

**Legal opinion regarding abuses against civilians in  
non-ceasefire areas as potential violations of the  
Myanmar Nationwide Ceasefire Agreement**

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**IHRC**

INTERNATIONAL HUMAN RIGHTS CLINIC

HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL



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## Introduction

On October 15, 2015, the government of Myanmar and eight ethnic armed organizations (EAOs) signed the Nationwide Ceasefire Agreement (NCA), a long-awaited settlement aimed at facilitating political dialogue to end armed conflict in Myanmar. The agreement was heralded as a significant step in the country's peace process. However, more than a dozen EAOs, including many that participated in successive rounds of ceasefire talks, chose not to join, or were prevented from joining, the NCA. In the past year, armed conflict between signatories<sup>1</sup> and non-signatories to the NCA has persisted, and human rights organizations and journalists have reported significant abuses against civilian populations in Shan State and other contested areas.

Harvard Law School's International Human Rights Clinic (the Clinic) received a request to provide a legal opinion on whether abuses of civilians by NCA signatories in territories controlled or contested by non-signatories constitute violations of the NCA. With alleged abuses taking place since the signing of the NCA, this question has become relevant to a number of national and international actors concerned with civilian protection and the ongoing peace process.

After considering the implications of such abuses in relation to various NCA provisions, the Clinic chose to focus its analysis on Article 9, which governs civilian protection. This choice was made because Article 9 is, on its face, most directly relevant to recent alleged abuses in Shan State and elsewhere and because the Clinic found that the argument that the NCA has been violated is strongest in relation to Article 9.<sup>2</sup>

The memorandum concludes that Article 9 of the NCA should be interpreted to apply outside of "ceasefire areas," a term used in many parts of the NCA. The memorandum further concludes that certain actions of the Myanmar military and other armed groups in Shan State and elsewhere since the signing of the ceasefire would, if verified, constitute violations of Article 9 of the NCA. Regardless, many of these allegations, if true, would constitute violations of international humanitarian law, which binds both the Myanmar military and non-state armed groups.

Notwithstanding the conclusions of this memorandum, disputes relating to the NCA should be resolved according to the terms outlined in the agreement itself. The NCA states that disagreements regarding the meaning of the agreement should be referred to the NCA Joint Implementation Coordination Meeting for resolution. Ambiguities regarding the term "ceasefire areas" as well as the implication of the absence of the term in key provisions should be addressed in this manner. Per the terms of the NCA, the Joint Ceasefire Monitoring Committee should investigate potential violations of the NCA, including alleged abuses in non-ceasefire areas.

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<sup>1</sup> In the Myanmar context, the term "signatories" is sometimes used to refer to only the eight signatory EAOs. In this memorandum, the term "signatories" refers to all NCA signatories, including the eight EAOs and the Myanmar military and government.

<sup>2</sup> The Clinic also concluded that military offensives and abuses by military personnel may violate the basic principles and spirit of the NCA, but chose not to make the analysis on these points the focus of the memorandum.

Given the persistence of reported violations against civilians and the ongoing armed conflict in Myanmar, the Clinic recommends that NCA signatories act immediately to resolve these issues according to the specified procedures and in a manner that advances the basic principles and spirit of the agreement. Specifically, NCA signatories should: (1) engage in good faith with the mechanisms established by the NCA to investigate potential violations of the agreement, (2) ensure the participation of community-based organizations and other third parties in resolving disputes relating to the NCA, and (3) reform Myanmar military and EAO policies that lead to abuses against civilians.

## I. Nature and Legal Status of the Nationwide Ceasefire Agreement (NCA)

Although international law touches upon many aspects of internal armed conflicts, agreements between states and non-state armed groups to end such conflicts are not directly governed by international treaty law. The Vienna Convention on the Law of Treaties (Vienna Convention), the primary convention concerning the formation, observation, interpretation, and enforcement of treaties, among other issues, defines a treaty as:

[A]n international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.<sup>3</sup>

The NCA was not “concluded between States,” but between a single state and multiple non-state groups. Therefore, the Vienna Convention, on its face, does not apply.<sup>4</sup>

Peace agreements concerning internal armed conflicts may, however, have a form of international legal status under Common Article 3 of the Geneva Conventions, which concerns non-international armed conflict. Common Article 3 states, in part, “The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.”<sup>5</sup> In some peace agreements and ceasefire agreements, parties have expressly stated that the agreement is or is not a special agreement per the terms of Common Article 3 in an attempt to make the legal status explicit.<sup>6</sup> Commentators, and notably the International

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<sup>3</sup> Vienna Convention on the Law of Treaties (Vienna Convention), adopted May 23, 1969, UN Doc. A/Conf.39/27, entered into force January 27, 1980, art. 1(a).

<sup>4</sup> Treaties involving non-state armed groups that achieve independence have, at times, been held to fall within the parameters of the Vienna Convention. Christine Bell, “Peace Agreements: Their Nature and Legal Status,” *The American Journal of International Law*, Volume 100 (2006), p. 380.

<sup>5</sup> Four Geneva Conventions of 12 August 1949, adopted 12 June 1949, 75 U.N.T.S. 287, entered into force 21 October 1950, Common Article 3 (Common Article 3), art. 3(1).

<sup>6</sup> See, for example, the negotiation concerning the peace agreement between the Columbian government and FARC rebel group. “Joint Communiqué 69: Final Agreement will become Special Agreement,” Havana, Cuba, May 12, 2016, available at <https://farc-peace.org/communiques/joint-communicues/item/1219-joint-communicue-69-final-agreement-will-become-special-agreement.html>; Nicolas Carrillo-Santarelli, “An International

Committee for the Red Cross (ICRC) commentary to the Conventions, have suggested that peace agreements relating to internal armed conflicts may be considered “special agreements” under Common Article 3 whether or not they explicitly reference the Geneva Conventions.<sup>7</sup> Article 9 of the NCA includes responsibilities found in the Geneva Conventions, and the NCA may therefore arguably be considered a “special agreement” under Common Article 3.

Regardless of the precise relationship between the NCA and international law, Myanmar, a signatory to three of the Geneva Conventions, is bound by Common Article 3, which prohibits “violence to life and person,” murder, torture, humiliating or degrading treatment, and other forms of conduct.<sup>8</sup> Moreover, both the Myanmar military and the EAOs are bound by customary international humanitarian law, which establishes the principle of distinction between civilians and combatants and sets out a broad range of prohibited conduct.<sup>9</sup> These obligations, which overlap significantly with the duties laid out in Article 9 of the NCA, apply regardless of whether other agreements are applicable.<sup>10</sup> Moreover, any agreement signed by the Myanmar government should be presumed to be compliant with Myanmar’s obligations under international law, including Common Article 3, customary international humanitarian law, and international human rights law.<sup>11</sup> Therefore, to the extent that there is scope to interpret the NCA in conformity with these obligations, such an interpretation should prevail.

The relationship between agreements governing internal armed conflicts and domestic law is likewise ambiguous. Domestic law is often the subject of such agreements, which envisage legislative or constitutional reform in order to achieve a sustainable peace.<sup>12</sup> Domestic law should not be used to justify non-compliance with international obligations.<sup>13</sup> While the conflicting demands of domestic law and those agreements complicate enforcement through courts or other existing domestic institutions, drafters often assign domestic institutions key roles in implementing the agreements.

The NCA states that it is to be “ratified” in a formal vote by Myanmar’s Parliament, a requirement that was intended to ensure that the NCA would be binding on future

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Legal Agreement between the FARC Guerilla and the Columbian Government?,” *Opinion Juris*, May 19, 2016, available at <http://opiniojuris.org/2016/05/19/an-international-legal-agreement-between-the-farc-guerrilla-and-the-colombian-government/>.

<sup>7</sup> International Committee of the Red Cross, “Article 3: Conflicts Not of an International Character,” *Geneva Conventions of 1949 and Additional Protocols, and their Commentaries*, Commentary of 2016 (hereinafter “ICRC Commentary of 2016”), para. 846; see also paras. 847-860 for additional discussion of special agreements.

<sup>8</sup> Common Article 3, art. 3(1)(1); see also ICRC Commentary of 2016, paras. 854-855, 858.

<sup>9</sup> See, International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge, UK: Cambridge University Press, 2009), available at <https://www.icrc.org/customary-ihl/eng/docs/v1>.

<sup>10</sup> See, ICRC Commentary of 2016, paras. 854-855, 847.

<sup>11</sup> See, ICRC Commentary of 2016, paras. 854-855.

<sup>12</sup> Bell, “Peace Agreements,” pp. 408-409.

<sup>13</sup> See, for example, ICRC Commentary of 2016, para. 860.

governments.<sup>14</sup> This process was completed shortly after the agreement was signed.<sup>15</sup> During negotiations, the Myanmar government expressed the opinion that the NCA should be governed by domestic contract law and be enforceable in domestic courts.<sup>16</sup> However, there was a lack of agreement on this point, with the EAOs unwilling to recognize the legitimacy of the military-drafted 2008 constitution and reluctant to grant enforcement powers to a judiciary they have perceived to be biased against them.<sup>17</sup> Moreover, the NCA itself does not identify a role for Myanmar's courts in interpreting or enforcing the agreement. Rather, many provisions in the NCA directly conflict with Myanmar's current domestic law and constitutional framework and practice. For example, the NCA authorizes the signatory EAOs to administer development and security matters in their own constituencies, a grant of authority that is incompatible with the highly centralized form of government established by Myanmar's constitution.<sup>18</sup> It is therefore unclear what role, if any, Myanmar's domestic legal framework and institutions may play in future disputes regarding the NCA.

For these reasons, pacts such as the NCA cannot at present definitively depend on either international or domestic law to settle disputes regarding interpretation or enforcement. Rather, the success of such agreements depends primarily on the clarity and content of the documents themselves and voluntary compliance by signatories, often motivated by the same self-interest that drove the conclusion of the agreements in the first instance.

Despite their ambiguous relationship with international and domestic law, peace agreements relating to internal armed conflicts often take the form of a legal agreement and use language that connotes binding obligations. Agreement in this form, along with signing ceremonies or other public displays of commitment, can heighten the sense of legal obligation and raise the political costs of non-compliance.<sup>19</sup> Effective enforcement mechanisms or processes, such as monitoring committees with investigatory powers, likewise increase the pressure to comply with the terms of an agreement.

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<sup>14</sup> Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations (NCA), October 15, 2015, art. 26.

<sup>15</sup> "NCA approved by Pyidaungsu Hluttaw," *Global New Light of Myanmar*, December 9, 2015.

<sup>16</sup> Confidential communication from an individual close to the negotiations.

<sup>17</sup> *Ibid.*

<sup>18</sup> NCA, art. 25.

<sup>19</sup> Public International Law & Policy Group (PILPG), "The Ceasefire Drafter's Handbook: An Introduction and Template for Negotiators, Mediators, and Stakeholders," May 2013, available at <http://publicinternationallawandpolicygroup.org/wp-content/uploads/2013/10/PILPG-Ceasefire-Drafters-Handbook-Including-Template-Ceasefire-Agreement.pdf>, p. 7. In addition to drafting a document with a legal form, the signatories to the NCA could have further promoted compliance by involving third parties in the interpretation and monitoring of the agreement. Such incorporation of third parties increases the political costs of non-compliance. Virginia Page Fortna, *Peace Time: Cease-Fire Agreements and the Durability of Peace*, (Princeton, New Jersey: Princeton University Press, 2004), p. 28.

The NCA adopts a treaty-like form and has been treated as a binding legal agreement by the signatories. It opens with a preamble, describes aims and objectives, and lays out procedures for “entry into force.”<sup>20</sup> The NCA also incorporates legal language indicative of binding obligations. For example, Article 4 states that the signatories “agree to abide by the mutually binding terms and conditions of the ceasefires” and uses language such as “shall enact,” “shall abide by,” and “to ensure compliance with.”<sup>21</sup>

The NCA was signed by top military and civilian leaders of the Myanmar government and each signatory EAO.<sup>22</sup> The signing ceremony additionally incorporated dozens of international and domestic observers who signed a separate document as “witnesses” to the agreement.<sup>23</sup> These individuals included foreign diplomats, UN officials, government ministers, representatives of political parties, and prominent civil society figures.<sup>24</sup>

Given that the NCA presents itself as a binding legal agreement and has been presented as such by the signatories,<sup>25</sup> its provisions should be interpreted in light of general principles of law and canons of interpretation relevant to treaties, contracts, and other such agreements.<sup>26</sup> Relevant principles include:

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<sup>20</sup> NCA.

<sup>21</sup> NCA, arts. 4, 7, 11, and 12.

<sup>22</sup> “Peace Deal Signed: President extends olive branch to those who haven’t signed,” *Global New Light of Myanmar*, October 16, 2015.

<sup>23</sup> President’s Office, the Republic of the Union of Myanmar, “Peace Deal Signed,” October 15, 2015, available at <http://www.president-office.gov.mm/en/?q=node/6086>; European Council, “Declaration by the High Representative for Foreign and Security Policy, Federica Mogherini, on behalf of the European Union on the occasion of the signing of a Nationwide Ceasefire Agreement in Myanmar/Burma,” October 15, 2015, available at <http://www.consilium.europa.eu/en/press/press-releases/2015/10/15-declaration-hr-myanmar/>.

<sup>24</sup> Richard Horsey, “The Importance of the Myanmar Peace Deal,” International Crisis Group, October 16, 2015, available at <http://blog.crisisgroup.org/asia/2015/10/16/the-importance-of-the-myanmar-peace-deal/>; Ye Mon and Lun Min Mang, “Ceasefire pact is ‘historic gift’: president,” *Myanmar Times*, October 16, 2015, available at <http://www.mmtimes.com/index.php/national-news/17051-ceasefire-pact-is-historic-gift-president.html>.

<sup>25</sup> See, for example, Joint statement by President’s Minister Aung Min and P’doh Kwe Htoo Win, Naypyidaw, Myanmar, October 15, 2015, available at <http://www.knuhq.org/pdoh-kwe-htoo-win-and-minister-u-aung-min-reading-aloud-together/> (“[T]he NCA details mutually binding terms and conditions . . .”). The language used by signatories to describe the NCA stands in contrast to the language used in the “Deed of Commitment” signed by the Myanmar government and four EAOs in March 2015, which described a “pledge” between the parties “aiming” and “striving” for certain goals. Deed of Commitment for Peace and National Reconciliation, February 12, 2015, available at <http://www.president-office.gov.mm/en/?q=briefing-room/news/2015/02/13/id-4973>.

<sup>26</sup> To do otherwise may undermine the strength of legal principles more generally. See, for example, ICRC Commentary of 2016, para. 858 (a Party “should be able to respect the obligations it has undertaken. This ensures that the agreements are not empty words that, in the end, may lessen respect for humanitarian law.”).



- *Pacta sunt servanda*, which states that agreements must be kept and “must be performed by [parties] in good faith,”<sup>27</sup> and its corollary principle that agreements must be interpreted in good faith;<sup>28</sup>
- The principle of actuality, which states that agreements “are to be interpreted primarily as they stand, and on the basis of their actual texts;”<sup>29</sup>
- The principle of integration, which states that agreements “are to be interpreted as a whole, and particular parts, chapters or sections also as a whole;”<sup>30</sup> and
- The principle of legitimate expectation, which states that if individuals or groups rely on the commitments of a public authority, the public authority has a duty to honor the expectations created by such a commitment.<sup>31</sup>

These general principles of law provide a framework for interpreting the NCA, especially given the NCA’s silence on interpretive methods. They have therefore been employed in this memorandum to address ambiguities in the NCA’s terms in a manner that gives priority to the plain meaning of the NCA’s text, but allows reference to context, the treaty’s object and purpose, and other interpretive methods.<sup>32</sup> However, given the NCA’s current ambiguous relationship to international and domestic legal frameworks, it should first be evaluated according to its own terms, which includes a dispute resolution process as discussed in Section V of this memorandum.

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<sup>27</sup> See, for example, Vienna Convention, art. 26.

<sup>28</sup> Vienna Convention, art. 31(1); Oliver Dorr, Kristen Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (Heidelberg: Springer, 2012), p. 541.

<sup>29</sup> Gerald Fitzmaurice, “The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Treaty Points,” *British Yearbook of International Law*, Volume 33 (1957), pp. 210-212.

<sup>30</sup> *Ibid.*

<sup>31</sup> Søren J. Schönberg, *Legitimate Expectations in Administrative Law* (New York: Oxford, 2010), p. 10.

<sup>32</sup> This interpretive approach is similar to that of the Vienna Convention. Vienna Convention, art. 31(1) (“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”). Articles 31 and 32 also describe factors that may be used to determine “context,” and the means for resolving ambiguities or avoiding absurd or unreasonable interpretations. Various theories and schools of thoughts regarding treaty interpretation have emerged, including textualist, intentionalist, and teleological models. American Society of International Law, “General Principles of Law: Treaty Interpretation,” *International Justice Monitor*, Volume 1, Issue 4, September 2006, available at [http://www.judicialmonitor.org/archive\\_0906/generalprinciples.html](http://www.judicialmonitor.org/archive_0906/generalprinciples.html). However, the Vienna Convention’s treatment of the issue is sufficiently broad to accommodate these various schools of thought. Michael Waibel, “Principles of Treaty Interpretation: Developed for and Applied by National Courts?,” University of Cambridge Faculty of Law, Legal Studies Research Paper Series, Paper No. 16/2015, April 2015, pp. 3-4. Moreover, the formulation provided by the Vienna Convention is widely accepted as customary international law. UN General Assembly, “Report of the International Law Commission,” UN Doc. A/66/10, 2011, para. 344; Mark Eugen Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Leiden, The Netherlands: Martinus Nijhoff Publishers, 2009), pp. 439-440.

## II. Ambiguities in the NCA

The NCA fails to incorporate two key components that are common in many ceasefire agreements: a description of the geographic scope of the agreement and a set of definitions for key terms.<sup>33</sup> Together, these two omissions have left important ambiguities within the text of the NCA and open the door to contested interpretations regarding key provisions.

The NCA's silence regarding geographic scope perhaps reflects the expectation of the drafters that all major armed groups in Myanmar would sign the agreement and that it would therefore implicitly apply nationwide, as the agreement's title implies. This expectation, however, was not realized. By omitting a description of geographic scope, the NCA fails to clarify the obligations of signatories in territories controlled or contested by non-signatories. Moreover, the obligations of signatories in territories where their own control is not contested—for example, in Yangon or areas that have long been administered by the Karen National Union—is similarly ambiguous.

Two undefined terms that are relevant to the subject matter of this memorandum are “Ethnic Armed Organizations,” used 30 times in the text, and “ceasefire area(s),” used eight times. In most instances, it appears that “Ethnic Armed Organizations” refers to those non-state armed groups that have signed the NCA.<sup>34</sup> This understanding is supported by the usage in the title and preamble of the NCA, which reference a “Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations.”<sup>35</sup> In places throughout the NCA, this usage is the only logical interpretation of the text as it ascribes obligations on the “Ethnic Armed Organizations.”<sup>36</sup> An agreement could not confer obligations on a non-party.

Constructing a definition for “ceasefire areas” is less straightforward. The term is used in several provisions specifying joint obligations between the Tatmadaw and signatory

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<sup>33</sup> PILPG, “The Ceasefire Drafter’s Handbook.” PILPG’s handbook includes an “Annotated Ceasefire Template” that incorporates sections relating to “Definitions” and “Geographic Scope of Ceasefire.”

<sup>34</sup> Article 2(d) of the NCA appears to use the term “Ethnic Armed Organization” in a manner that incorporates all ethnic-based non-state armed groups in Myanmar. It states that an objective of the NCA is to, “Include all the relevant Ethnic Armed Organizations in the collective signing of the Nationwide Ceasefire Agreement by recognizing the political aspirations behind the resistance movements of the Ethnic Armed Organizations and aim to strengthen the Union spirit.” However, this use of the term appears to be isolated and a stronger interpretation is that “Ethnic Armed Organization” generally applies to signatories unless otherwise required by the term’s usage in the text. This memorandum adopts the latter interpretation.

<sup>35</sup> NCA, Preamble.

<sup>36</sup> In a few instances where the term “Ethnic Armed Organization” is used to describe the beneficiary of an obligation, rather than the party that is obligated, the meaning of the term is less clear. For example, the signatories are obligated to “[r]eaffirm all promises and previous agreements signed between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations.” NCA, art. 2(c).

EAOs,<sup>37</sup> making it clear that “ceasefire areas” should be interpreted in reference to signatories to the NCA rather than signatories to other bilateral ceasefire agreements.<sup>38</sup> However, the extent of territory that falls under the term “ceasefire areas” is unclear. Presumably, all areas contested between signatory parties are included, but the status of uncontested areas controlled by signatories is subject to debate.<sup>39</sup>

Notwithstanding this ambiguity, the use of the term “ceasefire area,” implies the existence of territories that are not “ceasefire areas.” Areas controlled by non-signatories to the NCA would fall outside of the NCA’s definition of “ceasefire areas,” as would areas that are contested between signatories and non-signatories.

### III. Applicability of Article 9 to Non-Ceasefire Areas

Article 9 of the NCA sets out a list of the obligations of the Tatmadaw and signatory EAOs in relation to civilian populations. The list begins without making reference to “ceasefire areas”:

The Tatmadaw and the Ethnic Armed Organizations shall abide by the following provisions regarding the protection of civilians:

- a. Provide necessary support in coordination with each other to improve livelihoods, health, education, and regional development for the people.
- b. Do not commit any acts violating a person’s dignity, violence, extrajudicial detention, kidnapping, torture, inhumane treatment, imprisonment, killing or otherwise causing the disappearance of the individual.
- c. . . .<sup>40</sup>

In total, Article 9 lists 17 specific obligations (see Annex for full text of Article 9). Only the final two contain a reference to ceasefire areas:

- p. Ensure the security and development of civilians living in ceasefire areas.

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<sup>37</sup> See, for example, NCA, art. 5(a), (c), (g), (h), and (i).

<sup>38</sup> A number of the non-signatories to the NCA are party to longstanding or recent bilateral ceasefire agreements with the government of Myanmar.

<sup>39</sup> Notes from the meetings between the Myanmar government, military, and EAOs indicate that the definition of the term “ceasefire areas” was tabled for discussion. “Decisions and Records for Reference Extracted from the Nationwide Ceasefire Agreement Drafting Meetings,” October 12, 2015. However, agreement between the parties was never reached and the ambiguity in the text of the NCA was not resolved.

<sup>40</sup> NCA, art. 9. The NCA states that both the Myanmar language and English language version are “legally valid,” but that the Myanmar language version is controlling. NCA, art. 28. In the official English language version of the NCA, many of the points under Article 9 begin with the word “Avoid.” A more accurate translation of this term from the Myanmar language version is “Do not.” “Do not” has therefore been used in this memo.

q. Permit civilians to move freely inside ceasefire areas.<sup>41</sup>

On its face, a provision such as Article 9(b) imposes obligations on the Tatmadaw and the signatory EAOs<sup>42</sup> to refrain from certain forms of abusive conduct against civilians or to fulfill certain duties towards civilian populations. A plain textual reading of Article 9 clearly reveals a general duty of the signatories that has no geographical limitation outside of those established by sub-articles (p) and (q). To conclude that Article 9 in its entirety applies only to “ceasefire areas,” would require the addition of implied terms not currently in the text of the NCA. There are a number of reasons to resist such an interpretation.

First, the obligations imposed by the final two provisions of the list in Article 9 are explicitly limited to ceasefire areas. It is a standard maxim of interpretation that a negative inference may be drawn from the exclusion of language in one provision of a law or agreement that is included in other provisions of the same law or agreement.<sup>43</sup> In short, if the drafters intended the entirety of Article 9 to apply only to ceasefire areas, the reference to ceasefire areas in the final two provisions would not have been necessary. More broadly, the NCA references “ceasefire areas” in six places outside of Article 9. If the agreement as a whole applied only to ceasefire areas, these additional references would be rendered meaningless as well, contrary to the treaty interpretation maxim of interpreting the text to avoid surplus language.<sup>44</sup>

Second, the object and purpose of the NCA further suggest that the application of Article 9 should not be limited to ceasefire areas. Many agreements explicitly state their object and purpose in introductory sections. Most relevant here are the NCA’s Basic Principles section and its Preamble. Article 1 of the NCA sets out certain “Basic Principles” underlying the agreement, including a commitment by the parties to:

Undertake efforts to protect lives and property and improve the livelihoods of persons living within the Republic of the Union of Myanmar.<sup>45</sup>

This explicit reference to the goal of nationwide protection of civilians is consistent with an interpretation of Article 9 that ensures its application outside of ceasefire areas.<sup>46</sup> Moreover, the NCA’s preamble states:

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<sup>41</sup> NCA, art. 9(p) and (q).

<sup>42</sup> Article 9 imposes obligations on “Ethnic Armed Organizations” and therefore, as described above, should be interpreted to mean signatory EAOs.

<sup>43</sup> *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006).

<sup>44</sup> Ulf Linderfalk, *On the Interpretation of Treaties: The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Lund University, Sweden: Springer, 2007), p. 108 (“A treaty shall be interpreted so that none of the expressions used for the treaty take the form of a pleonasm—this is a view generally accepted by the literature.”).

<sup>45</sup> NCA, art. 1(k).

<sup>46</sup> In this memorandum, abuses against civilians in non-ceasefire areas are assessed as possible violations of Article 9 of the NCA. The Preamble and Article 1 are therefore considered in light of how they inform interpretation of Article 9. However, abuses against civilians could also potentially be considered as direct violations of obligations imposed on parties by Article

This agreement also aims to secure an enduring peace on the principles of dignity and justice, through an inclusive political dialogue process involving all relevant stakeholders.<sup>47</sup>

The protection of civilians throughout Myanmar, including in territories not considered to be “ceasefire areas,” would contribute to the goals of dignity, justice, and inclusive dialogue laid out in the preamble.

Finally, the context in which the NCA was negotiated and concluded supports the understanding that Article 9 was intended to protect civilian populations regardless of their location. Leading up to the signing of the NCA, EAOs regularly affirmed their concerns regarding abuses against ethnic nationality communities and their position that such abuses undermined the peace process.<sup>48</sup> Moreover, joint statements between the government and EAOs, and a preliminary “deed of commitment” signed by the government and four of the eight signatory EAOs, affirm the ambition for a nationwide agreement.<sup>49</sup> Given that one of the NCA’s stated goals is to facilitate “enduring peace” and an “inclusive political dialogue process involving all stakeholders,”<sup>50</sup> it is reasonable to believe that the drafters intended to bind parties to refrain generally from abusive conduct towards civilian populations regardless of their geographic location or ethnicity.

The position that the NCA’s provisions that are not specifically limited in geographic scope, including those regarding civilian protection, apply nationwide was affirmed at

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1. Article 1 states that signatories “agree to implement this Nationwide Ceasefire Agreement in accordance with the following basic principles: . . .” Despite the slight ambiguity in this language created by the use of the word “principles,” the sub-points that follow, including the quoted provision regarding the protection of lives and property, use language suggesting an affirmative obligation. Therefore, abuses against civilians by signatories anywhere in Myanmar could be viewed as possible violations of Article 1(k).

<sup>47</sup> NCA, Preamble.

<sup>48</sup> See, for example, United Nationalities Federal Council, Annual Meeting Statement, January 10, 2013, available at [http://www.burmalibrary.org/docs15/2013-01-10-Annual\\_Statement.pdf](http://www.burmalibrary.org/docs15/2013-01-10-Annual_Statement.pdf); United Nationalities Federal Council, Press Release, January 9, 2013, available at [http://www.burmalibrary.org/docs15/2013-01-09-UNFC\\_Press\\_Release-re\\_offensive\\_against\\_Kachin-en.pdf](http://www.burmalibrary.org/docs15/2013-01-09-UNFC_Press_Release-re_offensive_against_Kachin-en.pdf).

<sup>49</sup> Deed of Commitment for Peace and National Reconciliation, February 12, 2015, available at <http://www.president-office.gov.mm/en/?q=briefing-room/news/2015/02/13/id-4973>; speech by President Thein Sein upon the signing of the NCA, Naypyidaw, Myanmar, October 15, 2015, available at <http://www.president-office.gov.mm/en/?q=node/6084> (“Therefore, although some organisations are currently not ready to sign, the government decided to conclude the NCA with the vanguard group of organisations that were ready to proceed. However we will continue with our efforts to bring the remaining organisations into the process. The door is open to them. Since the NCA is based on the terms that these organisations have negotiated and agreed to, the implementation of the NCA is in accordance with their intent . . . Mutual trust will be built on the tangible progress of the implementation of the terms in the NCA. The participation of the remaining organisations also depends on how quickly the terms are realised.”).

<sup>50</sup> NCA, Preamble.

the NCA signing ceremony on October 15, 2015, when President's Minister and lead negotiator U Aung Min, reading a joint statement alongside KNU General Secretary P'doh Kwe Htoo Win, stated:

The Nationwide Ceasefire Agreement (NCA) is intended by the parties as an agreement to implement a nationwide ceasefire. To this end, the effectiveness of the NCA extends throughout the entire Union.<sup>51</sup>

Without referencing geographic limitations, the two leaders went on to describe binding commitments under the NCA to protect civilians and implement military codes of conduct.<sup>52</sup>

#### **IV. Potential Article 9 Violations in Shan State and Elsewhere**

As discussed above, the stronger interpretation of the NCA is that the obligations relating to the protection of civilians that are imposed by Article 9 are general obligations and apply in areas outside the control of signatory parties. These obligations include prohibitions on killings, enforced disappearances, arbitrary arrest and detention, torture, sexual violence, forced labor, forcible displacement, destruction of civilian property, looting, and unnecessary restrictions relating to movement, education, and livelihoods.<sup>53</sup> These prohibitions overlap significantly with Myanmar's obligations under Common Article 3 and the obligations of both the Myanmar military and EAOs under customary international humanitarian law. The NCA signatories also have a number of positive duties, including obligations to promote the security of civilians in ceasefire areas and to support generally "efforts to improve livelihoods, health, education, and regional development for the people."<sup>54</sup> See Appendix for the entire text of Article 9.

Since the signing of the NCA, human rights and community-based organizations have reported numerous actions by the Myanmar military and other armed groups that may constitute violations of Article 9 of the NCA. In particular, organizations such as the Shan Human Rights Foundation, Ta'ang Women's Organization, Ta'ang Student and Youth Organization, and various Shan community-based organizations have accused the Myanmar military of committing abuses against civilian populations in central and northern Shan State as part of its ongoing offensives against the Shan State Army—North (SSA-N) and the Ta'ang National Liberation Army (TNLA).<sup>55</sup> The UN Special

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<sup>51</sup> Joint statement by President's Minister Aung Min and P'doh Kwe Htoo Win, Naypyidaw, Myanmar, October 15, 2015, available at <http://www.knuhq.org/pdoh-kwe-htoo-win-and-minister-u-aung-min-reading-aloud-together/>.

<sup>52</sup> Ibid.

<sup>53</sup> NCA, art. 9.

<sup>54</sup> NCA, art. 9(a) & (p).

<sup>55</sup> See, for example, Ta'ang Women's Organization, "Trained to Torture: Systematic war crimes by the Burma Army in Ta'ang areas of northern Shan State (March 2011 – March 2016)," June 2016, available at [http://www.burmapartnership.org/wp-content/uploads/2016/06/Trained-to-Torture-English\\_for-Web.pdf](http://www.burmapartnership.org/wp-content/uploads/2016/06/Trained-to-Torture-English_for-Web.pdf). Ta'ang Women's Organization and Ta'ang Student and Youth Organization, "Joint Statement of TWO and TSYU on Human Right Violation in Ta'ang Areas Committed by the Burmese Military

Rapporteur on Myanmar, U.S. State Department officials, and others have also raised concerns about potential human rights violations perpetrated by the Myanmar military in Shan State since the signing of the NCA.<sup>56</sup>

These groups have accused the Myanmar military of indiscriminately attacking numerous villages with mortars and aerial bombs, causing civilian injuries, and the destruction of civilian property.<sup>57</sup> For example, in November 2015, the Myanmar military allegedly used a jet and helicopters to bomb Mong Nawng, a town of 6,000 residents in central Shan State, over the course of four days, destroying homes, injuring civilians, and causing the population to flee.<sup>58</sup> Myanmar Army soldiers have also been

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Troops and Militias,” January 5, 2016, available at <http://www.burmapartnership.org/2016/01/joint-statement-of-two-and-tsyu-on-human-right-violations-in-taang-areas-committed-by-the-burmese-military-troops-and-militias/>; “Naypyidaw must immediately stop its attacks in central Shan State and let communities return home,” Statement by Shan Community Based Organisations, November 6, 2015, available at <http://oneworld.org/2015/11/05/call-for-halt-to-military-attacks-in-myanmars-shan-state/>; Shan Human Rights Foundation (SHRF), “Burma Army shelling and aerial bombing of 6,000 civilians in Mong Nawng town are war crimes,” November 20, 2015, available at <http://www.shanhumanrights.org/index.php/news-updates/235-burma-army-shelling-and-aerial-bombing-of-6-000-civilians-in-mong-nawng-town-are-war-crimes>. See also, Ta’ang National Liberation Army, “The Statement of Violation of Human Rights by the Burmese Tatmadaw,” March 18, 2016, available at <http://www.burmapartnership.org/2016/03/the-statement-of-violation-of-human-rights-by-the-burmese-tamadaw/>; Palaung State Liberation Front, “PSLF Letter to International Community,” March 31, 2016, available at <http://www.burmapartnership.org/wp-content/uploads/2016/04/PSLF-Letter-to-International-Community.pdf>.

<sup>56</sup> Human Rights Council, “Report of the Special Rapporteur on the situation of human rights in Myanmar,” March 18, 2016, UN Doc. No. A/HRC/31/71, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/055/13/PDF/G1605513.pdf?OpenElement>; David Brunnstrom, “U.S. calls for probe of reports of Myanmar military atrocities,” *Reuters*, December 3, 2015, available at <http://www.reuters.com/article/us-myanmar-violence-usa-idUSKBN0TM2AN20151203>.

<sup>57</sup> See, for example, SHRF, “Naypyidaw’s escalated offensive in central Shan State displaces over 6,000; four civilians injured by indiscriminate shelling and shooting,” November 3, 2015, available at <http://shanhumanrights.org/index.php/news-updates/232-naypyidaw-s-escalated-offensive-in-central-shan-state-displaces-over-6-000-four-civilians-injured-by-indiscriminate-shelling-and-shootinghas>; Palaung State Liberation Front, “PSLF Letter to International Community,” March 31, 2016, available at <http://www.burmapartnership.org/wp-content/uploads/2016/04/PSLF-Letter-to-International-Community.pdf>; Palaung Women’s Organization, “Joint Statement on Targeting of Ta’ang Civilian Populations and Human Rights Violations by Myanmar Tatmadaw,” March 22, 2016, available at <http://en.palaungwomen.com/index.php/statement/93-joint-statement-on-targeting-of-taang-civilian-populations-and-human-rights-violations-by-the-myanmar-tatmadaw>; Ta’ang Women’s Organization and Ta’ang Student and Youth Organization, “Joint Statement of TWO and TSYU on Human Right Violation in Ta’ang Areas Committed by the Burmese Military Troops and Militias,” January 5, 2016, <http://www.burmapartnership.org/2016/01/joint-statement-of-two-and-tsyu-on-human-right-violations-in-taang-areas-committed-by-the-burmese-military-troops-and-militias/>.

<sup>58</sup> SHRF, “Burma Army shelling and aerial bombing of 6,000 civilians in Mong Nawng town are war crimes,” November 20, 2015, available at

accused of opening fire on unarmed civilians during attacks on villages, leading to civilian casualties, including injuries to women and children.<sup>59</sup>

Community-based organizations have reported that Myanmar Army soldiers have beaten, tortured, or otherwise mistreated villagers in Shan State and have used civilians for forced labor, including in combat zones.<sup>60</sup> In a number of incidents in May 2016, the Myanmar military reportedly looted and destroyed property from four-dozen households, arbitrarily arrested and used more than 40 villagers as human shields, tortured villagers using knives and electric shocks, and executed and burned the bodies of eight individuals, at least three of whom were villagers.<sup>61</sup> The Shan Human Rights Foundation claims to have documented two gang rapes of women in central Shan State since the signing of the NCA.<sup>62</sup> Myanmar Army soldiers have also reportedly burned villages and destroyed or looted civilian property, including motorcycles, food stores,

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<http://www.shanhumanrights.org/index.php/news-updates/235-burma-army-shelling-and-aerial-bombing-of-6-000-civilians-in-mong-nawng-town-are-war-crimes>.

<sup>59</sup> See, for example, SHRF, “Burma Army troops shoot at farmers in central Shan State on election day, seriously injuring a woman and boy,” November 12, 2015, available at <http://www.shanhumanrights.org/index.php/news-updates/234-burma-army-troops-shoot-at-farmers-in-central-shan-state-on-election-day-seriously-injuring-a-woman-and-boy>; SHRF, “Killing, disappearance, land-mine death during Burma Army offensive in central Shan State,” December 28, 2015, available at <http://www.shanhumanrights.org/index.php/news-updates/241-killing-disappearance-land-mine-death-during-burma-army-offensive-in-central-shan-state>; SHRF, “Government troops attack Ta’ang village in Lashio, killing two villagers, one mentally disabled,” January 18, 2016, available at <http://shanhumanrights.org/index.php/news-updates/242-government-troops-attack-ta-ang-village-in-lashio-killing-two-villagers-one-mentally-disabled>; SHRF, “Burma Army must be held accountable for extrajudicial killing of seven villagers in Mong Yaw,” July 13, 2016, available at <http://shanhumanrights.org/index.php/news-updates/249-burma-army-must-be-held-accountable-for-extrajudicial-killing-of-seven-villagers-in-mong-yaw>.

<sup>60</sup> See, for example, “Burmese government troops must withdraw to allow IDPs to return home in central Shan State,” Statement by Shan Community Based Organizations, December 23, 2015, available at <http://www.shanhumanrights.org/index.php/news-updates/240-burmese-government-troops-must-withdraw-to-allow-idps-to-return-home-in-central-shan-state>; SHRF, “Burmese government troops torch Ta’ang village in northern Shan State; farmer forced to guide troops shot in battle,” December 22, 2015, available at <http://shanhumanrights.org/index.php/news-updates/239-burmese-government-troops-torch-ta-ang-village-in-northern-shan-state-farmer-forced-to-guide-troops-shot-dead-in-battle/>.

<sup>61</sup> The identities of the other individuals are unknown. SHRF, “Torture, extrajudicial killing, and the use of civilians as human shields by Burma Army during new offensive,” June 1, 2016, available at <http://shanhumanrights.org/index.php/news-updates/247-torture-extrajudicial-killing-and-use-of-civilians-as-human-shields-by-burma-army-during-new-offensive>; SHRF “Killing for Coal: arbitrary arrest, torture, and killing of villagers by Burma Army to secure Nam Ma coal mines,” August 2, 2016, available at <http://www.shanhumanrights.org/index.php/news-updates/250-killing-for-coal-arbitrary-arrest-torture-and-killing-of-villagers-by-burma-army-to-secure-nam-ma-coal-mines>.

<sup>62</sup> See, for example, SHRF, “Sexual violence by Burmese government troops continues despite ceasefires in Shan State,” November 25, 2015, available at <http://www.shanhumanrights.org/index.php/news-updates/236-sexual-violence-by-burmese-government-troops-continues-despite-ceasefires-in-shan-state>.



crops, and livestock.<sup>63</sup> The Myanmar military has allegedly restricted the movement of displaced communities and prevented access to internally displaced persons (IDPs) in camps by local organizations seeking to provide humanitarian assistance, according to reports by community-based organizations.<sup>64</sup>

In June 2016, Myanmar Army soldiers reportedly tortured and killed seven Shan and Ta'ang civilians in Mong Yaw Village where there were numerous witnesses. The Myanmar military admitted responsibility for killing five of the victims and conducted a military court martial during which seven soldiers, including officers, admitted to the killings and noted that they acted under orders.<sup>65</sup>

Although most of the reports regarding abuses in Shan State implicate the Myanmar military, there have also been reports, all though fewer, and with less detail, of abuses committed by the Restoration Council of Shan State/Shan State Army—South (RCSS/SSA), an armed group that has also been involved in fighting with the PSLF/TNLA.<sup>66</sup> The RCSS/SSA is a signatory to the NCA and therefore bound by Article 9 in the same way as the Myanmar military.

Additional reports have alleged that the Myanmar military has committed abuses against civilian populations in other parts of the country since the signing of the NCA. Notably, soldiers have been implicated in killings, torture, the destruction of civilian

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<sup>63</sup> See, for example, “Burmese government troops must withdraw to allow IDPs to return home in central Shan State,” Statement by Shan Community Based Organizations, December 23, 2015, available at <http://www.shanhumanrights.org/index.php/news-updates/240-burmese-government-troops-must-withdraw-to-allow-idps-to-return-home-in-central-shan-state>; SHRF, “List of recorded damage to civilian property in Mong Hsu Township by Burma Army during offensive against SSPP/SSA since October 6, 2015,” available at [http://shanhumanrights.org/images/stories/pdf/Dec23\\_2015/List%20of%20damage%20during%20central%20Shan%20State%20offensive%20Eng.pdf](http://shanhumanrights.org/images/stories/pdf/Dec23_2015/List%20of%20damage%20during%20central%20Shan%20State%20offensive%20Eng.pdf).

<sup>64</sup> See, for example, “Burmese government troops must withdraw to allow IDPs to return home in central Shan State,” Statement by Shan Community Based Organizations, December 23, 2015, available at <http://www.shanhumanrights.org/index.php/news-updates/240-burmese-government-troops-must-withdraw-to-allow-idps-to-return-home-in-central-shan-state>.

<sup>65</sup> See Lawi Weng, “Burma Army Soldiers Confess at Court Martial to Killing Civilians,” The Irrawaddy, August 10, 2016, available at <http://www.irrawaddy.com/burma/burma-army-soldiers-confess-at-court-martial-to-killing-civilians.html>. The convicted soldiers also admitted to forcing the civilian victims to put on uniforms. The Myanmar military did not admit responsibility for two of the seven killings, and the higher-level officers implicated by the convicted officers were not included in the court martial proceedings. Lawi Weng, “Burma Army Soldiers Sentenced to Five Years for Killing Civilians,” The Irrawaddy, September 16, 2016, available at <http://www.irrawaddy.com/burma/burma-army-soldiers-sentenced-to-five-years-with-hard-labor-for-killing-civilians.html>.

<sup>66</sup> Ta'ang Women's Organization and Ta'ang Students and Youth Organization, “TWO and TSYU condemn human right violations committed by RCSS/SSA in Northern and Southern Shan State,” February 10, 2016, available at <http://en.palaungwomen.com/index.php/statement/91-two-and-tsyu-condemn-human-right-violations-committed-by-rcss-ssa-in-northern-and-southern-shan-state>.

property, and the use of forced labor in the Kokang region of eastern Shan State.<sup>67</sup> Soldiers have also been accused of attacks on civilians, killings, torture, extortion, and forced labor in Kachin State and northern Shan State, where the Myanmar military has been fighting the Kachin Independence Army.<sup>68</sup>

In addition to being potential violations of Article 9 of the NCA, these reported abuses, if verified, would constitute violations of Myanmar's obligations under Common Article 3 of the Geneva Conventions and customary international humanitarian law. Customary international humanitarian law also binds non-state armed groups, and abuses of civilians by the RCSS/SSA would constitute violations. Although Myanmar has not ratified a number of major human rights treaties, Myanmar is a party to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Verified abuses committed by the Myanmar military would constitute violations of these treaties and other international law obligations.

## V. Interpretation and Enforcement Mechanisms under the NCA

General principles of law help interpret the NCA, but conflicts relating to the NCA should be resolved according to the terms of the agreement.

The NCA specifies that issues regarding the NCA should be resolved through “peaceful negotiation,” and, failing successful resolution, should be referred to the NCA Joint Implementation Coordination Meeting.<sup>69</sup> Therefore, a disagreement regarding the definition of terms such as “ceasefire areas” and “Ethnic Armed Organizations” as well as the applicability of Article 9 to non-ceasefire areas, should be referred, in the first instance, to the signatory parties of the NCA. Absent consensus among the signatories, the matter should be formally considered and resolved by the Joint Implementation Coordination Meeting.<sup>70</sup>

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<sup>67</sup> These reports are not entirely clear regarding the dates when alleged incidents occurred, but indicate that abuses continue until the present. See SHRF, “Burma Army expansion, abuses along Kokang-China border creating scores of ‘ghost villages,’” April 21, 2016, available at <http://www.shanhumanrights.org/index.php/news-updates/245-burma-army-expansion-abuses-along-kokang-china-border-creating-scores-of-ghost-villages>.

<sup>68</sup> Free Burma Rangers (FBR), “October/November Update – Burma Army Offensives against KIA No. 8 Brigade Headquarters and SSPP/SSA Headquarters,” December 15, 2015, available at <http://www.freeburmarangers.org/2015/12/14/fbr-report-octobernovember-update-burma-army-offensives-against-kia-no-8-brigade-hq-and-ssppssa-hq/>; FBR, “Update and Map of the Current Situation in Kachin State,” May 9, 2016, available at <http://www.freeburmarangers.org/2016/05/11/update-map-current-situation-kachin-state/>; FBR, “Burma Army Shoots Villagers, Killing 70-Year-Old Woman and Wounding 7-Year-Old Girl and Others, While Raiding Villagers on Shan-Kachin State Boarder, North Burma,” April 9, 2016, available at <http://www.freeburmarangers.org/2016/04/15/61902/>; Lun Min Mang, “Toddler killed as fighting rages between Tatmadaw and KIA,” *Myanmar Times*, October 3, 2016, available at <http://www.mmtimes.com/index.php/national-news/22856-toddler-killed-as-fighting-rages-between-tatmadaw-and-kia.html>.

<sup>69</sup> NCA, art. 31.

<sup>70</sup> *Ibid.*

The NCA also establishes a Joint Ceasefire Monitoring Committee responsible for, among other functions, investigating alleged violations of the NCA.<sup>71</sup> Moreover, Article 4 obligates the signatories to submit to investigations carried out by the Joint Ceasefire Monitoring Committee.<sup>72</sup>

As described above, available reports suggest that soldiers affiliated with the Myanmar military and non-state armed groups have committed violations against civilians in northern Shan State and elsewhere since the signing of the NCA. The alleged abuses fall squarely into categories of conduct prohibited by Article 9 of the NCA. As discussed above, the subsections of Articles 9 that do not explicitly reference “ceasefire areas” should be interpreted to apply nationwide, and thus, the Joint Ceasefire Monitoring Committee should immediately investigate the reported abuses in northern Shan State and elsewhere. Moreover, per the terms of the NCA, the signatories are obligated to cooperate with the committee to ensure the success of any investigation.

## **VI. Conclusion**

The allegations that have been leveled against the Myanmar military since the signing of the NCA are serious and have potentially far-reaching implications. If the reports of abuses against civilian populations perpetrated by government soldiers are verified, they would directly violate express provisions of the NCA as well as cast doubts more generally on the military’s good faith commitment to the agreement. Moreover, non-signatory EAOs are less likely to be effectively incorporated into the peace process if the Myanmar military repeatedly engages in abusive conduct against civilian populations. More fundamentally, the mistreatment of ethnic nationality populations foments ongoing distrust of the Myanmar government and military and undermines long-term efforts to achieve peace and stability. Similarly, ongoing abuses by signatory EAOs, including the RCSS/SSA, could fracture ethnic alliances and impede the peace process.

If recent reports are accurate, abuses by government forces and EAOs would constitute violations of international humanitarian law, including prohibitions against war crimes. Although the primary responsibility to address these violations lies with the Myanmar government, international mechanisms and processes could serve as a backstop if the government fails to act.

For these reasons, the Myanmar government and EAOs must act immediately to address alleged abuses in Shan State and elsewhere. First, the NCA signatories should engage in good faith with the mechanisms and processes established by the NCA to investigate potential violations of the NCA. Specifically, both the Myanmar military and EAOs should ensure compliance with international legal obligations by investigating credible reports of abuse, holding perpetrators accountable, and providing a remedy to victims. If necessary, NCA signatories should resolve any interpretative issues that may arise in relation to any NCA investigation. Second, the NCA signatories should improve the Joint Ceasefire Monitoring Committee by

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<sup>71</sup> NCA, arts. 2(b), 4, 13(e).

<sup>72</sup> NCA, art. 4.

ensuring genuine third party participation, developing a clear means for community-based organization involvement, and providing effective verification and adjudication mechanisms. Finally, the Myanmar military and EAOs should reform policies that lead to abuses against civilians and take other steps to ensure non-repetition of unlawful forms of conduct.

## **Annex – Select Provisions of the NCA**

*\*Article 28 of the NCA states that both the Myanmar language and English language version are “legally valid,” but that the Myanmar language version is controlling. The provisions provided below include minor edits to the official English language version of the NCA to ensure accuracy to the Myanmar language version. In particular, in the official English language version of the NCA, many of the points under Article 9 begin with the word “Avoid.” A more accurate translation of this term from the Myanmar language version is “Do not.”*

### **Preamble**

The Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations recognizes, reinforces, and reaffirms all previous agreements between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations. The agreement aims to secure an enduring peace based on the principles of dignity and justice, through an inclusive political dialogue process involving all relevant stakeholders.

In order to achieve lasting and sustainable peace, we, the signatories to this Nationwide Ceasefire Agreement, pledge to each other to diligently work together to implement all provisions contained in this agreement completely, successfully and without fail in an accountable, responsible and transparent manner.

### **Chapter 1 Basic Principles**

1. In order to build lasting and sustainable peace, we agree to implement in accordance with the following basic principles:
  - a. Establish the Republic of the Union of Myanmar based on the principles of democracy and federalism in accordance with the outcomes of the political dialogue; in the spirit of Panglong, which fully guarantees democratic rights, national equality and the right to self-determination; on the basis of liberty, equality and justice; and upholding the principles of non-disintegration of the union, non-disintegration of national solidarity and perpetuation of national sovereignty.
  - b. Reach a negotiated settlement to end protracted armed conflict in the Republic of the Union of Myanmar, secure a nationwide ceasefire as the first step to end armed conflict, and establish a new political culture of resolving political conflicts through political dialogue instead of force of arms.

...

- h. Negotiate in good faith any issues that may arise between and among the dialogue partners in order to achieve lasting and sustainable peace.
- i. Abide by all mutual promises and commitments contained in this Agreement and implement the peace process in a transparent, responsible and accountable manner.

...

- k. Undertake efforts to protect lives and property and improve the livelihoods of all persons living within the Republic of the Union of Myanmar.

## **Chapter 2 Aims and Objectives**

2. The Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations agree to the following aims and objectives:

...

- b. Form a “Joint Ceasefire Monitoring Committee” to carry out the following: monitoring the implementation of provisions of the Nationwide Ceasefire Agreement, adherence to the Code of Conduct, investigating alleged violations, and undertaking conflict resolution functions.
- c. Reaffirm all promises and previous agreements signed between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations.

...

## **Chapter 3 Ceasefire Related Matters**

...

3. We agree to abide by the mutually binding terms and conditions of the ceasefire and military codes of conduct as entered into through this Nationwide Ceasefire Agreement, and shall submit to investigation by the different levels of the Joint Ceasefire Monitoring Committee.

...

## **Protection of Civilians**

9. The Tatmadaw and the Ethnic Armed Organizations shall abide by the following provisions regarding the protection of civilians:

- a. Provide necessary support in coordination with each other to improve livelihoods, health, education, and regional development for the people.
- b. Do not commit any acts violating a person's dignity, violence, extrajudicial detention, kidnapping, torture, inhumane treatment, imprisonment, killing or otherwise causing the disappearance of the individual.
- c. Do not commit any forcible displacement or relocation of local populations.
- d. Do not forcibly take money, property, food, labor or services from civilians.
- e. Do not commit arbitrary arrest, entrapment, prosecution and pronouncement of judgment against civilians. Any action against civilians shall be undertaken in accordance with the law.
- f. Do not commit any forcible confiscation or transfer of land from local populations.
- g. Do not commit any the destruction of public property, looting, theft, or the taking of property without permission.
- h. There shall be no restrictions on the right to education in accordance with the law; destruction of schools and educational buildings, including educational tools; and disturbance and hindrance of students and teachers.
- i. Do not impede an individual's right to health or access to healthcare or restrict public health resources and the legal transportation of medicines for public use.
- j. Do not impede the small-scale storage, transport, sale and trade of food and supplies.
- k. Do not commit the destruction or actions that would lead to the destruction of schools, hospitals, clinics, or religious buildings and their premises, and do not use of such places as military bases or outposts.

- l. Do not directly or indirectly interfere, humiliate or damage the reputation of public activities to preserve religion, literature, and cultural and traditional practices.
- m. Do not commit any form of sexual attack on women, including sexual molestation, sexual assault or violence, rape and sex slavery.
- n. Do not commit any killing or maiming, forced conscription, rape or other forms of sexual assault or violence, or abduction of children.
- o. Do not commit any enslavement or forced labor of civilians.
- p. Ensure the security and development of civilians living in ceasefire areas.
- q. Permit civilians to move freely inside ceasefire areas.

**Provision of humanitarian assistance**

10. The Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations agree to abide by the following provisions regarding the provision of humanitarian assistance:

- a. Relevant Government ministries, the Ethnic Armed Organizations and local organizations shall coordinate with each other when implementing the delivery of humanitarian assistance by NGOs and INGOs to assist Internally Displaced Persons (IDPs) and conflict victims with the approval of the Government of the Republic of the Union of Myanmar.
- b. Ensure the safety and dignity of the IDPs when undertaking a prioritized voluntary return of IDPs to their places of origin or resettlement of IDPs into new villages in suitable areas.
- c. Collaborate on the resettlement process including verification of IDPs and refugees.

...

**Chapter 7  
General Provisions**

...

28. This agreement shall be written in Myanmar and translated into English. Each shall be legally valid, however in the event of any dispute or ambiguity over the



wording and essential meaning of the agreement between the two versions, the original meaning and intention of the Myanmar version shall prevail.

...

### **Joint dispute resolution**

31.
  - a. We shall resolve through peaceful negotiation any issues that may arise in complying with the terms and conditions of this Agreement.
  - b. We shall submit any issue that cannot be resolved in accordance with paragraph 31(a) to the Nationwide Ceasefire Agreement Joint Implementation Coordination Meeting for resolution.