

# **Justice Delayed, Justice Denied**

## **Seeking Truth about Sexual Violence and War Crime Case in Burma**

(With a Special Focus on the Kawng Kha Case, in Kachin Land)

Collectively compiled by

Legal Aid Network (LAN)

and

Kachin Women's Association in Thailand (KWAT)

January 2016

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## Acknowledgement

We are very grateful to all the interviewees for their courage in speaking the truth, and to all KWAT staff, field workers and students from the Federal Law Academy (FLA) who took great risks to collect the information. The responsible religious leaders from the Kachin Baptist Convention (KBC) – who collected and shared relevant information and motivated the mentality of the witnesses to fight for justice – are highly appreciated.

We especially would like to thank the Legal Aid Network (LAN) for technical assistance in developing this report.

We would also like to thank the Burma Relief Center (BRC) and Open Society Foundation (OSF) for their generous financial support, which made this report possible.

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## Executive Summary

Despite the so-called democratic transition taking place since 2010, Burma<sup>1</sup> remains constitutionally under the control of the Armed Forces. However, our national democratic icon, democratic forces, some ethnic armed organizations, many NGOs -- especially GON-GOs – and most of the international community are siding with or exercising a policy of appeasement with the power holders, without scrutinizing whether the source of their power emanates from the genuine will of the various ethnic nationalities and/or indigenous peoples.

As a result, terms such as human dignity, human value, and particularly human rights have become empty rhetoric. Accountability is merely a political slogan, used by the incumbent President Thein Sein, the chairperson of the Union Solidarity and Development Party (USDP), since coming to office in 2011, but never implemented by any government institution in practice. The vicious circle of impunity continues, and, for the time being, seeking justice is an unpopular concept, voiced only by victims' communities.

Against this background, a heinous crime against two young ethnic Kachin female volunteer teachers was committed on January 19, 2015, allegedly by the Myanmar soldiers of the ruling regime. Despite the fact that it has been almost ten months now, the perpetrators are still at large and no suspect has been identified by the police. Investigations carried out by the authorities have not focused on the victims, but have been one-sided, benefitting the perpetrators. The lack of reparative and restorative justice has led to delay and finally a denial of justice. The ominous silence around this case will become a catalyst for recurrence of gross human rights violations in the future.

This preliminary report attempts to uncover the truth about this case, relating it to similar past incidents of war crimes, particularly sexual violence. It is also examined as to whether the state is held accountable for failure to provide protection for such heinous crimes and reparations to the victims, due to official state passivity. The government is also reminded of its obligations under domestic and international law.

The victims of rape have commonly been non-Burman ethnic females, such as Shan, Karen, Kachin, Karenni, Palaung, etc. As such, the crimes can be categorized as having an ethnic nature. In many previous cases, even though victims were raped, they were not murdered. Burma was the official name of the country, which was used when the country gained independence. Afterwards, it was changed into Myanmar by the previous military

dered. And even if they were murdered, they were not tortured. However, the Kawng Kha war crime case highlighted in this preliminary report is quite distinct. The victims were not only raped but also murdered. Worse, it was not an ordinary rape but a gang-rape. In addition, the victims were inhumanely and brutally tortured before they were murdered. As of now, nobody knows whether the victims were tortured by the perpetrators before or after being raped.

As such, among the gross human rights violations inflicted on the various ethnic nationalities over the past decades, the Kawng Kha case constitutes one of the most heinous crime ever committed. Unfortunately, the ruling regime, albeit having the responsibility as the government, has not yet submitted any report specifically on this case to the Committee against Torture and to the Committee on the Elimination of Discrimination Against Women (CEDAW), which Burma has already acceded to. There are no independent institutions or professionals working with victims of sexual violence nor does there exist any effective law for protection of witnesses in Burma.

In accordance with the 2008 Constitution of Burma, the Myanmar Armed Forces, led by the Commander-in-Chief – not the State President – primarily exercise executive power. In addition to the Police and other security institutions, the Judiciary is also subservient to the executive. This legal and institutional framework has exacerbated the situation of the victims, their families and their communities, whenever the culprits or suspects are army personnel or government authorities. In regard to sexual violence, a serious problem is that ethnic women victims, given social, geographical, financial and legal constraints, are unable even to file complaints; and, even if a complaint is filed, it is commonly rejected by the Judiciary or the local authorities.

This paper explores the status of State Institutions, focusing on the Police Institution, from the aspect of institutional integrity as well as procedural justice, as underpinned by not only national laws, international human rights laws and humanitarian law, but also the Rule of Law. This paper also establishes the nexus between civil war and human rights violations and attempts to find a reasonable solution. Last, but not least, the role and responsibility of the international community is scrutinized from the perspective of promotion and protection of human rights in connection with the previous and current background scenario of Burma.



## Case Summary

Ms. Maran Lu Ra and Ms. Nan Tsin were young Kachin ladies, 20 and 21 years old. They were from Myitkyina, the capital of Kachin State, in the northern part of Burma/ Myanmar. As devout Christian churchgoers, they were volunteering as teachers at a school, sponsored by the Kachin Baptist Convention (KBC) in the Kawng Kha Shabuk village, about 20 miles east of Muse town, in Northern Shan State. They had been sent there by the KBC about eight months before the incident happened on January 19, 2015.

They taught at the village school, and stayed in a small bamboo house within the church compound. Apart from the two of them, no one else stayed in the compound, which was at the edge of the village. There are 28 households in the village, with a population of about 160 people. There exists no permanent encampment of the Myanmar Army or government force in or around the village, which is located in a government controlled area, nor are there any ethnic armed resistance organizations operating in the area, despite the fact that the internal armed conflict was still taking place in Kachin and Shan States at the time the crime was committed.

On January 19th 2015, at about 7 a.m.,<sup>2</sup> a military column – comprising about 50 soldiers led by Major Aung Phyo Myint – from the government's Light Infantry Battalion (LIB) 503, which is based in Kyaukme, arrived at Shabuk Kawng Kha village. They

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2 Statement of Mr. Seng Naw, a villager living nearby

came from the direction of Mong Ko, where there had been a military operation against the Kachin Independence Army (KIA) in early January. The soldiers occupied four houses nearby the church compound, posting guards around the village within eyesight of each other. They maintained close guard of the entire village to ensure their security.

In the evening, the two teachers went to a birthday party for the child of Mr. Zein Ton La, the deputy administrator of the village, at his house. They returned back to their house at about 10 p.m.

On January 20th 2015, at about 1:00 a.m., three villagers living near the church compound heard screams coming from the church compound. They went to the house in the compound where the two teachers were staying, and called out to them, but there was no answer. There was no light on in the house, only in the toilet nearby. They could hear some groaning from inside. The villagers thought the women might be sleeping deeply, and perhaps the screaming came from some quarrelling of neighbors nearby. They therefore went back to their homes.

In the early morning, at about 5:30 a.m., a truck with about ten soldiers from the Myanmar Army left the village whilst some soldiers still remained there.<sup>3</sup>

At about 7 a.m., a neighbour, Mrs. Lahpai Nang Seng,<sup>4</sup> was surprised when the teachers, who routinely prepared breakfast in the early morning, were not seen around their house. Then the neighbor went to check, and also called out the teachers' names. However, no response was received. The neighbor then pushed the door, which was opened easily; the bodies of the two teachers – lying under the cover of a blanket – were found dead; and, the neighbor yelled. The other villagers rushed to the scene of the crime immediately.

The bodies with knife wounds were half naked; appeared raped and murdered; and their heads had been severely beaten. The neighbors noticed there were marks of boots in front of the house, where the crime was committed. That morning, all the villagers were just shocked and upset and many cried; but did nothing.

Afterwards, the village administrator called the police by phone. At about 2 p.m., the police from Panghsai town, together with an ambulance, got there. They examined the scene of the crime and took the bodies to Muse Hospital. In the afternoon, more Myanmar

3 Statements of Mrs. Hpau Da Seng Hkam and Mrs. Ban Yawng

4 Statement of Mrs. Lahpai Nang Seng, a villager living nearby

soldiers, numbering 200, from Kyaukme, reached the village. About 100 began staying in villagers' houses, while another 100 patrolled around the village. Major Aung Phyo Myint and his soldiers from LIB 503 remained in the village as well.

On 21 January 2015, the bodies of the two teachers were brought from Kawng Kha Shubuk village to Myitkyina, the capital of Kachin State, passing through some towns – Kut-khai, Lashio and Mandalay. On the way to Myitkyina, when thousands of local people saw the coffins, they mourned for the two teachers. On 23 January 2015, the bodies of the victims were buried in the Nawng Nang graveyard, Myitkyina, in a public ceremony, attended by thousands of people.



## Seeking Truth

With regard to the Kawng Kha case, truth shall be sought and the perpetrators uncovered. In addition, the crime will be analyzed from the aspect of human rights, the Rule of law and other factors, such as the civil war, procedural justice and the status of state institutions, which have influenced the entire case. To this end, for the first stage, the investigation will focus on 'suspects' who might have committed this brutal crime. Who should be identified as suspects – the local villagers or the soldiers who entered the village one day before the crime occurred?

Prior to this incident, the Kawng Kha village was peaceful and quiet. There was no murderer, dacoit, or robber;<sup>5</sup> even though the houses were not fenced nor were they secure, rape and murder never occurred; <sup>6</sup> nobody in the village had committed a similar crime previously and there had been no villager cruel enough to commit such a heinous crime. Having examined the villagers, the Kachin Baptist Convention (KBC) stated that people living in that village neither committed nor were involved in this case. This needs to be scrutinized.

When police examined the scene of the crime within some hours after the incident, no statement or physical evidence which would prove the involvement of any villager or local civilian people in the crime, could be collected. Despite the fact that police searched over 10 houses in the village, no single piece of evidence which could have identified any villager as a suspect, was found. <sup>8</sup>

If the local villagers had an intent to commit that heinous crime by themselves against their own voluntary teachers, whom they respected highly, they might have chosen the night before the military column entered the village or after that period. This was not the case. Furthermore, even if the crime was committed by other local people that night, the perpetrators would have been apprehended by the army personnel; otherwise, at least, a yell of terror would certainly have been heard by the soldiers who were standing by or patrolling for security; and, immediately after the crime, in order to search for anonymous perpetrators, there would have been cooperation between the soldiers and the local villagers that night. However, nothing happened. As such, it is evident that the local villagers cannot be regarded as suspects. <sup>9</sup>

The Kawng Kha crime was committed by an unidentified force systematically, without being noticed by the entire village. The circumstantial as well as physical evidence indicate the soldiers from the Light Infantry Regiment No. 503, the troops of the ruling regime in Burma, as suspects.<sup>10</sup> There was no other military force at the time the incident happened.

How can this be analysed?

5 Statement of Mr. Laphai Zaw Phan, a villager in the Kawng Kha village

6 Statement of Zehkung Hkawn Mai

7 Statement of Mrs. Zingtung Ma Myaw

8 Statement of U Aung Nan, village administrator, and U Zinhtung La, quarter administrator

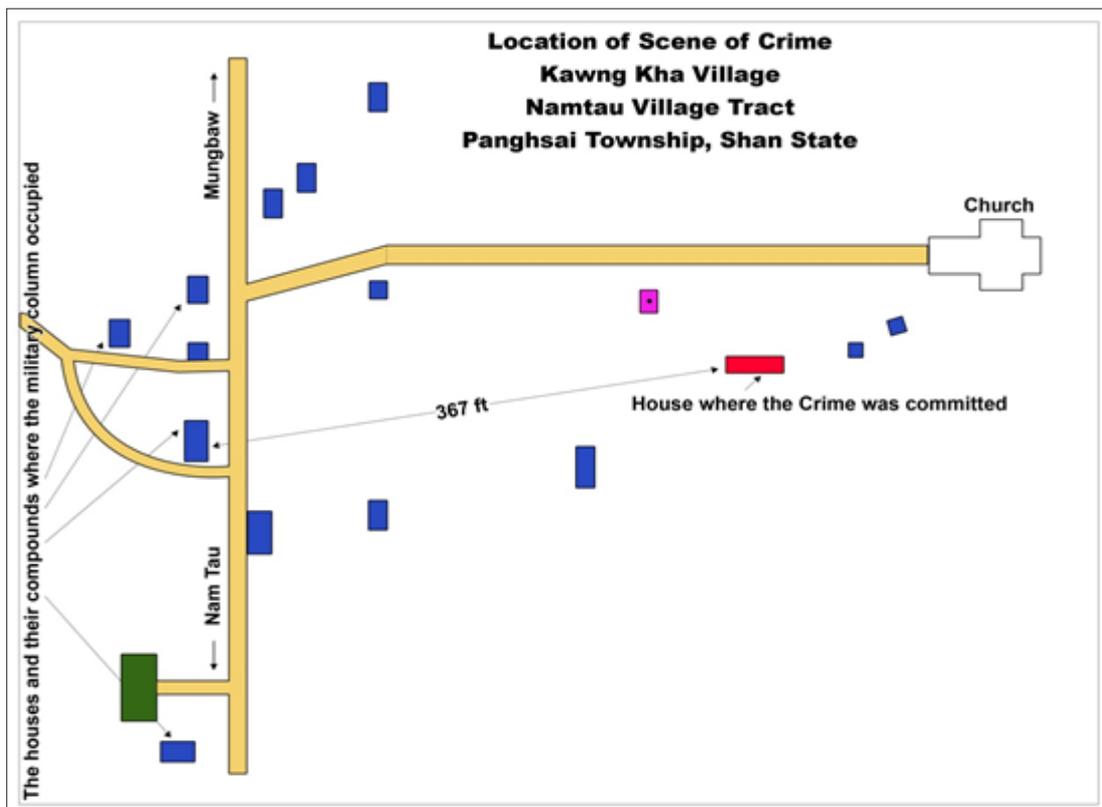
9 Conclusion made by the Kachin Baptist Convention

10 Statement of Mr. Laphai La Sai

## Identification of Suspects

When the police were examining the crime site, including the bodies of the rape victims and other evidence, the military officials prohibited the villagers from taking any photograph of the scene of the crime, by threatening that, if they did, their phones and cameras would be destroyed.<sup>11</sup> Why did the military officials prohibit them in this way without providing any reason? If there is other evidence which identifies the soldiers as suspects, this prohibition will also be a corroborating factor that the military personnel disliked such actions of the villagers simply because they wanted to cover up the crime that they had committed. To clarify this entails a lot of hard work.

Firstly, the geographical location in connection with the discipline of the mobile military columns needs to be examined. The distance between the compounds of four houses where the soldiers bivouacked and the site where the crime was committed is only over



11 Statement of U Aung Nan, village administrator, Mrs. Ester and Mrs. Bawm Swi, the villagers who were present during the examination of police at the scene of crime

100 yards.<sup>12</sup> Whenever any military column is encamped somewhere – particularly in areas where armed conflict between the Kachin Independence Army (KIA) and the armed forces of the ruling Myanmar regime is still breaking out – army security guards routinely make patrols at night, within about a 200 yard radius of their location. The army security surveillance scope covered the site where the incident happened. In this regard, the eye witnesses made corroborating statements that they saw soldiers on patrol and also standing by around the area.<sup>13</sup> This denotes that, except for the military personnel, there could have been no other group or no other person who was able to enter that area to commit such a heinous crime.

Physical evidence shall also have to be observed. Perpetrators commonly leave a certain type of clue after a crime was committed. In this respect, when the scene of the crime was examined by the police, prints of military boots were found beside the house where the



*The house at the right end is the location where the crime was committed. The soldiers from the military column occupied, out of four, the two houses and their compounds, seen beyond the trees at the centre and left of the photo, and were stationed there while the crime was being committed.*

<sup>12</sup> The distance was measured by responsible persons from the land registration office.

<sup>13</sup> Statement made by U Zinhtung La, Ms. Htoi Ja and Mrs. Zingtung Ma Myaw

crime was committed. They were of a size and feature compatible with the military boots of the soldiers who were positioned around that area one day before the crime occurred.<sup>14</sup>



*The police taking photographs of prints of the military boots.*

Evidence Act section 14 states, “Facts showing the existence of any state of mind are relevant when it is an issue or relevant.” Aung Phyto Myint was the commander of the military column formed by Light Infantry No. 503, which was present in the village at the night when the incident happened. When he got to the village after leading his military column, before the incident happened, he was normal and stable; the next day after the crime occurred, his manner changed; he was shaken; he walked to and fro; he entered and left the

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<sup>14</sup> Statement made by U Zinhtung La

house repeatedly; and, he was angry without any sufficient reason. <sup>15</sup> Aung Phyo Myint's behaviour falls under the Evidence Act. <sup>16</sup> He was the military official who ordered the villagers not to take photographs of the scene of crime. <sup>17</sup>



*The military official sitting at the centre of the three army personnel surrounding the table is Aung Phyo Myint.*

Most importantly, a suspicious action carried out by Aung Phyo Myint – coincidentally the time before the crime was committed – is also noteworthy. At that night, together with some soldiers, he slept at U Seng Naw's house – one of the four houses which the entire military column, comprising about 50 soldiers, occupied. At about 11:00 p.m., while all villagers, including U Seng Naw and his wife, were soundly asleep, he woke U Seng Naw

<sup>15</sup> Statement of U Zinhtung La and Mrs. Bawm Swi

<sup>16</sup> Section 8 of the Evidence Act: "Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding or in reference to any fact in issue therein or relevant there to, and the conduct of any person an offense against whom is the subject of any proceeding, is relevant, if such conduct inferences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

<sup>17</sup> Statements of U Aung Nan, Mrs. Bawm Swi, U Bran Ja,

up and sent him to Yin Kwe mountain, rather far from the village, by a motorcycle together with one of his soldiers, without providing any obvious reason, notwithstanding his oral statement. U Seng Naw's attempt to refuse to go outside at midnight was rejected and Aung Phyو Myint forced U Seng Naw to comply with his instruction.

Therefore, when the incident happened that night, U Seng Naw was absent from his house. He got back there only at about 3:00 a.m. of the next morning, January 20, 2015. Meanwhile, Mrs. Bang Yawn, the wife of U Seng Naw, continued sleeping alone in her bedroom; and Aung Phyو Myint was in the living room. In the aftermath of sending U Seng Naw somewhere out of his house, nobody knew what Aung Phyو Myint was doing. After U Seng Naw and the soldier left the house, Aung Phyو Myint might have disappeared from his sleeping place. Mrs. Bang Yawn took notice that when the telephone rang in the living room where Aung Phyو Myint should have been sleeping, nobody answered it.<sup>18</sup> She also heard one soldier lying down on his sleeping place outside her house urge another soldier sleeping in the house to answer the phone, saying, "Hi guy! Our captain's telephone is ringing. You should pick it up."

## **The Commander of the Military Column: the Top Suspect**

With regard to Aung Phyو Myint's suspicious action, the police need to raise a number of questions. Almost at the same time the crime was being committed, where was he going to? Why did he go out at midnight? Aung Phyو Myint, the commander of the military column, is the top suspect. He shall have to provide an alibi. In addition, many questions remain to be answered by not only Aung Phyو Myint but also his subordinate soldiers as well as superior officials. Why did he send U Seng Naw and one of his soldiers somewhere at midnight? If there was an emergency for him or his military column, what was that emergency? Whom did he send a request or communication to? Which type of urgent assistance was he asking for? Why couldn't he wait until the morning?

Unfortunately, as of now, no information has been received that the police have already undertaken such an important investigation. Out of over 40 soldiers who bivouacked in the four houses, their compounds and in the cane field,<sup>19</sup> the police examined only 28. The eye witnesses stated that a group of soldiers, possibly about 12, left Kawng Kha village in two cars, driving towards Nam Tawn village tract, in the early morning of the next day,

18 Statement of Mrs. Bang Yawn

19 Statement made by U Zingtung La Sai and Twan Si

January 20th, 2015. <sup>20</sup>

Srl No.	Personal No.	Rank	Name	Duty	Department
1	Kji- 34102	Major	Aung Phyo Myint	2nd in com- mand	Hk.M.Y -503
2	Kji-58679	Captain	Tan Win Htay	Platoon Com- mander	Hk.M.Y -503
3	Kji-59472	Captain	Aung Phyo Paing	Platoon Com- mander	Hk.M.Y -503
4	Kji-61663	Lieuternant	Min Twin	2nd Platoon Commander	Hk.M.Y -503
5	KP- 678640	Warrant officer (II)	Naing Win	Camp ( LHKY)	Hk.M.Y -503
6	KP-905272	Sergeant	Aung Tin Saw	2nd Section Commander	Hk.M.Y -503
7	KP-905173	Sergeant	Soe Paing	2nd Section Commander	Hk.M.Y -503
8	KP-517848	Sergeant	Sein Linn	2nd Section Commander	Hk.M.Y -503
9	KP-905201	Sergeant	Zaw Min	2nd Section Commander	Hk.M.Y -503
10	T- 362562	Sergeant	Aung Zaw Min	2nd Section Commander	Hk.M.Y -503
11	T-152081	Corporal	San Thein	2nd Section Commander	Hk.M.Y -503
12	T-167386	Corporal	Tin Moe Win	2nd Section Commander	Hk.M.Y -503
13	T- 120418	Corporal	Aung Kyi Moe	2nd Section Commander	Hk.M.Y -503
14	T-203485	Corporal	Sann Aye	2nd Section Commander	Hk.M.Y -503
15	T-749096	Lieutenant Corporal	Soe Min	LKHY	Hk.M.Y -503
16	T-340316	Lieutenant Corporal	Aung Zay Yar Oo	LKHY	Hk.M.Y -503

Srl No.	Personal No.	Rank	Name	Duty	Department
17	T- 439097	Lieutenant Corporal	Zaw Min Tant	LKHY	Hk.M.Y -503
18	T-341101	Lieutenant Corporal	Aung Myo Tu	LKHY	Hk.M.Y -503
19	T-465094	Private	Kyi Naing Win	LKHY	Hk.M.Y -503
20	T- 392315	Private	Tant Zin	LKHY	Hk.M.Y -503
21	T-444811	Private	Thein Lwin	LKHY	Hk.M.Y -503
22	T-482976	Private	Aung San Linn	LKHY	Hk.M.Y -503
23	T-463102	Private	Zaw Min Tun	LKHY	Hk.M.Y -503
24	T-463099	Private	Myat Taung Oo	LKHY	Hk.M.Y -503
25	T-404818	Private	Kaung Myat Oo	LKHY	Hk.M.Y -503
26	T-465092	Private	Way Lwin Oo	LKHY	Hk.M.Y -503
27	T-465092	Private	Za y Yar Aung	LKHY	Hk.M.Y -503
28	T-470742	Private	Tan Kyaw Swar	LKHY	Hk.M.Y -503

Those soldiers made their departure just two or three hours before the bodies of the two victims were found by the villagers. Was that coincidence? Or might they be the perpetrators who committed the heinous crime and disappeared before the crime was uncovered? At minimum, some of the perpetrators might have been in this group and already left the village. In this regard, Union Minister U Ko Ko, on behalf of the ruling regime, clarified that, out of those who were in the military column, two soldiers were sent back to their battalion so that they could participate in a sports competition.<sup>21</sup> However, his clarification was inconsistent with the statements of the villagers, as eye-witnesses, who saw about 12 soldiers, as mentioned above.

As well as Aung Phyto Myint, the commander of the military column, the abovementioned group of soldiers are at the top of the suspect list. The information on their disappearance was received by the police immediately after the crime scene and a few villagers were examined. Unfortunately, the police did not chase after those soldiers nor did the police make any attempt to examine them. According to the statements made by many

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<sup>21</sup> New Light of Myanmar, the Government Newspaper, August 2, 2015, P. 9

villagers, including the village administrator,<sup>22</sup> his deputy<sup>23</sup> and a local religious leader,<sup>24</sup> the police are scared of the soldiers from the Myanmar Armed Forces.

The village administrator and his deputy manifestly stated that whenever the police finished an examination of the villagers, the Military Strategic Commander Tun Naing Oo – a Lieutenant Colonel in rank – and Aung Phyo Myint came to the police and asked them questions. This happened routinely. Following the examination of the villagers, made in the church, the police used to go to the Military Strategic Commander by car, stop their car in front of the deputy village administrator’s house, and show the records they had made for that day to him, on the street which goes to Mong Paw and Nam Tawn.<sup>25</sup> Aung Phyo Myint, the top suspect, is also the one who threatened the villagers by saying, “Our military column has 20 mortar shells. If we are targeted as suspects, the entire village will be fired at and burnt down.”



*Tun Naing Oo, Lieutenant Colonel and military strategic commander, and Aung Phyo Myint, military column commander are the two army personnel standing at the entrance of the house where the crime was committed and looking at the scene of the crime.*

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22 U Aung Nan, Village Administrator

23 U Zengtung La Sai, Quarter Administrator

24 Rev. U Zaw Ra, one of the KBC investigation team members

25 Statements made by U Aung Nan, Village Administrator, and U Zengtung La Sai, Quarter Administrator

## Police under Institutional Constraint

The Police should be a State Institution which enforces ‘the Rule of Law’<sup>26</sup> but not ‘Rule by Law’<sup>27</sup>. This may become a reality only when the police exercise their neutrality. The potential for neutrality of police may come into existence only when the Police Force – the State Institution – is formed independently. It should operate under the command of the Ministry of Home Affairs, and be headed by an elected civilian Minister. It should be comprised of professional policemen and policewomen – trained only for police service and promoted progressively to higher positions – not by those who have changed out of their military uniforms, moved to the police institution and then occupied higher police positions.

For the time being, there can be little expectation of police neutrality, given that the incumbent police institution has none of the abovementioned characteristics. Military representatives, led by the Commander-in-Chief of the Armed Forces, who appoints the Minister for Home Affairs – under which the Police Institution has to operate – outnumber the others in the National Defence and Security Council (NDSC), which exercises the highest power of the State;<sup>28</sup> even if elections are held countless numbers of times under the 2008 Constitution, no elected civilian MP will ever occupy the position of Minister for Home Affairs given that, in accordance with the Constitution, only a military official sent by the Commander-in-Chief of the Armed Forces can be appointed by the State President as the Minister for Home Affairs;<sup>29</sup> and, in the key positions of the Police Institution, professional police officials have been replaced by former army officials. For example, in Shan State where the Kawng Kha village is located, both the Police Chief and his deputy originated in the Army.<sup>30</sup>

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26 One of the essential principles of the Rule of Law is that every person is equal before the law; to this end, perpetrators – regardless of whether they are government officials or ordinary citizens – shall be provided with penalty, on one hand, while justice of the victims be sought, on the other; and, these actions are to be conducted by independent, impartial and efficient state institutions, particularly through a fair trial which enforces and applies just laws and relevant procedures.

27 In practicing Rule by Law, the government authorities are above the law; laws – regardless of whether they are just or unjust – shall be enforced and complied with by people or citizens; and the state institutions take sides with the government authorities and cover up the crimes allegedly committed by the latter.

28 The Article 201 of the 2008 Constitution

29 The Article 232 (b) (ii) of the 2008 Constitution:

“In order to appoint the Union Ministers, the President shall: obtain a list of suitable Defence Services personnel nominated by the Commander-in-Chief of the Defence Services for Ministries of Defence, Home Affairs and Border Affairs;

30 Statement made by Rev. U Zaw Ra

Currently, no trace of police neutrality can be found. Pursuant to Article 338 of the 2008 Constitution of the Republic of the Union of Myanmar, all the armed forces in the Union shall be under the command of the Army. This constitutional provision negatively damages the criminal justice system of Burma, as the Police Institution is totally subservient to the Myanmar Armed Forces under its direct command. When army personnel are suspected of committing heinous crimes against their own people, particularly ethnic nationalities, police lack any power to carry out effective investigation and litigation.

The institutional constraint which has arisen out of the 2008 Constitution and its legal framework, has resulted in lack of protection against grave human rights violations inflicted on grassroots people nationwide, primarily in the ethnic areas; and, in particular, the appalling Kawng Kha case.

The police bias in favour of the Army, together with their own lack of capacity, led them to be inefficient in examining the scene of the crime and in collecting evidence.

## **Forensic Exams**

As a matter of fact, despite lack of eyewitnesses, if physical evidence is collected systematically in accordance with effective national laws, such as the Police Manual, and international norms, including Forensic Exams for Sexual Assault Suspects, perpetrators can definitely be identified. In the Kawng Kha case, it is obvious that the attackers or killers left some measures of bodily fluid – at minimum, semen – at the scene of the crime. A witness who observed the bodies of the two victims even before the police arrived at the scene of the crime, stated that she saw a lot of semen – about a handful, in terms of amount – underneath the vagina of one of the victims.<sup>31</sup>

In handling and storage of physiological fluid evidence, the police should have sufficient knowledge to carry this out properly. Physiological fluid evidence shall be collected and kept on non-absorbent items (metal or plastic). As condensation from thawing could disturb or destroy such evidence, such items should be kept at room temperature and submitted to the lab as soon as possible.<sup>32</sup> Unfortunately, the police did not apply these measures in the Kawng Kha case, nor did they manage seized materials in line with the provisions enshrined in para 1750 of the Police Manual, which are as follows:

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31 Statement of Mrs. Ester

32 Evidence Collection Guideline, P. 2. <http://www.crime-scene-investigator.net/collect.html>

(A) All materials that are intended to be submitted as evidence for a case must be attached with numbered paper, on which is written a serial number (if the material is a contract, mark it with alphabet), packed, if possible, and then sealed in front of the person who found them or person who submitted them or the person who gave them, in order to witness the concrete evidence.

(E) If evidence is required to be examined at a laboratory, pack and seal it systematically and the investigation officer shall send it to the laboratory department through an in-charge police officer at the police station.



*A wooden stick, the weapon which was used in killing the victims*

## Collection of Evidence

The police simply placed almost all the evidence gathered from the scene of crime in plastic bags commonly used in the market for packing and carrying foodstuff, without complying with the procedures mentioned above.<sup>33</sup> Although the envelope – in which hairs, collected from the bodies of the victims, were placed – was sealed, someone could have taken them out of that envelope and put them into it again, by passing through the holes located on the two edges of the upper cover of the envelope.<sup>34</sup> As such, by taking advantage of unsystematic collection and packing of evidence, contrary to the provisions mentioned in the Police Manual, any scoundrel – be they individuals, or groups, or authorities – could turn innocent persons into suspects and could also set the perpetrators free.

Identification and collection of forensic evidence gathered and documented during

33 Statements made by Mrs. Ester, U Zengtung La Sai, U Aung Nan.

34 Statement made by U Aung Nan, village administrator

the examination of the two victims, Ms. Maran Lu Ra and Ms. Nan Tsin, are critical and essential. More importantly, in this case where eye witnesses cannot be found, due to heavy constraint imposed by the military personnel of the ruling regime, police should have complied with procedures for obtaining comprehensive forensic examinations for sexual assault suspects, given the potential for recovering probative evidence from the body as well as the clothing of suspects.<sup>35</sup>

The police's ignorance and failure to comply with the abovementioned procedures have effectively abetted the rapists and killers, who had committed a war crime. This is a grave breach of the Geneva Convention of 12 August 1949, to which Burma is a party, worsening the state of justice of the entire society, in which alleged perpetrators of war crimes and crimes against humanity<sup>36</sup> have been enjoying ongoing impunity. Protection of civilians from the effect of hostilities has to be respected in accord with the Geneva Conventions and various criminal codes which recognize those basic humanitarian provisions.<sup>37</sup> In the Kawng Kha case, the military personnel, as perpetrators, and the police, as abettors, have violated not only international law and humanitarian law but also national law, among others, provided for in the Penal Code section 201 – causing disappearance of evidence of offence.

Having observed the statements made by the villagers who were present at the scene of the crime – before the arrival of the police and until the bodies of the two victims were brought to the hospital – as well as the photographs taken from the scene of crime, a draft list of the evidence – including materials, physiological fluid and specimens – can be compiled as follows:

1. Blood and blood stains
2. Semen and seminal stains<sup>38</sup>
3. Other biological samples such as saliva
4. Hair<sup>39</sup>

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35 "Forensic Exams for the Sexual Assault Suspect" by Joanne Archambault, SATI Training Director and Founder of EVAW international.

36 Submission made by Mr. Thomas OJ Quintana, the UN Special Reporter on Human Rights Situation in Myanmar, in March 2010

37 "War Crimes in Internal Armed Conflicts," by Eve La Haye, Cambridge University Press, 2008. P 61.

38 Seminal stains are often, but not always, found on clothing, blankets, and sheets.

<http://www.crime-scene-investigator.net/collect.html>

39 Human hair can be compared to determine whether or not two samples could have had a common origin. <http://www.crime-scene-investigator.net/collect.html>

5. Latent finger prints
6. A wooden stick which was used in killing
7. A knife
8. A flat material in black color <sup>40</sup>
9. All garments such as undershorts, panties, or other exhibits (which should be labeled and each garment packed separately).<sup>41</sup>
10. Boot marks



*The two photos indicate the finger prints which were left by the perpetrators after the crime was committed.*

Out of the above mentioned list of evidence, fingerprints are of paramount importance. A suspect or suspects can be identified by matching them. In regard to fingerprints, the Police Manual provides as follows:

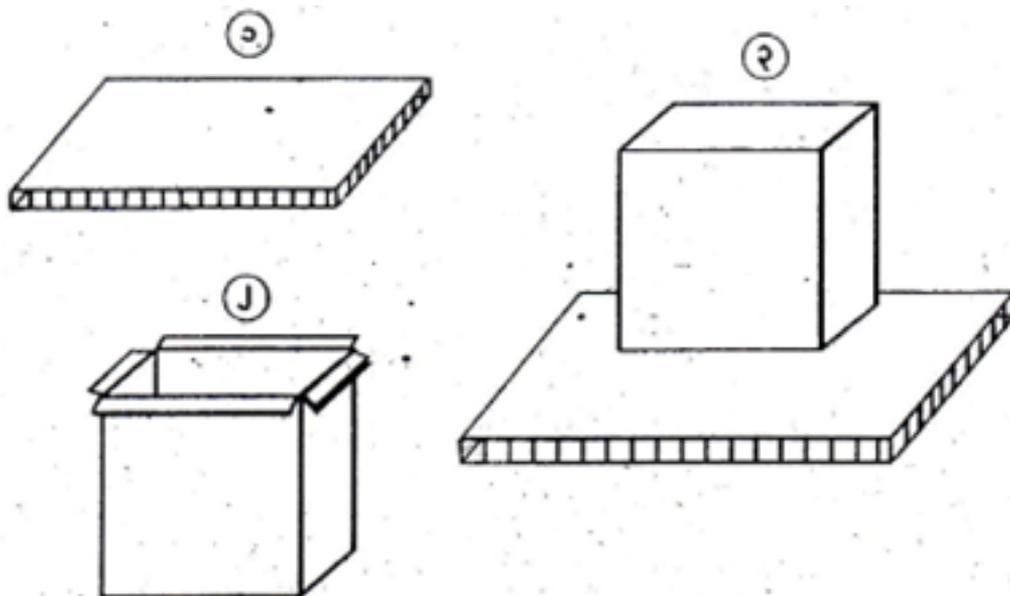
1588. Find the fingerprints at the scene of crime or on a certain object related to this crime. The fingerprints can be seen on a bottle, window glasses, enamelware and tin box by human eyes. Moreover fingerprints of dirty, oily, bloody and wet fingers can be left on the surfaces of these objects clearly.

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<sup>40</sup> Statement made by Mrs. Ester, "While the bodies of the two victims were being dressed, I found a flat material. Although I raised the question on what it is, the police did not answer."

<sup>41</sup> <http://www.crime-scene-investigator.net/collect.html>; P. 3.

1590. When fingerprints are found, materials with fingerprints shall be sent to the forensic department (fingerprint branch) for examination. In so doing, sufficient attention shall be provided so that fingerprints do not become damaged. If you are unable to make this effort, the assistance of an expert from the fingerprint branch shall be asked by contacting the Crime Suppression Police Chief through the respective State/Division/District Police Chief in order to examine and uncover the latent fingerprints. If the materials with fingerprints have many surfaces, they shall be protected by a paper box without cover, like the picture below.



(B)

1. Flat surface material with fingerprint
2. Paper box, without cover; four top area of the paper box is glued.
3. Fingerprints on the flat surface material are protected by upside down paper box without cover and pasted with glued papers

A witness, inter alia, stated that, 'On the wall of the bathroom, fingerprints with blood were found.'<sup>42</sup> Unfortunately, while the scene of the crime was being examined, no villagers saw that the police systematically collected the fingerprints in line with the procedures mentioned above.

Notwithstanding the precise provisions in the Police Manual on how to collect, man-  
42 Mrs. Ester

age and send the materials with fingerprints, the police utterly ignored them. The villagers saw that the police gathered the evidence and simply put almost all of it into plastic bags, commonly known as Kyot Kyot Aik in Burmese; they did not see any paper box used by the police, in order to protect the fingerprints left on the surfaces of the materials.<sup>43</sup>

The Rule of Law will prevail only when just laws – one of which is the Police Manual – are enforced, while rejecting unjust laws which involve deprivation of human rights, women's rights, and the rights of ethnic nationals, in addition to the right to a fair trial. Non-application of the Police Manual by the police led to disappearance of evidence which has caused the denial of justice not only for the two victims of the crime but also for the entire society, particularly the Kawng Kha village community which has been surviving in fear in the aftermath of the occurrence of this heinous crime.<sup>44</sup>

## **Biological Samples and Accountability of the Police**

If biological samples taken from the bodies – including the vaginal vault - of the deceased victims, are sufficient for DNA testing, they are able to be used to identify the suspects.

When asked by one<sup>45</sup> of the KBC<sup>46</sup> investigation members, about the whereabouts of semen collected from the rape victims, the district police officials – with the rank of Police Major – provided two different answers: one was that it had been sent to the laboratory; and, another was that it had already been ruined.<sup>47</sup>

If the former is correct, the police are responsible for identifying the suspects officially, with reference to the DNA examination result. However, unfortunately, despite the fact that it has already been almost ten months now, the police have not yet made any public statement about this. In this regard, in addition to the police, the high ranking Army officials who command the police are legally responsible, given that the unnecessary, or intentional, delay in the investigation process would certainly have caused the ruin of the biological samples, and as a result, perpetrators will never be brought to justice.

43 Statements made by Mrs.Elster, U Zengtung La Sai, and U Aung Nan

44 Statements of the villagers living in the KawngKha village

45 Rev. U Zaw Ra, a member of the KBC investigation team

46 The Kachin Baptist Convention has more than four hundred thousand members. It is also a member of Myanmar Baptist Convention. It is linked to the Myanmar Christian Council, American Baptist Churches and World Baptist Alliance, as a member; The Statement of the KBC issued on 27th February, 2015.

47 Statement made by Rev. Zaw Ra

If the latter happened, the police themselves have already turned into criminals abetting the perpetrators by causing the disappearance of evidence. In order to deal with this conspiracy, legal action should be taken against all responsible police officials – at minimum, commencing from the Shan State Police Chief and his inferior officers.

The statements of the police are inconsistent. Contrary to the district police, their senior official <sup>48</sup> admitted that fluid samples from the intestine and vagina of the deceased victims were collected and had already been sent to a laboratory for examination. <sup>49</sup> Here, a crucial question arises, due to the fact that, in the police institution, neutrality is lacking. Within the police department, who took responsibility as a forensic science technician for this particular case which constitutes a war crime? Intrinsically, that technician is responsible to help investigate crimes by collecting and analysing physical evidence; and, most technicians specialize in either crime scene investigation or laboratory analysis.<sup>50</sup>

With respect to this case, no information has been received that a forensic science technician came to the scene of the crime together with the police and collected all relevant physical evidence – such as finger prints and biological samples, including bodily fluids -- systematically in accordance with the Police Manual and international norms. The failure of the police to proceed accordingly has resulted in denial of procedural justice. The police stated that they could not examine, among others, finger prints, <sup>51</sup> despite the fact that a big wooden stick, which was used by the perpetrators in killing the two victims, was found. Neither were they able to obtain finger prints from the blood stains, along with hand prints, remaining on the walls at the scene of crime.<sup>52</sup>

For the disappearance of finger prints, the police are primarily responsible. The police should already have sufficient knowledge, at least, that after the committing of any heinous crime, finger prints are commonly left and they should be collected systematically. Omission of such an action has resulted in a denial of retributive as well as reparative justice

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48 Statement of Police Colonel Aung Myat Moe, Deputy Chief of the Shan State Police Force

49 Evidence Act Section 17: “An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.”

50 What is a forensic science technician?

[http://careerplanning.about.com/cs/occupations/p/forensic\\_tech.htm](http://careerplanning.about.com/cs/occupations/p/forensic_tech.htm): P. 1.

51 Finding of the KBC investigation team

52 Statement of Mrs. Ester, one of the villagers who observed the deceased victims before the police arrived at the scene of crime

for the victims of war crimes in this case, while dragging down the entire society into a circle of impunity.

The improper behaviour of the police should be scrutinized from various aspects. Did the police act with negligence or intentionally? In this regard, facts showing the existence of any state of mind of the police shall be emphasized.<sup>53</sup> When the members of the KBC investigation team, including a few KBC lawyers, asked the police about who could be identified as suspects, the latter – without identifying the suspects – replied by saying, “The Army Personnel are clear.”<sup>54</sup> The police<sup>55</sup> answered this crucial question within a few days after the crime occurred, even before a detailed examination of both oral and documentary evidence was made. Based on this statement of the police, the government authorities issued the following announcement, ten days after the crime occurred, and threatened the entire country, including the media, on January 29, 2015.

In accordance with the findings of the Myanmar Police Force on the ground and those of the collective investigation team, it is analysed and acknowledged that the Army Personnel are not culprits. However, while investigations were being done, the Army was alleged with prejudice. At the time when the perpetrators can be identified, legal action will be taken against those who mistakenly wrote about the Army.<sup>56</sup>

The announcement of the government was far-reaching and negatively impacted the entire society. The efforts of the media, which attempted to practice investigative journalism, ceased as far as this case was concerned. Proactive comments of some genuine civil society organizations, which were interested in this case, gradually disappeared. The KBC investigation team itself had to pay too much attention to not expressing something which might cause ill-feeling among the Army leaders. These factors indicate that, in the entire investigation process from the beginning up to now, the police have taken sides not only with the army personnel, who can be identified as suspects, but also with the government authorities who attempted to cover up the crime.

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53 Evidence Act Section 14: “Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will towards any particular person, showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

54 Statement of Rev. U Zaw Ra, a member of the KBC investigation team

55 Min MinOo, Muse District Police Chief, and Soe Than, Muse Township Police Chief

56 The New Light of Myanmar, the government’s newspaper; Jan 29, 2015, P. 13.

Hairs found in the hand of a deceased victim can be presumed to be those left by the perpetrators. The police collected them; put them into an envelope; sealed it; and it was to be sent to the laboratory. However, unfortunately, according to the statements of eye witnesses, even though it was sealed, the upper edges of the envelope had already been opened; and, even by using fingers, someone could have taken hairs out of the envelope and replaced them with other hairs of different persons.<sup>57</sup>

In examining the scene of the crime, police are the most responsible officials. They have to take responsibility to protect all evidence which remains at the site where the crime was committed. Unfortunately, the police mistakenly allowed army personnel – including Aung Phyo Myint, the top suspect – who were not responsible for the investigation to enter the room where the two victims were raped, tortured and murdered. As such, Aung Phyo Myint had the opportunity to destroy the evidence, if left by him or his accomplices. The action of the police has constituted a criminal offence, known as Abetment. In this regard, the Penal Code Section 107 provides that a person abets the doing of a thing, if they intentionally aid, by any act or illegal omission, the doing of that thing.

During the course of investigation, biological samples shall have to be taken from rape victims by the police;<sup>58</sup> afterwards, a post-mortem examination or autopsy shall be made by pathologists. As per the statement of the police themselves, it is evident that in this case a post-mortem examination was conducted only by three doctors – a surgical doctor<sup>59</sup>, a menstruation specialist<sup>60</sup> and an assistant surgeon, in addition to in-charge doctor for township hospital, excluding any pathologist.

A pathologist is a specialized medical doctor who routinely performs examination of a corpse, as autopsy, and determines the cause and manner of death. In this case, the autopsy or post-mortem examination was primarily done by other ordinary doctors, but not by a pathologist.<sup>61</sup> When asked about the time of death, the doctor who performed the post-mortem examination said he could not answer accurately because he was not a pathologist.<sup>62</sup> This happened under the mismanagement of the police. Such an improper action,

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57 Statement of U Aung Nan, village administrator

58 Statement of Police Colonel AungMyat Moe, Deputy Chief of the Shan State Police Force

59 U Thet Lwin Oo

60 Daw Khin Htay

61 Statement of Rev. U Zaw Ra, a member of the KBV investigation team

62 Ibid

inter alia, of the police denies the right of the victim to seek justice, negatively resulting in disappearance of expectation of identification of suspects as culprits. This is an irreparable mistake. Was it done by the police intentionally or out of ignorance? Anyway, the police are responsible to answer this question in court after they are indicted and charged.

The police even had to be stealthy in taking photographs of the houses and compounds which had been occupied by the soldiers at the time the crime was committed,<sup>63</sup> without being noticed by the army personnel. They were also constrained in carrying out an effective investigation and examination of the soldiers as suspects. When Aung Phy Myint was to be examined in the church, the police officials attempted to evade this responsibility, trying to assign it to one another, out of fear of possible repercussion from the Myanmar Army. When examination of 28 soldiers, including Aung Phy Myint, was carried out by the police in the church, each one took just about 3 to 5 minutes, and not more than 10 minutes.<sup>64</sup> This vividly indicates that the investigation of the soldiers by the police was just fake.

The police did not catalogue and preserve evidence precisely and systematically by using specialized kits, before transferring it to a crime lab. They did not search the four houses and compounds temporarily occupied by about 50 government soldiers, nor did they examine the suspected military personnel immediately after the crime scene investigation had been undertaken or, at least, before those soldiers left that venue. On the contrary, the police primarily carried out one-sided investigations with the local villagers, who loved the two victims of the crime and regarded them as their benefactors. Even worse is that while examining one villager as a suspect, police tortured him, and tried to persuade him to confess to the crime, by promising him financial and material support.<sup>65</sup> This was a deliberate ploy of the police to make innocent persons replace the perpetrators.

The improper and illegal action of the police denied the rights of victims, their families and the local villagers to a fair trial, enshrined in Article 14 (1) of the International Covenant on Civil and Political Rights (ICCPR), in addition to denial of their right to life, liberty and security of person.<sup>66</sup> Trials should be approached from the perspective of ‘fairness’ in search of justice for both victims as well as perpetrators. When police evidently take

63 Statement of U Aung Nan, village administrator

64 Statement made by U Aung Nan, village administrator

65 Statement made by Lashi Dilar

66 The Article 3 of the Universal Declaration of Human Rights

sides with the powerful armed forces in the Kawng Kha case, ‘police neutrality’ disappears, and ‘fairness’ for victims has been lost even before the commencement of a formal hearing in the court. It is evident that, out of three stages of a trial – pre-trial, trial and post-trial – the rights of the victims have been infringed at the pre-trial stage even though ‘fairness’ needs to be sought immediately after any crime has been committed, in accordance with the concept of human rights.

## **The Contested Role of the KBC Investigation Team in the Kawng Kha case**

Out of a number of rape cases which fall within the scope of war crimes, occurring primarily in ethnic areas, the Kawng Kha case is unique. The atrocious nature of the crime led to the emergence of an investigation team formed by a civilian religious institution, the Kachin Baptist Convention (KBC), comprising 15 members, led by Rev. Dr. Samson, the General Secretary of the KBC. This team assumed a de-facto status, as it was semi-officially recognized by the Union Peace Working Committee (UPWC), led by U Aung Min, the Union Minister, on behalf of the government, in accordance with its letter dated 27th Feb, 2015, with reference to the KBC’s request to President Thein Sein, the chairperson of the Union Solidarity and Development Party, to this end.

The UPWC has been initiating the emergence of a Nationwide Ceasefire Agreement (NCA) to be signed by the ruling regime on one side and the Ethnic Armed Organizations (EAOs) on the other, as counterparts. It is anticipated that, despite the elusiveness of the process, it may pave the way for the development of peace seeking efforts for the entire union, in the case that both sides sign a genuine peace agreement, rather than a document which primarily focuses on the ceasefire. The permission of the Union Peace Working Committee for formation of the KBC’s investigation team manifestly indicates that the Kawng Kha crime – notwithstanding having the characteristics of a human rights violation – relates to the peace issue. It can also be realized that so long as the civil war persists in Burma, such atrocious human rights violations cannot be circumvented.

However, it is quite unfortunate that during the current peace seeking process, commencing from the Nationwide Ceasefire Agreement, in Burma, both parties – the ruling regime as well as the EAOs, in spite of conducting a number of meetings, formally and informally – have not yet discussed nor have they reached any agreement on how to deal with

previous human rights violations, including the Kawng Kha case and many others. The fact that the formation of the KBC investigation was allowed by the authorities, may be because of the following factors:

1. The rape victims were commissioned by the KBC to contribute to the village, as volunteers;
2. The KBC is the most powerful civilian organization in Kachin land, with more than four hundred thousand members; and,
3. When the bodies of the rape victims were brought in a convoy from Kawng Kha village, located in northern Shan State, to Myitkyina, the capital of Kachin state, passing through many towns, including Mandalay, the second capital of Burma, several thousands of people appeared on the streets, mourning, expressing their sympathy and sadness, and showing their support for seeking justice.

The emergence of the KBC investigation team is remarkable given that such a situation was never enjoyed by any other civilian organization or organizations in the entire country previously. Nevertheless, the KBC investigation team was not endowed formally and officially with any power for investigation. The team's role was only sketched out and fabricated by the ruling regime, as a paper tiger.



Despite the fact that the KBC investigation team held meetings with the police several times, the former did not receive any concrete information and evidence from the latter, nor did the former obtain the effective cooperation of the latter.<sup>67</sup> In this regard, there are two issues. One is that the police themselves on the ground dare not investigate and examine the military personnel; rather, they are subservient to the military. Another is that the police regard the KBC investigation team only as an entity which is merely to help them.

The letter – sent by Police Colonel Aung Myat Moe, the former military leader and deputy police chief of Shan State, dated 28 May, 2015 – clearly challenges the KBC’s role. According to this letter, the KBC is responsible simply for summoning, bringing and sending witnesses to the police for examination. As a matter of fact, to summon, bring and send witnesses to KBC for examination, should be the task of the police, if the KBC is recognized as an official investigation team and authorized by the State. Now, the opposite is taking place.

As a result, in spite of the noticeable efforts exerted by the KBC, it has not yet been able to identify the suspects. So long as a similar situation continues taking place, there is no potential for the KBC to undertake and complete its task successfully. If so, the KBC investigation team might be blamed by the public -- who would like to see ‘justice being done,’ not only in Kachin state but also in other parts of the country – as they have not yet received sufficient information on the hardships being faced by the KBC investigation team.

Worse, if the KBC does not comply with the informal instruction imposed by the police, it might face a similar fate to that encountered by U Brang Shawng – father of Ja Seng Ing, a 14-year-old female student who was shot and killed by the Myanmar soldiers in Pha Kant township, Kachin State. U Brang Shawng requested the Myanmar National Human Rights Commission (MNHRC) to take action against those Myanmar soldiers who committed the crime. Unfortunately, without taking any action against them, the MNHRC simply transferred the case to the Myanmar Army. Afterwards, he was sued by the military officials, alleging Penal Code section 211: false charge of offense made with intent to injure. U Brang Shawng, the complainant, turned into the accused and was given a penalty.

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<sup>67</sup> Statement made by Rev. U Zaw Ra

## The Nexus between Four War Crime Cases

On 13 September 2012, 14-year-old <sup>68</sup> Ja Seng Ing, a female student, was shot and injured in an attack against civilians by a group of soldiers from a military column of Light Infantry Battalion No. 389, which is settled in Ho Pin town, under the northern military Command. The crime occurred in a village in Pa Kant township, Kachin State. She died the same evening.



*Photograph of young female student Ms. Ja Seng Ing <sup>69</sup> at school, before she became the victim of a war crime committed by soldiers from Myanmar Armed Forces*

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<sup>68</sup> Date of birth of Ja Seng Ing is July 20, 1998

<sup>69</sup> Photograph of Ja Seng Ing, taken from the report, entitled 'Who killed Ja Seng Ing?', compiled by Truth Finding Committee (Myitkyina)

The military established an investigation tribunal, which concluded that the girl had died in a bomb explosion allegedly by the Kachin Independence Army (KIA). Her father, U Brang Shawng, filed a complaint with the Myanmar National Human Rights Commission (MNHRC), requesting an investigation and subsequent prosecution of the suspected perpetrators. It appears the complaint leaked from the MNHRC to the military, which filed a counter-complaint against U Brang Shawng.

He was tried under the Penal Code section 211 – false charge of offense made with intent to injure – risking seven years in prison.

## The incident

At around 3:30 am on 13 September 2012, a military column from Light Infantry Battalion No. 389 entered Hsut-ngaing-yan village in Pa Kant township, Kachin State. The soldiers cooked and had breakfast. They drank alcohol and stayed in the village during the day, squabbling with each other.



### *Evidence of chaotic shooting by soldiers from Myanmar Armed Force and their bullets<sup>70</sup>*

Just after 4:00 pm, the battalion prepared to leave for Pa Kant, with a few vanguards already en route, when a bomb blast was heard. Immediately, soldiers opened fire around them – at nearby villagers, livestock, and houses at random. Villagers ran away, trying to hide and take cover. Afterwards, it was clear that the government soldiers had not been fighting rebels, but had exchanged fire with fellow soldiers at a nearby strategic hill.

<sup>70</sup> Photograph taken from the report, entitled ‘Who killed Ja Seng Ing?’, compiled by Truth Finding Committee (Myitkyina)

At the time, some students in their school uniforms and a teacher were returning home from school. When hearing shots and the explosion, they took shelter in a nearby house, hiding in the kitchen.

An armed soldier discovered them, and at gunpoint he forced them out. When 14-year-old Ja Seng Ing, her friends and the teacher emerged, the soldier opened fire. The friends and the teacher saw that Ja Seng Ing was hit. The soldier forced two villagers hiding in the compound to carry the injured girl to the Battalion Commander Zaw Min Thant. Also the girl's father, U Brang Shawng, was brought to the Commander.



*Ja Seng Ing and her friends' hiding place<sup>71</sup>*

Upon arriving, U Brang Shawng saw his daughter in great pain and the teacher, Daw Nan Hsan, was treating her. Daw Nan Hsan said the soldiers had given the girl medication, including an injection. U Brang Shawng requested to take his daughter to hospital, but the Commander said he would have to wait until the military column had left the village. About three hours after being shot, Ja Seng Ing was taken to Pa Kant General Hospital. She died from abdominal injuries at about 9 pm.

71 Photograph taken from the report, entitled 'Who killed Ja Seng Ing?', compiled by Truth Finding Committee (Myitkyina)



*Ja Seng Ing's blood*<sup>72</sup>

On October 1, 2012, U Brang Shawng submitted a petition to the Myanmar National Human Rights Commission (MNHRC), requesting an investigation into the incident with a view to ensure prosecution of the perpetrator in accordance with the law. U Brang Shawng's petition to the MNHRC is vividly justified by the practice of customary international law; accordingly, states have acknowledged through their actions and their statements that intentionally killing civilians during wartime is illegal.<sup>73</sup>

Unfortunately, instead of investigating such a serious crime, which amounts to a war crime, or at least collecting evidence by itself in order that the incident could be dealt with properly and effectively from the aspect of promotion and protection of human rights, possibly leading to reforming state institutions or/and seeking justice for victims of war crime, the MNHRC, without asking agreement from the complainant, informed the Myanmar Armed Forces about the complaint. In so doing, the latter got the opportunity not only to cover up its crime but also to fabricate a story by which the complainant has turned into a perpetrator.

<sup>72</sup> Ibid

<sup>73</sup> <http://www.globalization101.org/what-are-the-sources-of-international-law/>

Having received information from the MNHRC, an investigation tribunal, comprising three army officials – Colonel Zaw Min, Major Zarni Min Peik and Major Tint Naing Win, as members – was formed under the instruction of the commander of the Northern Military Command, according to his telegraph sent on October 30, 2012.

Afterwards, the investigation tribunal submitted its opinion, inter alia, as follows: “According to the statement of the witnesses, Ja Seng Ing, 14-year-old daughter of U Brang Shawng, living in Hsut Ngaing Yan village, Pa Kant township, died of her injuries, caused by shattered pieces of bomb, when KIA (Kachin) rebel group attacked the military column of the Light Infantry Battalion No. 389, by using remote-controlled mines, nearby Hsut Ngai Yang village.”

### **Criminal complaint against the father**

On 20 February 2013, Major Zarni Min Peik, on behalf of the investigation tribunal and with instructions from the Commander of the Northern Military Command, filed a complaint at Pa Kant police station, alleging that U Brang Shawng had submitted a wrongful and deceitful complaint against the Myanmar Armed Forces, at the MNHRC.

Major Zarni Min Peik, the holder of Armed Forces Identification No. 33169, serves as a Military Commander (Second Command) of the Military Operation, at the Front Line No. 3 Military Strategic Team. The complaint reads (unofficial translation):

1. On the 13th September, 2012, when the KIA (Kachin) rebels started to attack the military column of the Armed Forces, using remote-controlled mines, U Brang Shawng’s 14-year-old daughter, a 9th standard student from Pa Kant State High School, Ms. Ja Seng Ing died of injuries from shattered pieces of bomb.
2. After investigation of the above case, the truth was found out that after the Light Infantry Battalion No. 389 had left map reference estimated area (KJ-293734) at 0005 on the 13th September, 2012, to take security of that territory and reached Sut Ngaing Yang Village, map reference estimated area (KJ-302363), around 03:50 pm; afterwards, the KIA (Kachin) rebels detonated three remote-controlled mines and fired with Energa grenade rifles; as a result, U Brang Shawng’s 13-year-old daughter, 9th standard student, Ma Jar Seng Ing died of injuries from shattered pieces of bomb.

3. However, 13-year-old <sup>74</sup> Ms. Ja Seng Ing’s father U Brang Shawng, the holder of the 74 Ms. Ja Seng Ing’s age was incorrectly mentioned by the army officials.

national identification card number 13/Ma-ka-na (Naing) 086052, who lives in Hmaw One quarter, Group (1), Sut Ngai Yang Village, Pa Kant Township, wrongfully and deceitfully reported to the Myanmar National Human Rights Commission that the soldiers' gratuitous shootings caused Ma Jar Seng Ing's death, despite the fact that it was due to injuries from shattered pieces of bomb, planted by the KIA (Kachin) when it attacked the military column of the Armed Forces, using remote-controlled mines on September 13, 2012.

4. As such, it is requested to take necessary action on U Brang Shawng, the holder of the national identification card number 13/Ma-ka-na (Naing) 086052, for making a wrongful and deceitful complaint.

On 25 February 2013, Pa Kant township court, led by judge U Zaw Zaw Tun, received the complaint. Afterwards, without examining the complainant, the court decided to take legal action against U Bran Shawng, father of the deceased victim, under the Penal Code section 211 – false charge of offense made with intent to injure -- reasoning that Major Zarni Min Peik submitted such a complaint in the process of his official duty. The court issued a summons for the suspect to appear at the court.

At the outset, U Brang Shawng escaped and hid across the country for fear of the military officials involved in or seeking to cover up the killing of his daughter. However, friends, villagers and religious leaders encouraged him to fight for justice. They argued that the case had relevance for other war crime cases in ethnic areas, particularly in Kachin State. If U Brang Shawng were able to defend his case, the truth may be uncovered, and similar war crimes might be deterred in the future. People started to support U Brang Shawng, and a group of pro bono lawyers agreed to defend him in court. He attended the trial in Pa Kant town on April 8, 2013, and was granted bail with a surety.

In the trial, the complainant stated that he had received instructions from the commander of the Northern Military Command on 30 October 2012, to establish an investigation tribunal, comprising three army officials: Colonel Zaw Min, Major Zarni Min Peik and Major Tint Naing Win. He also confirmed that on 13 September 2012 at 3:30 am, the military column of Light Infantry Battalion No. 389, entered Sut Ngai Yang village and stayed there until 4 pm when the incident took place.

Except for three military personnel, no single independent civilian witness testified

that exchange of gunfire occurred between government troops and KIA soldiers at the point where Ja Seng Ing was shot. No other eye witnesses could be submitted to testify that Ja Seng Ing died of splinters of bombs planted by KIA. The atmosphere in and around the trial was intimidating: one prosecution witness, Colonel Zaw Min, who chaired the military investigation tribunal that investigated the case, sat in court on 15 July 2013 with his pistol hanging from his waist; armed military guards surrounded him; and the court did not prohibit the arms.

Colonel Zaw Min and Major Zarni Min Peik testified in the court. Accordingly, it was evident that the investigation tribunal members – Colonel Zaw Min, Major Zarni Min Peik and Major Tint Naing Win – never got to the scene of the crime for investigation. They did not even realize the distance between the place where Ja Seng Ing was shot and the area of the mine bomb blast, which is rather far from the scene of the crime.

Although complainant Major Zarni Min Peik alleged that the KIA (Kachin) rebel group attacked the military column of Light Infantry Battalion No. 389, by using a remote-controlled mine bomb, nearby Hsut Ngaing Yan village, no civilian villager eyewitness supported such testimony. On the contrary, 21 villagers signed and endorsed the statement of U Brang Shawng, father of the deceased victim, who submitted a complaint to the Myan-



mar National Human Rights Commission.

*Ms. Ja Seng Ing, the innocent female student, after she had passed away*

Although the complainant testified that the victim died of injuries caused by shat-

tered pieces of a mine bomb planted by the KIA rebel group, no piece of mine, as evidence, could be submitted at the trial at all. Actually, according to U Brang Shawng, the Pa Kant hospital surgeon stated, “The bullet caused many injuries inside the abdomen of Ja Seng Ing. Three of the intestines were hit by the bullet.” It is evident that Jar Seng Eain died of the bullet released by a soldier from Light Infantry Battalion 389.

Currently, the key eye witnesses – Daw Nan San, the teacher, and four female student friends of the victim who were at the scene of crime along with the deceased victim – are victim-witnesses as they were also threatened by the soldier aiming the gun. The action of the Myanmar Army after the committing of the crime exacerbated their trauma. They were summoned to the military base camp, located in a remote place amidst the jungle outside the village, and questioned by military officials. Since then, they have been keeping silent.

Burma lacks a witness protection act. More importantly, the state does not have any mechanism that can financially, logistically and psychologically facilitate and support witnesses to the extent that they can feel secure, uncover the truth, and collaborate in prosecutions, without having any fear of reprisal. The ruling regime in Burma, led by Min Aung Hlaing, Commander-in-Chief of the Armed Forces and President Thein Sein, the chairperson of the Union Solidarity and Development Party (USDP), ignores the rights of victims and witnesses – the right to life, liberty and security – resulting in denial of the right to a fair trial, enshrined in Articles 10-11 of the Universal Declaration of Human Rights (UDHR), and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which constitute a part of customary international law.<sup>75</sup>

Fear of reprisal prevails not only among the witnesses but also among the independent legal community, which can be expected to lead the victims and their community in exerting efforts to prosecute the perpetrators in court. In the entire country of Burma, there are only very few courageous lawyers who seek criminal justice for victims whose rights are violated by the state; and, in Kachin state, even less. The worst is that government prosecutors and police investigators never actively initiate a process for investigation and litigation whenever it is alleged that heinous crimes have been committed by soldiers from the Myanmar Armed Forces. Such a systemic shortfall has resulted in impunity being enjoyed by the

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<sup>75</sup> David Fisher, Prof. of International Law, Faculty of Law, Stockholm University, Sweden commented as follows: “Although Burma is not a party to the ICCPR, the right to a fair trial and the minimum guarantees in Article 14 have in all likelihood the status of customary international law and thus bind even states which are not parties to the ICCPR. Similar guarantees are also enshrined in Arts. 10-11 of the Universal Declaration of Human Rights.”

Myanmar Armed Forces for some decades.

There have been a large number of cases of suspected war crimes across ethnic areas in Burma, including Kachin State. Impunity is the rule, as reported by numerous human rights groups at local, regional and international levels. The tactic in U Brang Shawng's case of turning the father into a suspected perpetrator further aggravates the impunity, and the apparent leak from the Myanmar National Human Rights Commission (MNHRC), which lacks independence and integrity, implies that it stands in conspiracy with the security institutions of the state – primarily the Myanmar Army or the Armed Forces of Burma/ Myanmar.

The conduct of the MNHRC is a source of grave concern for ethnic nationalities. More importantly, it has, in practice, entrenched the status of impunity being enjoyed by the government authorities, including military leaders in the Myanmar Army.<sup>76</sup> Such an unethical action of the MNHRC exacerbates the vulnerable situation of the ethnic minorities, leading to committing of more war crimes – one of which was the case of the two young female Kachin Christian volunteers, who were raped, tortured and murdered on January 19, 2015, allegedly by the same institution mentioned above.

## **First Case Study of Sexual Violence Amounting to a War Crime<sup>77</sup>**

In the aftermath of the so-called democratic transition taking place in Burma since 2010, the Sumlut Roi Ja case can be highlighted as an example of sexual violence amounting

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<sup>76</sup> Section 445 of the 2008 Constitution provides blanket amnesty for crimes which happened in the past.

<sup>77</sup> Personal details of victim:

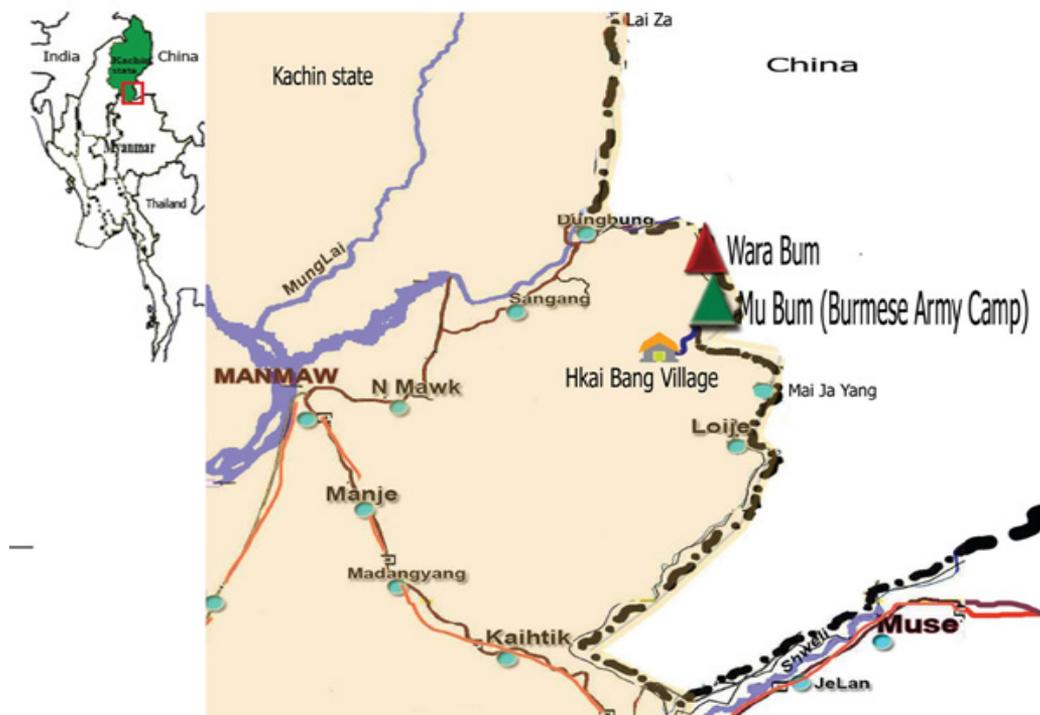
Name:	Sumlut Roi Ja
Age:	28
Sex:	Female
Ethnicity:	Kachin
Religion:	Christian
Parents' names:	Mr. Sumlut La + Mrs. Maran Hpang Myaw
Occupation	Farmer
Child:	Lum Naw (14 months old, girl)
Husband:	Dau Lum (aged 31)
Father-in-law:	Ze Dau (aged 70)
Place of residence:	Hkai Bang village, Moemauk township, Kachin State

to a war crime, committed by soldiers from the Myanmar Armed Forces in Kachin land on 28 October, 2011. When perpetrators in that case were not brought to justice, the army personnel from the Myanmar Armed Forces did not hesitate to commit more war crimes in Kachin land: one was against Ja Seng Ing, on September 13, 2012; and another was against the two young volunteer teachers, known as the Kawng Kha case, on January 19, 2015.

On October 28, 2011, at 3:00 pm, while Sumlut Roi Ja, her husband and her father-in-law were working in their corn farm near Hkai Bang, three armed Burmese soldiers from the Mu Bum base arrived at their farm. The soldiers pointed their guns at them and said “Answer only the questions we ask and don’t talk.” The soldiers then seized 30 kgs of corn and ordered the couple to carry it to their military camp at Mu Bum. The old man was ordered to accompany them, but was not forced to carry anything. The three villagers were too afraid to refuse, as they were being threatened with guns.

As they were walking, Roi Ja suggested to her husband that they should try and run away, but at first there was no chance for this. After a while, they came upon three other Burmese soldiers in a place where there was a hide-out in the ground. The soldiers then

## Map Of Incident Area



accused Dau Lum, the husband, of being a KIA soldier and deliberately leading them to the hide-out. He protested that he was not a soldier, and knew nothing about the hide-out. The soldiers then tied up Dau Lum and his father with the strings of their Kachin basket. Then, they made Dau Lum and his father walk in front tied together, while Roi Ja walked behind them.

The strings tying up Dau Lum came loose as they walked, and he realized he could run away. He told his father he was escaping, and then ran off. His father also ran after him. The soldiers shot twice after them. Some KIA soldiers in the area heard the gunshots, and then also started shooting. This caused the Burmese soldiers to stop shooting after Dau Lum and his father.

Only when Dau Lum and his father had got away, did they realize that Roi Ja had not been able to run after them. She had been left carrying the corn for the Burmese soldiers. When the soldiers had taken the corn, they had said they would pay for it. However, they did not come back to pay for the corn, and there was no sign of Roi Ja. Dau Lum was left to take care of their young breast-feeding daughter.

Three days after Sumlut Roi Ja was arrested, on October 31, 2011, a human rights documenter on a nearby hilltop in Kachin-controlled territory reported seeing her through a zoom lens at the Mu Bum camp. She saw two soldiers take her out of a building in the sunlight; the two soldiers were touching her in turn. The next day, on November 1, the same documenter again saw a woman being dragged by four soldiers into a bunker at the camp; the woman was dressed in a soldier's uniform. After that, the documenter did not see any women at the camp.

On November 1, 2011, Sumlut Roi Ja's family members met with Lt. Col. Zaw Myo Htut, the Burma Army commander at the nearby LIB 321 military base at Loi Je, on the China-Kachin border, and begged for her release. He told them that she would be released on November 2, but they waited the whole day at the foot of Mu Bum mountain and she did not appear.

On November 4, 2011, Sumrut Roi Ja's father-in-law sent a letter to the Kachin State Chief Minister, copied to the Northern Military Office and the Minister for Security and Border Area Department, Kachin State, (Bhamo District governor and to the Burma Army 321 battalion base at Loi Je), appealing for her release.

In the second week of November, two porters who had run away from the Mu Bum military base to the China border told human rights documenters that they had seen four women being held at the camp. One was Kachin; three others were Shan and Palaung. These women had been raped by soldiers at night.

## **Taking the case to court**

Roi Ja's husband, Dau Lum, took the case of his wife to the Supreme Court in Nay Pyi Daw on January 27, 2012, so that the case would be heard by the Naypyidaw Supreme Court on 23 February 2012. Dau Lum attended the court hearing, but was not allowed to give evidence during the trial. Only a Myanmar Army lieutenant from Battalion 321 was allowed to testify. He simply stated "We have no-one of that name and no woman" at the Mu Bum Camp. The judgment of the court was that the final verdict would be reached two weeks after the hearing. Two weeks later, Roi Ja's husband received official notification that the case had been dismissed.

## **The Third Case Study of Sexual Violence Amounting to a War Crime**

After the so-called democratic transition taking place in Burma since 2010, another significant case of sexual violence amounting to a war crime committed by soldiers from the Myanmar Armed Forces – out of many cases happening in Kachin and Shan State – took place in Shan State, similar to the two previous sexual violence cases, which had taken place in Kachin land.

Given that in the two previous sexual violence cases the authorities deliberately failed to bring perpetrators to justice, the army personnel from the Myanmar Armed Forces dared commit another war crime in Shan State, five months ago. In that case, it was evident that the officials of the Myanmar Armed Forces admitted the committing of the crime, by providing compensation to the family members of the victim, while taking a soft action on their military perpetrators. The detailed case story mentioned below was collected by the Shan Human Rights Foundation.<sup>78</sup>

<sup>78</sup> The contacts of the Shan Human Rights Foundation (SHRF) are as follows:

Website - [www.shanhumanrights.org](http://www.shanhumanrights.org); E.mail - [shanhumanrights@gmail.com](mailto:shanhumanrights@gmail.com)

Sai Hor Hseng +66 (0) 62- 941-9600 (English, Shan)

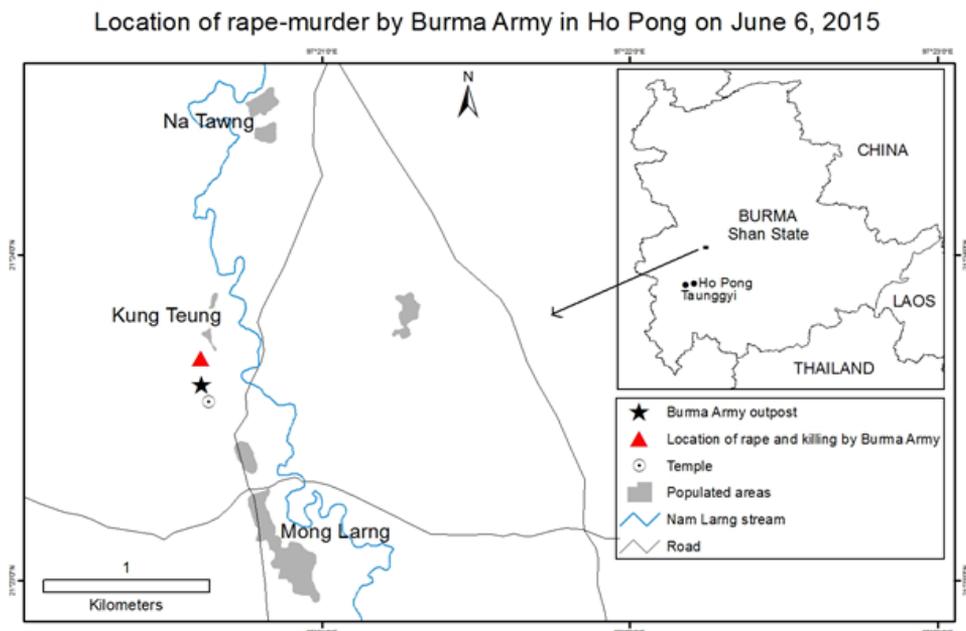
Sai Kheun Mai +66 (0) 94-638-6759 (English, Burmese)

On June 6, 2015, a 28-year-old Shan woman was found raped, murdered and robbed in Ho Pong Township, southern Shan State, with evidence pointing to Burma Army soldiers stationed at the nearby Light Infantry Battalion 249 outpost. After initial denial, local Burmese military officers arrested one of their soldiers for the crime, gave him a public beating, and announced he would be given the death sentence. The Eastern Commander himself, Major General Aye Win, came from Taunggyi to apologize to the victim's husband, and donated money and food to him.

A key factor causing sexual violence is the large number of Burma Army troops deployed throughout the ethnic states. Even in ceasefire areas, such as Ho Pong, the Burma Army continues to maintain and build up its military bases, instead of reducing its presence to show it is sincere about seeking a negotiated political solution to the conflict.

Another key factor is the military's exemption from civilian control under the current constitution, making troops confident that they can commit crimes with impunity. It is significant that the culprits in the Ho Pong case dared commit rape and murder only about 60 meters from their military outpost, right in the middle of a small community.

To seriously address the problem of military sexual violence, SHRF reiterates our



calls for the Burmese government to end its military offensives, begin troop withdrawal from the ethnic areas, and enter into dialogue to bring about political reform that will end the war and bring the military under civilian control.

## **Details of the crime**

The victim, 28-year-old Nang Khaek, lived in the village of Wan Na Tawng, Mong Larnng village tract, Ho Pong Township, southern Shan State. She was a farmer, married with one 13-year-old son, who was a novice in the local monastery at Wat Kung Teung.

In the morning of June 6, 2015, she had gone to work on her cornfield, and on the way back, had gone to give alms at the Wat Kung Teung temple in the late afternoon. However, by about 5pm she had not returned home. Her husband, Sai Ka Vi, became worried, and went to see if she was at the house of his mother-in-law, Pa Ne, but did not find her there. The two of them therefore went together to look for Nang Kaek along the path she usually took to her fields.



*Wat Kung Teung Temple*

At about 6 pm, they found the body of Nang Khaek near the path between Wat Kung Teung temple and Wan Na Tawng village. She was lying naked on the ground, with her sarong tied around her neck. She had wounds on her chin and behind her neck, from

being hit with a hard object, and her body was covered with blood. Her right ear had been slit to remove her earring, and she had also been robbed of the money she had been carrying (120,000 kyat – about USD 120). Her body was found only about 60 meters from the “Kung Teung Pha Lai” outpost of Burma Army Light Infantry Battalion (LIB) 249, which was located directly next to Wat Kung Teung temple.

Her mother covered her daughter’s body with clothes, and Nang Khaek’s husband, Sai Ka Vi went to inform the village headman and other villagers, who then came to inspect



*Burma Army outpost next to Wat Kung Teung Temple*

the crime scene. The villagers saw several sets of boot-prints near the body, and found a stick nearby, with traces of blood and hair on it. The stick was the kind used to build the roofing of the military outpost. Nang Khaek’s farming knife had been stuck into the ground beside her body, and had traces of blood on it. It had apparently been used to cut the earring off her ear.

The next day, on June 7, 2015, the Mong Larng village tract committee and monks from Wat Kung Teung temple, altogether about 20 people, called Sgt. Major Kyaw Htet, the commander of the local LIB 249 outpost, to the temple. He came with two other soldiers. The committee informed him that they suspected his soldiers of committing the crime, but

he denied that any of his troops were responsible. That day, at 3 pm, the villagers and family of Nang Khaek arranged for her body to be cremated.

Local monks and villagers refused to accept Sgt. Major Kyaw Htet's denials that his troops were involved, and on June 8, Maj. Wai Yan Nyein Thurein, commander of the main LIB 249 base at the neighbouring tract of Mong Paeng, arrived to deal with the case.

On June 9, after conducting investigations, Maj. Wai Yan Nyein Thurein called the victim's relatives and other villagers to the Kung Teung Pha Lai outpost. He apologized to them, and informed them that they had arrested the soldier who had committed the crime, and he would be given the death penalty. The culprit was brought before them, and given a severe beating in front of them. The earrings and money were also returned to Nang Khaek's husband.



*Nang Khaek*

On June 11, 2015, the Burma Army Eastern Commander from Taunggyi, Major General Aye Win, arrived at Wat Kung Teung temple with about ten other military officers in two army trucks. He called Nang Khaek's husband, Sai Ka Vi, and other local villagers

to the temple. He apologized to Sai Ka Vi and presented him with 15 sacks of rice, 2 sacks of potatoes, 1 sack of onions, 16.6 litres of cooking oil, and 5.3 million kyat (approx USD 4,800).

On June 12, 2015, all the soldiers in the Kung Teung Pha Lai outpost were transferred out of the area, and a new column of soldiers from Keng Kham village, were transferred in. On June 23, 2015, the villagers held another big funeral for Nang Khaek. No government official joined the ceremony. Since the murder of his wife, Sai Ka Vi, has become seriously mentally disturbed, and is currently undergoing medical treatment.

Wan Na Kawng is a village of about 25 households. The army outpost next to Wat Kung Teung was set up over 20 years ago, and usually had about 20 troops stationed there, rotated from other areas every three months.

According to villagers, in the weeks before the crime, Sgt. Major Kyaw Htet's troops had been sexually harassing local girls, groping and kissing them if they met them around the village.

## Concluding Analysis

The state, Burma, breaches its obligation under international law, <sup>79</sup> according to which it cannot rely only on the provisions of its internal law, <sup>80</sup> in terms of protecting its populations from international crimes – genocide, war crimes, crimes against humanity and ethnic cleansing; as such, genuine civil society organizations in the country should exert efforts collectively to deal with this situation from the aspect of promotion and protection of human rights, primarily emphasizing the international norm – Responsibility to Protect (RtoP).

During a historic gathering of world leaders in New York for the High-level Plenary

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79 Responsibility of States for Internationally Wrongful Acts 2001 Text: Article 4, "Conduct of organs of a State"

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

80 Ibid; Article 32 Irrelevance of internal law

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part.

Meeting of the UN General Assembly (World Summit) in 2005, heads of state and government agreed to a Responsibility to Protect (RtoP) populations from genocide, war crimes, crimes against humanity and ethnic cleansing. This commitment is included in paragraphs 138 and 139 of the 2005 World Summit Outcome Document (WSOD), and explains that the primary Responsibility to Protect populations from the four aforementioned crimes lies with each individual state, but that the international community also has a responsibility to assist states in reaching their capacity to do so. Should a state “manifestly fail” to uphold this commitment, the international community has a Responsibility to Protect those affected by the consequences of this failure.<sup>81</sup>

## **The KBC’s efforts for Effective Investigation**

In order to carry out the process of investigation into the Kawng Kha case more effectively, the KBC investigation team sent a letter to President Thein Sein on July 2, 2015 and asked him to be able to exercise the following rights and responsibilities:

1. Formation of the KBC’s independent investigation team, comprising religious leaders, legal practitioners, other academicians, and representatives from civil society organizations shall be officially recognized;
2. The KBC investigation team shall have the right to examine all witnesses such as civilians, soldiers, police and government authorities, who are relevant to and involved with the case, independently and formally in order to uncover the truth;
3. Police will be examined as to whether, at the scene of crime, evidence was collected, confiscated, packed and sealed, and then formally registered in the police station in accordance with the Police Manual; whether evidence was transferred from one hand to another, violating the Police Manual; whether the result of the DNA is valid and genuine and it was received in the light of the relevant procedures;
4. In all investigation processes, video records, voice records and photo records will be obtained and kept;
5. In order to scrutinize the status and validity of documentary evidence, including medical certificates, the KBC investigation team will seek the assistance of experts from the international community;

<sup>81</sup> <http://www.responsibilitytoprotect.org/index.php/about-rtop/the-un-and-rtop>

6. Out of the witnesses examined, for those who are recommended by the KBC investigation team, the KBC will seek all necessary aid.
7. During those trips made by the KBC investigation team, the media people shall have the right to accompany it;
8. The government shall provide prior agreement to the KBC investigation team that it will not ignore the recommendations to be provided by the latter having investigated the case in accordance with the effective laws in the country, such as the Penal Code, the Code of Criminal Procedures, Evidence Act, Police Manual and 1959 Army Act; and that the government will take necessary actions accordingly; and,
9. The KBC investigation team will ask for necessary and relevant information from the respective government authorities.

For furtherance of the process, the above-mentioned step of the KBC investigation team was courageous, reasonable, legitimate and timely. Unfortunately, the ruling regime has not yet responded to the KBC's request.

## **Institutional Constraints**

It has been proven that the State Institutions – the Myanmar Army, the Police, the Judiciary, the government offices, and the Myanmar National Human Rights Commission (MNHRC) – have become accomplices particularly in regard to the heinous crimes committed and being committed by the Myanmar Armed Forces, negatively resulting in systemic and systematic violations of human rights, commonly in ethnic areas of Burma.

In addition to many other similar crimes occurring primarily in ethnic and/or indigenous territories, the Kawng Kha case should not be regarded as merely an ordinary criminal case. Rather, it constitutes a war crime, which should not be neglected by the international community. If effective action can be taken, from the aspect of effective human rights litigation, similar future crimes will be deterred; and it might possibly lead to a certain process of institutional reform.

Without conducting any reform of the existing State Institutions, human rights will remain elusive in Burma. In addition, the 2008 Constitution authorizes formation of an independent military tribunal, not under the supervision of the civilian Supreme Court. In the case of Par Gyi, a freelance journalist, who was detained by the Myanmar Army and tor-

tured to death, the military tribunal quoted Section 72 of the 1959 Army Act, dismissed the legal argument that the two soldiers accused be tried in a civilian court as they committed an offence against a civilian journalist, and acquitted the two soldiers accused,<sup>82</sup> despite the fact that the criminal action of those soldiers constituted a war crime.

Section 72 of the said Act stipulates as follows:

A person subject to this Act who commits an offence of murder against a person not subject to military law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court martial, unless he commits any of the said offences –

- (a) while on active service, or
- (b) at any place outside the Union of Burma, or
- (c) at a frontier post specified by the President by notification in this behalf.

The said law can be defined from the opposite aspect, as follows:

A person subject to this Act who commits an offence of murder against a person not subject to military law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall be deemed to be guilty of an offence against this Act and shall be tried by a court martial, if he commits any of the said offences –

- (a) while on active service, or
- (b) at any place outside the Union of Burma, or
- (c) at a frontier post specified by the President by notification in this behalf.

Out of the three conditions mentioned above, the terms ‘active service’ and ‘frontier post’, stipulated under para (a) and (c), are controversial. The 1959 Army Act became a law under the 1947 Constitution which existed during the period from 1948 – the year Burma gained independence – to 1962, when the Army staged a military coup. Even though the two terms were controversial, they did not create serious problems given that, under the 1947 Constitution, the civilian Judiciary was independent, impartial and efficient while the “Courts-Martial Appeal Court”<sup>83</sup> was under the direct supervision of the civilian Supreme

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82 <https://www.facebook.com/466917343363482/videos/vb.466917343363482/804886372899909/?type=2&theater>

83 The Section 3 (i) of the 1959 Army Act

Court in accord with Section 211 of the 1959 Army Act.<sup>84</sup> Civilian supremacy – which is foundation for democracy, practiced under the 1947 Constitution – was to a notable extent able to control the human rights abuses of the Army personnel, despite the fact that it did not effectively reach mountainous areas, where non-Burman ethnic nationalities have been residing.

From the time that the military coup happened in 1962, to now, military supremacy has replaced civilian supremacy; and, with this underpinning, the 2008 Constitution has emerged. As a negative result, inter alia, Courts-Martial, as independent military tribunals, have come into existence in parallel with the civilian Supreme Court.<sup>85</sup> The worst is that the power of the “Courts-Martial Appeal Court” provided for in Section 211 of the 1959 Army Act was in practice withdrawn; and, instead, the Commander-in-Chief of the Defense Services assumes appellate power as per Article 343 (b) of the 2008 Constitution.<sup>86</sup> As such, under the 2008 Constitution, no State Institution can take any legal action regarding serious human rights abuses -- amounting to heinous crimes -- committed by Army personnel, thereby causing ongoing impunity in the country.

By providing due attention to this legal framework, in addition to the Ko Par Gyi case, many other atrocious human rights abuses which have been occurring in indigenous territories and in ethnic states, need to be scrutinized.

Pursuant to the 1959 Army Act, so long as a person subject to this Act is on active service, he shall be tried by a court martial even though he commits one or more of the said offences against a person not subject to military law. The Section 3 (a) makes a definition, among others, of the term ‘active service’ as follows:

‘Active Service’ means the time during which such person is attached to, or forms part of, a force which is engaged in military operations against an enemy.

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84 The Section 211 of the 1959 Army Act: “There shall be a Court-Martial Appeal Court whereof the judges shall be –  
(a) such of the judges of the High Court as the Chief Justice of the Union may from time to time nominate for the purpose;

(b) such of the officers not below the rank of Lieutenant Colonel of the Defence Services as the Chief Justice of the Union may from time to time nominate for the purpose; and

(c) such other persons, being persons of legal experience and not in the Government Service, as the Chief Justice of the Union may appoint.

85 The Article 293 of the 2008 Constitution

86 The Article 343 (b) of the 2008 Constitution: “In the adjudication of the Military Justice, the decision of the Commander-in-Chief of the Defence Service is final and conclusive.”

Actually, Par Gyi was arrested not in a battle zone where military operations were taking place, but in an area where no armed conflict was occurring. However, in his case, the military tribunal rendered a judgment by saying that the soldiers who apprehended Par Gyi, conducted their action while they were on 'Active Service'; and, as such, the adjudication of military justice should be applied. Unless that judgment can be abrogated, it might become a ruling and the entire society, particularly the indigenous territories and ethnic states, will suffer far reaching negative impacts.

This is because, whenever Army personnel from the Myanmar Armed Forces commit any crime – including heinous crimes such as war crimes, crimes against humanity, genocide and ethnic cleansing – the soldier suspects can be adjudicated only by the Courts-Martial or the military tribunals; after fabricating fake trials, those suspects will be discharged or acquitted. In the Kawng Kha case, even if Aung Phy Myint and some soldiers can be identified as culprits, they will certainly be placed under military justice and be acquitted. Under this national legal framework in which Courts-Martials or Military Tribunals are at the apex, justice for civilian victims can never be achieved. As a result, the army has become the strongest institution in the country, subordinating all other institutions, such as police, judiciary, state security forces and government departments.

The police institution in particular does not take a neutral position, as it has to obey the orders of the officials of the Myanmar Armed Forces -- for reasons of State security in accordance with the 2008 Constitution – in cases of crimes committed by rank-and-file Myanmar soldiers against civilian people, especially in ethnic areas. Even worse, the leaders of the Armed Forces systematically control the police by appointing their army officers – after their uniforms have been changed into civilian dress – to high ranking positions within the police institution.

The Police Colonel and Deputy Colonel who occupy the highest positions -- the police chief and deputy chief -- in the police institution in Shan State, are those who moved from the Army to the Police. When the Kawng Kha case occurred in Muse township, Shan State, the army officials-turned-police officers provided commands to the ground where the crime was committed, and ordinary police had no alternative but to obey those orders. Recently, similar actions were taken for judicial positions, but lawyers have started to reject this with a widespread white ribbon campaign.

## The Application of International Humanitarian Law

Unlike international human rights laws, international humanitarian law cannot be applied in all circumstances. Presupposition for the application of international humanitarian law is the existence of an armed conflict<sup>87</sup> in a nation state. In this regard, as far as Burma is concerned, it has already been evident that the internal armed conflict has existed since the independence of the country in 1948.

A series of meetings currently being held between the ruling regime, led by President Thein Sein, on one side and the Ethnic Armed Organizations (EAOs) on the other, as counterparts, to produce a Nationwide Ceasefire Agreement (NCA) is clear evidence that armed conflicts are still taking place in Burma. Paragraph 1 (A) of that agreement, inter alia, recognizes the equal rights and self-determination of the ethnic nationalities in attempting to establish a Federal Union, after achieving a nationwide ceasefire.

“Similarly, there is an established kind of internal armed conflict, wars of self-determination, which has gradually come to be considered as being governed by the laws of war applicable in international armed conflicts. ----- In 1973, the General Assembly resolution 3103 recognized explicitly that the Geneva Conventions should apply to wars of self-determination, as such conflicts should be considered international.”<sup>88</sup>

The ceasefire being implemented by the ruling regime in Burma is not nationwide, as purported, given that out of 21 organizations – the total number of EAOs in the country – only 8 signed the agreement. Even if the Nationwide Ceasefire Agreement had been signed by all EAOs, the mere existence of such an agreement per se could not guarantee termination of the internal armed conflicts given that the regime violated similar previous bilateral agreements made with the Kachin Independence Organization (KIO) and the Shan State Progressive Party (SSPP), by killing many members of the former and by launching military operations against the latter.

In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, inter alia the following factors: the fact that the perpetrator is a combatant; the fact that the victim is non-combatant; the fact that

<sup>87</sup> International humanitarian law by Sandesh Sivakumaran, University of Nottingham; International Human Rights Law published by Oxford University Press, 2010; P. 526.

<sup>88</sup> War crimes in internal armed conflicts, by Eve La Haye, Cambridge University Press, 2008; P. 14

the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator`s official duties.<sup>89</sup>



*The body of one of the two victims before post-mortem examination was made in the hospital.*

## **Torture**

In this case, the suspected perpetrators are combatants and the victims are non-combatant civilians. The two victims were brutally tortured before they were killed. Under any circumstances, the act of torture is prohibited as it falls under a jus cogens norm – a peremptory norm of general international law, accepted and recognized by the international community; no derogation is permitted; since the 1990s, international, regional, and national courts have recognized certain norms as jus cogens including the prohibition against torture.<sup>90</sup>

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<sup>89</sup> The ICTY Appeals Chamber in the Kunarac case; Ibid P. 111

<sup>90</sup> Supra 1, P. 113-114.

States are bound by jus cogens norm whether or not they have expressly consented to them. For example, the 50 or so states that are not parties to the UNCAT remain subject to the prohibition of torture: they cannot derogate from it through international treaties, through local or special customs, or even ‘through general customary rules not endowed with the same normative force’.



*In the photos above, the hands of the two victims are compared to that of Corporal Chan Yein – a soldier from the Kachin Independence Army (KIA), at the top right – who was apprehended, tortured and killed by the Myanmar Armed Forces on June 9, 2011, resulting in ignition of fighting, terminating the bilateral ceasefire agreement signed between the military regime and the KIA in 1994. These photos indicate that the Myanmar Armed Forces commonly practice a similar method in torturing their detainees or victims of rape. These criminal actions undoubtedly constitute war crimes.*

## Interconnection Between Human Rights and Civil War

As far as Burma is concerned, it is regrettable that international human rights communities have not yet expressed their interest in the civil war issue, the main reason being that it is political; and, as such, they are keeping a distance from the current process being conducted between the ruling regime and the Ethnic Armed Organizations (EAOs), which might possibly lead to a peace seeking process. As a matter of fact, if the civil war cannot be terminated with the underpinnings of individual rights and freedoms on one hand, and collective rights – the right to self-determination of ethnic nationalities and/or indigenous peoples on the other -- human rights violations will continue unabated.

Similarly, political communities – democratic forces and ethnic parties or ethnic resistance organizations alike – have not yet revealed an in-depth commitment to human rights. During the dialogue process between the ruling regime and EAOs aiming to produce a Nationwide Ceasefire, despite taking a couple of years, neither side has raised the issue of human rights or transitional justice. Without dealing with human rights issues inflicted on various ethnic nationalities and indigenous peoples, how can genuine peace be achieved?



An analysis of the Kawng Kha case – a heinous crime inflicted on individual victims, albeit not on a group – may be complete only when it is connected with the civil war background. The area where Kawng Kha village is situated is in the designated territory of Division No. 4 of the Kachin Independence Organization (KIO) and Kachin Independence Army (KIA), even though it is in the northern part of Shan State, and not in Kachin State. This is not only because of historical factors but also practical settlement of the Kachin population there.

The above map indicates the location of Kawng Kha village. It is between Nam Tau and Mung Baw, which are village tracts much larger than Kawng Kha. From the economic aspect, this entire area is not directly significant. However, militarily, it is important for the Myanmar Armed Forces as, after collecting manpower, supplies, weapons and ammunitions in or around Mung Baw, they are able to conduct military operations against Division No. 4 of the KIO, a part of which has been manoeuvring in the north-eastern part of Mung Baw.

In order to have access to Mung Baw, the major route from the lowlands of the country needs to pass through firstly Nam Tau and then Kawng Kha. Although Kawng Kha village is small, strategically it is important due to its geographical location. In addition, what is unique is that in Kawng Kha village, a large majority of the population are of Kachin nationality, which might cause the Myanmar Army leaders to be concerned that they are supporters of the KIO/KIA.

During over six decades of civil war, it is evident that successive ruling regimes, primarily military rulers, up to the present time, routinely apply the “four cuts” strategy, whereby rebel forces are cut off from local communities, in terms of supplies, transportation, communication and information. The premise is that if there are no villages and local people providing support in the designated strategic areas, the rebel forces cannot survive. Under that strategy, still being practiced by the ruling regime led by President Thein Sein and Commander-in-Chief Min Aung Hlaing, various ethnic nationalities have faced ongoing suffering. As a result, in the northern part of Shan State, in the areas influenced by the Shan State Army North and the KIO Division No. 4, out of the entire number of villages, over half have been forced to relocate and several thousands of local people have turned into refugees or IDPs.

Another factor directly linked to KIO Division No. 4 relates to the attitude of the ruling regime. Min Aung Hlaing, Commander-in-Chief of the Myanmar Armed Forces,

appears to have particular loathing for the existence of KIO Division No. 4 in the northern part of Shan State, probably due to suspicion that it has been closely cooperating with the SSA (North), the Ta-ang (Palaung) National Liberation Army (TNLA), Arakan Army, and the MNDA, known as the Kokang group. These EAOs are able to threaten the security of the gas pipeline originating from Rakhine State, which passes through the territories controlled by these organizations, and finally reaches Kunming, the capital of Yunnan Province, China.

Min Aung Hlaing claimed on August 25, 2015 that in addition to TNLA, which provided assistance to the Kokang Group, the KIO Division No 4 must also surrender.<sup>91</sup> KIO Division No. 4 is therefore a specific target of the military authorities. As such, the Kawng Kha case might have been committed by the ruling regime and Myanmar Armed Forces systematically and intentionally, threatening the entire Kachin community who primarily inhabit the territory where the KIO Division No. 4 has been operating.

In addition, the ruling regime might have committed such a heinous crime in order to create a feeling of fear, particularly among Kachin youth, who have been increasingly supporting the leadership of the KIO, by various means. This is similar to the case when an artillery shell launched by the Myanmar Armed Forces fell on the ground of a KIA military cadet school and killed 21 youth cadets. What is undisputed is that so long as the civil war continues, serious human rights violations can never be circumvented. At the same time, while exerting efforts for termination of civil war, under any circumstances or for any reason, human rights violations should not be committed by either side.

## **Recommendations to Protect Human Rights in Connection with Civil War in Burma<sup>92</sup>**

The ceasefire agreement should contain a cohesive provision embracing promotion and protection of all internationally recognized human rights. From this aspect, the provisions in the government's proposed Ceasefire Agreement are inadequate for an ordinary situation let alone for dealing with the scale of the humanitarian issues in relation to the armed conflict and the disputes that lie at the heart of it.

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<sup>91</sup> Reported by the New Light of Myanmar, the government's newspaper, August 25, 2015.

<sup>92</sup> These recommendations, already provided in the paper "Potential for Peace in Burma or Regional Stability" compiled by the Legal Aid Network on May 14, 2015, are repeated here with a little bit of revision.

## **Human Rights**

The government needs to be clearly held to all Burma's international treaty obligations, under the laws of armed conflict as well as human rights law. The agreement needs to specify that the State has the duty not just to not commit, but also to prevent and to protect human rights. Given the reported prevalence of sexual violence and exploitation of children in the course of the struggle, it is essential that there must be concrete provisions addressing the protection of women and children already at this ceasefire stage. For example, all child soldiers must be immediately demobilised and returned home to their families or taken into rehabilitation pending return and reintegration. Sufficient protection for the victims of war should be included here. Of course, these laws and rights must also be respected by the EAOs, even if formally they are not bound by international law in the way that the State is.

A critical gap here is an outright prohibition on attacks on civilians and violations of human rights during the ceasefire. The agreement must impose a clear obligation on the parties to take immediate and prompt action within the law against anyone, civilian or military, who engages in such acts.

Monitoring missions to be set up under this agreement should also monitor the human rights situation, particularly in the designated areas provided for in the Agreement, and provide necessary assistance to all victims of human rights abuses.

## **Humanitarian assistance**

In regard to IDPs, provisions mentioned in the Nationwide Ceasefire Agreement, signed by the regime and 8 EAOs on October 15, 2015, appear vague and lack specifics. To engender confidence and commitment, more detailed provisions on both the nature of the cooperation and the assistance should be specified while a definition of "IDPs" be made.

A comprehensive bill of rights is hardly appropriate in a ceasefire agreement. However, the obligations of the parties at this critical juncture, which is neither an 'emergency' nor 'peacetime', need to be clearly laid out as do the entitlements of civilians, especially the victims of the armed conflict and those particularly vulnerable groups such as children, women and the elderly. The well-being of civilians should be at the centre of this. Both parties may commit to creating conditions, which would guarantee security for all people particularly in the war torn areas negatively affected by the armed conflicts, in a way that measures for the Rule of Law are implemented. Only then, it will facilitate the return of ref-

ugees and resettlement of displaced persons effectively.

### **The Role of National and International NGOs**

The lull in fighting can allow space for regular criminal activity and much repression including revenge attacks and exploitation, and the agreement needs to be alive to that. What is to happen in relation to human rights violations during the ceasefire, for example sexual violence, arbitrary arrest, torture in custody or disappearances?

One way to focus attention on the parties in this matter is to include a role for NGOs and monitors (this of course presupposes freedom of movement of civilians and freedom of expression, from both the State and the EAOs). It also links to the role of law enforcement in the EAO areas, previously discussed.

### **Seeking Criminal Accountability**

It may not be politically possible to agree to anything specific about criminal accountability at this stage, although it must be dealt with in the near future. Raising that issue in any dialogue process will facilitate the Rule of Law and, may to a certain extent prevent the repeated heinous crimes, which have been occurring particularly in the ethnic areas. The State has long been under international obligations in the matter of international crimes and serious violations of international human rights law; the EAOs too have obligations.

Both sides benefit from an approach that strengthens Rule of Law. By implementing its international obligations, the new regime led by President Thein Sein can prove that it is different from the former military regimes. EAOs' credibility can be boosted by a pro-active approach. The EAOs should make every effort to preserve evidence of criminality, assist with documentation, safety of victims and witnesses, and assist private efforts at fact-finding. They should enforce the law within areas under their control when new criminality occurs.

### **Specific Recommendation Particularly to Deal with War Crime Cases**

The previous and current attitude and actions of the successive ruling Myanmar military regimes, including the incumbent one, have vividly indicated and proven that, in Burma, there are very rare alternatives to seek justice for the victims of heinous crimes,

particularly those which constitute grave breaches of the Geneva Convention of 12 August 1949, which Burma has acceded to.

At the same time, what is discernible is that, in regard to these unjust practices, which amount to international crimes, so long as various ethnic nationalities and/or indigenous peoples inhabiting the country, and their organizations – EAOs and/or genuine civil society organizations – are keeping silent, or act very timidly, their voices cannot be heard by the international community. As a result, there can be little expectation of gaining the attention, cooperation, and contribution of the international community.

To overcome this, the media should revive its efforts to practice investigative journalism. Genuine civil society organizations, legal practitioners, women's rights associations, religious leaders, community leaders, local human rights activists, political forces, which are committed to seeking justice for these heinous crimes, should rise up; gather together now; and find ways to repel the unjustifiable threats being imposed by the incumbent regime. To this end, this preliminary report may constitute a wake-up call. This is on one hand.

On the other, invoking international human rights laws, international criminal law, humanitarian law, including R2P norms, as well as the concept and practices of universal jurisdiction, the international community has also obligations to deal with such heinous crimes, the scope of which transcends the national boundary of a sovereign state. Most of the international community which are siding with or exercising a policy of appeasement with the power holders, while ignoring justice, freedom, human dignity, human values, particularly human rights, should review their policies and rectify them.

If a united voice can be created by the power of people in the country, there are several ways to deal with such heinous crimes at the international level, by applying UN mechanisms, including the Human Rights Council, or in some countries which exercise universal jurisdiction, in addition to litigation of perpetrators, by using the Torture Victim Protection Act and Alien Tort Claims Act in the United States. Another possible alternative is to request the enquiry of the International Humanitarian Fact-Finding Commission (IHFFC),<sup>93</sup> which is established in accord with Article 90 of the Additional Protocol to the Geneva Convention of 12 August 1949.<sup>94</sup>

93 <http://www.ihffc.org/index.asp?Language=EN&page=home>

94 The Article 90 (2) stipulates as follows:

(c) The Commission shall be competent to:

i) enquiry into any facts alleged to be a grave breach as defined in the

Art. 90 of the Additional Protocol makes the consent of a State Party to the Protocol (or other State not a party to the Protocol) a prerequisite for an inquiry. According to such a reading, an enquiry can be undertaken against the United States if it gives its consent in the Kunduz case. Similarly, Burma would need to give its consent in the Kawng Kha case. Rule 20 appears only to govern the contents of a request for an inquiry. It does not reveal who may lodge a request (it thus seems to open the door to persons/entities that are not state parties to the Protocol to lodge an enquiry). In summary, the IHFFC should be able to undertake an inquiry against Burma in the Kawng Kha case provided that Burma consents.”<sup>95</sup>

### **Commitment to Proceed with the Process for Seeking Truth and Justice**

It was anticipated that the KBC might stand courageously in the forefront in seeking justice for the Kawng Kha case. When asked in this regard, Dr. Samson, the General Secretary of the KBC and also leader of the KBC investigation team, publicly claimed, ‘To which extent, shall we be courageous? We are courageous enough to continue taking action on whatever we should.’ Unfortunately, President Thein Sein, the chairperson of the Union Solidarity and Development Party, totally ignored the KBC’s request to transform its investigation team into an authorized body, with a reasonable amount of power. It is anticipated that the KBC investigation team may take effective action soon in line with its courageous commitment so that it can uncover the truth, while overcoming the status of a paper tiger. All may need to wait and see, while time is flying. The regime is buying time so that the Kawng Kha case disappears from the mentality of the general public, similar to other heinous crimes which occurred in previous decades.

The female activists from KWAT rightly claimed, ‘Previously, after our people had suffered from any serious human rights violation, committed by Myanmar soldiers or government authorities, we, as Christian believers, gathered together; prayed to God: attempted to practice forgiveness: afterwards, everything finished. That was all. However, in this

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Conventions and this Protocol or other serious violation of the Conventions or this Protocol;

ii) facilitate, through its good offices, the restoration of an attitude of respect for the Convention or this Protocol;

(d) In other situations, the Commission shall institute an enquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned.

<sup>95</sup> A legal comment, provided by Dr. David Fisher, Prof. of International Law, Faculty of Law, Stockholm University, Sweden, and also a member of Board of Director of the Legal Aid Network (LAN)

Kawng Kha case, we should do something effective to respond to perpetrators, at least, to the extent that they cannot evade justice nor enjoy absolute impunity?

In the third week of August, 2015, lawyers from the Legal Aid Network (LAN) interviewed and examined six witnesses from the Kawng Kha village. After completion of the examination process, the witnesses mentioned that as a result of the case, the women in the village dare not sleep in their own homes; and at night they gather together and sleep in one or two houses so that similar incidents can be circumvented.



Mr. Aung Htoo, a human rights lawyer from the LAN, explained to them the dead-lock situation of the Kawng Kha case, highlighting concerns of our three organizations that unless effective action could be taken within a certain limited time, momentum for seeking justice might wane and efforts might gradually end in disappearance. He also suggested that they allow their statements and video records, which reveal unjust and illegal practices of the police and army officials, to be used in our public campaign, with their original names and pictures. If they did so, this would facilitate efforts to seek justice, and support the ending of impunity. If not, the vicious circle of impunity would not be broken and similar crimes would continue occurring in the future.

He also warned those witnesses by elaborating that, if they did so, they might be targeted by the authorities and their lives might be at risk, given that there is no program of witness protection in Burma nor is there any law in this regard. Finally, he encouraged all witnesses to make their own decisions independently, as their destiny would be only in their hands. A few days later, those witnesses replied that they would allow the LAN to use their statements and video records with their original names and pictures; and they only asked for material assistance for their survival when they fight for justice publicly against the authorities.

Even though the villagers in Kawng Kha village are poor, mostly uneducated, and lack any financial or political power backing, their small community has commenced to rise up, stand together and struggle for justice and human rights.

နောက်ဆက်တွဲ -

ဥက္ကဋ္ဌ

မြန်မာနိုင်ငံလူ့အခွင့်အရေးကော်မရှင်  
အမှတ်(၂၇)၊ ပြည်လမ်း၊ လှိုင်မြို့နယ်  
ရန်ကုန်မြို့။

ရက်စွဲ - အောက်တိုဘာ(၁) ရက်၊ ၂၀၁၂။

အကြောင်းအရာ။ ။ တပ်မတော်သားများမှ အပြစ်မဲ့ ကိုးတန်းကျောင်းသူ မဂျာဆိုင်းအိန်အား  
အကြောင်းမဲ့ ပစ်သတ်မှုကို စုံစမ်းစစ်ဆေးပေးပါရန် တိုင်ကြားခြင်း။

လေးစားစွာတင်ပြ လျှောက်ထားအပ်ပါသည်ခင်ဗျား -

ကျွန်တော်၏ အမည်မှာ ဦး ဘရန်ရှောင်(ဘ) ဦးနော်လှိုင် ၊ ၁/မကန (နိုင်) ၀၈၆၀၅၂  
ဖြစ်ပါသည်။ ကျွန်တော်တို့ မိသားစုသည် မှော်ဝှမ်းရပ်ကွက်၊ အုပ်စု (၁) ဆွတ်ပိုင်ယန်ရွာတွင်  
အေးချမ်းစွာ လုပ်ကိုင်စားသောက် နေထိုင်ကြပါသည်။ ကျွန်တော်သမီး မဂျာဆိုင်းအိန်လည်း  
အ.ထ.က ( ဖားကန်) ကျောင်း၊ နဝမတန်း( ယ ) တွင် ပညာသင်ကြားနေသော (၁၄) နှစ်အရွယ်  
ကျောင်းသူဖြစ်ပါသည်။

(၁၃.၉.၂၀၁၂) ရက်နေ့နံနက် (၃:၀၀) နာရီခန့်တွင် မှော်ဝှမ်းကလေးဘက်မှ  
မြောက်ပိုင်းတိုင်း လက်အောက်တွင် အခြေစိုက် တပ်ရင်း(၃၈၉) တပ်အင်းအား(၈၀)ခန့်ရှိ  
စစ်ကြောင်းသည် ကျွန်တော်တို့ရွာတွင် အရက်သေစာများ သောက်စားမှုူးရူးကာ အချင်းချင်း  
စကားများနေကြပါသည်။

ညနေ(၄:၀၀)နာရီခန့်တွင် ဖားကန်မြို့ဘက်သို့ ထွက်သွားရန် ပြင်ဆင်နေကြပြီး  
ရှေ့ပြေးအဖွဲ့တစ်ဖွဲ့ထွက် သွားသည်ကို တွေ့ရသည်။ ထိုအဖွဲ့များထွက်သွားပြီး မိနစ်အနည်းငယ်ခန့်  
အကြာတွင် ဗုံးပေါက်ကွဲသံ ကြားလိုက်ရ သည်။ ထိုပေါက်ကွဲသံ ကြားရပြီးနောက်တွင်  
မြန်မာ့တပ်မတော်သားများသည် ရွာအတွင်း နေရာတကာ တွေ့သမျှလူ၊ တိရိစ္ဆာန်နှင့်  
လူနေအိမ်မကျန် အဆက်မပြတ် ပရမ်းပတာ လက်နက်ကြီး/ငယ်ဖြင့် ပစ်ခတ်ကြတော့သည်။

လက်နက်ကြီး/ငယ် ပေါက်ကွဲသံများ ၊ ပြေးလွှားအော်ဟစ်သံများ ၊ ငိုကြွေးသံများဖြင့် ကမ္ဘာပျက်သကဲ့သို့ပင် ဖြစ်ပါသည်။ မိမိအနေဖြင့်လည်း အနီးဆုံး ပုန်းကွယ်နိုင်သောနေရာတွင် အကာအကွယ်ယူ ပုန်းခိုနေရပါသည်။ နောက်မှသိလိုက်ရသည်မှာ ထိုပစ်ခတ်မှုသည် ရန်သူတပ်များနှင့် အပြန်အလှန် တိုက်ခိုက်ကြသည့်တိုက်ပွဲမဟုတ် စစ်ကြောင်းရှိ စစ်သားများနှင့် ဗျူဟာကုန်းရှိစစ်သားများ အချင်းချင်း အပြန်အလှန်ပစ်ခတ်ကြသည့် တိုက်ပွဲဖြစ် ကြောင်း သိခဲ့ရသည်။

ဗျူဟာကုန်းမှ ပစ်လိုက်သည့် လက်နက်ကြီးများသည် ကျောင်းဆင်းချိန် ဖြစ်သောကြောင့် ကျောင်းသား/ သူ များနှင့် ကျောင်းကြိုမိဘများ ရှိနေရာတွင် ကျရောက်ကာ ထိခိုက်ဒဏ်ရာရသူများစွာ ရှိခဲ့ပြီး ယခုဖားကန့်ပြည်သူ့ဆေးရုံးနှင့် မြစ်ကြီးနားပြည်သူ့ဆေးရုံတွင် ဆေးကုသမှုများ ခံယူလျက်ရှိ နေကြပါသည်။

ထိုကဲ့သို့ တပ်မတော်သားများ စစ်ကြောင်းထွက်လာချိန်တွင် မ- ဂျာဆိုင်းအိန်နှင့် သူငယ်ချင်းများ ဆရာမ- ဒေါ်နန်ဆန် ( အ.မ.က - မူကြို ) တို့သည် ကျောင်းမှအပြန် ဖြစ်သည်။

- ၁။ မ ဆိုင်းမိုင် (ဘ) ဦး ဂမ်လှိုင်
- ၂။ မ ရွယ်နူး (ဘ) ဦး နနန်းဘောက်
- ၃။ မ ဂျာဘောက်လု (ဘ) ဦး လဂန်ဇော်လောဒွိ
- ၄။ မ ဂျာမွန်းမိုင် (ဘ) ဦး လဂန် ဇော်လောဒွိ
- ၅။ ဆရာမ-ဒေါ်နန်ဆန်

တို့သည်စစ်ကြောင်းနှင့် တွေ့တွေ့ချင်း ၊ ဗုံးကွဲသံ ၊ သေနတ်ပစ်သံများကြောင့် ကြောက်လန့်တကြား ပြာယာခတ်ကာ ညာဘက်လမ်းဘေး လူနေအိမ်၏ အနောက်ဘက် မိုးကာဖြင့် ကာရံထားသော မီးဖိုချောင် အဟောင်းတွင် ပုန်းကွယ်လျက်ရှိနေသည်။ ထိုပုန်းကွယ်နေသော နေရာသို့ တပ်မတော်သား တစ်ဦးမှ "တောက် ခေါက်" ဆဲဆိုအော်ဟစ်ပြီး သေနတ်ဖြင့် ချိန်ရွယ်ကာ "ထွက်ခွဲ" ဟု အော်ပြောသောကြောင့် မ- ဂျာဆိုင်းအိန်နှင့် သူငယ်ချင်းများ၊ ဆရာမတို့သည် ပုန်းကွယ်လျက်ရှိသောနေရာမှ ထွက်လာသောအခါ ကျောင်းအပြန်ဖြစ်သော ကြောင့် ကျောင်းစိမ်း / ဖြူ ဝတ်ထားသည်ကို တွေ့လျက်နှင့် သေနတ်ဖြင့် ချိန်ရွယ်ကာပစ်လိုက်သည်။

ထိုပစ်လိုက်သော ကျည်ဆံသည် မ-ဂျာဆိုင်းအိန် ၏ တင်ပါးတွင်ထိသွားသည်ကို သူငယ်ချင်းများနှင့် ဆရာမ တို့ တွေ့လိုက်ရသည်။ သေနတ်ဒဏ်ရာဖြင့် ပျော့ခွေနေသော

မ- ဂျာဆိုင်းအိန်အား ၎င်းခြံဝင်းတွင် ပုန်းခိုနေသော ယောက်ျားနှစ်ဦးကို အတင်းအဓမ္မ ခြိမ်းခြောက်ခေါ်ယူ ထမ်းခိုင်းကာ ဆရာမနှင့်သူမ၏ သူငယ်ချင်းများနှင့်တကွ စစ်ကြောင်းမှူး ဦးဇော်မင်းသန်ရှိရာသို့ ခေါ်ဆောင်သွားကြောင်း ဆရာမ-ဒေါ်နန်ဆန်၏ ပြောပြချက်အရ သိရှိခဲ့ရပါ သည်။ ထိုသို့ အခင်းဖြစ်စဉ် ကျွန်တော်တို့မိသားစုသည် ကျွန်တော်တို့အိမ်တွင်း ပုန်းခိုလျက်ရှိသည်။ မိမိအိမ်တွင်း မိမိပုန်းခိုနေကြသော ပြည်သူများကို မြန်မာတပ်မတော်သားများမှ "အားလုံးထွက်ခဲ့ကြ" ဟုအော်ဟစ်ပြောကာ မိန်းမ နှင့်ကလေးများကို တစ်စု၊ ယောက်ျားများကိုတစ်စု စုထားသည်။ ယောက်ျားအုပ်စုထဲ တပ်မတော်စစ်သားများထဲမှ တစ်ဦးက "ဦး ဘရန်ရှောင်" ဆိုတာဘယ်သူလဲဟု ကျွန်တော့်အား ခေါ်ထုတ်သွားသည်။ ကျန်နေသောသူများအား "ဘာမှမဟုတ်ဘူး" မစိုးရိမ်နဲ့ဟုပြောကာ စစ်ကြောင်းမှူးနှင့် ကျွန်တော့်သမီးရှိရာသို့ ရောက်ရှိသွားသည်။

ထိုနေရာသို့ ဧရာဝတီအခါတင်ပါးတွင် သေနတ်ဒဏ်ရာဖြင့် ငြီးတွားနေသော သမီးကို ဆရာမ ဒေါ်နန်ဆန် မှပြုစုပေးနေသည်ကို တွေ့ရသည်။ ဆရာမ ဒေါ် နန်ဆန်က ကျွန်တော့်ကို တွေ့သောအခါ ကချင်လို "သူတို့ဆေးထိုးထားပေးတယ်၊ ဆေးလည်းထည့်ထားပေးတယ်" ဟုပြောပါသည်။ ကျွန်တော်သည် စစ်ကြောင်းမှူး အား ကျွန်တော်သမီး၏ ဒဏ်ရာကို ဆေးရုံတွင် အမြန်ဆုံးကုသပေးမည်ဟု ခွင့်ပန်သော် "အခုမရဘူး စစ်ကြောင်း ထွက်သွားမှ ဆေးရုံသွားလိုက်" ဟု ကျွန်တော့်အားပြောပါသည်။

သေနတ်ဒဏ်ရာရရှိပြီး (၃) နာရီခန့်အကြာမှ ဖားကန့်ပြည်သူ့ဆေးရုံသို့ သွားရသည်။ ဆေးရုံရောက်သော အခါ ဖားကန့်ဆေးရုံ၊ ခွဲစိတ်ဆရာဝန် ဒေါက်တာကျော်ထွန်းဦးနှင့် သူနာပြုဆရာမများ သွေးသွင်းပြီး ခွဲစိတ်ကုသနေ သော်လည်း သွေးဖိအား လုံးဝကျဆင်းသွားပြီး ဖြစ်သောကြောင့် အသက်မကယ် နိုင်ဘဲည (၉:၀၀)နာရီခန့်တွင် ကွယ်လွန်သွားပါသည်။ ဆရာဝန်ကကျွန်တော်အား "ဗိုက်ထဲမှာ ကျည်ဆံ အကုန်ပွေ့လိုက်တယ်ကော ၊ အူသိမ် (၃) နေရာမှာ ထိသွားတယ် ၊ ကျွန်တော်တို့ ကြိုးစားပေးမယ့် မရတော့ဘူး၊ စိတ်မကောင်းပါဘူး" ဟုပြောပါသည်။

ကျွန်တော်တို့ မိသားစုအနေနှင့် ယခုကဲ့သို့ အပြစ်မဲ့သော ကျောင်းသူသမီးငယ်ကို ချိန်ရွယ်ပစ်ခတ်ခဲ့သလို နောက်နောင် မည်သည့် ပြည်သူလူထုကိုမျှ ဥပဒေနှင့်မညီညွတ်သော လုပ်ရပ်မျိုးမလုပ်ကြရန် တင်ပြလိုပါသည်။ တပ်မတော်သည် ကျောင်းသူ / သား များနှင့် ပြည်သူကို ပစ်သည့် တပ်မတော်မဟုတ်ဘဲ ပြည်သူကို ကာကွယ်သည့် တပ်မတော်သာဖြစ်စေလိုပြီး မတည်ငြိမ်သောဒေသများတွင် ယခုကဲ့သို့ တရားဥပဒေမဲ့ ပြုလုပ်မှုများကိုလည်း လုံးဝ

မရှိစေလိုတော့ပါ။

သို့ဖြစ်၍ ကျွန်တော်၏သမီး မ-ဂျာဆိုင်းအိန် အားအကြောင်းမဲ့ သေနတ်ဖြင့် ပစ်သတ်ခဲ့သည့် တပ်မတော်သားကိုလည်း စုံစမ်းဖော်ထုတ်ပြီး ဥပဒေနှင့်အညီ အရေးယူ ပေးနိုင်ပါရန် ယုံကြည်အားကိုးစွာဖြင့် တင်ပြအပ်ပါသည်။

တင်ပြသူ-

( ဦး ဘရန်ရှောင် )

၁/ မကန (နိုင်) ၀၈၆၀၅၂

မှော်ဝမ်းရပ်ကွက် ၊ အုပ်စု (၁) ဆွတ်ငိုင်ယန်။

ဖားကန့်မြို့။

- (၁) နိုင်ငံတော်သမ္မတ ၊ နိုင်ငံတော် သမ္မတရုံး ၊ နေပြည်တော်။
- (၂) ကာကွယ်ရေး ဦးစီးချုပ်၊ မြန်မာ့တပ်မတော် ၊ နေပြည်တော်။
- (၃) ဥက္ကဋ္ဌ၊ အမျိုးသားလွှတ်တော် ၊ အမျိုးသားလွှတ်တော်ရုံး ၊ နေပြည်တော်။
- (၄) ဥက္ကဋ္ဌ၊ ပြည်သူ့လွှတ်တော် ၊ ပြည်သူ့လွှတ်တော်ရုံး ၊ နေပြည်တော်။
- (၅) ဝန်ကြီးချုပ် ၊ ကချင်ပြည်နယ်အစိုးရအဖွဲ့၊ ကချင်ပြည်နယ်။
- (၆) လက်ခံ။

ပူးတွဲပါ -

- ( ၁ ) မ ဂျာဆိုင်းအိန် နှင့်သက်ဆိုင်သော အထောက်အထားများ





၄။ သို့မဟုတ် ပိဋကတ် မှန်မကန် နိဗ္ဗာန် နှစ်စဉ် တိုက်ကြား သူဦး ဘုရား ရွှေဘို၊ နိုင်ငံသား စီစစ်ရေး  
ကော်မရှင် / မကန် ( နိုင် ) ၀၀၆၀၅၄၄ ဖိုင် ဆောင်သူအား လိုအပ်သလို ရေး ယူပေး -  
ပိဋကတ် တိုက်ကြား ပေးပါ။

( ပုံ )

စည်း ၃၃၀၆၉  
မိုလ်ဖူး ဇာနည်မင်း ပိုက်  
စစ်ဦး စီး ဖူး ( ဒုတိယတန်း ) စစ်ဆင်ရေး  
ရွှေတန်း ကမ္ဘာ ( ၃ ) စစ်ဗဟိုအဖွဲ့  
အမှတ် ၁၆၁၀၀၀၀၀ စစ်ဌာနချုပ်

ထာဝန်ခံ မိတ္တူပြန်

တိုက်ဆိုင်စစ်ဆေးပြီးမှန်ကန်ကြောင်း တာဝန်ယူသည်

စစ်ဆေးပြီး  
မိတ္တူပြန်  
၂၀၁၆/၁၆/၁၇  
အမှတ် ၁၆၁၀၀၀၀၀

( မိတ္တူသုံးစာရေး )



၃၅၁၆ မိန့်ခံ

ဗြဟ္မစိုက်စားကြေးကုန်ကြေးကုန်

ပြေးကမ်းစာ  
၃၅၁၆



က် မြောက် တိုင်း စစ် ဌာန ချုပ်  
ရှေ့ တန်း အမှတ်(၃) စစ် ဗျူဟာ အဖွဲ့  
ဖား ကန့် မြို့  
စာအမှတ်၊ ၂၀၀၀ / ၁၀ / ရော ၃  
ရက် စွဲ ၂၀၁၃ခုနှစ်၊ဖေဖော်ဝါရီလ ၂၀ ရက်

သို့

စခန်းဖုဒ  
ဖားကန့်ရဲစခန်း

အကြောင်းအရာ၊ မပုန်မကန်လိပ်လည်တိုင်ကြားချက်အပေါ် အရေးယူပေးပါရန်  
ရည်ညွှန်းချက်၊ မြောက်ပိုင်းတိုင်းစစ်ဌာနချုပ်၏ ၂၀၁၃ ခုနှစ်၊ ဖေဖော်ဝါရီလ ၁၈ ရက်နေ့ ၁၅၀၀ ချိန်ပို့ကြေးနန်းအမှတ်၊  
၁ ရော ၃ ။

၁။ ၂၀၁၂ ခုနှစ်၊ စက်တင်ဘာလ(၁၃)ရက်နေ့တွင် ကေအိုင်အေ(ကချင်)သောင်းကျန်းသူများမှ တပ်မတော်  
စစ်ကြောင်းအား အဝေးထိန်းစနစ်သုံးမိုင်းဖြင့် စတင်ဖောက်ခွဲတိုက်ခိုက်ခဲ့သည့်ဖြစ်စဉ်တွင် မကုဆိုင်းအိန်(၁၃)နှစ်(ဘ)  
ဦးဘရန်ရွှေငှက်၊ ၉ တန်း၊ အထက်တန်းကျောင်း(ဖားကန့်) မိုင်းစထီမှန်၍ သေဆုံးခဲ့ပါသည်။

၂။ အထက်ပါဖြစ်စဉ်အား စုံစမ်းစစ်ဆေးခဲ့ရာတွင် ၂၀၁၂ ခုနှစ်၊ စက်တင်ဘာလ ၁၃ ရက်နေ့ ၀၀၀၅ ချိန်ခန့်တွင်  
ရှေ့တန်းအမှတ်(၃)ခြေမြန်တပ်ရင်းသည် နယ်မြေရှင်းလင်းရန် ခန့်မှန်းမြေပုံညွှန်း (ကေဂေ-၂၉၃၇၃၄)နေရာမှ စတင်  
ထွက်ခွာခဲ့ပြီး၊ ဆွတ်ပိုင်ယန်ရွာ ခန့်မှန်းမြေပုံညွှန်း (ကေဂေ-၃၀၂၃၆၃)နေရာသို့ ၁၅၅၀ ချိန်ရောက်ရှိစဉ် ကေအိုင်အေ  
(ကချင်)သောင်းကျန်းသူများမှ ချီမိုင်း(၃)လုံးစတင်ဖောက်ခွဲပြီး အိန်ဂါ/လက်နက်ငယ်များဖြင့် ပစ်ခတ်တိုက်ခိုက်ခဲ့သဖြင့်  
မကုဆိုင်းအိန်(၁၃)နှစ်(ဘ)ဦးဘရန်ရွှေငှက်၊ ၉ တန်းကျောင်းသူအား မိုင်းစထီမှန်၍ သေဆုံးခဲ့ကြောင်း အမှုမှန်ပေါ်ပေါက်  
ခဲ့ပါသည်။

၃။ သို့ရာတွင် သေဆုံးသူ မကျဆင်းတိန်(၁၃)နှစ်၏ ဖခင်ဖြစ်သူ ဦးဘရန်ရွှေစင်၊ နိုင်ငံသားစီစစ်ရေးကော်မမှတ်၊  
 ၁/မကန(နိုင်) ၀၈၆၀၅၄၊ မော်ဝမ်းရပ်ကွက်၊ အုပ်စု(၁) ဆွတ်ငင်ယန်ကျေးရွာ၊ ဖားကန့်မြို့နယ်မှ မကျဆင်းတိန် သေဆုံး  
 ရခြင်းသည် ၂၀၁၂ ခုနှစ်၊ စက်တင်ဘာလ ၁၃ ရက်နေ့တွင် တပ်မတော်စစ်ကြောင်းအား ကေတိုင်အေ(ကချင်)အဖွဲ့မှ  
 အထူးထိန်းစနစ်သုံးမိုင်းဖြင့် ဖောက်ခွဲတိုက်ခိုက်ခဲ့မှုကြောင့် မိုင်းစထိမှန်သေဆုံးရခြင်းဖြစ်သော်လည်း တပ်မတော်သား  
 များမှ အကြောင်းမဲ့ပစ်ခတ်ခဲ့ကြောင်း မြန်မာနိုင်ငံလူ့ကော်မရှင်အဖွဲ့သို့ မမှန်မကန်လိမ်လည်တိုင်ကြားခဲ့ပါသည်။  
 ၄။ သို့ဖြစ်ပါ၍ မမှန်မကန် လိမ်လည်တိုင်ကြားသူ ဦးဘရန်ရွှေစင်၊ နိုင်ငံသားစီစစ်ရေးကော်မမှတ်၊ ၁/မကန  
 (နိုင်) ၀၈၆၀၅၄ ကိုင်ဆောင်သူအား လိုအပ်သလိုအရေးယူပေးပါရန် တိုင်ကြားအပ်ပါသည်။

စားကန်မြို့နယ်တရားရုံး  
 ၂၀၁၃ ခုနှစ်ဖြစ်ကြီးမှုစာရင်း (၃၂ )

စာနစ်မိမိ  
 ထက်ဝေခံအမှတ်... ၇၃...  
 မည်သူကထက်ခံခံသည့်... ၇၃...  
 မည်သူကထက်ပြသ... ၇၃...  
 ထပ်ပြသည့်... ၇၃...  
 မည်သည့်... ၇၃...  
 မည်သည့်... ၇၃...

၂၀၁၃  
 စာနစ်မိမိ

တိုက်ဆိုင်စစ်ဆေးပြီးမှန်ကန်ကြောင်းတာဝန်ယူသည်

ကြည်း ၃၃၁၆၉

ဗိုလ်မှူး စာနစ်မိမိ

တာဝန်ခံဗိုကြီး

စစ်ဦးစီးမှူး(ဒုတိယတန်း)စစ်ဆင်ရေး

ရွှေဘန်းအမှတ်(၃)စစ်ဗဟိုအဖွဲ့

အောက်မြောက်တိုင်းစစ်ဌာနချုပ်

စစ်ဆေးပြီး  
 ဗိုကြီး

၂၀၁၃  
 စာနစ်မိမိ

ဗိုကြီးစာရေး

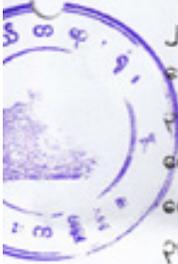


အတွင်းရေး

၁၂

**စုံစမ်းစစ်ဆေးရေးနှင့် ရုံး၏ စစ်ဆေးတွေ့ရှိချက်**

၁။ သက်သေအမှတ်(၁/၂/၃/၄/၅/၆/၇/၈)တို့၏ ထွက်ဆိုချက်များအရ ရွှေတန်းအမှတ်(၃၀၉)မြေ မြန်တပ်ရင်းသည် ၂၀၁၂ခုနှစ်၊စက်တင်ဘာလ(၁၃)ရက်နေ့တွင် နယ်မြေစွမ်းလင်းရန် အခြေပြုခန့်မှန်းမြေပုံ ညွှန်း(ကေဂျေ-၂၉၃၇၃၄)နေရာမှ ၂၀၁၂ခုနှစ်၊စက်တင်ဘာလ(၁၃)ရက်နေ့(၀၀၀၅)ချိန်တော်ထွက်ခွာခဲ့ပြီး ဆွတ် ဝိုင်ယန်ရွာ၊ ခန့်မှန်းမြေပုံညွှန်း(ကေဂျေ-၃၀၂၃၆၃)နေရာသို့ (၁၅၅၀)ချိန်ရောက်ရှိစဉ် ကေတိုင်အေး(ကချင်) သောင်းကျန်းသူများမှ ရိုမိုပိုင်း(၃)လုံးစတင်ဖောက်ခွဲပြီး ဖိနက်လက်နက်ငယ်များဖြင့် ပစ်ခတ်တိုက်ခိုက်ခဲ့ ကြောင်း စစ်ဆေးတွေ့ရှိရပါသည်။



၂။ သက်သေအမှတ်(၁/၂/၃/၄/၅/၆/၇/၈)တို့၏ ထွက်ဆိုချက်များအရ ကေတိုင်အေး(ကချင်) သောင်းကျန်းသူများသည် မိမိတပ်စည်ရှိရာ ဆွတ်ဝိုင်ယန်ရွာ၏ဘယ်ဘက် ခန့်မှန်းမြေပုံညွှန်း(ကေဂျေ-၃၀၆ ၃၅၈) ညာဘက်ခန့်မှန်းမြေပုံညွှန်း(ကေဂျေ-၃၀၃၃၅၇)နှင့် ခန့်မှန်းမြေပုံညွှန်း(ကေဂျေ-၃၀၃၃၅၈) တောင်လှမ်း ပေါ်တို့မှ ရိုမိုပိုင်း(၃)လုံး စတင်ဖောက်ခွဲပြီး ဖိနက်လက်နက်ငယ်များဖြင့် ပစ်ခတ်တိုက်ခိုက်ခဲ့ကြောင်း စစ်ဆေး တွေ့ရှိရပါသည်။

၃။ သက်သေအမှတ်(၁/၂/၃/၄/၅/၆/၇)တို့၏ ထွက်ဆိုချက်များအရ မရားဆိုင်းဖိနပ်သည် ရွှေလမ်းပကြီးပေါ် ခန့်မှန်းမြေပုံညွှန်း(ကေဂျေ-၃၀၂၃၆၃)၌ မိမိတပ်မှအရာရှိ(၁)ဦးစစ်သည်(၃)ဦးတို့နှင့် မိုင်းစထဲမှန်၌ ဝက်ရာရရှိခဲ့ခြင်းဖြစ်ကြောင်း စစ်ဆေးတွေ့ရှိရပါသည်။



တတွင်းနေ  
၁၃

**စုံစမ်းစစ်ဆေးရေးရုံးမှူး၏ ထင်မြင်ယူဆချက်**

သက်သေများ၏ထွက်ဆိုချက်အရ မကွာဆိုင်းစိန်(၁၃)နှစ်(ဘ)ဦးဘရန်ရွှေငင် ဆွတ်ငိုဇင်ယန်ကျေးရွာ၊  
ဖားကန့်မြို့နယ် သေဆုံးခြင်းမှာ ကျောင်းဆင်းချိန်ကာလ ကျေးရွာဝန်းကျင်အနီး ခန့်မှန်းပြေပုံညွှန်း (ကေကျေး-  
၃၀၂၃၆၃) နေရာတစ်ဝိုက်တွင် ကေတိုအေ(ကမ္ဘာ့)သောင်းကျန်းသူများမှ ရွှေတန်းအမှတ်(၃၈၅)ခြေမြန်တပ်  
မင်းအား အထေးထိန်းစနစ်သုံး မိုင်း(၃)လုံး ဖောက်ခွဲတိုက်ခိုက်ခဲ့မှုကြောင့် မိုင်းစထိမှန် ဝါက်ရာရရှိ သေဆုံးသွား  
ခဲ့ခြင်းဖြစ်ကြောင်း ထင်မြင်ယူဆပါသည်။



**စုံစမ်းစစ်ဆေးရေးရုံးမှူးဥက္ကဋ္ဌနှင့်အဖွဲ့ဝင်များ**

*(Handwritten signature and initials)*









## **About Legal Aid Network**

### **Mission**

Legal Aid Network is committed to facilitate efforts of grassroots people and activists, civil society organizations, lawyers and legal teams which aim to achieve human rights by establishing a peaceful, free, just and developed society with the underpinnings of genuine principles of the Rule of Law, mainly from legal aspect.

### **Status of the Organization**

Legal Aid Network is an independent organization. It is neither aligned nor is it under the authority of any political organization.

### **Work Agenda**

1. Raising public awareness for the emergence of just laws and a better legal framework, in which individual freedoms and collective rights of ethnic nationality, social strata and community are reflected, on the basis of international law, international human rights laws and humanitarian laws, and genuine principles of the Rule of Law;
2. Conducting legal analysis and providing legal suggestions in order for the achievement of democratic transition and the right to self-determination of the ethnic nationalities – at maximum, by establishing the Rule of Law or, at minimum, by seeking transitional justice; in addition, for the rectification of criminal justice system;
3. Providing legal aid and assistance to selected victims, facilitation of justice defender lawyers and taking actions on those cases, which would affect structural changes of society;
4. Cooperation with organizations and individuals who have common objectives for the emergence of independent, impartial and efficient judiciary and that of state institutions as well as security forces which would protect human rights, the rights of citizens and those of diverse nationalities; and,
5. Facilitation of efforts for the establishment of genuine principles of the Rule of Law in a way that perpetrators who committed international crimes – but not cooperated for seeking truth as well as for transformation of state institutions so that repeated crimes can be prevented – are indicted in national and international courts.

## **Location of LAN Office**

It is located in a picturesque mountainous area of Kachin land, Burma.

## **International Advisory Board**

Josef Silverstein, Professor Emeritus, Rutgers University, New Jersey, USA.

David Fisher, Professor of International Law, Faculty of Law, Stockholm University, Sweden.

Dr. Suzannah Linton, Chair and Professor of International Law, Bangor University, The United Kingdom.

Dr. Venkat Iyer, Law Commissioner for Northern Ireland and Barrister, The United Kingdom.

Simon NM Young, Prof. of Law and Barrister, Faculty of Law, The University of Hong Kong, Hong Kong.

## **Founder of Legal Aid Network**

Aung Htoo, a human rights lawyer, is the founder of Legal Aid Network. He was a practicing lawyer in Burma from 1977 to 1988. In 1992, along with his lawyer colleagues, he initiated to form a lawyers' organization – the Burma Lawyers' Council (BLC) – with a group of democratic lawyers who have got to liberated area of Burma. The organization formally came to existence on October 20, 1994. As the General Secretary, he led the organization for a number of work programs such as doing legal analysis, research and documentation, conducting human rights and legal trainings, assisting the drafting of a future federal constitution of Burma, providing legal suggestions, legal aid and assistance, doing international legal advocacy, legal campaign for transitional justice, compilations of legal papers and articles, publications, production of television programs, etc. He formally resigned from the BLC on 18 February 2012; afterwards, he founded a new organization – Legal Aid Network – on October 30, 2012. His introduction can be observed in the following links:

<http://www.youtube.com/watch?v=yvoCPdr6rNg&feature=youtu.be> (English)

<http://www.youtube.com/watch?v=bCHTFQ2x9qQ&feature=youtu.be> (Burmese)

## **Status of the Organization**

Legal Aid Network is an independent organization. It is neither aligned nor is it under the authority of any political organization.

## **About Kachin Women's Association Thailand**

### **Background**

Owing to the deteriorating political, economic and social situation in Kachin State, many Kachin people, mainly young men and women, have left their homeland and scattered to foreign countries.

The number of Kachin people coming to Thailand for various purposes is increasing year by year. Problems in the Kachin community in Thailand have also increased accordingly. Recognizing the urgent need for women to organize themselves to solve their own problems, the Kachin Women's Association Thailand (KWAT) was formed in Chiang Mai on the 9th September 1999.

KWAT is a founding member of the umbrella organization, the Women's League of Burma, comprising 13 women's groups from Burma. In addition, KWAT is working with other organizations that have the same aims for documentation on Human Rights Violations in Burma as a member of Network for Human Rights Documentation Burma (ND-Burma).

### **Vision**

As a non profit-making organization working on behalf of Kachin women, we have a vision of a Kachin State where all forms of discrimination are eliminated; where all women are empowered to participate in decision making at a local, national and international level; and where all Kachin children have the opportunity to fulfill their potential.

### **Mission**

The empowerment and advancement of Kachin women in order to improve the lives of women and children in Kachin society

### **Strategic aims**

- To promote women's rights, children's rights and gender equality
- To promote women's participation in politics and in peace & reconciliation processes
- To oppose all forms of violence against women including human trafficking
- To provide health education & health services
- To promote women's awareness of how to manage and protect the environment

## **Activities**

### (1) Capacity Building Program

#### 1.1 Trainings/Workshops

- Women's Empowerment Training
- Democratic Leadership
- Gender/ Human Rights

#### 1.2 Internship

#### 1.3 Advance training for staff

### (2) Documentation and Research Program

- Human Rights data collection
- Human Rights Documentation Training
- Data analysis and record
- Publication

### (3) Anti- Trafficking Program

- Crisis Support Center
- Safe House
- Vocational Training
- Community Outreach/Awareness

### (4) Health Program

- Clinic
- Health survey/education
- Reproductive Health Training
- Back pack

### (5) Political Empowerment Program

- Women Political Forum
- Monthly Political Exchange
- Political Awareness Training (Democracy, Constitution, Federalism)
- Human Rights and Women's Rights Training
- Produce awareness materials

(6) Income Generation

(8) Advocacy: KWAT works on advocacy at national and international level, to raise awareness about the human rights situation including women situation and the political situation in Burma. KWAT collaborates with a variety of networks and partner umbrella organizations to implement its advocacy activities.

**Contacts Information:**

Legal Aid Network (LAN) Website: <a href="http://legalaidnetwork.org">legalaidnetwork.org</a> E.mail: <a href="mailto:legalaidnetwork@gmail.com">legalaidnetwork@gmail.com</a>	Kachin Women's Association in Thailand (KWAT) Website: <a href="http://www.kachinwomen.com">www.kachinwomen.com</a> E.mail: <a href="mailto:kwat.secretariat@gmail.com">kwat.secretariat@gmail.com</a>
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