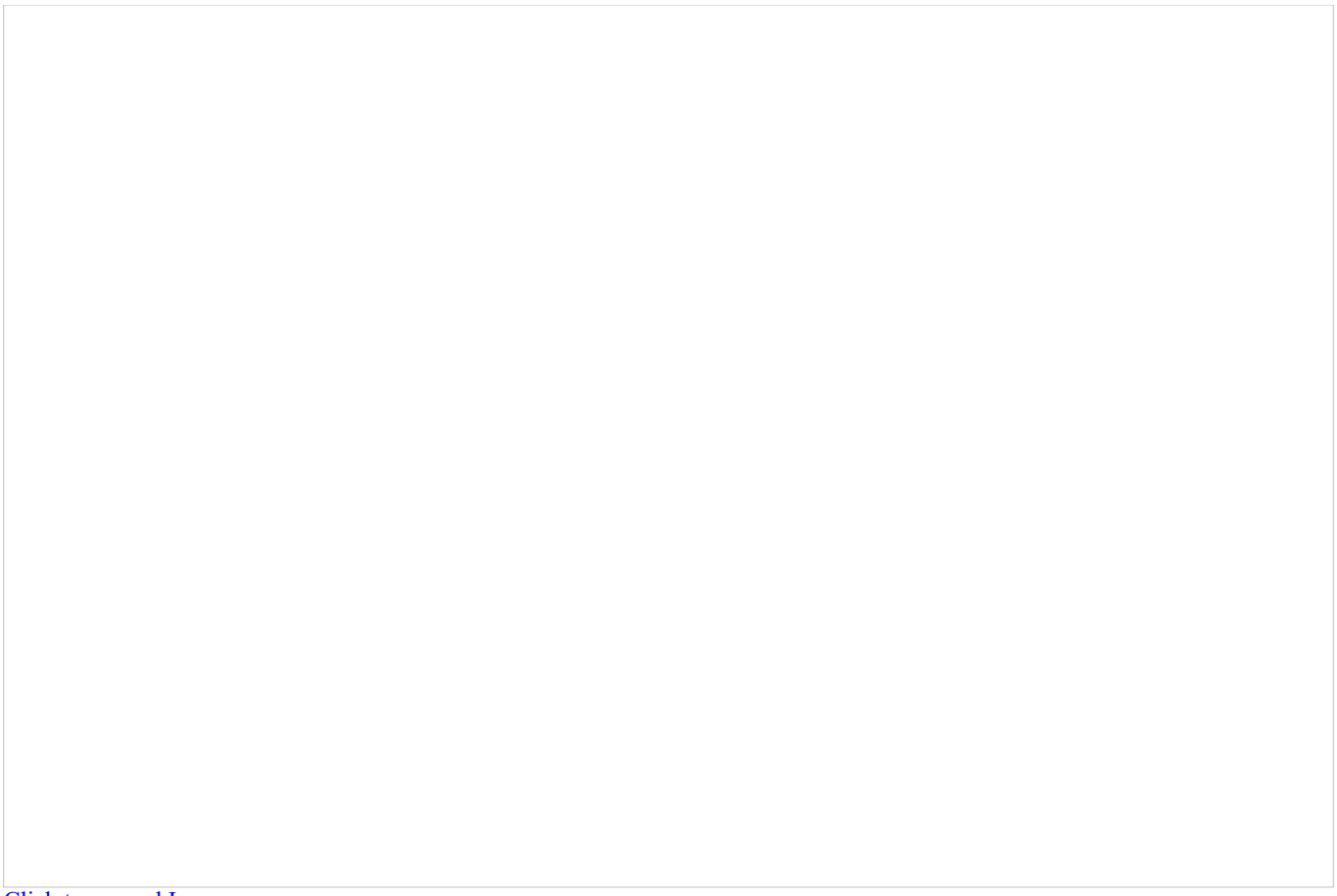
Burmese army soldier walks behind a convict porter in northern Karen State. During this operation, the army used approximately 140 prisoners from Insein prison in Rangoon, and Toungoo prison in Karen State. 2011 Free Burma Rangers



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A group of escaped convict porters show their injuries from carrying heavy loads of military supplies, Karen State in 2000. 2000 Karen Human Rights Group

Click to expand Image

The remains of four convict porters killed by the Burmese army in northern Karen State in 2006. 2006 Karen Human Rights Group

Click to expand Image

Burmese army mortar rounds and landmines carried by convict porters. 2011 Karen Human Rights Group

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Former convict porter Tun Tun Aung, 20, receives treatment for a gunshot wound. Burmese soldiers shot him in the shoulder when he escaped to Thailand in January 2011. 2011 Phil Thornton

Click to expand Image

Former convict porter Maung Nyunt escaped in January 2011. 2011 Phil Thornton

Click to expand Image

Click to expand Image

BGF

Border Guard Force

bo-gyi

captain

DKBA

Democratic Karen Buddhist Army

IB

Infantry Battalion

ICRC

International Committee of the Red Cross

ILO

International Labour Organization

KNLA

Karen National Liberation Army

KNU

Karen National Union

Kyat

Burmese currency, the official rate is US$1 to 6 Kyat, but the effective market rate is US$1 to 1,000 Kyat.

LIB

Light Infantry Battalion

LID

Light Infantry Division

Louq a pay

Forced Labor

MOC

Military Operations Command (similar to a brigade, comprising 10 battalions)

por-ta

porter, Burmese use of the English word

Sa Ka Ka

Military Operations Command

Sit-tha

soldier

SLORC

State Law and Order Restoration Council (ruling military council from 1988-1997)

SPDC

State Peace and Development Council (ruling military council from 1997-March 2011)

Tatmadaw

Burmese armed forces

taung bpaing kyi

prison warden

wan hsawn

public service personnel, term for a porter

yeh beh

labor camp

For decades the Burmese army has forced civilians to risk life and limb serving as porters in barbaric conditions during military operations against rebel armed groups. Among those taken to do this often deadly work, for indefinite periods and without compensation, are common criminals serving time in Burmas prisons and labor camps.

Escaped convict porters described to us how the authorities selected them in a seemingly random fashion from prison and transferred them to army units fighting on the front lines. They are forced to carry huge loads of supplies and munitions in mountainous terrain, and given inadequate food and no medical care. Often they are used as human shields, put in front of columns of troops facing ambush or sent first down mined roads or trails, the latter practice known as "atrocity demining. The wounded are left to die; those who try to escape are frequently executed.

Burmas military government promised that the November 2010 elections, the countrys first elections in more than 20 years, would bring about human rights improvements. But soon after election day the Burmese army, the Tatmadaw, launched military operations that have been accompanied by a new round of abuses.

In January 2011, the Tatmadaw, in collusion with the Corrections Department and the Burmese police, gathered an estimated 700 prisoners from approximately 12 prisons and labor camps throughout Burma to serve as porters for an ongoing offensive in southern Karen State, in the east of the country. The same month, another 500 prisoners were taken for use as porters during another separate military operation in northern Karen State and eastern Pegu Region, augmenting 500 porters used in the same area in an earlier stage of the operation in the preceding year. The men were a mix of serious and petty offenders, but their crimes or willingness to serve were not taken into consideration: only their ability to carry heavy loads of ammunition, food, and supplies for more than 17 Tatmadaw battalions engaged in operations against ethnic Karen armed groups. Karen civilians living in the combat zone, who would normally be forced to porter for the military under similarly horrendous conditions, had already fled by the thousands to the Thai border.

The prisoners selected as porters described witnessing or enduring summary executions, torture and beatings, being used as human shields to trip landmines or shield soldiers from fire, and being denied medical attention and adequate food and shelter.

One convict porter, Ko Kyaw Htun (all prisoner names used in this report are pseudonyms), told how Burmese soldiers forced him to walk ahead when they suspected landmines were on the trails: They followed behind us. In their minds, if the mine explodes, the mine will hit us first. Another porter, Tun Mok, described how soldiers recaptured him after trying to escape, and how they kicked and punched him, and then rolled a thick bamboo pole painfully up and down his shins.

This report, based on Human Rights Watch and Karen Human Rights Group interviews with 58 convict porters who escaped to Thailand between 2010 and 2011, details the abuses. The porters we spoke with ranged in age from 20 to 57 years, and included serious offenders such as murderers and drug dealers, as well as individuals convicted of brawling and fraudeven illegal lottery sellers. Their sentences ranged from just one year to more than 20 years imprisonment, and they were taken from different facilities, including labor camps, maximum security prisons, such as Insein prison in Rangoon, and local prisons for less serious offenders.

The accounts shared by porters about the abuses they experienced in 2011 are horrific, but sadly not unusual. The use of convict porters is not an isolated, local, or rogue practice employed by some units or commanders, but has been credibly documented since as early as 1992. This report focuses on recent use of convict porters in Karen State, but the use of convict porters has also been reported in the past in Mon, Karenni, and Shan States. The International Labour Organization (ILO) has raised the issue of convict porters with the Burmese government since 1998, yet the problem persists, particularly during major offensive military operations.

Burmas forcible recruitment and mistreatment of convicts as uncompensated porters in conflict areas are grave violations of international humanitarian law and human rights law. Abuses include murder, torture, and the use of porters as human shields. Those responsible for ordering or participating in such mistreatment should be prosecuted for war crimes.

Authorities in Burma have previously admitted the practice occurs, but have claimed that prisoners are not exposed to hostilities. The information gathered for this report, consistent with the evidence gathered over the past two decades, demonstrates that this simply is not true. The practice is ongoing, systematic, and is facilitated by several branches of government, suggesting decision-making at the highest levels of the Burmese military and political establishment. Officials and commanders who knew or should have known of such abuses but took no measures to stop it or punish those responsible should be held accountable as a matter of command responsibility.

The use of convict porters on the front line is only one facet of the brutal counterinsurgency practices Burmese officials have used against ethnic minority populations since independence in 1948. These include deliberate attacks on civilian villages and towns, large-scale forced relocation, torture, extrajudicial executions, rape and other sexual violence against women and girls, and the use of child soldiers. Rebel armed groups have also been involved in abuses such as indiscriminate use of landmines, using civilians as forced labor, and recruitment of child soldiers. These abuses have led to growing calls for the establishment of a United Nations commission of inquiry into longstanding allegations of violations of international humanitarian and human rights law in Burma.

As the experiences contained in this report make clear, serious abuses that amount to war crimes are being committed with the involvement or knowledge of high-level civilian and military officials. Officers and soldiers commit atrocities with impunity. Credible and impartial investigations are needed into serious abuses committed by all parties to Burmas internal armed conflicts. The international communitys failure to exert more effective pressure on the Burmese military to end the use of convict porters on the battlefield will condemn more men to take their place.

This report is based largely on interviews with 58 escaped convict porters from an estimated 26 prisons and labor camps throughout Burma since January 2010, either in Karen State or in locations along the Thailand-Burma border. Human Rights Watch interviewed 12 escaped convict porters in February, March, and June 2011, as well as 8 Burmese army soldiers. The Karen Human Rights Group interviewed 46 escaped convict porters from January 2010 through January 2011. The Karen Human Rights Group has conducted additional interviews with escaped porters since 2008, and those accounts have also been included where relevant.

Interviews were conducted in Burmese or in Karen, sometimes with Burmese to English translation. We have given pseudonyms to all Burmese we interviewed and in some cases have withheld certain other identifying information to protect their safety. Locations of

interviews done in Burma have been generalized to the township or district level, so that those interviewed cannot be easily identified. Where possible and in a majority of cases, interviews were conducted on a one-on-one basis. All those interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the data would be used, and orally consented to be interviewed and for their testimony to be used in Human Rights Watch and Karen Human Rights Group reporting. All were told that they could decline to answer questions or could end the interview at any time. None received compensation.

Human Rights Watch used a common list of questions for interviews with convict porters and separate questions for soldiers, but not a formal questionnaire. Karen Human Rights Group researchers are trained to conduct interviews based upon a basic set of interview guidelines; standard questionnaires are not used. Karen Human Rights Group reporting aims to present the perspectives of individual interviewees, allowing them to raise issues that they consider to be the most important and to express their individual concerns. This means that a given question or issue may or may not be raised in every interview.

Human Rights Watch and the Karen Human Rights Group have attempted to include, wherever possible, the ranks, insignia, and unit identification of Burmese military personnel implicated in using convict porters. Names of alleged perpetrators are given where the information could be independently corroborated. Not all porters interviewed were clear on which units they were assigned to. Many did not recognize unit insignia, or comprehend military rank insignia, but researchers would have them explain or draw what the soldiers wore, for example three chevrons means a sergeant, or three stars is a captain. In most cases, Human Rights Watch researchers showed an array of military unit insignia: LID-22, artillery command, Southeast Command, for example, to discern what unit the porters were assigned to or witnessed during their service. In some cases convict porters had clear details and names of their unit commanders and abusive personnel. One prisoner had precise details of the unit he was assigned to, and when asked how he knew so much, he replied that all the soldiers had their battalion numbers stenciled onto the butts of their MA-1 assault rifles.

In addition, Human Rights Watch and the Karen Human Rights Group drew from a number of secondary sources including United Nations reports, academic studies, and nongovernmental organization reports.

We take no position on the guilt or innocence of the convict porters interviewed for this report. While many freely admitted to committing the crimes that put them in prison and provided detailed information on their prison experience, our interviews were centered on their experiences after being transferred to military custody.

This report does not examine the legal system in Burma or conditions in Burmese prisons. We recognize that the judicial system in Burma is not independent; trials are unfair, official corruption is pervasive, and conditions in penal facilities are extremely dire, but such issues are beyond the scope of the present report.[1]

The Burmese Defense Services, or Tatmadaw, is one of the largest armed forces in Asia, with an estimated 300,000 to 400,000 personnel. The Tatmadaw has been battling a wide range of primarily ethnic minority insurgencies throughout the country since independence in 1948. In the past two decades it has succeeded in confining most armed resistance to the borderlands with Thailand, China, and India.

The Burmese armys brutal human rights record has been well documented for nearly two decades.[2] Violations during military operations include attacks on civilian populations, summary executions, torture, rape, and looting, as well as forced labor. These violations, carried out with complete impunity, and abuses by non-state armed groups, have led to calls for the United Nations to establish an international commission of inquiry into allegations of war crimes and crimes against humanity in Burma.[3]

One of the most serious and widespread reported abuses against civilians has been unpaid forced labor. In the 1990s, Burmese soldiers press-ganged civilians off the streets in cities, towns, and villages to be used by army units as porters on combat operations or by local officials for development and infrastructure projects. The practice of forced labor has gradually transformed from a common urban problem where civilians were press ganged into work in towns and cities, or taken by force from urban areas and sent to carry supplies in conflict zones in the hinterlands, to one now predominantly, but by no means exclusively, confined to isolated rural areas. Especially targeted have been those living in conflict areas, where the military continues to routinely force civilians into carrying supplies or providing labor for a range of military related duties.

The Burmese army has long used prison convicts as porters in armed conflict zones with the complicity of both civilian and military officials. Their use in large-scale military operations has been documented since at least 1992 by Human Rights Watch, the Karen Human Rights Group, the United Nations, the International Committee of the Red Cross (ICRC), and Amnesty International. For instance, in 1995, Human Rights Watch interviewed more than 50 men who escaped from army units involved in a large-scale offensive against the headquarters of the rebel Karen National Union (KNU) at Manerplaw on the Burmese-Thai border. Thousands of porters forcibly recruited from the civilian population and from various prisons were used to carry weapons and supplies to army units at the front line of the operation.[4]

Past reports have described the process of transferring prisoners from prison facilities to the front lines, where convict porters have suffered a range of abuses from the military units they were serving. During operations, Tatmadaw officers ordered convict porters to carry heavy supplies of munitions and rations into battle zones, routinely exposed them to hostilities, beaten and tortured them for complaining or attempting to escape, forced them to walk ahead of troops to deter ambushes or trigger landmines, and executed some when they became too weak to carry supplies, or were injured. A 1992 report by Amnesty International described convict porters facing extrajudicial executions, beatings, lack of food and medicines, and poor conditions, describing the use of criminal prisoners for portering as a apparently a new phenomenon.[5]

Many of these reports emerged from Karen State, where armed conflict has continued for more than five decades. The ethnic Karen KNU has been in armed revolt against the central government since 1948 and controls one of the largest ethno-nationalist armed groups in Burma, the Karen National Liberation Army (KNLA). Since 1989, the central government has reached ceasefire agreements with approximately 17 non-state armed groups in the north and east of Burma, and where since then conflict has been largely sporadic or small scale. The then-ruling State Peace and Development Council (SPDC) agreed to a ceasefire with the KNU between December 2003 and October 2004, but since then large-scale military offensives have resumed. Convict porter use has also been reported in parts of Mon, Karenni, and Shan States by grassroots human rights organizations, but has not been investigated or conclusively documented by Human Rights Watch or the Karen Human Rights Group.

While small numbers of prisoners are used to perform manual labor around military camps, and sometimes to carry supplies to the frontlines, the large-scale use of prison labor at the frontlines is more often associated with large-scale military offensives.[6] That the Tatmadaw has often employed brutally punitive measures during its six decades-long counter-insurgency campaign has been well documented. Less well understood is why the armywhich since at least 1988 has made massive outlays for trucks, armored personnel carriers, and helicopters to carry supplies and weaponsneeds civilian porters.[7] In response to pressure from the ILO, the Tatmadaw expanded their use of mules to carry supplies in some conflict areas, including the purported use of five Animal Transport Battalions, which were of limited use on combat operations.[8]

In spite of these outlays, the Tatmadaw has continued to rely on civilian labor to support military operations in remote or mountainous areas, where roads are too undeveloped for the use of mechanized transport and animal transport too noisy to evade guerrilla attacks. Maung Aung Myoe, a Burmese academic specializing in the Tatmadaw, argues that a combination of rugged terrain in the mountains of eastern Burma where most insurgent groups operate, and longstanding logistics shortcomings are a key reason for low morale within frontline army units. He writes:

The International Labor Organization is the key international agency working to end the practice of forced labor in Burma. For over 15 years the ILO has been pressing the military government to bring Burmas laws and practices in line with the governments obligations under ILO Convention No. 29 (1930) concerning Forced or Compulsory Labor, which Burma ratified in 1955. According to a recently published history of the ILOs efforts in Burma, the use of convict porters in conflict areas has been a longstanding practice:

Following widespread reports of the use of forced labor in Burma, the ILO established a Commission of Inquiry into the practice in 1997. The commissions report was released in 1998, and while its main focus was the use of civilian labor, it made mention of convict labor as an established practice. Prisoners were also regularly sent from prisons and labour camps across the country to be used by the army in major offensives. They continued to wear prison uniforms and were usually kept separate from the other porters. In certain cases, prisoners were forced to continue working in such conditions beyond their normal release date.[11] In its response to the ILO investigation, the Burmese government admitted using porters to carry supplies but categorically denied exposing them to armed conflict. The governments argument, as summarized in the commissions report, stated:

Due to the ILOs inquiry, the government issued SPDC Order 1/99 in May 1999 and a supplementary order in October 2000, which specifically outlawed the use of forced labor of any kind.[13] In early 2008, the new constitution that the SPDC had been drafting since 1993 and had completed in September 2007, was released with a specific passage on forced labor, The Union prohibits forced labor except hard labor as a punishment for crime duly convicted and duties assigned by the Union in accord with the law in the interest of the public.[14] The ILO requested the government of Burma to amend this clause and bring it in line with the forced labor convention.

Despite international attention to the ILOs efforts, the Tatmadaws use of convict porters in military operations has continued, and grassroots human rights organizations have reported episodically on the issue.[15] A court sentenced Zaw Zaw Tun, a 30-year-old former cadet of the prestigious Defense Services Technological Academy (DSTA) in Pyin U Lwin, to seven years in prison for his involvement in a cadet protest at the college in 2002. In early 2004, he and 100 other prisoners were driven from Sittwe prison in Arakan State across Burma to Tenasserim Division (region) to serve with the armys 9th Infantry Division. Zaw Zaw Tun remembers that there were approximately 800 prisoners from four different prisons in Burma, and that prisoners were assigned to specific battalions to carry supplies including food and munitions to frontline bases and on routine patrols. The porters were forced to carry heavy loads, walk ahead through trails suspected of containing landmines, and endure routine brutal treatment. In one incident, a soldier tortured a porter as an example for the rest of the group. Zaw Zaw Tun said:

Zaw Zaw Tun escaped with another prisoner after one month, with the assistance of one of the battalions officers who encouraged him to flee. By the time he escaped, the former army cadet estimates that 200 porters remained of the 800, with some 600 escaping, falling ill, being killed by landmines and ambush, or executed by Burmese army soldiers.

In a major military offensive in northern Karen State from 2005 to 2006, the Tatmadaw allegedly used hundreds of prisoners drawn from numerous prisons throughout Burma to carry supplies. The Karen Human Rights Group interviewed 25 prisoners who escaped from this fighting. One of the prisoners, a 25-year-old ethnic Shan, described the mistreatment porters suffered:

Soldiers we interviewed admitted that abuses were committed against convict porters at the front. Let Ya, a 24-year-old army soldier, told Human Rights Watch how his battalion used convict porters on routine unit rotation movements in Karen State in 2010, but only in small numbers and just to carry officer supplies:

In June 2007, the International Committee of the Red Cross (ICRC) released a rare public statement denouncing major and repeated violations of international humanitarian law committed by government forces during the conflict. The statement outlined abuses against civilians in eastern Burma, making specific reference to convict porters:

In 2007 the ILO signed a Supplementary Understanding with Burma to create a legal mechanism for reporting cases of forced labor. Since then, the ILO has received 770 complaints of forced labor by the authorities, looked into illegal recruitment of child soldiers, and facilitated the release and discharge of 168 underage soldiers from military custody. In February 2011, a High Level Team of the ILO visited Burma to discuss a range of issues relating to forced labor. According to the ILOs March 2011 report on the visit:

Despite the hard-won accomplishments of the ILO, the most egregious forms of forced labor persist in Burma, including the continuing use of convict porters in armed conflict. And the Tatmadaw remains the Burmese institution most resistant to reform or independent investigation of alleged abuses. The ILO conducts frequent workshops with government officials, the security services, and community-based organizations. It has produced an information brochure in Burmese on forced labor and the work of the ILO and its work is featured routinely in the state run media and exiled media organizations. Despite these efforts, ILO officials acknowledge that:

The ILO would also benefit from an augmented staff presence, especially in rural and regional areas, and more logistics support to enhance monitoring in isolated areas which would raise awareness in ethnic regions where the military presence is much greater, the Tatmadaws use of forced labor more entrenched, and local awareness much less than in towns and cities of central Burma. One recent positive example was the ILOs visit to Chin State in May 2011, where reports of widespread forced labor persist, and where the ILO

conducted investigations of forced labor complaints and workshops with local Burmese officials.[22]

Convict porters continue to be used extensively in multi-unit Tatmadaw operations in northern Karen State and eastern Pegu Region. In northern Karen State and eastern Pegu Region, porters are being used as part of ongoing Tatmadaw operations against the KNLA. In 2010, several hundred porters were used to carry supplies to camps along primitive roads linking Tatmadaw camps in Papun and Nyaunglebin in northern Karen State and eastern Pegu Region. In January 2011, a new group of at least 500 men were congregated at the prison in Toungoo Town and then used to supply Tatmadaw positions to the south and east, in northeastern Pegu Division and into northernmost Karen State.

A major use of convict porters occurred in January 2011, when the military escalated its offensive in Karen State following the November 2010 elections, eventually forcibly drawing an estimated 700 prisoners from more than 12 prisons and labor camps.

On November 7, 2010, election-day across Burma, a faction of the Democratic Karen Buddhist Army (DKBA) briefly took control of the border town of Myawaddy in Karen State. The motives for the attack are not clear, whether political considerations or illicit trade disputes, but the broader issue was the DKBA factions refusal to agree to transform into a Border Guard Force (BGF), a government initiative to incorporate under direct Burmese army command all ethnic armed groups that had agreed to ceasefires.[23] The DKBA, a splinter group from the larger Karen National Union/Karen National Liberation Army, agreed to transform into a Karen State BGF in September 2010. But a unit of the DKBA under the command of Brig. Nah Kham Wey refused to sign onto the BGF scheme and attacked and occupied Myawaddy on November 7. Fighting continued the following day there and further south at Three Pagodas Pass across from Kanchanaburi province in Thailand.

The fighting initially displaced more than 20,000 civilians who fled into Thailand, as bullets and mortar rounds were fired into the Thai town of Mae Sot. Many of these people returned to Burma soon after as fighting ceased. In the following days and weeks, clashes continued between the Tatmadaw and DKBA factions, and at times with the KNLA south of Myawaddy.

Many villagers interviewed by Human Rights Watch and the Karen Human Rights Group spoke of fears of being taken as a porter, and these fears being their primary reason for fleeing to Thailand. A 30-year-old Karen farmer told Human Rights Watch:

From November 9, 2010, to March 2011, more than 11,000 civilians were displaced internally or fled to Thailand because of the fighting, large-scale planting of landmines around civilian settlements, and fears of being taken as porters by the Tatmadaw. In addition to fighting south of Myawaddy, renewed fighting between the Tatmadaw and the KNLA also occurred north of the former KNU headquarters at Manerplaw, resulting in further displacement of civilians into Thailand.[25]

In military operations such as those in the rugged terrain around the Dooplaya area where ordinary trucks cannot be used, the Tatmadaw often use civilian porters to carry equipment, munitions, and food. Convict porters appear to be preferred to ordinary civilians for a number of reasons. Many of the villagers in the areas of fighting quickly flee, so there are few people available to force into portering duties. And because they are drawn from the very population the army is fighting, they are less reliable and more likely and capable of fleeing. Convict porters by contrast provide a reliable source of relatively able men to do the difficult work.

As discussed below, the Tatmadaws use of uncompensated convict porters in dangerous armed conflict areas violates Burmas obligations under international humanitarian law. It is one of many violations of international law committed by the Tatmadaw in its fighting against insurgent forces. Yet, as is evident in the response of the Burmese government during Burmas Universal Periodic Review at the Human Rights Council in Geneva on January 26, 2011, the authorities do not acknowledge that any kind of inquiry into alleged abuses is warranted and claim to investigate abuses allegedly perpetrated by Burmese army personnel even though they do not make public the results of any purported investigation:

In March 2011, at the Human Rights Council, the Burmese government included a section on forced labor in its response to the report by UN Special Rapporteur on the situation of human rights in Myanmar Toms Ojea Quintana even though convict labor was not specifically mentioned in the special rapporteurs report. Under the heading Use of forced labor by military, the government asserted:

The numerous accounts obtained by Human Rights Watch, the Karen Human Rights Group, and others paint a very different picture.

The abuses against convict porters violate international humanitarian and human rights law. International humanitarian law, or the laws of war, applies in areas of armed conflict to both government and rebel forces. Article 3 common to the four Geneva Conventions of 1949 provides for the humane treatment of persons under the control of an armed force.[28] For persons taking no active part in the hostilities, it specifically prohibits violence to life and person, murder, cruel treatment and torture, and humiliating and degrading treatment.[29]

Customary international humanitarian law addresses a range of issues relating to the Tatmadaws use of convicts as porters in armed conflict areas.[30] The laws of war prohibit the use of uncompensated or abusive forced labor, including work directly related to the conduct of military operations or that would oblige them to take part in military operations.[31] Parties to a conflict have an obligation to take all feasible precautions to protect civilians under their control against the effects of attack.[32] In addition to the prohibitions against murder, torture, and other ill-treatment, international humanitarian law also prohibits human shielding. Shielding occurs when a party to a conflict deliberately uses civilians to render its forces immune from attack.[33] Individuals who order the use of human shields are committing a war crime.[34] Moreover, officials and commanders are criminally responsible if they knew or had reason to know that war crimes were being committed by their subordinates and did not take all necessary and reasonable measures to prevent their commission or punish those responsible.[35]

International human rights law also remains applicable during armed conflict situations. The Universal Declaration of Human Rights, which is broadly accepted as reflective of customary international law, prohibits violations of the right to life and torture or cruel, inhuman or degrading treatment or punishment.[36]

The involuntary use of convict labor as porters in conflict zones also comes within the definition of forced labor in ILO Convention No. 29 because it fails to meet any of the rules provided in respect of the prison labor exclusion.[37]

The Tatmadaws brutality and long history of disregard for civilian life in counterinsurgency operations, its unwillingness to devote greater resources to logistics particularly in rugged border areas, and the large pool of easily accessible labor in the countrys prisons may explain but do not justify the illegal and immoral use of convict porters on the frontlines. This practice has been long utilized as a cheap and replaceable form of labor for the Tatmadaw predominantly in large-scale operations, but also in normal military deployments, such as the building of military bases and other activities.

Interviews conducted by Human Rights Watch and the Karen Human Rights Group over several years show that the use of convict labor is common but not widespread. It is usually employed to support major operations in rugged terrain, even when, according to some Tatmadaw deserters, combat units are capable of carrying their own supplies and equipment. Using convict porters thus becomes a cheap, expendable, and easy solution to logistical challenges. It is a willful deferment of military obligation onto a vulnerable civilian population.

In the offensive military operations following the November 2010 elections, the Tatmadaw, the correctional authorities, and the police worked in concert to choose and transport large numbers of prisoners to the military for use on the frontline. Burmas Prisons Department and the Myanmar Police Force come under the purview of the Ministry of Home Affairs, which has been implicated in facilitating the transport of prisoners to staging areas where they are handed over to military units.[38]

There are currently 42 prisons and 45 labor camps in Burma under control of the Corrections Department. Prisons are divided into three different classes: Class A prisons are equivalent to maximum security, Class B are medium security facilities, and Class C prisons are for petty offenders or those serving short sentences. Political prisoners are usually sent to Class A prisons. Serious offenders or those committing further offenses in prison are sent to labor camps, which include gravel production, agricultural service, road building, and specially designated porter camps which are little different from standard labor camps, but from which convicts are drawn on a regular basis. The authorities select porters from all classes of prison and from labor camps.

Convict porters are drawn from a range of prisons throughout Burma, from the central Dry Zone, the former capital of Rangoon, and from prisons close to ethnic conflict areas such as Toungoo or Hpa-an in Karen State. The selection of prisoners from a large number of facilities indicates a well-established system of drawing prisoners, typically small groups of 30 to 100 men or sofor portering duties. One consequence of this system is that prison and military officials can reasonably argue that inmates who end up not accounted for have become lost in the system if they perish during portering service.

The allocation of prisoners for porter use reflects Tatmadaw practices dating back to the 1990s. In 1995, Human Rights Watch interviewed over 50 men who escaped from Tatmadaw units involved in a large-scale offensive against the rebel Karen National Union (KNU) headquarters at Manerplaw, where thousands of porters drawn from the civilian population and from various prisons were used. A porter recounted how one group of about 1,000 prisoners had come from Pa'an, the capital of Karen State, Insein jail in Rangoon, and from Myainggone prison labor camp.[39]

None of those interviewed by Human Rights Watch or the Karen Human Rights Group in 2010-2011 had volunteered for portering duty; even if porter service were voluntary, this would not justify inhumane treatment and abuse of porters. Only male prisoners were chosen. There are no credible reports of female prisoners being selected for porter duties, although civilian women and girls are often ordered by the army to engage in forced labor in conflict areas. Those interviewed by Human Rights Watch and the Karen Human Rights Group ranged in age from 17 to 57 years. Prison authorities selected names without any clearly stated criteria. There appeared to be no distinction according to the crime committed or length of sentence.

Prisons and Labor Camps from which Prisoners were Drawn in 2010-2011 for the Post-Election Offensive in Karen State

Facility

Miektila Prison

Mandalay Region

30

Pakokku Prison

Sagaing Region

30

Insein Prison

Rangoon Region

100

Zin-kyike Labor Camp

Mon State

75-100

Taung-zun Labor Camp

Mon State

100

Yin-nyein Labor Camp

Mon State

75

Pya Prison

Pegu Region

50

Prisons and Labor Camps from which Prisoners were Drawn in 2009-2011 for Ongoing Operations against the KNLA in Northern Karen State and Eastern Pegu Region

Facility

Location

Estimated Number of Prisoners

Taungoo Prison

Pegu Region

125

Yamethin Prison

Mandalay Region

175

Kin-tha (1) Labor Camp

Mandalay Region

200

Kin-tha (2) Labor Camp

Mandalay Region

150

Mote-pa-lin Labor Camp

Mon State

150

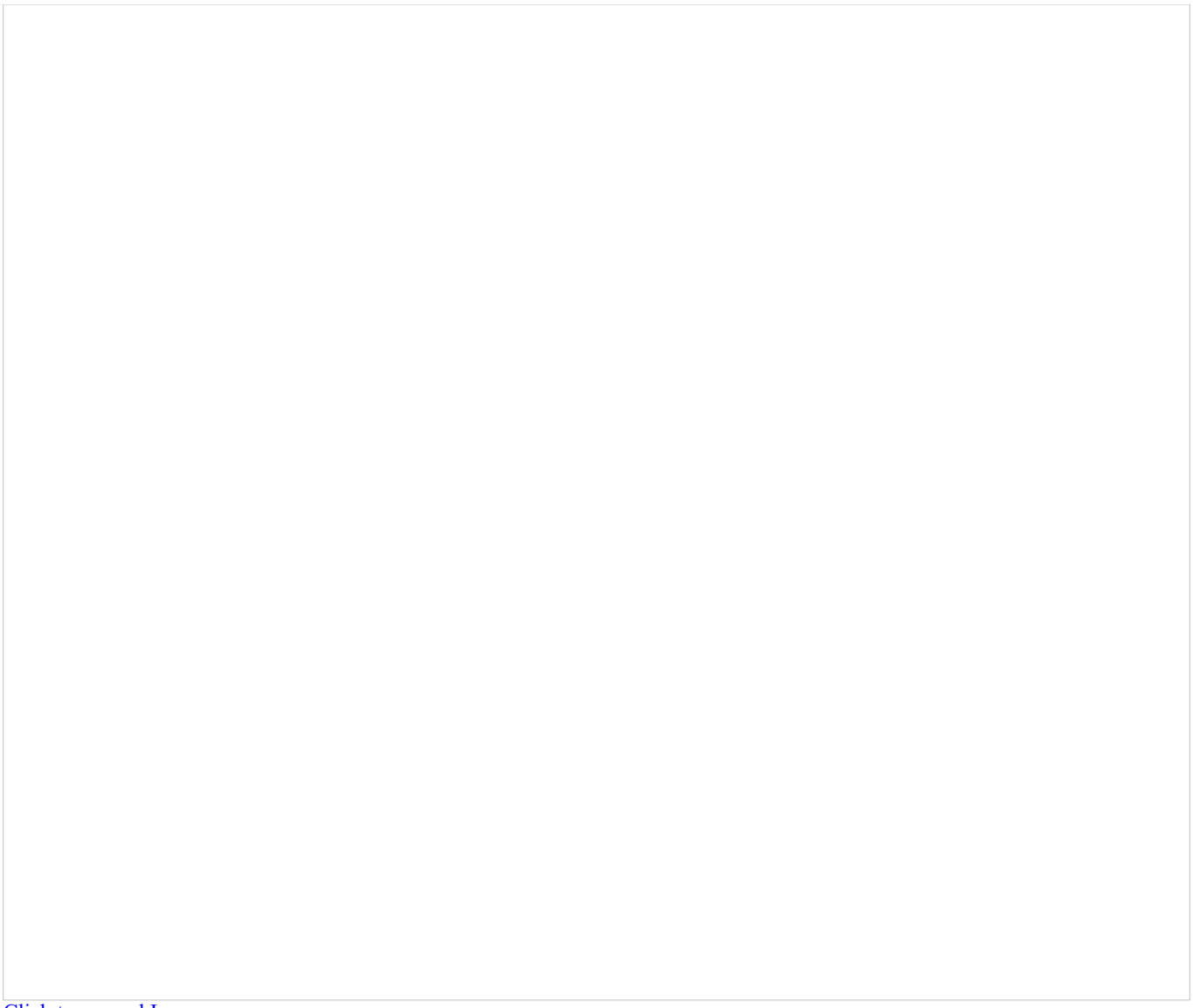
Other prisons from which porters were drawn for service in the 2011 offensive include: Monywa, Mandalay, Magwe, Thayet, and Myingyan. Of the 20 escaped convict porters Human Rights Watch and the Karen Human Rights Group interviewed for this report in early 2011, the estimated total number of prisoners assembled in Hpa-an and Kawkariek on the first few days of January 2011 was 700-800.

Most of the prisoners we interviewed for this report were not informed of the purpose of their transfer. This is likely designed to confuse the prisoner and their relatives into believing their removal is part of a regular prison transfer. Some prisoners related how they at first believed they were being transferred to a labor camp, possibly to serve hard time with a reduction of sentence. Many of those already in labor camps, already at the most punitive end of the penal system, suspected they were being sent for portering duties. Labor camps are deemed to be the harshest facilities: the only thing considered worse is portering.

Government Departments and Military Units Involved in Transporting and Using Convict Porters

Click to expand Image

Prisons Department under Ministry of Home Affairs

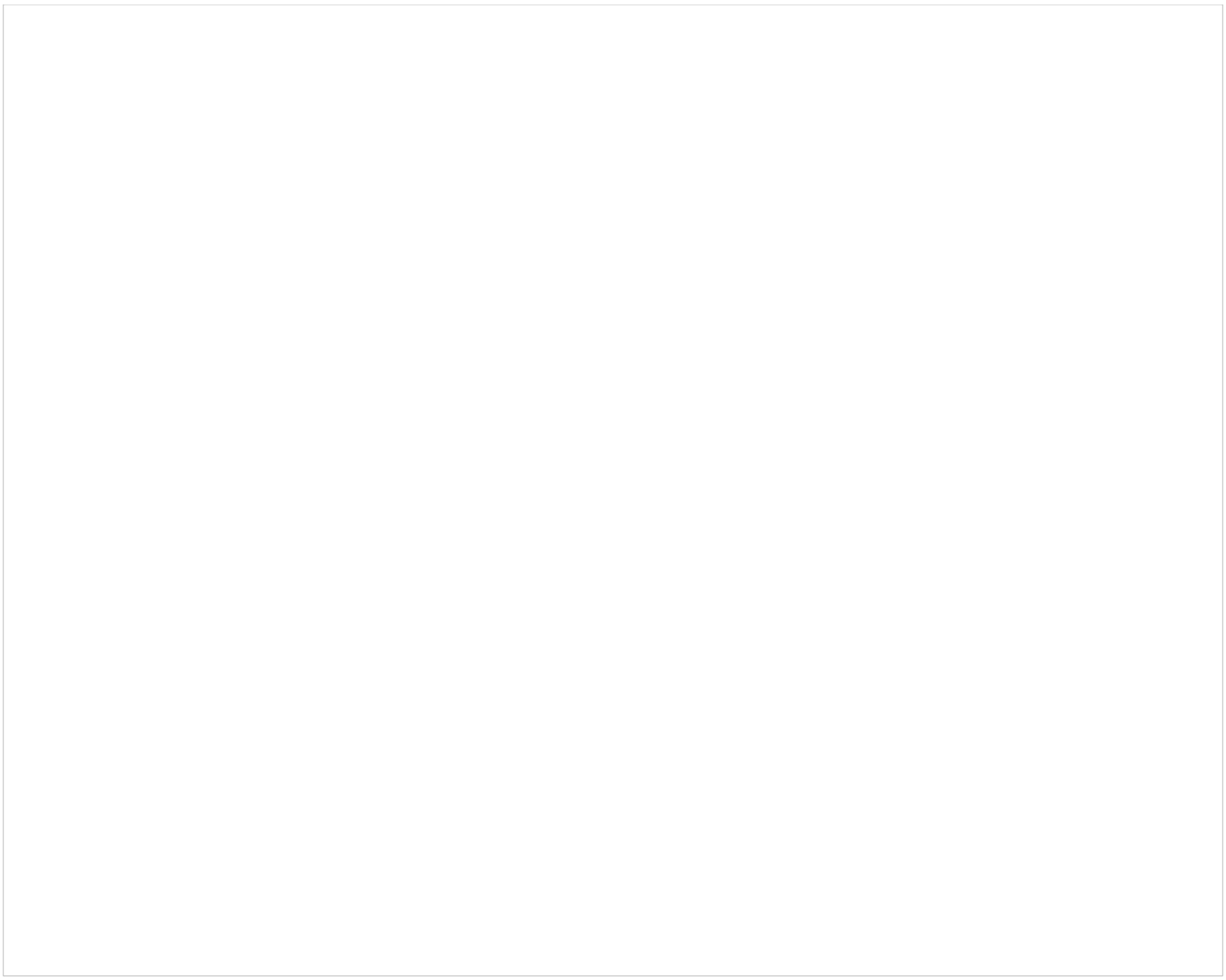


Click to expand Image

Myanmar Police Force

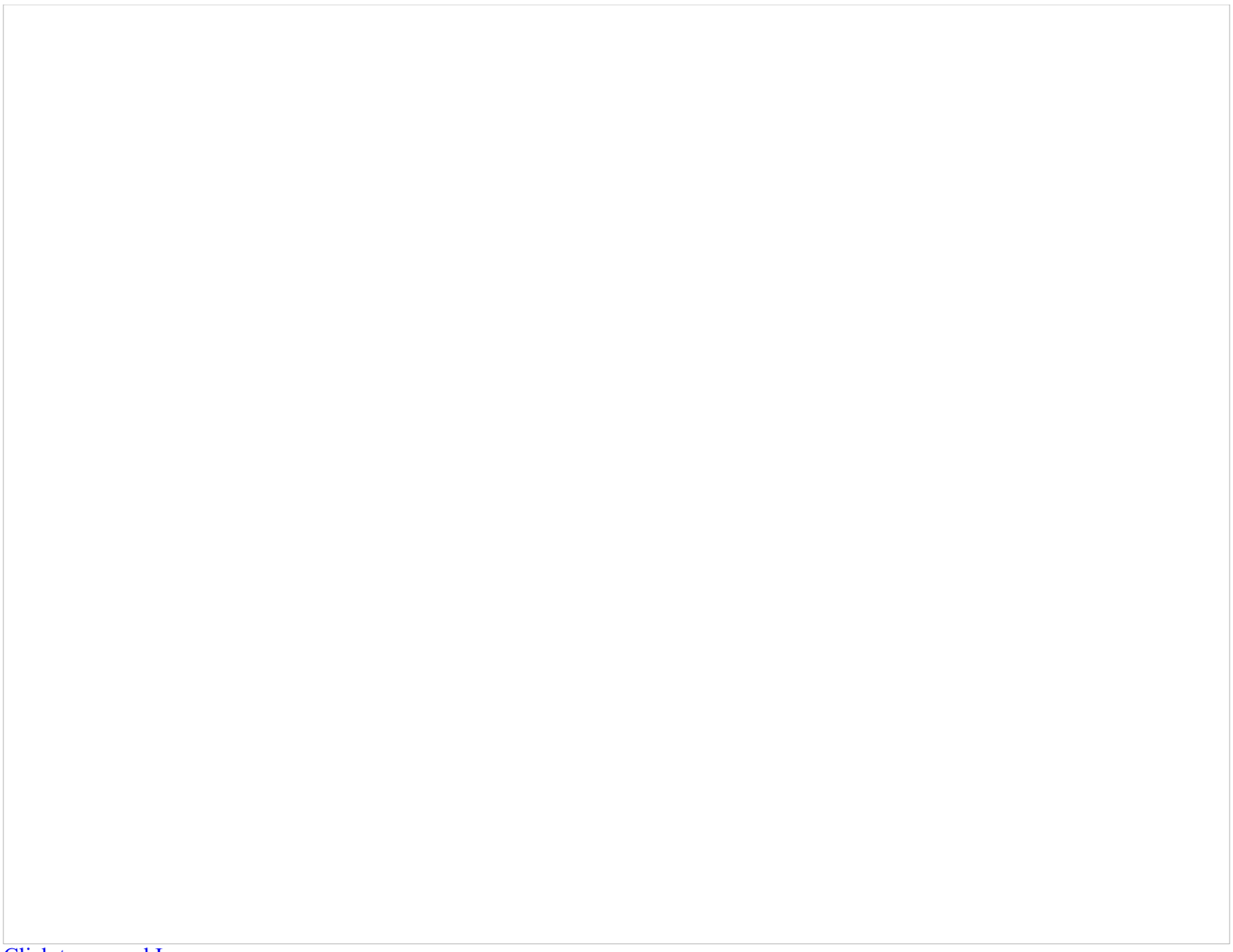
Click to expand Image

Tatmadaw infantry insignia



Click to expand Image

Southeast Region Military Command (Moulmein, Mon State)



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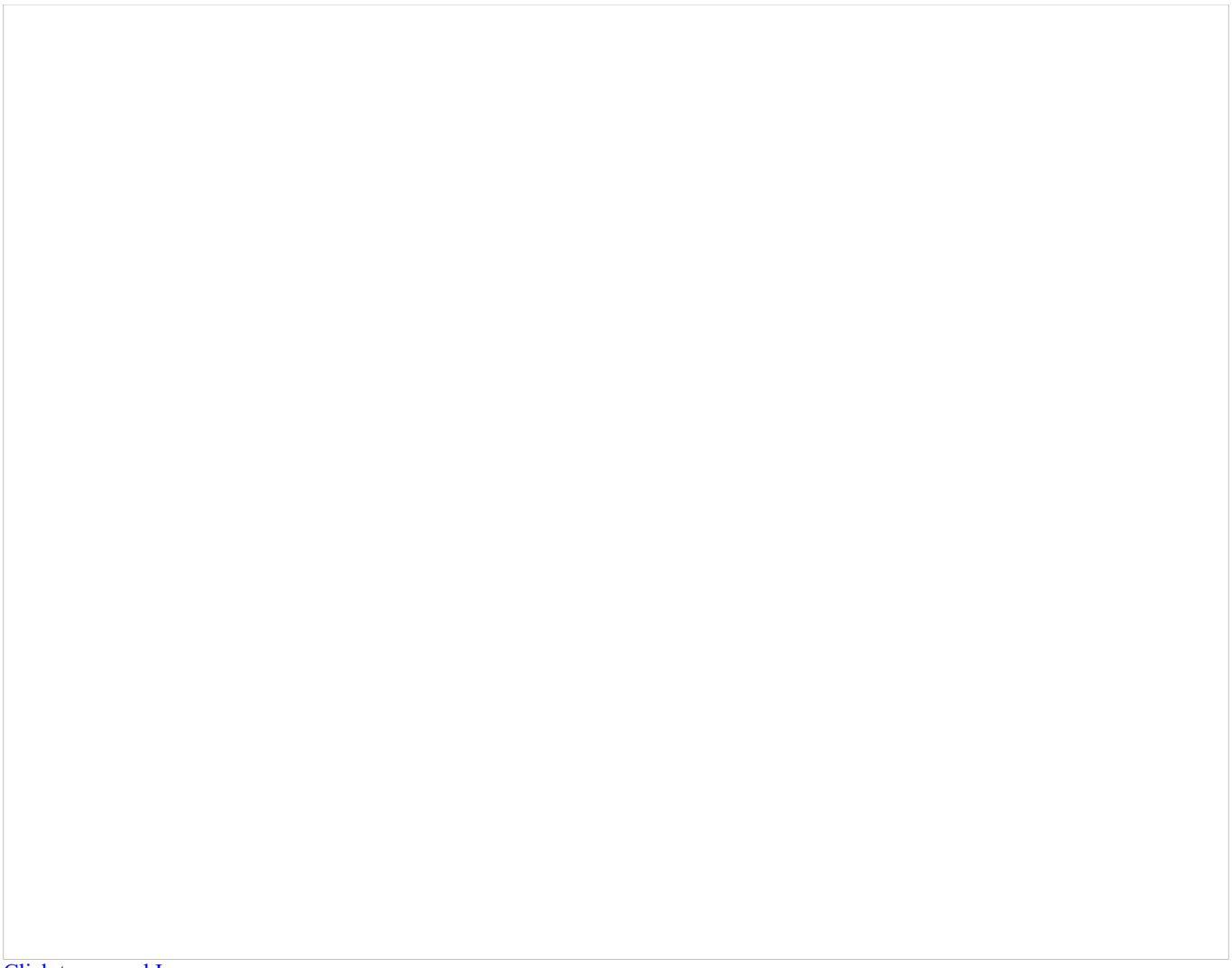
Light Infantry Division 22 (Hpa-an, Karen State)



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Artillery Operations Command

Soe Myint, a 32-year-old drug offender from Mandalay with five years left in his seven-year sentence, was part of a group of 30 prisoners selected from Meiktila Class C prison in Mandalay Region in late December 2010. He told Human Rights Watch, The prison guard told us we had the chance to go to a labor camp and have our sentences reduced. Thirty of us were chosen. I thought it was a chance to break rocks and get out of prison early.[40]

Choosing prisoners from prisons in central Burma also meant many of the prisoners have never been to Karen State or the hinterlands of eastern Burma, cannot speak the local languages, and are not familiar with traversing thick jungles and mountains. Some prisoners in central Burma are ethnic minorities from northern Burma, such as Shan, Wa, and others, who may not speak Burmese fluently, and often Burmese is the only language that prisoners and Karen civilians share. Escape becomes even more daunting if the prisoner is unfamiliar with the terrain or limited in their ability to communicate.

In some cases, prisoners attempted to pay bribes in order to avoid being sent to the front lines, but these bribes were not always successful. Some were given perfunctory health checks, indicating collusion by prison medical authorities. Thaing Soe, a 30-year-old ethnic Burman imprisoned at Meiktila prison for getting into a brawl, suspected he was being sent on portering detail. He said:

Thi Ha Soe, 30, had served only 10 days of his five-year sentence for murder (or manslaughter) in Pakokku, Sagaing Region, when authorities selected him as a porter in late 2010. He told the Karen Human Rights Group how some prisoners tried to bribe their way out of the service:

Ko Kyaw Htun, 28, was part of a group of 100 prisoners taken from Insein prison in Rangoon on January 1, 2011. He said:

For prisoners drawn from labor camps, the treatment was more perfunctory and brutal. Maung Pwe, an ethnic Mon imprisoned for manslaughter in 2003 and taken with 75 other prisoners from the Zin-kyike labor camp in Mon State, told Human Rights Watch, They [prison authorities] didnt say anything, they picked us as they want. The soldiers kicked us and beat us onto trucks.[44]

Many of the prisoners interviewed provided details of how, though guarded by policemen, they were transported by military trucks through a number of other prisons before they reached the prison in Hpa-an, the capital of Karen State. During their transport, the prisoners were shackled or handcuffed, ordered to sit with their heads on their knees, and instructed not to talk or look around. Most were never told by their guards where they being transported to, or for what purpose.

Authorities transported Kyaw Min, a prisoner from Pya (Prome) prison in Pegu Region, with a group of 50 prisoners to Hpa-an in early January 2011. He said:

Soe Myint from Meiktila prison told Human Rights Watch about his transportation:

Myint Swe, 23, in the same Meiktila group, described the journey to Human Rights Watch:

Maung Pwe, from a labor camp in Paung Township of Mon State said, Some of the prisoners were tied by their thumbs with plastic ties, others were tied [by their thumb] to the person next to them.[48]

These accounts are similar to those heard two decades ago. In 1992, the Karen Human Rights Group interviewed Myint Aung, a 24-year-old prisoner from Mandalay prison who managed to escape from serving with Tatmadaw Infantry Battalion 117. He said:

Interviews conducted by the Karen Human Rights Group over the past several years indicates that prisoners are routinely drawn from prisons and labor camps and assigned to battalions at the front line to do menial labor, or retained in case of use in combat operations. Lwin Kaing, a 44-year-old ethnic Arakanese who was sentenced to 12 years in prison for drug offenses, was taken from the Hin Tha labor camp in the national capital, Naypyidaw, along with 200 other prisoners in December 2009. They were transported to Taungoo prison in northern Karen State where they stayed for four or five days. Lwin Kaing remembers that there were 86 trucks full of soldiers and porters who eventually transported them from Taungoo prison to Shwegyin township in Karen State. He told the Karen Human Rights Group:

In early January 2011, the authorities assembled approximately 700 prisoners from an estimated 13 penal facilities at the prison in Hpa-an. Many stayed for one to two days, were issued specific convict porter uniforms, and then were transferred en masse by army truck to the headquarters of the Tatmadaw Military Operations Command No.12 (MOC-12) at Kawkariek, close to Myawaddy town. There, according to several former porters, the prisoners were kept in two large barracks for one to two days. Around January 3 or 4, dozens of army trucks then drove the prisoners to the town of Palu, across from the Thai town of Baan Mae Khon Kaen, about 20 kilometers south of the border town of Myawaddy. From there, the prisoners were divided among an estimated 17 Tatmadaw units, and sent off on a range of duties in the Palu area and further south around the town of Waw Lay. These duties included carrying supplies to the front line, detecting landmines, foraging for firewood and water, fulfilling base support duties, and cooking for soldiers.

The assembly at Hpa-an prison and the army camp at Kawkariek illustrate the military commands deliberate policy to deploy convict porters to the front line, reflected in prepared uniforms and fixed assembly dates. This was not an ad-hoc gathering in an emergency, but indicative of patterns documented previously by human rights groups over the past two decades.

Soe Myint, from Meiktila prison, told Human Rights Watch what happened when his group of 30 prisoners arrived at Hpa-an prison:

Thi Ha Soe, a 23-year-old convicted murderer from Pakokku prison, was issued the same uniform for portering duties:

Maung Pwe, from a labor camp in Mon State, told Human Rights Watch that an army captain from Military Operations Command-12 (MOC-12, or *Sa Ka Ka*) told him, We had nothing to be afraid of, we would be taken care of, and we would be returned alive and then freed.[54] Other prisoners were told nothing by any prison or military officials. Tun Mok, a 45-year-old drug offender from Shan State, had been drawn from one of the labor camps in Mon State. He told Human Rights Watch:

Matthew, an ethnic Chin from Pya prison in Pegu Region, described the experience of how he and other prisoners from Hpa-an were transported close to the front line:

Burmese authorities arrested Ko Kyaw Zwa in the Irrawaddy Delta for selling illegal lottery tickets in 2010 and first sent him to a prison close to his home before transferring him to a labor camp in Mon State. He was part of a group of 75 prisoners sent first to Hap-an, and then straight to Palu. Ko Kyaw Zwa said:

Alive or Dead, Its the Same Thing Here

Tun Tun Aung, 20, an illiterate laborer from the Mandalay region, was sentenced to one year in prison for fighting with a neighbor. The authorities took him as part of a group of 30 prisoners from Meiktila prison in late December 2010. He told Human Rights Watch:

I didnt know I was being taken as a porter. When we arrived in Karen State thats when we knew, we were all afraid. There were about 1,000 prisoners there, but we were separated into small groups. My group went to La-pan village. We had to carry bombs [mortar or rocket-propelled grenade rounds] in a basket, 13 in each. We would start at 7 a.m. and reach the mountain [Tatmadaw base] at 3 p.m. We were never given food, never given water. After we dropped our loads [at the camp] we walked back down, but some of the porters had to stay there. We had to dig pits for their mortars. We had to struggle the whole time, the *sit-tha* [soldiers] would yell at us, Quick, hurry, I will kill you! Are you fucking your mother or your sister? Most of the soldiers are bad. We are Burmese like them, but the *sit-tha* have no kindness, they are selfish. It is easy to torture people.

Some of the porters went first [walking ahead]. Others were between the *sit-tha.* At 10 different times I saw porters step on landmines. Some died, others lost their legs or eyes. If the soldiers got injured we carried them back, but the injured porters just stayed there. Three or four times I had to carry the wounded *sit-tha.* Some had lost arms, a whole leg, injuries on their face and chest. We had to carry them slowly down the mountains and the soldiers would swear at us to go faster.

The soldiers told us at night that there was a lot of fighting on the mountain, and that if we were alive tomorrow night we would be lucky. We are all dead, I thought. Alive or dead, its the same thing here. So 15 of us planned to escape. It was a full moon that night, so we decided to run away at 11 p.m. We were not tied up. We were outside a monastery, and when the *sit-tha* fell asleep, we crept away. We were not far from the [Moei] river [along the Thai border], just five minutes to walk. We walked through the river to the Thai side. We heard the *sit-tha* yell, Dont run! Dont run! I turned around to look and was hit with the first shot. They shot at us four times I think. The bullet hit my right shoulder and broke my arm. It knocked me down onto the ground. I first felt dizzy, everyone else just ran. My friend stayed and dragged me into a sugarcane field. We spent the night hiding there. In the morning we met a Thai man. I think he owned that field, and he called the Thai [health] officials who took me to the hospital [in Mae Sot].

I was told that if we escaped the army would send a letter to our family saying that we were killed by the enemy. Ive never seen my son; he was born while I was in prison. I want to see him. I also want to see my grandfather, he is very sick. I will work here in Thailand for two or three months to get money and then go back [to Burma] to my family. I am worried I will get into trouble if I go back, but I have to go back.[58]

Convict porters used in northern Karen State in 2009-2010 and during the post-election offensive south of Myawaddy in 2011 endured horrific abuses at the hands of the Tatmadaw. These include killings and summary executions, atrocity demining (defined below), torture and beatings, denial of medical assistance, ill-treatment including denial of food and shelter, and abuses while attempting to escape.

Porters told Human Rights Watch and the Karen Human Rights Group about specific incidents they witnessed in which Tatmadaw soldiers or officers summarily executed porters. Soldiers usually killed porters for no longer being able to carry the loads, attempting to escape, or having injuries from landmines or from being beaten that rendered them unable to walk. Most of the porters we interviewed said they were repeatedly threatened that they would be killed if they could no longer carry the loads, if they were injured, or if they tried to escape.

Matthew, an ethnic Chin, told the Karen Human Rights Group of his experience with a military unit. He described other porters having their throats cut, being shot, and their bodies being thrown over steep cliffs:

Pyit Zon from Insein prison witnessed three porters from the same prison attempting to escape on the front line:

Many of the escaped porters described how soldiers executed porters who were wounded by landmines (see next section). Ko Kyaw Htun told the Karen Human Rights Group Most of my friends [porters] were hit by mines and their legs were blown off. The soldiers said they would send them back and they called them behind the troops and shot and stabbed them with knives and kicked them down to the valley.[61]

Maung Pwe, from a gravel labor camp in Mon State, witnessed soldiers and officers shooting porters after they had been wounded by landmines:

Authorities took Soe Win, a young man serving time for breaking and entering, with a group of 500 prisoners from the Kin Tha labor camp near Naypyidaw in late 2009. They assigned him together with a small group of other porters to Infantry Battalion 58, on its way to the front line in Papun district of Karen State. Along the way soldiers beat him and deprived him of food. Aung Kyaw Moe witnessed a young soldier shooting and killing two porters. He said:

Soldiers also provided accounts of the summary execution of convicts used by the military. Tin Soe, a 21-year-old soldier, told Human Rights Watch how one of his officers killed two convict laborers at his camp in October 2009:

In violation of international humanitarian law prohibitions against human shielding, placing civilians at unnecessary risk, and using forced labor in combat areas, porters reported that they were forced to walk with patrols in mined areas. Atrocity deminingthe practice of forcing porters to walk ahead of columns or patrols to detonate enemy antipersonnel landmines or command-detonated IEDsis a war crime. Porters are also forced to clear and mark areas suspected of containing landmines or IEDs, with no specialist training or equipment to perform this task. In most cases, the porters were just ordered to use a stick to locate the mines.

The term atrocity demining, also referred to as human mine sweeping, has been used to describe forced passage of civilians over confirmed or suspected mined areas or the forced use of civilians to clear mines without appropriate training or equipment.[65] The International Campaign to Ban Landmines has documented the use of forced labor, civilian and prisoner, for forced mine clearance with their bodies or with tools without training in areas with a known mine hazard every year in Burma since 1999.[66] It is a form of human shielding, which is a war crime.

Many of the convict porters interviewed by Human Rights Watch and the Karen Human Rights Group in 2010-2011 reported landmine deaths and injuries, several of which have already been described in the section above, highlighting the dangers arising from military operations to which porters are routinely exposed. Porters told Human Rights Watch and the Karen Human Rights Group that soldiers forced them to dig out landmines, to strike or beat the ground with a pitchfork or pickaxe before soldiers walked on it, or to walk in front of Tatmadaw columns in a mined area or in an area suspected to have been mined.

According to Htway Thu, a 28-year-old man from Magwe Region sentenced to 5 years for brawling, soldiers forced him to walk ahead of the column and probe for landmines:

Ko Kyaw Htun recalls soldiers forcing them to walk ahead, knowing it was the wrong thing for them to do:

Laing Oo, 43, who had been in prison since 1990, told the Karen Human Rights Group about two incidents in 2011 in which porters were injured by mines and then left by the soldiers without administering any medical assistance. He said:

Matthew, from Pya (Prome) prison, described how soldiers ordered him to walk ahead of the formation and search for mines: The soldiers said, Many of our soldiers were hit by mines. We will keep the porters at the front. If they dont go, we will shoot them in the back. We will shoot them if they dont go in the front. We will order them to clear up mines.[70]

Pyit Zon, who witnessed prisoners killed attempting to escape, was also present when a young porter was ordered to step off the path, when the soldiers clearly feared that landmines were present. He said:

Maung Nyunt was carrying supplies to a Tatmadaw camp in early January 2011 when a porter walking ahead of troops stepped on a landmine and was seriously injured:

The Tatmadaw and non-state armed groups have used antipersonnel landmines extensively in Karen State and elsewhere in eastern Burma for many years. Burma is not a party to the 1997 Mine Ban Treaty, which bans the use, production, transfer, and stockpiling of

antipersonnel landmines, and has abstained from voting the UN General Assemblys annual resolution calling for universalization of the treaty. Because landmines cannot distinguish between civilians and combatants, their use even where the Mine Ban Treaty is not in effect violates the international humanitarian law provision against indiscriminate attacks.[73]

In recent years, the militaries of Burma and Col. Gaddafis Libya have been the only government armed forces confirmed to have used antipersonnel mines. Insurgent groups in Burma make use of improvised explosive devices (IEDs) for ambushes, and homemade landmines for use on trails. Their use by both government forces and insurgents is a serious violation of international humanitarian law.

Reported casualties remain high, but do not necessarily reflect the full extent of deaths and injuries because of haphazard and incomplete reporting by the Burmese authorities and by non-state armed groups. No party to Burmas armed conflicts has ever included numbers of convict porters in their official reporting on landmine injuries and deaths, nor has there ever been any official acknowledgement of the scale of injuries due to landmines.[74]

In addition to their use in atrocity demining, described above, convict porters have also been subject to other forms of human shielding, a violation of international humanitarian law that amounts to a war crime. Porters interviewed by Human Rights Watch and the Karen Human Right Group described how soldiers deliberately intermingled porters while walking in military columns in frontline areas.

Porters related how they were forced to walk ahead of troops to either detonate landmines or draw fire from an ambush. Several porters specifically reported that soldiers forced them to walk before or on either side of them to shield military personnel during hostile fire.

They also described other practices that, even when not amounting to shielding, violate the international humanitarian law prohibition on putting civilians at unnecessary risk. Porters described how soldiers did not allow them to seek shelter in the trenches; forced them to stay out in the open during firefights; sent them to areas the army had just vacated under fire in order to retrieve military equipment hastily abandoned; and made them sleep in an unsheltered open area while soldiers slept in trenches or under shelter.

Laing Oo described his experiences within a Tatmadaw column on the front line:

Chit Kawn, a 37-year-old ethnic Han Chinese taken from Myitkina prison with approximately 100 other convicts in northern Kachin State in late 2009, described his experiences at the front line in northern Karen State in 2010:

Thi Ha Soe, who was with an army unit during the January 2011 fighting south of Myawaddy told the Karen Human Rights Group what happened when DKBA insurgents started directing fire on their position:

In other cases, military personnel forced porters to pillage civilian houses in the conflict area, a war crime. Ko Kyaw Zwa explained how he and other prisoners were ordered to loot civilian goods for the Tatmadaw:

Without exception, all porters we interviewed reported violence, physical abuse, or threats of violence against them. Porters said that Tatmadaw soldiers and officers beat them for things such as requesting a rest, slowing down, stopping, speaking to soldiers or with other porters, requesting a lighter load, or being unable to climb either up or down a mountain. Other porters reported that soldiers tortured them when they attempted to escape or failed to stop other prisoners from escaping. They said that soldiers and officers insulted them, punched them, kicked them with military boots, prodded them forward with gun barrels, stabbed them, and beat them with the butts of their weapons.

Ko Kyaw Htun told the Karen Human Rights Group, They beat the prisoners when they didnt do what they ordered. They stabbed them with a knife or beat them with their gun butts in the prisoners faces. Prisoners faces became swollen.[79]

Matthew elaborated on this ill-treatment:

Tun Mok, an ethnic Shan from northern Burma, told Human Rights Watch how soldiers beat him after he attempted to run away from the Tatmadaw just days after arriving in the conflict area:

Soldiers beat Myint Swe, 23, twice:

Kaw Kay, an ethnic Han Chinese from the China-Burma border, was incarcerated in 2008 for drug related offenses. The authorities took him with hundreds of other porters to northern Karen State in late 2009, where he endured constant beatings at the hands of officers and soldiers, and witnessed other porters being beaten unconscious, possibly to death. He said:

Lwin Kaing was assigned with 11 other prisoners to Light Infantry Battalion 237 or 238. He was forced to carry a heavy load of military mess tins as the battalion moved into the Bpleh Koh army camp. He said:

Many of the porters interviewed by Human Rights Watch and the Karen Human Rights Group said that the military denied porters basic or life-saving medical treatment. This resulted in convict porters dying from treatable injuries and diseases; porters being forced to carry loads while sick or injured; and porters being abandoned when injured, unable to walk, or in any other way incapacitated.

International humanitarian law requires that parties to an armed conflict collect and care for the wounded and sick. [85] The ILO Forced Labour Convention provides that governments using forced labor under the exemption provisions must ensure all necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care.[86] The Forced Labour Convention requires that workers be medically examined before commencing the work and at fixed intervals during the period of service.[87]

Only two convict porters interviewed said that the prison from which they were sent conducted a medical examination. Both reported that prisoners were sent to be porters based on their ability or inability to pay bribes, and health considerations did not matter.

Ko Kyaw Htun described how injuries and ailments accumulated during his forced service, and how Tatmadaw medical personnel refused to provide treatment:

Matthew likewise related how the soldiers refused to give any medicine for common ailments, and how many of the porters feared getting ill and weak, because it would signal almost certain death at the hands of the soldiers:

Almost all of the 58 porters we interviewed reported that the military did not feed them often enough or provide them with enough food to carry out the work required of them on the front line. The ILO Forced Labour Convention requires that workers under the exemption provisions be guaranteed a supply of food[90] and an increased or ameliorated diet where performing work to which they are not accustomed.[91]

Some convict porters described going full days without being fed once, being fed only once a day or being given food only if some was left over after the soldiers had finished eating. Others describe having to share small amounts of food between three or four other porters or having to forage for food in the jungle in order to try to get enough to eat. Many also described enormous disparities between what soldiers and porters were given to eat.

The Forced Labour Convention also requires that workers be guaranteed a supply of drinking water.[92] Many porters reported that they did not have ready access to water or that they were not permitted to drink a sufficient amount of water while portering. Porters reported being forced to work full days without being provided any water. Seven porters mentioned that they were not allowed to bathe or even wash their hands before eating despite extremely unhygienic and unsanitary conditions.

Ko Kyaw Zwa spent most of his service in the rear area, stealing from villages, digging foxholes, and cooking for soldiers. While he was rarely exposed to actual weapons fire or landmines, he was not immune from ill-treatment. He said:

Ko Kyaw Zwa was also privy to one of the paradoxes of armed conflict in Burma: Burmese soldiers listening to ostensibly banned exiled radio stations that carry news on Burma that circumvents Burmas strict censorship on news, especially reports on ongoing armed conflict. He said:

Human Rights Watch and the Karen Human Rights Group interviewed 20 prisoners who escaped the post-election offensive in Karen State. It is impossible to estimate how many of the large group assembled in Hpa-an and Kawkariek managed to escape, were killed, or remain in service. Porters reported that they chose to escape because they believed they would be forced to porter on the frontline until they were killed or died from malnourishment, exhaustion, or disease. Many porters interviewed by the Karen Human Rights Group reported that after having served one battalion, the army forced them to remain on the front line to serve new battalions that rotated forward. Win Naing, a 27-year-old porter, told the Karen Human Rights Group about his fears of being kept in the conflict zone:

In addition to the widespread abuses they suffered while portering, many porters also reported abuses as they attempted to escape, including being shot at by Tatmadaw troops. Some prisoners were lucky in that they received help from soldiers, non-state armed groups, or villagers, who urged them to escape and in some cases helped them with information or money, food, shelter, and medical support after their escape. A soldier who was from the same town in Burma as Soe Myint was kind to him, and helped him during his time at Palu. Soe Myint eventually escaped in a group of 11 convict porters:

Maung Nyunt was carrying mortar shells from an artillery unit when he and another porter took advantage of the widening distance between him and his Tatmadaw column and also their proximity to the Thailand border. He made his escape after less than two weeks on the frontline. He said:

Laing Oo, 43, who had been in prison for more than 20 years, managed to escape with one other prisoner while doing menial chores for the officers at the river in the late morning. He said:

Twenty of the prisoners interviewed for this report escaped to Thailand between January and March 2011. All of these individuals expressed a desire to return home to Burma, and an equally strong fear of arrest and punishment, possibly death, if they did. Many others interviewed by the Karen Human Rights Group in other parts of Karen State in the past three years expressed similar dilemmas. We also learned that prisoners who survive their service as porters and remain in Burma may face difficulties upon return to prison, such as being transferred to prisons far from their homes or being denied special medical care.

Thailand is not a party to the 1951 Refugee Convention and its 1967 Protocol, and it has suspended its refugee status determination process for several years. This means that many of the 140,000 refugees in nine separate camps along the Thailand-Burma border are not officially recognized by United Nations High Commissioner for Refugees (UNHCR), though Thailand does allow the UNHCR to process refugees for eventual resettlement in third countries. Escaped Burmese convict porters seeking refugee protection in Thailand and other neighboring countries face particular difficulties in seeking refugee status because many are not members of minority ethnic groups long subject to persecution in Burma, [99] and because of their criminal records.[100] Many are too afraid to try.

Thailand is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which prohibits a state from returning a person to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture.[101] Thailand is also bound under customary international law by the principle of non-refoulement, which protects refugees and asylum seekers from being returned to any country where their lives or freedoms could be threatened or where they face persecution. Thus, to the extent that the treatment or punishment meted out by Burmese authorities to convict porters constitutes torture or a form of persecution, their asylum claims should be given consideration.

Options for escaped convict porters in Thailand are slim. Many told us they planned to work in Thailand for some time to earn money to send to their families or save up, and that they would attempt to return in the future, be it in a few months or a few years. Thailand is currently host to an estimated two million migrant workers. About a third are legally registered with Thai migrant worker cards, but most live perilously as undocumented workers in fields such as agriculture, factory work, fishing, hospitality, construction, and domestic or sex work.

Ko Kyaw Htun from Insein prison told the Karen Human Rights Group he could not go home to Burma:

Myint Shwe, who was initially sentenced to three years for fraud when he was 21, bribed the judge to reduce the sentence to one-and-a-

half years. Within a year he was in Karen State carrying supplies on the front line. He said:

Pyit Zon, also from Insein prison said:

Soe Myint, from Mandalay, said he would try and return to Burma:

Htway Thu, from the Irrawaddy Delta, fears returning to Burma and being put back into prison again, but mostly wants his family to know where he is:

The Burmese government has long been responsible for serious violations of international humanitarian and human rights law in the conduct of military operations against rebel armed groups. It has failed completely to credibly investigate or hold accountable civilian officials and military personnel responsible for serious abuses, including the use and mistreatment of convict porters on the battlefield. This longstanding impunity led the UN Special Rapporteur on the situation of human rights in Myanmar, Toms Ojea Quintana, to recommend in his March 2010 report to the UN Human Rights Council the formation of a UN commission of inquiry into serious violations of international humanitarian and human rights law in Burma.

Holding individuals accountable for human rights abuses and war crimes is important because it may deter future violations, promote respect for the rule of law, and provide avenues of redress for the victims and their families. It can promote discipline and professionalism in the armed forces and law enforcement agencies, maintain responsible command and control, and improve relations with the civilian population.

The United Nations through the General Assembly, the Human Rights Council, and its special rapporteurs has issued highly critical human rights reports on Burma annually for nearly two decades. These reports frequently demonstrate that serious crimes by government security forces are widespread and systematic. But while many commissions of inquiry have been established around the world to investigate violations of international law, no UN body has done so with respect to Burma. Human Rights Watch believes that it is not enough for the UN to simply continue to document and publish reports on the human rights situation in Burma. Instead, the UN General Assembly or Human Rights Council should use its existing reports as a basis for establishing an international commission of inquiry that can impartially investigate allegations of international crimes, with a view to bringing justice to the victims and holding perpetrators to account.

As of this writing, 16 countries have backed the special rapporteurs call and publicly voiced support for a commission of inquiry in Burma. These are Australia, Belgium, Canada, the Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Latvia, Lithuania, the Netherlands, New Zealand, Slovakia, the United Kingdom, and the United States.

No.

Name

Category

Location

1.

Taw-gyi-tan

Agriculture

Twante Township, Rangoon Region

2.

Shwe-tha-htay

Agriculture

Twante Township, Rangoon Region

3.

Kyike-sagaw

Livestock

Dike-U Township, Pegu Region

4.

Hlay-hlaw-Inn

Agriculture

Hlegu Township, Rangoon Region

5.

Prison Labor Camp (KaLaTha)

General

Hlegu Township, Rangoon Region

6.

No. 2 New Life Camp

Agriculture

I-Kalaung, Tikekyi Township, Rangoon Region

7.

No. 9 New Life Camp

Agriculture

Tanyin Township, Rangoon Region

8.

Shwe-mya-ya

Agriculture (Rubber)

Pegu Region

9.

No. 11 New Life Camp

Kyu-Inn, Pyin Oo Lwin Township, Mandalay Region

10.

No. 11 New Life Camp

Ho-Kho, Pyin Oo Lwin Township, Mandalay Region

11.

No. 6 New Life Camp

Agriculture

Kyike-Mayaw Township, Mon State

12.

No. 7 New Life Camp

Agriculture

Hpa-an Township, Karen State

13.

Porter Battalion

Porter Recruiting Center

Thaton Township, Mon State

14.

No. 1 Porter Battalion

Porter Recruiting Center

Hpa-an Township, Karen State

15.

No. 2 Porter Battalion

Porter Recruiting Center

Hpa-an Township, Karen State

16.

Ka-Sa-Kae

Agriculture

Wakhema Township, Irrawaddy Region

17.

No. 3 New Life Camp

Agriculture

Nyaungdon Township, Irrawaddy Region

18.

In-ga-bo

Agriculture (Rubber)

Belin Township, Mon State

19.

Shwe-kyin-too

Gravel Production

Wakhema Township, Irrawaddy Region

20.

No. 1 New Life Camp

Tha-nan, Tamu Township, Sagaing Region

21.

No. 1 New Life Camp

Myo-thit, Tamu Township, Sagaing Region

22.

No. 1 New Life Camp

Tamu Township, Sagaing Region

23.

No. 10 New Life Camp

Ya-za-gyo (1), Kalay Township, Sagaing Region

24.

No. 10 New Life Camp

Ya-za-gyo (2), Kalay Township, Sagaing Region

25.

Taung-zun

Gravel

Belin Township, Mon State

26.

Yin-nyein

Gravel

Paung Township, Mon State

27.

Zin-kyike

Gravel

Paung Township, Mon State

28.

Mote-pa-lin

Gravel

Kyikehto Township, Mon State

29.

Kin-tha (1)

Gravel

Pyinmana Township, Mandalay Region

30.

Kin-tha (2)

Gravel

Pyinmana Township, Mandalay Region

31.

Htone-bo (male)

Gravel

Pathaingyi Township, Mandalay Region

32.

Htone-bo (female) (1)

Gravel

Pathaingyi Township, Mandalay Region

33.

Htone-bo (female) (2)

Gravel

Pathaingyi Township, Mandalay Region

34.

Bae-lin (male)

Gravel

Pathaingyi Township, Mandalay Region

35.

Pa-ya-nga-su

Gravel

Pathaingyi Township, Mandalay Region

36.

Mote-pa-lin (female)

Gravel

Kyikehto Township, Mon State

37.

Taungoo (4 mile)

Gravel

Taungoo Township, Pegu Region

38.

Sun-pra-bum

Road Project

Myitkyina Township, Kachin State

39.

Myitkyina Porter Battalion

Porter

Myitkyina Township, Kachin State

40.

Hti-kan

Agriculture

Yatsauk Township, Shan State

41.

Ban-kan

Agriculture

Yatsauk Township, Shan State

42.

No. 8 New Life Camp

Agriculture

Tanai Township, Kachin State

43.

No. 4 New Life Camp

Agriculture

Mergui Township, Tenaserrim Region

44.

No. 5 New Life Camp

Agriculture

Mergui Township, Tenaserrim Region

45.

Loikaw Porter Battalion

Porter

Loikaw, Kayah State

This report was researched and written by David Mathieson, senior researcher in the Asia Division of Human Rights Watch, and Jill Davison, research officer for the Karen Human Rights Group. Many of the interviews were conducted by Karen Human Rights Group region-based staff in Karen State in Burma and in Thailand who cannot be named for security reasons. The report was edited by Elaine Pearson, deputy Asia director at Human Rights Watch; Matt Finch, advocacy coordinator at the Karen Human Rights Group; James Ross, legal and policy director at Human Rights Watch; and Joseph Saunders, deputy program director at Human Rights Watch. Specialist review was provided by Steve Goose, arms division director at Human Rights Watch; Philippe Bolopion, United Nations advocacy director at Human Rights Watch; Bill Frelick, refugees director at Human Rights Watch; and Sophie Richardson, Asia advocacy director at Human Rights Watch.

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[1] Nick Cheesman, Thin Rule of Law or Un-Rule of Law in Myanmar?,*Pacific Affairs*, Winter 2009/2010, pp. 597-613.

[2]See Amnesty International, *Myanmar: Lack of security in counter-insurgency areas*, AI Index ASA 16/007/2002, July 2002, Amnesty International, *Myanmar: Crimes against humanity in eastern Myanmar*, AI Index ASA 16/011/2008, June 2008, Mary P. Callahan, *Making Enemies. War and State Building in Burma*, Cornell University Press, 2003, pp.207-28, Human Rights Watch, *They Came and Destroyed Our Village Again. The Plight of Internally Displaced Persons in Karen State*, June 2005, International Center for Transitional Justice, *Impunity Prolonged: Burma and its 2008 Constitution*, ICTJ, September 2008, International Human Rights Clinic, *Crimes in Burma*, Harvard Law School, May 2009, Martin Smith, *Burma. Insurgency and the Politics of Ethnicity*, Zed Books, 1999, Thailand Burma Border Consortium, *Internal Displacement and International Law in Eastern Burma*, Bangkok, TBBC, October 2008.

[3]See Human Rights Watch, Burma: Q&A on an International Commission of Inquiry, March 24, 2011, http://www.hrw.org/en/news/2011/03/24/burma-q-international-commission-inquiry.

[4]Human Rights Watch/Asia, *Burma: Abuses Linked to the Fall of Manerplaw*, C. 705, March, 1995.

[5] Amnesty International, Myanmar. No Law At All: Human rights violations under military rule, London, AI Index, ASA 16/11/92, September 30, 1992.

[6]The term military offensive is often misapplied in conflict areas of Burma. Normal patrol activities by Tatmadaw units often entail abuses against civilians, but they are not an offensive in the sense of being a multi-unit operation with clearly defined aims of taking over territory, destroying a target, or relocating large numbers of civilians as part of a counter-insurgency operation. The historical label Four Cuts campaign has likewise often been misapplied. This specific counter-insurgency campaign is not an everyday phenomenon, but a multi-unit specific campaign designed to pacify a designated area of insurgent activity.

[7]On post-1988 foreign arms sales to Burma, see Andrew Selth, *Burmas Armed Forces. Power Without Glory*, Norwalk CT, Eastbridge, 2002.

[8] International Labour Organization, Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). Report of the High-Level Team, Geneva, 282nd Session, GB.282/4, November 2001, para. 60. p.15.

[9]Maung Aung Myoe, *Building the Tatmadaw. Myanmar Armed Forces Since 1948*, Singapore: Institute of Southeast Asian Studies, 2009, p.201.

[10]Richard Horsey, *Ending Forced Labor in Myanmar: Engaging a Pariah Regime*, Routledge, 2011, Conclusion, footnote 2, p.233 (parentheses in original). See also the ILO report of 1992, in which the ILO liaison officer writes On the question of prisoners being used as porters, the L.O. ad interim stressed that this should not be seen as an acceptable alternative to the use of civilians. See also International Labour Organization, Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, 285th Session, GB.285/4, November 2002, para. 27, p.10.

[11]International Labor Organization, Forced labour in Myanmar (Burma). Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, July 2, 1998, para. 303.

[12]The government also stated that the *Tatmadaw* was under a strict military code of conduct, was highly disciplined, and did not resort to onerous or oppressive actions against the people. Any isolated aberration was met with severe punishment meted out by a military court. Finally, the government asserted that the use of porters had significantly diminished as a result of fewer military operations against opposition armed groups.ILO, *Forced Labor in Myanmar*, para. 112.

[13]Ministry of Home Affairs, State Peace and Development Council Order No. 1/99. Order directing not to exercise powers under certain provisions of The Towns Act, 1907 and The Village Act, 1907 (sic, 1908), Yangon, Government of the Union of Myanmar, May 14, 1999.

[14] Chapter VII, Citizen, Fundamental Rights and Duties of Citizens, Clause 359, *Constitution of the Republic of the Union of Myanmar*, Printing and Publishing Enterprise, Ministry of Information, May 2009, p. 151.

[15]Assistance Association for Political Prisoners (Burma), The Use of Prisoners as Forced Porters and Labor by the Military Junta in Burma, Mae Sot, Thailand, September 19, 2000, Burma Issues, From Prison to Frontline. Portering for SPDC Troops During the Offensive in Eastern Karen State, Burma, September-October, 2003, Mae Sot, Thailand, January 2005, and Karen Human Rights Group, Convict Porters: The brutal abuse of prisoners on Burmas frontlines, Mae Sot, KHRG #2000-06, December 2000. See also the testimony of Aye Maung in Maggie Lemere and Zo West, Nowhere to be Home. Narratives from Survivors of Burmas Military Regime, Voice of Witness, February 2011.

[16]Human Rights Watch interview with escaped convict porter Zaw Zaw Tun, Thailand-Burma border, June 11, 2011.

[17] Karen Human Rights Group, Less than Human: Convict Porters in the 2005-2006 Northern Karen State Offensive, Mae Sot, KHRG #2006-03, August 22, 2006, p.17.

[18] Human Rights Watch interview with Tatmadaw deserter Let Ya, Thailand-Burma border, March 3, 2011.

[19] International Committee of the Red Cross, Myanmar: ICRC denounces major and repeated violations of international humanitarian law, ICRC News Release 82/07, June 29, 2007 http://www.icrc.org/eng/resources/documents/news-release/myanmar-news-290607.htm (accessed March 25, 2011).

[20]International Labour Organization, Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, 310th Session, GB.310/5, March 2011, para. 26, p.5.

[21] Thea Forbes, The ILO and forced labour in Burma, *Mizzima News*, March 7, 2011 http://www.mizzima.com/edop/interview/4973-the-ilo-and-forced-labour-in-burma.html (accessed June 16, 2011).

[22] See ILO conducts forced labour workshops with Burmese govt officials, *Mizzima News*, May 26, 2011, http://www.mizzima.com/edop/interview/5326-ilo-conducts-forced-labour-workshops-with-burmese-govt-officials.html (accessed June 5, 2011). See also Human Rights Watch, *We Are Like Forgotten People. The Chin People of Burma: Unsafe in Burma, Unprotected in India*, January 2009, Physicians for Human Rights, *Life Under the Junta: Evidence of Crimes Against Humanity in Burmas Chin State*, Cambridge Mass, January 2011.

[23] In 2008, Burma's ruling SPDC announced that all armed groups under ceasefires would have to transform into BGFs under the direct operational control of the Tatmadaw, as stipulated in the 2008 Constitution. To date, nine small militias have agreed to the terms and transformed into BGFs throughout Burma. Large ethnic armed groups such as the United Wa State Army (UWSA), the Kachin Independence Organization (KIO), and the New Mon State Party (NMSP), have refused to join the BGF scheme according to Transnational Institute and Burma Centrum Nederland, Ethnic Politics in Burma: The Time for Solutions, Amsterdam, Burma Policy Briefing Nr.5, February 2011. Other insurgent groups such as the KNLA and Shan State Army-South have not been offered to transform into BGFs because they are still in open conflict with the central government.

[24] Burma: Eyewitness Accounts of Abuses in Eastern Fighting, Human Rights Watch news release, December 4, 2010, http://www.hrw.org/en/news/2010/12/04/burma-eyewitness-accounts-abuses-eastern-fighting, and Karen Human Rights Group, Villagers flee to avoid fighting and portering: Conflict continues to impact civilians in Dooplaya District, KHRG News Bulletin, KHRG #2010-B16, December 4, 2010.

[25] United Nations High Commissioner for Refugees, UNHCR urges Thailand against forced returns to Myanmar, UNHCR Press Release, December 28, 2010, and Phil Thornton, When the people are the enemies of the state, *Bangkok Post*, March 6, 2011, pp.3-5 (Spectrum section), Backpack Health Worker Team, Update on the Conflict and Displacement of Civilians along the Thai-Burma border, Mae Sot, BPHWT, February 15, 2011, Refugees International, Thailand: No Safe Refuge, RI Field Report, March 24, 2011.

[26] United Nations Human Rights Council, Draft report of the Working Group on the Universal Periodic Review: Myanmar, Geneva, A/HRC/WG.6/10/L.7, February 2, 2011, para. 96, p.11. Burma: UN Should Tackle Rights Crisis as New Parliament Convenes, Human Rights Watch news release, January 25, 2010, http://www.hrw.org/en/news/2011/01/25/burma-un-should-tackle-rights-crisis-new-parliament-convenes.

[27] Human Rights Council, Note verbale dated 11 March 2011 from the Permanent Mission of Myanmar addressed to the Secretariat of the Human Rights Council, A/HRC/16/G/9, March 11, 2011, p.4.

[28]Geneva Conventions of 1949, art. 3. Article 3 applies to armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.

[29] Ibid.

[30] Customary international humanitarian law can be found in the International Committee of the Red Cross (ICRC), *Customary*

International Humanitarian Law (Cambridge, UK: Cambridge University Press, 2005) (available at http://www.icrc.org/customary-ihl/eng/docs/home). Many of the provisions of the Protocols Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, entered into force December 7, 1978, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978, are considered reflective of customary international law during internal armed conflicts.

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

[32] Ibid., rule 22, citing Protocol I, art. 58(c); Protocol II, art. 13(1).

[33] Ibid., rule 97, citing, e.g. Fourth Geneva Convention, art. 28; Protocol I, art. 51(7).

[34] Ibid., rule 156, citing Rome Statute of the International Criminal Court, art. 8(2)(b)(xxiii).

[35] Ibid., rule 153, citing, e.g. Protocol I, art. 86(2); Rome Statute of the International Criminal Court, art. 28.

[36]Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), arts. 3 and 5.

[37] Under Article 2 of ILO Convention No. 29, amongst other factors, forced or compulsory labor shall not include any work or service

exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.

[38] The departments under the Ministry of Home Affairs are the Myanmar Police Force, the General Administration Department, Corrections (or Prisons) Department, and Bureau of Special Investigation. The Ministry also controls several related organizations, the National Intelligence Bureau, Central Committee for Home Affairs, Central Committee for Drug Abuse Control, Myanmar Passport issuing Board, the Visa Issuing Board, Central Registration Board for Printer and Publishers, the Committee for Restriction of Transfer Immovable Property, Preliminary Scrutiny Committee for Awarding Titles and Medals, and the Board of Product using Prison Labors Objectives.

[39] Human Rights Watch/Asia, *Burma: Abuses Linked to the Fall of Manerplaw*, March 1995.

[40]Human Rights Watch interview with escaped convict porter Soe Myint, Thailand-Burma border, March 5, 2011.

[41]Human Rights Watch interview with escaped convict porter Thaing Soe, Thailand-Burma border, February 17, 2011.

[42]Karen Human Rights Group interview with escaped convict porter Thi Ha Soe, Thailand-Burma border, January 13, 2011

[43]Karen Human Rights Group interview with escaped convict porter Ko Kyaw Htun, Thailand-Burma border, January 28, 2011.

[44]Human Rights Watch interview with escaped convict porter Maung Pwe, Thailand-Burma border, March 2, 2011.

[45]Karen Human Rights Group interview with escaped convict porter Kyaw Min, Thailand-Burma border, January 28, 2011.

[46]Human Rights Watch interview with escaped convict porter Soe Myint, Thailand-Burma border, March 5, 2011.

[47] Human Rights Watch interview with escaped convict porter Myint Swe, Thailand-Burma border, February 6, 2011.

[48]Human Rights Watch interview with escaped convict porter Maung Pwe, Thailand-Burma border, March 9, 2011.

[49]Karen Human Rights Group, Report by an escaped SLORC munitions porter, Manerplaw, November 1992.

[50]Karen Human Rights Group interview with escaped convict porter Lwin Kaing , December 24, 2009, Papun District, Karen State.

[51] Human Rights Watch interview with escaped convict porter Soe Myint, Thailand-Burma border, March 5, 2011.

[52] Human Rights Watch interview with escaped convict porter Soe Myint, Thailand-Burma border, March 5, 2011.

[53]Karen Human Rights Group interview with escaped convict porter Thi Ha Soe, Thailand-Burma border, January 13, 2011.

[54]Human Rights Watch interview with escaped convict porter Maung Pwe, Thailand-Burma border, March 9, 2011.

[55]Human Rights Watch interview with escaped convict porter Tun Mok, Thailand-Burma border, February 6, 2011.

[56] Karen Human Rights Group interview with escaped convict porter Matthew, Dooplaya district, Karen State, January 28, 2011.

[57] Human Rights Watch interview with escaped convict porter Ko Kyaw Zwa, Thailand-Burma border, March 9, 2011.

[58] Human Rights Watch interview with escaped convict porter Tun Tun Aung, Thailand-Burma border, February 17, 2011.

[59] Karen Human Rights Group interview with escaped convict porter Matthew, Dooplaya district, Karen State, January 28, 2011.

[60]Karen Human Rights Group interview with escaped convict porter Pyit Zon, Thailand-Burma border, January 28, 2011.

[61] Karen Human Rights Group interview with escaped convict porter Ko Kyaw Htun, Thailand-Burma border, January 28, 2011.

[62] Human Rights Watch interview with escaped convict porter Maung Pwe, Thailand-Burma border, March 2, 2011.

[63] Karen Human Rights Group interview with escaped convict porter Soe Win, Papun District, Karen State, Burma, January 2010.

[64] Human Rights Watch interview with Tatmadaw deserter Tin Soe, Thailand-Burma border, February 5, 2011.

[65] The term atrocity demining was coined by Yeshua Moser-Puangsuwan of the International Campaign to Ban Landmines (ICBL) in the ICBL publication *Landmine Monitor* in 1999. Atrocity demining is the use of human beings to remove landmines. In a suspected mine area, they [the Burma army] will take [civilians] and they will march them ahead of military units to trigger any mines that may be there, intentionally to detonate any mines that may be there. Up to 70% of these people die during their military service. They can die being caught in the crossfire, they can die due to malnutrition and malaria, but they are also being killed by landmines, by being casualties simply in a war zone but also as human mine sweepers. See Richard S. Ehrlich, Making demining an atrocity, *Bangkok Post*, September 16, 2003.

[66]See International Campaign to Ban Landmines, Myanmar. Submission to the UN Universal Periodic Review, Geneva, July 2010, http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/ICBL_InternationalCampaigntoBanLandmines_eng.pdf (accessed May 9, 2011).

[67] Karen Human Rights Group interview with escaped convict porter Htway Thu, Thailand-Burma border January 13 2011.

[68]Karen Human Rights Group interview with escaped convict porter Ko Kyaw Htun, Thailand-Burma border, January 28, 2011.

[69]Karen Human Rights Group interview with escaped convict porter Laing Oo, January 28, 2011.

[70]Karen Human Rights Group interview with escaped convict porter Matthew, Dooplaya district, Karen State, January 28, 2011.

[71] Karen Human Rights Group interview with escaped convict porter Pyit Zon, Thailand-Burma border, January 28, 2011.

[72]Human Rights Watch interview with escaped convict porter Maung Nyunt, Thailand-Burma border, March 9, 2011.

[73] See ICRC, *Customary International Humanitarian Law,* rule 81.

[74]See International Campaign to Ban Landmines, Landmines and Cluster Munition Monitor. Country Report: Myanmar/Burma, December 2010.

[75] Karen Human Rights Group interview with escaped convict porter Laing Oo, Thailand-Burma border, January 28, 2011.

[76] Karen Human Rights Group interview with escaped convict porter Chit Kawn, Northern Karen State, January 6, 2010.

[77] Karen Human Rights Group interview with escaped convict porter Thi Ha Soe, Thailand-Burma border, January 13, 2011.

[78]Human Rights Watch interview with escaped convict porter Ko Kyaw Zwa, Thailand-Burma border, March 9, 2011. Palu town is only 20 kilometers south of the border town of Myawaddy, and directly across the Moei River from the Thai town of Baan Mae Khon Kaen. It has been a main DKBA base for several years, and as such has benefited from the relative peace in the area, and a thriving cross border trade in logging, corn cultivation, and other goods, as well as alleged methamphetamines production. It is thus relatively more prosperous than other border towns. For a map of the border checkpoints in this area, see the Human Rights Watch report, *From the Tiger to the Crocodile. Abuse of Migrant Workers in Thailand*, February 2010, p.24.

[79] Karen Human Rights Group interview with escaped convict porter Ko Kyaw Htun, Thailand-Burma border, January 2011.

[80] Karen Human Rights Group interview with escaped convict porter Matthew, Dooplaya district, Karen State, January 28, 2011.

[81]Human Rights Watch interview with escaped convict porter Tun Mok, Thailand-Burma border, February 6, 2011.

[82]Human Rights Watch interview with escaped convict porter Myint Shwe, Thailand-Burma border, February 6, 2011.

[83] Karen Human Rights Group interview with escaped convict porter Kaw Kay, Papun district, Karen State Burma, January 2010.

[84] Karen Human Rights Group interview with escaped convict porter Lwin Kaing, Papun district Karen State, December 30, 2009.

[85] See Common Article 3 to the 1949 Geneva Conventions; see also ICRC, *Customary International Humanitarian Law,* rules 109 and 110, citing and Protocol II, art. 7(2).

[86] ILO Forced Labour Convention (1930), art. 17(1).

[87]ILO Forced Labour Convention (1930), art. 17 (1)(a).

[88]Karen Human Rights Group interview with escaped convict porter Ko Kyaw Htun Thailand-Burma border, January 28, 2011.

[89] Karen Human Rights Group interview with escaped convict porter Matthew, Dooplaya district, Karen State, January 28, 2011.

[90] ILO Forced Labour Convention (1930), art. 17

[91] ILO Forced Labour Convention (1930), art. 16 (4)

[92] ILO Forced Labour Convention (1930), art. 17.

[93]Human Rights Watch interview with escaped convict porter Ko Kyaw Zwa, Thailand-Burma border, March 9, 2011.

[94]Human Rights Watch interview with escaped convict porter Ko Kyaw Zwa, Thailand-Burma border, March 9, 2011.

[95] Karen Human Rights Group interview with escaped convict porter Win Naing, Dooplaya district, Karen State, January 2011.

[96]Human Rights Watch interview with escaped convict porter Soe Myint, Thailand-Burma border, March 5, 2011.

[97]Maung Nyunt told Human Rights Watch that the base he was carrying supplies from was a large fire-support base with numerous heavy mortars, called artillery mountain south of the town of Palu. He identified shoulder patches of the Tatmadaws Artillery Operations Command worn by soldiers at this base. The *sit-tha* had accidently fired shells into Thailand, I overheard [from the soldiers], and they worried that if they did it again the Thai army would shoot at them, so they were moving the camp. Human Rights Watch interview with escaped convict porter Maung Nyunt, Thailand-Burma border, March 9, 2011.

[98] Karen Human Rights Group interview with escaped convict porter Laing Oo, Thailand-Burma border, January 28, 2011.

[99] Article 1(A)(2) of the Refugee Convention states that a refugee is someone with a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country.

[100]The Refugee Convention excludes from refugee status criminalswho committed a serious non-political crime before admission to the host country, which might make ineligible those convict porters convicted of murder or other serious crimes. Refugee Convention, art. 1(F)(b).

[101]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987, art. 3.

[102] Karen Human Rights Group interview with escaped convict porter Ko Kyaw Htun, Thailand-Burma border, January 28, 2011.

[103] Human Rights Watch interview with escaped convict porter Myint Swe, Thailand-Burma border, February 6, 2011.

[104] Karen Human Rights Group interview with escaped convict porter Pyit Zon, Thailand-Burma border, January 28, 2011.

[105] Human Rights Watch interview with escaped convict porter Soe Myint, Thailand-Burma border, March 5, 2011.

[106] Karen Human Rights Group interview with escaped convict porter Htway Thu, Thailand-Burma border, January 13, 2011.