



## **Legal Analysis of the Case of Naw Mu Naw, a Karen female who was shot and killed by the two Myanmar Army soldiers in Karen State on 16 July 2020**

The above case<sup>1</sup> must be addressed from the aspect of seeking justice in addition to legal and political perspectives. Legally, regarding this type of case, a court-martial, being operated by the Myanmar Army (MA), does not have any jurisdiction. The MA soldiers committed the said crime against a civilian while they were not on active service. Hence, their criminal action is irrelevant to any of the three exception clauses provided for in Article 72 of the Burma Defence Services/Army Act (1959).<sup>2</sup> In the stated act, there is also no explicit provisions on the offences of murder, culpable homicide, and rape whereas civil offenses set out in Article 71 are quite vague. As such, the MA must transfer this case to a competent civilian court immediately.

Otherwise, the civilian part of the government led by Aung San Suu Kyi is responsible to transfer the said case to the Independent Investigative Mechanism for Myanmar (IIMM) formed by the UN as the crime committed by the MA soldiers constitutes a war crime under the Geneva Convention, or law of war, already ratified by Burma. In regard to this serious international crime, Aung San Suu Kyi must not be keeping silent, as have been for other cases before. She and her civilian part of the government are extensively responsible to protect security of citizens. She must stop her behavior wearing beautiful Karen costumes in the ceremonies just for show. If she totally ignores the sufferings of the Karen people, it reveals that she is not a genuine friend of the Karen nationals as well as of other ethnic nationalities.

In regard to Naw Mu Naw's case, accountability mainly lies with Min Aung Hlaing, C-in-C of the Myanmar Armed Forces, as he has nurtured impunity within his army, *inter alia*, by releasing military perpetrators, who were rendered 10 years imprisonment for murder of ten innocent civilian Rohingya people in Inn Din case, only after ten months detention. As a negative result, all military

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<sup>1</sup> Radio Free Asia, Myanmar Investigating Soldiers in Shooting Death of Karen Woman, (20 July 2020) available at <<https://www.rfa.org/english/news/myanmar/shooting-death-07202020195149.html>>

<sup>2</sup> Burma Defence Services/Army Act, Section 72: Civil offence not triable by court-martial. 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 Burma, or
- (c) at a frontier post specified by the President by notification in this behalf.

personnel serving in the MA might have presumed that although they commit any crimes against civilians, they would be released eventually.

In any peace seeking process, political considerations may never be feasible unless legal factors are heeded. This is relevant to all Ethnic Resistance Organizations (EROs), particularly the Karen National Union (KNU) which is primarily responsible to adequately accentuate the plights of a number of innocent Karen national vis-a-vis the Nationwide Ceasefire Agreement (NCA). Although the KNU objected the criminal and other unfair measures, done in violation of the NCA, by the MA leaders, no effective action was taken. In addition to commission of serious human rights violations, the MA has persisted in conducting unjust practices insofar as the Shwekoeko new town project is being implemented without asking consent of the Karen people in Karen State. No perpetrator has been taken into legal action by invoking any agreement in the NCA for almost five years now.

All these atrocities occur due to lack of independent enforcement mechanism – similar to the Crisis Management Board formed by the third parties in Indonesia or the United Nations Peace Keeping Forces – in the NCA. Under the NCA, Joint Monitoring Commissions (JMC) are formed primarily with the representatives of the belligerent parties, as members. Hence, out of the two counterparts, if one side—particularly the side of the government forces, the Myanmar Army—violates the agreement, enforcement is impossible despite having JMC.<sup>3</sup> Actually, the parties should consider establishing a supervision mechanism wholly independent of the parties themselves. The use of independent monitors of ceasefires appears to be the most common model applied today and is of particular utility in cases where the parties are not on an equal footing and where their relationship is characterized by mistrust. An independent supervision mechanism is also best suited to deal objectively with complaints of ceasefire breaches.

The incumbent NCA is nothing but ending in indefinite discussions, while wasting time and resources. Now, the KNU is obliged to initiate the process to produce a new peace accord, in which an independent supervision mechanism to be formed by the third parties is included, in addition to other valid political agreements.

Anyway, apart from the other CSOs and legal organizations, the KNU is the most responsible organization to seek justice for Naw Mu Naw given that providing penalties to the perpetrators alone would not be adequate at all. Her family deserves at least 100,000 USD as reparation. If it is the case, justice might have been sought to some extent.

## **Legal Aid Network**

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<sup>3</sup> Military Code of Conduct, para (1): “The military personnel of the Government of Burma and EAOs agreed to uphold and precisely implement the terms of the NCA. In the event when terms of the agreement are violated or when disputes arise, both parties agreed to abide by the ruling of the Joint Monitoring Committee.”

