



Legal Analysis Statement on current armed conflict in Karen State from the perspective of human rights and the rule of law vis-a-vis the Nationwide Ceasefire Agreement

Since the second week of September 2016, fighting has resumed between the DKBA and Burmese Army and its subsidiary Karen Border Guard Force. This can erode the trust of ethnic nationalities in the government and Burmese military leaders who are taking the leading role in the Nationwide Ceasefire Agreement (NCA) process.

The causes of the renewed fighting are the lack of rule of law and the flaws of the NCA which was signed by the government and eight ethnic armed groups on October 15, 2015.

The background of the lack of rule of law and current situation is as follows:

- (a) There is no legal agenda to implement a process by which all armed groups in the entire country, including the Burmese Army, can be under one Legal Framework.
- (b) Even though the government declared the nullification of the Unlawful Association Act for members of ethnic armed groups which signed the NCA, it has not yet planned for these groups to operate legally.
- (c) Regardless of whether the NCA has been signed or not, some ethnic armed groups which are lackeys of the Burmese military leaders have been favored and authorized to collect taxes and do business. However, other ethnic armed groups which are not allied with the Burmese Army are being ignored.
- (d) Instead of standing neutrally and controlling the situation in accordance with laws whenever there is a conflict between the different armed groups, the Burmese military has helped fight on the side of the groups who are allied with them.
- (e) Rather than providing protection to civilians during the course of fighting according to the Geneva Conventions and other effective national laws, the Minister of Interior, Minister of Defense, and Minister of Border Affairs – who

are military officials – have totally ignored the suffering of those civilians – the Karen nationals -- who have attempted to escape from fighting.

This current renewal of fighting is a result of the flaws of the NCA. Two major weaknesses of the NCA are: firstly, parties to the agreement do not comply with it; secondly, in the agreement there is no provision for a third party to be an international monitoring group, like the Crisis Management Board in Indonesia, to monitor any violation of the agreement.

(1) Chapter 3, Article (5) of the NCA has been violated by the Burmese military.

Sub-section (a) said that in ceasefire areas, between both sides, military maneuvers to control territories, reconnaissance missions, troop reinforcement, attacks, laying landmines, acts of violence, destruction of property and military offensives shall be stopped.

(b) Any hostile actions between the two sides, or insults, direct or indirect, shall not be made.

(k) Conflicts which occur at lower levels shall not be solved by using force.

Despite the fact that there have been violations of the agreement by the Burmese military, there has been no mechanism to take action over this. Hence, the agreement is just on paper. It is not effective in practice, and, in terms of human rights, the lives and properties of ethnic people cannot be protected.

Despite being called a Nationwide Ceasefire Agreement, it has been unable to stop the fighting taking place even in Karen State, where three Karen armed groups signed the NCA.

Recommendations

Legal Aid Network urges the following;

1. The Burmese Army shall unconditionally cease fighting, not only in Karen State but in the whole country, to make the Nationwide Ceasefire Agreement signed on 15th October 2015 legally binding.

2. The Government, Pyidaungsu Hluttaw and Burmese Army as one party, all ethnic armed groups and political parties, as second and third parties, shall hold tripartite political dialogue, make a core agreement, and produce a Peace Accord, including a nationwide ceasefire.

3. During wars, whatever their cause, any violation of Human Rights shall be stopped immediately. The government must take responsibility for the safety of civilians. Special care

shall be given to women, pregnant mothers, children and the disabled. Every loss incurred by civilians during the war shall be compensated by the Burmese Army.

4. To bring about the Rule of Law, the government must enact a Military Act so that military perpetrators who commit heinous crimes in violation of international humanitarian law (the Geneva Conventions), can be charged and given punishment in a civilian court.

5. Courts-Martial that exist in accordance with the 2008 Constitution shall be nullified. With regard to crimes committed by military personnel, the rule of law shall be restored by delegating appellate power to the civilian Supreme Court, pursuant to the existing Army Act (1959).

Legal Aid Network

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