



Karen Human Rights Group

Documenting the voices of villagers in rural Burma

Briefer

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Attacks on education and health facilities and related personnel: Trends and recent incidents from eastern Burma

The UN Security Council (UNSC) has repeatedly recognised the importance of protecting health and education facilities and related personnel from attack, with the passage of resolutions 1612 (2005) and 1998 (2011). Unfortunately, in the context of eastern Burma, UN-led monitoring and reporting pursuant to these resolutions has to date gathered only minimal information regarding such attacks. This briefer is thus designed to contribute information on this question, in the hope that it prompts more systematic international monitoring. After a short introduction, Section I of this briefer details KHRG research methodology; Section II analyses general trends in armed conflict and related violations during the reporting period and Section III analyses 16 particularly illustrative incidents that entailed attacks on schools, clinics and related personnel or children. These incidents were selected from a database detailing 59 recent attacks monitored by KHRG that did or could have placed educational or medical facilities and related personnel at risk of attack. Appendix 1 presents legal analysis to support monitoring attacks in eastern Burma.

Health and education facilities and related personnel in eastern Burma continue to be attacked or threatened with attack by Burma's state army, the Tatmadaw, as well as non-state armed groups (NSAGs). While this issue has been documented by local organisations, it remains largely unacknowledged by the international community, including in reports by the UN Secretary General's Special Representative on Children and Armed Conflict (SRSG), tasked with monitoring and reporting such attacks by UN Security Council Resolution 1612 (2005) and 1998 (2011). The SRSG's 2007 Myanmar report, for example, notes only that limited access to conflict-affected areas prevented confirmation of reports of attacks on schools or hospitals; the same issue received no mention at all in the SRSG's 2009 report.

International monitoring appears to be hamstrung by complete lack of access to conflict areas in eastern Burma. The SRSG's reports, for example, are based upon information gathered by the UN-led Monitoring and Reporting Mechanism (MRM), established by UNSCR 1612 to monitor attacks on health and education facilities and related personnel, as well as five other 'grave violations' of children's rights.¹ Because the 1612 MRM in the Myanmar context chiefly relies on reporting by UN agencies, very little information has been able to be included in the system; as the SRSG has noted, Burma's central government currently prevents UN staff from reaching affected populations in conflict areas across the eastern part of the country. As a result, extant reporting by the 1612 MRM appears to have gathered information chiefly regarding the use or recruitment of children by the Tatmadaw and NSAGs.²

¹ The six 'grave violations' of children's rights highlighted by the Security Council include killing and maiming, sexual violence, recruitment or use by armed forces or groups, abduction, denial of access to humanitarian services and attacks on schools, hospitals or related personnel.

² The preponderance of reporting on this subject is likely explained by the fact that children are recruited from or desert and escape to geographic areas readily accessed by UN staff, such as Yangon, Mandalay and refugee camps in Thailand, as well as engagement on the issue by the International Labour Organisation, beginning with a Commission of Inquiry investigation in 1997.

In the Burma context, the existing lack of international reporting on the issue of attacks on health and educational facilities and related personnel, as well as other grave violations, fails to accurately convey the true scope of violations occurring in eastern Burma, where KHRG field staff frequently document such incidents. This should be particularly alarming given that the existing lack of reporting results from barriers to UN-led monitoring that have been imposed by Burma's central government, whose state army is itself a perpetrator. KHRG applauds the SRSG's most recent report, released in April 2011, which included a confirmed report of Tatmadaw attacks on civilian settlements in eastern Bago Division that resulted in the closure of 13 schools and the destruction of one high school and one clinic.³ Increased monitoring and reporting on the issue is imperative, however. The international community must follow through on resolutions 1612 and 1998 by identifying perpetrators of such attacks, and then responding appropriately. Failure to monitor and report attacks on health and education seriously undermines the crafting of appropriate and effective child protection responses as well as international diplomatic engagement.

In order to encourage more systematic international monitoring, this briefer aims to elucidate the different ways in which attacks on health and education facilities and related personnel are carried out in eastern Burma, and provide legal analysis that explains why certain types of attacks should be monitored pursuant to UNSCRs 1612 and 1998. The briefer is divided into three sections:

Section I: Methodology: This section includes an explanation of KHRG field practices and cooperation with UNICEF and UNHCR-Thailand.

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

Section III: Recent incidents: This section locates 16 particularly illustrative individual incidents documented by KHRG within the typology presented in Section II, and analyses their relevance for reporting pursuant to UNSCRs 1612 and 1998. Because the UNSC has also placed a special emphasis on unlawful attacks that kill or maim children, examples of such incidents are also discussed in Section III.

Appendix 1: Legal basis for monitoring pursuant to UNSCR 1998: This section offers a preliminary analysis of the legal basis for monitoring attacks on schools, hospitals and related personnel in eastern Burma and attempts to address potential ambiguity in the interpretive guidance currently in use by UNICEF field staff.

³ *Children and armed conflict: Report of the Secretary-General, A/65/820–S/2011/250*, para 112 April 2011.

Section I: Methodology

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

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

While KHRG field staff approach human rights conditions in eastern Burma holistically and have not been tasked with exclusively monitoring violations of children's rights, all six of the grave violations monitored pursuant to UNSCRs 1612, 1882 and 1998 occur in eastern Burma and are documented by field staff. When KHRG information processing staff analysing this information encounter incidents entailing grave violations of children's rights, this information is shared with UNICEF and UNHCR Thailand for inclusion in the 1612 MRM. Please note that until recently, lack of familiarity with monitoring attacks on schools, hospitals and related personnel meant that KHRG field staff did not systematically seek information on this issue. In some cases, for example, field staff documenting an attack on a civilian settlement may not have made specific note of the consequence of a given attack on children, schools, clinics or related personnel. As such it has only been possible for KHRG to submit information on such attacks occurring relatively recently.

In order to provide information to support monitoring and reporting pursuant to UNSCRs 1998 and 1882, KHRG compiled a database of 59 incidents monitored by KHRG: 46 known recent attacks on civilians and civilian settlements and 13 incidents in which children were killed or injured and potentially maimed by parties to conflict in eastern Burma. KHRG also met with staff from local organisations operating health and education programs in eastern Burma, to confirm whether their staff or facilities were impacted by attacks. Based upon primary evidence gathered by KHRG field staff and triangulation with health and education organisations, KHRG concluded that it had sufficiently credible information on 27 incidents of killing or maiming and attacks on schools, clinics and related personnel. Sixteen particularly illustrative examples have been selected from this number and are analysed in Section III below.

Section II: Trends analysis and typology of attacks

The geographic scope of armed conflict in eastern Burma expanded significantly since November 2010. While the national elections held on November 7th may open the door to changes in civilian governance in non-conflict areas, there have not been any positive changes in the relationship between parties to conflict in eastern Burma, nor in the practices employed by Tatmadaw units in rural areas of eastern Burma. Armed conflict between the Tatmadaw and the Karen National Liberation Army (KNLA) continues; there has been no change in the relationship between the Tatmadaw and KNLA or the posture of the two groups. While the KNLA has not been able to control significant territory for more than a decade, it continues to be able to launch 'guerrilla attacks' in southern and northeastern Mon State, eastern Bago Division, across the majority of Karen State and in eastern Tenasserim Division.

New conflict is also now ongoing in central and southern Karen State, in areas previously dominated by units of the Democratic Karen Buddhist Army (DKBA). Until November 2010, Tatmadaw and DKBA units in these areas had cooperated, with DKBA soldiers often taking orders from Tatmadaw commanders and playing a key role in attacks on the KNLA.⁴ Conflict intensified in these areas in November 2010, however, when factions of the DKBA that refused to transform into Tatmadaw Border Guard battalions attacked the large border towns of Myawaddy and Three Pagodas Pass. This fighting initially displaced at least 25,000 civilians.⁵ Those displaced from these major towns were able to return within a week, after the DKBA retreated. Though the Tatmadaw quickly overran the erstwhile headquarters of the individual commander leading the DKBA faction, the Tatmadaw has subsequently been unable to dislodge DKBA units from southern Karen State. The DKBA maintained a consistent level of guerrilla activity throughout 2011, including during the rainy season when weather damage to roads typically forces conflict to temporarily subside. DKBA-Tatmadaw conflict also increased in central Karen State, particularly after late May, when former DKBA units that had agreed to become Tatmadaw Border Guards defected. This defection included a symbolic attack and short-term occupation of Myaing Gyi Ngu, the headquarters of DKBA units that had agreed to transform into Tatmadaw Border Guard Units.

This ongoing conflict has serious consequences for children, who are among the 83,700 civilians who remain displaced and hiding from attacks in KHRG research areas.⁶ Not all of the consequences of this conflict amount to grave violations of children's rights, however, and understanding the relevance of ongoing conflict to the UNSC children in armed conflict agenda requires a careful analysis of discernable patterns in military practices employed by Tatmadaw and NSAGs active in eastern Burma. In southern and central Karen State, for example, schools have frequently been forced to close due to fears of clashes between DKBA and Tatmadaw units. In many cases, however, these closures appear to be related to generalised fears of insecurity or threats to civilians resulting from clashes between the Tatmadaw and units of the DKBA or KNLA; while schools, students and personnel in these areas are certainly placed at risk when fighting occurs, school closures are not necessarily the result of fears that civilians themselves will be subjected to deliberate attacks. Government schools in Myawaddy and Three Pagodas Pass closed in November 2010 when DKBA units occupied the towns, for example; these schools were able to re-open once the risk that fighting between the Tatmadaw and DKBA would endanger civilians had abated, although schools in the Myawaddy area

⁴ "Joint SPDC/DKBA attacks, recruitment and the impact on villagers in Dooplaya and Pa'an districts," KHRG, May 2009; "Over 3,000 villagers flee to Thailand amidst ongoing SPDC/DKBA attacks," KHRG, June 2009.

⁵ KHRG report.

⁶ Protracted Displacement and Chronic Poverty in Eastern Burma/ Myanmar, Thailand Burma Border Consortium, November 2010, p60. The figure cited here is the combined total of internally displaced people hiding in Mon and Karen states and Bago and Tenasserim divisions.

remained prepared to suspend classes if and when further clashes were expected.⁷ At least 27 schools, meanwhile, closed in southern Karen State in the months after the elections amid similar generalised threats to the security of children and personnel incidental to Tatmadaw-DKBA conflict.⁸ KHRG did not submit any information regarding these school closures because, although clearly a disruption of children’s education, it is not clear if such closures are monitored under UNSCR 1998, which appears to limit monitoring to cases in which attacks on schools, hospitals or related personnel result from unlawful military activities.⁹

It is important not to conflate contexts in which children or children’s education and health are placed at general risk from lawful armed engagements between two or more parties to a conflict, and contexts in which children, schools, clinics or related personnel are themselves the subjects of unlawful attack or threat of attack by a single party. Attacks of this latter sort commonly occur according to three loose types, each of which is detailed in Table 1 below. Section III of this briefer will then place 16 individual incidents documented by KHRG into the loose typology presented below, and analyse each incident for relevance to monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998. With the exception of one, all incidents took place within the last 18 months. It is important to note that children, schools, clinics and related personnel do not appear to be *singled out* from other civilians and attacked individually. Instead, they are subjected to knowing and wilful attacks or the threat of attacks that at the same time also target other civilians and civilian objects. Attacks of this sort must be monitored and reported on pursuant to UNSCR 1998; no actor that carries out or threatens to carry out knowing and wilful attacks on children, schools, clinics and/or related personnel should be exempted from monitoring and reporting. Further analysis of legal arguments related to this issue is included in Appendix 1.

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

Tatmadaw or NSAG practices entailing attacks on children, schools, hospitals or related protected personnel	Violations of relevant international humanitarian law	Consequence for children, schools, hospitals and related protected personnel
<p>Type 1: Targeted remote shelling Civilian settlements are shelled remotely, typically from Tatmadaw mortar positions on nearby hilltops, but Tatmadaw troops remain in their position and do not enter the area on foot. No civilians or civilian objects within the settlement are accorded protection; schools, clinics, civilians working in farm fields: all may be subjected to shelling.</p> <p>These practices appear to be</p>	<p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting indiscriminate attacks.</p> <p>In Type 1 attacks, prior to attacks, no effort is made by Tatmadaw forces to ascertain the presence of civilians, or whether settlements are civilian or military objects, and therefore whether they may or may not be lawfully attacked.</p>	<p>The entire community is singled out for deliberate attack; no additional protection is given to children, schools, clinics or related personnel.</p> <p>In cases of a direct or near hit, school or medical buildings are damaged or children killed or maimed.</p> <p>Because communities in these areas have been attacked repeatedly, they <i>do not</i> always flee</p>

⁷ “School closures and movement restrictions: conflict continues to impact civilians in Dooplaya District,” KHRG, November 19th 2011.

⁸ This figure is based upon data collected from the Burma Migrant Workers Education Committee and the Karen Teachers Working Group, which both support schools in the area. Data was collected by KHRG in January 2011 at the request of the Special Rapporteur on the Situation of Human Rights in Myanmar.

⁹ For further analysis of this issue, see Appendix 1.

¹⁰ Indeed, frustration of KNLA infantry with continued attempts to defend a fixed line during the 1990s is factored by many as a key motivation prompting the defection of large numbers of KNLA troops in late 1994; these troops then formed the DKBA. Other factors also cited for this split have been religious conflicts between Buddhist infantry and Christian officers within the KNLA. For further discussion, see, Ashley South, *Ethnic politics in Burma: States of conflict*, New York: Routledge, 2009 (2nd ed.).

<p>designed to drive civilian populations into areas where non-state armed groups cannot access them for support, following earlier government forced relocation campaigns. They typically occur in areas where Tatmadaw control is most precarious, terrain is difficult, roads are non-existent or barely navigable and Tatmadaw forces fear ambush by non-state armed groups. Such areas can be found in southern and northern Karen State, eastern Bago Division and eastern Tenasserim Division.</p> <p>While conflict between the Tatmadaw and non-ceasefire non-state armed groups (NSAGs), including the Karen National Liberation Army (KNLA) and the Democratic Karen Buddhist Army (DKBA) occurs in such areas, Type 1 attacks entail incidents in which an attack on a civilian settlements does not occur in response to a prior attack by KNLA or DKBA forces. Because neither group is militarily strong enough to defend fixed positions,¹⁰ they appear to prefer ambushes and the use of landmines, and survive against a numerically superior opponent by limiting confrontations to situations where terrain and surprise give their forces a tactical advantage.¹¹ This inability to use anything other than ‘guerrilla tactics’ means that, as a rule, it is highly unlikely that non-ceasefire NSAGs would launch an attack from a position against which they Tatmadaw could retaliate, including both fortified military positions and unfortified civilian settlements. Cases where civilian settlements are shelled remotely but this attack immediately follows an attack by the KNLA or DKBA are discussed in more detail below in Type 4.</p> <p>NSAGs in Karen State, Bago Division and eastern Tenasserim Division have not been documented consistently making</p>	<p>Alternatively, the presence of civilians and the civilian nature of objects are known or clearly visible from the point of attack. In neither circumstance do Tatmadaw forces provide advance warning to civilians so that the latter may seek shelter or flee the area before attacks occur. It cannot be said that Tatmadaw forces exercise all feasible precautions to avoid or minimise harm to civilians and damage to civilian objects.</p> <p>Type 1 attacks typically do not occur following clashes with non-state armed groups. Nor do they occur incidentally as a consequence of generalized fighting in the area.</p> <p>In IHL, “military necessity” may justify “unavoidable” harm to civilians and civilian objects, but only if attacks are directed against a legitimate military objective; if use of force is proportional to the concrete and direct military advantage anticipated from the attack; and if all feasible precautions are taken to minimise civilian harm. Such attacks violate IHL if efforts are not made to determine civilian or military nature of objects of attack, if civilian nature of objects of attack is known, or if all feasible precautions are not taken to minimise civilian harm.</p>	<p>as a response to remote shelling. Settlements are <i>only</i> abandoned in cases where civilians feel the threat of intensified shelling or a subsequent ground attack is highly probable. This entails the closure of schools and clinics. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack.</p>
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¹¹ The KNLA formally shifted from strategy predicted on defending fixed positions to the use of guerrilla tactics in 1998 at a military conference in Mae Hta Raw Tha, Doolaya District. See, Ashley South, *Ethnic politics in Burma: States of conflict*, New York: Routledge, 2009 (2nd ed.), p.56.

<p>Type 1 attacks. Such attacks only make sense as part of a ‘counter-insurgency’ strategy; as the ‘insurgents,’ NSAGs would thus not employ the approach. The KNLA and DKBA could not likely gain a strategic advantage by attempting to coerce large-scale population movements; neither group is strong enough to maintain control of the population afterwards. Instead, the groups must survive by positioning themselves as ‘protectors’ of the Karen people. The only consistent exception to this has been in areas in which DKBA and KNLA forces are in conflict. In these areas, DKBA forces have sometimes adopted methods akin those used by the Tatmadaw, though to a lesser degree.</p>		
<p>Type 2: Ground attacks Tatmadaw forces leave fixed positions and enter civilian settlements on foot, sometimes preceded by shelling. Civilians typically flee immediately prior to or during the attacks, often receiving warning from informal early warning systems established by civilians or by obtaining military intelligence from non-state armed groups.¹² Civilians who remain in the area may be shot on sight or detained and subjected to interrogation, physical violence and/or summary execution. This includes personnel of schools and medical facilities.</p> <p>Tatmadaw forces entering civilian settlements sometimes but not always burn or otherwise damage or destroy some, many or all structures in the village. Essential civilian property such as food stores, crops under cultivation, livestock and cooking and agricultural equipment may also be burned or destroyed.¹³ This</p>	<p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting attacks against objects essential to survival of civilian population.</p> <p>Civilian nature of targets is known already, as Tatmadaw troops enter area on foot. Civilian objects, including those essential to the survival of the civilian population, are knowingly and wilfully damaged, including homes, cooking and agricultural equipment, household food supplies and communal property such as schools, clinics and churches.</p> <p>Ground attacks typically do not occur following clashes with non-state armed groups. Nor do they occur incidentally as a consequence of generalized fighting in the area.</p> <p>In IHL, “military necessity” may justify “unavoidable” harm to</p>	<p>The entire community is singled out for attack; no additional protection is given to children, schools, clinics or related personnel.</p> <p>Because of past experiences in which civilians encountered by Tatmadaw troops have been shot on sight or arrested and later summarily executed, the entire community typically flees, as do adjacent settlements that also perceive the probability of attack to be high. This entails the closure of schools and medical facilities. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack.</p> <p>In cases where the threat of attack remains high, usually because the Tatmadaw establishes a new permanent position in the area, schools and clinics are permanently abandoned. In cases where the Tatmadaw vacates the area, civilians return and schools and clinics are reopened, sometimes in</p>

¹² For more information on self-protection strategies employed by communities seeking to avoid attacks, see *Self-protection under strain: Targeting of civilians and local responses in northern Karen State*, KHRG, August 2010.

¹³ Widespread commission of such acts prompted the International Committee of the Red Cross (ICRC) to take the unusual step of issuing a public statement to condemn Tatmadaw in violation of “many provisions of international humanitarian law.” See, “Myanmar: ICRC denounces major and repeated violations of international humanitarian law,” ICRC, June 29th 2007, News Release 82/07.

<p>includes schools and medical facilities.¹⁴</p> <p>Tatmadaw forces are not typically able to remain for extended periods of time in villages after attacks, because the positions are not defensible; non-state armed groups typically monitor Tatmadaw movements and ambush Tatmadaw units when they are in vulnerable locations, such as along exposed sections of road or when they enter villages, which are not typically fortified.</p> <p>Upon leaving, Tatmadaw forces sometimes leave unmarked landmines in the village or mutilated livestock, so the danger of injury or the smell of rotting carcasses makes it difficult for civilians to return to the area.</p> <p>These practices appear to be designed to drive civilian populations into areas where non-state armed groups cannot access them for support, following earlier government forced relocation campaigns. They typically occur in areas where Tatmadaw control is most precarious, terrain is difficult, roads are non-existent or barely navigable and Tatmadaw forces fear ambush by non-state armed groups. Such areas can be found in southern and northern Karen State, eastern Bago Division and eastern Tenasserim Division.</p> <p>As with Type 1 attacks, Type 2 attacks do not typically occur in response to a prior attack by NSAG forces. NSAGs have also not been documented making ground attacks, with the exception of areas in which the DKBA and KNLA are in conflict. In these areas, DKBA forces have sometimes adopted ‘counter insurgency’ methods akin those used by the Tatmadaw, though to a lesser degree.</p>	<p>civilians and civilian objects, but only if attacks are directed against a legitimate military objective; if use of force is proportional to the concrete and direct military advantage anticipated from the attack; and if all feasible precautions are taken to minimise civilian harm. Tatmadaw forces appear to treat all persons and objects within settlements targeted for ground attacks as legitimate objects of attack, violating the principle of distinction and IHL rules regarding civilian protection – and making evaluations of “military necessity” impossible.</p>	<p>a surprisingly short interval of time given the severity of the threat. That they are later reopened does not obviate the fact that the school, clinic or related personnel were threatened with an attack.</p>
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¹⁴ One incident of this type, in which 13 schools were abandoned and one clinic destroyed, has been verified and reported by the SRSR. See, Children and armed conflict: Report of the Secretary-General, A/65/820-S/2011/250, April 23rd 2011. Note that the report identifies these attacks as occurring in Ler Doh Township, Nyaunglebin District, Kayin State. Ler Doh and Nyaunglebin are township and district designations used by Karen organisations and the KNLA. On map used by Burma’s central government, the attack would be identified as occurring in eastern Bago Division or, following the implementation of the new constitution, Bago Region.

<p>Type 3: Foot patrols and shooting on sight Tatmadaw forces conduct foot patrols along roads or on forest paths. These patrols typically destroy civilian settlements or property, including property essential to the civilian population, when it is encountered. Civilians encountered by these patrols may be shot on sight or detained and subjected to interrogation, physical violence and/or summary execution. This includes personnel of schools and medical facilities.</p> <p>These practices appear to be designed to drive civilian populations into areas where non-state armed groups cannot access them for support, following earlier government forced relocation campaigns. They typically occur in areas where Tatmadaw control is most precarious, terrain is difficult, roads are non-existent or barely navigable and Tatmadaw forces fear ambush by non-state armed groups. Such areas can be found in northern Karen State, eastern Bago Division and eastern Tenasserim Division.</p> <p>As with Type 1 and Type 2 attacks, Type 3 attacks do not typically occur in response to a prior attack by NSAG forces. NSAGs have also not been documented conducting foot patrols and shooting civilians on sight, with the exception of areas in which DKBA and KNLA forces are in conflict. In these areas, DKBA forces have sometimes adopted ‘counter-insurgency’ methods akin to those used by the Tatmadaw, though to a lesser degree.</p>	<p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting indiscriminate attacks; prohibiting attacks against objects essential to survival of civilian population.</p> <p>The practice of shooting on sight precludes Tatmadaw forces from ascertaining whether individuals attacked are civilians or combatants. In some cases, Tatmadaw forces shoot on sight individuals whose non-combatant status is obvious, such as women carrying children or civilians working on agricultural projects.</p> <p>Shooting and destruction of civilian objects by foot patrols typically do not occur following clashes with non-state armed groups. Nor do they occur incidentally as a consequence of generalized fighting in the area.</p> <p>All shoot-on-sight attacks resulting in civilian injury or death contravene IHL because they entail that an attacker either knowingly attacks a civilian, or attacks an individual whose status has not been ascertained. Both courses of action preclude taking all feasible precautions to minimise civilian harm.</p>	<p>Any civilians encountered by patrols are shot on sight or detained; no additional protection is given to children, teachers or medical personnel.</p> <p>If a patrol encounters civilians, including children, the odds that they will be shot on sight and potentially killed are extremely high.</p> <p>Fortunately, the odds of Tatmadaw soldiers surprising civilians on patrols are low, chiefly because, after decades of living in this situation, communities are adept at avoiding Tatmadaw patrols. Also, the threat of ambush by non-state armed groups means that Tatmadaw patrols typically stick to areas they perceive to be ‘safe,’ which are conversely areas that civilians avoid.</p> <p>Because patrols may also precede ground attacks (Type 2), if a patrol enters an area near a settlement residents may flee if the threat of attack is perceived to be high. This entails the closure of schools and clinics. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack.</p>
<p>Type 4: Indiscriminate and “retaliation” attacks Tatmadaw forces sometimes respond to attacks by non-state armed groups on fixed positions such as military camps by returning fire indiscriminately, usually with mortars. Villages thought to be supporting non-state armed groups are also sometimes shelled as punishment for an attack by a non-state armed group launched from</p>	<p>Violation of principle of distinction and rules requiring protection of civilian population and objects; prohibiting attacks on civilian population and objects; prohibiting indiscriminate attacks.</p> <p>Some incidents, especially in southern and central Karen State, may be permissible within international humanitarian law on grounds of “military necessity”</p>	<p>The entire community is placed at risk by indiscriminate shelling, including children and protected personnel of schools and clinics. In cases where shelling is intense, prolonged or repeated, settlements are typically abandoned. This entails the closure of schools and clinics. It also entails children and protected personnel from schools and medical facilities fleeing to avoid attack or the threat of attack.</p>

<p>another location. Importantly, this may be preceded or followed by a warning transmitted verbally via messenger or face-to-face encounter between Tatmadaw commanders and villagers. This helps distinguish incidents of this type from incidents described in Type 1 above.</p> <p>These practices appear to be a defensive measure, designed to repel attacks or deter future attacks. These typically occur in both areas where Tatmadaw control is most precarious and where it is slightly stronger, but where attacks on fixed Tatmadaw positions are still possible. Such areas can be found across Karen State, eastern Bago Division and eastern Tenasserim Division. Since the DKBA began fighting the Tatmadaw following the 2010 election, these practices have been most commonly reported in southern and central Karen State.</p> <p>NSAG forces have also been documented indiscriminately firing mortars. This is especially the case in southern and central Karen State, where conflict between the Tatmadaw and units of the DKBA and KNLA has increased since November 2010. Both state and non-state parties to the conflict have also been documented indiscriminately using landmines, including in areas clearly of a civilian nature.</p>	<p>where mortars hitting civilian settlements and civilian objects are an incidental or “unavoidable” consequence of attacks directed against a legitimate military objective, adhering to the principle of proportionality, and in which all feasible precautions have been taken to minimise civilian harm.</p> <p>In many cases, however, the distance between civilian settlements and a military target – or the location of fighting – suggest that shelling is at best an indiscriminate attack that has not been directed at a specific military target.</p> <p>Where shelling is intentionally directed against known civilian settlements, as punishment for an attack by a non-state armed group, such attacks violate the principle of distinction and associated prohibitions on attacking civilians.</p> <p>In cases where non-state armed groups launch attacks from the vicinity or premises of a settlement, “military necessity” may justify a higher threshold of harm to civilians and civilian objects present in the settlement during a counter-attack. However, attacks entailing disproportionate uses of force, and which fail to take feasible precautions to avoid or minimise civilian harm, would remain prohibited.</p>	<p>However, unlike attacks in Type 1, Type 2 and Type 3, the civilian harm caused by Type 4 attacks may or may not be consistent with international humanitarian law, depending on “military necessity.” In cases where “military necessity” justifies an attack, even if a school, clinic or related personnel is harmed or threatened with harm, this may not necessarily be subject to monitoring pursuant to UNSCR 1882 and 1998. Further discussion of this interpretive issue can be found in Appendix 1.</p>
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Section III: Individual incidents

Table 2: Analysis of recent incidents

Recent Type 1 incidents	Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998
<p>Killing of child, February 2010, Papun District (Kayin State) (KHRG incident KM2 and A1¹⁵): Tatmadaw forces shelled the Tru Hta hiding site during February 2010. A mortar landed near a school during school hours, killing one student and injuring two others. The KHRG staff that visited the site to document the incident confirmed that the mortar attack was not a part of generalized fighting between the Tatmadaw and the KNLA, nor was it in response to a prior attack launched from the immediate area by KNLA forces.</p>	<p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by Tatmadaw forces that were “<i>in contravention of applicable international law.</i>”¹⁶</p> <p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that Tru Hta was a civilian hiding site and purposefully targeted it for attack; or (b) attacked indiscriminately. Attempts were not made to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian harm were not followed; civilians were not warned prior to attack of area. Civilians and combatants, and civilian and military objects were not distinguished in attack. “Military necessity” does not apply because attack was not against legitimate military target; no effort was made to ascertain civilian or military nature of target, or civilian nature of target was known; and feasible precautions were not taken to minimise civilian harm. The absence of an engagement with a non-state armed group in the area prior to the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack, and whether the shelling and resulting civilian harm was proportional to that anticipated advantage.</p>
Recent Type 2 incidents	Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998
<p>Threat of attack on protected personnel and school, May 2010, Mergui/Tavoy District (Tenasserim Division) (KHRG incident A14): Tatmadaw forces entered Kyat Yeh hiding site. Threat of attack on students, personnel and school was perceived to be credible, forcing teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces subsequently burned three civilian houses. According to the Backpack Health Worker Team (BPHWT), a mobile medic in the area also fled threat of attack. The KHRG staff that visited the attacked area and interviewed victims did not seek to confirm whether the Tatmadaw attack was part of generalized fighting or in response to a prior attack launched from the immediate area. Because the KNLA is not strong enough to repel a counter attack in that area, however, it is extremely unlikely that the group initiated an engagement.</p>	<p>Did attack violate relevant IHL? Yes. Tatmadaw forces entered Kyat Yeh on foot, so civilian nature of settlement and houses subsequently destroyed would have been apparent. Civilian objects were deliberately attacked and destroyed. “Military necessity” does not apply because civilian homes are not a legitimate military target. The likely absence of an engagement with a non-state armed group in the area prior to the attack also raises questions as to whether a concrete and direct military advantage was anticipated to arise from the destruction of civilian homes.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers and medic, who should be protected personnel, confirms that they felt

¹⁵ To enable systematic management of information, KHRG assigns temporary tracking numbers to incidents submitted for inclusion with the 1612 MRM. Further information on these individual incidents is available on request.

¹⁶ Paragraph 3, UN Security Council Resolution 1882, S/RES/1882, August 4th 2009.

	<p>threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{17,}</p> <ul style="list-style-type: none"> • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack.
<p>Attack on school and threat of attack on protected personnel, July 2010, Papun District (Kayin State) (KHRG incident A10): Tatmadaw forces shelled and then entered Tha Dah Der village. Threat of attack on students and personnel was perceived to be credible, forcing teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces subsequently burned the majority of structures in the village. During this incident, Tatmadaw soldiers attempted to burn the school, but were only able to partially damage it before leaving the area; after the attack, a burned pile of school benches and other flammable materials were found in the centre of the school building. However, flames did not spread from these objects to the rest of the building. The KHRG staff that visited the attacked area and interviewed victims confirmed that the attack was not a part of generalized fighting between the Tatmadaw and the KNLA, or in response to a prior attack launched from the immediate area by KNLA forces. Tatmadaw forces left a note to area residents explaining that the attack was prompted by a KNLA ambush that had occurred on an earlier occasion in a different location, along a road located well to the northeast of Tha Dah Der.</p>	<p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that Tha Dah Der was a civilian settlement and deliberately shelled it; or (b) indiscriminately shelled Tha Dah Der, without attempting to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian harm were not followed; civilians were not warned prior to attack of area. Soldiers on foot then knowingly attacked a civilian settlement and destroyed or attempted to destroy civilian objects, including objects essential to the survival of the civilian population. “Military necessity” does not apply because attacks were not against legitimate military targets. The absence of an engagement with a non-state armed group in the area prior to the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack, and whether the shelling and attacks on civilian objects were proportional to that anticipated advantage.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{18,} • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack. • Expectation that school would not be spared from attack was affirmed. Tatmadaw soldiers attempted to burn the school along with most other structures in the village, partially damaging the building and destroying other school materials in the process

¹⁷ Paragraph 3, Resolution 1998.

¹⁸ Paragraph 3, Resolution 1998.

<p>Threat of attack on protected personnel and school, October 2010, Papun District (Kayin State) (KHRG incident A15): Tatmadaw forces entered Lay Kaw Htih village. Threat of attack on students and personnel was perceived to be credible, forcing teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces shot into a home while a midwife was assisting a woman during childbirth, killing the mother and placing the midwife at risk. The KHRG staff that interviewed the husband of the victim did not seek to confirm whether the Tatmadaw attack was part of generalized fighting or in response to a prior attack launched from the immediate area. Because the KNLA is not strong enough to repel a counter attack in that area, however, it is extremely unlikely that the group initiated an engagement. Irrespective of whether Tatmadaw forces responded to a prior KNLA attack, however, military necessity did not justify firing into a civilian home without first ascertaining the presence of civilians and taking appropriate measures to avoid or minimise civilian harm.</p>	<p>Did attack violate relevant IHL? Yes. Tatmadaw forces entered Lay Kaw Htih on foot, so civilian nature of settlement would have been apparent. Forces fired on a civilian home, either: (a) with knowledge that civilians including a midwife were present inside, meaning soldiers deliberately attacked civilians; or (b) with knowledge that people were present inside, but without knowledge of whether they were civilians or combatants, meaning soldiers attacked indiscriminately, without verifying that persons in question were legitimate targets of attack. “Military necessity” does not apply because attacks were not against legitimate military targets; no effort was made to ascertain civilian or military nature of targets; and feasible precautions were not taken to minimise civilian harm. The likely absence of an engagement with a non-state armed group in the area prior to the attack also raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack on the civilian home, and whether that use of force was proportional to the anticipated advantage.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”¹⁹ • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack. • The midwife who remained in the village was directly exposed to an attack that killed the woman for whom she was providing care. The midwife was not accorded any special protection by attacking soldiers. That she was endangered in an attack affirms the credibility of the threat of attack against other protected persons and civilians, including teachers and children, who fled Lay Kaw Htih.
<p>Threat of attack on protected personnel and school, July 2010, Papun District (Kayin State) (KHRG incidents A11 and A12): Tatmadaw forces departed a nearby military camp and approached the immediate area of Tay Mu Der and Htee Shee Kee villages. Threat of attack on students and personnel in both villages was perceived to be credible, forcing teachers and</p>	<p>Did attack violate relevant IHL? Yes. See IHL analysis regarding attack on Tha Dah Der.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected

¹⁹ Paragraph 3, Resolution 1998.

<p>students to flee and two schools to be closed. Other residents fled as well. Tatmadaw forces subsequently burned the majority of structures in an adjacent village, Tha Dah Der. The KHRG staff that visited the attacked area and interviewed victims confirmed that the attack was not a part of generalized fighting between the Tatmadaw and the KNLA, or in response to a prior attack launched from the immediate area by KNLA forces.</p>	<p>personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{20,}</p> <ul style="list-style-type: none"> • Closure of the schools and abandonment of the premises by students and teachers confirms that civilians did not expect attacking Tatmadaw forces to accord schools any special protection from attack. This expectation was reasonable given that soldiers attempted to burn a school along with multiple other structures in a concurrent attack on nearby Tha Dah Der.
<p>Threat of attack on protected personnel and school, January 2011, Mergui/Tavoy District (Tenasserim Region) (KHRG incident A2): Tatmadaw forces entered Htee Poe Meh Gkeh village. Threat of attack on students and personnel was perceived to be credible, forcing one medic, teachers and students to flee and one school to be closed. Other residents fled as well. Tatmadaw forces burned civilian homes and a children’s boarding house. The KHRG staff that visited the attacked area and interviewed victims did not seek to confirm whether the Tatmadaw attack was part of generalized fighting or in response to a prior attack launched from the immediate area. Because the KNLA is not strong enough to repel a counter attack in that area, however, it is extremely unlikely that the group initiated an engagement.</p>	<p>Did attack violate relevant IHL? Yes. Tatmadaw forces entered Htee Poe Meh Gkeh on foot, so civilian nature of settlement and houses subsequently destroyed would have been apparent. Civilian objects were deliberately attacked and destroyed. “Military necessity” does not apply because civilian homes and the children’s boarding house are not legitimate military targets. The likely absence of an engagement with a non-state armed group in the area prior to the attack also raises questions as to whether a concrete and direct military advantage was anticipated to arise from the destruction of civilian homes.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by the medic and teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{21,} • Closure of the school and abandonment of the premises by students and teachers confirms that civilians did not expect Tatmadaw forces attacking the settlement to accord it any special protection from attack. • Expectation that educational facilities would not be spared from attack was affirmed. Tatmadaw forces burned a children’s boarding house along with other civilian objects.
<p>Threat of attack on personnel and schools, February 2011, Papun District (Karen State) (KHRG incidents A4, A5, A7, A8, and A16): Tatmadaw forces shelled and then entered an area containing 14 villages in Plah Koh, Ler Muh Bplaw and Saw Muh Bplaw village tracts. Threat of attack on students and personnel was perceived to be credible, forcing teachers and students to flee and</p>	<p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that the area in question contained multiple civilian settlements and deliberately shelled it; or (b) indiscriminately shelled a wide area, without attempting to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian</p>

²⁰ Paragraph 3, Resolution 1998.

²¹ Paragraph 3, Resolution 1998.

<p>six schools in two villages to be closed. Tatmadaw forces destroyed civilian homes, food storage barns, agricultural equipment and agricultural projects. KHRG staff present during the attack confirmed that the attack was not a part of generalized fighting between the Tatmadaw and the KNLA, or in response to a prior attack launched from the immediate area by KNLA forces.</p>	<p>harm were not followed; civilians were not warned prior to attack of area. Soldiers on foot then knowingly attacked a civilian settlement and destroyed or attempted to destroy civilian objects, including objects essential to the survival of the civilian population. “Military necessity” does not apply because attacks were not against legitimate military targets. The absence of an engagement with a non-state armed group in the area prior to the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack, and whether the shelling and attacks on civilian objects were proportional to that anticipated advantage.</p> <p>Did attack (a) kill or threaten to kill personnel related to schools or hospitals or (b) destroy, damage, or force closure of a school or medical facility? Yes.</p> <ul style="list-style-type: none"> • Flight by teachers, who should be protected personnel, confirms that they felt threatened with an attack on their person. This meets the requirement laid forth in Paragraph 3 of UNSCR 1998, which requires monitoring of “<i>threats of attacks against protected persons in relation to schools and/or hospitals.</i>”^{22,} • Closure of the six schools and abandonment of the premises by students and teachers confirms that civilians did not expect attacking Tatmadaw forces to accord schools any special protection from attack.
<p>Recent Type 3 incidents</p>	<p>Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998</p>
<p>Maiming of child, June 2009, Papun District (Karen State) (KHRG incident KM1): A DKBA foot patrol fired small arms, mortars and rocket propelled grenades into an isolated civilian house near a farm field in the Maw Ler Kee village area. One child was maimed, one adult was killed and two adults were injured. DKBA forces did not first seek to ascertain whether civilians or combatants occupied the house. After an initial round of fire, DKBA forces sent a scout to check on the occupants of the home. After this scout informed the unit that civilians occupied the home, and that the civilians were still alive, DKBA forces then resumed firing.</p>	<p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by parties to conflict that were “<i>in contravention of applicable international law.</i>”²³</p> <p>Did attack violate relevant IHL? Yes. The DKBA patrol was on foot, so the civilian nature of the house would have been apparent or feasible to ascertain. Forces fired on the civilian home, either: (a) with knowledge that civilians including a child were present inside, meaning soldiers deliberately attacked civilians; or (b) with knowledge that people were present inside, but without knowledge of whether they were civilians or combatants, meaning soldiers attacked indiscriminately, without verifying that persons in question were legitimate targets of attack. A second deliberate attack was carried out, with knowledge that civilians including were being attacked. “Military necessity” does not apply because attacks were not against legitimate military targets; no effort was made to ascertain civilian or military nature of targets or the civilian nature of targets was known; and feasible precautions were not taken to minimise civilian</p>

²² Paragraph 3, Resolution 1998.

²³ Paragraph 3, UN Security Council Resolution 1882, S/RES/1882, August 4th 2009.

	harm.
<p>Killing of children, March 2010, Nyaunglebin District (Bago Region) (KHRG incident KM6): A Tatmadaw foot patrol encountered two women and two children as they walked along a forest path towards Kaw Hta village. One five-year-old child and one five-month-old baby were shot and killed; the mother of the children was injured and the other woman was killed. No soldiers from non-state armed groups were present at the time and the shots were not fired at other legitimate military targets; they were fired directly at the women and children.</p>	<p>UNSCR 1882 requires reporting of this incident if a child was killed or maimed as a result of actions by parties to conflict that were “<i>in contravention of applicable international law.</i>”²⁴</p> <p>Did attack violate relevant IHL? Yes. The Tatmadaw patrol was on foot, so that the individuals to be attacked were civilians including children, and not combatants, would have been apparent. Forces deliberately attacked the group of civilians in violation of the principle of distinction and associated rules of IHL requiring the protection of civilians, including the requirement to take all feasible precautions to minimise civilian harm. “Military necessity” does not apply because attacks were not against legitimate military targets; the civilian nature of the targets was known; and feasible precautions were not taken to minimise civilian harm.</p>
Recent Type 4 incidents	Relevance for monitoring and reporting pursuant to UNSCRs 1612, 1882 and 1998
<p>Maiming of child, February 2011, Dooplaya District (Karen State) (KHRG incident KM5): One seven-year-old girl was injured by a landmine while travelling with her father to check on their home village, which they had earlier fled to avoid the threat of generalised fighting between the Tatmadaw and units of the DKBA and KNLA. The girl was injured by the mine along a footpath near the village. KHRG could not confirm which party placed the landmine, however all three parties to conflict in that area are known to employ landmines.</p>	<p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by Tatmadaw forces that were “<i>in contravention of applicable international law.</i>”²⁵ The preamble of resolution all raises special concern regarding “<i>indiscriminate use of landmines.</i>”</p> <p>Did attack violate relevant IHL? Yes. Although it is not known which party to conflict placed the mine, the landmine was unmarked and placed in a civilian area. Use of an indiscriminate weapon in an area in which civilians may be expected to travel, and failing to mark or warn civilians in the area of the location of the mine, precludes parties to a conflict from adhering to the principle of distinction and associated rules of IHL regarding the protection of civilians, particularly the requirement to take all feasible precautions to minimise civilian harm.</p>
<p>Killing of child, June 2011, Dooplaya District (Karen State) (KHRG incident KM3): Tatmadaw forces repelling an attack on their hilltop camp shelled a wide area behind the position from which DKBA forces were making an attack. Mortars fired by the Tatmadaw landed in at least three villages in the surrounding area. None of these villages were being used by DKBA forces to launch attacks. Tatmadaw mortars killed one seven-year-old child and injured a 17-year-old teenager. The children were in a location five kilometres from the Tatmadaw position.</p>	<p>UNSCR 1882 requires reporting of this incident if a child was maimed as a result of actions by Tatmadaw forces that were “<i>in contravention of applicable international law.</i>”²⁶</p> <p>Did attack violate relevant IHL? Yes. Tatmadaw forces either (a) knew that the area in question contained multiple civilian settlements and deliberately shelled it; or (b) indiscriminately shelled a wide area, without attempting to ascertain civilian presence and civilian/military nature of targets prior to shelling. Rules requiring exercise of all feasible precautions to avoid or minimise civilian harm were not followed; civilians were not warned prior to attack of area. “Military necessity” likely</p>

²⁴ Paragraph 3, UN Security Council Resolution 1882, S/RES/1882, August 4th 2009.

²⁵ Paragraph 3, UN Security Council Resolution 1882, S/RES/1882, August 4th 2009.

²⁶ Paragraph 3, UN Security Council Resolution 1882, S/RES/1882, August 4th 2009.

	<p>does not apply because attack was not against legitimate military targets; no effort was made to ascertain civilian or military nature of targets, or civilian nature of targets was known; and feasible precautions were not taken to minimise civilian harm. The occurrence of an engagement with a non-state armed group in the area during the attack raises questions as to whether a concrete and direct military advantage was anticipated to arise from the attack – for example, termination of the attack – and whether the shelling and resulting civilian harm was proportional to that anticipated advantage. In this incident, the geographic separation of the area shelled and the actual location of the DKBA-Tatmadaw clash, as well as the failure by Tatmadaw forces to ascertain civilian presence in order to take measures to minimise civilian harm or draw a conclusion as to whether an attack would be proportional, make an argument of “military necessity” tenuous.</p>
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Appendix 1: Legal basis for monitoring pursuant to UNSCR 1998

Monitoring of attacks on schools, hospitals and related personnel pursuant to UNSCRs 1612 and 1998 should include acts by parties to armed conflict that both:

- A) Violate relevant international law *and*;
- B) Attack or threaten to attack personnel related to schools or medical facilities *and/ or* destroy, damage or force the closure of a school or medical facility.

Paragraph 3 of UNSCR 1998 requests the SG to prepare an annex to his next global CAC report listing parties that, “*in contravention of applicable international law,*” commit “*recurrent attacks on schools and/or hospitals*” or “*recurrent attacks or threats of attacks against protected persons in relation to schools and/or hospitals.*” That this paragraph explicitly requests listing of parties to conflict that attack or threaten to attack personnel offers clear guidance with regard to monitoring and reporting of attacks in the context of eastern Burma: in eastern Burma, attacks and threats of attacks on schools, clinics and related personnel are inseparable from one another. Clinics and schools are closed when teachers, medics and the surrounding civilian community feel the protected personnel, as well as their students or patients, are under threat of attack. Tatmadaw forces may subsequently damage or destroy clinics and schools, but whether or not a given school or clinic is specifically damaged or destroyed has no bearing on whether protected personnel felt threatened with attacks on their person. Further details of attacks of this nature can be found under Type 1, Type 2 and Type 3 attacks described in Table 1 above.

Paragraph 4 of UNSCR 1998, which requests the Secretary General to monitor and report on attacks, provides additional guidance. It begins by explicitly urging parties to conflict to refrain from “*actions that impede children’s access to education and to health services.*”²⁷ This makes clear that the baseline criteria for judging whether a party to conflict’s actions should be monitored, is whether or not those actions impede access to education and to health. This in turn indicates that, rather than make the central question of monitoring whether or not schools, hospitals or related personnel were singled out for attack, the issue must be whether or not access to health or education for children has been impeded. Indeed, this is the underlying rationale for inclusion of attacks on related personnel within monitoring pursuant to the resolution: personnel related to schools and hospitals are only relevant to the Security Council’s CAC agenda insofar as they are necessary for children to be able to access education and health. While the remainder of Paragraph 4 identifies two particular issues to be monitored, the paragraphs’ use of the phrase “*inter alia*” unequivocally indicates that a broader range of actions that impede children’s access to education and health should be monitored under the resolution.

Because the two issues flagged for monitoring in Paragraph 4 are listed “*inter alia*” they, by definition, form part of a non-exhaustive list relating to impediment of access to education and health. It is therefore helpful to consider the spirit and purpose of UNSCR 1998 when determining more broadly what types of attacks should be monitored and reported upon. The text of the resolution makes clear from the outset that both attacks and the threat of attacks on schools and related personnel, and particularly cases which result in the closure of a school or hospital, were priority issues of concern when the Security Council drafted the resolution. The preamble of UNSCR 1998 expressed “*deep concern*” regarding “*attacks as well as threats of attacks in contravention of applicable international law against schools and/ or hospitals, and protected persons in relation to them.*” The same paragraph of the preamble expressed the same concern regarding “*closure of schools and hospitals... as a result of attacks and threats of attacks.*”

The above interpretation would not expand the scope of monitoring under UNSCR 1998 beyond issues relevant to the Security Council’s CAC agenda. The Security Council’s emphasis on

²⁷ Resolution 1998, S/RES/1998, July 12th 2011.

attacks that occur “*in contravention of applicable international law*” would limit out those incidents in which schools or hospitals are destroyed, damaged or forced to close as a result of lawful military practices, such as harm or threat of harm resulting from lawful armed engagements between two parties or some acts described under Type 4 in Table 1 above. It would also limit out incidents in which schools have to close as a result of some types of ‘forced displacement,’ unless the method by which the community was displaced is also an “*attack*” in violation of “*relevant international law,*” as phrased in Paragraph 3 of UNSCR 1998. Schools closed because a population fled due to generalized threats resulting from lawful combat between two parties to conflict, for example, would not be monitored; such a context is clearly distinct from incidents in which a single party to a conflict seeks to attack a given civilian population and, as a part of this unlawful attack, fails to accord protection to schools, clinics or related personnel. That some incidents of this latter type could *also* be described as forced displacement is immaterial to an assessment of whether protected personnel were threatened with attacks on their person or whether education or health services were interrupted, and should not disqualify them from monitoring pursuant to UNSCRs 1612 and 1998. It is clear that all incidents of forced displacement should not be included in monitoring pursuant to the resolutions, however all incidents that meet the narrow requirements set forth by the resolutions should be monitored and reported on.

Monitoring pursuant to UNSCR 1998 should also clearly include attacks which force “*protected persons*” such as teachers or medics to flee to avoid attack or the threat of attack. That such an attack or threat of attack may *also* have placed other civilians at similar risks does not negate the risk to protected personnel. The decisive factor in whether to report a given incident should not be whether the attack *singled out* medics and teachers, but whether parties to conflict *failed to respect their status as protected persons*. In the incidents recently submitted by KHRG, for example, Tatmadaw forces clearly failed to meet this responsibility. Ultimately, the question could be posed thus: during attacks on civilian settlements by Tatmadaw units in Karen State, Bago Division and Tenasserim Division, could teachers or medics remain behind in their schools and clinics and expect remain protected from attack – a protection which all other civilians who fled the threat of attack could not expect to receive? The fact that teachers or medics feel sufficiently threatened to compel flight, along with other civilians, unequivocally indicates that the answer is in the negative.

Indeed, while waiting his turn to be interviewed by UNICEF on September 2nd 2011, one school principal from Karen State described sitting in his school and listening on a short-wave radio as Tatmadaw soldiers coordinated their attack on his village during July 2010. Residents of his village, Tha Dah Der, and teachers, students and residents of two other villages nearby had been going into hiding as early as three days prior, but he told KHRG that he had wanted to remain behind as long as it was safe. He was the principal, after all; the school was his responsibility. All morning, he described listening to Tatmadaw soldiers on his radio. “*The situation was too hot,*” he said, “*so they did not have time to speak in their code.*” At 12 pm, mortars started landing nearby. Concluding that Tatmadaw soldiers would soon follow on foot, he fled, not wanting to be shot. By the next morning, Tatmadaw soldiers had burned nearly all of the houses in the village. They had also tried and failed to burn the school but, only partially damaging it, scrawled obscenities on the blackboard and left. The school principal was not killed, nor were any of the other teachers. The school was not singled out for destruction; nor was it given any special protection as Tatmadaw soldiers attempted to destroy nearly every major structure in the village. Villagers rebuilt their homes nearby, and a second school building that escaped unscathed because it was built in another location was eventually expanded to accommodate students who had previously studied in the damaged building. No interpretation of UNSCR 1998 should be so narrow or semantic as to mean that such an incident is excluded from monitoring and reporting for the Security Council.²⁸

²⁸ Further analysis of this incident can be found in the incident description accompanying explanation of Type 2 attacks in Table 1 above.

To exclude from monitoring an attack such as that on Tha Dah Der because the party to conflict did not single out the school for attack is inconsistent with letter and spirit of UNSCR 1998. To do so would be tantamount to absolving the party to conflict from responsibility for attacking schools or clinics or threatening to attack related personnel, simply because its forces *also* attacked other civilians and civilian objects. To make the bright line whether the school or personnel is *singled out* from other targets, then, raises the bar too high to be useful for child protection purposes. This would require evidence of mental intent to specifically attack a school or personnel in order to include an incident in monitoring, rather than simply evidence that a school or personnel was unlawfully attacked or threatened with unlawful attack.

Moreover, limiting monitoring and reporting only to incidents in which parties to conflict can be shown clearly to have intended to *single out* schools, hospitals or related personnel could, perversely, *encourage* parties to conflict to attack other civilian targets near schools or hospitals as a method for obscuring their intent, by making it difficult to determine whether they intended to attack the school/clinic or whether they intended to attack the entire civilian community. In such a circumstance a party to conflict could violate international humanitarian law by attacking a school and/or clinic, yet nonetheless be shielded from monitoring or listing under UNSCR 1998. This is clearly counter to the spirit of UNSCR 1998 and the entire Security Council CAC agenda.

That an attack or threat of attack on a school, clinic or related personnel also included a similar attack or threat of attack against the civilian population in a given location should thus not be interpreted as a reason to *exclude* the attack from monitoring pursuant to UNSCRs 1612 and 1998. Instead, attacks or threats of attacks on other civilians or civilian objectives should be taken to confirm the unlawful nature of a given attack. Once the attack has been ascertained to have been unlawful or potentially unlawful, the question should then be whether the attack destroyed, damaged or forced the closure of a school or clinic, or directly attacked or threatened to attack personnel related to schools or clinics. Analysis in the table included in Appendix 2 provides assessments according to these guidelines of individual cases submitted for monitoring pursuant to UNSCRs 1612 and 1998.

Two further issues regarding monitoring and reporting requirements must be addressed. First, incidents in which schools or clinics are closed, but not damaged or destroyed, should also be monitored and reported pursuant to UNSCRs 1612 and 1998. (A) Such attacks impede children's access to education or health, which is clearly the issue central to UNSCR 1998; children fleeing because their entire village, and its inhabitants including teachers and medics, are under threat of attack can neither attend school nor receive proper medical care. Whether the school or clinic they left behind remains standing has no practical consequence for them, and does not change the fact that their access to education or health was impeded. (B) Such attacks also typically entail threat of attack on personnel related to schools and clinics. This is evidenced by the fact that teachers and medics flee from attacks along with other members of the civilian population.

Second, while cases in which schools or clinics are completely destroyed or permanently closed are comparatively more serious than incidents in which schools or clinics are reopened after an attack, the duration of a school or clinic closure should have no bearing on whether an individual incident is monitored and reported upon pursuant to UNSCRs 1612 and 1998. (A) Legally, the duration of school closure does not affect assessments of whether or not an unlawful attack has occurred. If parties to conflict violate international humanitarian law and attack a school, clinic or attack or threaten to attack related personnel, on this basis alone the case should be reported. At minimum, unlawful attacks on civilians that result in the closure of schools and clinics should be taken as additional confirmation of a related threat of attack on teachers and medics. (B) It is imperative that monitoring pursuant to UNSCR 1998 reports information that enables the Security Council to accurately assess trends. While an individual incident of short-

term threat of attack on protected personnel or short-term closure of schools or clinics may in isolation appear insignificant, effective trends analysis requires clear information that indicates whether such short-term closures occur frequently. This is particularly important given that UNSCR 1998 specifically seeks to establish whether attacks are “*recurrent*.”²⁹ Existing gaps in information gathered by the 1612 MRM on this issue to date magnify the importance of this last concern.

(C) Finally, while an individual incident in which a school or clinic is closed for a short period of time may not appear serious when taken in isolation, the cumulative effect of repeated short-term closures has severe consequences for children’s health and education. The KHRG researcher that visited the Kyat Yeh area in Tenasserim Division, where teachers and students fled a threat of attack by Tatmadaw forces in May 2010, noted obstacles to education, including the fact that the number of teachers in the school had halved since 2009, as the result of fears of attacks and repeated short-term closures of the school resulting from attacks or the threats of attacks.³⁰ Ultimately, determination of the ‘seriousness’ of a given incident is inherently subjective and cannot be effectively made in isolation. Such an assessment should only be made after the gathering of a data set sufficiently large to determine whether a trend exists or does not exist, and whether or not a large number of individually ‘non-serious’ incidents are serious when aggregated. Given that UN staff attempting to monitor and report on grave violations of children’s rights are currently prohibited from accessing conflict areas in eastern Burma, it is clear that such a data set cannot yet have been gathered.

Finally, choosing to ignore individual incidents and exclude them from reporting because of semantic distinctions related to the intent of a given attack, arbitrary criteria such as the duration of a school closure, or subjective criteria such as the seriousness of an attack would at this juncture be particularly damaging to the Security Council’s ability to identify trends. Research by KHRG and other organisations, which are able to directly access and maintain programs in conflict areas in eastern Burma, indicates that attacks or threats of attack which force both short and long-term closures of schools and clinics are recurrent. Of the 27 incidents of killing or maiming, attacks on schools, hospitals or related personnel, 13 entailed, among other abuses of children’s rights, the permanent or temporary closure of at least 15 schools. Importantly, this data represents an extremely short timeframe and the effort of one single local organisation, operating in an exceedingly dangerous geographic area, to which no UN staff has ever travelled. Many, many more such incidents occurred that could not be documented. Monitoring and reporting pursuant to UNSCRs 1612 and 1998 needs to be approached from the perspective that as much accurate information as possible should be forwarded to the Security Council so that it can make its own authoritative evaluation.

²⁹ See, Paragraph 4, Resolution 1998.

³⁰ Further analysis of this incident can be found in the incident description accompanying explanation of Type 2 attacks in Table 2 above.