

After the Storm:

Voices from the Delta



A Report by EAT and JHU CPHHR
on human rights violations in the wake of Cyclone Nargis

After the Storm: Voices from the Delta

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An independent, community-based assessment of health and human rights in the Cyclone Nargis response

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After the Storm: Voices from the Delta is dedicated to the survivors of Cyclone Nargis and to the tireless individuals who put themselves at risk to assist their neighbors. We extend our deep appreciation to those relief workers and survivors who took the time to share their experiences for this report. We would also like to thank Global Health Access Program (GHAP) and Karen Human Rights Group (KHRG) for the technical assistance they contributed to the project, and Thein Phyo Hein and John Kraemer for their research contribution. Many other individuals helped make this possible; we are, however, unable to name them for reasons of security, and look forward to the day when this will no longer be the case.

The report was written and published by the Emergency Assistance Team and the Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health. The latest electronic versions may be obtained from www.jhsph.edu/humanrights or www.maetaoclinic.org.



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The Emergency Assistance Team (EAT-BURMA), established on May 6, 2008, is a grassroots organization dedicated to providing aid and assistance to the people affected by Cyclone Nargis, especially in the Irrawaddy and Rangoon Divisions. EAT was formed through the collaboration of several Burmese community-based organizations on the Thai-Burma border and works through networks of local organizations in Burma to deliver food, water, shelter, clothing, health services and rehabilitation to those most in need, and to build the capacity of local organizations to conduct relief work.



The Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health, founded in April 2004, uses population-based methods to measure their effects of population-level violations of human dignity and the right to health and utilizes innovative public health approaches to minimize the consequences of such violations. The Center partners with grassroots organizations, human rights groups, and public health researchers and practitioners to identify and address the needs of the underserved and to investigate public health and human rights interactions.

Front and back cover photo: Image captured by “accidental relief workers,” students from Dagon University who organized to provide food, shelter, and education support for cyclone-affected villages. The photo was taken of the bridge to Twantay on Sunday, May 25th – weekends were the biggest days for relief trips out of Rangoon. Government officials who were attempting to limit public donations to survivors began to block cars at 6am, resulting in the long line seen in the image. The authorities were later arresting individuals who had spent the day in the Delta, passing back through here on the way home.

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Preface

In May of 2008, the world watched in horror as evidence mounted from Burma that Cyclone Nargis had been an enormous storm resulting in great loss of life. Offers for emergency assistance poured in from around the world as the numbers of the lost and the missing rose into the tens of thousands. Yet the ruling Burmese junta, the State Peace and Development Council (SPDC), proved reluctant to accept aid or allow skilled relief workers into the flooded Irrawaddy Delta. Some ten months later, reconstruction of the Delta continues and the survivors of the storm and their communities continue to face huge challenges. Their voices, their experiences, and their eye-witness accounts of the response to Cyclone Nargis have been missing from the international debate around the relief effort. This report, After The Storm: Voices from the Delta, by the Emergency Assistance Team and its partners, is the first independent assessment of the response to bring forth the uncensored voices of survivors and independent relief workers.

Their accounts are stunning. Relief workers witnessed systematic obstruction of relief aid, willful acts of theft and sale of relief supplies, forced relocation, and the use of forced labor for reconstruction projects, including forced child labor. When the junta allowed aid to reach survivors, it was often preferentially provided to members of the Burman ethnic group. Survivors experienced SPDC controls on basic rights and freedoms, and they were compelled to vote in the junta's anti-democratic constitutional referendum just weeks after the storm—before many had access to the most basic of services.

While other reports have detailed the relief effort, the human rights dimensions of the complex humanitarian emergency have been missing. This report demonstrates that the SPDC continues to violate the rights of relief workers and survivors, just as it continues to hold relief workers in its prisons for having dared to help their own people. The needs of the people of Burma, especially the people of the Delta, are many. Among them is the need for truth, for transparency, accountability, and respect for their human rights. The crimes against the people of the Delta must stop, and those who have committed them must be held accountable. After the Storm is a critical step toward that accountability. These are findings which call for immediate action. The people of Burma deserve no less.

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Image 1 July 2008, Pyapon – survivors, still in need of aid, received emergency food assistance from EAT and return home in monsoon rain (courtesy of EAT)

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Executive Summary

Cyclone Nargis lashed Burma on May 2, 2008, making landfall in the Irrawaddy Delta, 220 km southwest of Rangoon. This was a massive cyclone which would have been a challenge for any country to address. In all, some 140,000 lives are thought to have been lost, and at least 3.4 million persons were directly affected. Nargis hit Burma, a country under long-standing military rule, at a crucial time: just days before a national referendum on a new military-backed constitution was planned.

The response to Cyclone Nargis on the part of Burma's ruling junta, the State Peace and Development Council (SPDC), was profoundly affected by the junta's policies, its practices toward its citizens generally, and by the political imperatives of the junta's referendum priorities. The junta's response was marred by failures to warn, failures to respond, limits on humanitarian assistance from independent Burmese NGOs and citizens, and limits on humanitarian assistance from international entities eager to assist.

Independent assessment of the Nargis response has proven to be challenging. Assessments done with the collaboration of the junta have reported little on the human rights situation for survivors and relief workers.

Burma Before the Storm

Military rule in Burma has also been characterized by widespread human rights violations, including the violent suppression of the 'Saffron Revolution' in 2007, and severe curtailment in social spending. The official government expenditure on health is about \$0.70 per capita per annum or 0.3% of the national GDP, amongst the lowest worldwide. The health and social services situation is more severe in rural and ethnic minority areas.

The Referendum and the New Constitution

The SPDC announced in February, 2008, that it would hold a referendum on its new military-drafted constitution on May 10. The constitution had been drafted in secret by military-appointed representatives, without the participation of the National League for Democracy (NLD) and the Shan Nationalities League for Democracy (SNLD), winners of the 1990 elections which were never recognized by the regime.

It was against this complex and contested backdrop that the worst natural disaster ever to hit modern Burma made landfall.

The Emergency Assistance Team - Burma

Within days of the cyclone, health workers from the Thai-Burma border region joined together with community-based organizations (CBOs) in cyclone-affected areas to create EAT, the Emergency Assistance Team- Burma. The teams, eventually 44, were comprised of several volunteers each; most were themselves cyclone survivors. They received training in emergency responses, food and water distribution, and basic first aid provision. The EAT teams, working "under the radar" with local community based organizations that were unaffiliated with any formal governmental entity or non-governmental organization (NGO), went deep into the affected areas to provide relief to survivors.

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Their efforts are part of a larger ongoing effort of border-based social organizations which quickly respond to challenges such as Cyclone Nargis, mobilizing through a network of other CBOs. By the end of the first phase of relief (in the first three months) 44 direct assistance teams had provided assistance to an estimated population of some 180,000 survivors in 87 villages across 17 townships.

An Independent Assessment of the Nargis Response

In response to reports of human rights abrogation in cyclone-affected areas, a collaborative group was formed which included EAT and the Johns Hopkins Center for Public Health and Human Rights to conduct an independent assessment. With technical assistance provided by local organizations Global Health Access Program and Karen Human Rights Group, two rounds of data collection were undertaken in the Irrawaddy Delta by the EAT teams: from June to September, and October to November, 2008. A total of 90 interviews were conducted. Interviewees were 33 relief workers and 57 survivors, interviewed in storm-affected areas (including in the Irrawaddy Division) and in Thailand.

RELIEF EFFORTS AND THE HUMAN RIGHTS FRAMEWORK

The Government of Burma/Myanmar¹ is not a party to most international human rights treaties, but acceded to the Convention on the Rights of the Child (CRC) in 1991, and the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) in 1997, albeit with reservations. By accession to the CRC, the junta has legally agreed to recognize the right of the child to reach the highest standard of health and access to health care. Under CEDAW, special consideration is given to realizing women's rights to health care and to the needs of rural women.

The Responsibility to Protect

The Responsibility to Protect (R2P) report of the International Commission on Intervention and State Sovereignty (ICISS), issued in 2001, advanced a framework for international human rights protection, declaring that it was each sovereign nation's responsibility to protect their citizens from crimes against humanity, genocide, and other mass atrocities. This was later reaffirmed by the 2005 resolution of the UN General Assembly and the 2006 UN Security Council resolution. The 2005 resolution concluded that it is the responsibility of the international community

...to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity...." and taking "collective action" only "on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations.

R2P was invoked in the early, stalled response to the Cyclone, but was never implemented. The people of Burma, including EAT, *did respond to the responsibility to protect*—despite junta harassment, arrest, and, in some cases, imprisonment, for providing humanitarian assistance.

¹ Throughout this report we refer to the country as Burma, however, international treaties were accepted by the "Government of Myanmar" and so is reference as such in this case.

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Crimes Against Humanity

The testimonies presented in this report, document 1) intentional disregard of some cyclone victims, including women and children, that could and may have led to mass loss of life 2) failure to address the health needs of rural women, and of women and children generally, in the cyclone-affected areas 4) targeted interference with relief operations on the basis of ethnicity, religion, and political affiliation 5) forced labor 6) forced relocation affecting women and children and 7) the use of forced child labor. Each is evidence of the junta's violation of its legal obligations to uphold the provisions set forth in the CRC and CEDAW conventions. However, taken together, these systematic abuses may also amount to crimes against humanity, as defined by article 7(1)(k) of the Rome Statute of the International Criminal Court, through the creation of conditions whereby basic survival needs of civilians cannot be adequately met and thus "intentionally causing great suffering, or serious injury to body or to mental or physical health."

Investigation of these rights violations and redress for their victims is critical if the next phases of the Nargis response, including reconstruction, are to be conducted in accord with international human rights norms, and in accord with the Government of Burma's obligations to its people and to international law.

FINDINGS: VOICES FROM THE DELTA

In all, EAT teams conducted 90 in-depth interviews. Thirty-three were among relief workers and health care providers in the affected areas, while 57 interviews were among survivors of the cyclone. Names, villages, and other identifiers have been removed to protect the security of those who were interviewed.

Immediate needs for Food, Water, and Shelter following the cyclone

The storm hit at night and was over by about 9:30 am. I immediately went to see the damage. There was no help; no soldiers, no police, no USDA. I felt we had to do something. I went to the UNDP but they only talked about assessments and staffing. That is not effective, we need to do something NOW. So we organized emergency relief.

-- **Relief Worker, civil servant working in Hlaingtharya, Dala, Bogale, and Dedaye. Interviewed in Rangoon on June 21, 2008.**

Relief workers cited that the aid that did reach the villages was often inadequate to meet the needs of the communities, often of insufficient quantity, or infrequent in distribution:

Food

The villagers said that the government had only come that one time to bring them food since the time of the cyclone.

-- **Relief worker, Female, working in several villages in Labutta. Interviewed in Mae Sot on June 14, 2008.**

Water

Safe drinking water is still a problem, two months after the cyclone. People still use manual, shallow wells, the water has mud. There are no buckets for rainwater.

--**Relief Worker, working in Dedaye and Pyapon. Interviewed in Rangoon on June 25, 2008.**



Image 2 courtesy of EAT - Delivering fresh water by boat

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Shelter

Many people are still living in temporary shelters built from debris and tarps. Still living in same shelters. Government has cut down wood to build homes, but hasn't seen any new construction yet.

-- Relief Worker, Male, working in several villages in Labutta Township. Interviewed in Mae Sot on September 23, 2008.

We had makeshift tents up, made of tarp and bamboo, with mats. This was two weeks before official tents made it there.

--Relief worker, working in Labutta, Dedaye, Pyapon, Mawlamyinegyun, Bogale, and Kunyangon Townships.

Interviewed in Rangoon on June 23, 2008.



Image 3 Temporary housing continues to be used in Labutta in December 2008 (courtesy of EAT)

Health

I went alone, not with an organization, and stayed for one month. I provided the only medical care, solved the health problems, provided medical education (how to clean the water), distributed medicines and food.

-- Relief Worker, Male, Physician, working in Pyapon. Interviewed in Mae Sot on August 20, 2008.

Government Interference in Relief Efforts

Last time we went out, the military authorities were very rude. We wore UN shirts, they stopped us and said to us, "the UN are like dogs." In Myanmar [Burma], that is very bad. They say the military has to take care of the victims, not the UN. They forced us to listen to their speech, which was very rude. One of our team members did not bow at the end of their speech, they were questioned by a military officer, a major, why didn't you bow like the other villagers? This makes me sick.

-- Relief worker, working in Dedaye and Pyapon Townships.

Interviewed in Rangoon on June 25, 2008.

Many reported barriers were due to government interference in local and international attempts to provide relief to the affected communities. These included travel restrictions, numerous check-points along routes into the Delta, and "fees"² to access the Delta, all of which dissuaded and delayed relief work as groups were forced to find alternate routes and methods (often clandestine in nature) to deliver aid to survivors.

On our first trip to Dedaye [Township], we had to smuggle medicines in our backpacks to get to the relief area. After two weeks, it was better, now they don't stop us. But the first week was very difficult, they arrested people, stopped cars. We had to smuggle in supplies. Later, some relief groups had to pay, 30,000 kyat [\$25USD] at the checkpoint to pass. We avoid this; negotiations or smuggling is okay but we won't go this way, we won't give money to the military.

-- Relief Worker working in Dedaye and Pyapon Townships.

Interviewed in Rangoon on June 25, 2008.

² Fees and other costs reported here in *kyat*, and in the following sections, and are accompanied by the calculated \$US equivalent. This was calculated based on the approximate black market exchange rate of 1200 kyat = 1 \$US at the time the data were collected (June-November 2008).

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They asked for our name and where we are from. I gave them a fake name and told them that I came from Sittwe. I could not tell them that I came from the border. If I tell them that I am from the border, that I work with XX [organization] they will arrest me for sure. I do not dare to tell them the truth because they will arrest me and so I tell the government that I am from a Rahkine organization and want to donate the food to our people in this village.

-- Relief worker, Male, working in Hi Kyi township. Interviewed in Mae Sot on June 13, 2008.

Confiscation of Relief Supplies

Occurrences of theft and confiscation of relief supplies by authorities, including international aid, were frequently reported among those surveyed. Such reports were seen as particularly problematic in light of the regime's policy that all donated relief supplies be handed over to the Burmese government for distribution and not given directly to survivors, as recounted by a former SPDC soldier and relief workers:

I went to some of the markets run by the military and authorities and saw supplies that had been donated being sold there. These materials were supposed to go to the victims. I knew what materials were being donated and so I could recognize them in the market. The markets were Bassein [Patheingyi] Air Force Market, Military Central Market in South West. I saw Mama noodles, coffee mix, soap and other things. I saw many kinds of noodles and coffee mix in the market and because these materials were not made in Burma, they came from other countries...The money from selling these things would go to the shop owner, but they are all part of the military. The shopkeepers are all families of the military. Like soldier or general's wife...

---Former SPDC Soldier, Male. Interviewed in Mae Sot on September 13, 2008.

Supplying through the [Burmese] government doesn't work. At the [Rangoon] airport, you can see supplies landing there but they are stored at a government warehouse. You can see army trucks carrying it out and in some areas, you can see them reaching the army camp. The army camp gets [the supplies], not the villagers. Some was labeled with USAID. In some areas, there are 7 villages and only one received supplies with the USAID logo, not the others. Local commanders don't dare distribute and need to wait for permission from the top.

-- Relief worker, working in Dala, Bogale, Dedaye.
Interviewed in Rangoon on June 21, 2008.

Arrest of Relief Workers

The military also obstructed delivery of aid to those suffering from the destruction of Cyclone Nargis through intimidation and arrest of relief workers, including the private volunteers which were relied upon by most survivors in the critical weeks immediately following the disaster:

After one month, they came to the village, saw my supplies and started asking – they sent my information to Yangon [Rangoon] to investigate me. They were asking why there were so many supplies. They think it was anti-government. So I left; I don't like prison

--Relief Worker, Male, Physician, working in Pyapon.
Interviewed in Mae Sot on August 20, 2008.

Information

The inability to access reliable information was a major concern for relief workers. This was exacerbated by information released through the state-controlled official media outlets, which frequently minimized or obscured the extent of the disaster or needs of the victims.

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The government is telling people exactly what they can say to people if they are interviewed. They are told to say these exact things and nothing more during an interview. They have to say that the government is providing support and they can do farming and everything is ok. They say that they get everything from the government.

-- **Relief worker, Female, working in multiple villages in Labutta.**
Interviewed in Mae Sot on June 20, 2008.

When they come to inspect, everything is acceptable, all is taken care of. It is not. Even the refugees: I have seen pictures of the same kid, same mother, in pictures of different camp visits on different camp days [in the official news]. How can this be? It is impossible.

-- **Relief worker, working in Dedaye and Pyapon.**
Interviewed in Rangoon on June 25, 2008.

Distribution of Aid

Reports, such as the following, indicate interruptions in distribution and the challenges to receive aid that was faced by cyclone survivors:

... the government announces they will distribute to XX village 5 bags of rice and 1 bag of beans, come and get it. They [the government] wants to give impression that distribution is free. But they don't send it to the village, the village must go to town to pick it up. They need transport and the headman must pay. He could not afford it, it costs 10-13,000 kyat [per trip; \$8-11USD]. He charges the villagers for this so now it isn't free, they have to pay... the government tells him he cannot charge the villagers, so who will bear the transportation costs? So he sold some [of the supplies] to cover the costs, then the government doesn't allow him to sell. In the end, the village head doesn't go to get the supplies. For "insulting the government's goodwill," he was slapped in the face by the township authorities.

-- **Relief worker, working in Rangoon. Interviewed in Rangoon on June 26, 2008.**

Discrimination in the Delivery of Cyclone Relief by Ethnicity and Religion

Interviews with multiple respondents demonstrated that discrimination existed in the distribution of aid to cyclone victims, particularly in the Irrawaddy Delta, which had significant non-Burman and non-Buddhist populations.

Ethnicity

At first the government only supported the Burmese [Burmans]. Not Karen people. [The religious leader], my friend, told me. He said that when the government came to help the people, they came by boat, they took the Burmese [Burman] people in the boat. But ... the Karen people, they kicked them down. They didn't let them on the boat...

...if the government gives 200 kyat [\$0.20USD] per person for Burmese [Burmans] day, they only give 50 kyat [\$0.04USD] per day. This happened really. Also, they give the good rice to the Burmese [Burmans] and the bad rice to the Karen. When they give support. The rice was so pour for the Karen that when you wash it it would break in to very small pieces.

-- **Relief worker, Male, working in Patheingyi district.**
Interviewed in Mae Sot on June 20, 2008.

Religious Affiliation

When the government comes to help people in the affected area, they leave behind the Christian groups because they know they may be helped by Christian organization.

-- **Relief worker, Male, working in Bogale, Labutta, and Myaungmya.**
Interviewed in Mae Sot on October 4, 2008.

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Forced Relocation and Land Confiscation

The government authority came there and brought us to their camp, as they did not have the people living in their camp. If we did not go there, we were afraid to see the quarrel between the government and volunteers working in the monastery...We were sent to the XX camp...Just after staying there for a week we were moved again to Laputta [Labutta]. And then we were ordered to go back to our own village.

--- **Survivor, Female, from Labutta. Interviewed in Labutta on November 6, 2008.**

Some people were forced to go to government center. The government asks the church leaders to send people to government camps. They went to stay in the big buildings, where they store grain. The camp was called Dan Daye Ya... the government wants to show people in their centers so they can get support and aid from outside. In July they are sent back to the village even if their village has not been rebuilt.

-- **Relief Worker, Male, working in several villages in Labutta. Interviewed in Mae Sot on September 23, 2008.**

If people are not in camps, they often are living in monasteries or schools. The authorities forced them to leave, they want to show the higher authorities that there are no refugees after Nargis. In some areas, Ban Ki Moon and the UN visited; they don't want them to see [the displaced populations] and moved the whole camp. They sent them all back to their villages, by big ships. They had no choice. Sometimes, they were given some food, but often, they were given nothing and have to rely on local donors to fill the gap that the government is not doing.

Relief Worker, Male, working in Kyanggon, Kawhmu, Dedaye, Kyaiklat, Bogale, Ngapudaw, and Labutta. Interviewed in Rangoon on August 4, 2008.

Restrictions on Movement and Association

Within the official camps, movement was highly restricted, making it difficult for people to reunite with family members. The government relief centers were often operated in a highly controlled manner, further complicating efforts to gather information on the impact of the storm and the needs of survivors:

People cannot leave these government camps whenever they want. The government has a list of all the names. If you want to go and meet someone there you have to say who you are meeting and cannot bring a camera.

--- **Relief Worker, Male, working in Pantanaw. Interviewed in Mae Sot on June 13, 2008.**

Land Confiscation

Land ownership in the Irrawaddy Delta is complex: most farmers do not own land but have long-term leases from the government for farming and fishing rights. Cases of land confiscation by the government were reported by many interviewees, and included reports that military personnel forced inhabitants from their land, seized land in which the original owners were thought to have perished, and confiscated land if agricultural output did not meet expectations:

The military forced the refugees to go back to their home. They have a lottery for where the people will stay. If they "win" they will get a good shelter. So, the people from the villages around this new place are forced by the military to go to this new place. They don't want to go. But, there is no way they cannot go. They have to go. They are forced to go. Then, the villages that they were forced to leave are bought by the military. The rich people buy the land and buy it from the military. The few people who were living there that were left there, about 3-4 families, they can sell the land to the rich people if they want. It is up to them. But the rest of the land, from the people who died, is purchased from the military by the rich people. This is in Labutta district, many villages there. Also in Labutta township. Also in Bogale. The military does not try to find out who owns the land. The military

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takes the land and then sells it to the rich people and the military keeps the profit. The people who are still alive there are allowed to still own their land but they are made to leave.

--- **SPDC Soldier, Male. Interviewed in Mae Sot on September 13, 2008.**

The law is that people can live on land if they work it. It is the government's land. But the people cannot afford to farm the land: they have no rice, no machine, they cannot farm, so they will lose the land. The government will take it away.

-- **Relief Worker, Male, Physician, working in Pyapon. Interviewed in Mae Sot on August 20, 2008.**

Forced Labor

Survivors, mainly men but also women and, in some cases, children, were made to provide free labor for the reconstruction phase. Survivors and relief workers describe cases in which survivors were forced to work on military-run reconstruction projects, which included repair of military bases as well as schools, roads, and other infrastructure projects.

At XX, the villagers had to carry wood where they [the military] want... If you couldn't participate you had to buy a worker. Two thousand [Kyats; \$1.60USD] for an employee. Some family has extra man so we could requested to buy. They didn't give like that equipments. We brought our works. Sometime, there were some pressure by the soldiers. If you leaved from home at seven o'clock, you could started the work at nine o'clock. There was an hour for lunch and then until evening.

--- **Survivor, Male, from Labutta. Interviewed in Labutta on October 24, 2008.**

"The government is making people work for them. They force people to build things. For example, they built this wall to prevent sea water from coming in. They made this dam and asked labor from the villagers. The USDA came and made the villagers construct it. They only give USDA people support, but for the others they don't get money or anything. At least USDA [members] gets some food and a little money. "

--- **Relief Worker, Male, working in Labutta and Bogale townships, Interviewed in Mae Sot on June 25, 2008.**

Child Labor

Where adults were not available, children were forced to work in order to fulfill household quotas. Conditions in which adults and children were forced to work reported to be unsafe, with no medical care was provided for injured workers:

"[we were] required to go two times per day, once in the morning and once in the evening to rebuild the road and clean up the tree that was fell down by Nargis. One person per household was required to go, and children were also forced to work, especially if there were not any adults who could work in the home. If we do not work when they ask, we will be beat, tortured. That group is very violent."

--- **Survivor, Male, from Labutta. Interviewed in Labutta on November 30, 2008.**

Although, they [Light Infantry Division 66] did not help us, they threatened us. Everyone in the village was required to work for 5 days, morning and evening without compensation. Children were required to work too. A boy got injure at his leg and he got fever. After 2 or 3 days, he was taken to Yangon [Rangoon], but in a few [days] he died.

--- **Survivor, Male, from Labutta. Interviewed in Labutta on October 13, 2008.**

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DISCUSSION AND CONCLUSIONS

To date, this report is the only community-based, independent assessment of the Nargis response conducted by relief workers operating free of SPDC control. Using participatory methods and operating without the knowledge or consent of the Burmese junta or its affiliated institutions, this report brings forward the voices of those working “on the ground” and of survivors in the Cyclone Nargis-affected areas of Burma.

The data reveal systematic obstruction of relief aid, willful acts of theft and sale of relief supplies, forced relocation, and the use of forced labor for reconstruction projects, including forced child labor. The slow distribution of aid, the push to hold the referendum vote, and the early refusal to accept foreign assistance are evidence of the junta’s primary concerns for regime survival and political control over the well-being of the Burmese people.

These EAT findings are evidence of multiple human rights violations and the abrogation of international humanitarian relief norms and international legal frameworks for disaster relief. They may constitute crimes against humanity, violating in particular article 7(1)(k) of the Rome Statute of the International Criminal Court, and a referral for investigation by the International Criminal Court should be made by the United Nations Security Council.



Map 1 Cyclone Nargis and Burma (satellite image by NASA)

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I. INTRODUCTION

Cyclone Nargis formed in the Bay of Bengal as a tropical depression, becoming a cyclone on April 28, 2008. As it approached the coast of Burma, Nargis packed peak winds of 215 km/h (135 mph), a category 4 storm on the Saffir-Simpson Hurricane Scale. Cyclone Nargis lashed Burma the evening of May 2, 2008 and into the morning of the 3rd, making landfall in the fertile Irrawaddy Delta, about 220 km southwest of Rangoon. This was a massive cyclone which would have been a challenge for any country to address. However, it hit Burma, a country that has been ruled for over four decades by a succession of secretive military regimes, at a crucial time: just days before a national referendum of a new military-backed constitution was scheduled. In all, some 140,000 lives are thought to have been lost, and at least 3.4 million persons were directly affected.

The response to Cyclone Nargis on the part of Burma's ruling junta, the State Peace and Development Council (SPDC), was profoundly affected by the junta's policies, its general practices toward its citizens generally, and by the political imperatives of the junta's referendum priorities. This would prove to also be true to the later phases of the cyclone response, including the reconstruction phase still underway in 2009. The junta's response was marred by failures to warn, failures to respond, limits on humanitarian assistance from independent Burmese NGOs and citizens, and limits on humanitarian assistance from international entities eager to assist.(2-5) Independent assessment of the Nargis response has also proven to be challenging, and assessments done with the collaboration of the junta have reported little on the human rights situation for survivors and relief workers.(6) Access to survivors and their communities continues to be controlled by the junta, making assessment of the cyclone response independent of their restrictions all but impossible for many donors and relief agencies.

Burma Before the Storm

Burma is the largest country in mainland Southeast Asia and one of the most ethnically diverse, with over a hundred different languages and dialects spoken. It has been ruled by successive military dictatorships since 1962. The current regime is the State Peace and Development Council (SPDC), headed by Senior General Than Shwe, who continues to rule by decree, controlling all executive, judicial, and legislative powers, while other active or retired military officers continue to hold almost all the top government positions.(7) The SPDC consistently ranks amongst the most repressive military dictatorships in the world, responsible for widespread human rights abuses, including torture, rape, forced labor, arbitrary taxation, and extrajudicial execution against the people of Burma, especially against suspected dissidents and non-Burman ethnic minorities. (7-13)

Under military rule, this rich country with a promising future was transformed into a UN Least Developed Nation; amongst the poorest in the world, a country which consistently ranks amongst the most corrupt, known as a center for money laundering and trafficking of persons and narcotics.(14) In 2006, Burma's GNI per capita was only \$220 while neighboring Thailand's equivalent figure was \$2990.(15) Average daily wages in Burma are less than \$1, almost half of Burmese households are in debt, and UN surveys estimate that almost 70% of the average Burmese household expenditure is spent on food alone; the equivalent figures for Indonesia, Bangladesh, and Thailand are 59%, 57%, and 32% respectively, and a third of Burmese children suffer from

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malnutrition, underscoring the dire food insecurity in a country once known as “Asia’s ricebasket.”(16-22)

The Health and Social Sectors under Military Rule

Military rule in Burma has also been characterized by severe curtailment in social spending; health and education receive <3% and 10% of government expenditures, respectively. The official government expenditure on health is about \$0.70 per capita per annum or 0.3% of the national GDP, amongst the lowest worldwide.(23) Meanwhile, almost half the country’s annual budget is estimated to be spent on the Burmese military or *Tatmadaw*, over 400,000 strong.(24) The end result is that over 7% of children born in Burma do not live to their first birthday and over 10% die before age five, the highest child and infant mortality rates in Asia after Afghanistan, deaths that are largely preventable and mostly a result of infectious diseases or malnutrition. (21, 24-26) In 2000, the WHO ranked Burma’s health system 190 out of 191 member states, only outperforming war-torn Sierra Leone.(27) The situation is most dire in rural areas of the country, particularly in its eastern conflict zones, where poverty is more pronounced and human rights abuses by the *Tatmadaw* against ethnic civilians are rife. Here, perhaps 10% of children do not survive to age 1 and over 20% will die before age five. One in 12 women will eventually lose her life from complications of pregnancy. These figures bear closer resemblance to countries such as Democratic Republic of the Congo, Sierra Leone, Niger, and Angola. (28, 29)

Despite the humanitarian tragedy faced by the country, the peoples of Burma receive the least humanitarian aid per capita in the world, including most other fragile states; about \$3- quadruple what the government spends on health for its own peoples.(23, 30-32) Yet the country has enjoyed years of trade surpluses, primarily driven by sales natural gas to Thailand, which netted the country 2.7 billion dollars alone in 2007, over \$100 million *per month*.(33-35) When combined with the other top exchange earners of the country, including agricultural products, gems and jewelry, forestry and fishery products, the country enjoyed a trade surplus of over \$3.2 billion in 2007, its most profitable year ever.(36-38) Little of this has been invested in social services; instead, it has gone to fund arms purchases, a nuclear reactor, and a new capital city, dubbed *Naypyidaw* (Abode of Kings), estimated to cost over \$4 billion.(39-41) *Naypyidaw* is off limits to most foreign visitors and boasts unimaginable luxuries such as eight-lane highways, three golf courses, 24-hour electricity, and a zoo, complete with a climate-controlled penguin house.(42, 43) It also features bunkers to house the top leaders and their families in the event of invasion or civil war.(44)

Concurrent with disinvestment in social spending, the government has increased restrictions on international humanitarian aid in Burma, a situation that has steadily worsened since 2005.(14, 24) These restrictions were formalized in a publication issued in February 2006 by the Ministry of National Planning and Economic Development entitled *Guidelines for UN Agencies, International Organizations and NGOs/INGOs on Cooperation Programme in Myanmar*, which tightened central control over all humanitarian activities, particularly covering travel, program approvals, hiring of staff, procurement of equipment, and collection of data.(45) Activities would be executed with “Coordination Committees” which would ensure “smooth implementation of the projects,” members of whom would include government authorities as well as junta-backed organizations such as the Union Solidarity and Development Association (USDA), a para-statal group implicated in intimidation, harassment, and violence against perceived opponents of the regime, including the attempted murder of Aung San Suu Kyi in 2003 and, more recently, the violent suppression of the

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Saffron Revolution in 2007.(14, 31, 46-48) A Burmese language version of the Guidelines not distributed to UN Agencies or INGOs contained even more restrictions.(14, 49) As a result, several organizations have had to curtail or cease programs in Burma starting in 2005, including the Global Fund to Fight AIDS, Tuberculosis, and Malaria(50) and Medecins Sans Frontiers – France (MSF-France). Noted the latter’s country director, Herve Isambert, “We had to face up to the facts: the Myanmar authorities do not want independent, foreign organizations to be close to the populations they want to control... For humanitarian organizations, the issue is to recognize when our role has been reduced to being a technical service provider of the Myanmar authorities, subject to their political agenda and no longer to the goals that we have set for ourselves as a humanitarian organization.”(51) In 2006, the International Coalition of the Red Cross (ICRC) followed suit, forced by the government to shut down several field offices as well as their highly-regarded prison visit program.(24, 52, 53) Over a dozen INGOs operating in Burma subsequently pleaded with the SPDC to allow a more open environment for humanitarian assistance, particularly to the most vulnerable populations in the country, a call supported by the UN office in Burma.(22, 54, 55) In response, the top UN humanitarian official in Burma, Charles Petrie, was summoned to *Naypyidaw*, rebuked for “acting beyond his capacity in issuing the statement” and expelled from the country, just one day before the UN special envoy to Myanmar, Ibrahim Gambari, was scheduled to return to the country for further talks with the country’s rulers on the ongoing political crisis.(56-58) In January 2008, official rules governing humanitarian agencies in the country were tightened even further and now required that all humanitarian activities request permission from the Ministry of Defense; all field visits were to be accompanied by government “liaison officers;” short-term consultants or trainers were forbidden from domestic travel; Memoranda of Understanding (MoUs) for all projects were to be reduced from five years to only one year; INGOs were required to apply for renewal 3-6 months in advance before the end date; and data collection was sharply limited and required “prior discussion and agreement” with the authorities.(59-61) Concurrently, the Burmese government increased restrictions on visas issued to Western diplomats, NGO workers, and UN staff based in Burma, forcing the cancellation of high level UN visits, including one from the UN High Commissioner for Refugees and members of the UN’s main humanitarian arm, Office for the Coordination of Humanitarian Assistance (OCHA).(62, 63)

In this atmosphere of increasing obstruction of international humanitarian aid, the SPDC also increased pressure on local community groups deemed to be “too political, too independent or because they do a better job than the government at providing social services,” while promoting government-associated organizations such as the USDA as legitimate NGOs.(64-66) Access by international humanitarian aid organizations to Burma’s conflict zones and the country’s most vulnerable communities has and remains officially prohibited, forcing these communities to rely primarily on the assistance of community based organizations such as mobile medics, who frequently operate on a cross-border basis.(29, 67) These medics work at great personal risk; members of these CBOs have been harassed, intimidated, or killed, medical supplies and equipment have been seized, and clinics forced to be abandoned or closed by Burmese troops and their allies.(25, 28, 29, 68, 69) For these many reasons, in December 2008, MSF recognized Burma in their annual top ten list of the worst humanitarian crises in the world; Burma was featured as a place “where the governments fail to make health care a priority or view NGO interventions with suspicion,” sharing this position with Zimbabwe.(70)

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The Referendum and the New Constitution

In February 2008, the SPDC announced that it would embark on the fourth step of its Seven Step Roadmap to Democracy by holding a national referendum on the military-drafted constitution, scheduled to be held on May 10, 2008. The new constitution had been drafted in secret by military-appointed representatives, without the participation of major victors of the 1990 elections, the National League for Democracy (NLD) and the Shan Nationalities League for Democracy (SNLD), the results of which had never been recognized by the regime.(71) The new constitution allowed the army commander to appoint a quarter of the parliament's members which, given that amendments require sponsorship of at least 20% of parliamentarians for deliberation and then passed by a vote of at least 75%, renders any changes that are not sponsored by the military almost impossible. The document also permits the Commander-in-Chief to assume full legislative, executive, and judicial powers in event of a "state of emergency," which he is entitled to declare at any time, and further bars Aung San Suu Kyi from participation from politics citing to her marriage to a foreigner as allegiance to a foreign country.(72-74) Offers of international and independent observers to monitor the referendum were bluntly rejected by the junta, and further intimidation against dissidents ensued.(11, 74, 75) Noted the UN Special Rapporteur on Human Rights in Myanmar, Paulo Sergio Pinheiro, "A referendum without some basic freedoms of assembly, political parties and free speech is a farce. What the Burmese government calls a process of democratisation is, in fact, a process of consolidation of an authoritarian regime."(76)

It was in the backdrop of these chronic national crises that the worst natural disaster ever to hit modern Burma made landfall.

Under decades of harsh and repressive military rule, the peoples of Burma have learned to help themselves and their communities, often in the face of brutality and always with the threat of severe punishment for activities not approved by the junta and its affiliated entities. In response to the cyclone, many ordinary Burmese rushed to the aid of their neighbors, attempting to address the needs of millions of affected citizens. While the international community debated how best to respond, the people of Burma took action on the responsibility to protect their fellow citizens. This report captures the voices and experiences of independent civilian relief workers and survivors from the Irrawaddy Delta, collected by these community members themselves using participatory research methods and in-depth audio-taped interviews. Both the relief efforts and the collected testimonies of survivor experiences reported here were independent community responses to Nargis.

The Emergency Assistance Team - Burma

Within days of the cyclone, health workers from the Thai-Burma border region joined together with CBOs in cyclone-affected areas to create EAT, the Emergency Assistance Team- Burma. The teams making up EAT, eventually more than 40, were each comprised of several volunteers who were local people, religious and secular leaders. Most were survivors themselves of Cyclone Nargis. They received training in emergency responses, food and water distribution, and basic first aid provision. They were supplied by an array of independent donors with food, medical supplies, water purification supplies, and cash. The EAT teams, working "under the radar" and not affiliated with any formal NGO or governmental structures, then went deep into the affected areas and provided relief to survivors starting within days of the cyclone. Regular re-supply and re-training

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activities continue to the present. The EAT teams have had unmatched independent access to survivors of the cyclone and to populations who have faced both the cyclone, and the junta's responses. Their efforts are part of a larger, ongoing, effort of cross-border health and human rights programs conducted by Burmese health workers and CBOs.

The focus of EAT's work is in the Irrawaddy Division, with some assistance also provided in Rangoon and Pegu Divisions as well. Immediately after the cyclone made landfall, and while INGOs and UN agencies were awaiting permission to enter Burma, fourteen direct assistance teams were mobilized to deliver emergency aid, with assistance from the EAT administration. By the end of the first phase of relief (in the first three months following the storm) a total of 44 direct assistance teams had accessed and provided assistance to an estimated population of more than 180,000 survivors living in 87 villages and spanning 17 townships. Their focus during this phase was to provide essential assistance to all areas where no other international assistance was being delivered. Activities included providing clean water and food, distributing materials for shelter and clothing, properly disposing of the bodies of the dead, working on family reunification, and providing emergency healthcare via distribution of medicine and medical supplies and referrals. In addition, child protection was a key priority of the initial phase as well, with EAT teams providing assistance to and supporting orphans and unaccompanied children.



Image 4 Supplies delivered by EAT (image courtesy of EAT)

During the second phase of EAT operations (the second three-month period after the cyclone), the teams' priorities were directed toward rehabilitation efforts, including rebuilding homes and reestablishing livelihoods, education, and health infrastructure. Given the fluidity of the situation and the variety of needs, EAT had to respond in a flexible manner and relied on community networks and organizations to help prioritize areas of need and support. During this phase, the numbers of EAT-Burma relief teams were reduced to 29 due to security issues that resulted from increasing checkpoints and the demand from authorities that all aid is to be provided only through official channels. In addition, the EAT administration was increasingly able to directly link with community organizations, which eliminated the need for teams acting as go-betweens and also allowed for this reduction without losing their impact.

Beyond the emergency relief, EAT has continued to play an important role in affected areas because of their ability to access challenging areas. As residents of these storm-affected areas, they arouse less suspicion while traveling and as members of the communities they serve, they also are trusted and are in a unique position to gauge the priorities and needs of the local people. Despite the strict control over information gathering, analysis, and dissemination by the Burmese government, they have made it a top priority to document flawed policies and problems encountered at the local levels during cyclone relief efforts. Such measures are key for informing policy change and cost-effective program design and evaluation. By doing so, EAT seeks to actively involve community members in the decision-making process, empowering them to rebuild their own communities.

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Concerns in the Delta

By June of 2008, several weeks after the storm and national referendum, it was clear that there were a range of human rights concerns emerging in responses to the Cyclone. Media reports of forced movement of survivors, of misappropriation of aid, and of unfair and unequal distribution of aid were many. While the world focused on compelling the junta to allow increases in international aid to reach the survivors, the people of the Delta languished under the kinds of human rights violations the Burmese junta has so long been known for.

In response, EAT and its partners agreed that an independent assessment of the actual conditions on the ground, in affected areas, was called for. A collaborative group was formed to conduct this assessment, which included EAT and the Johns Hopkins Center for Public Health and Human Rights, which contributed technical support for training community investigators, developing survey instruments, training in interview methods, and providing support for data analysis.

Two rounds of data collection were undertaken in the Irrawaddy Delta by the EAT teams, the first from August to September, and a second, to gather additional information from the later phases of the response, in October and November of 2008.

A total of 90 interviews were conducted; 33 interviews were conducted with relief workers and 57 of survivors, covering areas including Rangoon, Bogale, and other storm-affected areas, as well as of refugees living across the border in Thailand. In all, some 87 communities in 17 townships were visited. Interviews were conducted in Burmese, *Skaw* Karen and *Po* Karen, audio-taped, then translated into English, transcribed, and the English language transcripts checked against the original language versions by bilingual team members.

The FINDINGS section of this report is comprised of the results of these independent testimonies. The subsequent discussion on Cyclone Nargis and on the response helps put the testimonies in context and illuminate the wider policy and political environment around the disaster and its ongoing consequences.

Relief Efforts and the Human Rights Framework

Provisions for the protection of basic and non-derogable human rights were internationally and formally acknowledged in the 1948 Universal Declaration of Human Rights (UDHR).(77) While the UDHR and guidelines for human rights protections have formed the set of norms under which international human rights principles are applied, the UDHR is not a binding law in itself, though many of its key principles are often considered to have the status of customary international law. Furthermore, Burma is not a party to the two treaties which comprise the foundation of modern human rights law—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

The Government of Burma/Myanmar³ is not a party to most international human rights treaties, but acceded to the Convention on the Rights of the Child (CRC) in 1991, and the Convention on

³ Throughout this report we refer to the country as Burma, however, international treaties were accepted by the “Government of Myanmar” and so is reference as such in this case.

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Elimination of all forms of Discrimination Against Women (CEDAW) in 1997, albeit with reservations. These conventions provide the foundations to protect the basic rights to life, dignity, education and health of children, women, and their families. Of most relevance to the cyclone response, the junta has "...recognize[d] that every child has the inherent right to life." and the government "shall ensure to the maximum extent possible the survival and development of the child." (Article 6). Furthermore, as a party to the CRC the junta has legally agreed to recognize the right of the child to enjoy the highest attainable standard of health and access to health care. This includes the following provisions (Article 24).(78)

Article 24.2b To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

Article 24.2c To combat disease and malnutrition, including within the framework of primary health care, through...the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

Article 24.4 State Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article...(78)

Provisions of the CEDAW treaty assert several rights to health:

Article 12.2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

CEDAW also offers special provisions for rural women:

Article 14.1 1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

Article 14.2 (b) To have access to adequate health care facilities, including information, counseling and services in family planning

Accessions to these treaties legally obligate states to ensure the protection of these rights. They also require monitoring and reports on specific measures to demonstrate the country's progress in meeting the obligations and addressing any concerns raised by relevant UN councils charged with providing oversight.(78, 79) At the Twenty-second session meeting with the Committee on the Elimination of Discrimination against Women, held in January 2000, specific concerns were raised by the Committee about Burma.(80) These included the SPDC's use of forced relocation, the status of refugee camps, forced labor practices, and political process and exclusion/house arrest of Daw Aung San Suu Kyi. In response, the regime denied the use of forced relocation but argued that because of the "ethnic insurgency problem," women and children had been "resettled in safer areas to protect them from insurgent atrocities" and these "transit camps facilitate the repatriation of returnees by meeting their basic needs before they were sent home."(80) Furthermore, the government claimed that the political process was slow "in order to safeguard the interests of all the national races and to avoid replicating the shortcomings of the two previous Constitutions." Finally, despite continuing house arrest to date, it was stated that Aung San Suu Kyi "was not under house arrest and could move about freely in Rangoon" and was not allowed to stand for elections due to her "allegiance to a foreign country."(80) At the conclusion of the meeting, the committee

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emphasized the need to ensure human rights protections during times of internal conflict. Most relevant to the current situation, specific recommendations were made by the committee in reference to the behavior of law enforcement authorities, stating that it was the state's responsibility to ensure they "conformed to human rights standards and to make sure that they knew they would be held accountable and prosecuted for human rights violations..."(81) All of these concerns were once more raised by the CEDAW committee in November 2008, and additional concerns raised regarding the Burmese government's neglect of health services and its failure to facilitate provision of international humanitarian aid.(82)

Responsibility to Protect

Beyond these multilateral treaties, the Responsibility to Protect (R2P) report, produced by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, advanced a framework for international human rights protection, declaring that it was each sovereign nation's responsibility to protect their citizens from crimes against humanity, genocide, and other mass atrocities.(83) This was later endorsed by the 2005 resolution of the UN General Assembly following the World Summit,(84) and by the later 2006 UN Security Council Resolution 1674.(85) The 2005 UN General Assembly resolution noted:

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out. (84)

International intervention, in this case, does not necessarily imply military intervention; rather it implies the action of able states, organizations, and communities to make diplomatic and humanitarian efforts to alleviate these humanitarian emergencies, with "enforcement action" only when deemed necessary by the UN Security Council.(86)

In 2005, then UN Secretary-General, Kofi Annan, reiterated the call to the international community to embrace the responsibility to protect:

"...no legal principle – even sovereignty – should ever be allowed to shield genocide, crimes against humanity and mass suffering. [130] But without implementation, our declarations ring hollow. Without action, our promises are meaningless. ...Treaties prohibiting torture are cold comfort to prisoners abused by their captors, particularly if the international human rights machinery enables those responsible to hide behind friends in high places... And solemn commitments to strengthen democracy at home, which all states made in the Millennium Declaration, remain empty words to those who have never voted for their rulers and who see no sign that things are changing."

- Sec. General Kofi Annan, *In larger freedom: towards development, security and human rights for all*. Paragraphs 129-133(87)

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Questions about the responsibility to protect Burma's peoples had been raised even prior to Cyclone Nargis. Human Rights Watch (HRW) and Refugees International (RI), among others, have cited the indiscriminate use of landmines against ethnic civilians, the use of forced labor and displacement, the systematic rape of ethnic minority women, the forcible recruitment of child soldiers, and torture and arbitrary executions of political prisoners by the Burmese military.(11, 88) In 2006, the UN Security Council, deliberated these violations and the role in which the international community should play. At the January 2007 proposal of a resolution calling for the cessation of such violations, Permanent Security Council members China and Russia vetoed the proposal, claiming that Burma was "not a threat to international peace and security" blocking further deliberations by the UN Security Council. The discussion of R2P was reinitiated in response to the brutal crackdown of peaceful protesters and civilians by the Burmese government during the Saffron Revolution of September 2007, leading to the convening of a special session by the UN Security Council and the UN Human Rights Council.(89) The resulting Presidential Statement, released on October 11, 2007, "strongly deploring the use of violence against protestors in Myanmar," and called for the "Government [of Burma] and all parties concerned to work together towards a de-escalation of the situation and a peaceful solution."(90) Concurrently, the UN Human Rights Council called for further investigation of the human rights abuses and the release of political prisoners.(89)

R2P offers broad coverage for the protection of human rights during instances of mass atrocities and crimes against humanity, and is therefore often debated in other situations of conflict and natural disasters. Internal disruptions of a country, such as political unrest and natural disasters, create situations in which civilian populations are particularly vulnerable and the risks of human rights violations are great. Such vulnerabilities became clear following the Asian Tsunami of 2004, when human rights violations such as "unequal access to assistance; discrimination in aid provision; enforced relocation; sexual and gender-based violence; loss of documentation; recruitment of children into fighting forces; unsafe or involuntary return or resettlement; and issues of property restitution" were commonly experiences among internally displaced persons (IDPs) and survivors.(91) These "lessons learned" helped galvanize the UN's General Assembly Resolution 60/251 establishing the Human Rights Council, charged with "promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner," in place of the Commission for Human Rights.(92) To implement this resolution, the *Report of the Representative of the Secretary-General on human rights of internally displaced persons* (with the addendum, *Operational Guidelines on Human Rights and Natural Disasters*) was released, offering guidance on humanitarian assistance based on the protection of human rights among internally displaced persons and survivors of natural disasters.(91) Without guidance by a human rights framework, humanitarian assistance may be "too narrow" and fail to address all of the needs of the population. Therefore, this document specifically acknowledges the inherent rights of the victims as rights that are not lost with the onset of the disaster and further reaffirms the entitlement of victims and IDPs to protection and assistance from their country. While declaring that protection of such populations is the responsibility of the state, the document also notes that in the case where states fail to or are unwilling to protect its populations or provide necessary assistance, external intervention is justifiable. states that protection under international human rights and humanitarian laws when the state cannot or will not provide the necessary assistance is justifiable.(91) Emphasis is thus placed on the State's responsibility not only to end violations that may be occurring, but also to prevent such occurrences as well as ensure reparation

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and rehabilitation from those disasters that have occurred. Further recommendations call for appropriate monitoring systems in place to ensure that these protections are in place.(91, 93)

The responsibility of the Burmese government and international actors to uphold the provisions set forth by R2P and the guidelines for ensuring the rights of civilians following natural disasters was tested by Cyclone Nargis, quickly becoming a debate over the definition of state sovereignty and the responsibility of international actors to invoke R2P. On May 7, 2008, French Foreign Minister and co-founder of Medecins Sans Frontieres (MSF), Bernard Kouchner, threatened to invoke R2P to deliver aid to cyclone victims without the junta's consent, aid that waited just off the Burmese coast on a French naval vessel that had not been granted permission to offload their life-saving supplies. However, the UN disagreed, arguing that "invasion" would not be a "very sensible option" and the Secretary General's Special Advisor to R2P stated, "linking the responsibility to protect to the situation in Burma is a misapplication of doctrine."(94, 95) In this event, R2P was ultimately not invoked, but its threat may have helped lead to efforts to expand international humanitarian relief access in Burma.

Crimes Against Humanity

In particularly egregious instances, systematic and widespread human rights violations can rise to the level of a crime against humanity. The Rome Statute defines a crime against humanity as the knowing perpetration of any one of 11 listed offenses "as part of a widespread or systematic attack directed against any civilian population."(96) Although the language of an "attack" conjures ideas of armed force, the word's legal definition is much broader, consisting of a "course of conduct involving the multiple commission" of prohibited acts.(96) The acts which can give rise to a crime against humanity—if carried out in a widespread and systematic course of conduct—include killing or causing of death by infliction of conditions calculated to destroy part of a population, enslavement, deportation or forcible transfer of populations, rape and other sexual violence, as well as "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" [Article 7(1)(k)]. Additionally, persecution—such as on the basis of race, ethnicity, religion, political belief, or gender—in connection with other forbidden acts—can also constitute a crime against humanity.(86, 96)

The International Criminal Court has jurisdiction to investigate allegations of crimes against humanity when the acts which may constitute such a crime have occurred within the territory of a state that has accepted ICC jurisdiction, if committed by the national of such a state, or if referred to the ICC by the UN Security Council.(96) Burma has not agreed to ICC jurisdiction, thus formal investigation of junta officials for crimes against humanity would require a UN Security Council referral.

The testimonies presented in this report, document 1) intentional disregard cyclone victims, including women and children, that could and may have led to mass loss of life 2) failure to address the health needs of rural women, and of women and children generally, in the cyclone affected areas 3) the obstruction, theft, resale, and deferment of aid to benefit the junta 4) targeted interference with relief operations on the basis of ethnicity and religion 5) forced labor and forced donation, 6) forced relocation affecting women and children and 7) the use of forced child labor. Each is evidence of the junta's violation of its legal obligations to uphold the provisions set forth in the CRC and CEDAW conventions. Taken together, they may amount to crimes against humanity.

