

HUMAN RIGHTS WATCH

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March 24, 2011

Maj.-Gen. Yar Pyae
Judge Advocate General
Ministry of Defence
Naypyidaw
Republic of the Union of Myanmar

Re: Promoting Respect for International Humanitarian Law

Dear Maj.-Gen. Yar Pyae,

I write to you on the occasion of Burma's 66th Armed Forces Day on March 27 to urge your government and armed forces to respect international humanitarian law (the laws of war) and international human rights law in the country's ongoing internal armed conflicts.

Human Rights Watch is a nongovernmental organization that reports on violations of international human rights and humanitarian law by governments and non-state armed groups in more than 80 countries around the world.

We request that you, as Judge Advocate General, take all action necessary to help bring the armed forces (the Tatmadaw) within the fold of international law. Specifically, that means adopting measures to promote respect for the laws of war and human rights by all officers and soldiers, holding to account military personnel implicated in serious abuses, and expressing a willingness to cooperate with a proposal to establish a United Nations Commission of Inquiry on laws-of-war and human rights violations.

Human Rights Watch remains deeply concerned that the Burmese military continues to commit widespread and serious violations of the laws of war in its operations against ethnic armed groups. Burmese military forces have directly targeted civilians for attack in a number of ethnic minority areas, including in Karen, Karenni, Shan, Chin, and Arakan States. Abuses by the Burmese military include extrajudicial killings, torture, sexual violence against women and girls, forced labor, targeting of food production and other objects indispensable to the survival of the population, and confiscation of property. The Tatmadaw continues to use anti-personnel

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landmines, actively recruit and deploy child soldiers, and compel civilians to serve as porters for ammunition and supplies in battle zones.

Since November 2010, Tatmadaw operations have increased in central Karen State when a breakaway faction of the Democratic Karen Buddhist Army briefly took control of the town of Myawaddy. Tens of thousands of civilians were displaced on both sides of the Burma-Thailand border. Civilians have been forced to carry the wounded through areas containing anti-personnel landmines and improvised explosive devices (IEDs). Large numbers of convicts from several prisons throughout Burma have been forced to be porters for the Burmese army during military operations, including to walk ahead of troops to trigger landmines in a practice known as “atrocious de-mining.”

Human Rights Watch remains deeply concerned by the failure of the Tatmadaw to seriously investigate and prosecute military personnel for their involvement in violations of the laws of war. The internal armed conflicts in Burma are governed by international treaty, as well as the rules of customary international law, both of which are binding on the government and non-state armed groups. Common Article 3 to the Geneva Conventions of 1949, to which Burma is a party, provides protections to civilians and captured combatants from the hazards of armed conflict. Customary international law addresses the lawful means and methods of warfare during hostilities.

As you know, Burma has a responsibility under international law to prosecute war crimes, which are serious violations of the laws of war committed deliberately or recklessly. War crimes include a wide array of offenses, including intentional or indiscriminate attacks against civilians, summary executions, torture, rape, use of human shields, and using children as combatants, among others. Individuals also may be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, or aiding and abetting a war crime.

Human Rights Watch urges you, as the Judge Advocate General of the Armed Forces, to adopt and support the following measures to end laws-of-war violations, promote accountability for Tatmadaw personnel who commit abuses, and support international efforts to end the longstanding impunity that has been characteristic of Burma’s decades-long internal armed conflicts. Specifically you should:

- 1) Publicly order all military officers and soldiers to abide by international human rights and humanitarian law during military operations. Take all measures necessary to minimize the harm to civilians during hostilities. Treat all civilians and captured combatants in accordance with the laws of war, particularly Common Article 3 to the 1949 Geneva Conventions. Support the resumption of activities of the International Committee of the Red Cross in Burma, particularly in reactivating their regional offices.

- 2) Ensure that all military personnel who commit abuses are fully investigated and disciplined or prosecuted as appropriate. Ensure military courts meet international due process and fair trial standards.
- 3) Encourage greater civilian oversight into the prosecution of offenses by military personnel against civilians. This is not permitted under Burma's Constitution of 2008, which states that "[i]n the adjudication of military justice: the decision of the Commander in Chief of the Defense Services is final and conclusive" (Chapter 7, Section 343[b]).
- 4) Ensure that members of non-state armed groups prosecuted for legitimate criminal offenses receive trials in civilian courts, not military tribunals, and that such courts are independent, competent, and impartial.
- 5) Support our call to Attorney General Dr. Tun Shin to transform the current Human Rights Body into a fully independent and impartial national human rights commission in line with the Paris Principles on National Human Rights Institutions. An independent human rights commission that is able to help investigate abuses by government officials and military personnel would be an important step in curbing impunity and would promote respect for the rule of law.

Finally, we take this opportunity to set out Human Rights Watch's support for the formation of a United Nations Commission of Inquiry into violations of international human rights and humanitarian law in Burma's internal armed conflicts. This proposal was first raised in the March 2010 report by the UN Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana, and further elaborated on in his reports to the UN Human Rights Council in October 2010 and March 2011. We attach a detailed "Questions and Answers" on the Commission of Inquiry in Burmese and English, and request that you distribute this document to your subordinates in the Judge Advocate General's office and among senior commanders and officials in the War Office.

We believe that forming a Commission of Inquiry is a crucial measure towards curtailing abuses and ending impunity in Burma. A commission would act as a catalyst to discuss justice and accountability in a manner that currently does not exist in the country. And it could act as a deterrent to future abuses by all parties to Burma's conflicts, as similar commissions have done in Liberia and Bosnia.

A Commission of Inquiry's first step would be to document violations of international law by all warring parties over recent years. This process would have an important truth-telling component that would provide a measure of recognition to victims of serious abuses.

International support for a Commission of Inquiry is growing. Sixteen states have publicly affirmed their support for the proposal: Australia, Belgium, Canada, Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Latvia, Lithuania, Netherlands, New Zealand, Slovakia, United Kingdom, and United States. Were you, as the chief legal officer of the Burmese armed forces, to express a willingness to cooperate fully with such a commission, it would show a seriousness of intent to address and curtail ongoing violations of the laws of war.

I stand ready to correspond further with you on these and other matters related to human rights in Burma, and once again urge you to fulfill your duty in ensuring respect for the laws of war and the protection of the civilian population.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James Ross". The signature is fluid and cursive, with a long horizontal stroke at the end.

James Ross
Legal and Policy Director
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY
United States of America

Copies to:

1. Dr. Tun Shin, Attorney General of the Republic of the Union of Myanmar
2. Ambassador HE U Thant Kyaw, Permanent Mission to the United Nations in Geneva
3. Brig. -Gen. Htun Nay Lin, South-East Regional Military Command Commander, Moulmein, Mon State
4. Maj.-Gen. Thet Naing Win, Commander of Bureau of Special Operations No.4 (BSO-4)
5. Col. Naing Win, Commander of Military Operations Command No.12 (MOC-12), Kawkareik, Karen State