



## Protection Working Group Kachin State

### Update on arbitrary deprivation of life of civilians in Kachin State 2016-2017<sup>1</sup>

February 2017

#### *Reported cases of arbitrary deprivation of life by armed actors in Kachin State in 2016-2017:*

- **February 2016:** One woman was shot dead (and four other individuals were arrested) in the Nam San Yang area.
  - **June 2016:** One local Kachin young student from Myitkyina was shot and killed by a soldier in town. The soldier was arrested and charged under the Military Court with two years' imprisonment.
  - **May 2016:** seven people were arrested in Mansi Township; reportedly among them one pregnant woman and six men. All 7 people were killed
  - **October 2016:** An elderly IDP man from Manwin Gyi RC camp was shot to death when returning from his Village of Origin. The family in the IDP camp has not been able to retrieve the body so far.
- November 2016:** In Hpakant Township, incursion in two civilian houses where two men were arrested for drugs-related charges. The following day one of the arrested civilians was found dead.
- **December 2016:** A jade picker was shot and killed while working in the jade mining area in Hpakant Township.
  - **December 2016:** arrest and deprivation of life of a 51 year old man in Mansi Township.
  - **December 2016:** Another villager from Mansi Township was found shot dead on Christmas day.<sup>2</sup>
  - **December 2016:** An airstrike on a village in Injanyang Township killed one villager.
  - **January 2017:** An airstrike on a village in Mansi Township killed one civilian and affected the houses and livelihoods of two civilians.
  - **January 2017:** An IDP originally residing in NGCA, experienced a secondary displacement in January 2017 towards another IDP camp in NGCA in Waingmaw Township. He returned to his IDP camp of

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<sup>1</sup> The below mentioned cases of arbitrary deprivation of life and direct attacks towards civilians do not include incidents resulting from landmine or IED explosions.

<sup>2</sup> Kachin Land News article and confirmed by humanitarian partner Shalom.

origin to look for his belongings and was arrested and killed by soldiers residing in the abandoned camp in question.<sup>3</sup>

*The list is not exhaustive and other cases of direct attacks on civilians in the framework of the hostilities were recorded in Kachin State mostly in the second half of 2016.*

**In 13 months, the life of 16 civilians was arbitrarily deprived by armed actors in Kachin State (two of them were killed by airstrikes and fighter bombs) and a number of civilians suffered injuries due to attacks in the framework of the hostilities.**

## **Annexes**

### **1. National and international standards**

Corresponding international standards deliberate arbitrary deprivation of life are prohibited in all circumstances and can be seen as a minimum standard of humane behavior that is applicable everywhere at all times. The right to life being referenced in both national and international standards and applied with international consensus. In case of non-international armed conflict, both the national laws, international Human Rights and International Humanitarian Law is applicable.

### **Prohibition of arbitrary deprivation of life under Myanmar Criminal Law**

In Myanmar Penal Code the arbitrary deprivation of life of another person is prohibited and punishable as follows:

Homicide (not amounting to murder) in the **1861 Myanmar Penal Code** is punishable with imprisonment for a term which may extend to ten years and shall also be liable to fine (according to article 304, Chapter XVI of Offence Affecting the Human Body). Attempt to commit homicide is punishable with imprisonment of a term which may extend to three years, or with fine or with both and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both (article 308 of the 1861 Myanmar Penal Code)<sup>4</sup>.

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<sup>3</sup> Kachin News

<sup>4</sup> 299.

(1) Whoever causes death by doing an Act with the intention of causing such bodily injury as is likely to cause death commits the offence of culpable homicide not amounting to murder.

(2) Whoever causes death by doing an Act with the intention of causing death, or with the intention of causing such bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of culpable homicide not amounting to murder in any of the following cases:—

(A) If he, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident:

Provided—

*First*— That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person

*Secondly*— That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; and

300.

The prohibition of arbitrary deprivation of life of civilians *hors de combat* is prohibited according to the Myanmar Military Manual, provision.

According to the **Tatmadaw Military Manual**, when a civilian is arbitrarily killed by a combatant, the soldier is punishable with xxx years imprisonment if found guilty before the Military Tribunal in Myanmar.

According to the **KIA Military Manual**, when a civilian is arbitrarily killed by a combatant, the soldier is punishable with xxx years imprisonment if found guilty before the KIO tribunal.

Nationwide Peace Working Group and KIA signed a **bilateral agreement in 2013** and the Ceasefire Monitoring Group focusses on this when it records incidents – punishment for violations

### **Prohibition of arbitrary deprivation of life under International Human Rights (IHRR)**

The right to life is recognized as an inherent human right and cannot be violated by any other person or group. According to the Universal Declaration of Human rights, everyone has the rights to life, liberty and security of person.<sup>5</sup> The right to life is considered as a non-derogable right, not allowed to be limited in any circumstances, not even in times of public emergency.

Furthermore the International Covenant on Civil and Political Rights prohibits the arbitrary deprivation of the right to life<sup>6</sup>, which includes the unlawful deprivation of life during hostilities. In the Convention on the Rights of the Child, reference is also made to the inherent right to life and the necessity for State Parties to ensure the survival and development of children, to the maximum extent possible.<sup>7</sup> A similar reference to the inherent life and necessary measures to be taken by State Parties to provide effective enjoyment of that right for persons with disabilities is made in the Convention on the Rights of Persons with Disabilities.<sup>8</sup>

### **Prohibition of arbitrary deprivation of life under International Humanitarian Law (IHL)**

In IHL victims of war are protected from deliberate and arbitrary deprivation of lives, through the Geneva Conventions article 3<sup>9</sup> of all four conventions that prohibits the violence to life and person in non-international

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Whoever, in the absence of any circumstance which makes the act one of culpable homicide not amounting to murder, causes death by doing an act with the intention of causing death, or with the intention of causing bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits an offence by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the offence committed by the-offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder —

(a) being under sentence of transportation for life or

(b) with premeditation, or

(c) in the course of committing any offence punishable under this Code with imprisonment for a term which may extend to seven years, shall be punished with death, and shall also be liable to fine.

(2) Whoever commits murder in any other case shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall be also be liable to fine.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

<sup>5</sup> Article 3 of the Universal Declaration of Human Rights.

<sup>6</sup> Article 6(1) of the International Covenant on Civil and Political Rights.

<sup>7</sup> Article 6 (1) and (2) of the CRC.

<sup>8</sup> Article 10 of the CRPD.

<sup>9</sup> Article 3 (1) (a) of the Geneva Conventions : "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness,

armed conflicts, directed towards all kinds of protected persons in non-international armed conflicts. Those persons cannot be deliberately targeted or killed and attacks should only be directed towards military personnel and objects.

The prohibition of arbitrary deprivation of life is in addition included in Customary International Humanitarian Law, through rule 89 that prohibits violence to life and the deprivation of life of civilians and persons hors de combat.

*End.*

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wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”.