

Geneva Call and the Chin National Front

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A. CNF and Geneva Call

[Source : Geneva Call, Press Release « Burmese armed group commits to child protection and the prohibition of sexual violence » 20 March 2014, available online [<http://www.genevacall.org/burmese-armed-group-commits-child-protection-...>]], emphasis in original.

[1] On 19 March 2014 in Geneva, representatives from the Burma/Myanmar armed non-State actor - **the Chin National Front (CNF) and its armed wing the Chin National Army (CNA) – signed Geneva Call's *Deed of Commitment* protecting children in armed conflict and the *Deed of Commitment* prohibiting sexual violence in armed conflict and against gender discrimination.**

[2] The CNF/CNA, which signed a ceasefire with the Government in 2012, has been fighting for more autonomy for the Chin people – an ethnic group living in the north west of the country – for more than three decades.

[3] In signing these two *Deeds of Commitment*, the CNF/CNA **commits to the highest international norms in terms of child protection and prohibition of sexual violence.** In particular, the CNF/CNA pledges not to allow children under 18 to be recruited or used in hostilities and to strive to protect them from the effects of conflict. In a region where cases of sexual violence have often been reported, the CNF/CNA also reaffirms its determination to strictly prohibit any forms of sexual violence and to involve women in decision-making and in the on-going peace process.

[4] This commitment comes after several years of engagement on these issues by Geneva Call, including CNF's participation in Geneva Call's regional workshop "*Improving the Protection of Women and Girls during Armed Conflict*" in December 2010, and intensive training on both child protection and the prevention of sexual violence in August 2012.

[5] "Our signing of these two *Deeds of Commitment* clearly indicates **the priority that we give to seeking to**

reduce the risk of harm to those who are not involved in the conflict. As with anti-personnel (AP) mines, we will actively take steps to ensure that the terms of the two new instruments are complied with” said Paul Sitha, Assistant Secretary General 1.

[6] In 2006, the CNF/CNA signed the *Deed of Commitment* banning AP mines and has taken measures to implement this commitment, including destruction of components previously used to make these devices. By signing these instruments, **it becomes the first armed group in Burma/Myanmar to have signed all three of Geneva Call’s current *Deeds of Commitment*.**

[For the text of the Deed of Commitment on AP mines, see **Case No. 202**, Geneva Call, Puntland State of Somalia Adhering to a Total Ban on Anti-Personnel Mines. The Deed of Commitment signed by the Chin National Front (CNF)/Chin National Army(CNA) on 31 July 2006 is available online [<http://theirwords.org/?country=MMR&ansa=18>]]

B. Convincing rebel groups

[Source : WHITING Alex « How do you convince rebel groups to abide by laws on sexual violence? », Thomson Reuters Foundation, 12 June 2014, available at [<http://www.trust.org/item/20140612124102-81v60/?source=jtBlogs>]]

[1] While covering the London summit on ending sexual violence in conflict, I came across one thing you wouldn’t normally pick up at work: A booklet used to train rebel fighters on the dos and don’ts of sexual violence in conflict. It’s filled with cartoon illustrations of women being raped, men kicked in the groin, and others seeking help and justice.

[2] The booklet is produced by Geneva Call, an NGO that works to encourage rebel groups and other so-called non state armed groups to abide by international laws on the issue.

[3] “We want the groups to take ownership of the issue, not do it because they feel they have to,” Chris Rush, senior programme officer for Asia at Geneva Call, said at a meeting on the fringes of the summit.

[4] Armed groups which are not part of a national military cannot sign international treaties, including those which relate to international rules of war. This means rebel groups and others may not feel bound by international laws that they have not proposed, or formally agreed to.

[5] Some are not even aware of the international laws that ban the use of sexual violence in conflict, laws enshrined in the Geneva Conventions and several U.N. Security Council resolutions, and upheld by the International Criminal Court and others.

[6] Geneva Call is encouraging these groups to sign an agreement to abide by international humanitarian laws, and be held accountable for their actions.

[7] The agreement, drawn up by the organisation itself, covers not only the behaviour of fighters, but also commits them to prevent sexual violence in areas under their control, to facilitate others to help victims, and even eliminate discriminatory practices within their group.

[...]

[8] In March this year, a Myanmar group called the Chin National Front signed a deed of commitment. The Myanmar government last week signed the U.N. Declaration of Commitment to End Sexual Violence in Conflict.

[9] “If armed groups are able to make concrete commitments to addressing sexual violence, it puts the spotlight on the government,” Rush said.

[...]

[10] The Chin National Front does not have a track record of sexual violence. But even when armed groups don’t use sexual violence as a weapon of war, signing a deed of commitment can help them take steps to address random acts of violence.

[11] “This is one of the reasons why Geneva Call looks to get groups that don’t even have a bad track record ... often they are faced with an issue in their organisation and they may not know how to deal with it,” Rush said.

[12] Helping groups work out where they need to improve their practices to prevent individual fighters from using sexual violence, and training fighters to respect the rules is part of the battle.

[13] What’s also hard is tracking their progress. Monitoring the use of landmines is relatively simple, but monitoring sexual violence “is very complex”, Rush said.

C. Deed of Commitment under Geneva Call for the Protection of Children from the Effects of Armed Conflict

[Source : Geneva Call, « Deed of Commitment under Geneva Call for the Protection of Children from the Effects of Armed Conflict», launched in 2010, available online [http://www.genevacall.org/wp-content/uploads/dlm_uploads/2013/12/DoC-Protecting-children-in-armed-conflict.pdf]]

[1] WE, (name of signatory), through our duly authorized representative(s),

[2] Concerned with the harmful and widespread impact of armed conflict on the physical and mental development of children and the long-term consequences this has for human security, durable peace, and development;

[3] Affirming our determination to protect the civilian population, in particular children, from the effects or dangers of military actions, and to respect their right to life, to human dignity, to education and to development, with the best interest of the child as a primary consideration;

[4] Recognizing that children associated with armed forces are at particular risk of exposure to attacks by opposing forces;

[5] Taking due account of the varying standards within international law instruments providing special protection for children affected by armed conflict, in particular the Geneva Conventions and their Additional Protocols, and the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict, and determined to clarify our responsibilities on the recruitment and use in hostilities of persons under 18 years of age;

[6] Mindful that the Statute of the International Criminal Court criminalizes the act of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;

[7] Rejecting the notion that any cause, for whatever reason, may justify unlawful treatment of children in armed conflict;

[8] Accepting that international humanitarian norms apply to and oblige all parties to armed conflict;

[9] Stressing that the present Commitment protects all children, both girls and boys;

[10] And understanding that for the purposes of this Deed of Commitment:

“children” are defined as persons under the age of 18, and where there is doubt as to whether a person has reached the age of 18, (s)/he will be treated as a child;

[11] HEREBY solemnly commit ourselves to the following terms:

1. TO ADHERE to a total ban on the use of children in hostilities.
2. TO ENSURE that children are not recruited into our armed forces, whether voluntarily or non-voluntarily. Children will not be allowed to join or remain in our armed forces.

3. TO NEVER COMPEL children to associate with, or remain associated with, our armed forces. By associate, we mean any type of direct or supporting activity whether combat related or otherwise. In the event that children have been compelled to do so, they will be released at the earliest possible opportunity in accordance with Article 6 of this Deed of Commitment.

4. TO ENSURE that children do not accompany our armed forces during our military operations and to take all feasible measures so that children in areas where we exercise control are not present during military operations.

5. TO TREAT humanely children who are detained or imprisoned for reasons related to the armed conflict, in accordance with their age and gender specific needs, recognizing that deprivation of liberty may be used only as a measure of last resort and for the shortest appropriate period of time. The death penalty will not be pronounced or executed on a person for any offense committed while a child.

6. The release or disassociation of children from our armed forces must be done in safety and security, and whenever possible, in cooperation with specialized child protection actors.

7. TO FURTHER ENDEAVOUR TO PROVIDE children in areas where we exercise authority with the aid and care they require, in cooperation with humanitarian or development organizations where appropriate.

Towards these ends, and among other things, we will:

i) take concrete measures towards ensuring that children have access to adequate food, health care (including psycho-social support), education, and where possible, leisure and cultural activities;

ii) protect children against sexual and other forms of violence;

iii) facilitate the provision of impartial humanitarian assistance to children in need;

iv) facilitate efforts by impartial humanitarian organizations to reunite children with their families;

v) avoid using for military purposes schools or premises primarily used by children.

8. TO ISSUE the necessary orders and directives to our political and military organs, commanders and fighters for the implementation and enforcement of our commitment, including measures for information dissemination and training. Commanders and superiors are responsible for their subordinates. In case of non-compliance, we will take all necessary measures to cease violations immediately, initiate appropriate investigations and impose sanctions in accordance with international standards.

9. TO ALLOW AND COOPERATE in the monitoring and verification of our present commitment by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where we operate, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

10. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflict.

11. This Deed of Commitment shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.

12. We understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment.

13. We see the desirability of attracting the adherence of other such armed actors to this Deed of Commitment and will do our part to promote it.

14. This Deed of Commitment complements, or supersedes, as the case may be, any existing unilateral declaration of ours on children and armed conflict.

15. Any reservation to this Deed of Commitment must be consistent with its object and purpose, international humanitarian law, and the minimum obligations of State parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It must be expressed in writing upon signature and will be periodically reviewed towards attaining the highest possible respect for the rights of children. Geneva Call will be the final arbiter on the permissibility of any reservation.

16. This Deed of Commitment shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such deeds.

D. Deed of Commitment under Geneva Call for the Prohibition of Sexual Violence in Situations of Armed Conflict and Towards the Elimination of Gender Discrimination

[Source : Geneva Call, « Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination », launched in 2012, available online [http://www.genevacall.org/wp-content/uploads/dlm_uploads/2013/12/DoC-Prohibiting-sexual-violence-and-gender-discrimination.pdf]]

[1] We, (name of signatory), through our duly authorized representative(s),

[2] Concerned with the life-long physical, psychological and social impact that sexual violence has on victims, their families and communities, especially in situations of armed conflict, and the threat that it presents to human security and sustainable peace;

[3] Affirming our determination to protect the civilian population and other persons no longer taking part in hostilities from the effects or dangers of military operations, and to respect their fundamental rights;

[4] Confirming our obligation to treat all persons taking no active part in hostilities humanely and without adverse distinction;

[5] Mindful that women, men, girls and boys can be perpetrators as well as victims of sexual violence, and recognizing that women and girls are particularly targeted and face additional risks;

[6] Taking due account that international law prohibits all forms of sexual violence, and recognizing that acts of sexual violence may amount to war crimes, crimes against humanity and genocide;

[7] Resolved to play a role in ending impunity for sexual violence;

[8] Recognizing that sexual violence is a form of cruel, inhumane and degrading treatment or punishment, and accepting that such treatment or punishment of any person cannot be justified under any circumstance;

[9] Recognizing that international law requires respect for the principles of equality and non- discrimination;

[10] Bearing in mind that policies and practices that discriminate on the grounds of gender, in particular those against women and girls, are conducive to other forms of violence;

[11] Acknowledging the importance of participation and involvement of both women and men in decision-making processes at all levels;

[12] Reiterating that international humanitarian norms apply to and oblige all parties to armed conflict;

[13] HEREBY solemnly commit ourselves to the following terms:

1. TO ADHERE to an absolute prohibition of sexual violence against any person, whether civilian, member of State armed forces or member of an armed non-State actor.

2. TO TAKE all feasible measures towards effectively preventing and responding to acts of sexual violence committed by any person, in areas where we exercise authority.

3. TO ENSURE that persons deprived of their liberty are protected from sexual violence.

4. TO FURTHER ENDEAVOUR to provide victims of sexual violence with the assistance and support they require in order to address the impact of such violence. Towards this end, and among other things, we will encourage and facilitate:

- access to services, including medical, psychological, social and legal services, in cooperation with humanitarian and development organizations where appropriate;

- rehabilitation programmes and actions that facilitate social reintegration of victims;

- the provision of reparations to victims.

Confidentiality of the victim(s) of sexual violence will be ensured, to the extent possible and at every stage, including in the process of reporting, making investigations, taking disciplinary measures and providing assistance to victims.

5. TO FURTHER ENDEAVOUR, in addition to our obligation to treat all persons taking no active part in hostilities humanely and without adverse distinction, to eliminate any act or practice of discrimination between men and women in our policies and processes. Towards this end, we will take concrete measures to ensure, among other things, equal protection before the law, equal enjoyment of rights and remedies, equal access to health care and services and equal access to education.

6. TO FURTHER ENDEAVOUR to ensure increased participation and involvement of women in our decision-making processes at all levels.

7. TO ISSUE the necessary orders and directives to our political and military organs, commanders and fighters for the implementation and enforcement of our commitment embodied in the present Deed, including

measures for information dissemination and training. Commanders and superiors are responsible for their subordinates. In case of non-compliance, we will take all necessary measures for the immediate cessation of violations, initiate appropriate and swift investigations and impose sanctions that reflect the severity of the violation, in accordance with international standards, with a view to preventing their recurrence.

8. TO ALLOW AND COOPERATE in the monitoring and verification of our present commitment by Geneva Call and/or other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where we operate, the right to interview our members, possible victims and their family members without witnesses, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

9. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflict.

10. This Deed of Commitment shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.

11. We understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment.

12. We see the desirability of attracting the adherence of other armed actors to this Deed of Commitment and will do our part to promote it.

13. This Deed of Commitment complements, or supersedes, as the case may be, any existing unilateral declaration of ours on the prohibition of sexual violence and on the elimination of gender discrimination.

14. This Deed of Commitment shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such Deeds.

Discussion

I. Applicable law

1. Are armed non-state actors (ANSAs) bound by IHL? How do you justify your answer? Does your answer depend in any way on whether or not Burma/Myanmar is party to Additional Protocol II? (CIHL, Rule 139; PII, Art. 1; GC I-IV, Art. 3)

2. Are ANSAs bound by International Human Rights Law (IHRL)? How do you justify your answer?

3. How does the concept of civilians apply in non-international armed conflicts (NIACs)? What categories of persons are protected by IHL of NIACs? (CIHL, Rules 1, 3, 5 and 6; GC I-IV, Art. 3, PII Arts 2, 4, 5, 7, 9, 10 and 13)

II. Deeds of Commitment

4. In your opinion, does signing a Deed of Commitment confer some form of legitimacy on an armed group? Why/Why not?

5. (*Document B, paras [4]-[6]*) Can an ANSA sign or ratify an international treaty? In what ways can an armed group express its intention to comply with the rules of IHL in an armed conflict? Is an expression of its willingness to be bound by IHL necessary for it to be so bound? Why might it nevertheless be useful to obtain an ANSA's commitment to respect IHL? (GCI-IV, Art. 3 [See also Case-study available online, Secretary-

General's Reports on the Protection of Civilians in Armed Conflict])

6. (*Document B, para. [7]*) Are the Deeds of Commitment agreements between an armed group and Geneva Call? Unilateral declarations by an armed group? Are such declarations binding upon the armed group? Under international law?

7. (*Document C, para. [11]1.-16.; D, para. [13]1.-14.*) What is the basis of the rules contained in the Deeds of Commitment?

(*See also:*

(a) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000;

(b) Convention on the Rights of the Child of 20 November 1989;

(c) Convention on the Elimination of All Forms of Discrimination Against Women of 18 December 1979;

(d) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction of 18 September 1997;

8. Are all rules of the two different Deeds of Commitments part of IHL? Do all the rules of the Deeds of Commitment form part of customary international law? Do any of the rules expressed in the Deeds of Commitment go beyond the obligation of ANSAs under IHL?

9. Do the Deeds of Commitment apply to ANSAs that have signed them as well as to the corresponding States with which they are involved in conflict? Is Burma/Myanmar bound by the rules expressed in the Deeds of Commitment?

III. Children

(*Document C*)

10. How are children protected by IHL? Why, in your opinion, do children benefit from what is referred to as "special protection" under IHL? Is their protection different in international and non-international armed conflicts? What are the relevant provisions relating to the prohibition of the recruitment of children into armed forces/groups? (CIHL, Rules 135-137; PII, Art. 4(3); PI, Arts 77-78; GCIV Arts 14, 17, 23, 24, 50, 51, 68, 82, 94; Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict; Convention on the Rights of the Child of 20 November 1989)

11. Are States and armed groups subject to the same prohibitions concerning the association of children with them? How could the difference between the obligations of ANSAs and States concerning recruitment of children be justified? With which principle of IHL could this difference conflict? (*See Convention on the Rights of the Child of 20 November 1989*; Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict, Arts 3 and 4)

12. What is the difference between "direct participation in hostilities" and "use in hostilities"? (The terms are used in PI Art. 77 (2) and *Document C, para. 11. 1. See also, ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities*)

13. Is there a legal difference between the wording of the prohibition of recruitment and use of children contained in PI Art. 77 (2) and PII Art. 4 (3) (c)?

14. Are children allowed to voluntarily join the armed forces of a State under IHL? Of an armed group under IHL? Of an armed group under the Deed of Commitment? To serve as fighters? Spies? To help cook for the military camp? Does IHL differentiate between children who willingly take up arms and those who have been forced to do so? Does the Deed of Commitment? (P II, Art. 4(3)(c) and (d); PI, Art. 77(2) and (3); ICC

Statute, Arts 8(2)(b)(xxvi) and 8(2)(e)(vii))

15. What is the age below which the recruitment and use of children in hostilities is prohibited under AP I? Under AP II? Under the Optional Protocol to the Convention on the Rights of the Child? Under the Deed of Commitment? Under the ICC Statute? (P II, Art. 4(3)(c); PI, Art. 77(2); ICC Statute, Art. 8(2)(b)(xxvi)).

16. How are children who directly participated in hostilities meant to be treated upon capture? (CIHL, Rule 120; PI Art. 77(4), PII, Art. 4(3); PI, Arts 77-78; Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict)

IV. Sexual violence and gender discrimination

(Document D)

17. What protection does IHL provide against rape and other forms of sexual violence? Does IHL expressly prohibit rape and other forms of sexual violence in international armed conflicts? In non-international armed conflicts? (CIHL, Rules 90, 91, 93 and 94; GCI-IV, Art. 3; GC IV, Art. 27; PI, Arts 75(2) and 76; PII, Art. 4(2) (a) and (e);)

18. Does IHL apply to sexual violence committed against men and boys? As many rules of IHL are framed in terms of women's "honour", does this mean in practice that different rules protect men and women from sexual violence under IHL? (GCI-IV, Art. 3; GCIV, Art. 27; PI, Arts 75(2) and 76; PII, Art. 4(2)(a) and (e); CIHL, Rules 90, 91 and 93)

19. Despite the fact that men and boys are also victims of sexual violence in armed conflicts, why is it, in your opinion, that women are accorded special protection in armed conflicts in this respect? What rules of special protection can you identify for the treatment of women under IHL? Is their protection different in international and non-international armed conflicts? (CIHL, Rules 119 and 134; PII, Arts 5(2)(a) and (4); PI, Art. 76)

20. How, in your opinion, do IHL and IHRL differ in their attempts to prevent sexual violence? (CIHL, Rule 93; GCI-IV, Article 3; GCIII, Art. 14; GCIV Art. 27; PII Art 4(2)(e); PI Arts 75 (2), 76 and 77, Convention on the Elimination of All Forms of Discrimination Against Women of 18 December 1979)

21. Does IHL impose an obligation on States to investigate allegations of rape and other forms of sexual violence committed in international armed conflicts? In non-international armed conflicts? Do these IHL obligations also extend to armed groups? (CIHL, Rules 93 and 158; GCI, Art. 49; GCII, Art. 50; GCIII, Art. 129; GCIV, Art. 146; PI, Art. 85)

22. Does IHRL impose an obligation on States to prevent and repress rape and other forms of sexual violence? To investigate allegations of rape and other forms of sexual violence? Do these obligations also extend to armed groups? Are the obligations under IHL and IHRL different? If different, which regime is more protective?

23. Does the Deed of Commitment impose an obligation on ANSAs to prevent and repress rape and other forms of sexual violence? If so, do you think these rules are realistic for armed groups to abide by?

24. In what ways, if any, do you think that the Deed of Commitment on Sexual Violence and Gender Discrimination represents an improvement to current rules of IHL? In what ways does it go beyond IHL? Are there any ways in which it is less protective than IHL?

25. Is rape a war crime? What additional measures could help put an end to this practice? Would an additional international instrument be useful? What provisions should it contain? (CIHL, Rule 156; GCI, Art. 50; GCII, Art. 51; GCIII, Art. 130; GCIV, Art. 147; PI, Art. 85; ICC Statute, Art. 8(2)(b)(xxii) and (e)(vi))

26. Under IHL, does it matter whether the rape victim is a civilian, a combatant, a fighter, a militant

sympathizer, or a terrorist? Man, woman or a child? (CIHL, Rules 93, 134 and 135; GCI-IV, Art. 3; PII, Art. 4(2); GCI, Art. 12; GCII, Art. 13; GCIII, Art. 14; GCIV, Art. 27; PI, Arts 75(2), 76 and 77)

27. Can rape in itself amount to torture under IHL? Under IHRL? If yes, under which circumstances? (CIHL, Rules 90 and 93; GCI-IV, Art. 3; PII, Art. 4(2)(a) and (e); GCI, Art. 12; GCII, Art. 13; GCIII, Art. 14; GCIV, Art. 27; PI, Art. 75(2))

[See also: **ICTY, *The Prosecutor v. Delalic***, IT-96-21-T, Trial Chamber, Decision, 16 November 1998, [Discussion, paras 475- 497. Findings, paras 494-497]. Available online at: http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf]

28. Are armed groups under the obligation to allow for the recruitment of women under IHL? Under the Deed of Commitment?

29. With regards to the targeting of a person that is directly participating in hostilities, does IHL make a distinction between a man and a woman?

30. How are women who directly participated in hostilities to be treated upon capture? (CIHL, Rule 119; PI, Art. 75(5); PII, Art.5(2)(1))

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