



PWG Update

Conflict Dynamics and Protection of Civilians in Kachin State

September 2016

Objectives:

- a) To provide an update on the Protection Analyses¹ on the conflict dynamics in Kachin State, particularly as related to Protection of Civilians.
- b) To draw attention to the increased tension and conflict in close proximity to IDP camps and civilian residences and call on all parties to the conflict to respect the civilian character of these camps and communities.
- c) To facilitate, drive and inform discussion and response to Protection concerns in Kachin state within the PWG, the Inter Cluster Working Group, the AHCT and HCT, particularly in relation to Protection and Advocacy on key issues, including Emergency Preparedness;
- d) To provide a reminder and guidance of obligations to meet relevant international standards on the Protection of Civilians, with a particular focus on the responsibilities of parties to the conflict under International Humanitarian Law, Human Rights Law and Criminal Law.
- e) To initiate discussion and form the basis of a coordinated advocacy strategy by PWG and other relevant stakeholders.

BACKGROUND

Since the breakdown of the ceasefire and resumption of fighting between the Myanmar Army and the KIA in Kachin State in 2011, several conflict related security and Protection trends have emerged including, but not limited to, use of landmines, use of heavy artillery in in proximity to civilian settlements and airstrikes as well as reports of increased human rights abuses targeting individuals. More than 91,000 people² are currently forcibly displaced across Government Controlled Areas (GCA) and Non-Government Controlled Areas (NGCA) of Kachin. The PWG have been active throughout the conflict monitoring Protection concerns³.

While the PWG has captured a vast amount of information on concerns and incidents, it is not always possible to verify all information received and, indeed, not all incidents can be captured due to various access and confidentiality challenges. These challenges are lent further complexity by the need for the PWG and its members to exercise caution and sensitivity in how information is

¹ Protection Analyses for Rakhine, Kachin and NSS, October 2015.

² According to the July 2016 Cluster Analysis Report there were 91,393 persons displaced in Kachin State.

³ Since 2014 the monitoring has been done through the Protection Incidents Monitoring system (PIMs), an evidence-based mechanism used to record and collate data on protection incidents for advocacy purposes

gathered and shared due to the realities of the operating environment and the need to place beneficiary safety at the heart of all action.

The fact that fighting is occurring close to civilian residences and IDP camps and that worrying reports have been received of armed actors entering IDP camps, is creating fear amongst affected populations and, in some cases, resulting in new displacement. This highlights the risks faced by civilians and the need for the civilian character of camps and communities to be reiterated and to inform humanitarian dialogue. This dialogue should not be limited to discussion only on the legal obligations of Protection of Civilians. It should inform discussion around contingency planning, emergency preparedness and overall risk and scenario analysis by all humanitarian actors and other stakeholders.

Key political developments over the past two months have impacted on the field level dynamics in Kachin State and contributed to the increased tension in the state, including a summit for ethnic armed organizations (EAOs) that took place at Mai Jai Yang at the end of July in Kachin State (NGCA) and the 21st Century Panglong Conference in Nay Pyi Taw. The outcome and indeed methodology of the ongoing Panglong conference process will likely have a major impact on the situation in Kachin. Further, the state of play between the Myanmar Army and KIA on the ground in Kachin will impact the necessary preconditions for meaningful negotiation.

In addition to an escalation of armed conflict and build-up of troops over the course of this year, there has been a concurrent increase in restrictions on humanitarian access. Further, as noted at various points below, the reportedly breaching of the civilian character of IDP camps and the intensification of the conflict close to civilian's residences and institutions that occurred has created a feeling of deteriorated security and safety situation for IDPs.

LEGAL FRAMEWORK FOR THE PROTECTION OF CIVILIANS IN ARMED CONFLICT

The legal basis for Protection of Civilians in Armed Conflict as enshrined in Rule 139 Customary International Humanitarian Law:

“Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.”

The obligation to ensure respect for international humanitarian law is set forth in a number of instruments also pertaining to non-international armed conflicts.

Civilians are defined as persons who are not members of the armed forces and do not partake in the armed conflict⁴. The legal Protection of Civilians is a fundamental principle of international

⁴ Rule 5 of International Customary Humanitarian Law, available online: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule5.

humanitarian law that applies to both the state and non-state actors in armed conflict and includes the protection of civilian property⁵.

When protected persons (including civilians), objects or important values are breached or put at risk these incidents are considered serious violations under both IHL and IHR law.

Protection of Civilians not only refers to protection from imminent threats such as violence, murder or torture but extends to respecting humanitarian actors and their enabling access to affected populations in order to meet humanitarian needs.

The visit of the Special Rapporteur for Human Rights to Kachin State in 2016 focused on the need to protect civilians in armed conflict. This is in line with a recently released statement of the Security Council⁶ stressing the importance for parties to armed conflict taking necessary measures to ensure protection and meeting basic needs of the conflict-affected population. And in addition for parties to the armed conflict to ensure the protection of civilians against hostilities with special focus on ensuring cessation of indiscriminate use of weapons, and the marking, clearance and removal or destruction of mines and explosive remnants of war (ERW).

KEY REQUIREMENTS ON PROTECTION OF CIVILIANS UNDER IHL IN KACHIN

1) Ensure the distinction between military personnel and civilians is maintained

2) Re-establish full freedom of movement which would enable displaced persons to have safe and unhindered access to humanitarian assistance and services, allowing IDPs to choose the most appropriate solution to displacement, move freely and access places of safety

Incidents occurred:

May 2016, Hpakant Township: several movement restrictions reported including access to villages being blocked, increased checks and restrictions along the main Myitkyina-Hpakant road and, at the height of the clashes, a curfew of 8pm was imposed and reports of an unofficial imposition of martial law

- **August 2015, Mogaung Township:** access on the Mogaung –Kamaing road blocked due to reports of KIA troops along the route
- **June, July, August 2016:** Some humanitarian agencies refused passage for aid in to NGCA and requested to distribute at points in GCA meaning that IDPs would be forced to cross lines in order to access basic goods and services.

⁵ Rule 10 International Customary Humanitarian Law, available online: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule10.

⁶ S/PRST/2015/23*.

3) Respect the civilian and humanitarian character of camps as well as other protected areas where civilians are currently accommodated.

The presence of armed or uniformed personnel in an IDP camp or use of the camp for any military objective compromises the humanitarian and civilian character of camps, blurring the distinction between those who are taking part in hostilities and those who are not, potentially creating risks for residents.

Incidents occurred:

- **May 2016, Mansi Township:** fighting occurred in close proximity to IDP camps; in the same month in Mansi, seven cases of arbitrary arrest were reported including one IDP woman.⁷
- **August 2016, Hpakant Township:** Fighting led to temporary displacement of 450 persons
- **September 2016, Mogaung Township:** An armed, uniformed group entered a camp, surrounding both the perimeter and individual shelters. Reportedly, this was not the first time armed actors have entered the camp. On this particular occasion, between 20 and 50 men entered the camp and interviewed IDPs, asking where they obtained cash and food from. They requested the Camp Manager to take pictures of the families, which the camp leader refused. The armed group searched the shelters of more than 10 households, without permission or justification. They were reportedly looking for weapons, uniforms or other objects that could link IDPs to the conflict. IDPs expressed that they do not feel safe to leave the camp to carry out daily activities due to high military presence around the camps, in addition to fears of the armed group returning.
- **September 2016, Waingmaw township (NGCA frontline):** stray mortar rounds fell within 400 meters of an IDP camp hosting more than 1,300 Households. In addition, shelling was in proximity to a school, a hospital, a church and houses of a nearby village. Two more stray rounds landed in another unspecified location of the same area. This reportedly led to, movement of an unconfirmed number of IDPs from the camp towards Laiza (KIA administrative capital). No civilian casualties or injuries reported.

4) To ensure the dignity and security of the civilian population

The presence of armed elements in and around an IDP camp exacerbates concerns for the safety and security of IDPs, who are already vulnerable by virtue of being displaced. It can also lead to a host of other Protection risks including intimidation, harassment, exploitation, arbitrary arrest, forced labour, enforced disappearance, forced recruitment-including of children- and exposure to violence, including Sexual and Gender-Based Violence.

Incidents occurred:

- **May 2016, Hpakant Township:** nine bomb blast and/or landmine incidents, of which five resulted in injuries and several of which were reported as close to civilian centers. New displacement temporarily occurred as a result of fighting in close proximity to IDPs camps. Moreover, incidents of houses being burnt down, forced labour and intimidation were reported in the same area

⁷ Rule 99 of Customary International Humanitarian Law prohibits 'arbitrary deprivation of liberty'

- **July 2016, Hpakant, Tanai and Mougang Townships:** multiple armed clashes occurred including at least one fatal landmine blast which also injured five people. In addition, incidents of arbitrary detentions, intimidation and forced labour were reported⁸.
- **August 2016, Hpakant Township:** Clashes including small arms fire and shelling from both sides resulted in mortar rounds falling in the compound of a school, injuring a schoolteacher and a student⁹.
- **August 2016, Waingmaw Township (on NGCA border):** armed clashes were reported close to a number of IDP camps with several rounds of mortar shells falling nearby the camps and civilian residences

5) To guarantee the safety and security of humanitarian aid workers, assets and supplies as well as full access of humanitarian aid workers to the civilian population in need

Incidents occurred:

- **June-Sept 2016:** Increased restrictions on the movement of humanitarian personnel. In particular, restrictions on TAs for international staff for both NGCA and GCA and announcements of possible need for TAs for national staff to access GCA
- **June-Sept 2016:** Humanitarian personnel report increased wait times and questioning at checkpoints and, in some cases, refusal to grant permission for movement of aid

6) To refrain from planting landmines as indiscriminate targeting weapons that detrimentally affect human beings

Incidents occurred:

- **May and July, Hpakant Township:** as noted under point 5
- **August 2016, Hpakant Township:** a villager reported as wounded by a landmine¹⁰
- **August 2016, Hpakant Township:** injury of 5 persons by landmines, including one fatally;
- **September 2016 Hpakant Township:** two people injured by landmines, one fatally.

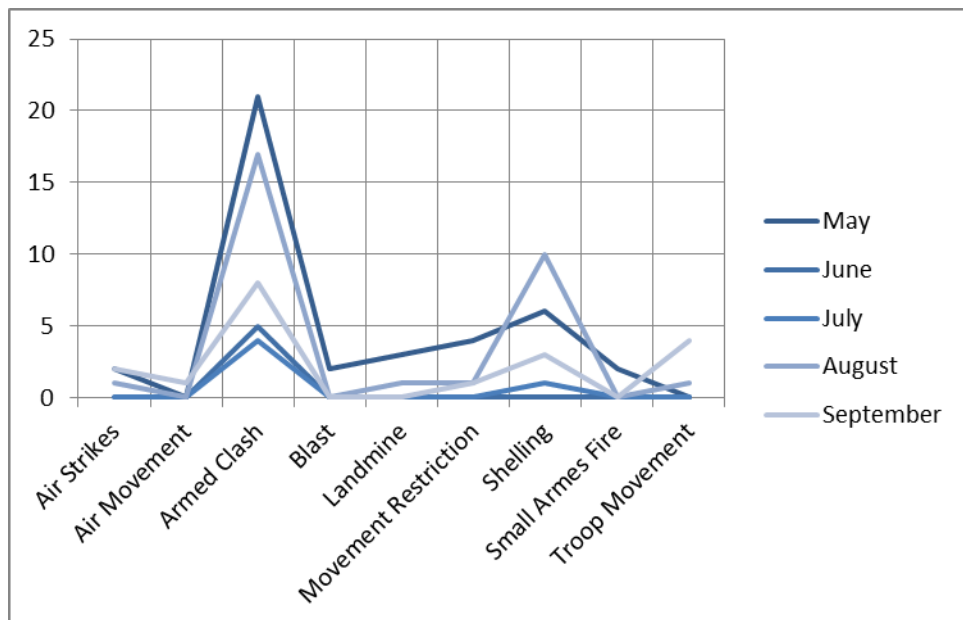
8) To avoid any form of discrimination among civilians based on any ground including ethnicity.

⁸ 4 persons were injured in Hpakant Township on the road to Mogaung, one person was injured by a mine blast in Mogaung, while another was killed in Hpakant Township. As part of the on-going conflict and occupation of the territory by troops of both parties, civilian buildings were dismantled too in the fighting areas.

⁹ NANG MYA NADI, "Schoolteacher wounded by artillery as clashes continue near Hpakant", The Irrawaddy, 16 August

¹⁰ LAWI WENG, "Schools Closed and Civilians Displaced as Fighting Between Burma Army and KIA Intensifies", THE IRRAWADDY, 15 August 2016.

The above mentioned Protection incidents do not represent the exhaustive list¹¹ (see graphs below for indication of no of incidents reported) of events reported during the period from May until September 2016 but highlight the most recent and serious incidents linked to Human Rights and International Humanitarian Law, that reflects the current increase in the conflict intensity in Kachin State.



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In light of the above information, one of the main Protection Sector functions is to remind relevant stakeholders about standards and principle related to the protection of civilians in armed conflict under the International Humanitarian Law as a contribution to advocacy efforts. Furthermore, the humanitarian community in Kachin must make its best efforts to respond to the changing and emerging needs of IDPs and other conflict affected communities, including preparedness.

**Protection Sector Kachin,
27th September 2016**

¹¹ All security and protection incidents since May 2016 have been collected and shared in the previous monthly PWG meetings in hard-copy. PIM report for the quarter April-June has been issued at the end of August and the next PIM report will be due between October and November.

¹² Blast: in cases where it has not been possible to confirm the nature or cause of the explosion it has been recorded as Blast/Movement restrictions: both affecting civilian population as well as (I)NGOs