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Via mail and facsimile

September 20, 2011

Re: The International Crisis Group's Policy Urging Unconditional Engagement with Burma's Military Rulers Contradicts States' Absolute Obligations to Respond to Burma's Serious Breaches of Peremptory Norms of International Law

Dear Board Members of the International Crisis Group:

The Global Justice Center is writing this open letter to urge the International Crisis Group (the "ICG") to immediately revoke its longstanding policy of supporting unconditional engagement with Burma's military rulers. This policy, encouraging "the West robustly engage the new Myanmar government at the highest levels,"¹ ignores both "on the ground facts" and peremptory norms of international law. The ICG fails to acknowledge that "the new Myanmar government" is illegal because it is based on a constitution mandating a bifurcated sovereignty, a fundamental breach of the law of nations. The constitution divides up sovereign powers and guarantees the military complete legal autonomy over all civilian and criminal military affairs. This renders the state of Burma without the legal capacity to enforce any international or domestic laws against the military, including U.N. Security Council Resolutions, the Nuclear Non-Proliferation Treaty, and the Genocide and Geneva Conventions.

This new constitution, implemented on January 31, 2011, is a serious breach of Burma's *erga omnes* obligations to the global community and violates the U.N. Charter. Both the constitution and the "new Myanmar government" are null and void under international law and must be treated as such by the global community. Burma's new constitution, further, guarantees the military impunity from prosecution, encouraging the military's continuing crimes against humanity, genocide, and war crimes. The sham election held in November 2010 has escalated the risk Burma poses to global peace and security to an all-time high. Burma's civil war continues and is marked by heinous crimes of genocide by the military against the Kachin, Karen, Shan, Rohingya and other ethnic groups. The military's war crimes, in particular the use of child soldiers and rape as a weapon of war, remain unabated, in spite of the U.N. Security Council's denouncement thereof. In addition, contrary to the ICG's assertion in its March 2011 Briefing (*Myanmar's Post-Election Landscape*, hereafter "the Briefing") that Senior-General Than Shwe (hereinafter Than Shwe) and Vice Senior-General Maung Aye would be "stepping down,"² their power, in fact, had already been "stepped up." In February 2011, Than Shwe proclaimed a law establishing himself as chair of a new, extra-constitutional ruling body which is now the most powerful ruling body in Burma.³

States' policies towards Burma must be in accord with their *erga omnes* duties under international law. These include a duty of "non-recognition" of Burma's constitution and elections, ensuring that Burma complies with the "cessation" required by international law,⁴ i.e. revoking the constitution, and ensuring

that Burma's top military officers are individually held criminally responsible for the perpetration of gross violations of international humanitarian law, including genocide and the use of rape as a weapon of war against ethnic women. Implementing the ICG's recommendations would legitimize and aid the new government and ignore states' *erga omnes* duties to respond to Burma's breaches of peremptory norms.

The Global Justice Center calls upon the Board of the ICG to revisit and change its policy on Burma. The following points highlight the most serious factual errors and omissions in the Briefing, and set forth the international legal framework for establishing a global policy towards the situation in Burma.

1. The ICG has a policy of Burma "exceptionalism" that is in sharp contrast to its analyses and policy recommendations on other conflict situations.
2. Burma's constitution, providing for a bifurcated sovereign state, is an internationally wrongful act of the highest gravity and all states are under absolute duties not to recognize its validity.
3. The post-election landscape in Burma is one of escalated military crimes, including genocide and war crimes, which presents a threat to peace and security.
4. Burma's attempt to launder war criminals through a sham election process does not create a new "civilian" government.
5. Economic development in Burma is not possible given the military's crimes, corruption and control of the economy.
6. The constitution shields the military from any legal oversight, threatening global peace and security.

1. The International Crisis Group's Burma "Exceptionalism"

All seventeen ICG reports on Burma since 2000 omit key facts and deliberately avoid any discussion of issues which would require action against military criminals. This has resulted in eleven years of consistently biased recommendations which strain credibility. For example, the military's killing and imprisoning of hundreds of Burmese monks in the 2007 "Saffron Revolution" was analyzed by the ICG as providing "opportunities for change,"⁵ suggesting that the international community "offer incentives for reform . . . and give the military leadership positive motivation for change."⁶ ICG reports on Burma consistently omit any discussion or even use of the terms "justice," "accountability," "the rule of law," "genocide," "nuclear treaty violations," "the judiciary," "rape," "women," "women's rights," "the International Criminal Court (the "ICC")," "international law," or "war crimes."⁷

The ICG's biased approach to Burma stands in sharp contrast to how the ICG reports on other conflict situations. A Global Justice Center analysis of ICG briefings, reports and speeches on conflict countries from 2009 to 2011 illustrates a shocking disparity (see *Calling for Justice: International Crisis Group's Reports on Countries in Armed Conflict, June 2009 – June 2011*, Appendix 1). ICG reporting on Afghanistan, Sudan, and Sri Lanka, for example, denounce "the blatant disregard for core principles of international humanitarian law,"⁸ the "deeply institutionalized impunity"⁹ that has made a fair government investigation of military war crimes impossible, NATO's "stif[ling of] all discussion of the critical need to link reconciliation with accountability and to tackle Afghanistan's long-standing culture of impunity,"¹⁰ and calls for a resolution that "authorizes the International Criminal Court to exercise jurisdiction over atrocity crimes."¹¹ If the ICG applied the same unbiased analytical framework to Burma's military regime as it does to other countries in conflict, ICG recommendations would be turned on their head.

2. The Newly Implemented Burmese Constitution Is a Peremptory, *Prima Facie* Breach of the UN Charter and Therefore Null and Void.

The ICG's description of Burma's constitution, implemented on January 31, 2011, as "improv[ing] the prospects for incremental reform," could not be further from the truth.¹² The constitution, which establishes a bifurcation of sovereignty, precludes any political reform. The military is not only guaranteed dominance in the "civilian government," it also is granted complete legal autonomy as an entity *outside of* and *supreme over* the sovereign state of the "Republic of the Union of Myanmar" (Burma).¹³ The sovereign state is defined as being composed of the "civilian," executive, legislative, and judicial branches of government.¹⁴

The constitution is singular in the world; by bifurcating sovereign powers, Burma as a nation state, represented by head of state President Thein Sein, is legally incapable—even if willing—to enforce any laws, civil or criminal, against the military. This bifurcation prohibits the state from effectively complying with any of its *erga omnes* duties to the international community,¹⁵ including under the Geneva and Genocide Conventions¹⁶ and U.N. Security Council Resolutions issued under Chapter VII powers to ensure global peace and security.¹⁷ To reinforce this legal autonomy, the constitution guarantees the military amnesty for all crimes, including genocide, even in criminal courts.¹⁸ The constitution is a *prima facie* violation of the U.N. Charter,¹⁹ and an "internationally wrongful act" arising to the gravity of being a "serious breach of peremptory norms."²⁰

The laws on states' responsibilities are clear that this peremptory breach by Burma triggers intransgressible secondary obligations on all states not to recognize the validity of either the constitution or the elections arising therefrom, and to take measures to ensure that Burma revokes the constitution.²¹ In addition, all states are under an existing concomitant duty to ensure that Burma's top military officers are criminally prosecuted for their past and present war crimes, genocide, and crimes against humanity.²²

3. The Burmese Military Is Systematically Perpetrating Genocide, Crimes Against Humanity and Other ICC-Covered Crimes, with the Complicity of the Judiciary

We do not use the term "genocide" lightly, nor do we shy away from the term simply for political reasons. Genocide strikes at the heart of our global order and yet states, and the ICG, have refused to face the fact that genocide in Burma is documented, ongoing and requires immediate action.

A. States Have a Duty to Stop Burma's Violations of The Genocide Convention, Including the Military's Continuing Crimes of Genocide

Crimes of genocide against the Karen and other ethnic groups in Burma are slow-burning but systematic.²³ There is little if any international public discussion of genocide in Burma, which is shocking given that for years Burma has been placed in the highest risk category for genocide by all authoritative global indices. Burma is one of eight "red alert" states at risk of genocide in the 2009 Mass Atrocity Crimes List compiled by the Genocide Prevention Project,²⁴ and is being monitored by the U.N. Special Advisor on the Prevention of Genocide.²⁵

Genocide continues unabated in post-election Burma.²⁶ For one example, on July 5, 2011, soldiers in the Burmese Army's Light Infantry Battalion 513, while plundering Wan Loi village in the Shan state:

- raped a 12-year-old Shan school girl in front of her mother, who was struck by a soldier as she tried to protect her daughter;
- violently attacked a nine-month pregnant Shan woman, threw her to the ground, and raped her;
- beat, stripped naked, and raped a 35-year old Shan woman in a farm hut.²⁷

The scope of states' *erga omnes* duties to both punish and prevent genocide has been expanded in recent jurisprudence,²⁸ including by the ICC appeals court decision reinstating the genocide charges against Sudanese President Omar al-Bashir.²⁹ This provides a direct precedent for arresting Than Shwe, the new President Thein Sein, and others for genocide, including rape as a weapon of war. The International Court of Justice (the "ICJ") in 2007 held that all states are under a positive duty to act to prevent genocide once a serious risk of genocide is made known even prior to any official court or U.N. finding.³⁰ All states are thus under an existing duty to act both "to punish genocide in Burma" and "to prevent" it.³¹

B. The Military Is Systematically Using Rape as a Weapon of War Against Ethnic Women

The Burmese military's use of rape as a weapon of war against ethnic women is a war crime, genocide and crime against humanity. Thorough documentation of this practice, including the names and badge numbers of many of the rapists and their commanding officers, dates back nearly two decades.³² The Secretary-General has cited Burma for violating Security Council Resolution 1820's protections for women in conflict situations³³ and for giving impunity for the Burmese military's ongoing sexual violence against ethnic women in conflict areas.³⁴ Although the ICG was a vocal proponent of the insertion of a "no amnesty" provision in SCR 1820,³⁵ subsequent ICG reports on Burma conspicuously omit any mention of the fact that Burma's new constitution guarantees the military impunity for using rape as a weapon of war.³⁶

C. Evidence of Continuing Crimes Has Prompted a Call for U.N. Investigation

The military, post-election, continues to mortar-bomb villages, kill civilians, rape women, force labor, and loot, which are all crimes covered by the ICC.³⁷ Appendix 2, attached hereto, sets forth a detailed recounting of escalating violence against the Kachin, Karen and Shan ethnic forces. These conflicts have driven tens of thousands more refugees³⁸ over the border into Thailand and China.³⁹

Of additional and immediate concern is evidence of the military's use of chemical weapons. The United States expressed concern about Burma as a "probable" chemical weapons possessor in 2005⁴⁰ and various ethnic groups have reported injuries from chemical weapons over the past decades. Most recently, on June 8, 2011, a group of insurgent Shan State Army (SSA) soldiers claimed that some 200 Burmese soldiers bombarded and incapacitated them with chemical-laced shells.⁴¹

The international community has woken up to the dangers of allowing Burma to be a "law free" zone and there is increasing support for measures to hold Burma's military criminals accountable. After his August 2011 visit to Burma, Mr. Tomas Ojea Quintana, U.N. Special Rapporteur on the Situation of Human Rights in Burma, reiterated his "belief that justice and accountability measures...are fundamental for Myanmar to face its past and current human rights challenges," and affirmed his call for a Commission of Inquiry ("COI") on human rights abuses in Burma.⁴² This call for a COI has, to date, been joined by 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.⁴³

D. The Civilian Judiciary Remains a Key Component of The Military's Criminal Enterprise

The ICG's description of Burma's new four post-election "centers of power" (the presidency, military, parliament and the Union Solidarity and Development Party)⁴⁴ accurately excludes the judiciary as an independent power. However, the judiciary remains a powerful arm of the military.⁴⁵ The constitution ensured that the top newly-appointed judges would be those same judges who faithfully carried out crimes by means of court orders⁴⁶ at the instruction of former Chief Justice Aung Toe. The new Chief Justice of the Supreme Court, Justice Tun Tun Oo, was former deputy chief justice and was one of three judges who affirmed Daw Aung San Suu Kyi's conviction and confinement on orders from Than Shwe.⁴⁷ Chief Justice Tun Tun Oo remains on the European Union (the "E.U.") sanction list.⁴⁸ Key members of the judiciary in Burma, including former Chief Judge Aung Toe and current Chief Judge Tun Tun Oo, are subject to prosecution for murder, rape, torture, and forced labor in prison, all resulting from false arrest and imprisonment.⁴⁹ For these crimes against humanity and war crimes, these judges must be held criminally accountable as were criminal judges under Hitler, Saddam Hussein, and Emperor Hirohito.⁵⁰

Missing from the Briefing is any analysis of the ramifications of a constitution guaranteeing the Commander-in-Chief control of all military affairs and putting all military personnel and police outside the reach of a civilian court.⁵¹ This applies to civil and criminal legal issues. No development strategy can work without amending the constitution to permit a rule of law; hence the ICG's emphasis on sanctions removal cannot succeed and dangerously takes the spotlight away from the serious political imperatives that must be addressed in Burma.

4. Laundering Military War Criminals Through a Sham Election Process Does Not Create a "New Civilian Government"

The Secretary-General's Report to the U.N. Security Council on SCR 1820, which cited Burma as one of 11 states in armed conflict using rape as a weapon of war with impunity, makes clear that states must adopt vetting procedures to ensure that even *alleged* perpetrators of rape and other war crimes are excluded from public office:

"States must ensure that vetting processes exclude persons against whom there are credible allegations, and evidence of crimes, including sexual crimes; such persons should also be excluded from public institutions, including integrated armed forces."⁵²

Burma successfully turned this vetting mandate on its head by deliberately crafting the constitution and election process to ensure that the highest offices in the new "civilian" government would be held by recycled military officers, including perpetrators of rape, torture, genocide and other heinous crimes. Twenty-six out of the new Cabinet's thirty Ministers are generals who have been part of the Security Peace and Development Council (SPDC).⁵³ The Supreme and Constitutional courts are occupied by former SPDC generals⁵⁴ culpable of carrying out crimes against humanity by means of court orders. Evidence links new Vice-President Tin Aung Myint Oo (a former general) as criminally responsible for spearheading mass atrocities against Kachin soldiers and civilians beginning in 2001, including genocide by mass killing and rape.⁵⁵

The ICG stresses that engagement with Burma's military rulers is needed to reduce their "suspicions."⁵⁶ This is hardly possible given that the governments who are to "engage" with the generals have absolute duties, under the doctrine of universal jurisdiction,⁵⁷ to arrest Burmese officials, including judges, should they travel to their territory.⁵⁸ Although international law provides temporary immunity⁵⁹ from

arrest by other countries under universal jurisdiction for certain top officials while in office (such as the President and foreign minister), this does not preclude arrest pursuant to an arrest warrant issued by the ICC or another international court as shown by the cases of the outstanding ICC arrest warrants for al-Bashir and Gaddafi.⁶⁰

The E.U.'s one year lifting of the travel ban on sanctioned military officers now serving as civilian officials means that those officials are not immune from arrest while traveling to the E.U. or other countries. In fact, lifting the bans heightens the chances for their arrest as it encourages such travel.⁶¹ Full and robust "bilateral contacts" with newly-elected officials from Burma, as urged by ICG, would put those domestic legal systems to the test.

5. The Lack of Legal Capacity of the "Civilian" Government to Enforce Any Laws Against Military-Owned Industries Exposes Foreign Investors to The Risk of Being Held Culpable for the Military's Crimes

The ICG argues that the only method for achieving political reform in Burma is for "the West" to support military rulers without distinction, remove all sanctions, encourage foreign investment, and "dramatically" increase aid to the new "civilian" government.⁶² This advice is an extreme version of a "development only" approach to underdeveloped countries which has been soundly rejected by all major development bodies. The World Bank's 2011 analysis of factors key to development is grounded on linking security, justice, and economic measures and makes clear that a military-only, justice-only, or development-only approach will not work.⁶³

The sole argument proffered by ICG to support the workability of foreign investment is that although the military will continue to "have a direct role in the defence and security sectors,"⁶⁴ they *will not control* Burma's social and economic sectors.⁶⁵ To the contrary, under the constitution, Commander-in-Chief Gen. Min Aung Hlaing has the sole power to make and enforce laws applying to "all" military affairs, including military-owned economic enterprises.⁶⁶ The military will retain firm control over the economic sector because no regulatory schemes, dispute resolution mechanisms, or taxation can be imposed by the "civilian" government on military-owned businesses.

A. The Military Controls the Burma Economy

Burma is a resource-rich country⁶⁷ with strong hydroelectric power, natural gas reserves, teak, gold, iron ore, and other valuable minerals.⁶⁸ Despite these vast resources, Burma has been categorized since 1987 by the U.N. as a "least developed" country (LDC).⁶⁹ LDC status is accorded those countries with the highest levels of poverty and other indicators of low socio-economic and human development.⁷⁰

The military controls Burma's economy mainly through its two umbrella conglomerates: Myanmar Economic Cooperation (MEC) and the Union of Myanmar Economic Holdings Limited (UMEH).⁷¹ Together they produce virtually all of Burma's revenue, including energy resources, infrastructure development projects, banking, trading, agriculture, hotel and tourism, gem and minerals, telecommunications and transport services.⁷² The military's control over the economy was cited by the United States Congress as the reason for its 2008 ban on jade and other imports from Burma:

"The SPDC [the military junta; State Peace and Development Council] owns a majority stake in virtually all enterprises responsible for the extraction and trade of Burmese natural resources, including all mining operations, the Myanmar Timber Enterprise, the Myanmar Gems Enterprise, the Myanmar Pearl Enterprise, and the Myanmar Oil and Gas Enterprise. Virtually all profits from these enterprises enrich the SPDC."⁷³

This stranglehold over Burma's natural resources and profits has enriched the military and its officers and allowed billions to be spent on weapons, all at the expense of the well-being of the Burmese populace.⁷⁴

B. Foreign Companies Are at High Risk of Being Held Civilly and Criminally Liable for Military Crimes and Corruption

Burma is also one of the most corrupt countries in the world,⁷⁵ and the ICG acknowledges that this corruption is “unlikely to decline much” under the new government.⁷⁶ In practical terms, economic engagement with Burma will require partnerships with criminal and corrupt military-owned enterprises, exposing foreign governments and businesses to serious consequences.⁷⁷ This is illustrated by the multimillion dollar settlement resulting from a lawsuit by Burmese villagers under the U.S. Alien Tort Claims Act for the military's use of forced labor, murder, and rape perpetrated on Burmese citizens during a UNOCAL (Union Oil of California)/military joint partnership in Burma.⁷⁸ The U.S. Federal Appeals Court held that UNOCAL's “role in [human rights] violations creates indirect legal liability to victims.”⁷⁹ The UNOCAL case is one example of how foreign companies can be held liable for their “complicity in the junta's wrongdoing” which will severely limit productive foreign investment in Burma absent true reform.⁸⁰

6. The Constitution Is Designed to Preserve the Military Monopoly over Burma's Nuclear Future, Escalating the Threat Burma Poses to Global Peace and Security

Though Burma does not have current nuclear capability, the military rulers have mineable uranium, billions of dollars,⁸¹ and a “law-free zone” in which to operate,⁸² giving them ample resources to become a nuclear state. The military is fixated on using this potential nuclear capability as a bargaining tool on the world stage like its ally, North Korea.⁸³ The military's legal control over Burma's energy development projects, including nuclear power, is unfettered; the constitution prohibits the “civilian” government from enforcing any Association of Southeast Asian Nations (“ASEAN”) or U.N. Security Council Resolutions relating to nuclear non-proliferation.⁸⁴

When Burma signed the Treaty on the Non-Proliferation of Nuclear Weapons (the “NPT”) in 1992, it obtained a Small Quantities Protocol exemption limiting the International Atomic Energy Agency's (IAEA) inspection authority, which the military has refused to amend.⁸⁵ After India and Pakistan's nuclear tests in 1998, Than Shwe, determined that Burma not be left out of the nuclear playing field,⁸⁶ enacted Burma's first Atomic Energy Law (AEL),⁸⁷ and shortly thereafter, Burma signed an agreement with Russia to acquire a nuclear research reactor.⁸⁸ Although this 2001 agreement fell through once the IAEA report found Burma incapable of complying with IAEA standards,⁸⁹ since 2002 Russia has been providing intensive trainings in missile and civilian nuclear technology training for Burma's military at fifteen Russian universities.⁹⁰ In 2007, Burma signed a new contract to have Rosatom, Russia's atomic energy agency, build a “Nuclear Research Center” in Burma which would include “a pool-type research reactor, and facilities for radioisotope production, neutron activation analysis and silicon doping.”⁹¹

In 2010, a Burmese army defector turned over extensive evidence from military installations in Burma to the Democratic Voice of Burma (DVB) in Norway.⁹² This evidence was analyzed by Robert Kelley, a former senior inspector at the IAEA who concluded that although it is unlikely that Burma *currently* has the ability to create a nuclear weapons program, the “components being developed by the military are rarely used outside of the nuclear weapons industry” (the “Kelley Report”).⁹³

Even prior to the Kelley Report, the U.S. and other countries expressed growing concerns about Burma's military and potential nuclear partnership with North Korea.⁹⁴ These concerns are justified; recently, on June 12, 2011, the U.S. Navy for the second time intercepted a North Korean cargo ship bound for Myanmar, believed to be carrying illegal arms shipments.⁹⁵ The Institute for Science and International Security (ISIS), an influential think tank at the forefront of monitoring Burma's nuclear activities, has reported business deals between Burma's military and the North Korean Namchongang Trading Corporation, a company which procures dual-use nuclear technology for North Korea, and was involved in providing nuclear reactor components to Syria.⁹⁶ ISIS notes that since the global intelligence community missed North Korea's sale of a nuclear reactor to Syria, "no one is willing to turn a blind eye to the possibility of North Korea selling nuclear equipment, materials, or facilities to Burma."⁹⁷ The military is also reaching out to build an alliance with Iran evidenced by high level exchanges both in Tehran and Naypyidaw since the new constitution was drafted in 2008.⁹⁸

The U.N. has implicated Burma as a violator of the Security Council's sanctions on North Korea but has yet to note that the new constitution makes it impossible for the "civilian" state of Burma to enforce these or any other Security Council resolutions on North Korea, including Security Council Resolutions 1695, 1718, 1874, 1887, and 1928.⁹⁹ These Resolutions mandate that U.N. member states implement stricter national controls for the export of sensitive goods and technologies of the nuclear fuel cycle, prohibit trading, shipping, and transfer of money to North Korea's missile or Weapons of Mass Destruction (WMD) program, and prohibit states from procuring missiles or missile-related items, materials, goods, and technology from North Korea. Although the new Burma legislature can enact national laws to implement these Security Council mandates, the civilian government, including the judiciary is prohibited from enforcing them against the military.¹⁰⁰ Similarly, the "civilian" government is powerless to compel the military operations of Burma's nuclear program to follow Nuclear Non-Proliferation Treaty protocols and allow inspections; all compliance is up to the discretion of the Commander-in-Chief.

The ICG and other influential international organizations and governments must take a leadership role by urging monitoring bodies, including the IAEA and the U.N. Security Council Resolution 1540 and 1884 oversight bodies,¹⁰¹ to consider how Burma's constitution is a blatant violation of international law by rendering the state legally unable to comply with its international legal obligations, including Security Council Resolutions, the NPT and the IAEA Safeguards Agreement.¹⁰²

For all of the foregoing reasons, the ICG must revisit its policy recommendations on Burma and use its considerable influence and authority to ensure that the global community abides by international law imperatives, which are critical to addressing Burma's threat to global peace and security.

Sincerely,



Janet Benshoof

Appendices:

1. Calling for Justice: International Crisis Group's Reports on Countries in Armed Conflict, June 2009 – June 2011
2. Summary of Violence in Post-Election Burma

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¹ International Crisis Group, *Myanmar's Post-Election Landscape*, Asia Briefing No. 118, Mar. 7, 2011 [hereinafter the Briefing], at 15. All reports on Burma are available at <http://www.crisisgroup.org/en/regions/asia/south-east-asia/burma-myanmar.aspx>.

² *Id.* at 9.

³ See *Than Shwe to Head Extra-Constitutional State Supreme Council*, THE IRRRAWADDY, Feb. 10, 2011, available at http://www.irrawaddy.org/article.php?art_id=20730. Its members are: Vice Senior-General Maung Aye, Lower House Speaker Pyithu Hluttaw, Thura Shwe Mann, President-elect Thein Sein, Vice President-elect Thiha Thura Tin Aung Myint Oo, former Lt. Gen Tin Aye and two other senior military generals.

⁴ Draft Articles on Responsibility of States for Internationally Wrongful Acts, arts. 29-30, in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess. Supp. No. 10, UN Doc.A/56/10 (2001) [hereinafter Draft Articles], available at <http://www.un.org/law/ilc>. For a general discussion of cessation requirements, see Shelton, Dinah, *Righting Wrongs: Reparations in the Articles on State Responsibility*, 96 AM.J.INT'L LAW 833 (2002), at 839.

⁵ International Crisis Group, *Burma/Myanmar: After the Crackdown*, Asia Report No. 144, Jan. 31, 2008, at 1 [hereinafter *After the Crackdown*]. This report details the military's crimes against Burmese monks during the 2007 Saffron Revolution, but contains no mention of international law, crimes against humanity or a call for military accountability.

⁶ *Id.* at 2.

⁷ The 17 ICG reports on Burma examined by the Global Justice Center are: *Burma/Myanmar: How Strong is the Military Regime?*, Asia Report No.11, Dec. 21, 2000; *Myanmar: the Role of Civil Society*, Asia Report No. 27, Dec. 6, 2001; *Myanmar: The Military Regime's View of the World*, Asia Report No. 28, Dec. 7, 2001; *Myanmar: The HIV/AIDS Crisis*, Asia Report No. 15, Apr. 2, 2002; *Myanmar: the Politics of Humanitarian Aid*, Asia Report No. 32, Apr. 2, 2002; *Myanmar: The Future of Armed Forces*, Asia Report No. 21, Sept. 27, 2002; *Myanmar Backgrounder: Ethnic Minority Politics*, Asia Report No. 52, May 7, 2003; *Myanmar: Sanctions, Engagement or Another Way Forward?*, Asia Report No. 82, Sept. 9, 2004; *Myanmar: Aid to the HIV/AIDS Policy*, Asia Briefing No. 34, Dec. 16, 2004; *Myanmar: New Threats to Humanitarian Aid*, Asia Briefing No. 58, Dec. 8, 2006; *After the Crackdown*, *id.*; *Burma/Myanmar After Nargis: Time to Normalise Aid Relations*, Asia Report No. 161, Oct. 20, 2008; *Myanmar:*

Towards the Elections, Asia Report No. 174, Aug. 20, 2009; *The Myanmar Elections*, Asia Report No. 105, May 27, 2009; *China's Myanmar Strategy: Elections, Ethnic Politics and Economics*, Asia Briefing No. 112, Sept. 21, 2010; the Briefing.

⁸ Alan Keenan, *The Politics of Domestic and International Accountability Options in Sri Lanka*, International Crisis Group, Mar. 24, 2011 [hereinafter Keenan Report], available at <http://www.crisisgroup.org/en/publication-type/speeches/2011/the-politics-of-domestic-and-international-accountability-options-in-sri-lanka.aspx>. See also International Crisis Group, *War Crimes in Sri Lanka*, Asia Report No. 191, May 17, 2010.

⁹ See Keenan Report, *id.*

¹⁰ Nick Grono, Deputy President of the International Crisis Group, Peace, Justice and Reconciliation in Afghanistan, Address at the Conference on Afghanistan at the European Parliament in Brussels (Mar. 16 2011), available at <http://www.crisisgroup.org/en/publication-type/speeches/2011/peace-justice-and-reconciliation-in-afghanistan.aspx>.

¹¹ International Crisis Group, *Darfur: The Failure to Protect, Executive Summary and Recommendations*, Africa Report N°89, Mar. 8, 2005, available at <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan/089-darfur-the-failure-to-protect.aspx>.

¹² The Briefing, *supra* note 1, at 1.

¹³ Constitution of the Republic of the Union of Myanmar (2008) [hereinafter Myanmar Const.], at ch.I, arts. 20(b)-(c), 232(b)(iii), 235(c)(ii). Pursuant to ch. VII, art. 340, 341, and 342, of the 2008 constitution, most of the powers of and in relation to the military are vested in the Defence Services Commander-in-Chief (he is defined as the ‘Supreme Commander of all Armed Forces’). The constitution provides that the President’s powers are to be exercised in conjunction with the National Defense and Security Council (the “NDSC”); however, the NDSC is in fact under the authority of the Commander-in-Chief who controls the appointment of a majority of the 11 positions. So while the constitution provides that the NDSC is “led” by the President, in reality, the Commander-in-Chief has direct control of the NDSC. Chapter V, art. 201 provides that NDSC members are (a) The President; (b) Vice-President; (c) Vice-President (d) Speaker of the Pyithu Hluttaw; (e) Speaker of the Amyotha Hluttaw; (f) Commander-in-Chief of the Defence Services; (g) Deputy Commander-in-Chief of the Defence Services; (h) Minister for Defence; (i) Minister for Foreign Affairs; (j) Minister for Home Affairs; (k) Minister for Border Affairs. All these positions are to be occupied by former generals of the military junta except one vice president. See also ch. III, art. 71(b) and ch. IV, art. 141(b) (one-fourth of the total number of representatives in each legislative body must be active members of the military chosen by the Commander-in-Chief). Pursuant to ch. I, art. 20(b) “The Defense service has the right to independently administer and adjudicate all affairs of the armed forces.”

¹⁴ *Id.* at ch. I, art. 11. Article 11 defines “the three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.”

¹⁵ The *erga omnes* doctrine refers to the absolute legal obligations of states towards the international community. See Case Concerning the Barcelona Traction, Light and Power Co. (Belg. v. Sp.) (2d Phase), 1970 I.C.J. 23, at 33 (Feb. 5 1970) [hereinafter Barcelona Traction].

¹⁶ Convention on the Prevention of the Crime of Genocide, art. V, Dec. 9, 1948, G.A. Res. 260(A) (III) A, U.N.Doc A/Res/260(III) [hereinafter “Genocide Convention”]; Burma ratified the Genocide Convention on March 14, 1956. Geneva Conventions Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Burma ratified the Geneva Conventions on August 25, 1992. “As a party to the Genocide Convention and the Geneva Conventions, Myanmar is required to punish perpetrators of genocide and grave breaches of the Geneva Conventions in national courts or tribunals, regardless of the perpetrators’ political affiliation or military status. Furthermore, recent developments in customary international law indicate that national laws cannot provide amnesty for crimes against humanity or other serious violations of international humanitarian law.” International Center for Transitional Justice, *Submission to the Universal Periodic Review of the UN Human Rights Council*, at 4 (Jan. 2011), available at <http://ictj.org/sites/default/files/ICTJ-Myanmar-Periodic-Review-2010-English.pdf>.

¹⁷ See Special Research Report *Security Council Action Under Chapter VII: Myths and Realities*, Jun. 23, 2008, available at http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.4202671/k.3A9D/Special_Research_ReportbrSecurity_Council_Action_Under_Chapter_VII_Myths_and_Realitiesbr23_June_2008.htm

¹⁸ Myanmar Const., *supra* note 13, at ch. V, art. 445 (“No proceedings shall be instituted against the said Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.”); see also ch. XII, art. 343.

¹⁹ United Nations, *Charter of the United Nations*, Oct. 24, 1945, 1 U.N.T.S. XVI, available at www.unhcr.org/refworld/docid/3ae6b3930.html [hereinafter U.N. Charter], at arts.24, 25 and 41.

²⁰ See Draft Articles, *supra* note 4, at art. 40. “A peremptory norm of general international law is a norm accepted and recognized by the international legal community of States as a whole as a norm from which no derogation is permitted...” Vienna Convention on the Law of Treaties, May 23, 1969, art.53, 1155 U.N.T.S. 331. “Those peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination.” G.A.Res. 56/83, art.26, U.N. Doc. A/56/49 (Vol. I)/Corr.4 (Dec. 12, 2001)

²¹ See Draft Articles, *supra* note 4, at arts. 40-42. The Draft Articles supplement the criminal accountability mandates by

focusing on states' *erga omnes* obligations to alter their relationship with the violator state. See also Barcelona Traction, *supra* note 15, at 33.

²² Draft Articles, *supra* note 4, arts. 40-41. States' international legal obligations are fully explicated in the Global Justice Center ("GJC") publication *Burma's Nuclear Strategy: How Burma's Military Has Successfully Hijacked Democracy and Made control over Burma's Nuclear Future a Constitutional Right of the Military* (Jan. 2011) [hereinafter GJC Burma Report], available at <http://www.globaljusticecenter.net/publications/Report/Burma's-Nuke-Strategy.pdf>. See also GJC letter to ICG President Louise Arbour of Oct. 28, 2009, available at www.globaljusticecenter.net/nes-events/news/2009/letter-icg-burma-elections.pdf.

²³ Anton La Guardia, *Burma's 'slow genocide' is revealed through the eyes of its child victims*, THE TELEGRAPH, June 24, 2005, available at <http://www.telegraph.co.uk/news/worldnews/asia/burmayanmar/1492726/Burmas-slow-genocide-is-revealed-through-the-eyes-of-its-child-victims.html>. See also *Motion: Burma and Karen Refugees*, Statement of Lord Alton, et. al, during House of Lords Debate, Hansards, Col. 1292, Mar. 25, 1998. ("The Karen are unaware that they are suffering from a gradual form of genocide which not only neglects its victims but isolates and targets them.")

²⁴ Genocide Prevention Project, Mass Atrocity Crimes Watch List, available at <http://www.preventorprotect.org/overview/watch-list.html> (last visited July 27, 2011).

²⁵ See Lawrence Wocher, *Developing a Strategy, Methods and Tools for Genocide Early Warning*, Prepared for Office of the Special Adviser to the UN Secretary-General on the Prevention of Genocide, Sept. 2006, at 12, available at <http://www.un.org/ar/preventgenocide/adviser/pdf/Wocher%20Early%20warning%20report,%202006-11-10.pdf> (relating that Mr. Méndez, Special Adviser to the U.N. Secretary-General on the Prevention of Genocide, said his office was currently tracking situations in Darfur, Sudan; Cote d'Ivoire; Democratic Republic of Congo; Uganda; Myanmar; West Papua, Indonesia; Togo, Guinea Bissau, and Somalia).

²⁶ See Christopher Deere, *Burma's Secret Karen Genocide*, June 15, 2011 available at <http://www.greenleft.org.au/node/47835>; see also *Burma: Genocide against Ethnic Minorities*, Unrepresented Nations and Peoples Organization, July 20, 2010, available at <http://www.unpo.org/article/11341>.

²⁷ See Saw Yan Naing, *Burmese Army Accused in Four Rape Cases in Shan State*, THE IRRAWADDY, July 14, 2011, available at http://www.irrawaddy.org/article.php?art_id=21696 ("Hseng Moon, the coordinator of SWAN, said, 'Burma Army troops are being given free rein to rape children, the pregnant and the elderly.'").

²⁸ See Human Rights Watch, *Genocide, War Crimes, and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal For The Former Yugoslavia* (2004), available at <http://hrw.org/reports/2004/ij/>. See also G.A. Res. A/Res/60/1, (Oct. 24, 2005), at para.138 and S.C. Res. 1674, U.N. Doc. S/Res/1674 (Apr. 28, 2006), at para.4 which reaffirm the "responsibility to protect" doctrine. For a general discussion of state responsibility, see William A. Schabas, "Genocide" in *Encyclopedia of Human Rights*, vol. 2, David P. Forsythe, ed. (2009) at 294.

²⁹ *The Prosecutor v. Omar Al Bashir*, ICC-02/05-01/09-95-OA (2010) (The Appeals Court of the International Criminal Court found that the proof required for genocidal intent sufficient to support an arrest warrant is lower than the proof of intent required at trial, and reinstated an arrest warrant for genocide against Sudanese President Omar Al Bashir).

³⁰ See *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosn. & Herz. v. Serb. & Mont.), 2007 I.C.J. 91, 155 (Feb. 26, 2007). The Genocide Convention states: "The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3." Additionally, article VI of the convention states "[p]ersons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

³¹ See Juan E. Mendez, Special Adviser to the U.N. Secretary-General on the Prevention of Genocide, Lecture at the Nuremberg Human Rights Center: Prosecution and Prevention of Genocide: Current Developments and Historical Experience (Oct. 6, 2006), at 2, available at http://www.responsibilitytoprotect.org/files/60_Nuremberg.pdf ("Governments are obliged to take all measures within their power to prevent the commission of the crime of genocide, even before a competent court determines that the Convention actually applies to the case at hand."); see generally Stockholm Declaration on Genocide Prevention, Declaration by the Stockholm International Forum, (Jan. 28, 2004), available at http://www.aegistrust.org/index2.php?option=com_content&do_pdf=1&id=94 ("We are committed to shouldering our responsibility to protect groups identified as potential victims of genocide, mass murder or ethnic cleansing . . ."). The Stockholm Declaration was issued by fifty-five governments at the Stockholm International Forum on Preventing Genocide: Threats and Responsibilities. See also Stephen Troope, *Book Review*, 97 A.J.I.L. 459, 462 (2002) (book review).

³² See Women League of Chin Land, *State-Sanctioned Sexual Violence against Chin Women in Burma* (Mar. 2007); Women and Child Rights Project, *Catwalk to the Barracks*, (July 2005); The Women's League of Burma (WLB), *System of Impunity* (Sept. 2004); Karen Women's Organization (KWO), *Shattering Silences* (Apr. 2004); Refugee International, *No Safe Place* (Apr. 2003); Shan Human Rights Foundation (SHRF) and the Shan Women's Action Network (SWAN), *License to Rape* (May 2002).

³³ See *Report of the Secretary-General Pursuant to Security Council Resolution 1820 (2008)*, U.N.Doc. S/2009/362, Aug. 20, 2009 [hereinafter 1820 Report] (citing Burma as a violator country, noting both the ongoing sexual violence perpetrated against ethnic women in conflict and the longstanding impunity afforded military perpetrators); see also S. C. Res. 1820, U.N. Doc. S/RES/1820, June 19, 2008, at para. 4 (prohibiting any amnesty for rape and other crimes targeting women in conflict).

³⁴ See 1820 Report, *id.* at paras. 15, 19, 23, 26. The report notes criminal violations in Burma in four places:

1. In Myanmar, recent concern has been expressed at discrimination against the minority Muslim population of Northern Rakhine State and their vulnerability to sexual violence, as well as the high prevalence of sexual violence perpetrated against rural women from the Shan, Mon, Karen, Palaung and Chin ethnic groups by members of the armed forces and at the apparent impunity of the perpetrators. (Para. 15)
2. In Myanmar, women and girls are fearful of working in the fields or traveling unaccompanied, given regular military checkpoints where they are often subject to sexual harassment. (Para. 19)
3. Furthermore, in countries such as Afghanistan, Côte d'Ivoire, the Democratic Republic of the Congo, Iraq, Kosovo, Liberia, Myanmar, Nepal, Sierra Leone, the Sudan and Timor-Leste, the effective administration of justice is hampered not only by a lack of capacity, but also by the fact that some justice officials do not give serious consideration to reports of sexual violence. (Para. 23)
4. [I]n Myanmar, although there has been documentation and identification of military personnel who have committed sexual violence, including relevant dates and battalion numbers, disciplinary or criminal action is yet to be taken against the alleged perpetrators. (Para. 26)

³⁵ See International Crisis Group, Statement on Gender Violence ahead of UNSC 19 June Debate, June 18, 2008, available at <http://www.crisisgroup.org/en/publication-type/media-releases/2008/statement-on-gender-violence-ahead-of-uns-19-june-debate.aspx>; see also Donald Steinberg, Deputy President of the International Crisis Group, Testimony to the U.S. Senate Foreign Relations Committee: Beyond Victimhood: Protection and Participation of Women in the Pursuit of Peace, (Oct. 1, 2009), available at <http://www.crisisgroup.org/en/publication-type/speeches/2009/beyond-victimhood-protection-and-participation-of-women-in-the-pursuit-of-peace.aspx>.

³⁶ Myanmar Const., *supra* note 13, at art. 445; U.N. S.C.R. 1820, U.N. Doc. S/RES/1820, June 19, 2008, para.4 (...rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation”).

³⁷ A Human Rights Watch report on convict porters in Eastern Burma reported that “post-election,” the military appropriated approximately 700 prisoners in January 2011 to serve as slave porters and human mine detectors during military attacks against rebel armed groups. These prisoners, many imprisoned for petty crimes such as arguing with a neighbor, are used for manual labor without food or medical care and as “human shields” on the front lines against rebel armed groups. See Human Rights Watch and Karen Human Rights Group, *Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma*, July 12, 2011, available at <http://www.hrw.org/en/node/100194/section/1>; see also Bruce E. Johansen, *Burma (Myanmar): Forced Labor in the World's Last Teak Forest*, Indigenous Peoples and Environmental Issues: An Encyclopedia (2003), available at <http://www.ratical.org/ratville/IPEIE/Burma.html> (In the late 1990's, the regime concessioned off hardwood forests in southern Burma “to increase economic development ‘with support from the private sector’” and indigenous peoples living there were subjected to an “ethnic cleansing” operation involving “burning of villages, rape and torture, forced labor and forced relocations” (quoting *Teak is Torture and Burma's Reign of Terror: Mon, Karen and Karenni Indigenous peoples Threatened in Burma*, Rainforest Relief, Mar. 29, 1997)). Burma has ratified the International Labor Organization (ILO) Forced Labor Convention (Convention 29), SPDC Order 1/99 officially outlaws forced labor, and Article 359 of the new Burmese Constitution “prohibits forced labor.” ALTSEAN Burma and the International Federation of Human Rights, *Universal Periodic Review of Myanmar, 10th Session*, Feb. 2011, available at http://www.fidh.org/IMG/pdf/UPR_Submission_on_Burma_SUBMITTED.pdf.

³⁸ U.N. High Commission for Refugees (UNHCR), *UNHCR Global Report 2010- Myanmar*, available at <http://www.unhcr.org/4dfdbf56a.html> (stating that Burma is the fifth largest refugee producing country in the world, with approximately 415,700 people fleeing their homes due to conflict).

³⁹ See ALTSEAN-Burma, *The 2010 Generals' Election*, Burma Issues and Concerns, Vol. 6, at 2, 9, Jan. 2011, available at <http://www.altsean.org/Docs/PDF%20Format/Issues%20and%20Concerns/Issues%20and%20Concerns%20Vol%206.pdf>.

⁴⁰ See *Burmese junta uses chemical weapons*, THE SUNDAY TIMES, May 8, 2005, available at <http://www.timesonline.co.uk/tol/news/world/article519966.ece>; *Burma used chemicals on rebels*, BBC News, Apr. 21, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4467471.stm>. See also, Lalit Jha, *US Concerned Over Burma's Role in Weapons Proliferation*, THE IRRAWADDY, Apr. 7, 2011, available at: http://www.irrawaddy.org/article.php?art_id=21091 (reporting

on the U.S. Pacific Command Admiral Robert Willard's testimony before the U.S. House Armed Services Committee expressing his concern for "Burma's role in regional weapons proliferation.").

⁴¹ Democratic Voice of Burma, *Fears mount over chemical weapons use*, June 8, 2011, available at: <http://www.dvb.no/news/fears-mount-over-chemical-weapons-use/16018>. The Burmese government signed the Chemical Weapons Convention in 1993, but is one of only two states which have failed to ratify it. Chemical Weapons Convention Signatories and State Parties, Arms Control Association, <http://www.armscontrol.org/factsheets/cwcsig>.

⁴² See Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar, Mr. Tomas Ojea Quintana, Aug. 25, 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11330&LangID=E>; the original call for a Commission of Inquiry was made in September 2010. See, U.N. Doc. A/65/368, (Sep. 15, 2010). ("UN institutions may consider the possibility to establish a commission of inquiry with a specific fact finding mandate to address the question of international crimes".)

⁴³ John Pomfret, *U.S. Supports Creation of U.N. Commission of Inquiry Into War Crimes in Burma*, WASH. POST, Aug. 18, 2010. For information on other countries supporting a Commission of Inquiry, including France and the United Kingdom, see U.S. Campaign for Burma, *Countries Supporting a UN-led Commission of Inquiry on Burma*, available at <http://uscampaignforburma.org/countries-supporting-commission-of-inquiry-on-burma>. See also International Federation for Human Rights, *BURMA/MYANMAR: International crimes committed in Burma: the urgent need for a Commission of Inquiry* (Aug. 2009). More recently, on August 12, 2011, twelve U.S. Senators called upon the U.S. Secretary of State to take actions against rape used as a weapon of war in Burma. Diane Feinstein, Key Bailey Hutchinson, et. al, United States Senate letter to Secretary Hillary Clinton condemning rape as a weapon, Aug. 10, 2011, available at <http://msmagazine.com/blog/blog/2011/08/15/newsflash-women-senators-call-for-action-on-rape-in-burma/>.

⁴⁴ The Briefing, *supra* note 1, at 5.

⁴⁵ It is also important to note that absent from the Briefing is any mention of an independent judiciary and economic reform, as are the words "international law," "judges," "judiciary," "rule of law," "accountability," or "justice."

⁴⁶ Myanmar Const., *supra* note 13, at ch. VI, arts. 299, 303, 308, 311, 327 and 334. See also Mr. Tomas Ojea Quintana, U.N. Special Rapporteur on Human Rights Situation in Burma, *Fourth Core Human Rights Element: Judiciary*, Human Rights Situation in Myanmar, Special 5, 2008; see also Win Maung, Law Reporting in Burma: Lack of Transparency, Legal Issues on Burma Journal, No. 8 (Apr. 2001). U Aung Toe, Chief Justice of the Supreme Court, while delivering a speech during the meeting, used the words "under the First Secretary's guidance" many times. He reminded the judges to follow that guidance. Under such guidance it is difficult to believe that judges are independent and that their judgments are fair and just. See also Statement by the Global Justice Center and Burma Lawyer Council, *Certain Judges in Burma are Themselves Criminally Liable as Co-conspirators*, Nov. 20, 2008, available at <http://burmadigest.info/2008/11/20/certain-judges-in-burma-are-themselves-criminally-liable-as-co-conspirators>.

⁴⁷ See *President changes his chief justice nominee*, Mizzama News, Feb. 17, 2011, available

<http://www.mizzima.com/news/inside-burma/4895-president-changes-his-chief-justice-nominee.html>

(When an appeals case involving pro-democracy advocate Aung San Suu Kyi, who was accused of violating the terms of her house arrest, was heard before the Supreme Court in Naypyidaw in October 2010, deputy chief justice Tun Tun Oo was on the bench along with Chief Justice Aung Toe).

⁴⁸ Council Common Position 2009/615/CFSP of 13 August 2009 Acts adopted under title V of the E.U. Treaty, Official Journal of the European Union, Aug. 14, 2009.

⁴⁹ See generally Assistance Ass'n for Pol. Prisoners (Burma), *The Darkness We See: Torture in Burma's Interrogation Centers and Prisons* (2005) (detailing torture in Burmese prisons with accounts from political prisoners).

⁵⁰ For precedents on the conviction judges for war crimes, see *The Justice Case, 3 Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* (Drexel A. Sprecher & John H. E. Fried eds., vol. 3) (1951) (finding Nazi judges guilty of crimes against humanity, and war crimes); see also Trial of Lieutenant General Harukei Isayama and Seven Others, 5 Law Reports of Trials of War Criminals (1948) (finding the Japanese English Translation, (Dec. 26, 2006), available at www.law.case.edu/saddamtrial/documents/20070103dujailappellatechamberopinion.pdf (finding Judge Awad Hamed al-Bandar jointly criminally liable for crimes against humanity committed with Saddam Hussein because he used the pretense of judicial "authority and law" to try and then execute civilians). See also Amnesty Int'l, *Annual Report: Myanmar 2011*, May 28, 2011.

⁵¹ Myanmar Const., *supra* note 13, at ch. XII, art. 343.

⁵² See 1820 Report, *supra* note 33, para. 26. In addition to the 1820 Report, Security Council Resolutions 1820 and 1888 recognize that without vetting restrictions, any mandates on judicial reform are meaningless; see also SCR 1820, *supra* note 33, para. 3; S.C. Res. 1888, ¶ 3, U.N. Doc. S/RES/1888 (Sept. 30, 2009).

⁵³ See Republic of the Union of Myanmar President Office, Formation of New Government, Notification No. 1/2011, Mar. 30, 2011, published in *The New Light of Myanmar*, Mar. 31, 2011. See Council Common Position 2009/615/CFSP of 13 August 2009 Acts adopted under title V of the E.U. Treaty, Official Journal of the European Union, Aug. 14, 2009.

⁵⁴ Six members of Supreme Court Judges and eight members of Constitutional Tribunal are former judges and officers of SPDC. See Republic of the Union of Myanmar, Presidential Office, Order no. 1/2011 and Order No. 2/2011, Mar. 30, 2011.

⁵⁵ See Ba Kaung, *Burma's Vice-President Implicated in Kachin Massacres*, THE IRRAWADDY, July 15, 2011, available at http://www.irrawaddy.org/print_article.php?art_id=21705 (“In his interview with *The Irrawaddy* in Laiza last week, Brig-Gen James Lum Dung—who took up arms against the Burmese troops in 1961 and retired as the KIA regional military commander in 2007—said the killings were a deliberate provocation by the Burmese troops under the supervision of Tin Aung Myint Oo. . . . “Their motive was to drive our troops out of Shan State,” said James Lum Dung. “Tin Aung Myint Oo was mainly responsible for these killings.””).

⁵⁶ See the Briefing, *supra* note 1, at 15.

⁵⁷ International Committee of the Red Cross, *The Scope and Application of the Principle of Universal Jurisdiction*, Statement to the United Nations General Assembly, 65th Sess., 6th Ctte., Item 86, N.Y., Oct. 15, 2010; Roth, Kenneth, *The Case for Universal Jurisdiction*, FOREIGN AFFAIRS (Sept./Oct. 2001; Human Rights Watch, Universal Jurisdiction in Europe (June 27, 2006), available at <http://www.hrw.org/reports/2006/06/27/universal-jurisdiction-europe->; The Princeton Principles on Universal Jurisdiction: Joint Declaration of the Princeton University’s Program in Law and Public Affairs, Woodrow Wilson School of Public and International Affairs, et. al on Universal Jurisdiction available

at <http://www.law.uc.edu/morgan/newsdir/univjuris.html>; see also Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation* (AI Index 53/002/2001) available at <http://web.amnesty.org/pagesj-memorandum-eng>.

⁵⁸ Particularly for the crimes of genocide and torture, states have an obligation to arrest those Burmese officials in their territory if there is “reasonable grounds to believe, (akin to the “reasonable suspicion standard” set by the European Convention on Human Rights,) that they have committed genocide or torture directly, or under the law of command responsibility or joint criminal enterprise. See Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, at arts. 58, 28, 25; see also International Federation for Human Rights, *Burma’s “Saffron revolution” is not over; Time for the international community to act,*” at 39 (Dec. 2009).

⁵⁹ As the ICJ emphasized in its Congo decision, “immunity . . . does not mean impunity.” Case Concerning the *Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.)*, 2002 I.C.J. 3, at 60 (Feb. 14) [hereinafter the Yerodia Case].

⁶⁰ *Supra* note 30; see also ICC-Pre-trial Chamber I issues three warrants of arrest for Muammar Gaddafi available at <http://www.icc-cpi.int/Menus/ICC/Search?qt=gaddafi&la=en>. The ICJ specifically noted the continue applicability of criminal proceedings before certain international criminal courts in the Yerodia Case, *id.*

⁶¹ The Council of the European Union, Renewing Restrictive Measures against Burma/Myanmar, COUNCIL DECISION 2010/232/CFSP, Apr. 26, 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:105:0022:0108:EN:PDF>.

⁶² See the Briefing, *supra* note 1, at 15.

⁶³ World Bank, *World Development Report 2011: Conflict, Security, and Development* (2011), at 5-6, available at <http://www.wdr2011.worldbank.org/fulltext>.

⁶⁴ The Briefing, *supra* note 1, at 9. It is inaccurate to portray the military as only having a “direct” role in the defense services when the constitution guarantees them the *only* role and legal autonomy over all military affairs whether the military is acting in the defense, business or social realms. See generally Myanmar Const., *supra* note 13, at ch. I, art. 20.

⁶⁵ See Sean Turnell, *A State-run Market Economy*, THE IRRAWADDY, Vol. 17, No.8, Nov. 2009, at 9 (analyzing the economy-related provisions in the new Constitution and questioning whether anything will change economically absent the rule of law and independent institutions that can provide checks and balances in the government).

⁶⁶ See *supra* note 13.

⁶⁷ See generally CIA World Factbook, *East and Southeast Asia: Burma*, last updated July 14, 2011, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>; Toshihiro Kudo & Fumiharu Mieno, *Trade, Foreign Investment and Myanmar’s Economic Development during the Transition to an Open Economy*, Institute of Developing Economies, Aug. 2007, available at <http://www.ide.go.jp/English/Publish/Download/Dp/116.html>.

⁶⁸ In 2008, Burmese exports of natural gas reached over \$2.5 billion (equal to 38% of Burma’s total exports that year). U.S. Department of State, *Background Note: Burma, East Asia and Pacific Affairs*, July 28, 2010, available at <http://www.state.gov/r/pa/ei/bgn/35910.htm>. See also Julien Levesque, *Lords of Jade: Mismanaging Myanmar’s Natural Resources*, Institute of Peace and Conflict Studies, Mar. 2008, available at: http://www.ipcs.org/pdf_file/issue/324228081IPCS-IssueBrief-No60.pdf.

⁶⁹ United Nations, *List of Least Developed Countries*, last accessed Aug. 8, 2011, available at http://www.un.org/esa/policy/devplan/profile/ldc_list.pdf.

⁷⁰ United Nations, Office of the High Representative of Least Developed Countries, Landlocked Developing Countries, and Small Island Nations, (UN-OHRLS), *Criteria for Identification and Graduation of LDCs*, last accessed Aug. 12, 2011, available at <http://www.unohrrls.org/en/ldc/related/59/>. LDC status is based on gross national income, human assets and economic vulnerability to external shocks.

⁷¹ See U.S. Department of State, *Investment Climate Statement: Burma*, Mar. 2010, available at <http://www.state.gov/e/eeb/rls/othr/ics/2010/138043.htm>.

⁷² See Win Min, *Burmese Military Government: Crony Capitalists in Uniform*, VA. REV. ASIANST. 6 (2004), available at http://www.davidmetraux.com/docs/family/daniel/burma/articles/win_min.doc. In addition, it has been reported that

SPDC leaders transferred “ownership of over 1,000 acres of rubber plantations, jade mines and gold mines to junta chief Snr-Gen Than Shwe and his family.” Yan Pai, *Than Shwe Acquires State Properties*, THE IRRAWADDY, Apr. 4, 2011, available at: http://www.irrawaddy.org/article.php?art_id=21071.

⁷³ Tom Lanto Block Burmese Jade (Junta’s Anti-Democratic Efforts) Act of 2008, U.S. Pub. L. No. 110-286, § 2(10), 122 Stat. 2634, July 29, 2008. See also Human Rights Watch, *Burma: Gem Trade Bolsters Military Regime, Fuels Atrocities*, News Release, Nov. 12, 2007, available at <http://www.hrw.org/en/news/2007/11/11/burma-gem-trade-bolsters-military-regime-fuels-atrocities>.

⁷⁴ See David Scott Mathieson, *Burma’s Authoritarian Upgrade: 1990-2010* (June 2010), available at <http://www.hrw.org/en/news/2010/06/10/burma-s-authoritarian-upgrade-1990-2010> (“Burma’s military government also controls nearly \$5 billion in foreign reserves, accumulated thanks to lucrative natural-gas sales and the use of an accounting trick: for domestic purposes, gas revenues are recorded at the official exchange rate (\$1 to 6 Burmese Kyat) but actual payments are made in U.S. dollars (worth \$1 to 800-1,000 Burmese Kyat at the market rate), the difference being deposited (it is suspected) in offshore bank-accounts.”). See also Earth Rights International, *Energy-Insecurity Report*, July 2010, at 19 (“EarthRights International reported that rather than being used to benefit the people of Burma, portions of the country’s natural gas revenue found their way into private bank accounts in two offshore banks in Singapore – the Overseas Chinese Banking Corporation and DBS Group. This revenue and its convenient offshore location would enable the regime to engage in international hard-currency transactions to buy arms and technologies for nefarious purposes.”)

⁷⁵ Transparency International, *Corruptions Perception Index 2010 Results*, Oct. 2010, available at: http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

⁷⁶ See the Briefing, *supra* note 1, at 5.

⁷⁷ For example, on July, 2011 the English Mining Company Monterrico/Rio Blanco settled a civil suit lodged against it by Peruvian complainants alleging that the company was liable for intentional torts and negligent acts because it participated and was “complicit in the torture [including rape] and mistreatment of protesters by [Peruvian] police.” Lewis Gordon, *English Mining Company agrees to compensate Peruvian torture victims*, Statement from Environmental Defender Law Center, July 20, 2011. The settlement came in the wake of hearings on the scope of mistreatment and related evidence of violations, and subsequent decisions by the High Court in London to issue a world-wide injunction freezing £5 million to cover the plaintiff’s damages and costs and to allow a ten week trial against the company to proceed. *Guerrero & Orsv. Monterrico Metals PLC & Anor* (Rev. 1), Court of Appeal – Queens Bench Division (2009) 2475 Q.B.

⁷⁸ See *Doe I v. Unocal Corp.*, 395 F. 3d 932 (9th Cir. 2002).

⁷⁹ Rachel Chambers, *The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses*, Hum. Rts. Brief, Vol. 1, Issue 1, Washington College of Law, American University (Fall 2005), at 14.

⁸⁰ In a concurring opinion, Justice Reinhardt found that “because the underlying conduct alleged constitutes a violation of customary international law” by Burma’s military government, its partner, UNOCAL, is legally responsible for these violations as a “derivative of that government’s entity.” *Ibid*, at 963. See also Amanda Kloer, *Chevron, Total Linked to Forced Labor and Killings in Burma*, Change.org, Dec. 17, 2009, available at <http://news.change.org/stories/chevron-total-linked-to-forced-labor-and-killings-in-burma> (detailing a 2009 Earth Rights International report that found Total and Chevron’s joint Yadana pipeline project had generated over \$4 billion for the Burmese government while workers had been subjected to forced labor, beatings and other violations of human rights).

⁸¹ See Robert Kelley, Andrea Scheel Stricker & Paul Brannan, *Exploring Claims about Secret Nuclear Sites in Myanmar*, Institute for Strategic International Studies (Jan. 28, 2010). See also Phil Thornton, *The Colour of Money*, BANGKOK POST, Nov. 21, 2010, available at <http://www.bangkokpost.com/news/investigation/207425/the-colour-of-money>. See also Anita Elizabeth Mathew, *Sino-Myanmar Relations and Impact on the Region*, Mar. 3, 2011, available at <http://www.observerindia.com/cms/sites/orfonline/modules/report/ReportDetail.html?cmaid=21511&mmaid=21512>. (China has been a major arms supplier for the Myanmar Army. Beijing has provided the regime with over \$ 2-billion worth of weapons and military equipment. In 2010, Myanmar purchased 50 fighter jets from China.)

⁸² See *supra* note 13; for a more detailed discussion, see generally GJC Burma Report, *supra* note 22, at 7-10.

⁸³ See Andrew Selth, *Burma and North Korea: Smoke or fire?*, Australian Strategic Policy Institute Policy Analysis, Aug. 24, 2009, at 8-9. (“Some generals—possibly including regime leader Senior General than Shwe—are clearly attracted to the idea of acquiring a nuclear weapon, in the belief that possession of WMD would give Burma the same status and bargaining power that they believe is now enjoyed by North Korea.”)

⁸⁴ For a full description of the constitution and the military’s nuclear monopoly, see generally GJC Burma Report, pp. 7-10, 16-18.

⁸⁵ Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161; Signatories and Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, available at <http://www.fas.org/nuke/control/npt/text/npt3.htm>. State Parties to the NPT must comply with International Atomic Energy Agency (IAEA) standards. See International Atomic Energy Agency, *Non-Proliferation of Nuclear Weapons and Nuclear Security: Overview of Safeguards Requirements for States with Limited Nuclear Material and Activities*, June 2006, available at <http://www.iaea.org/Publications/Booklets/Safeguards3/safeguards0806.pdf> (Burma’s safeguards agreement includes a

Small Quantities Protocol exemption, which exempts those states that have no nuclear capacity, or plans to develop any, from most of IAEA's inspection authority.)

⁸⁶ See Norman Robespierre, *Nuclear Bond for North Korea and Myanmar*, ASIA TIMES, Oct. 4, 2008, available at http://www.atimes.com/atimes/Southeast_Asia/JJ04Ae01.html.

⁸⁷ The Atomic Energy Law, The State Peace and Development Council Law No. 8/98, June 8, 1998, available at http://www.blc-burma.org/html/myanmar%20law/lr_e_ml98_08.html. The Burmese language version of the AEL can be found on file at the offices of BLC.

⁸⁸ Larry Jagan, *Myanmar Drops a Nuclear 'Bombshell'*, ASIA TIMES, May 24, 2007, available at http://www.atimes.com/atimes/Southeast_Asia/IE24Ae02.html; see also Bertil Lintner, *Burma's Nuclear Temptation*, Yale Global, Dec. 3, 2008, available at <http://www.yaleglobal.yale.edu/content/burma%E2%80%99S-nuclear-temptation>.

⁸⁹ See Thomas Crampton, *Burma Seeks Nuclear Research Plant*, INT'L HERALD TRIB., July, 14 2001; Julian Moe, *US findings on Burma: An overview*, THE IRRRAWADDY, Nov. 7, 2003; Platts: Nuclear Fuel, *IAEA probes Myanmar Data, Discourages New Research Reactors*, Aug. 10, 2009, available at http://www.carnegieendowment.org/static/npp/pdf/myanmar_reprint.pdf.

⁹⁰ Anton Khlopkov & Dmitry Konukhov, Center for Energy and Security Studies, *Russia, Myanmar and Nuclear Technologies*, June 29, 2011, at 6; see also *Russia Denies Helping Burma Obtain Nuclear Know-How*, RIA News Agency, Moscow, Apr. 11, 2005 and Sharad Joshi, Monterrey Institute for International Studies, *Issue Brief: Playing Politics: How the Regional Context Impedes Confronting Myanmar's Alleged Nuclear Program*, Feb. 4, 2011..

⁹¹ Press Service of the Federal Agency for Nuclear Energy, *Russia and Myanmar Sign Inter-governmental Cooperation Agreement*, May 15, 2007, available at http://www.minatom.ru/en/news/4674_15.05.2007, Paul Kerr, *Russia, Burma Sign Nuclear Agreement*, Arms Control Association, June 2007, available at <http://www.armscontrol.org/print/2387>. This contract has not been acted upon allegedly due to disputes regarding IAEA access and financial considerations.

⁹² Robert E Kelley & Ali Fowle, *Nuclear Related Activities in Burma*, Democratic Voice of Burma, May 25, 2010, available at <http://www.dvb.no/burmas-nuclear-ambitions/burmas-nuclear-ambitions-dvb-reports/nuclear-expert/9263>.

⁹³ *Id.*

⁹⁴ See *United States Concerned about North Korea's Ties to Burma*, U.S. Department of State, July 22, 2009, available at <http://www.america.gov/st/peacesecenglish/2009/July/20090722135141dmslahrellek4.505557e-02.html&distid=ucs>. See also Ewan MacAskill, *WikiLeaks Cables Suggest Burma is Building Secret Nuclear Sites*, THE GUARDIAN, Dec. 10, 2010, at 33.

⁹⁵ David Sanger, *U.S. Said to Turn Back North Korea Missile Shipment*, NY TIMES, June 12, 2011, available at <http://www.nytimes.com/2011/06/13/world/asia/13missile.html> (After refusing four authorized requests to board and inspect, the North Korean crew ultimately returned to its home base after the U.S. raised the issue at an ASEAN meeting in Washington D.C.)

⁹⁶ David Albright et al., Institute for Science and International Security, *Burma: A Nuclear Wannabe; Suspicious Links to North Korea; High-Tech Procurements and Enigmatic Facilities*, ISIS Reports, Jan. 28, 2010, available at: <http://isis-online.org/isis-reports/detail/burma-a-nuclear-wannabe-suspicious-links-to-north-korea-high-tech-procurement/>.

⁹⁷ *Id.* at 1.

⁹⁸ Evidence of this growing Burmese-Iranian military partnership includes then-Deputy Foreign Minister Maung Myint's visit to Iran in March 2010, followed by Iranian Deputy Foreign Minister Mohammad Ali Fathollahi's three-day trip to Naypyidaw in June 2010 for discussions with high-level military officers. This relationship should raise red flags in the international community. See Francis Wade, *Top-Level Iranian Officials in Burma*, Democratic Voice of Burma, June 17, 2010, available at <http://www.dvb.no/news/top-level-iranian-officials-in-burma/10323>. The U.N. Security Council has imposed multiple rounds of sanctions on Iran regarding its nuclear program, see S.C. Res. 1929, U.N. Doc. S/RES/1929 (June 9, 2010). See also S.C. Res. 1887, U.N. Doc. S/RES/1887 (Nov. 30, 2009); S.C. Res. 1835, U.N. Doc. S/RES/1835 (Sept. 27, 2008); S.C. Res. 1803, U.N. Doc. S/RES/1803 (Mar. 3, 2008); S.C. Res. 1747, U.N. Doc. S/RES/1747 (Mar. 24, 2007); S.C. Res. 1737, U.N. Doc. S/RES/1737 (Dec. 23, 2006); S.C. Res. 1696, U.N. Doc. S/RES/1696 (July 31, 2006).

⁹⁹ See Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009), U.N. Doc. S/2010/571; see also S. C. Res. 1695, U.N. Doc. S/RES/1695 (2006); S. C. Res. 1695, U.N. Doc. S/RES/1695 (2006); S. C. Res. 1718, U.N. Doc. S/RES/1718 (2006); S. C. Res. 1874, U.N. Doc. S/RES/1874 (2009); S. C. Res. 1887, U.N. Doc. S/RES/1887 (2009); S. C. Res. 1928, U.N. Doc. S/RES/1928 (2010).

¹⁰⁰ See generally, *supra* note 13; the Myanmar Const., at ch.I, art.20(b), states that "[t]he Defense services has the right to independently administer and adjudicate all affairs of the armed forces."; at Ch. VII, art. 343 the Myanmar Const. states that "[i]n the adjudication of Military Justice...the decision of the Commander-in-Chief is final and conclusive."

¹⁰¹ Countries are required to submit reports detailing national compliance with Security Council Resolutions 1540 and 1884. For example, see 1540 Committee, List of National Reports by Submitting Member States, available at <http://www.un.org/sc/1540/nationalreports.shtml>.

¹⁰² See generally, *supra* note 84. The IAEA has said that it is looking into reports of Burma's nuclear activity, but ignores the fact that the military cannot be held to any laws under the 2008 constitution. See Ashish Kumar Sen, *IAEA Seeks Permission from Myanmar for Nuke Inspectors to Visit*, WASH. TIMES, Jan 13, 2011.

Appendix 1:

Calling for Justice: International Crisis Group's Reports on Countries in Armed Conflict June 2009 - June 2011

Between June 2009 and June 2011, the International Crisis Group (the ICG) issued 61 reports on the below listed countries in armed conflict: Afghanistan^{*1}, Burma/Myanmar *, Burundi *, Colombia, Cote d'Ivoire *, Democratic Republic of Congo *, Haiti, Iraq *, Kosovo *, Nepal *, Somalia, Sudan *, Timor-Leste *, Uganda. In its reporting on every country except Burma, the ICG detailed the need for government and military accountability, rule of law, and strengthening the judiciary.

While Burma is also a country in armed conflict, the ICG failed to criticize the absence of the rule of law, accountability, an independent judiciary, protection for human rights, respect for international humanitarian law, and the provision of impunity for the crimes committed by the military.

BURMA/MYANMAR

-In the four reports issued by the ICG between June 2009 and June 2011, not one report criticizes the government for the absence of the rule of law, accountability, an independent judiciary, protection for human rights, respect for international humanitarian law, and the provision of impunity for the crimes committed by the military.

1. Myanmar: Towards the Elections, Crisis Group Asia Report N°174, August 20, 2009
 2. The Myanmar Elections, Crisis Group Asia Briefing N°105, May 27, 2010
 3. China's Myanmar Strategy: Elections, Ethnic Politics and Economics, Crisis Group Asia Briefing N°112, September 21, 2010
 4. Myanmar's Post-Election Landscape, Crisis Group Asia Briefing N°118, March 7, 2011
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AFGHANISTAN

-The reports on Afghanistan focus on issues of the government's legitimacy, corruption, and growing instability throughout the country.

1. *The Insurgency in Afghanistan's Heartland*, Crisis Group Asia Report N°207, June 27, 2011

- "Kabul's failure to support the **rule of law** and the absence of government in many parts of the country has given Afghans little choice but to rely on the Taliban's rough justice." P. 10.
- "International and local efforts to address the weak **rule of law** have only recently increased but for the most part remain piecemeal, giving corrupt elements of the government wide berth to profit from the conflict." P. 22.
- "Greater investment in rebuilding the **judicial system** is crucial to restoring the **rule of law**. This will inevitably entail house-cleaning in the attorney general's office, which has emerged as a hotbed of corruption and the central force in reinforcing the growth of the criminal oligarchy that has gained power under the Karzai administration." P. 23

2. *Afghanistan's Elections Stalemate*, Crisis Group Asia Briefing N°117, February 23, 2011

- "**Flaws in the constitution**, a poorly articulated balance of power and anemic government institutions have allowed Karzai to exploit the political system to his advantage. The **judiciary**, as a result, has been transformed into a bully pulpit for the president, brooking breach after breach of the constitution. " P. 14

¹ * Indicates which countries were listed as violators of Security Council resolution 1820. *Report of the Secretary-General pursuant to Security Council resolution 1820 (2008)*, UN Doc. S/2009/362, August 20, 2009

3. *Afghanistan: Exit vs. Engagement*, Crisis Group Asia Briefing N°115, November 28, 2010

- "The failure to give adequate power to provincial councils or to hold district council elections has created a disconnect between people and the state. Kabul's revolving door appointment process has, meanwhile, disempowered provincial governors and radically reduced their **accountability** to the local populace. Provincial and district courts are in disarray, leaving Afghans little or no **access to justice**. Devastated by three decades of war, traditional tribal systems cannot fill these gaps." P. 5
- "The **judiciary** has been almost entirely neglected. There is increasing disillusionment as crimes go unpunished and courts are unable to adjudicate simple civil cases, such as those over land, a primary source of many disputes in Afghanistan. Yet, **justice** was regarded as a luxury after the intervention, and **the rule of law** is still considered an extravagance. **Lack of justice** has had a profoundly destabilizing effect on Afghanistan and **judicial** institutions have all but withered away in most provinces" P. 6
- "Deal-making, even in the shape of reintegration, let alone reconciliation, will not address the many problems that Afghan citizens face - the lack of economic opportunities, warlordism, corrupt police and the absence of the **rule of law**." P. 10

4. *Reforming Afghanistan's Broken Judiciary*, Crisis Group Asia Report N°195, November 17, 2010

-This article discusses the judiciary's shortcomings and advises the international community and Afghan government to better train lawyers and judges on the law. The article also advises the Afghan government to reconcile secular and Islamic laws, and strengthen state judicial institutions.

5. *Afghanistan: Elections and the Crisis of Governance*, Crisis Group Asia Briefing N°96, November 26, 2009

-This briefing focuses on the lack of rule of law and the power within the executive.

6. *Afghanistan: What Now for Refugees?* Crisis Group Asia Report N°175, August 31, 2009

-This report details the lack of rule of law, poor judiciary, and the worsening refugee conditions.

BURUNDI

-The reports on Burundi focus on electoral and political processes and the need to ensure peace between different political parties and their supporters.

1. *Burundi: From Electoral Boycott to Political Impasse*, Crisis Group Africa Report N°169, February 7, 2011

-This article discusses strengthening rule of law and the judiciary, and ensuring the judiciary is a separate political entity.

2. *Burundi: Ensuring Credible Elections*, Crisis Group Africa Report N°155, February 12, 2010

- "It is certainly hard to imagine local **judicial institutions** following up cases linked to political violence. Civil society and the international community will thus have to ensure that the political players appreciate that recourse to **the International Criminal Court** will be one of the available options for bringing the authors of serious crimes to justice, should that prove necessary. The documentation of **human rights violations** will make the possible threat of such a course of action more credible and should thus help to dissuade some players who are tempted to resort to violence." P. 25
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COLOMBIA

-The Colombia reports focus on building rule of law, accountability, and addressing the armed rebel groups.

Colombia: President Santos's Conflict Resolution Opportunity, Crisis Group Latin America Report N°34, October 13, 2010

- Recommendation to the Government of Colombia: "Ensure the security forces' respect for **human rights** and **international humanitarian law** (IHL) by applying existing human rights and IHL policy rigorously." P. ii.
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COTE D'IVOIRE

-The Cote d'Ivoire reports focus on the 2010 elections violence and the implications of political and social instability.

Côte d'Ivoire: Is War the Only Option?, Crisis Group Africa Report N°171, March 3, 2011

- Recommendation to the Chief of General Staff of the Army, the Chief of Staff and Commanders of the Forces Nouvelles and Commanders of All Other Military Forces: "Recall they will be held responsible for serious crimes committed by their forces, including **crimes against humanity, war crimes and other violations of international law.**" P. ii
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DEMOCRATIC REPUBLIC OF CONGO

-The Democratic Republic of Congo reports center on the flawed electoral process, weak government institutions, and general instability.

1. Congo: No Stability in Kivu Despite a Rapprochement with Rwanda, Crisis Group Africa Report N°165, November 16, 2010

- "Despite three successive operations conducted by the Congolese army, the **humanitarian** situation in the Kivu has deteriorated, and instances of extreme violence have multiplied. Women and girls, particularly, have suffered the consequences of **impunity** and of a highly militarised environment in which rape is endemic. The population is being victimised by both retribution campaigns of the rebels and unpunished **human rights violations** by Congolese soldiers." P. i
- "A legislative effort in Kinshasa and in provincial parliaments should be engaged to establish the legal and administrative framework necessary for handling issues linked to political representation of ethnic minorities and to discrepancies between traditional justice and **the rule of law.**" P.24

2. Congo: A Stalled Democratic Agenda, Crisis Group Africa Briefing N°73, April 8, 2010

-This article focuses on the need to reform the judiciary.

HAITI

-The Haiti reports focus on political, economic, and social development.

1. Haiti: The Stakes of the Post-Quake Elections, Crisis Group Latin America/Caribbean Report N° 35, October 27, 2010

- "The weak institutional infrastructure was reflected in the protracted makeshift status of the Provisional Electoral Council (Conseil Electoral Provisoire, CEP); a ramshackle political system featuring scores of parties unable to generate coherent policy choices for voters; **an often corrupt judiciary** and limited public security." P. ii.
- "The government and the Haitian National Police (HNP), supported by the UN mission (MINUSTAH), must take the necessary steps to **apply the rule of law** to those who attempt to disrupt the process." P. 2.
- "While acceptable elections and another peaceful handover of power are essential and would mark some progress, true consolidation of democracy requires more: strengthening key institutions, consolidating **rule of law** and institutionalizing electoral management to increase the impartiality and professionalism of election organisers and administrators." P. 21

2. Haiti: Stabilisation and Reconstruction After the Quake, Crisis Group Latin America/Caribbean Report N°32, March 31, 2010

- "These [decisions on reconstruction] need to be based on a Haitian-led long-term strategy supported by all sectors of society and the international community and pay due attention to **restoring security and rule of law.**" P. i.
 - "As Crisis Group has previously observed, three 2007 laws on the establishment of the Superior Council of the Judiciary (CSPJ), the status of magistrates and the Magistrates' School (EMA, French acronym) were essential steps, but **strengthening the justice sector depends on the CSPJ becoming operational and independent.** This has not yet happened." P. 11-12.
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IRAQ

-The Iraq articles focus on political instability and high-level relations between Iraqis and Kurds.

1. *Loose Ends: Iraq's Security Forces Between U.S. Drawdown and Withdrawal*, Crisis Group Middle East Report N°99, October 26, 2010

- Recommendation to Iraq Government: "Dismantling security and intelligence agencies that are **without legal basis**, including the Office of the Commander in Chief and the Office of Information and Security." P. ii
- "This attitude of contempt and **impunity** is deeply entrenched in Iraq's political culture, a legacy of decades of dictatorship and arbitrary rule, and rooted in the enduring absence of genuine **accountability**." P. 30

2. *Iraq's Uncertain Future: Elections and Beyond*, Crisis Group Middle East Report N°94, February 26, 2010

- Recommendation: "Launch a serious effort once a new government is formed to open up political space, increase cross sectarian participation, improve transparency and **accountability** in decision making and strengthen, and encourage the political independence of the **judiciary** and independent commissions." P. ii

3. *Iraq's New Battlefield: The Struggle over Ninewa*, Crisis Group Middle East Report N°90, September 28, 2009

- "There are two evident alternatives to a compromise deal: open warfare; and a stalemate involving continuation of the de facto territorial and administrative separation on the ground that might, however, erupt into open conflict once U.S. forces pull out in less than a year. Al-Hadbaa and the Brotherhood List should contemplate these alternatives and act responsibly with a view to protecting the people of Ninewa and their rights regardless of ethnicity. Should they fail to do so, they should be held **accountable** for not choosing the peaceful option that today remains available." P. 40

KOSOVO

-The reports on Kosovo focus heavily on improving rule of law and governance.

1. *North Kosovo: Dual Sovereignty in Practice*, Crisis Group Europe Report N° 211, March 14, 2011

- "The insistence of Kosovo and international community representatives that the Mitrovica court can only fully function after Serbs accept its authority in the North adversely affects Kosovo Albanians in the south and **undermines the sense that rule of law is the priority**." P. ii.
- "The **rule of law recommendations** involve EULEX [EU rule of law mission] and are the most grounded and least controversial, but implementation is painfully slow." P. 9
- "Local mayors and opposition activists – some themselves the victims of violence – argue that the image [of a crime-ridden North] is propagated as a cover for integration through **imposition of Kosovo rule of law institutions**." P. 13

2. *Kosovo and Serbia After the ICJ Opinion*, Crisis Group Europe Report N°206, August 26, 2010

- "At a minimum and in order to obtain positive consideration in Brussels for the EU candidacy application it filed in December 2009, Serbia should pledge to work with Pristina to **secure the rule of law** in the North, establish good neighbourly relations by cooperating on a host of technical issues to improve people's daily lives and stop blocking Kosovo's participation in regional institutions." P. ii
- "The governments of Serbia and Kosovo should...support each other, if a comprehensive agreement is impossible now, in **securing the rule of law** in the North and establish good neighbourly relations by concluding customs, trade, communications, electricity and transport agreements that can improve people's lives and strengthen both the Serbian and Kosovo economies." P. iii

3. *The Rule of Law in Independent Kosovo*, Crisis Group Europe Report N°204, May 19, 2010

- "Realising that prosperity, relations with the European Union (EU) and affirmation as an independent state **depend on the rule of law**, the government has taken important steps, replacing key officials and passing long-delayed reforms. But critical **weaknesses remain, notably in the courts**, and the government, supported by the international community, must act swiftly to curtail them." P. i
- "But the **judicial system** is weak. Few crimes end with their perpetrators in prison. **Court procedures suffer from widespread distrust**, fearful or unwilling witnesses and shoddy work by prosecutors. On the

civil law side, it is all but impossible for citizens and domestic and international corporations to enforce their rights in court.” P. ii

- “But virtually none of Crisis Group’s interlocutors in the judiciary, police and associated institutions and among EULEX and other international officials believe the government fully supports the **rule of law**. Many expressed the opposite belief, **that the government prefers a weak judiciary.**” P. 1
 - “Kosovo’s **judiciary** has deteriorated to the point that many, perhaps most citizens **lack genuine access to justice.**” P. 12
 - “An overwhelming and growing backlog of cases, some of which date to 1999, is evidence of **the judicial failure.**” P. 13
 - “Under this model [absolute judicial independence], the **judiciary** is supposed to be self policing, and because the government has no role, it cannot be criticised if the **judiciary** fails. As a result, there **is no barrier to judicial cronyism and nepotism**, or to relatively mild forms of favouritism and corruption that do not cross clear legal lines. Nor does the **judiciary** have a voice or advocate in the government, or indeed any institutional way to affect policy.” P. 16
 - “The newly independent country is losing out on important **benefits that would be offered by the rule of law**, in which important decisions are made on the basis of formal rules and in the context of public institutions, and the results are impersonal and predictable.” P. 22
 - “Prevention is as important as prosecution; **international pressure** should also focus on restricting the opportunities for corruption by **strengthening the legal framework** – in one observer’s words, changing ‘the system that allows for corruption’ instead of attacking corruption as a sort of abstract, endemic problem.” P. 23
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NEPAL

-The ICG reports on Nepal focus on political stability and building an effective governance structure.

1. *Nepal’s Political Rites of Passage*, Crisis Group Asia Report N°194, September 29, 2010

- “When the best form of defence is inaction, the prospects for **rule of law** are clearly poor. The lead given by ministers of all recent governments has been unambiguous: there has been no action on **impunity**, no effort to pursue even the most egregious crimes and no shame at the willful flouting of the **rule of law** by powerful institutions, in particular the Nepal Army.” P. 33

2. *Nepal: Peace and Justice*, Crisis Group Asia Report N°184, January 14, 2010

- This article devotes an entire section to the culture of impunity in Nepal, detailing the killings and disappearances of civilians. It also discusses the government and Maoists lack of respect for international humanitarian and human rights law and encourages holding those responsible accountable for their actions.
 - “There are tensions between the pursuit of **justice** and the pursuit of peace. An absolutist approach to accountability for past abuses is impossible in practice and could obstruct the compromises needed to bring formerly warring parties together to forge a stable political settlement. But **tackling impunity and improving accountability** has a direct and acute relevance to managing Nepal’s fractious transition. **Unaccountable** and heavy-handed security measures by a state with weak legitimacy have escalated conflict before and threaten to do so again.” P. ii
 - “Peace and justice can sometimes appear to be opposing goals. Transitional settlements are fragile and pushing for **full accountability** for conflict-era crimes could threaten political leaders to the extent that the entire process is destabilised or abandoned. In Nepal as well, there is a temptation to ignore justice issues and focus on establishing a stable political environment.” P. 2
 - “The blanket rejection of **accountability** for crimes committed during the conflict reflects broader patterns in society. The Nepalese state has a long history of both breaking its own rules and allowing **impunity** as privilege for the powerful or well connected.” P. 6
 - “Ensuring **justice** in the longer term requires serious attention to the **constitutional basis for rule of law institutions and accountability.**” P. 18
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SOMALIA

-The Somalia reports discuss generally the need to strengthen the rule of law and governance and build accountability.

SUDAN

-The Sudan reports frequently reference the need to hold war crimes perpetrators responsible, stressing accountability as critical to post-conflict reconstruction.

1. *Divisions in Sudan's Ruling Party and the Threat to the Country's Stability*, Crisis Group Africa Report N°174, May 4, 2011

- "In the absence of **accountability**, the leadership enjoys absolute freedom and has institutionalised corruption to its benefit, in the process rewarding political barons who can deliver their constituencies by giving them lucrative government positions to maintain their loyalty." P. i

2. *Politics and Transition in the New South Sudan*, Crisis Group Africa Report N°172, April 4, 2011

- "Tangible gains on key transitional issues – decentralisation, oil sector management, security provision and service delivery – would bolster the kind of political and financial **accountability** necessary to secure the confidence of the people." P. 30

3. *Sudan: Preventing Implosion*, Crisis Group Africa Briefing N°68, December 17, 2009

- "**Justice and accountability are critical** for the sustainability of any peace deal in Darfur." P. 10

4. *Sudan: Justice, Peace and the ICC*, Crisis Group Africa Report N°152, July, 17, 2009

- "**Judicial reforms and transitional justice mechanisms** leading to reconciliation and a culture of **accountability** are essential to the success and sustainability of the peace process there [in Sudan]." P. ii
 - Recommendation to the National Congress Party: "**Holding all government forces and associated militias accountable for their violations of international humanitarian law**, such as attacks on civilians; destruction of property, livelihoods and means of sustenance, including wells and granaries; murder; forcible transfer of populations; and inhumane acts such as torture and rape." P. ii
 - "**Justice** requires not only the criminal prosecution of individuals, but also the establishment of a credible system and culture of **accountability through transitional justice mechanisms** that make the fight against impunity a key component of a reformed governance system." P. 28
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TIMOR-LESTE

-The reports on Timor-Leste discuss building the accountability of the police force and indicate that police corruption is not addressed in a meaningful or substantive way.

1. *Timor-Leste: Reconciliation and Return from Indonesia*, Crisis Group Asia Briefing N°122, April 8, 2011

- "There remains a risk that a decision not to prosecute could lead to violent retribution against suspects. More certain is that it will further complicate efforts to build **the rule of law** and guarantee rights for all." P. 1
- Recommendation to the Timor-Leste government: "Debate in parliament the CAVR [Commission for the Reception, Truth and Reconciliation in East Timor] report and draft laws on reparations for victims and the creation of a planned successor institution to the CAVR, whose mandate should include **supporting community reconciliation processes**." P. 2
- "A number of those imprisoned were offered commuted sentences by President Gusmão and later President José Ramos-Horta, demonstrating weak commitment to ensuring **accountability**." P. 5
- "The former pro-integration elite and the current East Timorese leadership alike consistently cite the lack of **accountability** for crimes committed prior to 1999 as an indication of the inability to ensure **accountability** in the present." P. 14

2. *Handing Back Responsibility to Timor-Leste's Police*, Crisis Group Asia N°180, December 3, 2009

- "Reform of Timor-Leste's police will only succeed with a clear commitment to improving **accountability** within the service. Respect **for human rights** and the enforcement of disciplinary laws have been a problem since the inception of the Timorese police. The commitment of Timor-Leste's political leaders to ending

impunity has been limited.” P. 15

UGANDA

-The Uganda reports often discuss accountability and prosecuting those responsible for war crimes either in national courts, or at the International Criminal Court if Ugandan leaders fail to act.

LRA [Lord's Resistance Army]: A Regional Strategy beyond Killing Kony, Crisis Group Africa Report N°157, April 28,2010

- “What was supposed to be a sudden, decisive strike [against the LRA] has become a slow and very expensive campaign of attrition across three countries. It has also yielded unacceptably high human costs among local civilians, with virtually no **accountability** for the failure to protect.” P. i
 - “To enhance the current mechanisms for **accountability and reconciliation**, parliament should amend the amnesty law so that those suspected of having committed the most serious crimes are no longer eligible [to be covered under the law] but will instead have to stand trial in the High Court.” P. 24
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Appendix 2:

Summary of Violence in Post-Election Burma

Situation: Armed conflict and serious crimes in Burma, particularly targeting ethnic groups, continue to escalate in the wake of the November 2010 election, subsequent “regime change” and the January 2011 implementation of Burma’s 2008 constitution.

ICC Crimes in Burma: War crimes defined by the Rome Statute of the International Criminal Court (“ICC”) include armed attacks, rape, torture, recruitment and use of child soldiers, forced displacement and other forms of persecution. In Burma, these crimes cause tens of thousands of innocent civilians to flee, sometimes over regional borders. They consequently end up hiding in the jungle or in refugee and internally displaced persons camps. Ethnic minorities in Burma are subject to war crimes during attacks that in the nature of their intent “to destroy” these groups present a serious risk of genocide. All U.N. Member States have a legal obligation to respond to “prevent” and “punish” a serious risk of genocide. Burma is one of eight “red alert” states listed on the global genocide indices.ⁱ

While states such as Burma have primary responsibility to prosecute the most serious international crimes, namely war crimes, crimes against humanity and genocide, when a state is unable or unwilling to do so, the ICC has jurisdiction to undertake investigations and prosecutions, including of the highest-level officials.

Escalating armed conflict in ethnic areas: Tensions have increased since the 2010 elections between the military junta (the State Peace and Development Council, or “SPDC”), ethnic ceasefire groups, and many ethnic armed opposition groups. Following the adoption of the new constitution in 2008, the SPDC issued an ultimatum to all ethnic ceasefire groups - disarm and participate in the upcoming elections. Ethnic ceasefire groups resisted the SPDC’s demands for disarmament because they believe arms provide leverage in negotiations with the junta and are necessary to protect their people. Many ethnic organizations also voiced their objections over the undemocratic nature of the 2010 elections.

Following the ethnic ceasefire groups’ refusal to disarm, the SPDC appeared to have changed its tactics to end the armed ceasefire groups’ existence by forcing them to form a border security force. Many groups openly refused to comply with the proposed “Border Guard Force” (BGF) and did not disarm. Parallel to the SPDC’s drive to deny ethnic ceasefire groups military capability, the regime continued its military campaign against ethnic armed opposition groups in Eastern Burma. The offensives have systematically targeted the civilian population in ethnic-inhabited areas.

New Ethnic Alliance Formed: Twelve ethnic armed opposition groups and political organizations from Burma agreed to form a new coalition, the Union Nationalities Federal Council (“UNFC”), in February 2011. The alliance includes Rakhine, Chin, Karen, Karenni, Kachin, Lahu, Mon, Pa-O, Palaung, Shan, and Wa groups. The UNFC decided to establish four military regions in Burma with the objective of sharing military resources if any of the coalition members are attacked by the SPDC Army. UNFC members also agreed that individual groups would not hold separate cease-fire talks with the regime. UNFC stated that the coalition was open to any group that supports the alliance’s aim “to establish a genuine union.”

Crisis deepens in ethnic nationality areas: Despite the November election’s illusory promise of an inclusive democratic system, the situation in ethnic nationality areas continues to deteriorate. In addition to the SPDC’s ongoing offensives against armed ethnic non-ceasefire groups, the SPDC has increasingly targeted ceasefire groups who rejected the junta’s Border Guard Force (BGF) scheme. Armed conflict between those groups and the SPDC Army has led to the displacement of tens of thousands of civilians. The situation for residents living in conflict zones of ethnic States remains grim as the SPDC prepares to re-launch its inhumane ‘four cuts’ campaign, which seeks to cut off the rebels’ revenues, information, recruits, and food supply.

The following chart details many ongoing post-election crimes/violations that Burma's military continues to perpetrate against civilians in Burma, especially ethnic minorities along Burma's borders.

ICC Crimes in Post-election Burma

| 1. Escalating armed conflict in ethnic areas and the growing risk of genocide | |
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| Chin State – Arakan Liberation Army (ALA) | <ul style="list-style-type: none"> ▪ Outbreaks of violence follow the election, including on January 3 and March 8, 2011, when the Arakan Liberation Army (ALA) and SPDC clash in Paletwa Township ▪ 7 military (SPDC) soldiers and 4 ALA soldiers are killed |
| Karen State - Democratic Karen Buddhist Army (DKBA, Karen National Union (KNU), Karen National Liberation Army (KNLA) | <ul style="list-style-type: none"> ▪ On November 7, 2010 election day, and the days following, violence breaks out between the SPDC and a breakaway faction of the Democratic Karen Buddhist Army (DKBA) ▪ Violence spreads throughout the Southern Karen State causing the single largest influx of refugees into Thailand in two decades (27,000+ persons) ▪ More than 27,000 civilians flee to Thailand, thousands more to jungles in Southern Karen and Mon States ▪ Heavy fighting persists between November-July 2011 ▪ Major clashes November 8-9, 2010 in Myawaddy and Three Pagodas Pass ▪ Several clashes erupt between the state army and Karen National Liberation Army (KNLA), and Karen National Union (KNU) from March-July 2001 ▪ Clashes between state and joint forces of the DKBA and KNLA in Kyainnseiky Township begin in April and intensify in May 2011, causing more than 1000 civilians to flee to Thailand (they are forced back to Burma by Thai authorities within days) ▪ Fighting worsens in Doooplaya and Pa'an districts post-elections ▪ Daily flow of refugees to Thailand, sometimes number in thousands |
| Kachin State – Kachin Independence Organization (KIO) | <ul style="list-style-type: none"> ▪ February 2011 SPDC troops invade a KIO-controlled area near Mansi Township ▪ On February 7, 2011, KIO's armed wing, Kachin Independence Army (KIA) responds, clashes with SPDC army for the first time since making a 1994 ceasefire agreement ▪ Regime deploys 12 tanks, 200 soldiers near KIA's headquarters in Laiza ▪ July 20 KIA prepares to protect Laiza, located on the Sino-Burmese border. KIA settles approximately 6,000 people, mostly ethnic Kachins; more than 10,000 refugees since June 9, 2011 |
| Mon State – New Mon State Party (NMSP) | <ul style="list-style-type: none"> ▪ Longstanding ceasefire (1995) breaks following elections; tense relations between NMSP and SPDC ▪ February 4, 2011, state uses newspaper to call NMSP “insurgents” and NMSP says going to “war” with regime |
| Shan State – Shan State Army- North (SSA-N) | <ul style="list-style-type: none"> ▪ State and Shan State Army-North (SSA-N) Brigade 1 forces begin fighting February 2011 ▪ SPDC steadily increases its military presence in Shan State by deploying thousands of soldiers near local armed forces sites ▪ March 21, 2011, the state run newspaper New Light of Myanmar described the SSA-N as “insurgents” ▪ Conflict spreads to ten townships in April 2011 ▪ 3,500 troops participate in a state-run military offensive in north-central Shan State, an area populated by 100,000 ▪ Within 3 weeks of the state breaking the ceasefire, 65 clashes erupt ▪ <u>Burma's military targets ethnic civilians, firing mortar bombs at villages, summarily executing villagers, arbitrarily detaining, torturing, looting, raping</u> |

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| | <p><u>them and forcing them to labor and relocate</u></p> <ul style="list-style-type: none"> ▪ More than 3,000 flee the violence to hide in the jungle ▪ May 2011, state army deploys significant troops to fight against the SSA-N, UWSA, National Democratic Alliance Army (NDAA), and Shan State Army-South (SSA-S). ▪ May 2011, the SSA-N and SSA-S merge to form a united front ▪ Serious violent attacks on innocent civilians and widespread looting force more than 3,000 villagers to seek refuge in the jungle or nearby towns like Mong Su. Still others flee over the Thai border ▪ <u>Military tortures and kills innocent villagers</u> who are unable to flee, or are caught, for “supporting the Shan resistance” ▪ July 2011, military sends more than <u>4,000 regime troops</u> from 42 battalions to Wan Hai in Ke See Township to take over the SSA-N headquarters; fighter jets support advancing ground troops as they <u>march through villages, committing atrocities, such as summary execution, rape and mutilation, against ethnic civilians (one villager was found dead and missing his leg and hand.</u> ▪ At least 31,700 villagers from 9 townships flee this violence, beginning March 13, when the state broke its 22 year ceasefire with the SSA-N ▪ While some of these villagers flee to Wa-controlled areas or border areas with China or Thailand, most are still <u>hiding in the jungle</u> where they <u>face chronic shortages of food, clean drinking water, shelter and medicine</u> ▪ SSA-N confronts government Infantry units Nos. 286, 9, 12, 131 and Light Infantry units Nos. 501, 502, 503, 504, 505 and 506. |
| <h2>2. Rape</h2> | |
| Kachin State | <ul style="list-style-type: none"> ▪ Military perpetrates <u>at least 34 documented cases of rape against women and girls</u> in Burma’s ethnic areas <u>since the November 2010 elections</u> ▪ Women and girls in Kachin and Shan states are systematically targeted, particularly between March-July 2011 during which time <u>at least 30 women and girls were gang-raped during and as part of military offensives against the KIA and SSA</u> ▪ Between June 10-18, as part of its advance on KIA strongholds at the China border, the regime’s troops <u>gang-raped at least 18 women, killing 4</u>. The raped girls and women ranged in age from 7-50 years old ▪ One of these women was <u>raped and killed in front of her husband</u> who was forcibly restrained (tied up) and forced to watch, while another woman died at the site of injuries sustained during the rape ▪ These rapes spanned 4 townships in Bhamo District, and participating soldiers came from five of the regime’s battalions (Light Infantry Battalion 437 and Infantry Battalions 237, 141, 142, 139 and 437) ▪ June 18, 2011, regime troops from LIB 437 caught three families in Dum Bung village, before they were able to flee. <u>Soldiers gang-raped six women and girls and then killed 7 children</u> ▪ Also on June 18, 2011 in Je Sawm village, in the Man Si township of Bhamo district, regime soldiers from LIB 139 <u>gang-raped a 7-year-old girl and her grandmother before killing both of them</u> |
| Karen State – Karen Human Rights Group (KHRG) | <ul style="list-style-type: none"> ▪ The ever-present threat of sexual violence becomes a reality for women in Dooplaya and Pa’an on December 22, 2010 when a volunteer KHRG researcher confirms Waw Lay villagers’ reports of finding the dead body of an unidentified woman close to the village ▪ Villagers disclose the body’s discovery – at the Waw Lay village school - after fleeing the area to Thailand’s Phop Phra District ▪ The researcher also confirms reports (and gathers photographic evidence) that a second woman’s body had also been found. <u>Both women, apparently between</u> |

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| | <p>the ages of 20-30 years old, had been <u>raped</u>. Identification was difficult because of decomposition</p> |
| Palaung State | <ul style="list-style-type: none"> February 23, 2011, a <u>16-year-old girl</u> from the <u>Palaung ethnic group in Shan state</u> is <u>blindfolded and gang-raped by six Burmese soldiers from Light Infantry Battalion (LIB) 574</u>. The patrol attacks as she walks from Hpanlan village in Shan state's Kunhing township to Nanmawngin village. |
| <p>Shan State – Shan State Army – North (SSA-N) and –South (SSA-S)</p> <p>Note: Light Infantry Battalion (LIB), Infantry Battalion (IB).</p> | <ul style="list-style-type: none"> Beginning April 2011, state army increasingly uses rape of civilians as a tactic in armed conflict against SSA-N (see above under Kachin as well) Within the context of ongoing armed conflict between the state and SSA-N, the regime's army undertakes a new deterrence tactic: it rounds up women and girls from different villages, forces them to serve as human shields, the women porter military provisions while walking ahead of the troops In March 2011, regime soldiers perpetrate <u>12 rapes against ethnic women as part of its offensive in northern Shan State</u> In March-April 2011, government soldiers gang-rape at least 11 women and girls Soldiers from Light Infantry Battalions (LIB) 291 and IB 33 gang-rape 2 women in Nam Lao Village, Tangyan Township, Shan State Soldiers from LIB 131 rape two local women in Wan Pa Tab Village, Kyethi Township, Shan State Soldiers from LIB 291 and LIB 33 gang-rape a 19-year-old girl in Nam Lao Village, Tangyan Township, Shan State Three soldiers from LIB 147 gang-rape a 25-year-old woman in Wan Bang Hom Village, Tangyan Township, Shan State Soldiers from LIB 574 gang-rape a 44-year-old woman in Wan Nawng Tao Village, Mongyawng Township, Shan State Soldiers from LIB 513 rape three Shan women and a 12-year-old girl in Kyethi Township, Shan State Five Soldiers from IB 9 gang-rape a 35-year-old woman in Wan Nar Karng Village, Kyethi Township, Shan State |
| <h3>3. Refugees and Internally Displaced Persons</h3> | |
| <p>Kachin State – Kachin Independent Army (KIA), Kachin Independence Organization (KIO)</p> | <ul style="list-style-type: none"> June 9, 2011, violent conflict erupts between Tatmadaw (regime army soldiers) and KIA in Kachin and Northern Shan States 13,000 civilians flee the fighting and are displaced Tatmadaw deploys thousands of additional troops in Bhamo and Momauk Townships KIO claims <u>conflict has created 10,000 Kachin war refugees in nine days of fighting</u> Some refugees from this fighting stay in emergency shelters in Laiza and other locations near the Sino-Burmese border. Others have taken refuge with far-away relatives July 20 KIA prepares to protect Laiza, located on the Sino-Burmese border. KIA settles approximately 6,000 people, mostly ethnic Kachins More than 10,000 refugees arrive since fighting began June 9 6,000 more Kachin refugees take shelter at makeshift camps along the China-Burma border |
| Karen State | <ul style="list-style-type: none"> The <u>day after election day on Nov 9, 2010</u>, in the face of violence clashes between the state and DKBA, sees the <u>largest single influx of refugees in two decades into Thailand as more than 27,000 civilians flee fighting</u> Thousands more seek safety from the post-election fighting in the Southern Karen and Mon State jungles Civilians in Myawaddy, Three Pagodas Pass, and in the Dooplaya and Pa'an districts continue to be deeply affected by the violence, sustaining small arms |

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| | <p>fire</p> <ul style="list-style-type: none"> ▪ A steady stream of refugees, often numbering 1000 at a time, cross the border into Thailand on a daily basis, entering Mae Hong Song, Tak and Kanchanaburi provinces. ▪ By January 10, 2011, nearly 7000 (8663) civilians from Burma seek refuge in Tak Province ▪ Members of these communities are subject to sexual violence (rape), torture and executions |
| Shan State | <ul style="list-style-type: none"> ▪ During five months of fighting (February- July 2011) between the Shan State Army-North (SSA-N) and Burmese government troops, more than 30,000 people flee the combat area ▪ Many refugees face serious shortages of food and medicine |
| 4. Child Soldiers (recruitment and use as soldiers and human shields) | |
| Myanmar/Burma Shan State | <ul style="list-style-type: none"> ▪ From early 2010 to July 2011, 305 complaints of children as young as 10 years old being taken and used as child soldiers are lodged with the International Labour Organization (ILO) office in Myanmar/Burma. As a result, 77 children are discharged from the military. ▪ 242 complaints are left still being screened (before review by the government) or are still under active investigation by the government ▪ Children are taken and ordered to accompany Burmese troops as they carry wounded soldiers through volatile areas of Shan State where they are more vulnerable ▪ According to residents in Kehsi Mensi, a township near the conflict zone of fighting Burmese and SSA troops, an infantry battalion went through villages in the township on Tuesday (September 13, 2011) recruiting children and other civilians to act as “human shields” |

ⁱ Genocide Prevention Project, Mass Atrocity Crimes Watch List, <http://www.preventorprotect.org/overview/watch-list.html>

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