



Karen Human Rights Group

Documenting the voices of villagers in rural Burma

Thematic report

December 6th / KHRG #2011-05

Attacks on Health and Education: Trends and incidents from eastern Burma, 2010-2011

This report presents primary evidence of attacks on education and health in eastern Burma collected by KHRG during the period February 2010 to May 2011. Section I of this report details KHRG research methodology; Section II analyses general trends in armed conflict and details a loose typology of attacks identified during the reporting period. Section III applies this typology to 16 particularly illustrative incidents, and analyses them in light of relevant international humanitarian law and UN Security Council resolutions 1612, 1882 and 1998. These incidents were selected from a database detailing 59 attacks on civilians documented by KHRG between February 2010 and May 2011.

Civilian communities in eastern Burma continue to face attacks and threats of attacks by Burma's state armed forces, the Tatmadaw, as well as non-state armed groups (NSAGs).¹ Attacks on civilians have been reported by local organisations active in eastern Burma, both those documenting abuses² and those providing humanitarian support.³ Attacks have also been noted by international actors, including the International Committee for the Red Cross (ICRC), UN Special Rapporteur on Human Rights and Amnesty International.⁴ Over the course of a three-year offensive⁵ during 2005 to 2008, for example, KHRG published 43 reports, each detailing repeated grave violations of IHL by Tatmadaw units.⁶

¹ The most recent attacks on civilians documented by KHRG occurred in October 2011. See, "Incident Report: Villager shot and killed in Pa'an District, October 2011," KHRG, November 2011; "Tatmadaw soldiers shell village, attack church and civilian property in Toungoo District," KHRG, November 2011. Note that after publishing information regarding the attack in Toungoo District, KHRG was able to confirm that the attack also forced a school to close.

² *Shoot on Sight: The ongoing SPDC offensive against villagers in northern Karen State*, Burma Issues, December 2006; *Campaign of Brutality*, Free Burma Rangers (FBR), April 2008; *State of Terror*, Karen Women's Organisation, February 2007.

³ See for example periodic reports by the Karen Teacher Working Group (KTWG), "Two Students Injured and School Closed During 10 Days of Fighting," KTWG, October 2011; and reports by the Backpack Health Worker Team (BPHWT), *Provision of Primary Healthcare among the Internally Displaced Persons and Vulnerable Populations of Burma*, BPHWT 2010.

⁴ "Myanmar: ICRC denounces major and repeated violations of international humanitarian law," ICRC, June 29th 2007, News Release 82/07; "Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sergio Pinheiro," UN Human Rights Council (HRC), February 12th 2007, A/HRC/4/14 paras. 55-6, 58; *Crimes Against Humanity in Eastern Myanmar*, Amnesty International, June 2008; "Burma: Army Forces Thousands to Flee," Human Rights Watch, November 2006.

⁵ KHRG uses the noun 'offensive' to indicate coordinated military activity by 10 or more battalions operating in concert. This usage is distinct from 'offensive' as an adjective, which contrasts military operations designed to obtain control over new territory, as opposed to 'defensive' military operations designed to hold a particular position. Distinguishing between usages of the term, particularly the former, is important so that activity during the period 2005-2008 is understood differently from the day-to-day targeting of civilians by Tatmadaw battalions, a practice which remains ongoing.

⁶ Of these 43 reports, 6 were Thematic Reports, 27 were Field Reports and 10 were News Bulletins. Each report details multiple, and in some cases more than one hundred, incidents of abuse.

While this documentation is extensive, there has not been systematic international acknowledgement of attacks on health and education in eastern Burma, particularly regarding health and education for children. Internationally, however, there has been growing acknowledgement of the importance of protecting health and education from attack. In July 2011, the UN Security Council adopted Resolution (UNSCR) 1998, urging parties to conflict to refrain from impeding children's access to education and to health services.⁷ The resolution forms an important new component of the Security Council's Children and Armed Conflict (CAC) agenda, building on UNSCR 1612, which in 2005 established a UN-led mechanism for monitoring and reporting on six grave violations of children's rights, known as the "Monitoring and Reporting Mechanism" (MRM).⁸ The 1612 MRM is designed to trigger responses by UN and country actors at a national and international level, including potentially powerful actions by the UN Security Council.⁹ At the same time, major global advocacy initiatives have been launched to focus on protecting health and education in conflict settings.¹⁰

If international developments such as the adoption of UNSCR 1998 can encourage the Tatmadaw and non-state armed groups to change practices that violate international norms in eastern Burma – and hold accountable those actors who do not halt unlawful practices – they could create much needed space for communities in eastern Burma actively attempting to protect their children's health and education from attack.¹¹ Actions mandated by resolutions adopted within the UN Security Council's CAC agenda, however, are largely shaped by information gathered by the 1612 MRM. It is imperative, then, that the MRM gather information that is accurate and represents the true scope of grave violations of children's rights in eastern Burma.

Unfortunately, the Secretary General's Special Representative on Children in Armed Conflict (SRSG), mandated to report information gathered by the MRM to the Security Council, has repeatedly noted that restrictions imposed by Burma's central government have prevented her office from systematically following up on reports of attacks on health and education.¹² This

⁷ *Resolution on children and armed conflict*, SC Res 1998, UN SCOR, 66th Year, 6581st Meeting, UN Doc S/Res/1998 (2011).

⁸ The six 'grave violations' of children's rights highlighted by the Security Council in Resolution 1612 include killing and maiming, sexual violence, recruitment or use by armed forces or groups, abduction, denial of access to humanitarian services and attacks on schools, hospitals or related personnel. See, *Resolution on children and armed conflict*, SC Res. 1612, UN SCOR, 60th Year, 5235th Meeting, UN Doc S/Res/1612 (2005). In 2009, this resolution was augmented by UNSCR 1882; see: *Resolution on children and armed conflict*, SC Res 1882, UN SCOR, 64th Year, 6176th Meeting, UN Doc S/Res/1882 (2009). Resolution 1882 specifically focused on strengthening UN-led responses to killing, maiming and sexual violence against children.

⁹ *Resolution on children and armed conflict*, SC Res. 1612, UN SCOR, 60th Year, 5235th Meeting, UN Doc S/Res/1612 (2005). In 2009, this resolution was augmented by UNSCR 1882; see: *Resolution on children and armed conflict*, SC Res 1882, UN SCOR, 64th Year, 6176th Meeting, UN Doc S/Res/1882 (2009).

¹⁰ In October 2001, with the release of the report *Health Care in Danger: Making the case*, the International Committee of the Red Cross signalled the launch of a "... major campaign to raise awareness of this pressing issue, and mobilizing a community of concern. This global initiative will last four years and aims at making a crucial difference for people affected on the ground." In February 2010, meanwhile, the Global Coalition to Protect Education From Attack began organising similar activities to encourage better protection for education in conflict.

¹¹ For more on these community self-protection strategies, see *Self-Protection Under Strain: Targeting of civilians and local responses in northern Karen State*, KHRG, August 2010.

¹² In her reports to the Security Council, the Secretary General's Special Representative on Children in Armed Conflict has repeatedly noted that access restrictions have prevented her from effectively monitoring and reporting on grave violations of children's rights in eastern Burma. *Children and armed conflict: Report of the Secretary-General*, A/65/820–S/2011/250, April 2011. See paragraph 111, noting restrictions on access. See paragraph 112, noting attacks in February 2010 that forced the closure of 13 schools and destroyed a high school, nursery school and a clinic. The SRSG began noting such restrictions in her first report on Burma. See, *Report of the Secretary-General on children and armed conflict in Myanmar*, S/2007/666, November 2007. Paragraph 36 and 37, noting that

should be particularly alarming, given that the barriers noted by the SRSG have been imposed by Burma's central government, whose state army is itself a perpetrator. KHRG applauds the SRSG's most recent report, released in April 2011, which included a confirmed report of Tatmadaw attacks on civilian settlements in eastern Bago Division that resulted in the closure of 13 schools and the destruction of one high school, a nursery and a clinic.¹³ Increased monitoring and reporting is nonetheless imperative.

In order to support more systematic international monitoring, this report aims to elucidate the different ways in which attacks on health and education facilities and related personnel continue to be carried out in eastern Burma. Confirming the continuation of trends documented by KHRG over the last two decades, this report presents evidence from a database of 59 attacks or threats of attacks documented in Karen State, Bago Division and Tenasserim Division by KHRG between February 2010 and May 2011. This database was compiled using primary evidence gathered by villagers trained by KHRG to document human rights abuses, and then triangulated with data from health and education organisations operating affected programmes.

While this database is far from comprehensive, it confirms that children's health and education is consistently being disrupted by unlawful attacks by Tatmadaw forces on civilians in conflict-affected areas of eastern Burma. Schools and clinics are frequently forced to close as residents flee attacks, on the understanding that Tatmadaw soldiers will not accord civilians the basic protection required by IHL; teachers and medics are forced to flee for the same reasons as other civilians, and on the understanding that Tatmadaw forces will not accord educational or medical personnel any additional protection. In some cases, schools, clinics and children's homes are burned, destroyed or otherwise made uninhabitable. In other cases, schools and clinics are permanently or temporarily forced to close, but not physically destroyed. In all cases, the attacks are clearly unlawful – and children's health and education unacceptably disrupted.

This report is divided into three sections:

Section I: Methodology: This section includes an explanation of KHRG field research methodology and the methods used to compile information in this report.

Section II: Trends analysis and typology of common attacks: This section includes information regarding recent trends in armed conflict in eastern Burma. It also draws upon 20 years of primary research by KHRG to present a typology of four types of commonly documented attacks that can entail attacks on health or education facilities and related personnel. This typology should enable more accurate analysis of the individual incidents presented in Section III, given that analysis by international monitors based upon individual incidents considered in isolation from wider trends is vulnerable to error in a context in which a large data set has not been gathered, and monitoring and reporting have been neither comprehensive nor sustained over a significant period of time.

Section III: Recent incidents: This section locates 16 particularly illustrative individual incidents documented by KHRG within the typology presented in Section II, and analyses them in light of international humanitarian law as well as their relevance for reporting pursuant to the UN Security Council's CAC agenda.¹⁴

“Credible reports indicat[e] that during the period 2006-2007 Government armed forces in Kayin state attacked villagers... These reports, however, cannot be confirmed owing to lack of access to conflict-affected areas.”

¹³ *Children and armed conflict: Report of the Secretary-General, A/65/820-S/2011/250*, para 112 April 2011.

¹⁴ For more detailed analysis of the legal basis for monitoring and reporting attacks on health and education pursuant to UNSCR 1612 and 1998, see: “Definitional ambiguity and UNSCR 1998: Impeding UN-led responses to attacks on health and education in eastern Burma,” KHRG, December 2011.

Section I: Methodology

KHRG has gathered testimony and documented individual incidents of human rights violations in eastern Burma since 1992. KHRG trains villagers living in Mon and Karen states and Bago and Tenasserim divisions to use KHRG research methodology, including to:

- Gather oral testimony, by conducting audio-recorded interviews with other villagers living in eastern Burma. When conducting interviews, villagers are trained to use loose question guidelines, but also to encourage interviewees to speak freely about recent events, raise issues that they consider to be important and share their opinions or perspectives on abuse and other local dynamics.
- Document individual incidents of abuse using a standardised reporting format. When writing or gathering incident reports, villagers are encouraged to document incidents of abuse that they consider important, by verifying information from multiple sources, assessing for potential biases and comparing to local trends.
- Write general updates on the situation in areas with which they are familiar. When writing situation updates, villagers are encouraged to summarise recent events, raise issues that they consider important, and present their opinions or perspectives on abuse and other local dynamics in their area.
- Gather photographs, video footage and other forms of evidence. Villagers are trained to take photographs or video footage of incidents as they happen when it is safe to do so or, because this is rarely possible, of victims, witnesses or the aftermath of incidents. Villagers are also encouraged to take photographs or video footage of other things they consider important, including everyday life in rural areas, cultural activities and the long-term consequences of abuse. When available, villagers collect other forms of evidence, such as letters written by military commanders ordering forced labour or forced relocation.

While KHRG encourages villagers to approach monitoring of human rights conditions in eastern Burma holistically and does not task anyone with exclusively monitoring violations of children's rights, all six of the grave violations monitored pursuant to UNSCRs 1612, 1882 and 1998 occur in eastern Burma and are documented by field staff. Until recently, lack of familiarity with monitoring attacks on schools, hospitals and related personnel meant that villagers trained by KHRG did not systematically seek information on this issue. In some cases, for example, villagers documenting an attack on a civilian settlement may not have made specific note of the consequence of a given attack on children, schools, clinics or related personnel.

This report therefore should not be taken as comprehensive; rather, it represents an incomplete though nonetheless alarming snapshot of the full scope of attacks on health and education. Still, KHRG was able to compile a database of 59 incidents monitored by KHRG: 46 known recent attacks on civilians and civilian settlements and 13 incidents in which children were killed or injured and potentially maimed by parties to conflict in eastern Burma. KHRG also met with staff from local organisations operating health and education programmes in eastern Burma, to confirm whether their staff or facilities were impacted by attacks. Based upon primary evidence gathered by KHRG field staff and triangulation with health and education organisations, KHRG concluded that it had information on 27 incidents of killing or maiming and attacks on schools, clinics and related personnel relevant for reporting pursuant to UNSCRs 1612, 1882 and 1998. Sixteen particularly illustrative examples have been selected for analysis in Section III below.

Section II: Trends analysis and typology of attacks

The geographic scope of armed conflict in eastern Burma expanded significantly during the period covered by this report. While the national elections held on November 7th may open the door to changes in civilian governance in areas not affected by armed conflict, there were not positive changes in the relationship between parties to conflict in eastern Burma, nor in the practices they employ in rural areas of eastern Burma. Armed conflict between the Tatmadaw and the Karen National Liberation Army (KNLA) continues; there has been no change in the relationship between the Tatmadaw and KNLA or the posture of the two groups. Though ceasefire discussions between representatives of Burma's central government and the Karen National Union and KNLA occurred in November 2011, no formal agreement has been reached.¹⁵ While the KNLA does not control the extensive territory it once did, it continues to be able to launch 'guerrilla attacks' in southern and northeastern Mon State, eastern Bago Division, across the majority of Karen State and in eastern Tenasserim Division.

New conflict also broke out in late 2010 in central and southern Karen State, in areas previously controlled by units of the Democratic Karen Buddhist Army (DKBA).¹⁶ Until November 2010, Tatmadaw and DKBA units in these areas had cooperated, with DKBA soldiers often taking orders from Tatmadaw commanders and playing a key role in attacks on the KNLA.¹⁷ Conflict intensified in these areas in November 2010, however, when factions of the DKBA that refused to transform into Tatmadaw Border Guard battalions attacked the large border towns of Myawaddy and Three Pagodas Pass. This fighting initially displaced at least 25,000 civilians.¹⁸ Those displaced from these major towns were able to return within a week, after the DKBA retreated. Though the Tatmadaw quickly overran the erstwhile headquarters of the individual commander leading the DKBA faction, the Tatmadaw has subsequently been unable to dislodge DKBA units from southern Karen State. The DKBA maintained a consistent level of guerrilla activity through the 2011 rainy season when weather damage to roads typically forces conflict to temporarily subside. DKBA-Tatmadaw conflict also increased in central Karen State, particularly after late May, when former DKBA units that had agreed to become Tatmadaw Border Guards defected. This defection included a symbolic attack and short-term occupation of Myaing Gyi Ngu, the headquarters of DKBA units that had agreed to transform into Tatmadaw Border Guard units. Although the main DKBA faction involved in fighting the Tatmadaw in late 2010 and 2011 concluded a new ceasefire with the government effective November 7th 2011,¹⁹ the events of the past year illustrate the fragility of such agreements, and the speed with which ceasefire context can rapidly deteriorate into open conflict that seriously affects civilian populations, and children.

Ongoing conflict has serious consequences for children, who are among the 83,700 civilians who remained displaced and hiding from attacks in KHRG research areas during the period covered by this report.²⁰ Not all of the consequences of this conflict amount to grave violations of children's rights as defined by UNSCR 1612, however, and understanding the relevance of the UNSC CAC agenda for addressing ongoing violations requires a careful analysis of discernable patterns in military practices employed by the Tatmadaw and NSAGs active in

¹⁵ "Interview: Informal Talks Yield No Ceasefire With Karen Rebels," *The Irrawaddy*, November 2011.

¹⁶ During this period, KHRG published 88 'Displacement Monitoring' updates detailing displacement and human rights conditions in the context of renewed conflict in central and southern Karen State.

¹⁷ "Joint SPDC/DKBA attacks, recruitment and the impact on villagers in Dooplaya and Pa'an districts," KHRG, May 2009; "Over 3,000 villagers flee to Thailand amidst ongoing SPDC/DKBA attacks," KHRG, June 2009.

¹⁸ "Threats to human rights, obstacles to protection: Conditions for civilians seeking refuge in Phop Phra District, Thailand," KHRG, November 2011.

¹⁹ "DKBA Brigade 5 Reaches Ceasefire with Naypyidaw," *The Irrawaddy*, November 4th 2011.

²⁰ Protracted Displacement and Chronic Poverty in Eastern Burma/ Myanmar, Thailand Burma Border Consortium, November 2010, p.60. The figure cited here is the combined total of internally displaced people hiding in Mon and Karen states and Bago and Tenasserim divisions.

eastern Burma. In southern and central Karen State, for example, schools were frequently forced to close due to fears of clashes between DKBA and Tatmadaw units. In many cases, however, these closures appear to have been related to generalised fears of insecurity or threats to civilians resulting from clashes between the Tatmadaw and units of the DKBA or KNLA; while schools, students and personnel in these areas are certainly placed at risk when fighting occurs, school closures are not necessarily the result of fears that civilians themselves will be subjected to deliberate attacks. Government schools in Myawaddy and Three Pagodas Pass closed in November 2010 when DKBA units occupied the towns, for example; these schools were able to re-open once the risk that fighting between the Tatmadaw and DKBA would endanger civilians had abated, although schools in the Myawaddy area remained prepared to suspend classes if and when further clashes were expected.²¹ At least 27 schools, meanwhile, closed in southern Karen State in the months after the elections amid similar generalised threats to the security of children and personnel incidental to Tatmadaw-DKBA conflict.²²

International humanitarian law draws a clear distinction between contexts in which civilians are placed at general risk from lawful armed engagements between two or more parties to a conflict, and contexts in which civilians are themselves the subjects of knowing and wilful attack or threat of attack by a single party. While it is often assumed that attacks of the former type are the primary conflict-related threat to civilians in eastern Burma, attacks of the latter type also frequently occur. Civilians are not just caught in the crossfire – they are often targets of deliberate attacks.

In order to elucidate the nature of different types of attacks endangering civilians including children in eastern Burma, Table 1 below presents a basic typology drawn from analysis of KHRG information collected over the last 20 years, and confirmed using the recently compiled database. Section III of this brief then places 16 individual incidents documented by KHRG into the loose typology presented below, and analyses each incident to determine the applicability of monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998. With one exception, all incidents took place between February 2010 and May 2011. It is important to note that children, schools, clinics and related personnel attacked in these incidents do not appear to have been *singled out* from other civilians and attacked individually.²³ Instead, these protected objects and persons are subjected to knowing and wilful attacks or the threat of attacks that *also* target other civilians and civilian objects. These attacks must be monitored and reported upon pursuant to UNSCR 1998; no actor that unlawfully carries out or threatens to carry out knowing and wilful attacks on children, schools, clinics and/or related personnel should be exempted from monitoring and reporting.²⁴

²¹ “School closures and movement restrictions: conflict continues to impact civilians in Dooplaya District,” KHRG, November 19th 2011.

²² This figure is based upon data collected from local education organisations that support schools in the area. Data was compiled by KHRG in January 2011 at the request of the Special Rapporteur on the Situation of Human Rights in Myanmar.

²³ This should not be taken to mean that medical and education personnel are not also prone to additional risks because of their occupations.

²⁴ For further analysis of this issue, see “Definitional ambiguity and UNSCR 1998: Impeding UN-led responses to attacks on health and education in eastern Burma,” KHRG, December 2011.

Table 1: Types of commonly documented attacks relevant for UNSCRs 1612, 1882 and 1998

| Tatmadaw or NSAG practices entailing attacks on children, schools, hospitals or related protected personnel | Violations of relevant international humanitarian law | Consequence for children, schools, hospitals and related protected personnel |
|---|---|--|
| <p>Type 1: Targeted remote shelling Civilian settlements are shelled remotely, typically from Tatmadaw mortar positions on nearby hilltops, but Tatmadaw troops remain in their position and do not enter the area on foot. No civilians or civilian objects within the settlement are accorded protection; schools, clinics, civilians working in farm fields: all may be subjected to shelling.</p> <p>These practices appear to be designed to drive civilian populations into areas where non-state armed groups cannot access them for support, following earlier government forced relocation campaigns. They typically occur in areas where Tatmadaw control is most precarious, terrain is difficult, roads are non-existent or barely navigable and Tatmadaw forces fear ambush by non-state armed groups. Such areas can be found in southern and northern Karen State, eastern Bago Division and eastern Tenasserim Division.</p> <p>While conflict between the Tatmadaw and non-ceasefire non-state armed groups (NSAGs), including the Karen National Liberation Army (KNLA) and the Democratic Karen Buddhist Army (DKBA) occurs in such areas, Type 1 attacks entail incidents in which an attack on a civilian settlements does not occur in response to a prior attack by KNLA or DKBA forces. Because neither group is militarily strong enough to defend fixed positions,²⁵ they appear to prefer ambushes and the use of landmines, and survive against a numerically superior opponent by limiting</p> | <p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting indiscriminate attacks.</p> <p>In Type 1 attacks, prior to attacks, no effort is made by Tatmadaw forces to ascertain the presence of civilians, or whether settlements are civilian or military objects, and therefore whether they may or may not be lawfully attacked. Alternatively, the presence of civilians and the civilian nature of objects are known or clearly visible from the point of attack. In neither circumstance do Tatmadaw forces provide advance warning to civilians so that the latter may seek shelter or flee the area before attacks occur. It cannot be said that Tatmadaw forces exercise all feasible precautions to avoid or minimise harm to civilians and damage to civilian objects.</p> <p>Type 1 attacks typically do not occur following clashes with non-state armed groups. Nor do they occur incidentally as a consequence of generalized fighting in the area.</p> <p>In IHL, “military necessity” may justify “unavoidable” harm to civilians and civilian objects, but only if attacks are directed against a legitimate military objective; if use of force is proportional to the concrete and direct military advantage anticipated from the attack; and if all feasible precautions are taken to minimise civilian harm. Such attacks violate IHL if efforts are not made to determine civilian or military</p> | <p>The entire community is singled out for deliberate attack; no additional protection is given to children, schools, clinics or related personnel.</p> <p>In cases of a direct or near hit, school or medical buildings are damaged or children killed or maimed.</p> <p>Because communities in these areas have been attacked repeatedly, they <i>do not</i> always flee as a response to remote shelling. Settlements are <i>only</i> abandoned in cases where civilians feel the threat of intensified shelling or a subsequent ground attack is highly probable. This entails the closure of schools and clinics. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack.</p> |

²⁵ Frustration of KNLA infantry with continued attempts to defend a fixed line during the 1990s is factored by some as a key motivation prompting the defection of large numbers of KNLA troops in late 1994; these troops then formed the DKBA. Other factors also cited for this split have been religious conflicts between Buddhist infantry and Christian officers within the KNLA. For further discussion, see, Ashley South, *Ethnic politics in Burma: States of conflict*, New York: Routledge, 2009 (2nd ed.).

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| <p>confrontations to situations where terrain and surprise give their forces a tactical advantage.²⁶ This inability to use anything other than ‘guerrilla tactics’ means that, as a rule, it is highly unlikely that non-ceasefire NSAGs would launch an attack from a position against which the Tatmadaw could retaliate, including both fortified military positions and unfortified civilian settlements. Cases where civilian settlements are shelled remotely but this attack immediately follows an attack by the KNLA or DKBA are discussed in more detail below in Type 4.</p> <p>NSAGs in Karen State, Bago Division and eastern Tenasserim Division have not been documented consistently making Type 1 attacks. Such attacks only make sense as part of a ‘counter-insurgency’ strategy; as the ‘insurgents,’ NSAGs would thus not employ the approach. The KNLA and DKBA could not likely gain a strategic advantage by attempting to coerce large-scale population movements; neither group is strong enough to maintain control of the population afterwards. Instead, the groups must survive by positioning themselves as ‘protectors’ of the Karen people. The only consistent exception to this has been in areas in which DKBA and KNLA forces are in conflict. In these areas, DKBA forces have sometimes adopted methods akin those used by the Tatmadaw, though to a lesser degree.</p> | <p>nature of objects of attack, if civilian nature of objects of attack is known, or if all feasible precautions are not taken to minimise civilian harm.</p> | |
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| Tatmadaw or NSAG practices entailing attacks on children, schools, hospitals or related protected personnel | Violations of relevant international humanitarian law | Consequence for children, schools, hospitals and related protected personnel |
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| <p>Type 2: Ground attacks Tatmadaw forces leave fixed positions and enter civilian settlements on foot, sometimes preceded by shelling. Civilians typically flee immediately prior to or during the attacks, often</p> | <p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting attacks against objects essential to survival of civilian population.</p> | <p>The entire community is singled out for attack; no additional protection is given to children, schools, clinics or related personnel.</p> <p>Because of past experiences in</p> |

²⁶ The KNLA formally shifted from strategy predicted on defending fixed positions to the use of guerrilla tactics in 1998 at a military conference in Mae Hta Raw Tha, Doolaya District. See, Ashley South, *Ethnic politics in Burma: States of conflict*, New York: Routledge, 2009 (2nd ed.), p.56.

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| <p>receiving warning from informal early warning systems established by civilians or by obtaining military intelligence from non-state armed groups.²⁷ Civilians who remain in the area may be shot on sight or detained and subjected to interrogation, physical violence and/or summary execution. This includes personnel of schools and medical facilities.</p> <p>Tatmadaw forces entering civilian settlements sometimes but not always burn or otherwise damage or destroy some, many or all structures in the village. Essential civilian property such as food stores, crops under cultivation, livestock and cooking and agricultural equipment may also be burned or destroyed.²⁸ This includes schools and medical facilities.²⁹</p> <p>Tatmadaw forces are not typically able to remain for extended periods of time in villages after attacks, because the positions are not defensible; non-state armed groups typically monitor Tatmadaw movements and ambush Tatmadaw units when they are in vulnerable locations, such as along exposed sections of road or when they enter villages, which are not typically fortified.</p> <p>Upon leaving, Tatmadaw forces sometimes leave unmarked landmines in the village or mutilated livestock, so the danger of injury or the smell of rotting carcasses makes it difficult for civilians to return to the area.</p> <p>These practices appear to be designed to drive civilian populations into areas where non-state armed groups cannot access</p> | <p>Civilian nature of targets is known already, as Tatmadaw troops enter area on foot. Civilian objects, including those essential to the survival of the civilian population, are knowingly and wilfully damaged, including homes, cooking and agricultural equipment, household food supplies and communal property such as schools, clinics and churches.</p> <p>Ground attacks typically do not occur following clashes with non-state armed groups. Nor do they occur incidentally as a consequence of generalized fighting in the area.</p> <p>In IHL, “military necessity” may justify “unavoidable” harm to civilians and civilian objects, but only if attacks are directed against a legitimate military objective; if use of force is proportional to the concrete and direct military advantage anticipated from the attack; and if all feasible precautions are taken to minimise civilian harm. Tatmadaw forces appear to treat all persons and objects within settlements targeted for ground attacks as legitimate objects of attack, violating the principle of distinction and IHL rules regarding civilian protection – and making evaluations of “military necessity” impossible.</p> | <p>which civilians encountered by Tatmadaw troops have been shot on sight or arrested and later summarily executed, the entire community typically flees, as do adjacent settlements that also perceive the probability of attack to be high. This entails the closure of schools and medical facilities. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack.</p> <p>In cases where the threat of attack remains high, usually because the Tatmadaw establishes a new permanent position in the area, schools and clinics are permanently abandoned. In cases where the Tatmadaw vacates the area, civilians return and schools and clinics are reopened, sometimes in a surprisingly short interval of time given the severity of the threat. That they are later reopened does not obviate the fact that the school, clinic or related personnel were threatened with an attack.</p> |
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²⁷ For more information on self-protection strategies employed by communities seeking to avoid attacks, see *Self-protection under strain: Targeting of civilians and local responses in northern Karen State*, KHRG, August 2010.

²⁸ Widespread commission of such acts prompted the International Committee of the Red Cross (ICRC) to take the unusual step of issuing a public statement to condemn Tatmadaw in violation of “many provisions of international humanitarian law.” See, “Myanmar: ICRC denounces major and repeated violations of international humanitarian law,” ICRC, June 29th 2007, News Release 82/07.

²⁹ One incident of this type, in which 13 schools were abandoned and one clinic destroyed, has been verified and reported by the SRSG. See, *Children and armed conflict: Report of the Secretary-General, A/65/820–S/2011/250*, April 23rd 2011.

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| <p>them for support, following earlier government forced relocation campaigns. They typically occur in areas where Tatmadaw control is most precarious, terrain is difficult, roads are non-existent or barely navigable and Tatmadaw forces fear ambush by non-state armed groups. Such areas can be found in southern and northern Karen State, eastern Bago Division and eastern Tenasserim Division.</p> <p>As with Type 1 attacks, Type 2 attacks do not typically occur in response to a prior attack by NSAG forces. NSAGs have also not been documented making ground attacks, with the exception of areas in which the DKBA and KNLA are in conflict. In these areas, DKBA forces have sometimes adopted ‘counter insurgency’ methods akin those used by the Tatmadaw, though to a lesser degree.</p> | | |
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| Tatmadaw or NSAG practices entailing attacks on children, schools, hospitals or related protected personnel | Violations of relevant international humanitarian law | Consequence for children, schools, hospitals and related protected personnel |
|---|---|--|
| <p>Type 3: Foot patrols and shooting on sight Tatmadaw forces conduct foot patrols along roads or on forest paths. These patrols typically destroy civilian settlements or property, including property essential to the civilian population, when it is encountered. Civilians encountered by these patrols may be shot on sight or detained and subjected to interrogation, physical violence and/or summary execution. This includes personnel of schools and medical facilities.</p> <p>These practices appear to be designed to drive civilian populations into areas where non-state armed groups cannot access them for support, following earlier government forced relocation campaigns. They typically occur in areas where Tatmadaw control is most precarious, terrain is difficult, roads are non-existent or barely navigable and Tatmadaw forces fear ambush by non-state armed groups. Such areas can be found in northern Karen State, eastern Bago</p> | <p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting indiscriminate attacks; prohibiting attacks against objects essential to survival of civilian population.</p> <p>The practice of shooting on sight precludes Tatmadaw forces from ascertaining whether individuals attacked are civilians or combatants. In some cases, Tatmadaw forces shoot on sight individuals whose non-combatant status is obvious, such as women carrying children or civilians working on agricultural projects.</p> <p>Shooting and destruction of civilian objects by foot patrols typically do not occur following clashes with non-state armed groups. Nor do they occur incidentally as a consequence of generalized fighting in the area.</p> <p>All shoot-on-sight attacks resulting in civilian injury or death</p> | <p>Any civilians encountered by patrols are shot on sight or detained; no additional protection is given to children, teachers or medical personnel.</p> <p>If a patrol encounters civilians, including children, the odds that they will be shot on sight and potentially killed are extremely high.</p> <p>Fortunately, the odds of Tatmadaw soldiers surprising civilians on patrols are low, chiefly because, after decades of living in this situation, communities are adept at avoiding Tatmadaw patrols. Also, the threat of ambush by non-state armed groups means that Tatmadaw patrols typically stick to areas they perceive to be ‘safe,’ which are conversely areas that civilians avoid.</p> <p>Because patrols may also precede ground attacks (Type 2), if a patrol enters an area near a settlement residents may flee if the threat of attack is perceived to be high. This</p> |

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| <p>Division and eastern Tenasserim Division.</p> <p>As with Type 1 and Type 2 attacks, Type 3 attacks do not typically occur in response to a prior attack by NSAG forces. NSAGs have also not been documented conducting foot patrols and shooting civilians on sight, with the exception of areas in which DKBA and KNLA forces are in conflict. In these areas, DKBA forces have sometimes adopted ‘counter-insurgency’ methods akin to those used by the Tatmadaw, though to a lesser degree.</p> | <p>contravene IHL because they entail that an attacker either knowingly attacks a civilian, or attacks an individual whose status has not been ascertained. Both courses of action preclude taking all feasible precautions to minimise civilian harm.</p> | <p>entails the closure of schools and clinics. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack.</p> |
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| Tatmadaw or NSAG practices entailing attacks on children, schools, hospitals or related protected personnel | Violations of relevant international humanitarian law | Consequence for children, schools, hospitals and related protected personnel |
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| <p>Type 4: Indiscriminate and “retaliation” attacks</p> <p>Tatmadaw forces sometimes respond to attacks by non-state armed groups on fixed positions such as military camps by returning fire indiscriminately, usually with mortars. Villages thought to be supporting non-state armed groups are also sometimes shelled as punishment for an attack by a non-state armed group launched from another location. Importantly, this may be preceded or followed by a warning transmitted verbally via messenger or face-to-face encounter between Tatmadaw commanders and villagers. This helps distinguish incidents of this type from incidents described in Type 1 above.</p> <p>These practices appear to be a defensive measure, designed to repel attacks or deter future attacks. These typically occur in both areas where Tatmadaw control is most precarious and where it is slightly stronger, but where attacks on fixed Tatmadaw positions are still possible. Such areas can be found across Karen State, eastern Bago Division and eastern Tenasserim Division. Since the DKBA began fighting the Tatmadaw following the 2010 election, these practices have been most commonly reported in southern and central</p> | <p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting indiscriminate attacks.</p> <p>Some incidents, especially in southern and central Karen State, may be permissible within international humanitarian law on grounds of “military necessity” where mortars hitting civilian settlements and civilian objects are an incidental or “unavoidable” consequence of attacks directed against a legitimate military objective, adhering to the principle of proportionality, and in which all feasible precautions have been taken to minimise civilian harm.</p> <p>In many cases, however, the distance between civilian settlements and a military target – or the location of fighting – suggest that shelling is at best an indiscriminate attack that has not been directed at a specific military target.</p> <p>Where shelling is intentionally directed against known civilian settlements, as punishment for an attack by a non-state armed group, such attacks violate the principle of distinction and associated prohibitions on attacking civilians.</p> | <p>The entire community is placed at risk by indiscriminate shelling, including children and protected personnel of schools and clinics. In cases where shelling is intense, prolonged or repeated, settlements are typically abandoned. This entails the closure of schools and clinics. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack. However, unlike attacks in Type 1, Type 2 and Type 3, the civilian harm caused by Type 4 attacks may or may not be consistent with international humanitarian law, depending on “military necessity.” In cases where “military necessity” justifies an attack, even if a school, clinic or related personnel is harmed or threatened with harm, this may not necessarily be subject to monitoring pursuant to UNSCR 1882 and 1998. Further discussion of this interpretive issue can be found in Appendix 1.</p> |

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| <p>Karen State.</p> <p>NSAG forces have also been documented indiscriminately firing mortars. This is especially the case in southern and central Karen State, where conflict between the Tatmadaw and units of the DKBA and KNLA has increased since November 2010. Both state and non-state parties to the conflict have also been documented indiscriminately using landmines, including in areas clearly of a civilian nature.</p> | <p>In cases where non-state armed groups launch attacks from the vicinity or premises of a settlement, “military necessity” may justify a higher threshold of harm to civilians and civilian objects present in the settlement during a counter-attack. However, attacks entailing disproportionate uses of force, and which fail to take feasible precautions to avoid or minimise civilian harm, would remain prohibited.</p> | |
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Section III: Individual incidents

Table 2: Analysis of recent incidents

| Recent Type 1 incidents | Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998 |
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| <p>Killing of child, February 19th 2010, Papun District (Karen State): Tatmadaw forces shelled the Tru Hta hiding site during February 2010. A mortar landed near a school during school hours, killing one student and injuring two others. The KHRG staff that visited the site to document the incident confirmed that the mortar attack was not a part of generalized fighting between the Tatmadaw and the KNLA, nor was it in response to a prior attack launched from the immediate area by KNLA forces.³⁰</p> | <p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by Tatmadaw forces that were “<i>in contravention of applicable international law.</i>”³¹</p> <p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that Tru Hta was a civilian hiding site and purposefully targeted it for attack; or (b) attacked indiscriminately. Attempts were not made to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian harm were not followed; civilians were not warned prior to attack of area. Civilians and combatants, and civilian and military objects were not distinguished in attack. “Military necessity” does not apply because attack was not against legitimate military target; no effort was made to ascertain civilian or military nature of target, or civilian nature of target was known; and feasible precautions were not taken to minimise civilian harm. The absence of an engagement with a non-state armed group in the area prior to the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack, and whether the shelling and resulting civilian harm was proportional to that anticipated advantage.</p> |
| Recent Type 2 incidents | Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998 |
| <p>Threat of attack on protected personnel and school, May 1st 2010, Mergui/Tavoy District (Tenasserim Division): Tatmadaw forces entered Kyat Yeh hiding site. Threat of attack on students, personnel and school was perceived to be credible, forcing teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces subsequently burned three civilian houses. According to the Backpack Health Worker Team (BPHWT), a mobile medic in the area also fled threat of attack. The KHRG staff that visited the attacked area and interviewed victims did not seek to confirm whether the Tatmadaw attack was part of generalized fighting or in response to a prior attack launched from the immediate area. Because the KNLA is not strong enough to repel a counter attack</p> | <p>Did attack violate relevant IHL? Yes. Tatmadaw forces entered Kyat Yeh on foot, so civilian nature of settlement and houses subsequently destroyed would have been apparent. Civilian objects were deliberately attacked and destroyed. “Military necessity” does not apply because civilian homes are not a legitimate military target. The likely absence of an engagement with a non-state armed group in the area prior to the attack also raises questions as to whether a concrete and direct military advantage was anticipated to arise from the destruction of civilian homes.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> |

³⁰ For full details of this incident, see “SPDC mortar attack on school in Papun District,” KHRG, February 2010. For photos of the victims, see *KHRG Photo Gallery 2010*, KHRG, June 2010, photos A-26 to A-29.

³¹ UNSCR 1882, paragraph 3.

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| <p>in that area, however, it is extremely unlikely that the group initiated an engagement.³²</p> | <ul style="list-style-type: none"> • Flight by teachers and medic, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “threats of attacks against protected persons in relation to schools and/or hospitals.”^{33,} • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack. |
| <p>Attack on school and threat of attack on protected personnel, July 23rd 2010, Papun District (Karen State): Tatmadaw forces shelled and then entered Tha Dah Der village. Threat of attack on students and personnel was perceived to be credible, forcing teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces subsequently burned the majority of structures in the village. During this incident, Tatmadaw soldiers attempted to burn the school, but were only able to partially damage it before leaving the area; after the attack, a burned pile of school benches and other flammable materials were found in the centre of the school building. However, flames did not spread from these objects to the rest of the building. The KHRG staff that visited the attacked area and interviewed victims confirmed that the attack was not a part of generalized fighting between the Tatmadaw and the KNLA, or in response to a prior attack launched from the immediate area by KNLA forces. Tatmadaw forces left a note to area residents explaining that the attack was prompted by a KNLA ambush that had occurred on an earlier occasion in a different location, along a road located well to the northeast of Tha Dah Der.³⁴</p> | <p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that Tha Dah Der was a civilian settlement and deliberately shelled it; or (b) indiscriminately shelled Tha Dah Der, without attempting to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian harm were not followed; civilians were not warned prior to attack of area. Soldiers on foot then knowingly attacked a civilian settlement and destroyed or attempted to destroy civilian objects, including objects essential to the survival of the civilian population. “Military necessity” does not apply because attacks were not against legitimate military targets. The absence of an engagement with a non-state armed group in the area prior to the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack, and whether the shelling and attacks on civilian objects were proportional to that anticipated advantage.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “threats of attacks against protected persons in relation to schools and/or hospitals.”^{35,} • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack. • Expectation that school would not be spared from attack was affirmed. Tatmadaw soldiers |

³² For full details of this incident, see “Militarization, Development and Displacement: Conditions for villagers in southern Tenasserim Division,” KHRG, March 2011.

³³ UNSCR 1998, paragraph 3.

³⁴ For photographs of Tha Dah Der after the attack, see *KHRG Photo Gallery 2010-B*, KHRG, February 2011, photos C-11 to C-22.

³⁵ UNSCR 1998, paragraph 3.

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| | <p>attempted to burn the school along with most other structures in the village, partially damaging the building and destroying other school materials in the process</p> |
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| <p>Threat of attack on protected personnel and school, October 13th 2010, Papun District (Karen State): Tatmadaw forces entered Lay Kaw Htih village. Threat of attack on students and personnel was perceived to be credible, forcing teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces shot into a home while a midwife was assisting a woman during childbirth, killing the mother and placing the midwife at risk. The KHRG staff that interviewed the husband of the victim did not seek to confirm whether the Tatmadaw attack was part of generalized fighting or in response to a prior attack launched from the immediate area. Because the KNLA is not strong enough to repel a counter attack in that area, however, it is extremely unlikely that the group initiated an engagement. Irrespective of whether Tatmadaw forces responded to a prior KNLA attack, however, military necessity did not justify firing into a civilian home without first ascertaining the presence of civilians and taking appropriate measures to avoid or minimise civilian harm.³⁶</p> | <p>Did attack violate relevant IHL? Yes. Tatmadaw forces entered Lay Kaw Htih on foot, so civilian nature of settlement would have been apparent. Forces fired on a civilian home, either: (a) with knowledge that civilians including a midwife were present inside, meaning soldiers deliberately attacked civilians; or (b) with knowledge that people were present inside, but without knowledge of whether they were civilians or combatants, meaning soldiers attacked indiscriminately, without verifying that persons in question were legitimate targets of attack. “Military necessity” does not apply because attacks were not against legitimate military targets; no effort was made to ascertain civilian or military nature of targets; and feasible precautions were not taken to minimise civilian harm. The likely absence of an engagement with a non-state armed group in the area prior to the attack also raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack on the civilian home, and whether that use of force was proportional to the anticipated advantage.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”³⁷ • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack. • The midwife who remained in the village was directly exposed to an attack that killed the woman for whom she was providing care. The midwife was not accorded any special protection by attacking soldiers. That she was endangered in an attack affirms the credibility of the threat of attack against other protected persons and civilians, including teachers and children, who fled Lay Kaw Htih. |
| <p>Threat of attack on protected personnel and</p> | <p>Did attack violate relevant IHL? Yes. See IHL</p> |

³⁶ For full details of this incident, see “Mother of newborn shot and killed in Papun District,” KHRG, January 2011.

³⁷ UNSCR 1998, paragraph 3.

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| <p>school, July 23rd 2010, Papun District (Karen State): Tatmadaw forces departed a nearby military camp and approached the immediate area of Tay Mu Der and Htee Shee Kee villages. Threat of attack on students and personnel in both villages was perceived to be credible, forcing teachers and students to flee and two schools to be closed. Other residents fled as well. Tatmadaw forces subsequently burned the majority of structures in an adjacent village, Tha Dah Der. The KHRG staff that visited the attacked area and interviewed victims confirmed that the attack was not a part of generalized fighting between the Tatmadaw and the KNLA, or in response to a prior attack launched from the immediate area by KNLA forces.³⁸</p> | <p>analysis regarding attack on Tha Dah Der.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{39,} • Closure of the schools and abandonment of the premises by students and teachers confirms that civilians did not expect attacking Tatmadaw forces to accord schools any special protection from attack. This expectation was reasonable given that soldiers attempted to burn a school along with multiple other structures in a concurrent attack on nearby Tha Dah Der. |
| <p>Threat of attack on protected personnel and school, January 27th 2011, Mergui/Tavoy District (Tenasserim Division): Tatmadaw forces entered Htee Poe Meh Gkeh village. Threat of attack on students and personnel was perceived to be credible, forcing one medic, teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces burned civilian homes and a children’s boarding house. The KHRG staff that visited the attacked area and interviewed victims did not seek to confirm whether the Tatmadaw attack was part of generalized fighting or in response to a prior attack launched from the immediate area. Because the KNLA is not strong enough to repel a counter attack in that area, however, it is extremely unlikely that the group initiated an engagement.⁴⁰</p> | <p>Did attack violate relevant IHL? Yes. Tatmadaw forces entered Htee Poe Meh Gkeh on foot, so civilian nature of settlement and houses subsequently destroyed would have been apparent. Civilian objects were deliberately attacked and destroyed. “Military necessity” does not apply because civilian homes and the children’s boarding house are not legitimate military targets. The likely absence of an engagement with a non-state armed group in the area prior to the attack also raises questions as to whether a concrete and direct military advantage was anticipated to arise from the destruction of civilian homes.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by the medic and teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{41,} • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack. |

³⁸ For photographs of Tha Dah Der after the attack, see *KHRG Photo Gallery 2010-B*, KHRG, February 2011, photos C-11 to C-22.

³⁹ UNSCR 1998, paragraph 3.

⁴⁰ For full details of this incident, see “Tenasserim Situation Update: Te Naw Th’Ri Township, April 2011,” KHRG, September 2011. For a transcript of an interview with a medic forced to flee threat of attack during this incident, see “Tenasserim Interview: Saw K---, August 2011,” KHRG, September 2011.

⁴¹ UNSCR 1998, paragraph 3.

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| | <ul style="list-style-type: none"> • Expectation that educational facilities would not be spared from attack was affirmed. Tatmadaw forces burned a children’s boarding house along with other civilian objects. |
| <p>Threat of attack on personnel and schools, February 25th 2011, Papun District (Karen State): Tatmadaw forces shelled and then entered an area containing 14 villages in Plah Koh, Ler Muh Bplaw and Saw Muh Bplaw village tracts. Threat of attack on students and personnel was perceived to be credible, forcing teachers and students to flee and six schools in two villages to be closed. Tatmadaw forces destroyed civilian homes, food storage barns, agricultural equipment and agricultural projects. KHRG staff present during the attack confirmed that the attack was not a part of generalized fighting between the Tatmadaw and the KNLA, or in response to a prior attack launched from the immediate area by KNLA forces.⁴²</p> | <p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that the area in question contained multiple civilian settlements and deliberately shelled it; or (b) indiscriminately shelled a wide area, without attempting to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian harm were not followed; civilians were not warned prior to attack of area. Soldiers on foot then knowingly attacked a civilian settlement and destroyed or attempted to destroy civilian objects, including objects essential to the survival of the civilian population. “Military necessity” does not apply because attacks were not against legitimate military targets. The absence of an engagement with a non-state armed group in the area prior to the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack, and whether the shelling and attacks on civilian objects were proportional to that anticipated advantage.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{43,} • Closure of the six schools and abandonment of the premises by students and teachers confirms that civilians did not expect attacking Tatmadaw forces to accord schools any special protection from attack. |
| Recent Type 3 incidents | Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998 |
| <p>Maiming of child, June 19th 2009, Papun District (Karen State): A DKBA foot patrol fired small arms, mortars and rocket propelled grenades into an isolated civilian house near a farm field in the Maw Ler Kee village area. One child was maimed, one adult was killed and two adults were injured. DKBA forces did not first seek to ascertain whether civilians or combatants occupied the house. After an initial round of fire, DKBA forces sent a scout to check on the occupants of the home. After this scout</p> | <p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by parties to conflict that were “<i>in contravention of applicable international law.</i>”⁴⁵</p> <p>Did attack violate relevant IHL? Yes. The DKBA patrol was on foot, so the civilian nature of the house would have been apparent or feasible to ascertain. Forces fired on the civilian home, either: (a) with knowledge that civilians including a child</p> |

⁴² For full details of this incident, see “Tatmadaw attacks destroy civilian property and displace villages in northern Papun District,” KHRG, April 2011.

⁴³ UNSCR 1998, paragraph 3.

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| <p>informed the unit that civilians occupied the home, and that the civilians were still alive, DKBA forces then resumed firing.⁴⁴</p> | <p>were present inside, meaning soldiers deliberately attacked civilians; or (b) with knowledge that people were present inside, but without knowledge of whether they were civilians or combatants, meaning soldiers attacked indiscriminately, without verifying that persons in question were legitimate targets of attack. A second deliberate attack was carried out, with knowledge that civilians including were being attacked. “Military necessity” does not apply because attacks were not against legitimate military targets; no effort was made to ascertain civilian or military nature of targets or the civilian nature of targets was known; and feasible precautions were not taken to minimise civilian harm.</p> |
| <p>Killing of children, March 22nd 2010, Nyaunglebin District (Bago Division): A Tatmadaw foot patrol encountered two women and two children as they walked along a forest path towards Kaw Hta village. One five-year-old child and one five-month-old baby were shot and killed; the mother of the children was injured and the other woman was killed. No soldiers from non-state armed groups were present at the time and the shots were not fired at other legitimate military targets; they were fired directly at the women and children.⁴⁶</p> | <p>UNSCR 1882 requires reporting of this incident if a child was killed or maimed as a result of actions by parties to conflict that were “<i>in contravention of applicable international law.</i>”⁴⁷</p> <p>Did attack violate relevant IHL? Yes. The Tatmadaw patrol was on foot, so that the individuals to be attacked were civilians including children, and not combatants, would have been apparent. Forces deliberately attacked the group of civilians in violation of the principle of distinction and associated rules of IHL requiring the protection of civilians, including the requirement to take all feasible precautions to minimise civilian harm. “Military necessity” does not apply because attacks were not against legitimate military targets; the civilian nature of the targets was known; and feasible precautions were not taken to minimise civilian harm.</p> |
| <p>Recent Type 4 incidents</p> | <p>Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998</p> |
| <p>Maiming of child, February 12th 2011, Dooplaya District (Karen State): One seven-year-old girl was injured by a landmine while travelling with her father to check on their home village, which they had earlier fled to avoid the threat of generalised fighting between the Tatmadaw and units of the DKBA and KNLA. The girl was injured by the mine along a footpath near the village. KHRG could not confirm which party placed the landmine, however all three parties to conflict in that area are known to employ landmines.⁴⁸</p> | <p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by Tatmadaw forces that were “<i>in contravention of applicable international law.</i>”⁴⁹ The preamble of resolution all raises special concern regarding “<i>indiscriminate use of landmines.</i>”</p> <p>Did attack violate relevant IHL? Yes. Although it is not known which party to conflict placed the mine, the landmine was unmarked and placed in a civilian area. Use of an indiscriminate weapon in an area in which civilians may be expected to travel, and failing to mark or warn civilians in the area of the location of the mine, precludes parties to a conflict from adhering to the principle of distinction</p> |

⁴⁵ UNSCR 1882, paragraph 3.

⁴⁴ For full details of this incident, see “DKBA attack on villagers and the forced dismantling of a mosque in Papun District,” KHRG, July 2009.

⁴⁶ For photographs of this incident, see *KHRG Photo Gallery 2010-B*, KHRG, February 2011, photos C-6 to C-7.

⁴⁷ UNSCR 1882, paragraph 3.

⁴⁸ For full details of this incident, see “Update No. 62: 7-year old girl injured by landmine in Shwe Aye Myaing village,” KHRG, March 2011.

⁴⁹ UNSCR 1882, paragraph 3.

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| | and associated rules of IHL regarding the protection of civilians, particularly the requirement to take all feasible precautions to minimise civilian harm. |
| <p>Killing of child, June 7th 2011, Dooplaya District (Karen State): Tatmadaw forces repelling at attack on their hilltop camp shelled a wide area behind the position from which DKBA forces were making an attack. Mortars fired by the Tatmadaw landed in at least three villages in the surrounding area. None of these villages were being used by DKBA forces to launch attacks. Tatmadaw mortars killed one seven-year-old child and injured a 17-year-old teenager. The children were in a location five kilometres from the Tatmadaw position.⁵⁰</p> | <p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by Tatmadaw forces that were “<i>in contravention of applicable international law.</i>”⁵¹</p> <p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that the area in question contained multiple civilian settlements and deliberately shelled it; or (b) indiscriminately shelled a wide area, without attempting to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian harm were not followed; civilians were not warned prior to attack of area. “Military necessity” likely does not apply because attack was not against legitimate military targets; no effort was made to ascertain civilian or military nature of targets, or civilian nature of targets was known; and feasible precautions were not taken to minimise civilian harm. The occurrence of an engagement with a non-state armed group in the area during the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack – for example, termination of the attack – and whether the shelling and resulting civilian harm was proportional to that anticipated advantage. In this incident, the geographic separation of the area shelled and the actual location of the DKBA-Tatmadaw clash, as well as the failure by Tatmadaw forces to ascertain civilian presence in order to take measures to minimise civilian harm or draw a conclusion as to whether an attack would be proportional, make an argument of “military necessity” tenuous.</p> |

⁵⁰ For full details of this incident, see “Tatmadaw shelling kills one child, injures another in Mae T’Ler village,” June 16th 2011.

⁵¹ UNSCR 1882, paragraph 3.