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Joint Submission

Burma Forum on Universal Periodic Review (BF-UPR)

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Assistance Association for Political Prisoners Burma (AAPP-B), Arakan Rivers Network (ARN), Burma Fund UN Office, Burma Lawyers' Council (BLC), Chin Human Rights Organization (CHRO), Emergency Act Team vs Backpack Health Worker Team, Federation of Trade Unions Burma (FTUB), Foundation for Education and Development (FED), Human Rights Education Institute of Burma (HREIB), Human Rights Foundation of Mon Land (HURFOM), Kachin Women's Organization Thailand (KWAT), Kaladan Press (Bangladesh), Shwe Gas Movement, Women and Child Rights Project (WCRP)

Executive Summary

Burma's human rights record is characterized by a pervasive culture of impunity, enabling the State Peace and Development Council (SPDC) to violate a host of civil, political, economic, social and cultural rights. After nearly 50 years of successive military rule, there is a lack of adherence to human rights principles and a lack of rule of law and judicial independence, which has led to the creation of policies and measures by State authorities that are at complete odds with international human rights standards. There are no statutory or constitutional bodies to promote and protect human rights. Formal and informal human rights education is strictly repressed. Independent civil society organizations (CSOs) who promote human rights and document rights abuses inside the country are harassed by the State, and individuals subject to arrest. As a result, hundreds of CSOs are operating in exile, implementing training programs, publishing reports, and lobbying the international community and media, while working alongside those who are inside Burma.

In light of the transition from the UN Commission on Human Rights to the UN Human Rights Council, Burma's CSOs identified new ways to engage with UN human rights mechanisms. The Universal Periodic Review (UPR) is one such way. The UPR process presents a unique opportunity for CSOs to work together to highlight the full picture of Burma's human rights record. For this reason, the Human Rights Education Institute of Burma (HREIB) and partner organizations initiated a process, beginning in October 2009, to facilitate the efforts of the CSOs working on human rights issues in Burma, and raised awareness about the UPR amongst its networks. The Burma Forum on Universal Periodic Review (BF-UPR) was formed at the training and consultation workshop in Chiang Mai in April 2010, and this joint submission is an outcome of these efforts.

In this submission, BF-UPR provides information for Section C as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review. Drawing on research from its member organizations, BF-UPR's submission highlights concerns regarding Burma's compliance with its international human rights obligations in the following areas: crimes against humanity; administration of justice, impunity and the rule of law; freedom of expression and assembly, prisoners of conscience and political rights; housing, land and property rights and development; poverty and access to humanitarian services; the rights of ethnic and religious minorities and indigenous peoples; human trafficking; and labour rights.

(a) Crimes against humanity: violations of humanitarian law, forced labor, sexual violence, refugees, internally displaced persons, children and civilians in conflict

Human rights violations including the use of child soldiers, sexual violence, forced labor, forced relocation, and other crimes are not isolated incidents. These crimes occur systematically and are widespread throughout Burma, occurring with a level of impunity that indicates the perpetrators have institutional support for these practices[1] and are most severe in rural ethnic areas where there is ongoing armed conflict. These acts constitute crimes against humanity and war crimes as defined under the Rome Statute of the International Criminal Court. Crimes against humanity and war crimes are not being prosecuted in Burma under its current legal system. Article 445 of the *2008 Constitution* grants blanket amnesty for all government officials for all crimes, past and future, including war crimes or crimes against humanity. Such impunity violates *jus cogens*

norms of international law as well as UN Security Council Resolutions 1325 and 1820, which prohibit amnesty for crimes of sexual violence in conflict.

The SPDC troops use rape against women as a weapon of war, victimizing ethnic communities. Ethnic women are common targets for violence in Burma including gruesome killings, arbitrary executions, beatings, torture, gang rape, and slave labour.[2] Through its crimes of sexual and gender-based violence, the SPDC attempts to control ethnic minorities. Burma women's organizations have documented over 1,000 cases of rape in Karen, Shan, Mon, Chin, and Kachin States from 1988 to 2009 but this number is a mere fraction of the total number due to the SPDC's tight control and the fear and stigma that prevents women from reporting rape. This indicates that sexual violence by military soldiers is widespread and systematic. Victims of state-sanctioned rape are forced into silence, causing severe physical and psychological damage and leaving many perpetrators immune to investigation and prosecution.[3]

Thousands of children serve in the armed forces in Burma,[4] in violation of the UN Convention on the Rights of the Child (CRC), Burmese domestic law, and the Rome Statute.[5] Most of these children are recruited by force or intimidation and suffer beatings, torture, sexual violence, and other crimes. Battalions recruit children in order to meet a quota and receive financial incentives. There is evidence of children as young as eleven being forcibly recruited into the army. These children are used as human mine-sweepers, frontline combatants, porters, sentries and camp cleaners.[6]

The SPDC commonly subjects its citizens to forced labor, a form of slavery.[7] Despite having ratified the International Labor Organization (ILO) Convention 29 Concerning Forced Labour and subsequent Supplementary Understanding for a complaints mechanism, the SPDC systematically commits abuses of forced labour. Up to two million men, women, children are forced to work for the armed forces, development projects or infrastructure expansion without compensation. For example, in Chin State alone, more than seventy incidents of forced labour have been documented since 2006, some involving orders to multiple villages.[8] There are cases where those who use the ILO complaints mechanism were punished and face intimidation, arrest and imprisonment.

The SPDC utilizes forced relocation with shocking regularity, especially in Eastern Burma. There is an estimated one million internally displaced persons (IDPs) in Burma, including an estimated 470,000 people in Eastern Burma alone.[9] The increased militarization across Northern Karen State over the last two years has generated a shoot-on-sight policy for persons found in their villages after the expiry of the notice period for relocation.[10] In July 2009 government troops operating in Shan State burned ten villages and forcibly relocated an additional thirty, affecting 2,000 to 2,500 individuals.[11]

Since 2005, the SPDC forces have targeted civilians in rural areas, confiscating land and destroying housing and property. Landmines are planted to ensure it is unsafe to return home. The SPDC continues to plant landmines throughout Karen State. IDPs in the area have been severely affected by these landmines, with several civilians gravely injured or killed. SPDC forces rarely, if ever, inform civilians when or where they plant landmines.[12]

Recommendations to the SPDC:

- Remove article 445 in the *2008 Constitution* that provides immunity for perpetrators of-human rights abuses and crimes against humanity.
- Allow an independent international body that is fully accountable to all stakeholders to investigate possible war crimes and crimes against humanity and prosecute the perpetrators responsible for such crimes.
- Ban the use of anti-personnel landmines and ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, regardless of whether the non-state armed groups use landmines.
- Develop effective mechanisms, in consultation with independent groups representing women's interests, to prevent violence against women and girls, to facilitate prosecution of perpetrators and to provide full reparation for victims and survivors, in line with UN Security Council resolutions 1325 and 1820.
- Develop effective mechanisms to identify, release and ensure disarmament, demobilization, and reintegration of all child soldiers, to prevent further recruitment and to address all other grave violations against children in line with UN Security Council resolutions 1612 and 1882.

(b) Administration of justice, impunity and the rule of law

In Burma, there is no rule of law. The judicial system is controlled by the SPDC without judicial oversight, transparency nor independence. Courts and other legal institutions exist to protect and promote the SPDC, not to provide justice to victims nor fairly arbitrate disputes. One of the many examples is Bo Min Yu Ko, sentenced to 104 years imprisonment at the age of twenty one, while denied the right to any legal representation[13]. Such harsh and cruel sentencing and the lack of due process is illustrative of the unlawful nature of the judicial system in Burma.

Basic rights of due process, including the right to a public trial and to be represented by a defense lawyer, are denied in political cases. In many cases, the accused are kept in ignorance of the section of law under which they are charged. There are reported instances where Military Intelligence has passed sentences orally at the time of arrest, before any trial had taken place. Prior to being charged, political detainees rarely have access to legal counsel or their families, and no opportunity to obtain release on bail. In most cases, trials are held in camera in courtrooms on prison compounds[14].

In many instances, the SPDC authorities intimidate and harass lawyers, including arresting, imprisoning, and revoking their licenses for defending political and human rights cases. There are currently 12 lawyers in prison.[15] Phoe Phyu, a lawyer who represented 50 farmers and who lodged a complaint with the ILO, was sentenced to four years, accused of attempting to form an unlawful association. After his release in March 2010 his licence was revoked.[16]

The SPDC has made no effort to punish officials responsible for state-sponsored violence and mass killings. In the peaceful demonstrations in August and September 2007, the military used excessive force, including beating and killing monks and other unarmed civilians. On 26 and 27 September alone, at least thirty-one people were killed.[17] No one has been held accountable for these deaths and the SPDC has not launched an investigation into the matter. The military and security forces and their associates such as the Union Solidarity and Development Association (USDA) and Shwan-aa-shin often act above the law, as evidenced in the brutal attack on two

Human Rights Defenders and Promoters (HRDP) members, Myint Hlaing and Maung Maung Lay, by USDA members, as they conducted human rights trainings for villagers in rural areas on 18 April 2007.[18]

Recommendations to the SPDC:

- Seek technical assistance from the UN to reform the judiciary, in order to restore full independence and impartiality under the rule of law; guarantee due process of law, including public hearings, in trials against political prisoners and ensure independence of the judiciary under the Constitution.
- Sections of the *2008 Constitution* that do not meet international democratic norms or reflect international human rights and humanitarian laws must be repealed and redrafted.

(c) Freedom of expression and assembly, prisoners of conscience and political rights

In Burma, there is a well-established pattern of persecution, assault, arbitrary arrest, torture and wrongful imprisonment of human rights and democracy activists. There has been a dramatic increase in prisoners of conscience in the past four years, from 1,185 in 2006, to over 2,170 in 2010. Rights defenders are imprisoned for simply distributing copies of the Universal Declaration of Human Rights (UDHR), for having in their possession a copy of the UN Special Rapporteur's report on the human rights situation in Burma, and for reporting cases of forced labour to the ILO.

The *Unlawful Association Act* is used to suppress freedom of association and prosecute persons on the grounds of them being members or having contact with 'unlawful' organizations. The *Burmese Penal Code* is used to repress and punish those taking part in peaceful demonstrations, forming organizations, or expressing opinion unfavorable to the regime. In Burma, meetings of more than five people are prohibited by law under Order 2/88.

Journalists, bloggers and writers face strict censorship. Currently, forty-one media professionals are in prison.[19] The print and broadcast media are tightly controlled and restrictions on internet use and content severe. The *2004 Electronic Transaction Law* bans Burmese citizens from using the internet to disseminate information deemed critical of the SPDC. Twenty-two members of the *88 Generation Students* were sentenced to a total of sixty years each under this law.[20]

Citizens are systematically denied the right to change their government. The *2008 Constitution* was adopted in a referendum, amidst serious election irregularities including voter intimidation and ballot stuffing.[21] The draft constitution was not made available to the public, particularly to ethnic minority nationalities as it was published only in the Burmese language. The *2008 Constitution* guarantees military control over the fundamental rights of its citizens and allows for all fundamental rights to be suspended during 'emergencies'. In addition, ethnic ceasefire groups have been threatened with military action to come under control of the Burma Army through its Border Guard Force and support the 2010 elections.

The 2010 Election Commission (EC), appointed by the SPDC, can deny the registration of political parties and ban if they do not show allegiance to the Constitution and electoral laws. The EC is entitled to suspend the election in a constituency, or part of a constituency, where election preparation is "not possible due to lack of security," which may justify the suspension of basic human rights under the guise of "security," particularly in areas of armed conflict. The

laws disenfranchise "persons serving a prison sentence," and "persons prohibited in accordance with the Electoral Laws" - categories so broad in their potential definitions, as to make exclusion from voting highly subjective. The exclusion of those serving a prison term affects more than 2,170 political prisoners, including Aung San Suu Kyi.

Recommendations to the SPDC:

- Officially recognize anyone detained and imprisoned for peacefully exercising their rights to freedom of expression, association and assembly as prisoners of conscience, unconditionally release them and erase their criminal records.
- Abolish all articles of the *Penal Code* that criminalize peaceful acts and forms of association and expression, including articles 143-146, and 505(B), the *1950 Emergency Provisions Act*, the *1975 State Protection Law* and the *1908 Unlawful Association Act*, and Order 2/88 which prohibits any activity by five persons or more.
- Fully cooperate with UN human rights special procedures, specifically by issuing standing invitations to the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Rapporteur on the Situation of Human Rights Defenders.
- Reform the *2004 Electronic Transactions Law*, the *1996 Television and Video Law*, and the *1962 Printers and Publishers Act* to allow a free exchange of information and to ensure censorship does not adversely affect the freedom of political opinion and expression.
- Remove the provisions of the *2008 Constitution* that give the military absolute power during 'states of emergency', including the right to strip individuals of constitutionally guaranteed protections in the Constitution.

(d) Housing, land and property rights and development

The armed forces of Burma commit human rights violations in connection with state sanctioned development projects, including forced labour, arbitrary killings, beatings, illegal and arbitrary confiscation of land and property, forced farming and restrictions on movement. In many cases state sanctioned development and infrastructure projects are completed through the use of forced labour and through the extraction of arbitrary taxes from the local population. The SPDC deploys more troops in ethnic areas where such development projects take place which lead to more exploitation of natural resources and forced eviction of villages, disempowering local communities.

The SPDC exerts authoritarian control over the entire housing, land and property (HLP) sector and in many cases uses the domestic legal framework to maintain this control and to justify and perpetuate HLP rights abuses. The legal guarantee of ownership and control over virtually all land and natural resources in the country by the State, first prescribed in the *Land Nationalization Act* and recently reaffirmed in the *2008 Constitution*,[22] has been used by the SPDC to wield extraordinary degrees of power over the population and the entire HLP sector.[23]

The SPDC has appropriated resource-rich land traditionally belonging to the ethnic communities. For example, in Chin State in September 2008, a total of 45,502 acres of land belonging to Chin people measuring seventy-one miles in length and one mile in breadth was annexed to neighbouring Magwe Division. The area is abundant in teakwood, and widespread logging activity by companies linked to the SPDC has reportedly taken place since February 2009.[24] Also in Chin State over 15,000 acres of land have been transformed into tea plantations, since

2009, the majority of which have been confiscated from local communities which relied on the land to cultivate staple foods, such as corn, bean and potatoes.[25] The SPDC has exploited gas and oil reserves in Andaman Sea (western Mon State) and Arakan Sea of Arakan State, Western Burma. State authorities have confiscated land without compensation in relation to the Shwe gas project in Arakan State and have targeted villagers suspected of opposing the project.

In 2000, the SPDC began building an internal pipeline across Yebyu Township (Northern Tenasserim Division), Mon State and into Pa-an Township of Karen State, to supply energy to cement factories operated by the SPDC. In order to provide security for the pipeline project, the Burmese Army have deployed twenty military battalions, since 2000. These battalions have forced civilians to work on barracks, roads and sentry huts. In the years since 2003, pipeline battalions have seized over 6,000 acres, of paddies, plantations and homesteads confiscated to make way for the bases and agricultural projects of pipeline battalions.[26]

Recommendations to the SPDC:

- Immediately cease violations of housing, land and property rights, including the illegal appropriation of land and property, and the forcible eviction and displacement of civilians.
- Seek technical assistance from the UN to establish fair, equitable and accessible judicial remedies to effectively prevent forced evictions and land confiscation, resolve land disputes, clarify land rights, enforce landlord tenant laws, and provide restitution and return rights.
- Seek technical assistance from the UN to establish community participation mechanisms; environmental, social and human rights impact assessments of development projects; complaints mechanisms in the case of abuses; and a provision of adequate compensation in rural areas.

(e) Poverty and access to humanitarian services

The SPDC fails to provide people with the basic needs of survival and fails to prevent and alleviate extreme poverty. A large proportion of the population does not enjoy basic economic, social and cultural rights, due to the state policies, and as a consequence, it is reported that at least 32.7% of the population lives below the poverty line. Burma is the only country in the region to spend more on the military than education and health combined. The SPDC spent 0.5% of GDP on health, and 0.9% of GDP on education, while the military and State-owned enterprises together account for 80% of total spending.[27] Medical workers estimate there are between five and ten million malaria patients per year in Burma, but only a small proportion receive effective treatment.[28] About 15% of the population faces "food insecurity".[29] More than 30% of children are chronically malnourished.[30] IDPs and refugees are most vulnerable to food insecurity and poverty related diseases. Pregnancy related deaths kill one in seventy-five women, reflecting the lack of access to reproductive services. It is estimated that the consequences of unsafe abortion account for around 50% of maternal deaths.[31]

The SPDC has systematically eroded education by limiting resources, reducing expenditures and strictly censoring curriculum. It fails to make any genuine attempt to implement or uphold its own child protection law, as well as meet its obligations under the CRC. The *Child Law* articulates the right to education stating: "every child shall have opportunities of acquiring education; [and] have the right to free basic (primary level) education at schools opened by the state". However, according to UNICEF, 35% of children do not complete more than five years of schooling, and only 25% complete primary school.

The reality, for IDP children is far worse. Few ever attend school, due restrictions on movement, security concerns, prohibitive costs, as well as limited school facilities.[32] In large parts of Burma's ethnic States, the State provides very little or no education services whatsoever. In areas where services are provided, the military regime commonly uses forced labour for the construction of new schools and extorts building supplies. Local villagers are forced to cover many of the costs, such as teacher salaries.

At least 70% of Burma's population lives in rural areas relying on agricultural sectors and subsistence living, without sustainable services provided by the SPDC. Despite an increase in agricultural exports in the past five years, food shortages are reported in Northern Rakhine State, Karen State, North and East Shan State, and Chin State due to armed conflict, administrative mismanagement and natural disaster.[33] Chin State is one of the most underdeveloped and isolated regions, with little in the way of road infrastructure, communication systems, healthcare facilities,[34] electricity or running water. 70% of the Chin people live below the poverty line and 40% are without adequate food sources.[35] Since 2007, more than one-fifth of the population in Chin State has been severely affected by an ongoing food crisis, triggered by the flowering of the *Melocanna baccifera* bamboo, which produces a fruit, attracting forest rats. The rats decimated crops and food supplies. The SPDC has provided no assistance, and instead issued an order barring foreign aid.[36] To date more than fifty-four people have reportedly died in Chin State due to disease, illness, and complications related to severe malnutrition, and the majority of them were children.[37]

Cyclone Nargis hit Irrawaddy Delta on May 2, 2008, killing over 138,000 and affecting at least 2.4 million people. The SPDC blocked international aid to cyclone victims, forcing community-based organizations such as the Emergency Assistance Teams Burma (EAT) to fill the void, helping with cyclone relief, and long-term reconstruction. Yet, over one year after the cyclone, the situation has only worsened for the delta people who report still struggling to survive because of lack of access to food and potable water.[38] Under customary international law, the right to be free from hunger is an obligation of all states.[39] The SPDC not only has failed to mobilize resources to provide the majority of the Delta people food or potable water, but also allowed and potentially participated in the diversion and misappropriation of food and aid supplies to the needy for the profit of village heads, other authorities and local businesses. As a result, large numbers of people in the Delta area are unable to meet baseline nutritional needs and are resorting to sustenance from eating rats, frogs, and crabs. This vulnerable population has faced further exploitation by a wide range of actors forcing them to lose their assets and fall deeper into debt. Such exploitation includes: loan providers charging exorbitant interest rates for farming and fishing inputs; village heads renting confiscated aid materials for unaffordable prices; businesses imposing rules to sell catches below market prices; the government fining families who do not provide quota of dead rats; and the army charging taxes or permit charges to fish in areas that were previously open to the public. Abuses, including authorities' restrictions on aid, harassment of relief workers, land confiscation and tight control over communication and information exchange have also been reported during reconstruction.[40] Towards the end of 2009, while the SPDC spent over $570 million on advanced fighter jets from Russia, the Tripartite Core Group appealed for $103 million for priority reconstruction initiatives in cyclone damaged areas, of which, only $88 million was pledged by the international community.

Recommendations to the SPDC:

- Remove the restrictions imposed upon local volunteers and community based groups, UN agencies and international non-governmental organizations, providing humanitarian assistance and review procedures of procurement of medical and other supplies.
- Immediately increase investments in health and education to assure that the needs of all people in Burma are met.
- Provide women with sexual and reproductive healthcare services in order to decrease mortality and morbidity related to pregnancy and child birth.

(f) Rights of Ethnic and Religious Minorities and Indigenous Peoples

Ethnic minority nationalities constitute approximately 35-40% of the country's population, and form the majority in the seven States.[41] The ethnic nationalities have demanded equal rights and autonomy in a Federal Union of Burma; however, the SPDC has systematically denied these demands by oppressing through violence and force. The SPDC targets ethnic activists for their work on human rights, political, environmental, and/or religious issues, and for their real or alleged support of ethnic political and armed groups. Systematic human rights violations against civilians, such as summary executions, arbitrary arrests, forced relocation, forced labour, and destruction of food and crops, and torture have been well documented.

Since 1962, successive ruling military juntas have practiced a policy of assimilation against all ethnic minorities by restricting the preservation of their national identity, history, language, and culture. Using ethnic language in schools and workplaces is banned. Many ethnic people such as Mon, Karen, Shan, Chin, Karenni, Arakan, and Kachin have set up their own 'national schools' in order to preserve their language and culture through informal education. These schools are constantly disrupted by local authorities.

The policies and practices of the SPDC violate the collective rights of all indigenous people, in contradiction to the UN Declaration on the Rights of the Indigenous Peoples, which the SPDC voted in favour of in 2007.[42] In Chin State, comprised of more than sixty different sub-tribal groups, 90% of the population is Christian. Widespread State-sanctioned destruction of Christian infrastructure has taken place, and there are restrictions on freedom of religious assembly.[43]

The Rohingyas, a group of people with a distinct culture, language and religion living in Arakan State, are subjected to severe persecution, discrimination and human rights abuses. The *1982 Burma Citizenship Law* violates several fundamental principles of international common law, declaring Rohingya non-citizens, rendering them stateless. According to the *1982 Burma Citizenship Law*, citizenship is only granted to those who belong to one of 135 'national races' defined in the Law, from which the Rohingya are excluded. According to the United Nations High Commissioner for Refugees (UNHCR), there are approximately 730,000 legally stateless persons, mostly Rohingya, residing in Northern Rakhine State near the border with Bangladesh.[44] A consequence of their statelessness is the denial of the rights of citizenship and severe restrictions on movement. They are deprived of the right to an identity and religious practice as Muslims. The SPDC requires them to receive prior approval for travel outside their village tract of residence, and travel outside of Rakhine State is severely restricted. In contrast, citizens do not need approval to travel within the country; they need only be in possession of a citizenship card. Rohingyas have extremely limited access to higher education and cannot work

as civil servants, including as doctors, nurses, or teachers. Access to medical care is extremely limited. Authorities require Rohingyas to obtain official permission for marriages.[45]

Recommendations to the SPDC:

- Abandon its policy and practice of religious persecution, discrimination and forced assimilation against ethnic and religious minorities and unconditionally lift all restrictive and discriminatory measures and practices.
- In line with Article 38 of the UN Declaration on the Rights of Indigenous Peoples, request technical assistance from the UN to develop and implement a transparent legal framework to ensure the collective rights of indigenous peoples are protected, in particular the rights concerning self-determination; the practice of religious traditions, natural resources and conservation of the environment.
- Amend the *1982 Burma Citizenship Law* to ensure compliance with the country's international human rights obligations and end discriminatory practices against the Rohingya people in North Arakan State, including restrictions on freedom of movement.

(g) Human Trafficking

As party to CRC, CEDAW and the Human Trafficking Protocol, the SPDC fails to undertake preventative, protective, legislative, and administrative measures to ensure that adults and minors are not subject to exploitation and forced migration. Burma enacted *the Combating of Trafficking in Persons Act*, created an Inter-Agency Task Force and developed a National Plan of Action to combat trafficking. However, the State legislation does not address the root causes of trafficking. Instead, it has led to increased punitive action, which, given corruption and the absence of rule of law, has resulted in the punishment of innocent people.[46] The ongoing publicizing of arrests and rescues of victims of trafficking rings false in the face of increased trafficking and reports of complicity by law enforcement agents.

As political and economic conditions continue to deteriorate, and as adequate educational and employment opportunities are absent, increasing numbers of people are forced to migrate to urban areas or to other countries, particularly Thailand and China.[47] Failure by the State to provide legal opportunities for migration, combined with discriminatory directives forbidding women under the age of twenty-five from traveling without a legal guardian, and a lack of accessible information on living and working conditions in destination countries, means that most Burmese need help from third parties to facilitate their travel and find employment. Many are exploited either in the process of migration or at work places, and some find themselves trafficked. Assistance programmes for trafficked persons are undertaken by government organised organisations while the work of independent community-based organizations or NGOs is severely restricted. Additionally, there are reports of these government organized organizations accepting bribes to help traffickers get around anti-trafficking law.

Recommendations to the SPDC:

- Create more opportunities for legal migration, including ensuring that national identity cards are easily available to all citizens.

- Eliminate all forms of discrimination of women in migration measures, including the directive forbidding women under the age of twenty-five from travelling without a legal guardian.
- Allow independent community-based organizations, particularly women's organizations, to work without restriction to assist trafficked women and girls; to improve social services; and to develop and widely distribute accessible information on safe migration.

(h) Labour rights

A survey by the United Nations Development Programme (UNDP) and Burma's Central Statistical Organization reported at least 30% of the population had incomes insufficient to provide for basic food and needs, a ratio that rises to over 50% in ethnic states.[48] According to the U.S. State Department, the average annual wage for Burmese citizens is less than $200. For the most part civil servants in Burma are paid well below a livable wage, and the extraction of bribes for tasks that are ostensibly part of their employment is routine. In the private sector, urban laborers performing unskilled work earned $0.50 to $1.00 per day, while rural agricultural workers earned approximately half that rate.[49]

An abundance of labour and the failure of the State to protect workers have led to substandard and dangerous working conditions. The SPDC fails to recognize the working conditions set forth in the *1964 Law on Fundamental Workers' Rights* and the *1951 Factories Act*, which provide for overtime pay and just compensation. In the public sector industries, the State sets the wages and benefits. The joint sector companies are discouraged from paying their employees more than their counterparts in the public sector. The law prescribes a five-day, thirty-five hour workweek for employees in the public sector and a six-day, forty-four hour workweek for private and state enterprise employees, and workers are permitted twenty-one days paid holidays per year; however, in practice factory workers, work on average 7a.m. to 11p.m. seven days a week with no overtime or holiday.[50]

Despite having ratified the ILO Convention 87 on Freedom of Association, workers are not allowed to organize unions and bargain collectively. Any workers organisation has to function underground, and its members face constant threats of repression and reprisal, including imprisonment and torture. There are currently thirty-one labour activists in prison.[51] In addition, trade union activities are seriously limited by Order 2/88. The peaceful strikes of workers in Rangoon in 2010 were shut down by security forces and their claims never heard.

***Recommendations* to the SPDC:**

- Allow workers the right to form and join independent trade unions of their own choice.
- Immediately and unconditionally release all persons detained for peaceful activities to promote the rights of workers to freely associate; to peacefully assemble to protect and advance their rights; and to exercise their right to freedom of expression on behalf of workers and their concerns.
- Cooperate fully with the ILO to end the practice of forced labour. With the ILO, produce leaflets on the individual complaints mechanism against forced labour in all ethnic languages, and disseminate nationwide; and hold awareness raising seminars with the ILO on the complaints mechanism in all States and Divisions.

End Notes

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[4] Human Rights Watch, *Sold to Be Soldiers: The Recruitment and Use of Child Soldiers in Burma*, 2007

[5] Art 38. Burma's "Regulation for the Persons Subject to the Defense Services" sets 18 as the minimum age for military recruitment, Human Rights Watch, *Sold to be Soldiers* 130, 2007; Rome Statute, art. 8, §2(e)(vii)

[6] Human Rights Education Institute of Burma (HREIB), *Forgotten Futures*

[7] International Labour Organization, *Forced Labour in Myanmar, 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, 2 July 1998

[8] Chin Human Rights Organization (CHRO), *40 Villages Ordered to Perform Forced Labour*, Rhododendron News, Volume XII, No. V, September-October 2009. These violations have been carried out by LIB 99, 140, 266, 268, 269, 289, and 538. See individual submission by the CHRO for more information

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[11] U.S. State Department, *2009 Human Rights: Burma Report*, 2010

[12] Karen Human Rights Group, *Insecurity amidst the DKBA - KNLA conflict in Dooplaya and Pa'an district*, 2009

[13] Assistance Association for Political Prisoners Burma (AAPP-B), media release, *ABFSU member sentenced to 104 years in jail*, 14 January 2009

[14] Burma Lawyers' Council (BLC), *An Analysis of the Elections in Burma in 2010*, March 2010; also see AAPP-B's individual submission for more information on political prisoners in the justice system

[15] AAPP-B, *Monthly Chronology*, June 2010

[16] Asian Human Rights Commission, Urgent Appeal Case: AHRC-UAC-032-2010, 26 March 2010

[17] Report of the UN Special Rapporteur on the situation of human rights in Myanmar (A/HRC/10/19)

[18] AAPP-B, media release, Case of Two Attacked Human Rights Defenders Submitted to UN, 27 April 2007

[19] AAPP-B, *Monthly Chronology*, June 2010

[20] AAPP-B, Silent *Killing Fields: Burma's Prisons and Labour Camps*, 2009

[21] Human Rights Watch, *Vote to Nowhere: The May 2008 Constitutional Referendum in Burma*, 2008

[22] Article 37 provides: "The Union is the ultimate owner of all lands, and all natural resources above and below the ground, above and beneath the water and in the atmosphere."

[23] Leckie S. and Simperingham E., *Housing, Land and Property Rights in Burma: The Current Legal Framework*, 2010

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