



Seeking Accountability for Ending Impunity

LAN's Legal Analysis of Superior/Command Responsibility and Myanmar Army's Admission of their Involvement in Heinous Crimes Which Constitute Genocide

In regard to killings of ten Rohingyas, in Inndin Village, Maungdaw Township, Rakhine State, Burma/Myanmar, admission of Myanmar Army, as the perpetrators, has astounded almost entire society and proved that similar heinous crimes have been committed by them. Why did they admit so publicly? It is directly relevant to our legal analysis statement, entitled, 'On the Issue of Repatriation of Rohingya to Rakhine State, Burma¹ (Myanmar)² in which, we stated, inter alia, the following:

In accordance with the doctrine of superior/command responsibility being practiced in international law, it is realized that superior/command responsibility is a form of responsibility for omission to act: a superior may be held criminally responsible under that doctrine where, despite his awareness of the crimes of subordinates, he culpably fails to fulfill his duties to prevent and punish these crimes.

The superior commanders of the Myanmar Army have abused this doctrine. They have attempted to cover up their own responsibility, by taking action against subordinate soldiers who committed a heinous crime which may constitute genocide,³ arisen out of Inndin case first and foremost. They can thereby be seen to be fulfilling their duty to prevent and punish such crimes, and defend themselves if they are indicted in the International Criminal Court or an International Criminal Tribunal for Burma/Myanmar - similar to that of Yugoslavia.

The following sentence – from the English language press release issued by Myanmar Army's so-called True News Information Team on January 10, 2018 – shows that the leaders of the Myanmar Army have even invoked the terms “superior” and “subordinates” highlighted by our organization LAN from the aspect of international law: It was found that the incident was not submitted to superior levels. **So, the officials who needed**

1 The Legal Aid Network (LAN) recognizes the name of the country, Burma, as an official term, which has been used since the time of its independence. Without seeking the agreement of the Ethnic States, which constitute the Union, and the ethnic nationalities, residing therein, the former military regime unilaterally changed it into 'Myanmar'.

2 LAN's statement, entitled, 'On the Issue of Repatriation of Rohingya to Rakhine State, Burma (Myanmar) was issued on Dec 31, 2017.

3 Ten Rohingyas were killed and buried in Inndin Village cemetery in Maungdaw Township, Rakhine State, Burma/Myanmar.

to control subordinates despite no direct relation to the incident will be necessarily exposed and taken action, and information on completion of action will be released.⁴

For the first time in history, the Myanmar Army publicly and officially admitted that they have already got involved in committing such international heinous crimes. As a matter of fact, it is not because of the case that they are sincere, responsible and accountable, but because of their serious concern that legal action might be taken against them by the international community in near future, even though national judicial system in Burma is not sufficiently powerful to do so. Afterwards, their soldiers have been made the scapegoats for their heinous crimes.

For the first time in history, the Myanmar Army has publicly and officially admitted that they were involved in committing internationally recognized heinous crimes. However, this is not because they are sincere, responsible and accountable, but because of their serious concern that legal action might be taken against them by the international community in the near future, as the national judicial system in Burma is not sufficiently powerful to do so. Their soldiers have simply been made scapegoats for their own heinous crimes.

This action is not only unethical and unprofessional but also against the genuine principles of the Rule of Law, thereby perpetuating the denial of human rights in the entire country. Both the international community and local communities who value human rights need to uncover the truth, protect the rights of victims of heinous crimes, and bring perpetrators to justice, practicing the doctrine of superior/command responsibility. This must involve reform of the entire security sector of the country, to ensure that human rights can be protected and promoted effectively in the long term.

In regard to all serious human rights violations taking place, especially in ethnic States including Rakhine State, responsibility lies with Hluttaws⁵ and government authorities – on behalf of the State. Accountability particularly lies with the highest authorized body, namely the National Defense and Security Council (NDSC) – chaired by President U Htin Kyaw.

In the NDSC, President U Htin Kyaw and State Counsellor Daw Aung San Suu Kyi are in positions of superior responsibility, while Senior General Min Aung Hlaing and Deputy Senior General Soe Win are subordinates; simultaneously, while Senior General Min Aung Hlaing, Deputy Senior General Soe Win, General Mya Tun Oo⁶, Lieutenant General Aung Kyaw Zaw⁷ and Brigadier Kyaw Zwa Lin⁸ (ordered from top to down as shown in Figure.1) are in superior positions in the OCCDS, Major General Maung Maung Soe⁹ is a subordinate.

4 <https://www.facebook.com/Cincds/posts/1568727529914773>

5 Myanmar term which means Legislative Body

6 General Mya Tun Oo, Chief of General Staff (Army, Navy and Air)

7 Lieutenant General Aung Kyaw Zaw, (BC-17444)(DSA-24), Chief of the No. 3 Bureau of Special Operations (BSO) who oversaw all of the military operations under the Southern Command, Western Command and Southwestern Command, until he was transferred to be Chief of the No. 6 Bureau of Special Operations, in theory overseeing the operations of the Nay Pyi Taw Command, a virtually inactive post, on January 2, 2018.

8 Brigadier General Kyaw Zwa Lin (BC/25074)(DSA-35), General Staff (Brigadier General) Office of the Commander-in-Chief (Army) and Commander, No. 6 Military Operational Command (MOC)

Figure. 1

Office of the Commander-in-Chief of Defense Services



Similarly, Major General Maung Maung Soe and Brigadier General Sonny Ohn¹⁰ are responsible as superiors in command of the Western Command, while Brigadier General Khin Maung Soe¹¹, Colonel Maung Maung Win¹² and Police Colonel Thura San Lwin¹³ are responsi

until he was promoted to Major General rank as the Commander of the Central Command on January 2, 2018.

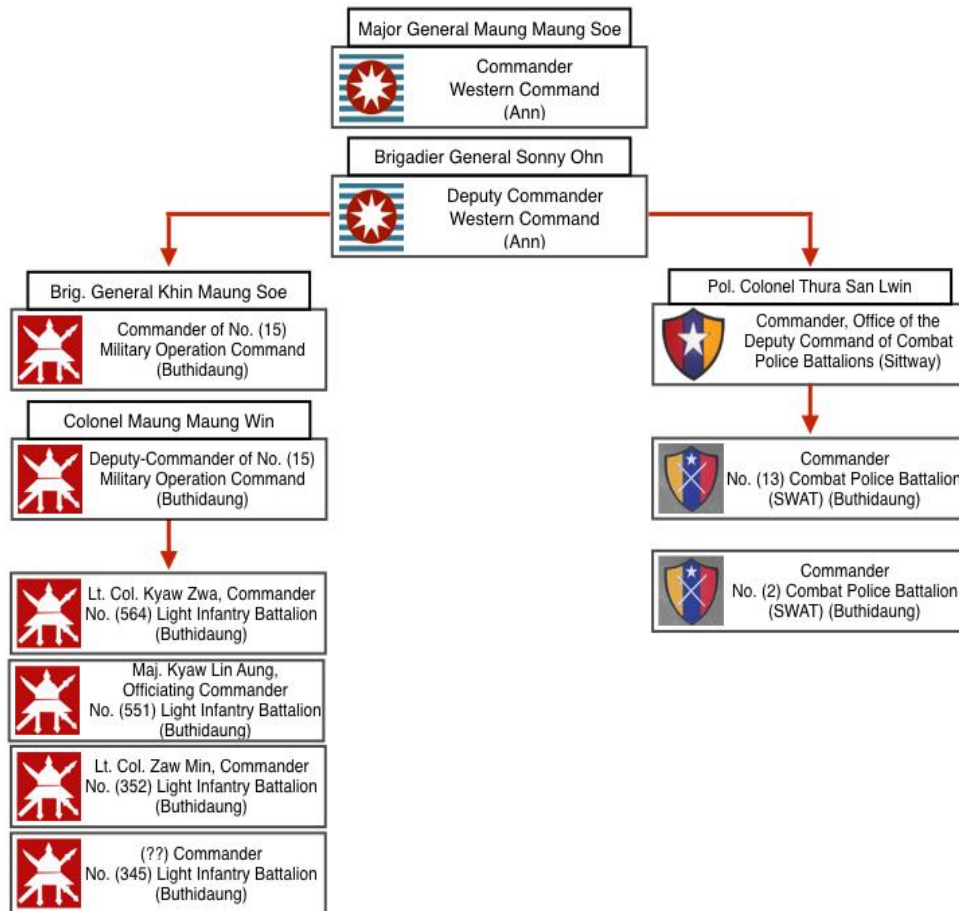
9 Major General Maung Maung Soe became Commander of the Western Command in October, 2016 until he was removed from his post and put in reserve without portfolio in the second week of November 2017. He was put in a sanctions blacklist by the United States in December, 2017.

10 Brigadier General Sonny Ohn, Deputy Commander, Western Command.

11 Brigadier General Khin Maing Soe, Commander, No. 15 Military Operational Command (MOC) based in Buthidaung, under which Light Infantry Battalions (LIBs) No. 564, 551, 352 and 345 conducted clearance military operations on the ground and have been alleged to have committed heinous war crimes against civilians.

Figure. 2

Western Command



ble as subordinates; and so on with other army battalion commanders and combat police battalion commanders bearing responsibility on the ground under the Western Command (ordered from top to down as shown in Figure.2)

According to the chain of command currently practiced in the Myanmar armed forces, although other departments and forces of the Myanmar Police Forces are under the

12 Colonel Maung Maung Win (BC/27203) (DSA-37), Deputy Commander, No. 15 Military Operational Command (MOC) until he was promoted to Brigadier General rank as the Commander of No. 5 Military Operational Command (MOC) on January 2, 2018.

13 Police Colonel ‘Thura’ San Lwin (ex-Lt.Col.) Commander, Office of the Deputy Command of Combat Police Battalions (Sittway) under which No. 2 and No. 13 Combat Police Battalions (SWAT), both based in Buthidaung, conducted clearance operations on the ground collaborating with the army LIBs and which have been alleged to have committed heinous war crimes against civilians.

administration of the Ministry of Home Affairs, a total of 16 Combat Police Battalions across the country are under the direct command of respective Military Regional Commands.¹⁴

Recommendations

1. We urge Senior General Min Aung Hlaing, President U Htin Kyaw and Mrs. Aung San Suu Kyi to uncover all other heinous crimes which have been committed by the Myanmar Army, not only in Rakhine State but also in other Ethnic States;
2. The Innadin case and other heinous crimes committed by the Myanmar Army in Rakhine State constitute genocide. In this regard, there is no provision at all in the 1959 Army Act, which is the effective law in Burma. As such, the senior army officials have no authority to investigate and take action against their subordinates by applying section 176 of Army Regulations or their military code of conduct. The incumbent Military Tribunal, which exists in accordance with Article 293 (b) and 319 of the 2008 Constitution of Myanmar, does not have any jurisdiction to adjudicate the heinous crime cases mentioned above. As such, the regime must seek the assistance of the UN Fact Finding Mission if they want to prove that they have fulfilled their duty to prevent and punish those crimes.
3. The UN Fact Finding Mission (UN FFM) should also be active by publicly demanding evidence from the State, for heinous crimes – war crimes, crimes against humanity and genocide, including the Innadin case – committed by the Myanmar Army.

Legal Aid Network (LAN)

January 18, 2018

For more information, please contact:

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

Telephone: + 86 1530 882 7948

E.mail: legaidnetwork@gmail.com

Website: www.legaidnetwork.org

¹⁴ These specially trained and combat capable police battalions are formed with personnel from former Riot Security Police, better known as "Lon Htein" Units, and selectively extracted personnel from Army battalions. Each battalion consists of 500+ personnel and these battalions are supported by two support battalions, which include signal and medical units. The structure of these battalions is similar to that of the Army's Light Infantry Battalions (LIBs) and they are subordinate to their respective Regional Military Commands.