



Objection of Any Arbitrary Killings, Allegedly Committed by the State Actor and Non-State Armed Group (NSAG), Amount to Crimes of International Concern

1. The killing of 25 civilians, allegedly committed by the Karen National Defense Organizations (KNDO) – that operates under the command of the Karen National Union (KNU) – on May 30, 2021, has astounded a large majority of the general public. The KNDO Chief is Saw Nandar Mya. His subordinates denied the stated accusation, imposed by the military council, led by Min Aung Hlaing. The former, however, admitted that the KNDO detained the deceased victims, who were suspected as the spies sent by the said council, before the latter disappeared.¹ Their action, at a minimum, presents a prima facie case that indicates the substantial likelihood for commission of a war crime, which constituted a blatant violation of the Geneva Convention, also known as law of war, to which Burma is a party.

2. In regard to this serious crime, Saw Kwe Htoo Win, the deputy chairperson of the KNU, was unable to answer the questions, raised by the BBC, accurately.² In fact, similar to the *Tatmadaw* or Myanmar Army, the KNU does not have any law on war crime, provided for in line with the Geneva Convention. Under the superior/command responsibility, an international legal doctrine, Saw Kwe Htoo Win is responsible if he conceals evidence of such wrongdoing or if he neglects to hold the perpetrators legally accountable. The analogous situation goes to Saw Nanda Mya. As the KNDO Chief, he must reveal whether he ordered his subordinates to commit such grave crimes against the civilians. Otherwise, to prove that he is innocent, he must lead the KNDO to invite the Independent Investigative Mechanism for Myanmar (IIMM), established by the UN Human Rights Council in September 2018, with the mandate to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law.

¹ <https://www.facebook.com/rfaburmese/posts/10161171603763128>

² <https://www.facebook.com/BBCnewsBurmese/videos/346978610108680/>

3. Although the military council, also known as the *Tatmadaw*, accused the KNU, a Non-State Armed Group (NSAG), as the organization which committed a war crime, the *Tatmadaw*, which was a crucial part of the State Actor previously, itself has violated a series of provisions, enshrined in the Geneva Convention, extensively over the past few decades. In addition to others, occurred in the Kachin, Karenni, Rakhine and Karen states, the two serious war crimes were committed by *the Tatmadaw* in Monekoe territory of the northern Shan State: one was in 2016³; another was in 2000. The latter happened on 24 October 2000.

4. When Lee Na Min staged a coup against Mung Sa La, the then leader of the Myanmar National Democratic Alliance (MNDA/MNDAA) – also known as the Kokant Group – both sides sought the protection from the military intelligence operated under the command of Khin Nyunt. Then, the *Tatmadaw* killed about 150 MNDA members, led by Lee Na Min, including the 23 leaders in the territory of Hae-moe-lone, near Monekoe town.

5. In March 2013, Senior General Min Aung Hlaing said the following in an address to mark Armed Forces Day: ‘We are a military that adheres not only civil and to martial laws and regulations, but also to the Geneva Convention. Since we train our national army personnel to acknowledge and adhere to the Geneva Convention, our Tatmadaw have never committed any war crimes and soldiers who [committed punishable acts] have had effective action taken against them according to military regulations.’⁴ The situation on the ground is however different as stated above.

Recommendation

So long as the rule of law is denied, peace would never be achieved. The rule of law, as a cornerstone of a democratic society, should be upheld and respected. To uphold the rule of law, seeking accountability and ending impunity primarily for the crimes of international concern are the key. The rights of the people must be protected by law in order to prevent them

³ UN Human Rights Council, Report of the Independent International Fact-Finding Mission for Myanmar, Sept 18, 2018, Para, 228, 316 to 320, and 321 to 323.

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E>

⁴ Speech quoted in: Women League of Burma (WLB), *Same Impunity and the Same Patterns: Sexual Abuses by the Burma Army Will Not Stop Until There Is a Genuine Civilian Government* (WLB January 2014) 40. Available at https://womenofburma.org/sites/default/files/2018-06/2014_Jan_SameImpunitySamePattern_English-final.pdf accessed 22 September 2020.

from being detained arbitrarily and extrajudicial killings. We recommend that both State Actors and Non-State Armed Groups must comply with the Geneva Convention and other human rights laws during the non-international armed conflicts.

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