



## Statement of the Legal Aid Network

### Recommendations to Break Deadlock in So-called Peace Seeking Process in Burma/Myanmar

The importance of the position statement publicly announced by the Karen National Liberation Army (KNLA) after their emergency meeting on January 5, 2018, should not be underestimated,<sup>1</sup> as it signals an eruption of anger over the unjust practices of the Myanmar Army. The KNLA cannot accept the way the Myanmar Army has been conducting the peace seeking process under the incumbent Nationwide Ceasefire Agreement, by pressurizing the ethnic armed revolutionary organizations to lay down their arms, transform into civilians, establish a political party, and participate in elections. In addition, the KNLA has urged that the third session of the upcoming 21st Century Pang Long Conference, be suspended.

This statement was based on previous complaints by local KNU authorities over violations of the NCA by the Myanmar Army,<sup>2</sup> and has appeared amidst new skirmishes between the Myanmar Army and the armed forces of the Restoration Council of Shan State (RCSS), one of the eight signatories to the NCA, which occurred three times during the first week of January, 2018<sup>3</sup>, in addition to others in 2017.

This has proven that the NCA is not a reliable agreement by which a genuine peace can be sought, given that, apart from other major flaws, it lacks an independent and impartial authorized institution which has power to adjudicate disputes arising out of breach of the agreement by one or more parties, including committing prohibited acts, and failing to *fulfil* one or more of the specified terms and conditions.

Out of the 37 points arising from the second session of the 21st Century Panglong Conference, held in the last week of May 2017, no single agreement which might lay down a

<sup>1</sup>

<https://mail.google.com/mail/u/0/?ui=2&ik=ceed5426e2&jsver=veKV0pjIDTc.en.&view=pt&search=inbox&type=160c9a80890a969f&th=160c9cb0de198ba0&siml=160c9a80890a969f&siml=160c9c7714493bfe&siml=160c9cb0de198ba0>

<sup>2</sup> (a) Letter of Col. Saw Daw Poe, from Division No. 2 of the KNLA, submitted to Brigadier Saw Aik Zet Poe, the deputy chairperson of the Joint Monitoring Committee (Union), giving in his resignation as the Secretary of the Joint Monitoring Committee (State), July 6, 2017.

(b) Letter of Pado Saw Eh Nar, Secretary of the KNU's Mergui-Tavoy District, submitted to the Chairperson of the JMC (U) for violations of Paragraphs 5, 6, 9(d) and 25 (c) of the NCA: Dated January 4, 2018.

<sup>3</sup> BBC Radio News, in the evening of January 6, 2018

foundation for the establishment of a genuine Federal Union can be found. Currently, the so-called peace seeking process surrounding the NCA has reached a deadlock.

In order to facilitate emergence of a genuine peace seeking process, our organization makes the following recommendations:

1. The belligerent parties must seek mediation of a third party, which should be formed by international dignitaries, as a team. This third party is to help the disputing actors find a satisfactory solution to the problem by themselves;
2. In order to circumvent the ruling regime's tactics of prolonging the peace seeking process which will end up in strengthening the operation of the 2008 Constitution, there must be immediate suspension by the ruling Myanmar military leaders of exploitation of natural resources owned by the Ethnic States; likewise, investment of foreign companies in exploiting these resources must be suspended until provincial sovereignty of the Ethnic States has been legally recognized and practiced;
3. Both international as well as national communities – such as all EAOs, political forces, CSOs operating in their respective Ethnic States etc. – must be mindful that the way that the 37 points were garnered during the second session of the 21 Century Pang Long Conference is illegal for the following reasons:
  - (a) Out of 37 points, 10 are those relevant to some underlying political issues. In spite of hard debates within the respective group, no agreement on those 10 points was reached officially in the formal meeting. The designated period for discussion had gone. Afterwards, the UPDJC imposed enormous pressure on the respective groups to sign on it as Part (1) of the Union Accord.
  - (b) Without seeking formal agreement from each and every respective representative group of the EAOs, only one organization's leader of eight EAOs signed on it on their behalf.
4. In terms of security sector reform, the existence of the ethnic armed revolutionary armies, as a part of the Federal Union Army of Burma, along with their right to receive 'defence related capacity building trainings' from the Union and official supplies from their Ethnic States must be guaranteed legally; and all Armed Forces, including the Myanmar Army, must be under one legal framework, thereby upholding the Rule of Law;
5. The peace seeking and constitution making process must go together. During the peace seeking process, constitutional issues must be addressed and a new Federal Democratic Constitution along with the Constitutions of the Ethnic States must be drawn up;<sup>4</sup>

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<sup>4</sup> In some cases peace agreements have in fact been constitutions, as was the case with the interim constitution of South Africa of 1993. Alternatively, a completely new draft national constitution may be attached to the peace agreement, as with the constitution for Bosnia-Herzegovina attached to the Dayton Accords of December 1995. <https://www.osce.org/bih/126173?download=true>

6. In the new Federal Democratic Constitution, ‘State Sovereignty’ shall be replaced with ‘Union Sovereignty’ with the underpinning of Provincial Sovereignty, and the following constitutional provision needs to be enshrined:  
"The sovereignty of the Union belongs to the Ethnic States which constitute the Federal Union, and people residing therein."
7. Promotion and protection of all internationally recognized human rights and humanitarian law – with a special focus on Geneva Convention – should be placed at the centre of all operations in seeking peace. The UN Fact Finding Mission (UN FFM) should be active in the peace seeking process in Burma from the aspect of closely monitoring the situation of human rights violations by publicly demanding evidence from the State, for heinous crimes – war crimes, genocide and crimes against humanity – allegedly committed by the Myanmar Army.
8. Since the beginning to the present time, the entire process surrounding the NCA – including the one that has caused the emergence of the 37 points – is illegal. Rather than proceeding this, invoking the independent historical background of the Ethnic States, the Pang Long Pact executed on Feb 12, 1947 must be revived, and in line with this, efforts must be exerted for the emergence of a genuine Peace Accord – in which a nationwide ceasefire constitutes a part.

**Legal Aid Network (LAN)**

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For more information, please contact:

Mr. Aung Htoo (Human Rights Lawyer & Founder of the LAN)

Tel: (66) 0932745713

E.mail: [legalaidnetwork@gmail.com](mailto:legalaidnetwork@gmail.com)

Website: [legalaidnetwork.org](http://legalaidnetwork.org)