

Applying the Responsibility to Protect to Burma/Myanmar*

Introduction

The Burmese junta, its armed forces known as the “Tatmadaw,” and other armed groups under government control are committing gross human rights violations against ethnic and religious minorities. Extrajudicial killings, torture, and forced labor are prevalent; rape and sexual abuse by the Tatmadaw are rampant; and from August 2008 through July 2009 alone, 75,000 civilians in the east, where armed conflict is ongoing, were forcibly displaced. The Tatmadaw shows a complete disregard for the principle of distinction, intentionally targeting civilians with impunity.

Reports indicate that these violations, perpetrated primarily by state actors on a widespread and systematic basis, rise to the level of crimes against humanity, ethnic cleansing and war crimes - three of the four crimes states committed themselves to protect populations from in endorsing the responsibility to protect (R2P) at the 2005 World Summit.

All Burmese citizens are subject to government oppression. However, the above crimes appear to be targeted primarily at five ethnic groups: the Karen, Shan and Karenni in eastern Burma, and the Rohingya and Chin in western Burma. While international actors have focused on the repression of the pro-democracy movement by the military government, crimes perpetrated against ethnic minorities for years have received little international attention and show no signs of subsiding.

This brief seeks to clarify how R2P applies to Burma and draw attention to the plight of minorities by assessing the following: whether acts perpetrated against them could constitute R2P crimes; the risk of future atrocities; and the resulting responsibility of the international community.

Applying the Responsibility to Protect

In committing to uphold R2P in 2005 — and thus reaffirming pre-existing obligations under international humanitarian and human rights law — the government accepted the primary responsibility to protect Burma’s population from genocide, war crimes, crimes against humanity and ethnic cleansing. Despite this commitment the government has failed to ensure that the Tatmadaw, and their proxies, respect international humanitarian and human rights law. The Special Rapporteur on Myanmar has noted that, “the killing, terrorizing or displacement of civilians is often part of a deliberate strategy,” indicating that the government has continued to enforce policies that result in the commission of these crimes.

Fighting insurgents is not a legitimate pretext to commit atrocities. Equally important, the government has a responsibility to protect its entire population, irrespective of ethnic or religious identity. The government’s unwillingness to do so provides substantial grounds to believe that it is manifestly failing to uphold its responsibility to protect.

In such a situation, United Nations (UN) member states, in keeping with their 2005 agreement, have a responsibility to protect the targeted minorities. This responsibility includes using appropriate diplomatic, humanitarian and other peaceful means to protect populations. In the face of the government’s manifest failure to protect its population from imminent and recurring attacks, there is an international commitment to take timely and decisive action to protect populations under threat.

This international obligation arises in the context of Burma as gross human rights violations that may constitute crimes against humanity and war crimes are being perpetrated daily.

Ongoing and At Risk Mass Atrocities

Between July 27 and August 1, 2009 (just four days after the government acknowledged its responsibility to protect during a UN General Assembly debate on R2P), thirty-nine villages in Shan state were burnt to the ground by government and proxy forces, displacing 10,000. Rape, sexual violence and killings of civilians accompanied this campaign.

This is nothing new. Burma has endured repressive military rule and atrocities committed with impunity since 1962 when a coup deposed the democratically elected government. In 1988, country-wide political protests known as the 8888 uprising broke out and 10,000 people were killed after the military responded with overwhelming force. In the wake of the protests the military consolidated its power and increased its presence in areas populated by ethnic and religious minorities. Since that time, armed conflict between the government, known as the State Peace and Development Committee (SPDC), and numerous ethnic armed groups has been prevalent throughout Burma, particularly in the east.

Eastern Burma: The government's attempts to root out armed groups have led to the Tatmadaw committing what appear to be crimes against humanity and war crimes. The crimes taking place in eastern Burma are directed primarily towards three main ethnic minorities: the Shan who constitute 10% of the country's population; the Karen who constitute 8%; and the Karenni, a sub-tribe of the Karen who constitute only 1%. Each of these groups has at least one ethnic armed group actively fighting government forces for control of territory and greater autonomy for its people. Additional armed groups have signed ceasefire agreements with the government in exchange for some level of autonomy to govern their communities. Known as ceasefire groups, some now fight as proxies under the control of the Tatmadaw, including the Democratic Karen Buddhist Army (DKBA) which is a primary perpetrator of atrocities against the Karen.

The government's "shoot-on-sight policy" carried out by the Tatmadaw and their proxies in contested areas results in individuals, found outside their villages, being shot on sight. As a result, murder is committed with

impunity. This policy restricts civilians to their villages and prevents farmers from accessing cropland. There are substantial grounds to believe that through this policy the government is intentionally depriving civilians in these areas of access to food as a means of destroying part of or the entire community.

This deprivation is exacerbated by the "four cuts policy," developed to undermine support for ethnic opposition groups by cutting off access to food, funds, information and recruits. The policy is used to justify the burning of cultivated fields in order to deprive the opposition of food although those bearing the brunt are often innocent civilians. In addition, village chiefs and other civilians are subjected to imprisonment, torture and murder if the Tatmadaw suspects that ethnic armed groups are receiving supplies and intelligence from villagers.

Forced displacement of civilians from contested and rebel-controlled territory into areas under army control is widespread. From August 2008 through July 2009 alone, 120 villages were destroyed and their populations forced to flee. This follows a long pattern of forcible displacement of civilians and destruction of villages indicating that the Tatmadaw and their proxies are perpetrating acts that appear to amount to deportation and forcible transfer of populations, which are crimes against humanity.

Rape is reportedly widespread, especially in Karen State (officially known as Kayah State) and Shan State. In November 2008 the Committee on the Elimination of Discrimination against Women expressed "deep concern at the high prevalence of sexual and other forms of violence, including rape, perpetrated by members of the armed forces against rural ethnic women."

Murder, enslavement, deportation or forcible transfer of populations, torture, and rape are acts that can constitute crimes against humanity. To rise to this level they must be widespread or systematic, directed at civilian populations, with knowledge of the attack. Evidence suggests that crimes in Burma have been occurring on a widespread basis in areas inhabited by these ethnic groups. They are systematic and are part of concerted government and military policies that

include a policy of destroying villages in contested territory as well as the four-cuts and shoot-on-sight policies. The perpetrators are aware that their actions are part of these policies and that ethnic minorities are singled out for attack.

Moreover, the protracted military operations against multiple armed groups in eastern Burma most likely meet the threshold for an internal armed conflict. Thus international humanitarian law applies and the potential for the commission of war crimes exists. The Tatmadaw is currently violating its obligations under international customary and treaty law including through the widespread intentional targeting of civilians, showing a complete disregard for the principle of distinction, using civilians as human shields and for forced labor for such things as minesweeping and the construction of military infrastructure, and forcibly recruiting child soldiers. Ethnic armed groups are also conscripting children and using forced labor. However, experts report that crimes committed by groups not under government control do not appear to rise to the level of mass atrocities but do warrant attention.

Western Burma: Many of the same crimes against humanity also occur in the west, particularly affecting the Chin and the Rohingya. Of specific concern is also the high level of persecution against these groups that appears to rise to the level of crimes against humanity and, with respect to the Rohingya, ethnic cleansing.

Severe food shortages experienced by the Chin have been exacerbated by arbitrary land confiscation and the redirection of food aid to the military. Armed conflict between the Tatmadaw and the Chin National Army has led to a high level of militarization in Chin State. As in other areas, the military relies heavily on forced labor. This includes situations where individuals are forcibly transported far from their homes to work on building projects or as porters for days or weeks on without the freedom to leave. Such forced labor, by which the Tatmadaw and their proxies restrict freedom of movement and exercise control over the individual, is rampant in Burma and may well constitute the crime against humanity of enslavement.

The Rohingya, an ethnic Muslim minority, are likely the most oppressed minority within Burma with Human Rights Watch recently reporting that, “Even in Burma’s dreadful human rights landscape the ill-treatment of the Rohingya stands out.” Military operations in 1978 and the early 1990s resulted in mass arrests and torture which led hundreds of thousands to flee to Bangladesh.

In addition to the crimes experienced by other ethnic minorities in Burma, including rape, enslavement and murder, since 1982 the Rohingya have been denied citizenship and are stateless. To marry they need government permission, something that necessitates paying crippling high fees and bribes, thus preventing many from legally marrying. Marriage licenses issued to Rohingya restrict couples from having more than two children; and women bearing children out of wedlock are subject to fines and arrest. Many Rohingya are forced from their homes and villages to make way for ethnic Burman settlers who are given the seized property. These policies of denying citizenship, restricting marriage and limiting births all certainly appear, in conjunction with forced displacement and other crimes, to constitute the crime against humanity of persecution. These same policies strongly suggest that the government is using force and intimidation to render the area ethnically homogeneous, and thus is perpetrating ethnic cleansing.

The Risk of Future Escalation

The massive offensive against civilians in Shan State in the summer of 2009 suggests that crimes are likely to continue unabated with the possibility that they will become markedly worse. The upcoming 2010 election raises concerns about the potential for further gross human rights violations and possible atrocities directed towards pro-democracy advocates and others from ethnic and religious minorities. In recent months the SPDC has been placing pressure on ceasefire groups throughout the country to become border security forces under the control and direction of the Tatmadaw. Many ceasefire groups are resisting such pressure, and there is a concern that there will be a renewal of fighting – as already occurred in August of 2009 between the Tatmadaw and the Myanmar National Democratic Alliance Army (MNDAA), who refused to become a border security force.

Of particular concern is the United Wa State Army (UWSA), a ceasefire group in the autonomous Wa region that has become one of the largest illegal drug trafficking organizations in the world. Well-financed and heavily armed it is unwilling to cede power and convert its role into a government controlled border force. The UWSA is engaged in negotiations with the government, while simultaneously preparing for war, stoking fears about the risk of further atrocities and concerns that the government will use a “war on drugs” argument to justify a harsh crackdown and mute international criticism — the United States, other Western governments, China and Thailand have long called for the government to curb the Wa's drug trafficking operations.

There is also concern that these ceasefire groups will join forces with major non-ceasefire ethnic armed groups, such as the Shan State Army South (SSA-S) and Karen National Liberation Army (KNLA), leading to large-scale conflict with government forces and ensuing mass atrocities.

International Response

International actors have been strong in their condemnation of the regime but this has not yet translated into unified or effective action. Many governments have enacted an arms embargo and other sanctions against the government. However, despite the 2005 agreement that the Security Council is prepared to take action should governments manifestly fail to protect their populations, the Security Council to date has been largely silent on Burma. Both China and Russia vetoed a 2007 draft Security Council resolution on Burma on the grounds that violent repression in Burma was not a threat to international peace and security.

Much more needs to be done to engage reluctant actors, such as China and Russia, and to unify the international community of states behind policies to engage, and put pressure on, the government to fulfill its responsibility to protect the people of Burma. The ruling generals appear to be concerned about how they are viewed and are willing to make some concessions to improve their international standing. This leverage should be directed towards encouraging the

government to end the perpetration of atrocities against ethnic and religious minorities.

The Security Council, the Association of Southeast Asian Nations (ASEAN), the United States, India and Thailand, are potentially the most influential actors and must determine what policy options can plausibly prevent the commission of mass atrocities in Burma. Regional actors have a crucial role to play. ASEAN has made a decision that it will not defend Myanmar if domestic issues about the country are raised in any international forum. ASEAN and its members must continue to put pressure on the government, in keeping with R2P and the ASEAN charter, leading the way for future international efforts.

Measures that have been proposed include strengthening diplomatic sanctions, consideration of the Burmese government by the ASEAN Intergovernmental Commission on Human Rights, enacting a global arms embargo and economic sanctions, and referring the military leaders to the ICC. A 2009 Harvard Law report called for the creation of an international commission of inquiry, and possible ICC referral, in light of its finding that there was a prima facie case that the government was contravening prohibitions against crimes against humanity and war crimes.

Conclusion

Ethnic and religious minorities in the east and west face daily a risk of mass atrocities perpetrated with impunity and largely outside of the gaze of international actors. As Burma prepares for the 2010 elections, the world's attention need to be focused not only on the pro-democracy movement, and human rights violations committed against them, but also on the commission and risk of atrocities faced by ethnic and religious minorities. UN member states, the Security Council, ASEAN, and key neighboring states must take action to uphold their responsibility to protect the people of Burma.

- * The name of the country was officially renamed the Union of Myanmar by the military government in 1989. The use of term Burma in this report is not intended as a political statement.