



Legal Analysis Statement: Extrajudicial Killing of Karenni Soldiers and Requirement to Recognize the Sovereignty of the Karenni State

The unlawful arrest and extrajudicial killing of four Karenni soldiers from the Karenni National Progressive Party (KNPP) by the Myanmar Army in the Karenni State on December 20, 2017, is amount to war crimes even though the KNPP and the ruling Myanmar military regime signed the ceasefire agreements in both provincial as well as the Union levels.

It is coincident with the time now that the Myanmar military leaders impose pressure and persuade the non-signatory ethnic armed organizations – particularly the members of the UNFC in which the KNPP occupies a leadership role – to sign the incumbent NCA and attend the 21 Century Pang Long Conference. Even if the incumbent NCA is signed, similar atrocities cannot be avoided due to lack of enforcement mechanism therein.

The Karenni State is quite particular from the aspect of its background history. Its independence was recognized by both Myanmar King as well as the British colonialist that annexed Burma into its empire. Afterwards, the independence of the Karenni States was impliedly recognized in the 1947 Constitution, drawn up in accordance with the 1947 Pang Long Pact, which was signed by the then leaders of the frontier areas and General Aung San on behalf of Burma. The 1947 Constitution of Burma was approved by people after convening constituent assembly. The Chapter (1) Article (2) of the said Constitution enshrined as follows:

The Union of Burma shall comprise the whole of Burma, including –

- (i) all the territories that were heretofore governed by his Britanic Majesty through the Governor of Burma, and
- (ii) the Karenni States

Accordingly, the Karenni States were not a part of Burma before the emergence of the 1947 Constitution; and, they were independent. After the 1962 military coup led by Gen. Ne Win, the 1947 Constitution was abolished. As such, since then the Karenni States have regained their independence legally as of now.

The abovementioned extrajudicial killing took place due to the fact that the Karenni soldiers checked the Myanmar military's truck, carrying timbers which were extracted from the Karenni forests illegally, and warned Myanmar army officials not to do similar illegal manner again. Current illegal extraction of timber from Karenni forests by Myanmar Army is

similar to the case of British's Bombay Burma Company, which extracted timber in Taunggu District illegally, thereby causing the war between the British and Myanmar kingdom in history.

Burma accepted the Convention Concerning the Protection of World Cultural and Natural Heritage (also known as the World Heritage Convention) in 1994.⁸³ This Convention asks each country that signs it to identify, protect and conserve sites which are so culturally or naturally important that they should be considered part of the world heritage of mankind. Countries are asked to set up services for the protection of sites of cultural and natural heritage, and to take appropriate legal, scientific, technical, administrative and financial measures to protect and conserve these sites. Countries which do not have the resources to carry out these obligations can request international assistance. Burma has not lived up to its obligations to this treaty.¹

Myanmar Army's illegal extraction of timbers has not only caused deforestation, threatening some of the last habitats on earth for endangered animals but also constituted a crime of aggression, similar to the case of the British colonialist. The four Karenni soldiers, who were killed in extrajudicial nature, were dignified martyrs who attempted to protect their wild life, territory and sovereignty.

A genuine federal Union will come into existence only when the Ethnic States – such as Karenni, Kachin, Karen, Mon, Rakhine, Shan, Chin etc. – assume the Provincial Sovereignty; and, by coming together, establish the Union Sovereignty. Such aggression, aggressive actions and brutal commission of heinous crime, which is amount to war crimes, by the Myanmar Army against the ethnic nationalities will never pave the way for the emergence of a genuine Federal Union nor will they uphold the Rule of Law.

During the 17 years long ceasefire period between the regime and the Kachin Independence Organization (KIO), the three groups of the KIA soldiers and some Kachin civilians - 11, 4 and 6 persons in each group respectively in 2001, 2002 and 2007 - were killed by the Myanmar Armed Forces, in Kachin State, Burma.

In the ceasefire agreement signed between the two belligerent parties in 1994, there lacked an authorized institution, such as a crisis management board or any judicial body, to take legal action – if someone from any party, regardless of whether civilian official or military personnel, commits a crime or any other serious human rights violation – and to bring such perpetrator into justice. As such, the KIO could not seek justice for the victims. Although frustration was mounting, the KIO did not respond to that unlawful commission of crimes violently in order to maintain ceasefire.

Unfortunately, given that no adequate legal action was taken against the perpetrators, it has exacerbated the status of impunity, being enjoyed by the Myanmar military leaders; the perpetrators never hesitate to commit similar crimes against the ethnic nationalities and their ethnic resistance forces; and, vicious circle continues.

However, when a KIA soldier was tortured and killed by the Myanmar Armed Forces repeatedly on June 9, 2011, the resumption of fighting occurred. It has resulted in the

¹ LEGAL ISSUES ON BURMA JOURNAL No. 9, AUGUST 2001 BURMA LAWYERS' COUNCIL;
Environment and Law in Burma by *Peter Gutter*

emergence of over 120,000 Internally Displaced Persons ('IDPs'), in addition to serious human rights abuses. During the heavy fighting, the Myanmar Army suffered a staggering death toll of 5,000 casualties² as per a reliable report.



This experience has proved that, in order to resolve the issues to be arisen out of the conflicts during a formal ceasefire period, an efficient mechanism needs to be set up under the supervision of the international community, like the UN, and deal with any serious human rights violation or heinous crime to be possibly committed by any side of the parties. Only then, negative results may be circumvented.

The serious conflict – previously experienced by the KIO – has now come to the fore for the KNPP, in addition to some other ethnic nationalities. Before being killed, the KIA soldier was seriously tortured. The four Karenni soldiers might face similar destiny; and, accountability shall have to be sought.

The ethnic armed revolutionary organizations have publicly rejected the 2008 Constitution; as a consequence, they are not under it nor its legal framework, including the Military Tribunal – established by the regime – where the Commander-in-Chief of the Armed Forces exercises appellate judicial power in the administration of Military justice, which is explicitly separated from the civilian judicial system, in accordance with the Section 293 (b) and 343 of the 2008 Constitution. Justice will never be done even if the Myanmar military perpetrators, who allegedly committed heinous crimes against the four Karenni soldiers, are tried at those military tribunals.

Recommendations

In order to deal with the current war crime issue in a way that a genuine peace seeking process is facilitated, an investigation mission under the supervision of the UN Peace Keeping Operation should be formed; afterwards, heinous crime be investigated thoroughly; truth uncovered; based on the evidence collected by that investigation mission, effective legal action shall have to be taken against the perpetrators; they shall be tried, at minimum, at the special criminal tribunal, a hybrid of independent national and international legal academicians. Only then, the Rule of Law will have been upheld and foundation for a genuine peace seeking process been laid down.

² See <http://www.irrawaddy.org/burma/army-lost-2-helicopters-suffered-heavy-personnel-losses-past-kachin-offensive-report.html>.

Otherwise, the NLD government led by Mrs. Aung San Suu Kyi, should request the investigation of the UN Fact Finding Mission, already existed, for investigation of heinous crimes in Burma. The government authorities should get rid of their policy for keeping silent on all international crimes committed and being committed by the Myanmar Army in Ethnic States, including Rakhine State, thereby covering up the full extent of atrocities inflicted upon the ethnic nationalities.

The UNFFM may also exercise transparent and accountable principle by asking detailed information from the government authorities and the Myanmar military leaders publicly – on a case by case basis, including the incumbent one, four Karenni soldiers were killed recently.

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