

No justice for ongoing Burma Army crimes in northern Shan State

Briefing paper by the Kachin Women's Association Thailand

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In the State Counsellor's speech at the International Court of Justice on December 11, 2019, she unequivocally defended Burma's justice system, and stated: "If war crimes have been committed by members of Myanmar's Defence Services, they will be prosecuted through our military justice system, in accordance with Myanmar's Constitution."

We beg to differ.

In this briefing paper, we have compiled recent cases of Burma Army torture, killing and shelling of civilian targets from March to August this year in Kutkai township, northern Shan State, where there has been no justice.

In one torture case in August, a 58-year-old deaf mute farmer was arrested in his village and interrogated by troops of Burma Army Infantry Division (ID) 88, who beat him when he could not reply. He was tied up and driven around in an armoured tank for two days, before being detained in the Kutkai Infantry Battalion (IB) 45 base for six days.

In the well-publicized case of the shelling of Mawhik quarter of Kutkai town on August 31, 2019, which killed two women and three children, all witnesses testify that the shells were fired from the Burma Army's IB 45 base, despite there being no fighting in their quarter.

Villagers have been too scared of the military to complain or press charges. In only one case has the Burma Army gone through the motions of an investigation: the murder of 51-year-old Pan Lawn on the night of July 3, 2019 – where all evidence points to soldiers of IB 261 who had arrived that day in her village. However, the military has blocked police involvement and sought to protect its own personnel.

This is ominously reminiscent of the rape-murder case of two Kachin teachers in northern Shan State on the night of January 19, 2015, where evidence pointed clearly to troops of Burma Army LIB 503 who had just arrived in their village, but where justice remains elusive until today. Medical staff were threatened by the military not to release evidence from the post mortem examination, and the army commander-in-chief himself publicly threatened to sue anyone accusing the military of involvement. Until today, there has been complete impunity for this horrific crime, where the teachers were not only raped and killed, but also brutally tortured and mutilated.

Clearly, justice is not being served under Burma's military justice system. At the same time, fear of the military is preventing the civilian legal system from functioning. Lawyers are afraid to take up cases against the military, and in the rare instances they do, the cases are dismissed: such as the case of 28-year-old Sumlut Roi Ja -- abducted, sexually assaulted and killed by the Burma Army in October 2011 – which was dismissed by the Supreme Court for "lack of evidence."

Continued Burma Army aggression and expansion in the ethnic areas, and their prevailing power under the 2008 constitution, are the key challenges to justice in Burma.

KWAT therefore calls urgently for the Burma Army to halt military operations throughout the country, and withdraw all troops from ethnic areas, so that civilians' lives can be protected and inclusive political negotiations can begin – towards a new federal constitution that can grant equality and justice for all ethnic peoples of Burma.

Summary of incidents documented

No	Date	Persons suffering violations (M/F), age	Location	Type of violation	Battalion of Burma Army perpetrators
1	Mar 13, 2019	M, 45	Kutkai town Block 2	Arrested, tortured	ID 99
2	May 8, 2019	M, 35	Nawng Hai village, Kutkai	Arrested, tortured	ID 99, IB 45
3	Jul 3, 2019	F, 51	Nam Sung village, Kutkai	Robbed, killed	Suspected IB 261
4	Aug 18, 2019	1 house damaged	Hunawng village, Kutkai	Aerial bombing of civilian area	BA aircraft
5	Aug 21, 2019	M, 58 (deaf-mute farmer)	Nawng Swi village, Kutkai	Arrested, tied up, tortured, detained for 8 days	ID 88
6	Aug 31, 2019	Killed 1. F, 34 2. F, 19 3. M, 14 4. M, 8 5. F, 4 mos Injured 1. F, 17 2. M, 25 3. M, 40	Maw Hik, Kutkai town	Shelling of civilian area	IB 45

Description of incidents of torture and bombing/shelling of civilian areas

Torture

Carpenter tortured for stopping car in Kutkai

In the evening of March 13, 2019, a 45-year-old carpenter was driving to collect some cardboard from his daughter's dormitory in Kutkai, when he stopped his car near the Kutkai public hospital to phone his wife. Some men opened the door of his car, switched off the engine, and pulled him out and forced him to go to the hospital morgue. Five Burma Army soldiers from ID 99 then came and tied his hands behind his back, slapped him four times, and kicked him hard in the right side. They tied a blindfold tightly over his eyes, and drove him to a house, where he was handcuffed from behind, and forced to kneel down. He was then questioned about what he was doing at that place, and about his work. He was taken outside, and a knife held to his neck. He was told "Prepare to die!" They asked him more questions, then pushed him into a vehicle again, and drove him to another location. The blindfold was removed, but it took a while for him to regain his vision. He found he had been left in his car in Taya Kung quarter of Kutkai. He then returned home, with blood on his face and shirt. He had to receive medical treatment for five days.

IDP tortured when collecting vegetables

On May 8, 2019, “ZM” a 35-year-old IDP from Zuk Awng IDP camp, south of Kutkai, was returning from collecting vegetables for his family, when he and another IDP were stopped by Burma Army soldiers from ID 99 and IB 45. The IDPs were accused of being KIA soldiers. The two men were separated, and ZM was taken to a house by five soldiers. They said to him: “There were shots fired at us this morning, and you came from the direction of those shots.” When he denied the accusations, one of the soldiers hit and kicked him in the head, back and shoulders. They put a gun to his head, and forced to him to bite on a grenade for 15 minutes. He was detained for about three hours, before finally being released, together with his friend. The soldiers apologized for mistakenly arresting them.

Deaf-mute detained, tortured for eight days

At about 7 am on August 21, 2019, a 58-year-old deaf-mute farmer was cooking breakfast in his sister’s house in Nawng Swi, about two miles north of Kutkai, when a large group of Burma Army soldiers came into the village and began questioning villagers. He too was questioned, and when he couldn’t answer, they beat him, tied him up and pushed him inside a tank. Some other villagers were also tied up and interrogated. The troops tore his shirt sleeves off and blindfolded him with the cloth. He was kept in the tank as it moved around, and beaten by soldiers for not answering their questions. The soldiers were from ID 88. After two days in the tank, he was transferred to the IB 45 base near Kutkai, and kept there for six days. He was forced to stay in a squatting position with his hands on his head. He was finally released on August 28, after his sister went to ask after him at the IB 45 base. She had been frantically searching for him for days. When he was handed over to his sister, he could barely walk. He was still wearing the clothes he had been arrested in, which were badly soiled, as he had been unable to tell his captors when he wanted to urinate or defecate. He had sores around his neck, wrists and ankles from being tied up and pulled around by rope.

Burma Army aerial bombing and shelling of civilian areas

Aerial bombing of village damages house

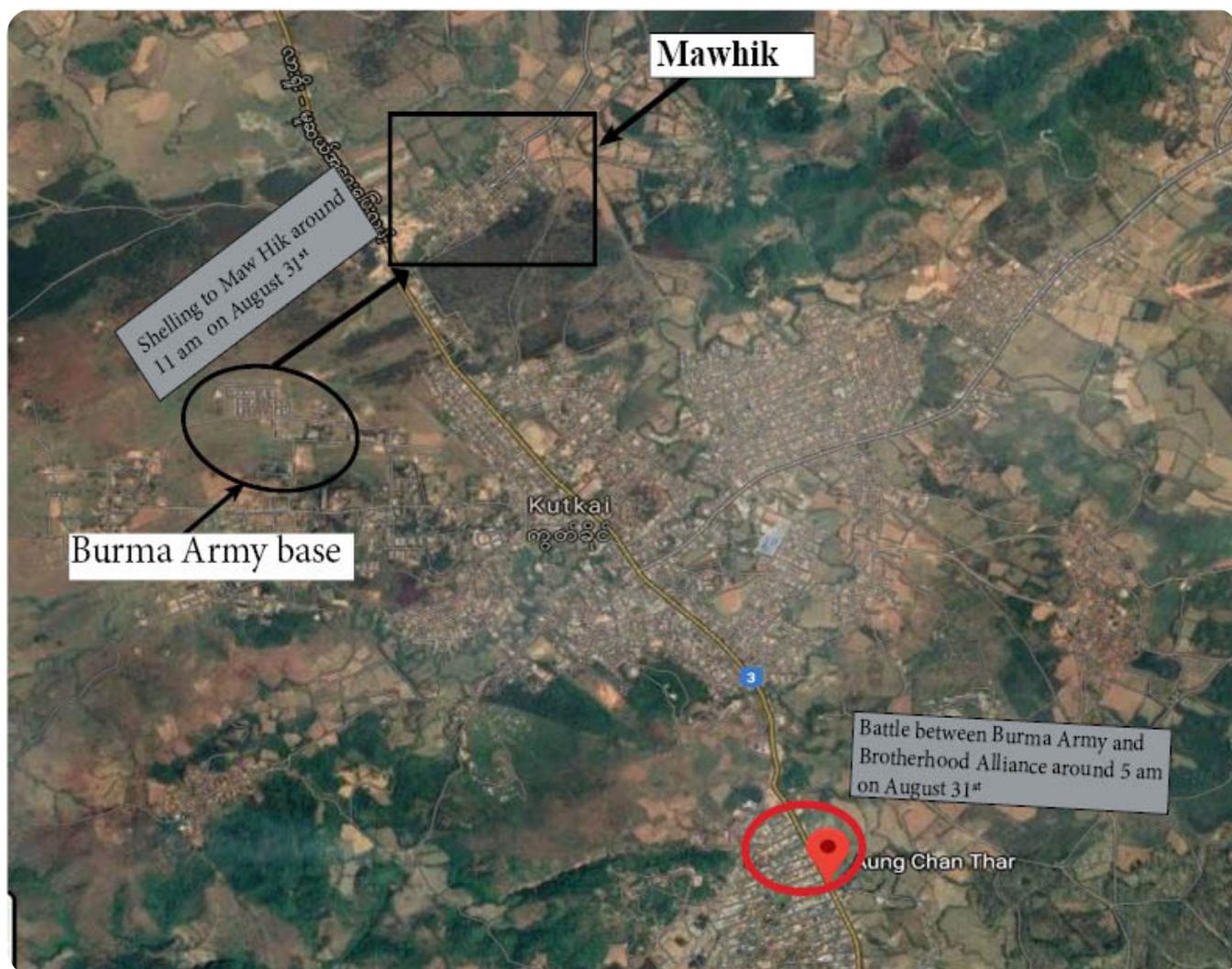
On August 18, 2019, between 9 am and 10 am two helicopters flew over Hunawng village, eight miles north of Kutkai along the road to Muse, and dropped three bombs over the village, damaging a house belonging to Slg. Labya Ladi and a paddy field. The villagers were terrified, as the helicopters were flying very low. They said that if the fighting was on the ground, they could run into the forest and hide from bullets, but when the helicopters were bombing from the air, they didn’t know where to hide. Hunawng village has about 50 houses, with a population of over 170.



Shelling in Kutkai town kills five, injures three

On August 31, 2019, at about 8 am, there was fighting between the Brotherhood Alliance and the Burma Army near the Aung Chan Tha restaurant on the main road to Lashio, south of Kutkai,

There was no fighting inside Kutkai town, but at around 10.30 am, the Burma Army suddenly began shelling from the Infantry Battalion 45 base west of the town, directly into a residential section in the north of the town, called Mawhik, which has about 140 houses.



When shelling began, a 40-year-old man called Hang Kau Gyung Dau sent his wife and daughter away from the house to take shelter, and was locking his door, when a shell fell on a pine tree about 40 feet away, sending out shrapnel. He was hit in the head and the elbow, causing heavy bleeding. He was taken to Kutkai hospital, where he received surgery and a blood transfusion. He was hospitalized for 8 days.

Another Mawhik resident, a 37-year-old Kachin construction worker called Zakhung Zau Bawk was building a new house for himself, next to his old house, together with eight other men, including family members and neighbours. He was in the middle of laying zinc roofing on top of the house, when he saw a shell land on a road nearby, and then another one at the top of the village. Realising that the shells were being shot directly into their quarter, he came off the roof, and told his wife and two children to stay inside their old house for safety. A neighbor, Mary Lu San, her young baby and 17-year-old sister also came to shelter in their house. He stayed outside preparing a bunker for shelter at the compound fence.

At about 11 am, a shell landed directly on Zakhung Zaw Bawk's old house, where his family were sheltering. He saw his brother-in-law Bawk La hurled upside down in front of the old house. He ran to pick

him up, and then looked inside the house, and saw the women and children all lying on the ground. Two had been killed instantly by the blast: his 14-year-old daughter, Zakhung Nang Mun Pan, and his neighbor Mary Lu San. His 8-year-old son Zakhung Ja Hkum Lat died soon after being carried out of the house; his wife, 34-year-old Sumlut Htoi Ja was rushed to Kutkai hospital, but died 15 minutes after arriving there.

Mary Lu San’s four-month-old baby seemed to be still breathing, and was carried to another house, but died there. Only Mary Lu San’s 17-year-old sister Roi Bu survived. She was injured in the shoulder and foot. She and Bawk La were taken first to Kutkai hospital, and then transferred to Lashio hospital. They were treated there for 11 days.

Altogether five people were killed by the shelling, and three people injured.

On September 1, a funeral was organized and the dead were buried. Reverends from all churches around Kut Kai joined the funeral, attended by about 2,000 people.

Detailed timeline and analysis of the killing of Pan Lawn in Nam Sung village, Kutkai, on the night of July 3, 2019

Background of Nam Sung

The village of Nam Sung (or Nam Sawng Kha) lies in Pein Pong (Pyin Pun) village tract, in western Kutkai township. Before 2011, the village had about 80 households, with a population of about 280 people – Kachin, Chinese, Shan, Ta’ang and Burman.

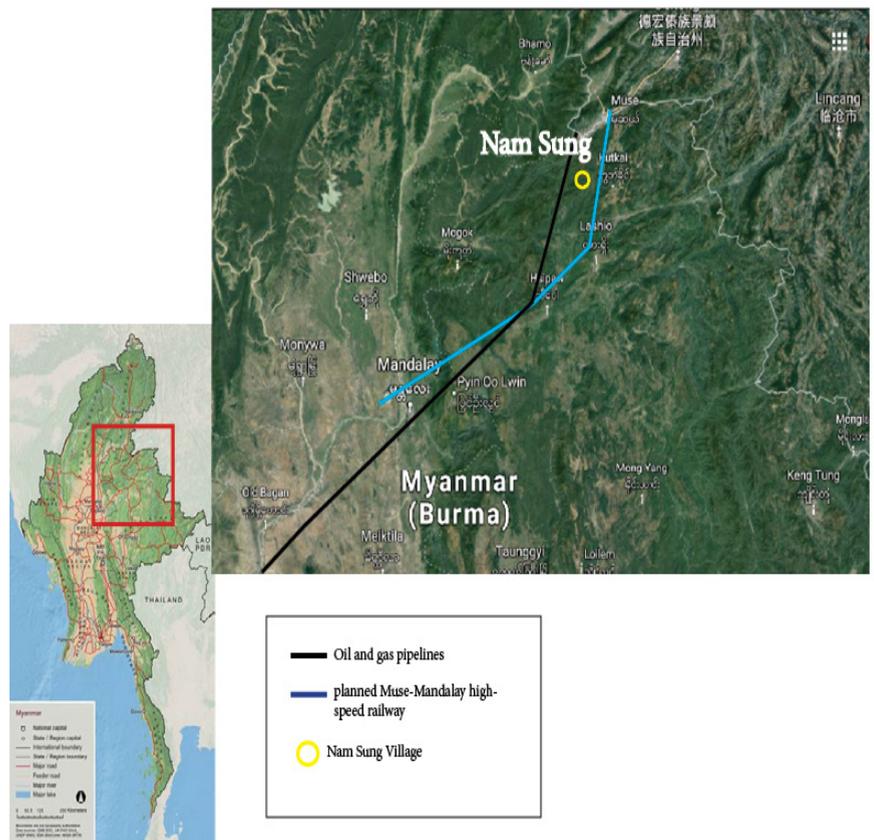
The village lies in a remote mountainous location, on the road leading from Nampaka to Man Mung in Mantong township. The inhabitants earned a living from farming and trading.

In 2011, when the Burma Army renewed their war against the Kachin Independence Army, breaking their 17-year ceasefire, they launched large scale offensives in the area.

In December 2011, there was heavy fighting at Nam Lep mountain north of Nam Sung, causing the villagers to run and hide in the jungle for three days. After that, the Nam Sung villagers all sought a place in Nampaka, where they stayed in an IDP camp.

In March 2016, the Burma Army set up a permanent camp on a hillock at the northern end of the village, where villagers had been intending to build a new church. Different battalions rotated in and out of the camp, with about 20 troops stationed permanently there. In early May 2019, troops of IB 261 arrived at the camp. Before that, ID 88 troops had been stationed there.

By July 2019, about 80 of the original residents of Nam Sung had returned to the village, staying in 20 of the original houses. 51-year-old Pan Lawn had returned to run her former grocery shop. She left her husband and two daughters, aged 12 and 14, in Nampaka, where they attended school.



Strategic location of Nam Sung

From 21 December 2018 to September 21, 2019, the Burma Army declared a unilateral ceasefire in five regional commands in Kachin, Shan and Karenni States, including the Northeast Regional Command which covers Kutkai. However, the Burma Army continued to deploy combat divisions and conduct operations against ethnic armed groups in these areas.

A main reason for ongoing militarization has been to secure strategic trading routes and investment projects, including the planned China-Myanmar Economic Corridor (CMEC). A key component of the CMEC will be a high-speed railway linking Muse, Lashio and Mandalay, which cuts across western Kutkai township, and a feasibility study for the railway was carried out in the first half of 2019. Nam Sung village lies only a few kilometres west of the planned route of the railway.

Timeline of the killing

July 3, 2019

Around 1 pm: About 80 troops of IB 261 arrived in Nam Sung village on foot along the road from Nampaka in the east. Local villagers heard they had come back from fighting in Panglong and Mong Maw, Mantong township a week earlier. On arrival, some troops went to stay in the military barracks, but most camped in the church, the nearby church hall, and the disused kindergarten next to the military compound.

Around 2 pm: Two Burma Army soldiers came to Pan Lawn's shop and bought some fish, then left. This was seen by a woman ("Naw Naw") who was helping Pan Lawn in her shop. The soldiers had just arrived that day. One of the soldiers had one star on his shoulder (denoting a 2nd lieutenant), and had darker skin. He was wearing a green army shirt, with a longyi. The other was pale skinned, with a wide, flat face, and about 5 feet tall. He was wearing army trousers, with a white vest and an army shirt. Neither carried weapons.



Pan Lawn's shop

Around 3 pm: The two soldiers returned to Pan Lawn's shop. They gave a present to Pan Lawn of some Shwe Pyi Oo instant tea, then asked to pawn a mobile phone for 30,000 kyat. Pan Lawn replied that she could only give them 20,000 kyat. They agreed to this, and said when they received their monthly pay, they would redeem the phone for 20,000 kyat and give 10,000 kyat interest. When Pan Lawn handed over the money, she took it from her purse, in which she had about 500,000 kyat. When she was taking out the 20,000 kyat, the soldiers could see the other money in her purse.

At this time, one of the soldiers asked Pan Lawn: "Where does your husband live? What does he do?"

Pan Lawn replied: "My husband lives in Nampaka and he is a farmer."

The soldier asked: "Is he older than you? Is he a soldier?"

Pan Lawn replied: "As people age, they get older."

Then, the 2nd lieutenant said: "If he's older, I will shoot a big gun at your husband."

After this, the soldiers ordered pickled tea leaf salad, and asked Pan Lawn and Naw Naw to mix it, but the women said they were busy making another snack to sell, so the soldiers mixed the salad them-

selves, and borrowed a plate and a solar panel, and took them back in the direction of their camp.

Around 8 pm: The two soldiers came back with the plate and the solar panel they had borrowed, and returned them to the women. At that time they were not wearing uniform. They sat for a minute, then went back in the direction of the military camp.

Shortly before 8.30 pm: Two soldiers in civilian clothes came to the house of a villager who lived near Pan Lawn's house. One had a knife tucked behind his back. They said they wanted to buy drugs and asked where they could buy them. The villager said he didn't know.

Around 8.30 pm: While Pan Lawn and Naw Naw were eating dinner, they heard a dog barking. Naw Naw went out to see why the dog was barking, and saw two men in longyis. She recognized they were soldiers (even though they were not in uniform) but they were not the same two soldiers who had come earlier to the shop. The men asked her in Burmese: "Where is the Chinese man's house?"

She pointed in the direction of the Chinese man's house, which was about 40 feet behind the shop. She could see one of the two men had a small army knife, which he was holding in his right hand.

The two Burmese soldiers then went to the Chinese man's house, where they asked to buy drugs. He sold them some opium for 2,000 kyat. The soldiers then left.

About 9.30 pm: After Pan Lawn and Naw Naw had finished dinner, Naw Naw folded the clothes they had hung up to dry. She then picked up a pillow to go and sleep in a nearby shop belonging to Mr. Fu and Mrs. La , as the couple had gone to Nampaka and needed someone to take care of their shop at night.



When she left, Pan Lawn was still laying out some home-made snacks on a tray.

That night, there was very heavy rain, starting at about 11 pm. Villagers said they heard no unusual noises, because the sound of the rain was so loud.

July 4, 2019

About 6 am: A Burma Army soldier in civilian clothes came to the shop of a local woman, and asked her to change some kyat notes of small denominations (50, 100, 200 and 500 kyat) into larger notes. He said that the soldiers would be leaving the village soon.

About 6 am: A woman called Ah Mai came to Pan Lawn's shop to buy a snack. She called out to Pan Lawn, but there was no reply. She then went to Fu's shop to buy the snack, where she told Naw Naw that Pan Lawn had not answered her.

About 6.15 am: Naw Naw built a fire in the kitchen of Fu's shop, then went outside and looked over at Pan Lawn's shop and saw the plastic awning in front of the shop was sagging from the heavy rain the previous night. Then she saw two Burmese soldiers coming down to the Pan Lawn's shop, and she remembered that Ah Mai had said there was no answer when she called out to Pan Lawn.

She went over to Pan Lawn's shop, and met the two soldiers standing there. The two men said they wanted to buy a jar of fermented soy bean paste. They called out to Pan Lawn, but there was no answer. Naw Naw thought she might be praying inside. She tried to fix the sagging plastic awning. Then one of the soldiers peered through the bamboo wall of the house, and said he could see a woman lying on the ground. Naw Naw peered inside too, and saw Pan Lawn on the ground. At that time, the front door was locked from the inside, as was the bamboo flap covering the shop front. The two soldiers then kicked open the front door and they went inside.

Naw Naw found Pan Lawn lying on her back on the earthen floor in the shop, outside her bedroom. She was wearing a T-shirt and pajama pants, with the legs rolled up to her upper thighs (which was very unusual, as she never usually rolled up her pajamas in this way). Her throat had bruises, looking like she had been strangled. Her lower left arm showed a stab mark. Her right cheek had a bruise. Naw Naw also saw some small kyat notes scattered on the floor of Pan Lawn's bedroom.

The two soldiers said, "She must be sick. We will go and call a medic." They then went to the army camp. When they left, Naw Naw called Mr. Tar, who lived behind Pan Lawn's shop.

Another man, Mr Kaw, also called other villagers. When the other villagers came, they went into the house to examine the crime scene. They saw the back door was open and the rope used to lock the back door from the inside had been cut.

Then Naw Naw went to look where she knew Pan Lawn kept her money, in three places, including her purse. She found that all the money was missing. She knew that the victim had altogether about two million kyat in her possession the day before.

A medic, Kyaw Ye Min, from the military camp arrived and examined the body, and confirmed she was dead. The medic said, "We should kill all the drug addicts." Then he left back to the camp.

About 7 am: The camp commander Myo That Tin and three soldiers came from the camp. The commander was not in uniform and was not holding a gun, but the three soldiers all had guns. The commander exclaimed angrily that he would arrest all the drug users in the village and said: "We will seek justice together for this case." He gave 50,000 kyat to Naw Naw. She wasn't sure if she should accept it, but the village leader told her it was alright to accept it.

The captain asked if the victim had any relatives. Then they went to the camp to phone the relatives. The village leader, Ah Dai and another villager, Mr Ah De, went with them. After that, the village pastor came. No one touched the body. They just prayed.

About 3 pm: Pan Lawn's relatives and some other villagers from Nampaka arrived. They took photos and looked around the house. They saw a boot-print near the back door. They found a large stick, usually kept inside the house, lying on the ground behind the house. There was blood on the stick. One of the villagers picked up the stick and packed it in plastic.

About 5.30 pm: The relatives picked up the body and carried it to a truck. When the body was moved, blood flowed from the mouth. The truck then set off to Nampaka Hospital. Naw Naw was getting ready to follow in another truck, when the camp commander arrived again at Pan Lawn's shop. He said to

Naw Naw that he knew that one of his soldiers had pawned his phone the day before, for 20,000 kyat, and he wanted to redeem the phone.

Naw Naw was not sure whether or not to give him the phone, so she asked the village leader, who told her she should give the phone to the commander. So she gave the phone to him, and the commander gave her 20,000 kyat.

About 8 pm: After driving along the muddy road, the trucks arrived at Nampaka Hospital. A doctor there talked to Pastor Ah Lar from Nampaka. The Nampaka police arrived at Nampaka Hospital and took the stick which was the suspected murder weapon away with them. The doctor said they could not do an autopsy, and asked them to go to Kutkai Hospital. They waited for some documents, then left for Kutkai. Kutkai Hospital also did not accept the body, so they went to Lashio Hospital.



place where Pan Lawn's body was found

July 5, 2019

About 1.30 am: They arrived at Lashio Hospital, where they presented the documents. Then the hospital staff took the body to the autopsy room. A doctor said they would conduct the autopsy at 8 am, so they all went to a church to sleep.

In the morning some people went to the police station in Lashio, and some stayed at the hospital. A pastor from Lashio and a lawyer joined them. At the hospital, the relatives saw many bruises on the victim's back, on her collar bones, buttocks, abdomen and upper thighs, and a stab wound in her side.

In the afternoon, after the autopsy, the body was taken back to Nampaka. Pan Lawn was buried there the next day.

July 7, 2019

Myo Set Aung, the Burma Army Tactical Commander ("Byuhamu") from Infantry Battalion 45 in Kutkai arrived at Namsung, and started calling villagers to be interviewed at the Nam Sung military camp.

He interviewed about 20 people, both men and women, whose ID cards were checked and photos taken.



boot print



Front side of Pan Lawn's shop



Back side of Pan Lawn's shop

During most of the interviews, three soldiers took notes.

Some villagers were interviewed twice, including the village leader. During the second interview, the village leader was asked about drugs in the village. The Tactical Commander commented there were more drug users than non-drug users in the village, and told the village leader he should carry out some anti-drug campaigns.

The Chinese villager who had sold opium to the soldiers was also interviewed twice. During the second interview, the officer asked him if he recognized the faces of the two soldiers who had come and bought opium from him. The villager replied that the soldiers were not wearing uniform, but sarongs, and that he did not recognize their faces. The officer then warned him not to sell opium to soldiers, and said he would be arrested if he sold opium to soldiers again.

Continuing lack of progress to investigations

During the past six months, Pan Lawn's relatives have been kept in the dark about the progress of the investigation. At the end of September, the Burma Army Tactical Commander from Hsenwi, Aung Min Than, summoned some Nam Sung villagers and questioned them further about the case. The police have still not visited Nam Sung village to carry out any investigation.

Analysis of the Nam Sung murder case

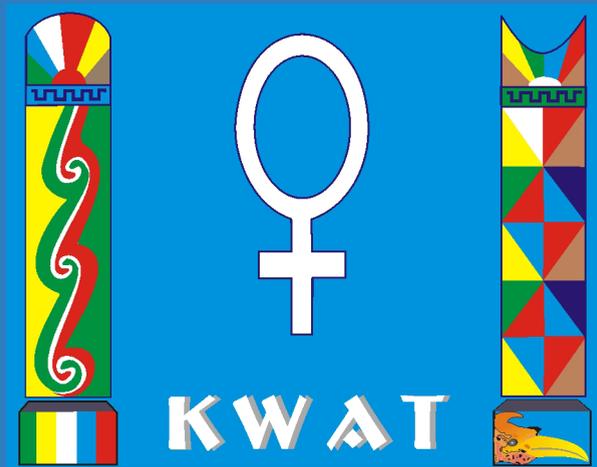
The available evidence points strongly to the fact that the robbery and murder of Pan Lawn was committed by one or more Burma Army soldiers who had arrived in Nam Sung on July 3, 2019, for the following reasons:

- There had never been a similar killing before in the village.
- It is extremely unlikely that a local villager would have committed such a crime with so many Burma Army troops camped in the village.
- There were no other strangers present in the remote village, accessible only by a muddy, unpaved road.
- Two newly arrived Burma Army soldiers had come three times to Pan Lawn's shop on July 3, and when pawning a phone had seen that she had a lot of money in her purse.
- Two other Burma Army soldiers (also new arrivals) had been seen with a knife in the vicinity of Pan Lawn's house late on the night the crime was committed, and had bought drugs from a nearby house
- There was a boot-print in the dirt at the back door of the house.
- A Burma Army soldier had changed many small kyat notes into large notes at a local shop early the same morning that the body was found.

Rather than seeking justice, the military authorities appear to be trying to protect their own soldiers from prosecution. This can be seen from the following:

- The military did not call the police to Nam Sung village to carry out investigations on the day the murder was discovered. The police only came to Nampaka hospital when Pan Lawn's body had arrived there. Until today, the police have not gone to Nam Sung to investigate the case.
- The only detailed questioning of witnesses in Nam Sung has been carried out by the Burma Army Tactical Commander from Kutkai.
- Despite hearing witnesses testify about suspicious behavior by soldiers, the commander did not organize a line-up of soldiers so that witnesses could identify them.
- From the outset, military personnel have publicly accused "drug users" for the crime.
- The camp commander redeemed the pawned phone of a soldier from Pan Lawn's col league on the day the body was discovered, despite the fact that the phone was a piece of evidence in the crime
- The military medic who examined Pan Lawn's body was transferred out of the area two days after the crime was discovered.

KWAT therefore calls urgently for a transparent police investigation into this case, and for the Burma Army to allow all military personnel who were present in Nam Sung village on July 3-4 to be independently investigated.



Email: kwat.office@gmail.com

Mobile: +66(0)89 755 9892

website: kachinwomen.com

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