

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE

NATIONAL PROSECUTION SERVICES
PADRE FAURA, MANILA



—versus—

SR. GEN. MIN AUNG HLAING, DR.
VUNG SUAN THANG, LT.
GEN. MIN NAING, LT. GEN. TAY
ZAR KYAW, MAJOR GEN. PHYO
THANT, MAJOR GEN. THAN
HTIKE, BRIG. GEN. MYO HTUT
HLAING, COL. SAW TUN, LT. COL.
MYO ZIN TUN, MAJOR NAY MYO
OO,

Respondents.


NPS DOCKET NO. _____
FOR: WAR CRIMES UNDER
SECTION 4(B)(1), SECTION
4(C)(10), SECTION 4(C)(2),
SECTION 4(C)(7), AND
SECTION 4(C)(21) OF
REPUBLIC ACT NO. 9851
OR THE "PHILIPPINE ACT
ON CRIMES AGAINST
INTERNATIONAL
HUMANITARIAN LAW,
GENOCIDE, AND OTHER
CRIMES AGAINST
HUMANITY"

X-----X

JOINT
CRIMINAL COMPLAINT-AFFIDAVIT

Do not deprive the foreigner or the fatherless of justice....

- Deuteronomy 24:17a (NIV)

, all of
legal age, natives of Chin State, Myanmar, and who are filing this Joint
Criminal Complaint-Affidavit under the principle of Mandatory Universal

¹“Mai” is a title of respect for a woman in the Chin language. “Mai” is synonymous to “Mrs.” in English.

²“Salai” is a title of respect for a man in the Chin language. “Salai” is synonymous to “Mr.” in English.

Jurisdiction incorporated in Section 17,³ Section 2(e),⁴ and Section 9⁵ of Republic Act No. 9851 or the “PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY,” do hereby state under oath that:

INTRODUCTION

Consistent with Rule 112 of the Revised Rules of Criminal Procedure and for the easy reference of this Honorable Office, this Joint Complaint-Affidavit is composed of the following six (6) parts:

II. PERSONAL CIRCUMSTANCES OF THE COMPLAINANTS

III. PERSONAL CIRCUMSTANCES OF THE RESPONDENTS

IV. PHILIPPINE LAW AND JURISPRUDENCE PROVIDE FOR MANDATORY UNIVERSAL JURISDICTION OVER WAR CRIMES THAT CONSTITUTE SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW OR ARE SERIOUS INTERNATIONAL CRIMES THAT ARE A CONCERN FOR THE INTERNATIONAL COMMUNITY

V. CONTEXT OF THE WAR CRIMES: THE NON-INTERNATIONAL ARMED CONFLICT IN CHIN STATE, MYANMAR, AND THE “FOUR-CUTS” MILITARY STRATEGY AND TACTICS BY THE MYANMAR MILITARY AGAINST THE PEOPLE OF CHIN STATE, MYANMAR THE WAR CRIMES

³**SEC. 17. Jurisdiction.** – The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

- (a) The accused is a Filipino citizen;
- (b) The accused, regardless of citizenship or residence, is present in the Philippines; or
- (c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence. IHL Act, Official Gazette online: <https://www.officialgazette.gov.ph/2009/12/11/republic-act-no-9851/> [IHL Act]

⁴**SEC. 2. Declaration of Principles and State Policies.** –

(e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;

⁵**SEC. 9. Irrelevance of Official Capacity.** –

This Act shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. However:

- (a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising its jurisdiction over such a person; and
- (b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law.

FOR WHICH RESPONDENTS ARE CHARGED IN THIS JOINT COMPLAINT-AFFIDAVIT

VI. THE WAR CRIMES FOR WHICH RESPONDENTS ARE CHARGED IN THIS JOINT COMPLAINT-AFFIDAVIT

A. COMPLAINANT [REDACTED], WITH THE REST OF THE COMPLAINANTS, CHARGE RESPONDENTS *THUS: THE NEPHEW OF COMPLAINANT PASTOR NGUN THAWNG LIAN – PASTOR CUNG BIAK HUM – WAS WILLFULLY KILLED, AND HIS FINGER MUTILATED, BY SOLDIERS OF THE MYANMAR MILITARY ON SEPTEMBER 18, 2021 IN THANGLANG, CHIN STATE, MYANMAR.*

THIS IS A WAR CRIME IN VIOLATION OF SECTION 4(B)(1) OF R.A. 9851.

B. COMPLAINANT [REDACTED] TOGETHER WITH THE REST OF THE COMPLAINANTS, CHARGE RESPONDENTS *THUS: THE FATHER OF COMPLAINANT [REDACTED], CHURCH ELDER PU RAL TU, AND HER FATHER’S FRIEND, CHURCH ELDER PU HRAM CUNG, WERE WILLFULLY KILLED WHEN THEY WERE SHOT TO DEATH ON SEPTEMBER 29, 2021 BY MEMBERS OF THE MYANMAR MILITARY UNDER THE COMMAND OF RESPONDENTS.*

THIS IS A WAR CRIME IN VIOLATION OF SECTION 4(B)(1) OF R.A. 9851.

C. COMPLAINANTS CHARGE THE RESPONDENTS *THUS: INTENTIONALLY DIRECTING ATTACKS AGAINST BUILDINGS DEDICATED TO RELIGION, SPECIFICALLY CHRISTIAN CHURCHES, ON MULTIPLE DATES FROM AUGUST 2021 UNTIL JUNE 2022.*

THESE ARE WAR CRIMES IN VIOLATION OF SECTION 4(C)(10) OF R.A. 9851.

D. COMPLAINANTS CHARGE RESPONDENTS *THUS: INTENTIONALLY DIRECTING ATTACKS AGAINST CIVILIAN OBJECTS, BY SPECIFICALLY BURNING CIVILIAN HOUSES, ON MULTIPLE DATES FROM AUGUST 2021 UNTIL JUNE 2022.*

THESE ARE WAR CRIMES IN VIOLATION OF SECTION 4(C)(2) AND SECTION 4(C)(7) OF R.A. 9851.

E. COMPLAINANTS CHARGE RESPONDENTS *THUS: INTENTIONALLY USING STARVATION OF CIVILIANS OF CHIN STATE, MYANMAR IN THE AFTERMATH OF THE MAY 2023 CYCLONE MOCHA, AS A METHOD OF WARFARE BY DEPRIVING THEM OF OBJECTS INDISPENSABLE TO THEIR SURVIVAL, INCLUDING WILLFULLY IMPEDING RELIEF SUPPLIES AS*

**PROVIDED FOR UNDER THE GENEVA CONVENTIONS AND THEIR
ADDITIONAL PROTOCOLS.**

THIS IS A WAR CRIME IN VIOLATION OF SECTION 4(C)(21) OF R.A. 9851.

**VII. UNDER SECTION 9 OF RA 9851, RESPONDENTS WHO ARE
INDIVIDUALLY CRIMINALLY RESPONSIBLE FOR THE WAR CRIMES ARE
NOT COVERED BY PROCEDURAL IMMUNITY.**

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II. PERSONAL CIRCUMSTANCES OF THE COMPLAINANTS

1. [REDACTED] but who, due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in Canada. She is the daughter of Baptist church Elder Pu Ral Tu, who was shot to death and intentionally killed on September 29, 2021 by officers and soldiers of the Tatmadaw. She may be served with pleadings, notices, orders, and other legal processes of this Honorable Office through her counsel.

2. [REDACTED] is male, of legal age, and is a native of Chin State, Myanmar, but who due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in Melbourne, Australia. His house in Thantlang, Chin State, Myanmar was burned by officers and soldiers members of the Tatmadaw. His nephew, **Pastor Cung Biak Hum**, was willfully killed and his finger mutilated by officers and soldiers of the Tatmadaw on September 18, 2021 in Thantlang, Chin State, Myanmar. He may be served with pleadings, notices, orders, and other legal processes of this Honorable Office through counsel.

3. [REDACTED] male, of legal age, and is a native of Chin State, Myanmar, but who, due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in London, United Kingdom. His house in Thantlang, Chin State, Myanmar was burned down by officers and soldiers of the Tatmadaw. He may be served with pleadings, notices, orders, and other legal processes of this Honorable Office through her counsel.

4. [REDACTED] is male, of legal age, and is a native of Chin State, Myanmar but who, due to the adverse acts of the Myanmar military against the people of Chin State, is constrained to reside in Australia. His house in Thantlang, Chin State, Myanmar was burned by officers and soldiers of the Tatmadaw. He may be served with pleadings, notices, orders, and other legal processes of this Honorable Office through her counsel.

5. [REDACTED] male, of legal age, and is a native of Chin State, Myanmar but who due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in Aizawl, India. His house in Thantlang, Chin State, Myanmar was burned by officers and soldiers of the Tatmadaw. He may be served with pleadings, notices, orders, and other legal processes of this Honorable Office through her counsel.

6. The **COMPLAINANTS** may be served with subpoenas, pleadings, notices, orders, and other legal processes of this Honorable Office through their counsel Atty. Romel Regalado Bagares and Atty. Gilbert Teruel Andres with address c/o the [REDACTED].

III. PERSONAL CIRCUMSTANCES OF THE RESPONDENTS

7. **SR. GEN. MIN AUNG HLAING**, is of legal age, a Myanmar citizen, and residing at the capital in Naypidaw, Myanmar. He is the chairman of the State Administration Council, Commander-In-Chief of the Myanmar Defence Services, and the Commander-In Chief of the Myanmar Military known as the Tatmadaw.

8. **DR. VUNG SUAN THANG**, is of legal age, a Myanmar citizen, and residing in Hakha, which is the state capital of Chin State, Myanmar. He is Chief Minister of Chin State, is formerly a military officer under the Myanmar military and is the Myanmar military's highest appointed state official government for Chin State and has ultimate responsibility for Chin State.

9. **LT. GEN. MIN NAING**, is of legal age, a Myanmar citizen, and residing at the capital in Naypidaw, Myanmar. He is the Chair of the Cyclone Mocha Emergency Response in Chin State and has ultimate responsibility for the Myanmar military's actions with respect to the Cyclone Mocha Emergency Response in Chin State.

10. **LT. GEN. TAY ZAR KYAW**, is of legal age, a Myanmar citizen, and residing at the capital in Naypidaw, Myanmar. He is the Myanmar military's Chief of Bureau of Special Operations 1 who has command over three (3) regional military commands:

- a) North Western Regional Military Command;
- b) Northern Regional Military Command; and
- c) Central Regional Military Command.

11. **MAJOR GEN. PHYO THANT**, is of legal age, a Myanmar citizen, and residing at Monywa, Sagaing Region, Myanmar. He was the Commanding General of the North Western Regional Military Command which is based on Monywa, Sagaing Region, Myanmar, until he was replaced by Major Gen. Than Htike since January 2022.

12. **MAJOR GEN. THAN HTIKE**, is of legal age, a Myanmar citizen, and residing at Monywa, Sagaing Region, Myanmar. Sometime on January 2022, he replaced Major Gen. Phyo Thant as the Commanding General of the North Western Regional Military Command which is based on Monywa, Sagaing Region, Myanmar.

13. **BRIG. GEN. MYO HTUT HLAING**, is of legal age, a Myanmar citizen, and residing at Hakha, Chin State, Myanmar. He is the Deputy Commanding General of the North Western Regional Military Command.

14. **COL. SAWTUN**, is of legal age, a Myanmar citizen, and residing at Hakha, Chin State, Myanmar. He is the Tactical Operations Commander

of the Myanmar Light Infantry Battalion No. 266 (“LIB 266”) which is based in the capital of Chin State in Hakkha. He has ultimate command responsibility over the Myanmar Light Infantry Battalion No. 269 which is based in Thantlang town, in Chin State, Myanmar.

15. **LT. COL. MYO ZIN TUN**, is of legal age, a Myanmar citizen, and residing at Thantlang, Chin State, Myanmar. He is the Thantlang Camp Commander with seventeen (17) soldiers under his command. He is the Commander of the Myanmar Light Infantry Battalion No. 269 (“LIB 269”) which has been the Myanmar military unit historically stationed in Thantlang town, in Chin State, Myanmar. He is the over-all military commander of all military units stationed in Thantlang town.

16. **MAJOR NAY MYO OO**, is of legal age, a Myanmar citizen, and residing at Homalin Town, Hkamti District, Sagaing Region. He is the Column Commander of the Light Infantry Battalion No. 222 (“LIB 222”) which is a reinforcement battalion to the LIB 269 which is already based in Thantlang, Chin State, Myanmar. He and his LIB 222 arrived in Thantlang on or about August 24, 2021. He has eighty-seven (87) soldiers under his column command.

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SERVICE OF PROCESS TO THE RESPONDENTS

17. All the **RESPONDENTS**, by virtue of Article 1⁶ vis-à-vis Article 4⁷ of the **ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN “TMLACM”)**, of which the Philippines and Myanmar are both state-parties to, may be served with subpoenas, pleadings, notices, orders, and other legal processes of this Honorable Office through the following means:

(a) Under Article 4(4)⁸ of the ASEAN TMLACM, from the Philippine Department of Justice (as the Philippine Central Authority) directly to the Myanmar Central Authority for Mutual Assistance in Criminal Matters Law (as the Myanmar Central Authority created by the

⁶ ARTICLE 1

SCOPE OF ASSISTANCE

1. **The Parties shall**, in accordance with this Treaty and subject to their respective domestic laws, **render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.** *(Emphasis and underscoring supplied)*

2. Mutual assistance to be rendered in accordance with this Treaty may include:

(a) taking of evidence or obtaining voluntary statements from persons;

(b) making arrangements for persons to give evidence or to assist in criminal matters;

(c) effecting service of judicial documents;

(d) executing searches and seizures;

(e) examining objects and sites;

(f) providing original or certified copies of relevant documents, records and items of evidence; (g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime;

(h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;

(i) the recovery, forfeiture or confiscation of property derived from the commission of an offence;

j) locating and identifying witnesses and suspects; and

(k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party. *(Emphasis and underscoring supplied)*

3. This Treaty applies solely to the provision of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

4. For the purposes of this Treaty, the expression "instrumentalities of crime" means property used in connection with the commission of an offence or the equivalent value of such property.

⁷ ARTICLE 4

DESIGNATION OF CENTRAL AUTHORITIES

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. The designation of the Central Authority shall be made at the time of the deposit of the instrument of ratification, acceptance, approval or accession to this Treaty.

3. Each Party shall expeditiously notify the others of any change in the designation of its Central Authority.

4. **The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.** *(Emphasis and underscoring supplied)*

⁸ ARTICLE 4

DESIGNATION OF CENTRAL AUTHORITIES

...

4. **The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.** *(Emphasis and underscoring supplied)*

Myanmar “The Mutual Assistance in Criminal Matters Law”) with the Minister, of the Myanmar Ministry of Home Affairs, as the Chairman of the Central Authority; or

(b) Alternatively, under Article 4(4) of the ASEAN TMLACM, through the diplomatic channel from the Philippine Department of Justice (as the Philippine Central Authority) to the Philippine Department of Foreign Affairs (“DFA”) and then, in turn, from the DFA to the Embassy of the Republic of the Union of Myanmar, at 8/F Gervasia Corporate Center Amorsolo Street, Legazpi Village, Makati and then, in turn, from the Myanmar Embassy in the Philippines to the Myanmar Ministry of Foreign Affairs (“MFA”) and then, in turn, from the Myanmar MFA to the Myanmar Central Authority for Mutual Assistance in Criminal Matters Law (as the Myanmar Central Authority created under the Myanmar “The Mutual Assistance in Criminal Matters Law”) with the Minister, of the Myanmar Ministry of Home Affairs, as the Chairman of the Central Authority.

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IV. PHILIPPINE LAW AND JURISPRUDENCE PROVIDE FOR MANDATORY UNIVERSAL JURISDICTION OVER WAR CRIMES THAT CONSTITUTE SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW OR ARE SERIOUS INTERNATIONAL CRIMES THAT ARE A CONCERN FOR THE INTERNATIONAL COMMUNITY

A. MANDATORY UNIVERSAL JURISDICTION UNDER PHILIPPINE LAW AGAINST WAR CRIMES

In violations of the law of nations, the offended party is the people of the whole world...and no person in position to prosecute the violators can honestly shirk the responsibility of relentlessly prosecuting them, lest he be branded with the stigma of complicity.⁹

Why protect civilians from belligerent violence, or ban rape, torture or the wanton destruction of hospitals, churches, museums or private property, as well as proscribe weapons causing unnecessary suffering when two sovereign States are engaged in war, and yet refrain from enacting the same bans or providing the same protection when armed violence has erupted “only” within the territory of a sovereign State? If international law, while of course duly safeguarding the legitimate interests of States, must gradually turn to the protection of human beings, it is only natural that the aforementioned dichotomy should gradually lose its weight.¹⁰

A.1 Preliminary Considerations: the Law of Humanity in the Philippine legal tradition

18. In his separate opinion in the landmark 1945 Philippine Supreme Court (PSC) case¹¹ affirming the legality of the prosecution for war crimes of Tomoyuki Yamashita, commanding general of the Japanese Imperial Army in the Philippines during World War II¹², Mr. Justice Gregorio M. Perfecto wrote:

...under the principles of natural law, all persons guilty of such crimes are amenable to be arraigned before a court of justice and, after a fair trial, if found guilty, should bear the full weight of the law.

...petitioner Yamashita can be prosecuted before the Philippine civil courts in the like manner as a common criminal and be punished under the provisions of the Philippine Penal Code...

⁹ *Yamashita v Styer* [1945] G.R. No. L-129 [En Banc] 19th December 1945. Unless otherwise specified, all references to Philippine cases in this essay are taken from the Philippines official web archive of jurisprudence, <https://elibrary.judiciary.gov.ph/search>.

¹⁰ *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 97.

¹¹ *Yamashita v Styer*, *supra* note 9.

¹² This was subsequently taken on appeal to the US Supreme Court by Yamashita’s defense lawyers, as at that time, the Philippines was still an American colony. The appeals process affirmed the Philippine decision and gave birth to the precedent for the principle of command responsibility. See *In Re Yamashita* [1946] 327 US 15-17.

...in violations of the law of nations, the offended party is the people of the whole world, and the case against petitioner could be properly entitled as "Humanity *versus* Tomoyuki Yamashita," and no person in position to prosecute the violators can honestly shirk the responsibility of relentlessly prosecuting them, lest he be branded with the stigma of complicity.

...the absence of a codified International Penal Code or of a criminal law adopted by the comity of nations with specific penalties for specific and well-defined international crimes, is not a bar to the prosecution of war criminals, as all civilized nations have provided in their laws the necessary punishment for war crimes which, for their very nature, cease to be lawful acts of war, and become ordinary crimes with the extraordinary character of having been committed in connection with war, which should be considered as an aggravating circumstance.¹³

19. The *habeas corpus* and prohibition case arose from a challenge filed by defense lawyers of Japanese General Tomoyuki Yamashita, Commanding General of the 14th Army Group of the Japanese Imperial Army in the Philippines in World War II, against an American-led Military Commission constituted to try him for alleged war crimes.

¹³ *Yamashita v Styer*, *supra* note 9, (J Perfecto, concurring and dissenting). Mr Justice Perfecto's dissenting and concurring opinion provides a precedent for the mandatory prosecution of war criminals accused of heinous offenses, whether by international tribunals or domestic courts, as well as for the right to fair trial, to due process protections of war criminals, as part and parcel of "fundamental human rights." On the latter point, he wrote:

Impelled by irrepressible endeavors aimed towards the ideal, by the unconquerable natural urge for improvement, by the unquenchable thirstiness of perfection in all orders of life, humanity has been struggling during the last two dozen centuries to develop an international law which could answer more and more faithfully the demands of right and justice as expressed in principles which, weakly enunciated at first in the rudimentary juristic sense of peoples of antiquity, by the inherent power of their universal appeal to human conscience, at last, were accepted, recognized, and consecrated by all the civilized nations of the world.

Under these principles, petitioner General Tomoyuki Yamashita is entitled to be accorded all the guarantees, protections, and defenses that all prisoners should have according to the customs and usages, convention and treaties, judicial decisions and executive pronouncements, and generally accepted opinions of thinkers, legal philosophers and other expounders of just rules and principles of international law. The seriousness or unfathomable gravity of a charges against him, the unthinkable magnitude of the wholesale murders, rapes, and destructions for which he is called to answer, the beastly massacres and horrors by which he was thrown from the pedestal of military glory as the "Tiger of Malaya" into the bottom of perversity of a human monster, must not be taken into consideration, must all be forgotten, in order that true justice may be administered in this case...

The peoples of all nations who are keenly watching the prosecution of Yamashita should be convinced by conclusive evidence that said prosecution is not a mere parody of the administration of justice devised to disguise the primitive impulses and vengeance and retaliation and of the instinctive urge to crush at all costs no matter by what means, a hated fallen enemy. The prosecution, trial and conviction of Yamashita must impress all the people of the world that the principle of law is paramount and supersedes and wipes out all other considerations dealing with war and commanders as war criminals. Otherwise, their faith in the supremacy of law as the invulnerable bulwark of all fundamental human rights will be shaken as will be the moral position of the victorious United Nations. The ethical value of the grandiose pronouncements of their great leaders and the profound significance of the lofty ideals for which millions have died, will be weakened and diminished. *Ibid.*

20. The panel of defense lawyers raised five grounds for the petition:

(1) That the Military Commission was not duly constituted, and, therefore, it is without jurisdiction;

(2) That the Philippines cannot be considered as an occupied territory, and the Military Commission cannot exercise jurisdiction therein;

(3) That Spain, the "protecting power" of Japan, has not been given notice of the implementing trial against petitioner, contrary to the provisions of the Geneva Convention of July 27, 1892, and therefore, the Military Commission has no jurisdiction to try the petitioner;

(4) That there is against the petitioner no charge of an offense against the laws of war; and

(5) That the rules of procedure and evidence under which the Military Commission purports to be acting denied the petitioner a fair trial.¹⁴

21. Mr. Justice Perfecto agreed with the majority that the challenge raised by General Yamashita over the legality of his being prosecuted by a military commission must fail. The defense lawyers had argued, among other things, that the Japanese general may not be prosecuted for acts that were not criminalized under Philippine law at the time they were committed.¹⁵ The majority opinion, written by Mr. Chief Justice Manuel V. Moran, held that the constitution of the Military

¹⁴ *Yamashita v Styer, supra* note 9.

¹⁵ Mr Justice Perfecto however, rejected the application of collective responsibility by the Military Commission, under the provision stating that "[a]ny military or naval unit or any official or unofficial group or organization whether or not still in existence, may be charged with criminal acts or complicity therein and tried by a Military Commission." He also objected to the allowance for hearsay evidence in the rules of the Military Commission. In dissent, Mr Justice Perfecto wrote that:

This provision, undoubtedly, advances the principle of collective responsibility in contradistinction to the principle of individual criminal responsibility. Under the principle of individualized criminal responsibility, no person may be convicted of any offense without due process of law and without proving in said process in which he should also enjoy the guarantee of equal protection of the laws, that he is personally guilty of the offense. Under the principle of collective criminal responsibility, any member of any social group or organization may be convicted without any hearing if, in a process where he did not have his day in court, the social group or any other member thereof is found guilty of an offense...

In section 16-e, the objectionable feature of a hearsay evidence is aggravated by the adherence to the principles of collective criminal responsibility. It provides: "The findings and judgment of a commission in any trial of a unit, group or organization with respect to the criminal character, purpose or activities thereof shall given full faith and credit in any subsequent trial by that or any other commission of an individual person charged with criminal responsibility through membership in such unit, group or organization convicted by the commission, the burden of the proof shall shift to the accused to establish any mitigating circumstances relating to his membership or participation therein."

We are opinion, too, that the Military Commission should be prohibited to follow the unjust procedures delineated in the above-quoted provisions, the objectionable character of which was explicitly admitted even by the *amicus curiae* who appeared to argue in this case in opposition to the granting of remedies sought by petitioner. *Yamashita v Styer, supra* note 9. (J Perfecto, concurring and dissenting).

Commission was legal and valid, and the Japanese general stood accused before it of violating the laws and customs of war:

Petitioner is charged before the Military Commission sitting at Manila with having permitted members of his command "to commit brutal atrocities and other high crimes against the people of the United States and of its allies and dependencies, particularly the Philippines," crimes and atrocities which in the bills of particulars, are described as massacre and extermination of thousands and thousands of unarmed noncombatant civilians by cruel and brutal means, including bayoneting of children and raping of young girls, as well as devastation and destruction of public, or private, and religious property for no other motive than pillage and hatred. These are offenses against the laws of the war as described in paragraph 347 of the Rules of Land Warfare.¹⁶

22. For the majority opinion, the Articles of War under which the US Military Commission was constituted embraced the Law of Nations, which in turn punished war crimes as prohibited both under treaty law and customary international law. *Yet it was Mr. Justice Perfecto who provided the PSC with an extended justification for the legality of the creation of any tribunal, international or domestic, for the war crimes prosecution of Japanese officers, under Philippine law.* Mr. Justice Perfecto, noting parallel calls abroad at the time to establish an "international criminal court" to try German and Japanese war criminals, agreed that there should be no hindrance to such a move.¹⁷ According to him, war criminals may in fact be tried either before international tribunals or domestic courts, given the development of the laws and customs of war in contemporary history.¹⁸ Thus, approvingly quoting the prominent American criminologist Sheldon Glueck, he said:

The law for an international tribunal can be drawn from the rich reservoirs of common and conventional law of nations and the principles, doctrines and standards of criminal law that constitute the common denominator of all civilized penal codes."¹⁹

The punishment to be applied by domestic military and civil courts depend upon local law and practice. Those to be imposed by the international tribunal could be based either upon the punishments permitted by the laws and customs of warfare or upon those provided for crimes of similar nature and gravity by the law of the accusing State, taking into account, also, where necessary individual instances, the law of the defendants States.²⁰

¹⁶ *Yamashita v Styer*, supra note 9 (J. Moran, majority opinion)

¹⁷ *Yamashita v Styer*, supra note 9 (J. Perfecto, concurring and dissenting).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*, quoting Sheldon GLUECK, *War Criminals: Their Prosecution and Punishment* (New York: Alfred A. Knopf 1944) 181.

A.2: Executive Summary of Arguments for Mandatory Universal Jurisdiction under Philippine Law over War Crimes Committed in Chin State, Myanmar, Even Where the Accused or Suspects Are Not Present in the Philippines

23. Today, nearly 80 years later, Mr. Justice Perfecto's emphatic words could not ring truer amid the continuing failure by states, who ought now to know better by now, to criminalize and prosecute the egregious violations being committed against citizens by their own governments. Such is the case of Myanmar's military junta, which stands accused of committing gross human rights violations against the citizens of the country amid a civil war.

24. In the Philippines, war crimes are defined and prosecuted under Republic Act No. 9851 ("RA 9851") or the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity" (hereinafter the "IHL Act").²¹ The jurisdictional clause in the law is found in Section 17, which states:

Section 17. Jurisdiction - The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

- (a) The accused is a Filipino citizen;
- (b) The accused, regardless of citizenship or residence, is present in the Philippines; or
- (c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court

²¹ IHL Act, Sec. 17, *supra* note 3.

outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.²²

25. A cursory reading of the aforementioned Section 17 gives the immediate impression that the exercise of universal jurisdiction by Philippine courts over the alleged war crimes committed in Myanmar against the people of Chin State is effectively foreclosed. On its face, the aforementioned provision provides an exhaustive list of situations when Philippine courts may assume jurisdiction over war crimes committed outside of the Philippines, under the IHL Act, given the proviso signaled by the phrase “provided that” in the Chapeau, which is usually given a limiting function in statutory construction.²³

26. Section 17 (a) is based on the nationality principle: that a state may prosecute Philippine nationals even for crimes committed abroad.²⁴ Section 17 (b) is anchored on universal jurisdiction proper, expressing the idea that some crimes are of such serious nature as to be of a concern to any state, regardless of who committed them and where they were committed.²⁷ Thus, at face value, Section 17 (b) allows the prosecution of foreign nationals who committed violations of international humanitarian law overseas, regardless of who the victims were, *but provided that a nexus requirement is met: the presence of the accused on Philippine soil*. Finally, Section 17 (c) embodies the doctrine of passive personality, which asserts state jurisdiction over crimes that harm its nationals, regardless of where the crimes may have occurred, or of who may have committed the crimes.²⁸

27. What follows are two exception clauses. The first concerns what has been termed as a mechanism for “reverse complementarity,” which we shall tackle shortly. The second concerns the established criminal law doctrine of *ne bis in idem*²⁹ or more commonly known as the principle of double jeopardy in common law jurisdictions.²⁵

²²IHL Act, Sec. 17, *supra* note 3.

²³ As has been held in one case:

The general rule is that the office of a proviso is to qualify or modify only the phrase immediately preceding it or restrain or limit the generality of the clause that it immediately follows. Thus, it has been held that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, and not to the statute itself or to other sections thereof. *Mercado v NLRC* [1991] G.R.

No. 79869 [Second Division] 5 September 1991 [in-text citations omitted].

²⁴ Jan KLABBERS, *International Law* 2nd ed. (Cambridge: Cambridge University Press 2017)101 ²⁷ *Ibid.* at 102 ²⁸ *Ibid.*

²⁵ In the Philippines, this is a constitutional right, after the Fifth Amendment of the US Constitution: “No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act [emphasis supplied]. 1987 Philippine Constitution, Article 3, Section 21 Official Gazette online: <https://www.officialgazette.gov.ph/constitutions/1987-constitution/> ³¹ Ronald DWORKIN, *A Matter of Principle* (Oxford: Clarendon Press 1986) 13.

28. In other words, Section 17 (b) presents a Dworkinian “hard case”³¹ as to the situation in Myanmar, as the language of the text presents an apparently insurmountable obstacle to the exercise by Philippine authorities of (mandatory) universal jurisdiction over war crimes committed in the former without the required nexus, at the same time that, as it will be shortly shown, resort to related portions of the section will result in ambiguities. Given the language of the text, a Dworkinian analysis of the legal conundrum presents Filipino legal authorities the choice between the rule-book approach or the rights-based approach in passing judgment on the validity of any exercise by Philippine courts of mandatory universal jurisdiction over war crimes in Myanmar. A rights-based approach supposes that people possess moral and political rights “other than and prior to those given by positive enactment” that are demandable from the state.²⁶ But this approach will require the invocation by advocates of a right (here a right arising from a legal duty to exercise mandatory jurisdiction over war crimes) not explicitly recognized in the text of the law, a difficult position for a highly-charged case involving another sovereign state, even as it will also involve various logistical and evidentiary challenges.

29. Meanwhile, the rule-book approach is made along positivist lines; “it insists that these moral and political rights be recognized in positive law, so that they may be *enforced upon the demand of individual citizens* through courts or other judicial institutions of the familiar type, so far as this is practicable.”²⁷ This latter approach rejects recognition of rights outside of the expressed words of the law’s text, one that admittedly would be an easy way out for Philippine authorities tasked to determine whether they have a legal duty to prosecute war crimes brought to their attention under the IHL Act. The latter option tantalizingly presents itself as the path of least resistance.

30. The Joint Complaint-Affidavit’s brief answer to this main question: the enumeration in the law of situations when Philippine courts may prosecute war crimes notwithstanding, the alleged war crimes against the Chin people committed by the perpetrators – such crimes being serious violations of international humanitarian law (IHL) constituting serious crimes that are a concern of the international community– are subject to mandatory universal jurisdiction by Philippine courts, these being violations of *jus cogens* prohibitions; in other words, of norms of customary international law that are of peremptory character.³⁴ ***By mandatory universal jurisdiction we mean that whenever such serious crimes of international concern are brought before Philippine prosecutorial authorities, under Philippine law, they have a legal duty to investigate and –where the evidence allow – prosecute the crimes before Philippine courts, regardless of the perpetrators’ nationality and where they may be, and the courts have both the legal duty and jurisdiction²⁸ to try the***

²⁶ DWORKIN, *supra* note 25, at 13.

²⁷ *Ibid.*, at 11.

²⁸ As Philippine jurisprudence would put it, it is the courts’ “the power and authority to hear, try, and decide a case” which is conferred by law. *Velasquez v Lisondra Land Incorporated* [2020] G.R. No. 231290 [First Division] 27 August 2020.

perpetrators, subject to available defenses provided in applicable national law and international law and other relevant Philippine procedural and substantive rules.

31. The Joint Complaint-Affidavit's affirmative answer to the inquiry's principal question on the hybrid Philippine legal system in which common law and civil law traditions and principles are fused together, and on constitutional structure and jurisprudence established out of this fusion. The Dworkinian divide between the rights-based approach and rule-book approach is avoided in the particularities of such a hybrid system. Under such a system, what the text may lack may be filled in by established norm, principle, or doctrine. In this particular case, an established feature of Philippine constitutional structure and jurisprudence provides that "generally-accepted principles of international law" form part of the law of the land through the Incorporation Clause of the Philippine constitution.

32. Under the doctrine of humanity recognized early on in Philippine jurisprudence and fully developed much later in the practice of international criminal tribunals, war crimes constituting serious violations of IHL are subject to mandatory universal jurisdiction of Philippine courts, without the requirement of a Philippine nexus (that is, the presence of the alleged perpetrator in the Philippines).

33. *Nearly eight decades later, Mr Justice Perfecto's proposal that war criminals be prosecuted for violating the law of humanity has become a fully evolved doctrine: previously, mandatory prosecution is limited to grave breaches of international humanitarian law committed during an international armed conflict (IAC), as governed by the Four Geneva Conventions. However, under current international law, the grave breaches regime has been absorbed into the concept of "serious violations of international humanitarian law" (IHL) or "serious crimes of concern to the international community as a whole" that now encompasses war crimes committed in both inter-state armed conflicts and in non-international armed conflicts (NIAC).*

34. This merger of the grave breaches regime under the Four Geneva Conventions and of the serious violations of IHL regime is itself found in the very provisions of the IHL Act, in particular, in its definition of war crimes and their particular manifestations.²⁹ Well-entrenched Philippine jurisprudence considers these serious violations of IHL as subject to *jus cogens* prohibitions binding on all members of the international community. Moreover, the same jurisprudence recognizes a *jus cogens* obligation on the part of the Philippines to observe *the aut dedere aut judicare* principle.

35. Too, the hermeneutic pursued in this essay comports with the *reddendo singula singulis* rule, in which "words in different parts of a statute must be referred to their appropriate connection, giving to each in its place, its proper force and effect, and, if possible, rendering none of them useless

²⁹ See IHL Act, Section 4, *supra* note 3.

or superfluous, even if strict grammatical construction demands otherwise” or, “where words under consideration appear in different sections or are widely dispersed throughout an act the same principle applies.”³⁰ These two canons of statutory construction reinforce, correlate with, as well as amplify each other in their application to Section 17 (b).

36. Further, the approach pursued here to fill the gap in the text of the law is buttressed by the Doctrine of Necessary Implication, which states that “[e]very statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.”³¹ The object and purpose of the IHL Act are spelled out in Section 2 in relation to Section 15 of the law, which we argue to be reflective of mandatory universal jurisdiction for serious violations of IHL, including war crimes.

37. In contrast, a strict textualist interpretation of Section 17 (b) would lead to an absurd conclusion that the defense of double jeopardy may only be interposed by a foreign national accused of serious international crimes under the IHL Act, and not by a Filipino citizen facing investigation or prosecution for the same nature of international crimes, against the established constitutional doctrine of equal protection of the law. This ambiguous or uncertain result of a *verba legis* hermeneutic³² calls into question the relevance of the restrictive sense of the proviso “provided that” in the section’s Chapeau and grants an enlarged scope for it as a recognized exception in case law.

38. In the view of this Joint Complaint-Affidavit, the Philippine nexus mentioned in Section 17 (b) of the IHL Act is actually an “express admissibility clause”; *it addresses the fact that the exercise of mandatory universal jurisdiction by one state may intrude into the sovereign prerogatives of another state*. Thus, Section 17(b) merely emphasizes the need for serious care to be exercised by Philippine authorities in investigating and prosecuting foreign nationals on Philippine soil suspected or accused of serious violations of IHL, given a customary international law (CIL) obligation to protect the rights of foreign nationals within its territory.

39. As an alternative or subsidiary argument, textualist analysis of the relevant provisions of the IHL Act – at the very least – provides warrant for the conclusion that the Philippine Department of Justice (DOJ) should hear a complaint for war crimes under the law for purposes of probable cause, subject to the operation of the principle of reverse

³⁰ *City of Manila v Laguio* [2005] G.R. No. 118127 [En Banc] 12 April 2005.

³¹ *Chua v Civil Service Commission* [1992] G.R. No. 88979 [En Banc] 7 February 1992, citing Ruben E. AGPALO, *Statutory Construction* (Quezon City: Rex Bookstore 1986 ed) 118-119.

³² The plain meaning rule in statutory construction enjoins that “if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.” *H. Villarica Pawnshop v Social Security Commission* [2018] G.R. No. 228087 [Third Division] 24 January 2018.

complementarity recognized for the first time by the Philippine Supreme Court in the case of *Pangilinan v Cayetano*.³³

B. PHILIPPINE COURTS HAVE MANDATORY UNIVERSAL JURISDICTION OVER WAR CRIMES COMMITTED IN MYANMAR – OR ELSEWHERE FOR THAT MATTER – UNDER THE IHL ACT

B. 1 A Hybrid – or Mestizo – Philippine Legal System and its Central Application to Questions of Universal Jurisdiction

40. Mr. Justice Perfecto’s argument for an established law of humanity in *Yamashita*, which has since radically evolved in both Philippine law and international law as established doctrine, frames the affirmative answer provided here, and discussed in greater detail in the succeeding sections, as can be seen below.

41. The rule-book approach posits that the state may only act towards citizens or people in general according to rules explicitly set out in a public rule book accessible to all.³⁴ Its concern is not so much the content of the rule-book but that “whatever rules are put in the book must be followed until changed.”³⁵ Thus substantial justice is independent of the Rule of Law ideal, though not necessarily far from the minds of the rule-book approach’s adherents.³⁶ In contrast, the right-based approach springs from a clear and unequivocal concept of individual rights as a necessary component of substantive justice that law needs to recognize.³⁷ A hard case results where “no explicit rule in the rule book firmly decides the case either way.”³⁸ Such obtains here, given the absurd result of a strict textualist reading of Section 17 (b), which, if followed, would grant the benefit of the defense of double jeopardy to foreigners but withhold the same from Filipinos, in violation of our hornbook constitutional doctrine on equal protection of laws. For Dworkin, it becomes a choice between principle (commitment to individual rights)³⁹ and policy (the dictate of some notion of general welfare).⁴⁰ But as we will show below, the basic distinction between these two approaches disappears in the way in which the Philippine constitutional law, legal system, and jurisprudential doctrine has developed. In this system, principle is supported by, expounded on, or correlated with considerations of morality, public good, public interest, public policy, or general welfare. As to method, international legal norms are given

³³ *Pangilinan v Cayetano* [2021] G.R. No. 238875, G.R. No. 239483 [Consolidated Cases, En Banc] 16 March 2021.

³⁴ DWORKIN, *supra* note 25 at 13.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.* at 11-12

³⁸ *Ibid.*, at 11

³⁹ *Ibid.* at 11.

⁴⁰ *Ibid.*

direct effect or otherwise internalized in Philippine law through a variety of formal, overlapping or parallel methods, from incorporation, to statutorification, to treaty, executive, and administrative regulations, among many other modes of direct effect.⁴¹

42. The Philippine legal system is unique in that it features both common law and civil law traditions - a “mestizo” legal system.⁴² It had been a Spanish colony for more than 300 years, and subsequently, an American colony, for another 50 or so years, following cession by the former of the colony to the latter under the 1898 Treaty of Paris for the price of US \$ 20 million.

43. By 1920, the American-controlled Philippine Supreme Court would be confident enough to rule that tutelage in such a system had reached a point where Philippine laws and courts already exhibited a “Philippine common law.”⁴³ Thus, in *In Re Max Shoop*⁴⁴ - on the surface a simple petition filed with the Philippine Supreme Court by an American lawyer from New York to be admitted into the Philippine Bar – also heralded important milestones in the American colonialist project in Asia.⁴⁵ The case declared that the Philippines had squarely become part of the Anglo-American legal tradition, citing a showcase of radical academic, doctrinal and statutory transformations affecting the Philippine legal system⁴⁶ two decades after the annexation of the islands as an “unincorporated territory” of the United States of America.⁴⁷

44. Even in the absence of a written constitution operative in the Philippines at the time, the PSC could already handle a full blown international legal question under the rules of customary international law(CIL), which it held to be binding on the Philippines. Footnote 4 of *In Re Shoop*, lists various fields and doctrines of law demonstrating the primacy of the common law

⁴¹ Romel Regalado BAGARES, “Philippine Chapter” *Oxford Handbook of International Law in the Asia and the Pacific* (Oxford: Oxford University Press 2019) 406-432; and Romel Regalado BAGARES, “Further Notes Towards Understanding Direct Effect of International Law within the Philippine Constitutional Framework: From United Nations Security Council Chapter VII Resolutions to ASEAN LAW” (National University of Singapore Centre for International Law Ideas in Progress Series (Work-in-Progress, July 2022) 1-31. The author has identified at least 12 modes of direct effect or entry points for the internalization of international law in the Philippine practice of international law.

⁴² Pacifico A. AGABIN, *Mestizo: The Story of the Philippine Legal System* (Quezon City: UP Law Center 2011); see also Soliman A. SANTOS (2000) “Common Law Elements in the Philippine Mixed Legal System”, 1 Australian J. of Asian Law 2 34-52. In addition, we might add to these two main legal streams Islamic law and customary law of indigenous peoples.

⁴³ *In Re Max Shoop* [1920] 041 Phil 213 [En Banc] 29 November 1920.

⁴⁴ *Ibid.*

⁴⁵ Most of the discussion in B.1 is lifted from a yet unpublished work-in-progress, Romel Regalado BAGARES, “‘Only a Pious Wish’: Judicial Technique and International Law in the Early American Occupation of the ‘Philippine Islands in *Compagnie de Commerce v Hamburg Amerika*” (2023).

⁴⁶ *In Re Shoop*, *supra* note 43.

⁴⁷ *Ibid.* In the famous phrase attributed to Elihu Root, the American Secretary of State of the time, “the Constitution follows the flag – but doesn’t quite catch up with it.” Philip C. JESSUP, *Elihu Root*, vol. 1, (New York: Dodd, Mead & Company, 1938) 348. Expounding on this in the so-called *Insular Cases*, the US Supreme Court held that the US Constitution cannot be said to be applicable in its entirety to annexed territories, but for certain unidentified basic rights. See *Downes v Bidwell*, 182 US 244 (1901). The US Supreme Court held this to be the case in the Philippines in *Fourteen Diamond Rings v United States*, 183 U.S. 176 (1901). For the details of how the constitution was severed from the flag in the American empire’s farthest colony, see Leia Castañeda ANASTACIO, *The Foundations of the Modern Philippine State: Imperial Rule and the American Constitutional Tradition in the Philippine Islands, 1898–1935* (Cambridge: Cambridge University Press, 2016) 67-97.

approach in Philippine jurisdiction. Under the subtopic of “[common] carriers” – classified as part of the jurisprudence on “Contracts” – the case of *Compagnie de Commerce v Hamburg Amerika*⁴⁸ was referenced as iconic of the new Philippine thrust towards its contextualization of Anglo-American Common Law and its system of *stare decisis* previously unavailable under the Spanish civil law system: “the court, in a lengthy opinion, considers the effect of war upon obligations of carriers, refers to American and English authors with reference to the rules of International Law which are applicable.”⁴⁹

45. In uncanny ways, this common law stream merges with its civil law counterpart that had been incubated for over three centuries under Spanish colonization. *Stare decisis* meets the civil law penchant for moral and judicial certainty. As the noted Filipino constitutional scholar and legal historian Pacifico A. Agabin writes, the Philippine Civil Code is suffused with such demand, founded on natural law concepts:

In the last analysis, every good law draws its breath of life from morals, from those principles which are written in words of fire in the conscience of man. If this premise is admitted, then the proposed rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by one, all the wrongs which cause damage. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one cannot but feel that it is safe and salutary to transmute, as far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality[,] which ought to be one of its superlative attributes.⁵⁰

46. Civil law principles enunciated in case law or are assumed to be grafted into the Civil Code itself forestall the Dworkinian tug-of-war between the rights-based and rule-book approaches. Another way of saying this is that the constitution or the law itself defers to or otherwise refers to core principles that are assumed to be part of the legal system. Thus, civil law principles can be utilized to shore up what jurisprudence or law may fall short of saying. This undergirds the system of precedents of *stare decisis*. As Section 7 of the Civil Code states:

... When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.⁵¹

⁴⁸ *In Re Shoop*, *supra* note 43, citing *Compagnie de Commerce v Hamburg Amerika* [1917] G.R. No. L-10986 [En Banc] 31 March 1917.

⁴⁹ *Ibid.*

⁵⁰ Agabin, *supra* note 42 at 116-117, quoting Napoleon R. MALOLOS and Teodorico C. MARTIN eds., *Report of the Code Commission on the Proposed Civil Code of the Philippines* (Manila: Domerte Book Supply, 1951) 40.

⁵¹ Republic Act 386, “The New Civil Code” (19 June 1949) Article 7 Official Gazette online <https://www.officialgazette.gov.ph/1949/06/18/republic-act-no-386/>

47. Moreover Article 8 of Civil Code states: “Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.⁵²” In situations where the language of the law is either uncertain or has gaps, Article 9 of the Civil Code states that: “No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.” PSC has said gaps in judicial pronouncements or the law are not real gaps, because the law presumes that all the principles of public policy, morality, right and justice as legislative intents are deemed grafted into law.⁵³ This is pursuant to Article 10 of the Civil Code, which states that: “In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.”⁵⁴

48. For now, it also bears noting that *Compagnie* anticipates a landmark case that would be decided by the PSC some 83 years later: a primary example of a modern Philippine case where even in the absolute absence of textual support, the PSC recognized the existence of an international right opposable to abuse by the state of citizen’s rights, one deemed part of the law of the land. This is the case of *Republic v Sandiganbayan*⁵⁵, which dealt with the *interregnum* - that one month-period immediately following the ouster of the late dictator Ferdinand E. Marcos Jr in late February 1986, when there was no constitution, as the revolutionary government of Corazon Aquino scrapped the Marcos-sponsored 1973 constitution preparatory to the drafting of a new constitution.

49. Citing previous and well-established jurisprudence on the question dating to the 1950’s⁵⁶, the PSC held that the absence of a constitution is immaterial as the Philippines remains bound to CIL embodied in the Universal Declaration of Human Rights (UDHR) to which it is a signatory.⁵⁷ In addition, it also directly applied to citizens as subjects entitled to protection against the arbitrary exactions by the State, the International Covenant on Civil and Political Rights (ICCPR), to which the Philippines was also a signatory, although it has not yet ratified or acceded to the convention at the time. The PSC considered the relevant provisions of the ICCPR, following the UDHR, as CIL binding on all states.⁵⁸ Though *Republic’s* majority opinion does not reference it, the UN Human Rights Committee has made a relevant Comment a few years earlier, in which it stated that:

⁵²Civil Code, Article 8, *supra* note 51.

⁵³ *Ibid.*, Article 9.

⁵⁴ *Ibid.*, Article 10.

⁵⁵ *Republic v Sandiganbayan* [2003] G.R. No. 104768 [En Banc] 21 July 2003.

⁵⁶ *Ibid.*, citing *Andreu v Commissioner of Immigration*, [1951] 90 Phil. 347 [En Banc] 31 October 1951; *Chirskoff v Commissioner of Immigration*, [1951] 90 Phil. 256 [En Banc] 26 October 1951; *Borovsky v Commissioner of Immigration*, [1951] 90 Phil. 107 [En Banc] 28 September 1951; *Mejoff v. Director of Prisons*, [1951] 90 Phil. 70 [En Banc] 26 September 1951.

⁵⁷ *Republic v Sandiganbayan*, *supra* note 55.

⁵⁸ *Ibid.*

The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that **once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant** [emphasis supplied].⁵⁹

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⁵⁹ UN Human Rights Committee, “General Comment 26 (1997): Issues Relating to the Continuity of Obligations to the International Covenant on Civil and Political Rights, A/53/40 vol. 1 (1997) para. 4 102.

C. OUTSIDE OF PENAL LAW IDENTIFICATION AND SPECIFICATION, MANDATORY UNIVERSAL JURISDICTION OVER SERIOUS INTERNATIONAL CRIMES THAT ARE A CONCERN TO THE INTERNATIONAL COMMUNITY IS A CONSEQUENT FEATURE OF PHILIPPINE LAW AND JURISPRUDENCE UNDER THE HYBRID PHILIPPINE CONSTITUTIONAL AND LEGAL SYSTEM

C.1 A Brief History of the Law of Humanity and Mandatory Universal Jurisdiction in Philippine Law

50. The exercise of mandatory universal jurisdiction in the Philippines began with a 1922 case, *Lol-Lo and Saraw*.⁶⁰ Here, the PSC upheld convictions for piracy handed down by a Sulu trial court in Southern Philippines.⁶¹ The two convicts in whose names the case has become identified with, were part of a band of 24 armed men who seized a boat in the high seas, robbed its passengers who were all Dutch nationals, and abducted two young women.⁶² Lol-Lo even raped one of the two victims. He and Saraw were arrested when they returned to their hometown in Sulu.⁶³ Upholding the trial court's ruling, the PSC said that pirates, being "*hostes humani generis*" may be prosecuted anywhere in the world, as the jurisdiction over piracy "has no territorial limits."⁶⁴ Article 2(5) of the Revised Penal Code (1930) recognized the doctrine of universal jurisdiction over international crimes early on, stating that:

Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

...

1. Should commit any of the crimes against national security and **the law of nations**, defined in Title One of Book Two of this Code⁶⁵ [emphasis supplied].

51. It is interesting to note that despite Article 2 (5) of the RPC, its Title One, Book Two only identified the following offenses as violations of the laws of nations: espionage (Article 117); inciting to war or giving

⁶⁰ Raul C. PANGALANGAN, *Philippine Materials in International Law* (Leiden: Brill 2022) 375

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*, citing *People v Lol-Lo and Saraw* [1922] G. R. No. 17958 [En Banc] 27 February 1922.

⁶⁵ Act No. 3815 "Revised Penal Code (8 December 1930) Official Gazette online: <https://www.officialgazette.gov.ph/1930/12/08/act-no-3815-s-1930/>

motives for reprisals (Article 118); violation of neutrality (Article. 119); and piracy (Articles 122-123).⁶⁶

52. The RPC did not and does not contain provisions for the prosecution of war crimes and relevant violations of international (humanitarian) law. It would take nearly 80 years before the penalization of war crimes and other related crimes would be made, through the passage of the IHL Act.

53. Nevertheless, even without the identification and specification of international crimes by legislation, the Philippines prosecuted alleged Japanese war criminals after World War II, and only through the device, first, of a Military Commission established by the US Armed Forces through a Department of Defense Memorandum⁶⁷ and later, through that of a National War Crimes Office (NWCO) established by an Executive Order issued by the President of the Philippines.

54. Thus, the task of prosecuting Japanese war criminals was turned over to the Philippine government.⁶⁸ Pursuant to this, President Manuel Roxas issued on 29 July 1947 Executive Order No. 68 (EO 68) establishing the NWCO. Under the NWCO, Military Commissions were established to try the alleged war criminals, following the American model. The relevant provisions of EO 68 states that:

II. JURISDICTION:

a. Over Persons. – The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses. – The military commissions established hereunder **shall have jurisdiction over all offenses including, but not limited to**, the following:

(1) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing:

(2) **Violations of the laws or customs of war.** Such violations shall include, but not limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton

⁶⁶RPC, *supra* note 65.

⁶⁷ Tackled in *Yamashita v Styer*, *supra* note 9.

⁶⁸For a contemporary comprehensive history of how war crimes trials in the Philippines were carried out and their accompanying controversies and challenges, see Sharon W. CHAMBERLAIN, *A Reckoning: Philippine Trials of Japanese War Criminals* (Wisconsin: University of Wisconsin Press, 2019).

destruction of cities, towns or villages; or devastation not justified by military necessity.

(3) Murder, extermination, enslavement, deportation and other inhuman acts committed against civilian populations before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the local laws⁶⁹ [emphasis supplied].

55. The legality of the war crimes prosecutions carried out by Philippine authorities under EO 68 was upheld by the PSC in a 1949 case involving Lt. Gen. Shinegori Kuroda, another Japanese war criminal, in *Kuroda v Jalandoni*.⁷⁰ In this other case, the PSC held that even if the Philippines were not a party to the Hague and Geneva Conventions, it was still bound to their norms by virtue of the Incorporation Clause of the 1935 Constitution, under which the provisions of the treaty were considered part of the law of the land as generally accepted principles of international law binding on all states.⁷¹ Thus the majority opinion, also speaking through Chief Justice Manuel V. Moran, held that:

In accordance with the generally accepted principle of international law of the present day including the Hague Convention the Geneva Convention and significant precedents of international jurisprudence established by the United Nation all those person military or civilian who have been guilty of planning preparing or waging a war of aggression and of the commission of crimes and offenses consequential and incidental thereto in violation of the laws and customs of war, of humanity and civilization are held accountable therefor. Consequently in the promulgation and enforcement of Execution Order No. 68 the President of the Philippines has acted in conformity with the generally accepted and policies of international law which are part of our Constitution.⁷²

⁶⁹Executive Order No. 68, “Establishing a National War Crimes Office and Prescribing Rules and Regulations Governing the Trial of Accused War criminals. (29 July 1947) Official Gazette online: <https://www.officialgazette.gov.ph/1947/07/29/executive-order-no-68/>. The Roxas EO essentially reproduced a US State Department Memorandum addressing the need to prosecute Japanese war criminals. This Memorandum was also the basis for the earlier Yamashita prosecution. See Memorandum: Policy of the United States in regard to the Apprehension and Punishment of War Criminals in the Far East. US Department of State, in R. John PRITCHARD and Sonia M. ZAIDE, eds. *The Tokyo War Crimes Trial: 1946-1948*, Index and Guide, Vol.1 (London: Taylor & Francis, 1981) xiv-xvi. The Incorporation Clause of the 1935 Constitution, Article II, Section 3, states: “The Philippines renounces war as an instrument of national policy, and adopts the generally-accepted principles of international law as a part of the law of the Nation.” online: <https://www.officialgazette.gov.ph/constitutions/the-1935-constitution/>. The clause is substantially echoed in the text of the 1973 and the 1987 Philippine constitutions.

⁷⁰ *Kuroda v Jalandoni* [1949] G.R. No. L-2662 [En Banc] 26 March 1949.

⁷¹ *Ibid.*

⁷² *Ibid.*. CJ Moran here appears to outdo J. Perfecto’s separate opinion in *Yamashita* by saying that the relevant international law norms and principles are “part of the Constitution”, which is different from saying these are made part of the law of the land via the Incorporation Clause. Our appreciation goes to Hon. Judge Santos for bringing this point to our attention. But this would in fact be true at least of the constitutional prohibition against war as an instrument of national policy, which is stated in the Incorporation Clause. Subsequent judicial interpretations of the Incorporation Clause tend to side with J. Perfecto on norms and principles outside what is now a *jus cogens* prohibition on the use of force to settle international disputes;

56. Further, the majority opinion explained:

It cannot be denied that the rules and regulation of the Hague and Geneva conventions form part of and are wholly based on the generally-accepted principles of international law. In fact these rules and principles were accepted by the two belligerent nations the United States and Japan who were signatories to the two Conventions, such rule and principles therefore form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them for our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rule and principle of international law as continued in treaties to which our government may have been or shall be a signatory.⁷³

57. Preceding the *Yamashita/Kuroda* rulings, the lesser-known *Co Kim Cham v Valdez*⁷⁴ involved the question of the validity of a judgment by a civilian court during the Japanese occupation from 1942 to 1945. Ruling in the affirmative, the PSC held that under the international law on occupation, “the proceedings of the legislative, executive, and judicial

that is, that such “generally-accepted principles of international law” (which would embrace jus cogens prohibitions on genocide, war crimes, and crimes against humanity), are instead “part of the law of the land” rather than “part of the Constitution” or what is now called in the scholarly literature as the process of “constitutionalization.” On this latter point’s manifestation in other sections of the constitution, see BAGARES, Philippine Chapter, *supra* note 41 425-426.

⁷³*Ibid.* Mr Justice Perfecto, in this case decided but five years after *Yamashita*, dissented from the majority opinion on the ground that the Roxas Executive Order was a form of invalid executive legislation, hence unconstitutional. He also assailed it on due process grounds, as it allowed the introduction of hearsay evidence in the war crimes trials. As he would write in his dissent:

Executive Order No. 68 is equally offensive to the Constitution because it violates the fundamental guarantees of the due process and equal protection of the law. It is especially so, because it permit the admission of many kinds evidence by which no innocent person can afford to get acquitted and by which it is impossible to determine whether an accused is guilty or not beyond all reasonable doubt.

The rules of evidence adopted in Executive Order No. 68 are a reproduction of the regulation governing the trial of twelve criminal, issued by General Douglas Mac Arthur, Commander in Chief of the United States Armed Forces in Western Pacific, for the purpose of trying among other, General Yamashita and Homma. What we said in our concurring and dissenting opinion to the decision promulgated on December 19, 1945, in the *Yamashita* case, L-129, and in our concurring and dissenting opinion to the resolution of January 23, 1946 in disposing the Homma case, L-244, are perfectly applicable to the offensive rules of evidence in Executive Order No. 68. Said rules of evidence are repugnant to conscience as under them no justice can be expected. *Ibid.* (J Perfecto, dissenting)

In *Yamashita*, Mr. Justice Perfecto could agree that the American-led Military Commission was validly constituted as it was issued under the authority of the Commander of the United States Armed Forces in the Western Pacific, Gen. Douglas MacArthur, at a time when the Philippine National Assembly of the American-led Philippine Commonwealth government was yet to be re-constituted after the Japanese surrender. It was justified by a declaration of Martial Law by Gen. MacArthur in effect at the time. In *Kuroda*, as he argued in his dissent, the Philippines was already an independent Republic, with a working legislature, and with the proceedings held three years after the grant of independence by the United States of America to the Philippines. But often overlooked in scholarly discussions on *Kuroda* is the fact that the laws and customs of war were actually given direct effect in Philippine law by an Executive Order emanating from the Office of the President. *Kuroda* is the first such instance in which an executive issuance was deemed a constitutional mode of internalizing international legal norms. For a further discussion on this, see BAGARES, ASEAN LAW, *supra* note 41.

⁷⁴*Co Kim Cham v Valdez*, [1945] G.R. No. L-5 [En Banc] 17 September 1945.

departments of a de facto government are good and valid”⁷⁵ and those judicial acts and proceedings that are not political in nature, “remained good and valid” even after liberation, by the principle of postliminium in international law, insofar as “the belligerent occupant has the right and is burdened with the duty to insure public order and safety during his military occupation.”⁷⁶ Thus, it so held, almost as an afterthought, that under the Incorporation Clause of the 1935 Constitution, the norms and principles embodied in section III of the Hague Conventions II of 1899⁷⁷ and of the Hague Conventions IV of 1907⁷⁸ and “the principles of international law, as they result from the usages established between civilized nations, the laws of humanity and the requirements of the public conscience”⁷⁹ form part of the law of the land.⁸⁰

58. *Co Kim Cham’s* majority opinion of nearly 10,000 words preceded *Yamashita* by a few months but *Yamashita* and *Kuroda* would become two of the most well-known Philippine precedents on the laws and customs of war, mostly because the first case dealt with a less dramatic question of the validity of civil court proceedings conducted during the Japanese occupation. Yet these three cases illustrate the duality of norms in international law, in which a treaty may simply be a restatement or codification of norms that independently exist as CIL. More importantly, the three cases marked out a progressive movement in the PSC’s thinking on the internalization of international legal norms in the Philippine legal system: the majority opinions in *Co Kim Cham* and *Yamashita* follow the early lead provided by *In Re Shoop*⁸¹, in which the law of nations form part of common law, but in the particular Philippine context of the immediate aftermath of the secession of hostilities of the last World War on Philippine territory; the majority in the first case almost grudgingly mentions the Incorporation Clause, which is then forgotten by the majority just a few months later in *Yamashita’s* majority opinion of less than 2,000 words (but brought to the fore by Mr. Justice Perfecto’s much longer separate opinion that ran to around 10,000 words). By the time the brevity that is the *Kuroda* ruling was issued – a judgement of around 1,500 words handed down by the Supreme Court of a newly-independent and functioning Philippine Republic – the Incorporation Clause as a constitutional device for giving effect to international law

⁷⁵ *Co Kim Cham*, *supra* note 74.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, citing the *Convention with Respect to the Laws and Customs of War on Land*, 29 July 1899.

⁷⁸ *Ibid.*, citing the *Convention with Respect to the Laws and Customs of War on Land*, 18 October 1907

⁷⁹ *Ibid.* Otherwise known as the “Martens Clause”, which is stated in the preamble of the Hague Convention II of 1899, *supra* note 84. The *Co Kim Cham* majority opinion, written by J. Feria, makes as his focus a long discussion of the laws and customs of war and American judicial precedents on the law of occupation, before arriving at a nearly tangential reference to the Incorporation Clause:

It is not to be presumed that General Douglas MacArthur, who enjoined in the same proclamation of October 23, 1944, “upon the loyal citizens of the Philippines full respect and obedience to the Constitution of the Commonwealth of the Philippines,” should not only reverse the international policy and practice of his own government, but also disregard in the same breath the provisions of section 3, Article II, of our Constitution, which provides that “The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation.” *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *In Re Shoop*, *supra* note 43

becomes the chief focus of juridical thought; the relevance of these precedents to the current discussion cannot be overstated, given the hybrid nature of the Philippine legal order as a common law-civil law jurisdiction. Under such a hybrid system, there is an inter-play between and among the express language of the law, interpretative principles codified in the Civil Code as well as those recognized by *stare decisis* or the system of precedents, and constitutional structure. Such a system militates against the absolute reliance on textualism or a textualist (positivist) approach in resolving legal issues such as those discussed here.

59. After World War II, the Philippines became a party to all Four Geneva Conventions of 1949.⁸² Under these landmark IHL treaties, the Philippines assumed an obligation to pass legislation implementing its obligations to prosecute grave breaches under the aforementioned treaties.⁸³ This, it would fail to do for the next six decades. But efforts to pass the required legislation coincided in earnest with Philippine participation in the landmark Rome conference for the establishment of the International Criminal Court. While the Philippines was an active participant in the drafting of the Rome Statute⁸⁴ and was one of its early signatories, Philippine political realities delayed Philippine accession to the ICC regime. As it happened, the IHL Act⁸⁵ came to embody implementing mechanisms for both the Geneva Conventions and the Rome Statute, but preceded Philippine membership in the ICC regime. As *Pangilinan v Cayetano* notes:

...Republic Act No. 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, echoes the substantive provisions of the Rome Statute. It was signed into law on December 11, 2009, two years before the Senate concurred with the Rome Statute. Republic Act No. 9851 covers rights similarly protected under the Rome Statute. Consequently, no new obligations arose from our membership in the International Criminal Court. Given the variances between the

⁸² Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, Article 49. The Philippines became a party to the Genocide Convention on 10 June 1952; Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949, Article 50; The Philippines became a party to the Genocide Convention on 10 June 1952; Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, Article 129. The Philippines became a party to the Genocide Convention on 10 June 1952; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Article 146. The Philippines became a party to the Genocide Convention on 10 June 1952.

⁸³ As required by common Article 49/50/129/146, respectively, of the Four Geneva Conventions, *ibid.*

⁸⁴ The Philippines signed the treaty on 28 December 2000 and ratified it on 30 August 2011. The Rome Statute entered into force as to the Philippines on 1 November 2011. On 8 February 2018, the ICC Office of the Prosecutor announced a preliminary examination of the situation in the Philippines in connection with the drug war launched by then President Rodrigo Duterte. On 17 March 2018, the Philippine deposited a Notice of Withdrawal from the ICC regime, and the withdrawal took effect on 16 March 2019. *ibid.* Rome Statute, originally circulated as document A/CONF.183/9 of 17 July 1998 and corrected by *procès-verbaux* of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. Amends to article 8 reproduce the text contained in depositary notification C.N.651.2010 Treaties-6, while the amendments regarding articles 8 *bis*, 15 *bis* and 15 *ter* replicate the text contained in depositary notification C.N.651.2010 Treaties-8; both depositary communications are dated 29 November 2010. See online: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

⁸⁵ IHL Act, *supra* note 3.

Rome Statute and Republic Act No. 9851, it may even be said that the Rome Statute amended Republic Act No. 9851 [emphasis supplied].⁸⁶

60. The case dealt with the question of the procedures entailed in the valid withdrawal from Philippine treaty obligations by the President. Although the question was mooted with a vote of 15-0 in favor of dismissal, after the Philippine withdrawal from membership in the Rome Statute regime took effect while the case was pending, the Supreme Court's majority opinion laid down guidelines for the purpose in an extensive *obiter dicta*.

61. *Pangilinan v Cayetano* once again echoes the duality of norms: the IHL Act is but formal law embodying substantive norms that already exist separately under a distinct legal regime; the Rome Statute itself is also formal law: it merely codifies norms and principles already extant as CIL. In *Bayan Muna v Romulo*,⁸⁷ decided two years after the IHL Act was passed, mandatory universal jurisdiction was recognized by the PSC as a consequence of *jus cogens* norms binding on the international community, in respect of genocide, war crimes, and crimes against humanity:

The term "jus cogens" means the "compelling law." Corollary, "a *jus cogens* norm holds the highest hierarchical position among all other customary norms and principles." As a result, *jus cogens* norms are deemed "peremptory and non-derogable." When applied to international crimes, "*jus cogens* [prohibitions on serious international]⁸⁸ crimes have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement."

These *jus cogens* [prohibition on serious international] crimes relate to the principle of universal jurisdiction, i.e., "any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists." "The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international

⁸⁶*Pangilinan v Cayetano*, *supra* note 33. In fact, according to the case, "Article II, Section 2 of the Constitution declares that international custom and general principles of law are adopted as part of the law of the land. No further act is necessary to facilitate this..."*Ibid*. Thus (mandatory) universal jurisdiction is firmly part of Philippine law by incorporation.

⁸⁷*Bayan Muna v Romulo* [2011] G.R. No. 159618 [En Banc] 1 February 2011, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Merits, I.C.J. judgment, February 26, 2007, para. 161 and M. Cherif BASSIOUNI, "International Crimes: *Jus Cogens* and *Obligatio Erga Omnes*" (1996) 59 *AUT Law & Contemp. Probs.* 63, 68.

⁸⁸The editorial emendation is necessitated by the awkward phraseology used by the PSC (echoing Bassiouni himself). The original phrase, taken literally, would result in a patently absurd meaning: that the crimes referred to are binding on all states; i.e., states are under a legal obligation to commit them. What the PSC meant is that the said crimes are subject to *jus cogens* prohibitions. In other words, every state in the world is duty-bound to criminalize and prosecute these crimes, as they are prohibited without exception under international law under a prohibition that cannot be derogated from.

community" and thus granting every State jurisdiction over the crime [emphasis supplied].⁸⁹

62. *Bayan Muna v Romulo* dealt with the constitutionality of a Bilateral Immunity Agreement (BIA) between the Philippines and the United States of America under Article 98 of the Rome Statute, in which the former obligated itself to extradite to the latter any American military personnel or contractor found in the Philippines who is facing prosecution before the International Criminal Court (ICC).

63. One of the arguments raised against this so-called "Non-Surrender Agreement"⁹⁰ is that the United States of America has not sufficiently criminalized international crimes in its criminal code. In response, the majority opinion said — noting the common law American jurisdiction — that "even with the current lack of domestic legislation on the part of the US, it still has both the doctrine of incorporation and universal jurisdiction to try these crimes."⁹¹ In the same discussion, the majority opinion approvingly said:

It has been held that [prohibitions on] genocide, war crimes and crimes against humanity have attained the status of customary international law. Some even go so far as to state that these crimes have attained the status of [crimes prohibited by] *jus cogens* [norms].⁹²

64. Thus, the PSC expressly recognized that all the serious international crimes cognizable by the ICC are subject to mandatory universal jurisdiction, under the separate regime of CIL, in particular, of peremptory norms prohibiting the commission of the crimes. In other words, outside of the Rome Statute of the ICC, these serious international crimes are subject to mandatory prosecution and punishment under CIL. States have a legal obligation to investigate and prosecute the aforementioned crimes with or without membership in the ICC, and if they are not able or willing, to extradite the suspect or accused to a willing third party (the *aut dedere aut judicare* principle); in fact, according to the majority opinion in *Bayan Muna v Romulo*, states do not need to be a party to the Rome Statute of the ICC to be obligated to prosecute these serious international crimes, such a duty being already recognized to be a *jus cogens* norm not subject to derogation by states.⁹³ The penalization of serious international crimes is merely re-stated and codified in the Rome Statute that founded the world's first permanent international criminal tribunal. Following this reasoning, the PSC disposed of the argument raised by the petitioners that parties protected by the BIA from prosecution over serious violations of IHL may never be held to account outside of the mechanisms established by the ICC.⁹⁴

⁸⁹*Bayan Muna v Romulo*, *supra* note 87.

⁹⁰*Bayan Muna v Romulo*, *supra* note 87.

⁹¹*Ibid.*

⁹²*Ibid.*

⁹³*Ibid.*

⁹⁴*Ibid.*

65. *Bayan Muna v Romulo* established a Philippine precedent: under the Philippines' hybrid constitutional and legal system, with its established jurisprudence on the doctrine of incorporation under the Philippine constitution – and even assuming the absence of a congressional penal act – genocide, war crimes, and crimes against humanity are subject to the mandatory universal jurisdiction of Philippine courts under the *jus cogens* regime. Mandatory prosecution of war crimes brought to their attention is a duty owed by Philippine authorities to the international community as a whole, as an *erga omnes* obligation proceeding from *jus cogens* norms.

66. *Bayan Muna's* observation about the common law system of incorporation of CIL into the US legal system⁹⁵ also echoes and reaches back into the beginnings of the annexation by the US of the Philippines as a colony and imparting into the latter's constitutional and legal DNA the Philippine's own common law tradition; it is a tradition that continues to be embodied in the incorporation clause of the Philippine constitution, its commitment to the doctrine of duality of norms, and to *stare decisis*.

C.2 Mandatory Universal Jurisdiction in the Text of the IHL Act

67. The previous section discussed extensively the constitutional and jurisprudential basis for the exercise of unrestricted or mandatory universal jurisdiction by Philippine courts over serious international crimes that are a concern for the international community, as a matter of the duality of norms: that is, owing to the Philippine constitutional structure and tradition, a practically unlimited universal jurisdiction in the case of serious violations of IHL is recognized as part of the law of the land, outside of legalization through the legislature.

68. What follows is an examination of the text of the IHL Act itself to establish mandatory universal jurisdiction over war crimes as part of the purview of Philippine courts' jurisdiction. Even here, the established hybrid Philippine constitutional and legal framework enforces the duality of norms in legislation.

69. *This Joint Complaint-Affidavit argues that Section 17 of the IHL Act per se does not limit the exercise of mandatory universal jurisdiction by Philippine authorities to a demonstrable "Philippine presence" nexus of perpetrators; rather, the structure of the law in question, correlated with case law, relevant statute, principles and norms of international law, and more importantly, the constitution itself, assumes mandatory universal jurisdiction as the rule grafted into the IHL Act over the aforementioned set of international crimes; Section 17 (b) (the Philippine presence nexus) is merely a specification of an admissibility bar for an obvious target for investigation and prosecution as a matter of a legal duty on the part of the Philippines; it however does not preclude the investigation and*

⁹⁵*Bayan Muna v Romulo*, *supra* note 87.

prosecution of international crimes whose perpetrators are not as yet found on Philippine soil, subject to considerations of reverse complementarity and/or “the interest of justice.”

C.3 IHL Act: Declaration of Principles on Mandatory Universal Jurisdiction

70. Section 2 of the IHL Act embodies a declaration of principles. Relevant to this Pleading are the following provisions:

...

(d) The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation;

(e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes... [emphasis supplied].⁹⁶

71. Here is laid down the adoption by the IHL Act as part of its purpose for penalizing international crimes the relevant sources of norms and principles of international law (subsection d) and the principle of effective prosecution of “the most serious crimes of concern to the international community”, this being “the duty of Every State to exercise its criminal jurisdiction over those responsible for international crimes (subsection e). Thus, the IHL Act sees as its purpose for being the very exercise of mandatory universal jurisdiction over the most serious crimes of international concern as “the duty of every State”, including the Philippines.

72. Subsection (d) in particular refers to the Hague and Geneva Conventions as among the treaties that serve as basis of the law, thus also implying its embrace of contemporary developments in international humanitarian law and international criminal law that now apply the criminalization of war crimes as serious violations of IHL to both international armed conflicts (IACs) and non-international armed conflicts (NIACs), which we will discuss in detail below.

73. Indeed, Section 2’s Declaration of Principles does not refer at all to a Philippine presence nexus requirement; rather, it invokes the generalized and unrestricted – or mandatory – obligation of states “to exercise its criminal

⁹⁶IHL Act, Section 2, *supra* note 3.

jurisdiction over those responsible for international crimes”⁹⁷ whether or not the perpetrators are found in their jurisdiction. The Declaration imposes no requirement of the Philippine presence of a suspected war criminal or someone accused of war crimes for Philippine courts to assert jurisdiction over them.

C.4 Other Indica of Mandatory Universal Jurisdiction: Section 19 and Section 17 Chapeau, IHL Act

74. Further, Section 9 of the IHL Act implies universal jurisdiction due to its reference to “*head of state or government*,” and to “*a member of a government or parliament*,” viz:

SEC. 9. *Irrelevance of Official Capacity.* – This Act shall apply equally to all persons without any distinction based on official capacity. **In particular, official capacity as a head of state or government,** a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. However:

(a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising its jurisdiction over such a person; and

(b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law [emphasis supplied]⁹⁸

75. In addition, the *Chapeau* of Section 17 speaks of criminalization of serious international crimes identified in the law, “regardless of where the crime is committed.”⁹⁹ The PSC had the occasion to render an *obiter dictum* in *Pangilinan v Cayetano* essentially stating that Section 17 of the IHL Act is about unrestricted and generalized – rather specified – universal jurisdiction, as quoted extensively below:

Republic Act No. 9851 declares the State policy of valuing "the dignity of every human person and guarantee[ing] full respect for human rights, including the rights of indigenous cultural communities and other vulnerable groups, such as women and children[.]" **It guarantees protection against "the most serious crimes of concern to the international community as a whole . . . and their effective**

⁹⁷ IHL Act, Section 2, *supra* note 3.

⁹⁸ IHL Act, Section 2, *supra* note 3.

⁹⁹ IHL Act, Section 17, *supra* note 3.

prosecution must be ensured by taking measures at the national level in order to put an end to impunity for the perpetrators of these crime[.] It recognizes that the State must "exercise its criminal jurisdiction over those responsible for international crimes[.]"

This is enforced by the Republic Act No. 9851's assertion of jurisdiction over crimes committed anywhere in the world...Republic Act No. 9851 expressly confers original and exclusive jurisdiction on regional trial courts over the offenses it punishes. It also provides that this Court shall designate special courts to try these cases. Unlike the Rome Statute, Republic Act No. 9851 dispenses with complementarity as a requirement for prosecution of crimes against humanity [emphasis supplied, internal citations omitted].¹⁰⁰

C.5 Mandatory Universal Jurisdiction in the Hermeneutical Key to the IHL Act

76. ***Thus the hermeneutical key:*** Section 15 of the IHL Act serves as basis for an expanded nexus for the exercise by Philippine courts of mandatory universal jurisdiction over serious international crimes outside of the "Philippine presence" nexus provided in Section 17 (b).

77. Section 15 of the IHL Act grafts universal jurisdiction into the law with its explicit reference to the applicability of international law in the application and interpretation of the IHL Act, viz:

Section. 15. *Applicability of International Law.* – In the application and interpretation of this Act, Philippine courts shall be guided by the following sources:

- (a) The 1948 Genocide Convention;
- (b) The 1949 Geneva Conventions I-IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;
- (c) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;
- (d) The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;

¹⁰⁰*Pangilinan v Cayetano*, supra note 33.

- (e) The rules and principles of customary international law;
- (f) The judicial decisions of international courts and tribunals;
- (g) Relevant and applicable international human rights instruments;
- (h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
- (i) Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.¹⁰¹

78. Section 15 is the hermeneutical key to interpreting the scope of universal jurisdiction outlined in Section 17. This hermeneutical key provided in Section 15 requires correlation of the IHL Act's provisions with other relevant statutory provisions outside of the IHL Act itself, as amplified by case law, as well as echoed by or mirrored in the text of the Constitution itself. Moreover, all of the sources, norms, and principles of international law listed in Section 15 assume universal jurisdiction without reference to a territorial presence requirement of a suspect or accused; thus, it would be a superfluity to expressly state that (mandatory) universal jurisdiction applies to all serious international crimes, whether or not the accused or suspect is found in the territory of a prosecuting state. This is already assumed as grafted into law as a feature and consequence of the Philippine constitutional and legal structure.

79. We shall consider only a selection of the sources, norms, and principles mentioned in Section 15 to establish the recognition in Section 17 of a generalized universal jurisdiction.

The 1968 Genocide Convention

80. What does the 1948 Genocide Convention say of universal jurisdiction? Article 1 of the Convention states: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, **is a crime under international law which they undertake to prevent and to punish**"[emphasis supplied].¹⁰²

¹⁰¹ IHL Act, Section 15, *supra* note 3.

¹⁰² Approved and proposed for signature and ratification or accession by United Nations General Assembly Resolution 260 A (III) A/RES/260(III)[A] 9 December 1948 (Adoption of the Convention on the Prevention and Punishment of The Crime of Genocide, and Text of the Convention). Entry into force: 12 January 1951, in accordance with article XIII. The Philippines became a party to the Genocide Convention on 7 July 1950.

The 1949 Geneva Conventions I-IV, their 1977 Additional Protocols 1 and II, and Their 2005 Additional Protocol III

81. What do these Conventions say of universal jurisdiction? Article 49 of the 1949 Geneva Convention I¹⁰³, Article 50 of the 1949 Geneva Convention II¹⁰⁴, Article 129 of the 1949 Geneva Convention III¹⁰⁵ and Article 146 of the 1949 Geneva Convention IV¹⁰⁶ provide a common obligation to states parties to exercise universal jurisdiction over and repress grave breaches of international humanitarian law, as follows:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed [grave breaches of the 1949 Geneva Conventions], **and shall bring such persons, regardless of their nationality, before its own courts.** It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case [emphasis supplied].

82. Originally, grave breaches under the Geneva Conventions were understood as follows:

Grave breaches are a closed category. If the offense is not specified in common Article 50/51/130/147, no matter how heinous the act, it is not a grave breach (although 1977 Additional Protocol I [Chapter 4, section 4.2.1.1.] in Articles 11.4, 85.3, and 85.4 raises several additional grave breaches). Mutilating a dead body? Cannibalism? They are not named as grave breaches and, heinous as such acts may be, they are not grave breaches. Such offenses are left to military commissions or courts-martial, or to the domestic criminal codes of the states involved, to be tried as simple war crimes. Grave breach offenses that are specified in all four of the 1949 Conventions are willful killing, torture or inhuman treatment, and willfully causing great suffering or serious injury. Each of the four conventions includes several additional grave breaches appropriate to the category of protected individual in that particular convention.¹⁰⁷

¹⁰³ Geneva I, *supra* note 82.

¹⁰⁴ Geneva II, *supra* note 82.

¹⁰⁵ Geneva III, *supra* note 82.

¹⁰⁶ Geneva IV, *supra* note 82.

¹⁰⁷ Gary D. SOLIS, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge: Cambridge University Press 2010) 94

83. Article 85(1) of the 1977 Additional Protocol I¹⁰⁸ incorporates by reference the provisions set forth in the second paragraph of Article 49 of the 1949 Geneva Convention I, Article 50 of the 1949 Geneva Convention II, Article 129 of the 1949 Geneva Convention III and Article 146 of the 1949 Geneva Convention IV, as follows:

The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

The 1954 Hague Convention for the Protection of Cultural Property

84. Article 28 of the 1954 Hague Convention for the Protection of Cultural Property provides:

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.¹⁰⁹

85. The above treaties referred to in the IHL Act as incorporated to its provisions and serve as interpretive guides are subject of the *pacta sunt servanda* obligation on the part of the Philippines, under both the Vienna Convention on the Law of Treaties and CIL. As the PSC held in one case:

The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction [in text citations omitted].¹¹⁰

The Rules and Principles of Customary International Law

86. CIL recognizes the right of states to vest universal jurisdiction in national courts over war crimes.¹¹¹ Be that as it may, international law, through CIL, also obligates states to repress grave breaches of international humanitarian law as well as violations of the prohibition on torture, protection of UN personnel, enforced disappearances and the protection of cultural property, as well as under the relevant treaties.¹¹² The obligatory

¹⁰⁸Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. The Philippines acceded to the AP I on 30 March 2012.

¹⁰⁹The Philippines signed the treaty on 5 May 1954 but is yet to accede to it.

¹¹⁰ *Deutsche Bank AG Manila Branch v CIR*, [2013] G.R. No. 188550 [First Division] 19 August 2013.

¹¹¹ Rule 157, ICRC Customary International Law Project online: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule157>

¹¹²*ibid.*

nature of state obligations to exercise universal jurisdiction over war crimes constituting grave breaches of IHL is reflected in rule 158 of the ICRC Customary International Law Project:

Rule 158. States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. **They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects**¹¹³ [emphasis supplied].

87. Yet, one of the most significant developments to take place in the interpretation of the nature of grave breaches of IHL prohibited and penalized by the four Geneva Conventions is its eclipse and absorption into the concept of “serious violations of IHL” that encompass war crimes. In the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY), grave breaches are defined as to amount to a serious violation of IHL where they:

... constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim. Thus, for instance, the fact of a combatant simply appropriating a loaf of bread in an occupied village would not amount to a “serious violation of international humanitarian law.”¹¹⁴

88. Previously, grave breaches were taken to be limited only to international armed conflicts. Today, however, the distinction has been practically erased; grave breaches are now subsumed under the notion of serious violations of IHL that may be committed both in an international armed conflict and in a non-international armed conflict.¹¹⁵

89. Under the jurisprudence of the ICTY, the alleged underlying crimes that have been held to meet the *Tadić* criteria include murder; cruel treatment; attacks on civilians or civilian objects; destruction and devastation of property, including cultural or religious property; and terror.¹¹⁶ As the *UK Manual of the Laws on Armed Conflict* would put it: “Although the treaties governing internal armed conflicts contain no grave breach provisions, customary law recognizes that serious violations of those treaties can amount

¹¹³Rule 158, ICRC Customary International Law Project online: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule158>

¹¹⁴ *Prosecutor v Tadic*, *supra* note 10, para. 94 (iii).

¹¹⁵Chile EBOE-OSUJI, “Much Ado About ‘Serious Violations’,” 8-9, (undated) online: <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/827EE9EC-5095-48C0-AB04-E38686EE9A80/283279/GRAVEBREACHESMUCHADOABOUTSERIOUSVIOLATIONS.pdf>, citing *Judgement en la cause Fulgence Niyonteze*, Tribunal de Division 2, Armée Suisse Justice Militaire (‘Niyonteze Appeals Judgment’) and *Prosecutor v Tadic*; Marko Divac ÖBERG, (2009) “The Absorption of Grave Breaches Into War Crimes Law”, 91 ICRC Review 873 163-183.

¹¹⁶Gideon BOAS, James L. BISCHOFF, and Natalie L. REID (eds.) *Elements of Crimes under International Law: International Law Practicioners Library Series Vol. III* (Cambridge: Cambridge University Press 2009) 262 (in-text citations omitted)

to punishable war crimes. It is now recognized that there is a growing area of conduct that is criminal in both international and internal armed conflict . . .”¹¹⁷

90. The UN General Assembly has recognized this as well, stating that “[i] cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violation and, if found guilty, the duty to punish her or him.”¹¹⁸

The Judicial Decisions of International Courts and Tribunals

91. The ICTY Appeals Chamber started the process of absorption of the grave breaches regime into the regime of serious violations or serious crimes of international law, founding it on a deepened understanding of the notion of humanity.¹¹⁹ In *Tadić*, it held thus:

[W]e have no doubt that they [violations of rules of warfare in international law] entail individual criminal responsibility, regardless of whether they are committed in internal or international armed conflicts. Principles and rules of humanitarian law reflect “elementary considerations of humanity” widely recognized as the mandatory minimum for conduct in armed conflicts of any kind.¹²⁰

92. Six years later, in *Čelebići*, the ICTY Appeals Chamber left no doubt that the process is made complete, asserting that:

In light of the fact that the majority of the conflicts in the contemporary world are internal, to maintain a distinction between the two legal regimes and their criminal consequences in respect of similarly egregious acts because of the difference in nature of conflicts would ignore the very purpose of the Geneva Conventions.¹²¹

93. These international jurisprudential developments were all anticipated by Mr. Justice Perfecto’s *Yamashita* opinion enshrining the principle of humanity as the foundation for the exercise of mandatory universal jurisdiction over war crimes, whether committed in an IAC or an NIAC.

¹¹⁷ U.K., *Manual of the Law of Armed Conflict* (Oxford: Oxford University Press 2004) paras. 15.32, 15.32.1, at 397, quoted in SOLIS, *supra* note 107 at 101.

¹¹⁸ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ annexed to UN General Assembly Resolution 60/147 21 March 2006 (Basic Principles and Guidelines on the Right to a Remedy) Section 4. The Resolution was adopted by consensus on 16 December 2005 and officially published in 2006. The adoption reflects *opinio juris sive necessitatis*.

¹¹⁹ SOLIS, *supra* note 107, at 100

¹²⁰ *Ibid.*, quoting *Prosecutor v Tadić*, *supra* note 7, para. 84.

¹²¹ *Ibid.*, at 106, quoting *Prosecutor v Delalić* IT-96–21-A (20 Feb. 2001), para.172

Relevant and applicable international human rights instruments and other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines

94. As already noted, the ICCPR has been applied directly to Philippine jurisdiction even in the absence of a constitution. According to the UN Committee on Human Rights, certain rights protected under the ICCPR are not subject to derogation, these “bearing the nature of peremptory norms of international law” (*jus cogens* norms) including Article 6 (right to life), Article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), Article 8, paras. 1 and 2 (prohibition of slavery, slave trade and servitude), Article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), Article 15 (the principle of legality in criminal proceedings), Article 16 (the recognition of everyone as a person before the law), and Article 18 (freedom of thought, conscience and religion).¹²²

95. The Committee has also opined that certain rights enumerated in the Convention are of a peremptory character, such that they cannot be made subject to reservations:

a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And while reservations to particular clauses of article

¹²²UN Committee on Human Rights, General Comment No. 29, “State of Emergency (Article 4)” CCPR/C/21/Rev.1/Add.11 31 August 2001 1-7. Para. 11 is apropos:

11. The enumeration of non-derogable provisions in article 4 is related to, but not identical with, the question whether certain human rights obligations bear the nature of peremptory norms of international law. The proclamation of certain provisions of the Covenant as being of a non-derogable nature, in article 4, paragraph 2, is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g., articles 6 and 7). However, it is apparent that some other provisions of the Covenant were included in the list of non-derogable provisions because it can never become necessary to derogate from these rights during a state of emergency (e.g., articles 11 and 18). Furthermore, the category of peremptory norms extends beyond the list of non-derogable provisions as given in article 4, paragraph 2. States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence. *Ibid.* para. 11 5

14 may be acceptable, a general reservation to the right to a fair trial would not be.¹²³

96. Article 5(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹²⁴ grants territorial, nationality and passive personality jurisdiction on violations of the prohibition on torture, as follows:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

97. In addition, the CAT's para. 5(2) provides that:

2) Each state party [shall] take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him to any of the states mentioned in paragraph 1 of this article.

3) This Convention *does not exclude any criminal jurisdiction exercised in accordance with internal law* [emphasis supplied]

98. Under the CAT's para. 5(2)(3), the Philippines may prosecute offenders, invoking mandatory universal jurisdiction under CIL and *jus cogens*, through the Incorporation Clause of the Constitution. The ILC summarized the components of the *aut dedere aut judicare* principle, as expressed in the landmark case between Belgium and Senegal on the obligation to prosecute or extradite under the CAT before the ICJ,¹²⁵ as follows:

The obligation to prosecute is actually an obligation to submit the case to the prosecuting authorities; it does not involve an obligation to initiate a prosecution. Indeed, in light of the evidence, fulfillment of the obligation may or may not result in the institution of proceedings. The competent authorities decide whether to initiate proceedings, in the same manner as they would for any alleged offence of a serious

¹²³ UN Committee on Human Rights, General Comment No. 24, "Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant" CCPR/C/21/Rev.1/Add.6, 4 November 1994 para. 9.

¹²⁴ Adopted by the UN General Assembly Resolution 39/46 ARES/39/46 10 December 1984 (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Entry into force: 26 June 1987. The Philippines became a party to the CAT on 18 June 1986.

¹²⁵ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ Rep. 2012

nature under the law of the State concerned. Proceedings relating to the implementation of the obligation to prosecute should be undertaken without delay, as soon as possible, in particular once the first complaint has been filed against the suspect. The timeliness of the prosecution must be such that it does not lead to injustice; hence, necessary actions must be undertaken within a reasonable time limit.¹²⁶

99. Thus, the Final Report added, following the aforementioned landmark case:

Universal jurisdiction is a crucial component for prosecuting alleged perpetrators of crimes of international concern, particularly when the alleged perpetrator is not prosecuted in the territory where the crime was committed. Several international instruments, such as the very widely ratified four Geneva Conventions of 1949 and the Convention against Torture, require the exercise of universal jurisdiction over the offences covered by these instruments, or, alternatively to extradite alleged offenders to another State for the purpose of prosecution [in text citations omitted].¹²⁷

100. There are many other human rights and related IHL treaties to which the Philippines as a party. But for the purposes of this Joint Complaint-Affidavit, we deem the above discussion sufficient to establish our point about the applicability of mandatory universal jurisdiction to the matter of war crimes committed against the Chin people by the Tatmadaw.

Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law

101. Jean Pictét, the famous legal adviser to the International Committee of the Red Cross instrumental in the drafting of the Geneva Conventions of 1949, opined that Article 49 of the 1949 Geneva Convention I, Article 50 of the 1949 Geneva Convention II, Article 129 of the 1949 Geneva Convention III and Article 146 of the 1949 Geneva Convention IV “lays the foundations of the system adopted for suppressing breaches of the Convention. The system is based on three fundamental obligations . . . [T]o enact special legislation . . . to search for any person accused of violation . . . and the obligation to try such persons.”¹²⁸

102. These fundamental obligations, according to Dinstein, is founded on the principle of universality:

¹²⁶Final Report of the International Law Commission, “The Obligation to Extradite or Prosecute (aut dedere aut judicare)” (2014), Adopted by the International Law Commission at its Sixty-Sixth Session, para. 29 9 online: https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf, citing *Belgium v Senegal*, *supra* note 133, 454 456, paras. 90 94; paras. 114-115,117.

¹²⁷ *Ibid.*, para.18 at 9.

¹²⁸ Jean PICTET, ed., *Commentary, I Geneva Convention* (Geneva: ICRC, 1952) 362.

When charges are preferred against a war criminal, the overriding consideration in the matter of jurisdiction is that the crimes at issue are defined by international law itself. The governing principle is then universality: all States are empowered to try and punish war criminals. The upshot is that a belligerent State is allowed to institute penal proceedings against an enemy war criminal, irrespective of the territory where the crime was committed or the nationality of the victim. In all likelihood, a neutral State (despite the fact that it does not take part in the hostilities) can also prosecute war criminals.¹²⁹

103. By the time of the establishment of the ICC, mandatory universal jurisdiction already covers serious violations of IHL committed in both IAC and NIAC. The definitive commentary on the Rome Statute (known as “The Triffterer”, after its founder Professor Otto Triffterer) has this to say about the status of war crimes as violations of the laws and customs of war in the era of the ICC:

The term “war crimes” contained in both article 5 para. 1, as well as in article 8 of the Statute, is derived from article 85 para. 5 of the 1977 Add. Prot. I to the Geneva Conventions. For the purposes of the Statute, it is however not limited to either grave breaches of the four 1949 Geneva Conventions or to those of the 1977 Add. Prot. I. Instead, it also extends to other serious violations of the laws and customs of war applicable in international armed conflict, violations of common article 3 of the four Geneva Conventions and serious violations of the laws and customs of war applicable in internal armed conflicts.

The Statute thereby contains a comprehensive stocktaking of the current status of customary international law in the field and indicates where international law might have evolved since the two Add. Prot. were adopted in 1977.

The inclusion of war crimes in article 5, read in conjunction with article 8 para. 1, further 25 **demonstrates that even individual war crimes are, under certain given circumstances, also of concern for the international community as a whole and thus subject to the jurisdiction of the Court** [emphasis supplied].¹³⁰

¹²⁹ Yoram DINSTEIN, *The Conduct of Hostilities Under the Law of International Armed Conflict* (New York: Cambridge University Press, 2004) 229

¹³⁰ Andreas ZIMMERMANN, “Article 5: Crimes within the Jurisdiction of the Court”, in Kai AMBOS ed., *The Rome Statute of the International Criminal Court: A Commentary* (Oxford: Beck/Hart/Nomos 3rd ed., 2015) 118-119.

104. Kai Ambos, another eminent authority on international criminal law, agrees:

The concept of “war crime” may be understood in both a broad and a narrow sense. In a broad sense, it encompasses all criminal acts committed in a ‘war’ or an armed conflict, notwithstanding their character as war crimes in a narrow sense (i.e., IHL violations converted into “war crimes”) or other international crimes, in particular crimes against humanity. In this chapter we deal with war crimes *stricto sensu*, specifically the ones codified in Article 8 ICC Statute. We can speak in this regard of the ICL of armed conflict encompassing the “ICL of war” (“droit pénal international de la guerre”, “derecho penal internacional de la guerra”, “Kriegsvölkerstrafrecht”) and the “ICL of civil war” (“droit pénal international de la guerre civile”, “derecho penal internacional de la guerra civil”, “Bürgerkriegsvölkerstrafrecht”). It is clear from this terminological dichotomy that “war crimes” ...are no longer limited to international armed conflicts (between states) but can be committed in internal (non-international) conflicts as well. Thus, contrary to Article 8 ICC Statute, the correct term would be “crimes of armed conflict” (“crimes de conflit armé”)[in-text citations omitted].¹³¹

105. Moreover, as an authoritative work on the legislative history of the Rome Statute of the ICC, co-edited by Bassiouni and another noted authority on international law, William A. Schabas, puts it:

The crimes within the ICC’s jurisdiction are well-defined in international criminal law... and carry the obligations for States to investigate, prosecute, and extradite individuals accused of such crimes, and to punish those individuals who are convicted of their commission....¹³²

The war crimes provision of Article 8 includes: 1) the “grave breaches” and Common Article 3 of the 1949 Geneva Conventions, which have been ratified by 196 states; and 2) the “grave breaches: of Protocol I and serious violations of Protocol II of 1977, which are deemed part of the customary law of armed conflict. Protocol I has been ratified by 174 states, and Protocol II by 168 states. Furthermore, Article 8 includes, in part, that which is considered the customary law of armed conflict, including prohibitions of certain weapons, though without much legal certainty as to what is prohibited and under what circumstances.¹³³

¹³¹ Kai AMBOS, *Treatise on International Criminal Law Volume II: The Crimes and Sentencing* (Oxford: Oxford University Press 2014) 117.

¹³² M. Cherif BASSIOUNI and William A. SCHABAS, eds. *The Legislative History of the International Criminal Court*, Vol. 1 (Leiden: Brill Nijhoff 2016, 2nd ex. & rev. ed.) 133.

¹³³ *Ibid.* at 174-175

106. Commenting on the peculiarities exhibited by the drafting of the war crimes provisions of the Rome Statute that incorporated the grave breaches regime, under them, one scholar had this to say:

The ICC Statute, adopted in 1998, listed grave breaches as a category of war crimes under Article 8(2)(a). This confirmed, in an instrument of international criminal law, that grave breaches had become subsumed under war crimes. The transformation led to some strange results. Article 8(2)(a) defines criminal acts using wording that was not drafted for that purpose, since the grave breaches provisions were only guidelines for domestic criminal legislation. Moreover, due to the different origins of the grave breaches provisions in Article 8(2)(a) and the war crimes provisions in the rest of Article 8, there is plenty of overlap between Articles 8(2)(a) and 8(2)(b).²⁹ Yet there is no logical or legal reason to separate the crimes in these articles, since the same rules in the ICC Statute apply to both types of crimes. In any event, the ICC Statute provided the ICC with jurisdiction over a long list of war crimes drawn from customary law, including grave breaches. This illustrates how in recent years the concept of grave breaches has appeared in instruments of international criminal law rather than in international humanitarian law.¹³⁴

107. A more recent commentary traces the development by the ICTY's jurisprudence of the view that CIL has established criminalization of war crimes in both IACs and NIACs in this wise:

After elaborating on State practice and *opinio iuris*, the ICTY *Tadić* Appeals Chamber concluded that "customary international law imposes criminal liability for serious violations of common Article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife." The ICTY *Tadić*, Appeals Chamber's deductive reasoning was based on "elementary considerations of humanity" and the acknowledgment that customary international criminal law with regard to war crimes committed in NIACs can be "supplemented by other general principles", and thus it opened the door for the "humanization of law" reasoning by international criminal tribunals [in-text citations omitted].¹³⁵

108. Earlier, we noted that in *Bayan Muna*, the PSC had cited approvingly the work of Bassiouni, an eminent scholar of international

¹³⁴ ÖBERG, *supra* note 118 at 169. The author calls this new set of grave breaches embodied in contemporary international criminal law as "substantive grave breaches", as opposed to the "procedural and jurisdictional" grave breaches of IHL, which detailed "how domestic legislative and law enforcement bodies should ensure that justice is done for certain breaches of international law." In contrast, substantive grave breaches "are substantive norms, and constitute a category of war crimes. They define behaviour that is considered to be criminal in international law." *Ibid.*

¹³⁵ Thomas RAUTER, *Judicial Practice, Customary International Criminal Law and Nullum Crimen Sine Lege* (Cham, Switzerland: Springer International Publishing 2017) 147.

criminal law¹³⁶, accepting the scholar's view that genocide, war crimes, and crimes against humanity are serious international crimes subject of *jus cogens* prohibitions.¹³⁷

109. In a co-authored book on the *aut dedere aut judicare* principle, Bassiouni laid down the philosophical basis for such a view advancing an *erga omnes* obligation on the part of all states to repress the aforementioned serious international crimes:

...there is ultimately the supposition that states constitute only an intermediate level of political organization in what actually is a more general and genuine moral community comprising all humanity.

The idea of the world as a . . . “community of mankind” primarily expresses a sense of human solidarity of common humanity. It postulates certain universal objects and moral imperatives that are believed, in principle, to limit the action of states and impel them to cooperate for the common good of a community of which everyone in the world is ultimately a member. . .

To a greater or less extent, it is belief in the ultimate reality of this *civitas maxima* that underlies assertions about a common interest in repressing crime wherever it occurs (and also assertions about the existence of a genuine body of international criminal law).¹³⁸

110. In the language of the pen of Mr Justice Perfecto, this *civitas maxima*, the moral community of common humanity, is what compels states to prosecute violations of *jus cogens* norms, so that the perpetrators, wherever they may have committed their horrendous crimes, and wherever they may be found, “may be given the full justice due to all human beings.”¹³⁹ That or they become complicit to the very crimes committed against the law of humanity.

111. In *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* in 2009 before the International Court of Justice, Eric David made what is considered as “the most comprehensive statement on customary grounds of the obligation *aut dedere aut judicare*”,¹⁴⁰ as follows:

¹³⁶ Among many outstanding contributions to the development of international criminal law, he led the Commission of Experts established in 1992 pursuant to UN Security Council Resolution 780 S/RES/780(1992) adopted by the Security Council at its 3119th meeting, 6 October 1992, to investigate atrocities in the former Yugoslavia and chaired the drafting committee of the Rome Statute. For various aspects of his groundbreaking and comprehensive work as an academic and international law practitioner, see Leila Nadya SADAT and Michael P. SCHARF eds. *The Theory and Practice of International Law: Essays in Honor of M. Cherif Bassiouni* (Leiden: Martinus Nijhoff Publishers 2008).

¹³⁷ See also BASSIOUNI, *supra* note 137, at 68

¹³⁸ M. Cherif BASSIOUNI and E.M. WISE, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law* (Dordrecht, Martinus Nijhoff Publishers, 1995) 51.

¹³⁹ *Yamashita v Styer*, *supra* note 9.

¹⁴⁰ Mr. Zdzislaw GALICKI, Special Rapporteur, Fourth Report on the Obligation to Extradite or Prosecute (*aut dedere aut judicare*) Sixty-Third Session DOCUMENT A/CN.4/648 para. 82 200

19. The rule *judicare vel dedere* is a rule of customary international law expressed by the United Nations General Assembly and the International Law Commission. In its resolution 3074 (XXVIII), adopted by the United Nations General Assembly, with no dissenting votes, on 3 December 1973, the Assembly proclaims:

“1. War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.” (Emphasis added.)¹⁴¹

C.6 The War Crimes Provisions of the IHL Act Follows Contemporary International Law Erasing the Distinction between Grave Breaches of IHL and Serious Violations of IHL

112. *The absorption of the grave breaches regime by the serious violations of IHL regime is also reflected in the very structure of the IHL Act. We need to go no farther than Section 4 of the IHL to show that already subsumed under war crimes or “crimes against international humanitarian law” are “grave breaches of the Geneva Conventions of 12 August 1949”;*¹⁴² crimes committed in an NIAC constituting “serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949;”¹⁴³ and finally, “[o]ther serious violations of the laws and customs applicable in armed conflict, within the established framework of international law...”¹⁴⁴

¹⁴¹ *Ibid.*

¹⁴² Section 4(a), namely: “any of the following acts against persons or property protected under provisions of the relevant Geneva Convention:

- (1) Willful killing;
- (2) Torture or inhuman treatment, including biological experiments;
- (3) Willfully causing great suffering, or serious injury to body or health;
- (4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- (5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (6) Arbitrary deportation or forcible transfer of population or unlawful confinement;
- (7) Taking of hostages;
- (8) Compelling a prisoner a prisoner of war or other protected person to serve in the forces of a hostile power; and
- (9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.”

¹⁴³ Section 4(b), namely: “any of the following acts committed against persons taking no active part in the hostilities, including member of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause;

- (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
- (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (3) Taking of hostages; and
- (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.”

¹⁴⁴ Section 4(c) “namely:

- (1) Internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

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- (2) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with international law;
 - (4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;
 - (6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health .
 - (7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;
 - (8) Killing or wounding a person in the knowledge that he/she is hors de combat, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;
 - (9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;
 - (10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;
 - (11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (12) Killing, wounding or capturing an adversary by resort to perfidy;
 - (13) Declaring that no quarter will be given;
 - (14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;
 - (15) Pillaging a town or place, even when taken by assault;
 - (16) Ordering the displacements of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatments;
 - (19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;
 - (20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;
 - (22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (24) Committing any of the following acts:
 - (i) Conscription, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;
 - (ii) Conscription, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and
 - (iii) Using children under the age of eighteen (18) years to participate actively in hostilities; and

113. In addition, Section 2(e) in the Declaration of Principles of the IHL Act states that:

The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes...¹⁴⁵

114. Without doubt, the IHL Act embodies and reflects current developments in international humanitarian law and international criminal law. In addition, the IHL Act also embodies Philippine treaty obligations under the Geneva Conventions. Under the IHL Act, serious violations of IHL, including war crimes, whether committed in an IAC or an NIAC, are subject to mandatory universal jurisdiction.

D. FINDING THAT “ARTICULATE CONSISTENCY” IN THE STRUCTURE OF SECTION 17 OF THE IHL ACT: SECTION 17(B) AS EXPRESS ADMISSIBILITY CLAUSE

D.1 A Consistent Application of the *ne bis in idem* Rule

115. So, how should we construe the Philippine presence nexus found in Section 17(b) of the IHL Act in a manner consistent with right and justice? Earlier, we noted that mandatory universal jurisdiction is in fact the overall intent of the chapeau of Section 17:

The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, **regardless of where the crime is committed**, provided, any one of the following conditions is met... [emphasis supplied]

116. Rather than being an application of the *expressio unius est exclusio alterius* rule,¹⁴⁶ Section 17(b) is an “express admissibility clause” that

(25) Employing means of warfare which are prohibited under international law, such as:

- (i) Poison or poisoned weapons;
- (ii) Asphyxiating, poisonous or other gasses, and all analogous liquids, materials or devices;
- (iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and
- (iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict...

¹⁴⁵ IHL Act, Section 2 (e), *supra* note 3.

¹⁴⁶ The PSC has held in one case that:

The rule...and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own

needs to be read with the exception clause under Section 17 dealing with the *ne bis in idem* bar, which is specific to foreigners suspected or accused of war crimes:

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.[emphasis supplied].

D.2 The *reddondo singular singulis* Rule is a Better Fit than the *expressio unius est exclusio alterius* Rule

117. Thus, the better construction of Section 17(b) also invokes the *reddendo singula singulis* rule. By this canon of construction, it is meant that:

[W]ords in different parts of a statute must be referred to their appropriate connection, giving to each in its place, its proper force and effect, and, if possible, rendering none of them useless or superfluous, even if strict grammatical construction demands otherwise. Likewise, where words under consideration appear in different sections or are widely dispersed throughout an act the same principle applies.¹⁴⁷

D. 3 Dovetailing with the Doctrine of Necessary Implication

118. This interpretative approach is also consistent with the Doctrine of Necessary Implication recognized in Philippine jurisprudence thus:

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. **What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding of events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication.** The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. **Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and**

voluntary act and not upon that of others. They proceed from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned. *De La Salle University v Bernardo*, [2017] G.R. No. 190809 [First Division] 13 February 2017.

¹⁴⁷ *City of Manila v Laguio* [2005] G.R. No. 118127 [En Banc] 12 April 2005.

logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, semper inest et minus* [emphasis supplied].

119. Applying the two aforementioned canons of statutory construction, and in conjunction with the established norms and principles of international law incorporated in Philippine law and treaty obligations, *Section 17 (b) should be read as structured in this way:*

SEC. 17. *Jurisdiction.* – The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, [and regardless of citizenship or residence], provided [...]

(b) [Where] the accused [or suspects, are foreigners who are] present in the Philippines[,] [n]o criminal proceedings shall be initiated against [such] foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence. [The same defense shall be available to similarly situated Filipino nationals suspected or accused of a crime defined and penalized in this Act].

120. This interpretative approach is also consistent with the Doctrine of Necessary Implication recognized in Philippine jurisprudence, thus:

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding of events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, semper inest et minus*.¹⁴⁸

¹⁴⁸ *Chua v Civil Service Commission* [1992] G.R. No. 88979 [En Banc] February 1992, citing Ruben E. AGPALO, *Statutory Construction* (Quezon City: Rex Bookstore 1986 ed) 118-119.

D. 4 Explaining and Applying Express Admissibility

121. By express admissibility clause, we mean that according to Section 17(b), even if the suspect or accused foreign national is **in the Philippines while being investigated or prosecuted by the relevant Philippine authorities, but it is established that they have been already tried by a competent court outside the Philippines on the same offense and acquitted, or having been convicted, already served their sentence, then Philippine authorities will no longer investigate or prosecute them. The *ne bis in idem* rule is a procedural bar to universal jurisdiction. It becomes a ground for an admissibility challenge. This is a mandatory cessation of investigation or prosecution, and not a discretionary one left to the determination of Philippine authorities.**

122. The same conclusion applies to the case of a foreign national suspected of or accused of war crimes cognizable under the IHL Act and who is subject of a pending investigation or prosecution under the law, even if not present in the Philippines; that is, if it can be shown that the *ne bis in idem* bar applies to him, the investigation and prosecution shall be put to an effective and permanent stop. The *ne bis in idem* exception clause works as an *express prohibition* against prosecutions of foreign nationals for international crimes penalized in the IHL Act, regardless of the nationality of victims, under the aforementioned two identified circumstances.

123. Why should this be the case? Ordinarily, the territoriality principle applies in the Philippine enforcement of criminal laws. Where extraterritoriality is resorted to, as in the application of the doctrine of (mandatory) universal jurisdiction, the sovereignty of other states may become at issue. Section 17(b) merely emphasizes that serious care should be taken by Philippine authorities in investigating and prosecuting foreign nationals on Philippine soil suspected or accused of serious violations of IHL. It is easier to pull the prosecutorial trigger on a foreign national found on Philippine soil, given the obligations posited by international law as embodied in the IHL Act. But as held in the landmark *Palmas* arbitration,

Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a State. This right has as corollary a duty: **the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory** [emphasis supplied].¹⁴⁹

124. The obligation of a state to protect the rights of other states and those of the latter's nationals within the former's territory are now part of CIL. It pertains to the classic right of that foreign state to ensure in the person of

¹⁴⁹ *Island of Palmas case* (Netherlands, USA) [1928] Permanent Court of Arbitration Award II RIAA 829, ICGJ 392, 4 April 1928 839.

its subjects, respect for the rules of international law.¹⁵⁰ But today, in a broader sense, it embraces the foreigner's right to access to justice within a state's territory that is subject to the exercise of diplomatic protection by his or her state of nationality:

Access to justice is not simply access to the courts, but availability of a system of fair and impartial justice the effectiveness and legitimacy of which may be reviewed under the international standard on the treatment of aliens.

...

It is the essence and the aim of this law to guarantee aliens a decent level of treatment by the territorial state and to ensure that in the event of an injury the affected aliens can have access to effective remedial process. The effectiveness of the remedy, however, cannot be determined solely by reference to local law and on the basis of the formal criterion that no impediment existed to the alien's access to a court or other local agency; **it must be determined in the light of a standard of fair and effective administration of justice, which ultimately depends on the international norms and principles on the treatment of aliens.** So, it is not enough that the territorial state opens its courts to the adjudication of aliens' claims. **The state must ensure that the adjudication process respects the rule of law and provides effective remedies to the injured alien. As a minimum, the procedure and the decision of the court must not be in violation of domestic law or be in conflict with treaty obligations of the forum state or with customary international law;** there must be no unconscionable delay of justice or manifest discrimination against the alien. By the same token, denial of justice would occur when the judicial process has been arbitrarily controlled by the executive or tainted by corruption.¹⁵¹

125. A violation of such right engages state responsibility. Now, one of the peculiarities of the phraseology of Section 17 is that the *ne bis in idem* exception clause appears applicable only to foreign nationals – without doubt, a Dworkinian hard case, where the law offers “incomplete, ambiguous, or confliction guidance.”¹⁵²

126. But this cannot be.

127. For we know that a Filipino national accused of international crimes penalized by the IHL Act may also interpose the same principle as an

¹⁵⁰ *Mavrommatis Palestine Concessions*, PCIJ Rep Series A No 2 (30 August 1924) 12

¹⁵¹ Francesco FRANCONI, “The Rights of Access to Justice under Customary International Law” in Francesco FRANCONI, ed. *Access to Justice as a Human Right: The Collected Courses of the Academy of European Law* (Oxford: Oxford University Press 2007) 79-80. See also Articles of State Responsibility for Internationally Wrongful Acts (2006), Article 3(1), which states: “The State entitled to exercise diplomatic protection is the State of nationality.” online: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_8_2006.pdf. This provision is without doubt already a CIL norm.

¹⁵² HLA HART, “Law in the Perspective of Philosophy: 1776-1976” (1976) 51 NYUL Rev 538, 547.

objection to the institution or prosecution of criminal proceedings against him. In the Philippine legal system, the prohibition on double jeopardy is an established constitutional doctrine.¹⁵³ Otherwise the constitutional principle of equal protection of laws¹⁵⁴ may be invoked by a Filipino national suspected or accused of committing crimes punishable under the IHL Act if the same right is denied him. *Yet again, this very point underscores the fact that there are matters not expressly stated in statute that are nevertheless deemed part of it, as a matter of public policy, generally-accepted principles of international law, customary international law, jus cogens norms, and as in this case, constitutional doctrine.*

D.5 An Expanded Application of the “Proviso” Clause Where a Literal Application Results in an Absurdity

128. Moreover, the clause “provided that” in the Chapeau of Section 17 having created an ambiguity as a proviso as far as the application of Section 17 (b) in relation to Section 17(a) and Section 17 (c) is concerned, it cannot be treated as a limitation to the exercise of jurisdiction by Philippines courts over violations of the IHL Act, including its prohibitions on war crimes or serious violations of IHL:

Even though the primary purpose of the proviso is to limit or restrain the general language of a statute, the legislature, unfortunately, does not always use it with technical correctness; **consequently, where its use creates an ambiguity, it is the duty of the court to ascertain the legislative intention, through resort to the usual rules of construction applicable to statutes, generally and give it effect even though the statute is thereby enlarged, or the proviso made to assume the force of an independent enactment and although a proviso as such has no existence apart from the provision which it is designed to limit or to qualify** [emphasis supplied].¹⁵⁵

129. On the other hand, if a foreign national suspected or accused of war crimes, regardless of the nationality of the victims, becomes subject of an investigation or prosecution by Philippine authorities under the IHL Act, and the *ne bis in idem* bar does not apply, still, the latter may defer to another court or international tribunal already conducting an investigation or undertaking the prosecution of such alleged crime committed by a foreign national, under the first exception clause:

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such

¹⁵³“No person shall be twice put in jeopardy of punishment for the same offense.”1987 Philippine Constitution, Section 21.

¹⁵⁴“No person shall be deprived of life, liberty, or property without due process of law, **nor shall any person be denied the equal protection of the laws**” [emphasis supplied] *Ibid.*, 1987 Constitution Article 3, Section 1.

¹⁵⁵*CIR v Filipinas Compañía de Seguros* [1960] G.R. No. L-14880 [En Banc] 29 April 1960, quoting E.T. CRAWFORD, *The Construction of Statutes* (St. Louis: Thomas Law Book, 1940) 604-605.

crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

130. But this is not a mandatory deferral to a foreign court or international tribunal but a discretionary one, regardless of whether the foreign national in question is present in the Philippines or not at the time of the investigation or prosecution. This is what the PSC, borrowing from the Philippine Coalition for the International Criminal Court petitioners in *Pangilinan v Cayetano*, called the mechanism of reverse complementarity. It is so-called because unlike the complementarity principle operative in the ICC, in which the international tribunal only steps in where a State Party fails to discharge its duty to prosecute crimes happening within its territory that are cognizable by the former under the Rome Statute, under the IHL Act, Philippine authorities may opt –in the interest of justice – not to prosecute or investigate a crime penalized by the law, and cede the matter to an international tribunal or foreign court “already conducting the investigation or undertaking the prosecution of such crime.”¹⁵⁶

131. The same discretionary deferral applies in the case of a Filipino national who is accused or is suspected of having committed war crimes, regardless of the *situs* of the commission of such crimes. In the determination of whether it is proper for Philippine authorities to continue with the investigation and prosecution under the first exception clause, they are required to do an “interest of justice” analysis. The IHL Act does not specify what such an analysis will consist of, but given the norms and principles absorbed into the Philippine constitutional and legal system by Section 15 of the IHL Act, it may mirror procedures followed for the purpose by the International Criminal Court.¹⁵⁷

¹⁵⁶ *Pangilinan v Cayetano*, *supra* note 33.

¹⁵⁷ Under Article 51(3)(c) of the Rome Statute, such an analysis springs from a “countervailing value” whose appreciation only happens where the requirements of jurisdiction and admissibility and gravity are present:

The “interests of justice” are a countervailing consideration. The Office must assess whether, taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice...

...While jurisdiction and admissibility are positive requirements, the interests of justice under article 53(1)(c) provide a potentially countervailing consideration that may give a reason not to proceed. As such, the Prosecutor is not required to establish that an investigation serves the interests of justice. Rather, the Office will proceed unless there are specific circumstances which provide substantial reasons to believe that the interests of justice are not served by an investigation at that time. The subject is treated in detail in a separate policy paper of the Office.

... Pursuant to article 53(1)(c), the Office will consider, in particular, the interests of victims, including the views expressed by the victims themselves as well as by trusted representatives and other relevant actors such as community, religious, political or tribal leaders, States, and intergovernmental and non-governmental organisations. Office of the Trial Prosecutor of the International Criminal Court, Policy on Preliminary Examination November 2013 4; 16-17.

D.6 A *verba legis* Approach to the Question Does not Cohere with the Articulate Consistency of the Inter-locking Principles, Public Policy, Norms, Object and Purpose of the Law, Jurisprudence, Constitutional Structure, on the Law of Humanity, and the Jus Cogens nature of the Prohibition on War Crimes

132. Thus, Section 17(b) should not be read as restricting investigations or prosecutions of foreign nationals suspected or accused of war crimes only to those who are present in the Philippines; to construe it in that sense is to deny existing jurisprudence on the workings of the Incorporation Clause of the constitution, the duality of norms recognized in such jurisprudence, Sections 2 and 15 of the IHL Act, Articles 8 and 14 of the Civil Code, and even Article 2 of the Revised Penal Code.¹⁵⁸ Rather, Section 17(b) has been crafted to expressly underscore the precedence of the *ne bis in idem* rule in the investigation or prosecution of foreign nationals suspected or accused of war crimes, who are found on Philippine soil, to avoid a miscarriage of justice that would entail state responsibility on the part of the Philippines under nationality claims.¹⁵⁹

133. In other words, in seeking right and justice – that “articulate consistency”¹⁶⁰ in judicial adjudication– courts may not interpret Section 17(b) in a manner that pits it against the clear mandate of CIL, in particular the *jus cogens* obligations recognized by Philippine case law under the Incorporation Clause of the constitution, as well as under treaty obligations, for the exercise of mandatory universal jurisdiction over war crimes, regardless of the nationality of the perpetrators or the victims.

134. Moreover, a contrary interpretation that insists on the *exclusio expressio unius est exclusio alterius* rule runs counter to express public policy contained in the relevant provisions of the IHL Act, in particular the law’s Declaration of Principles of Section 2 and Section 15’s incorporated treaties, international legal norms and principles, which both refer to standing rules of international law, as well as applicable treaties, binding on the Philippines.

135. The Declaration of Principles of Section 2 and the invocation of relevant international law norms, principles, jurisprudence, treaties, and subsidiary means of establishing the existence of a rule in international law contained in Section 15 of the IHL Act all indicate that the legislators were well aware of the obligation to exercise mandatory universal jurisdiction by Philippine courts in regard to serious violations of IHL, war crimes included, whether committed in an IAC or a NIAC.

¹⁵⁸ Revised Penal Code, *supra* note 45.

¹⁵⁹ See Articles of Responsibility of States for Internationally Wrongful Acts (2001), annexed to UN General Assembly Resolution 56/83 A/RES/56/83 12 December 2001 (Responsibility of States for Internationally Wrongful Acts), and corrected by document A/56/49(Vol. I)/Corr.4, Article 44 online: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

¹⁶⁰ Ronald DWORKIN, “Hard Cases” (1965) 88 Harvard Law Review 6 1064

136. The object and purpose of the IHL Act are clearly spelt out in the Declaration of Principles of Section 2 and the invocation of relevant international law norms, principles, jurisprudence, treaties, and subsidiary means of establishing the existence of a rule in international law contained in Section 15; Both sections underline the aim and purpose of the law of providing no quarters to impunity by recognizing a *jus cogens* obligation of Philippine courts to exercise mandatory universal jurisdiction in regard to serious violations of IHL, war crimes included, whether committed in an IAC or a NIAC.

137. Thus, it will be a reading contrary to the principles of right and justice that an established *jus cogens* obligation of the state to prosecute war crimes laid down as a key purpose for the enactment of the IHL Act is denied. Such a denial is not in harmony with the avowed object and purpose of the law.

138. In any case, under a textualist approach, there is strong warrant to conclude that the IHL Act, at the very least, provides the mechanism for finding probable cause against war crimes before the Office of the Prosecutor under the doctrine of universal jurisdiction, subject to the requirements of “reverse complementarity” found in the exceptions clauses of Section 17 of the IHL Act, as recognized in *Pangilinan v Cayetano*. This is consistent with CIL:

If a state has jurisdiction over a war crimes suspect, it must prosecute him or her. Thus from the perspective of domestic criminal jurisdiction, grave breaches carry mandatory universal jurisdiction, while other war crimes carry permissive universal jurisdiction. This is a significant difference in theory, as a state must prosecute or hand over a person accused of a grave breach, while the state would be legally entitled under international law not to assert jurisdiction over war crime suspects other than on the basis of territoriality or active nationality....¹⁶¹

139. Again, grave breaches here are understood as serious violations of IHL, which necessarily embraces war crimes of a serious or grave nature. *It must also be stressed that Section 17 of the IHL Act does not distinguish between international armed conflict and non-international armed conflict.* As can be seen in Part 3 of this Joint Complaint-Affidavit, the war crimes alleged to have been committed against the Chin people without doubt constitute serious violations of IHL or grave breaches of IHL.

¹⁶¹ Örberg, *supra* note 114, at 114.

D.7 For Purposes of Probable Cause, Even Assuming the Philippine Nexus Requirement, There is no Bar to Philippine Prosecutors from Hearing a Complaint for War Crimes at the Preliminary Investigation Stage

140. In the first place, Section 17(b) refers to an “accused”; this means that an Information for a war crime (an indictment in common law jurisdictions) has already been filed in the relevant Regional Trial Court.¹⁶² But before a person can be an accused, there should be a preliminary investigation (PI) conducted by the National Prosecution Service (NPS), under the DOJ, in order to determine the existence of probable cause. As defined by the PSC, probable cause:

...is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.¹⁶³ (in-text citation omitted)

141. In Philippine criminal procedure, at the PI stage, a respondent to a criminal complaint before the Office of the Prosecutor is only a “suspect.” The suspect becomes an accused when already formally charged in court via the filing of an Information.¹⁶⁴ The chapeau of Section 17 itself makes a distinction between a suspect and an accused: “The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed...” Hence, the text of Section 17(b) referring to an “accused” being “present in the Philippines” logically and procedurally presupposes that a preliminary investigation has been conducted, wherein the respondent foreigner may not even be physically present on Philippine territory and yet may validly be subject to a preliminary investigation prior to the actual filing in court of formal charges for war crimes. The preliminary investigation is precisely meant to establish whether or not there is a basis to charge a suspect in court for war crimes. This is the earliest stage where objections to admissibility may be raised by a respondent (as in the case for instance of the *ne bis in idem* principle). This procedure also applies to Filipinos subject of war

¹⁶² An Information:

...is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. Rule 110, Section 4, Philippine Revised Rules of Criminal Procedure.

¹⁶³ *Viudez II v Court of Appeals*, [2009] G.R. No. 152889 [En Banc] 5 June 2009.

¹⁶⁴ Rule 110, Section 6, Philippine Revised Rules of Criminal Procedure.

crimes investigation under Section 17 (a) who are out of the country at the time of the investigation.

142. Arguably, and even assuming the Philippine nexus requirement is what it appears to be, there is no bar to Philippine prosecutors from hearing a complaint for war crimes at the PI stage.

143. Thus, we can robustly argue from the IHL Act that there is legal basis for the Honorable Office, the Department of Justice-National Prosecution Service to conduct a preliminary investigation on this Joint Complaint-Affidavit filed before it for war crimes committed against the Chin people by the Myanmar military officers.

144. Additionally, given the demands of mandatory universal jurisdiction and Philippine rules on trials in *absentia*,¹⁶⁵ Philippine authorities are to exhaust all means necessary to acquire personal jurisdiction over suspects/accused, regardless of nationality, and wherever they may be, assuming there is a finding of probable cause for war crimes and an Information on such account is filed in court.

E. THE PHILIPPINE DELEGATION'S STATEMENTS BEFORE THE UN RECOGNIZED THAT THE PRINCIPLE OF MANDATORY UNIVERSAL JURISDICTION AS TO SERIOUS VIOLATIONS OF IHL IS PART OF PHILIPPINE LAW

145. It is important to note that on a number of occasions, the Philippine Delegation declared before the United Nations that the principle of mandatory universal jurisdiction is part of Philippine law.

146. On 16 May 2011, in response to a request for information observations on the scope and application of universal jurisdiction pursuant to UN General Assembly Resolution 65/33,¹⁶⁶ the Philippine Delegation sent to the UN Secretary General a five-page document detailing the ways in which universal jurisdiction has been grafted into the Philippine legal system. The 16 May 2011 submission recognized that universal jurisdiction answers “an imperative need to preserve the international legal order”¹⁶⁷ and thus serves as an exception to the territorial rule of criminal jurisdiction.¹⁶⁸

147. According to the Philippine Delegation, universal jurisdiction was first recognized in Philippine law under Article 2 of the Revised Penal Code and is as well made part of the law of the land as a generally accepted principle of international law through the Incorporation Clause of the Philippine

¹⁶⁵ As the PSC has held in one case, a trial in *absentia* in the Philippines is only valid where: “(1) the accused has already been arraigned, (2) he has been duly notified of the trial, and (3) his failure to appear is unjustifiable...” *People v Salas* [1986] G.R. No. L-66469 [First Division] 29 July 1986.

¹⁶⁶ UN General Assembly Resolution 65/33 A/RES/65/33 6 December 2010 (The Scope and Application of the Principle of Universal Jurisdiction).

¹⁶⁷ Philippine Submission to the UN Secretary General 16 May 2011 2.

¹⁶⁸ *Ibid.*

constitution.¹⁶⁹ More recently, it was incorporated by statute through the IHL Act, a law anchored on the principle that “the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrator of these crimes and [thus] contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”¹⁷⁰ It identified war crimes, along with genocide, and crimes against humanity, as among the serious crimes of concern to the international community as a whole that must be repressed by law.¹⁷¹ The submission verted to the treaties, norms and rules embodied in Section 15 of the IHL Act as relevant to the law’s interpretation and to other treaties to which the Philippines is a party that also incorporate universal jurisdiction as a norm.¹⁷²

148. Finally, it invoked the case of *Bayan Muna v Romulo* as Philippine authority for the view that genocide, war crimes, and crimes against humanity are subject to *jus cogens* prohibitions and that their commission are subject to the exercise of mandatory universal jurisdiction by all states, the rationale being that these crimes are so egregious that they are considered to be crimes committed against the international community as a whole and every state is granted jurisdiction over them.¹⁷³ The next two declarations were made by the Philippine Delegation in submissions to the Sixth Committee, a UN body mandated to specifically study the scope and application of universal jurisdiction. These two newer declarations essentially reproduced the assertions made by the first declaration.

149. On 3 November 2020, the Philippines, through Ms. Maria Angela A. Ponce, Philippine Minister and Legal Adviser, made the following official statement before the UN Sixth Committee:

Universal jurisdiction, as a generally accepted principle of international law, is considered part of Philippine law, both through the incorporation clause of our Constitution and through the enactment in 2009 of the Philippine Act on Crimes against International Humanitarian Law, Genocide and Other Crimes Against Humanity.

...

First, for the Philippines the general rule is that jurisdiction is territorial. Therefore **universal jurisdiction** is an exception, grounded on the imperative need to preserve international order. It **allows any State to assert criminal jurisdiction over certain offenses, even if the act occurred outside its territory or was committed by a person not**

¹⁶⁹ *Ibid*

¹⁷⁰ Philippine Submission, at 3, quoting without express reference Section 2(e) of the IHL Act.

¹⁷¹ *Ibid.*, at 4.

¹⁷² *Ibid.*

¹⁷³ Philippine Submission, citing *Bayan Muna v Romulo*, *supra* note 87.

its national, or inflicted no injury to its nationals.

Second, because it is exceptional, its scope and application must be limited and clearly defined. Immunity of state officials, in particular, must be preserved and respected. Unrestrained invocation and abuse of the exercise of universal jurisdiction only undermines the principle.

Third, these “certain offenses” must be limited to [crimes subject to *jus cogens* norms] that have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement. The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community and thus granting every State jurisdiction over the crime [emphasis supplied]¹⁷⁴

150. Earlier, on 17 October 2019, Ms. Ponce also issued the following formal statement:

...

We affirm our commitment to fight against impunity for atrocity crimes, notwithstanding our withdrawal from the Rome Statute, especially since the Philippines has national legislation punishing atrocity crimes. Indeed, we are celebrating the 10th anniversary of the Philippine Act on Crimes against International Humanitarian Law, Genocide and Other Crimes Against Humanity.

Many conveniently forget that the Rome Statute is anchored on the principle of complementarity: it recognizes that States have the first responsibility and right to prosecute international crimes; and that the ICC may only exercise jurisdiction where national legal systems fail or are unable to do so. We are able; we are willing.

Early this year a member of the Maute-ISIS terrorist group was convicted in court of violations of international humanitarian law. This underscores our effective domestic enforcement of international humanitarian law [emphasis supplied].¹⁷⁵

151. The aforementioned statements unmistakably show that the Philippines considers universal jurisdiction as a doctrine central to its own legal system; moreover, the statements also establish the willingness of the Philippines to exercise it, insofar as “States have the first responsibility and

¹⁷⁴ Ms. Maria Angela A. Ponce, Philippine Minister and Legal Adviser, Statement: “The Scope and Application of the Principle of Universal Jurisdiction Sixth Committee 75th Session of the United Nations General Assembly, 3 November 2020 online: https://estatemnts.unmeetings.org/estatemnts/11.0060/20201103/QMOU77nHEKvj/tT1BJWyhtyB3_en.pdf

¹⁷⁵ Ms. Ma. Angela Ponce, Statement: “Rule of Law at the National and International Levels: Sharing best Practices and Ideas to Promote the Respect of States for International Law”, Sixth Committee, 74th Session of the United Nations General Assembly, 11 October 2019 online: <http://statements.unmeetings.org/media2/21998547/-e-philippines-statement.pdf>

right to prosecute international crimes.” All three declarations are instances of state practice indicative of a state’s acceptance of a rule of international law and are binding on the Philippines. Finally, the same 3 November 2020 statement, like the 16 May 2011 statement, referred to *Bayan Muna v Romulo*¹⁷⁶ as basis for the Philippine submissions on the exercise of universal jurisdiction over genocide, war crimes, and crimes against humanity as arising from *jus cogens* norms, which makes such exercise mandatory. Here we find further confirmation and justification for our earlier argument that long-standing Philippine jurisprudence on the Doctrine of Incorporation provide without any doubt that serious violations of IHL, namely genocide, war crimes, and crimes against humanity, are subject to mandatory universal jurisdiction by Philippine courts as these international crimes are deemed to be violations of peremptory norms of international law.

F. CONCLUSION: FIRM LEGAL BASIS FOR THE PRINCIPLE OF MANDATORY UNIVERSAL JURISDICTION AS TO SERIOUS VIOLATIONS OF IHL AS PART OF PHILIPPINE LAW

152. Thus, based on the above-discussion, it is clear that the principle of mandatory universal jurisdiction for war crimes committed outside of Philippine territory is firmly established in Philippine law and jurisprudence, for the Honorable Office, the Department of Justice-National Prosecution Service, to conduct a preliminary investigation on this Joint Complaint-Affidavit filed before it for war crimes committed against the Chin people by Myanmar military officers and soldiers.

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¹⁷⁶ *Bayan Muna v Romulo*, *supra* note 87.

V. CONTEXT OF THE WAR CRIMES: THE NON-INTERNATIONAL ARMED CONFLICT IN CHIN STATE, MYANMAR AND THE “FOUR-CUTS” MILITARY STRATEGY AND TACTICS BY THE MYANMAR MILITARY AGAINST THE PEOPLE OF CHIN STATE, MYANMAR

A. THE EXISTENCE OF A RAGING NON-INTERNATIONAL ARMED CONFLICT IN CHIN STATE, MYANMAR IS RECOGNIZES BY THE UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

153. The plight of the Muslim Rohingyas has been under international public scrutiny for quite some time since a military junta or the *Tatmadaw* – the official name of the Myanmar armed forces – ousted from power Aung San Suu Kyi’s government in Myanmar in 2021.¹⁷⁷ An ongoing application by Gambia against Myanmar before the International Court of Justice under the Genocide Convention has alleged that the junta’s security forces have been waging genocide against the Rohingyas, committing mass murder, rape, and other forms of sexual violence—in villages of the Rohingya in Rakhine province.¹⁷⁸ Less attention has been given to the situation of the Chin people, a mostly Christian minority concentrated in Chin State, who had also been the target of mass atrocity crimes by the junta.¹⁷⁹

154. **A brief background on Chin State:** the Chin people, nearly 90 percent of the residents of whom are Christian, co-founded the Union of Burma (present-day Myanmar) in 1948.¹⁸⁰ Before the creation of modern Burma, Christianity was introduced into the territory of what would become Chin State, in the late nineteenth century by the American Baptist Mission.¹⁸¹ In 2014, the population of Chin State was reported at 478,801, representing only 0.93 percent of the total population (52.28 million) of Myanmar.¹⁸² Nevertheless, it is the only Burmese state without a Buddhist majority.¹⁸³ But following a coup in 1962, successive military governments would launch violent campaigns to repress Christianity in Myanmar as a foreign religion,¹⁸⁴

¹⁷⁷ Amy GUNIA, “How Myanmar’s Fragile Push for Democracy Collapsed in a Military Coup,” *Time* (1 February 2021) online: <https://time.com/5934896/myanmar-aung-san-suu-kyi-detained-coup/>

¹⁷⁸ MD Rizwanul ISLAM, “The Gambia v. Myanmar: An Analysis of the ICJ’s Decision on Jurisdiction under the Genocide Convention” 26 (2021) *Asian Society of International Law Insights* 21 September 2021 online: https://www.asil.org/sites/default/files/ASIL_Insights_2022_V26_I9.pdf.

¹⁷⁹ Human Rights Watch, “Statement: Myanmar: Another Wave of Atrocity Crimes in Chin State,” online: <https://www.hrw.org/news/2021/11/04/myanmar-another-wave-atrocity-crimes-chin-state>. See also Sang Hnin LIAN, “Christianity and the state of religious freedom in Burma/Myanmar’s Chin State”, (2021) 14 *International Journal for Religious Freedom* 105–121. See the official Myanmar website for the state for further details at <http://chinstate.gov.mm>. It provides the following information in English: population, at 0.57 million; area: 139,069 square miles; and electricity coverage at 29.64%. The official tourism website provides additional information at <http://chintravel.com.mm>, as follows: “Chin State is located in the Western part of Myanmar with the total area of 13,907 square-kilometer. Chin State is bordered by Sagaing Division and Magway Division to the east, Rakhine State to the South, Bagladesh to the West and India to the north. 80% of the total population is rural area inhabitants.”

¹⁸⁰ *Ibid.* at 106.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.* at 108.

all the way down to this day under the Tatmadaw. As has been noted by a leading scholar of religion in Myanmar:

Although it is tempting to generalize from the experience of Chin and other Christian ethnic nationalities regarding Burma/Myanmar's religious policy and practice, there are some significant differences. The different governments... have all targeted Chin State as it is the only state where Burmese Buddhists are not the majority.¹⁸⁵

155. In relation to the events described in the this Joint Complaint-Affidavit, the US State Department has said:

In late September [2021]..security forces responding to an attack by local defense forces in Thantlang, Chin State, shot and killed Baptist pastor Cung Biak Hum as he and others tried to extinguish fires the forces set. When his body was recovered, his ring finger was cut off and the wedding ring apparently stolen. Salai Za Uk Ling, Deputy Executive Director of CHRO, testifying during the 4th Hearing of International Parliamentary Inquiry on Myanmar,¹⁸⁶ reported the following:

- The unlawful deaths or extrajudicial killings of over 250 Chin civilians
- Unlawful arrests and arbitrary detention of over 1100 people
- The deliberate and intentional destruction of livelihood and civilian properties, including the burning of over 1800 houses across Chin State, the vast majority of which took place in my hometown Thantlang over the course of more than 30 separate attacks
- The destruction of 65 religious buildings, including over 50 churches or places of worship
- The forced displacement of an estimated 120,000 people, which constitute 20 percent of the entire population of Chin State¹⁸⁷

156. A recent Human Rights Watch statement called on the UN Security Council "to adopt a resolution to consolidate international action to stop the military's violent assault against the people of Myanmar."¹⁸⁸

¹⁸⁵ LIAN, *supra* note 190, at 111.

¹⁸⁶ Chin Human Rights Organization, "Testimony of Salai Za Uk Ling, Deputy Executive Director of CHRO at the 4th Hearing of International Parliamentary Inquiry on Myanmar" (20 July 2022) online: https://www.chinhumanrights.org/wp-content/uploads/2022/07/Testimony_Oral_Presentation.pdf

¹⁸⁷ *Ibid.*

¹⁸⁸ Human Rights Watch, "Statement: Myanmar: Another Wave of Atrocity Crimes in Chin State" online: <https://www.hrw.org/news/2021/11/04/myanmar-another-wave-atrocity-crimes-chin-state>

157. In a recent report to the UN Human Rights Council, the UN Office of the High Commissioner for Human Rights (OHCHR) has characterized the situation in Myanmar as a non-international armed conflict (NIAC).¹⁸⁹

158. The Report of the Office of the High Commissioner of Human Rights adverted to earlier states in the relevant parts why an NIAC rages in many parts of Myanmar, the Chin State included:

...For a situation of violence to be characterized as a non-international armed conflict, there must be protracted armed violence between government forces and one or more non-State armed groups or between two or more non-State armed groups, in the territory of the State. The armed violence must meet two cumulative requirements: (a) it must reach a minimum level of intensity that cannot be addressed through routine peacetime policing, as measured by the weapons used, its duration and other factors; and (b) the parties involved must demonstrate that they have a minimum level of organization to be capable of engaging in sustained armed violence and of abiding by the basic obligations of international humanitarian law.

Analysing whether international humanitarian law applies to a particular circumstance is challenging owing to the complexity and fragmented nature of Myanmar because of its geography, the multiplicity of armed actors, differences in territorial control, the pre-existence of armed conflicts and rapid developments. Accessing relevant and reliable information remains difficult and further analysis is required for a comprehensive determination....

OHCHR has nonetheless concluded that there are a number of pre-existing non-international armed conflicts, including between the Tatmadaw and ethnic armed organizations in Chin, Kachin, Kayah, Kayin, Rakhine and Shan States. As outlined in international jurisprudence, temporary ceasefire agreements do not equate to the general achievement of peace, and the armed conflict continues to exist.

Regarding confrontations between the Tatmadaw and various post-coup armed elements, there are reasonable grounds to believe that the intensity threshold of violence has been met, as demonstrated by the prevalence of attacks, the geographic and temporal spread of clashes, the numbers of civilians displaced by the violence and the types of weapons used. This was noted in certain areas of the country, namely Magway and Sagaing Regions and Chin and Kayah States.¹⁹⁰

¹⁸⁹ Report of the United Nations High Commissioner for Human Rights, "Situation of Human rights in Myanmar since 1 February 2021" (15 March 2022), Advanced Edited Version A/HRC/49/72 1

¹⁹⁰ OHCHR Report, at 4, citing *Prosecutor v Tadić*, para. 70, *supra* note 7, and *Prosecutor v Boškoski and Tarčulovski*, Case No. IT-04-82-T, Judgment, 10 July 2008, para. 177.

159. In *Tadić*, it was held that the prosecution does not need to prove that actual combat took place in the location where the underlying offence is alleged to have occurred. What is required is only that the offense be “closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.”¹⁹¹

160. In fact, there is an on-going non-international armed conflict (NIAC) in Chin State, Myanmar between the Myanmar Military and armed groups composed of the Chinland Defense Force (CDF) and the Chin National Army (CNA).

161. According to the OHCHR,

Post-coup armed elements in states where numerous ethnic groups live, particularly Chin, Kachin, Kayah and Kayin States, appear to be under the command of or allied with ethnic armed organizations. This is the case for the Chinland Defence Force, the Karenni Nationalities Defence Force and people’s defence forces in Kachin and Kayin States. It therefore appears that those groups have joined the ethnic armed organizations that are parties to the pre-existing non-international armed conflicts with the *Tatmadaw*. All parties are bound by article 3 common to the Geneva Conventions of 12 August 1949 and by the relevant rules of customary international humanitarian law, including those regulating the conduct of hostilities.¹⁹²

B. THE “FOUR-CUTS” STRATEGY OF THE MYANMAR MILITARY AND THE WAR CRIMES IT HAS ENGENDERED IN CHIN STATE, MYANMAR

162. The war crimes committed by the Myanmar Junta and its military (herein collectively “Myanmar military”) denounced in this Joint Complaint-Affidavit, and which forms its factual basis, are borne out of the “Four Cuts” Strategy of the Myanmar Military perpetrated against the Civilian Population of Myanmar from 1 February 2021 onwards, and which broadly consists of the following gross human rights violations and war crimes:

Firstly, the Myanmar Military’s indiscriminate attacks against the civilian population of Chin State, Myanmar exemplified herein by the willful killing of Pastor Cung Biak Hum on 18 September 2021 and the mutilation of his ring finger, and the willful killings of church elders Pu Ral Tu and Pu Hram Chung on 29 September 2021 both war crimes happening in Thantlang, Chin State;

Secondly, the Myanmar Military’s Intentional Airstrikes and Artillery Shelling against the Civilian Population of Myanmar, and the

¹⁹¹ *Ibid.*, quoting *Prosecutor v. Tadić*, para. 70, *supra* note 7.

¹⁹² OHCHR Report, *supra* note 22, at 5

Consequent Forcing of More Civilians from Myanmar to be Refugees from 1 February 2021 onwards;

Thirdly, the Myanmar Military's Intentional Burning in Chin State, Myanmar of Civilian Houses and Other Buildings Including Churches and Food Stores from 1 February 2021 onwards;

Finally, the Myanmar Military's Intentional Denial of Humanitarian Aid Deliveries to Civilians in Chin State, Myanmar, In General, from 1 February 2021 onwards and the Specific Denial of Humanitarian Aid to Areas Hard-hit in Myanmar by the May 2023 Cyclone Mocha, including Chin State.

163. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has extensively reported on the above-enumerated gross human rights violations committed by the Myanmar military authorities.

164. The relevant OHCHR report will be accordingly cited in this Joint Complaint-Affidavit.

B.1 The "Four Cuts" Strategy of the Myanmar Military Perpetrated against the Civilian Population of Myanmar from 1 February 2021 Onwards

165. The Myanmar military's "Four Cuts" strategy is "*traditionally directed at cutting off ethnic armed organizations' access to food, funds, intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts.*"¹⁹³

166. The "Four Cuts" strategy is being directed by the Myanmar Junta and its military against the civilian population of Myanmar from 1 February 2021 and has resulted in gross human rights violations and war crimes in Myanmar.

167. With its "Four Cuts" strategy, the Myanmar military is literally waging war against the civilian population of Myanmar. In other words, the strategy is an official policy of the Tatmadaw to commit war crimes, crimes against humanity and gross human rights violations against the civilian populace, with the aim to deprive the insurgency against the Military Junta of civilian support.

¹⁹³ Page 10, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

168. According to the latest 28 June 2023 Annual Report of the UN High Commissioner of Human Rights,¹⁹⁴ the “Four Cuts” strategy continue to adversely affect the human rights of civilians in Myanmar:

169. As previously reported, military actions since February 2021, including through its “four cuts” strategy against the civilian population, continue to expose the people in Myanmar to pervasive human rights violations, resulting in staggering humanitarian impacts.¹⁹⁵ (Internal citation omitted)

170. The “Four Cuts” strategy of the Myanmar military from the period of February 2021 to April 2023 has resulted in at least 3,452 deaths, the arrest of 21,807 individuals, the burning of about 60,000 civilian structures, and an estimated 1.5 million people having been internally displaced.¹⁹⁶ As observed by the UN High Commissioner of Human Rights in the 28 June 2023 Annual Report:

45. Between February 2021 and April 2023, credible sources verified that at least 3,452 persons have died at the hands of the military and its affiliates, 21,807 individuals were arrested, and 5,839 convicted without any respect for judicial guarantees. Additionally, 154 have been sentenced to death and four known to be executed. An estimated 1.5 million people have been internally displaced, with nearly one million in the central regions alone, and approximately 60,000 civilian structures have been reportedly burnt or destroyed. Over 75,000 people have reportedly fled to neighbouring countries. More than one million Rohingya already live under appalling conditions in refugee camps in Bangladesh and recent reductions to food rations due to limitations on available humanitarian funds are expected to have devastating consequences. Of the remaining 600,000 Rohingya in Rakhine, nearly 150,000 live in camps where they are deprived of fundamental rights including freedom of movement. Under the current conditions, safe, dignified, and sustainable returns remain impossible.¹⁹⁷ (Internal citations omitted)

¹⁹⁴ 28 June 2023 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

¹⁹⁵ Page 4, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

¹⁹⁶ Page 4, 28 June 2023 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

¹⁹⁷ Pages 4-5, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

171. In its previous 25 February 2022 Annual Report,¹⁹⁸ the UN High Commissioner of Human Rights also reported on the “Four cuts” strategy of the Myanmar military, observing that:

45. Myanmar is wrought with devastation that has destroyed the increasingly prosperous lives that many around the country had in recent years begun to enjoy. Concurrently, ethnic minorities who have been persecuted for decades face intensified violence and insecurity. In attempting to crush armed opposition, the Tatmadaw continued its “Four Cuts Policy”, conducting offensives using airstrikes, helicopter gunships, artillery, and mortars. Indiscriminate attacks often in populated areas, in flagrant disregard for human life and property were reported. Tatmadaw forces committed many violations during “clearance operations”, combing areas in search of members of armed groups and arresting, torturing, and summarily executing individuals, as well as looting and destroying property. In these operations, individuals were demonstrably at high risk of harm from small arms fire, which killed over 400 individuals; while airstrikes, mortar and artillery shelling and other explosions killed approximately 150 persons. For example, in September 2021, Tatmadaw forces, occupying a school, launched an artillery attack in Kone Thar village in Kayah State, ostensibly targeting positions of the Karenni Nationalities Defence Force. Shell explosions caused residents to flee. Thereafter, Tatmadaw units searched the village, shot and killed three civilians before burning their bodies, and shot and killed an elderly man who had remained behind. During their occupation of the village, Tatmadaw units destroyed 26 buildings and damaged 13 others.¹⁹⁹ (Emphasis and underscoring supplied)

172. As concluded by the UN High Commissioner of Human Rights in the 28 June 2023 Annual Report, it raised grave concerns about the effect of the “Four cuts” strategy on the civilian population of Myanmar:

63. As the post-coup human rights crisis continues to worsen, Myanmar’s overall humanitarian situation has also deteriorated to alarming levels. Through the implementation of its “four cuts” policy aimed at severing support for anti-military groups, the military has killed and injured thousands of civilians while destroying goods and infrastructure necessary for survival, including food, shelter, and medical centres. In violation of international obligations, the military has targeted humanitarian actions and actors through an all-encompassing system of military measures and the instrumentalization of the legal and

¹⁹⁸ 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” A/HRC/49/72.

¹⁹⁹ Page 9, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” A/HRC/49/72.

administrative spheres, forcing aid providers to either renounce support to people in desperate need of life-saving aid or to deliver at enormous personal risks.²⁰⁰ (Emphasis in the original)

B.2 The Myanmar Military’s Intentional Airstrikes and Artillery Shelling against the Civilian Population of Myanmar, and the Consequent Forcing of More Civilians from Myanmar to be Refugees from 1 February 2021 onwards

173. In the 28 June 2023 Annual Report of the UN High Commissioner of Human Rights,²⁰¹ it noted the Myanmar military’s use of airstrikes and artillery shelling against civilians as part of the latter’s “Four cuts” strategy:

1. Military’s “four cuts” strategy

42. **The military’s “four cuts” strategy**, traditionally directed at cutting off ethnic armed organizations’ access to food, funds, intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts. Its systematic implementation, which **relies on tactics including** burnings of entire villages, **use of airstrikes and artillery shelling**, as well as arbitrary arrests, enforced disappearances, torture and ill-treatment, has resulted in mass displacements of over a million people.

43. Through the “four cuts” policy, limitations of movements, denial of humanitarian assistance, and the use of scorched-earth tactics, the military intended to sever grassroots support for anti-military groups. **Following resumption of hostilities with the Arakan Army in late 2022, the military imposed a complete ban on movements and humanitarian actions in eight townships in Rakhine and southern Chin amidst airstrikes and artillery shelling.** They enforced these restrictions through checkpoints on main roads, waterways, bridges, and other supply routes, effectively preventing access to food, medicines, healthcare, and other essential items, with tremendous impact on all communities, including the Rohingya. Despite a ceasefire in November 2022, numerous restrictions remain in place and humanitarian access remains inadequate.

...

46. In addition to deaths and injuries, systematic implementation of the “four cuts” strategy has resulted in massive displacement and continuous increases in protection and humanitarian needs. **Repeated airstrikes and artillery shelling expose civilians to risks of recurring displacement with the military not sparing formal displacement sites or temporary shelter solutions. Interlocutors reported an increased targeting of shelters**

²⁰⁰ Page 14, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

²⁰¹ 28 June 2023 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

for displaced persons and monasteries since early 2023 and of monks being killed and arrested for providing assistance. Interlocutors added that, as a consequence, monasteries have become reluctant to provide shelter to people fleeing violence.²⁰²
(Emphasis and underscoring supplied)

174. The earlier 25 February 2022 Annual report of the United Nations High Commissioner for Human Rights already observed the Myanmar military's use of airstrikes and artillery shelling against civilians and the consequent displacement of the civilian population in large areas of Myanmar, specifically:

49. Tatmadaw "clearance operations", airstrikes and use of heavy weapons in populated areas purposely instil fear in villagers, forcibly displacing local populations. This has resulted in over 441,500 people being displaced from their homes around the country since February 2021. This included at least 240,000 people in Kayah and Kayin states and other parts of south-east Myanmar, 191,500 people in Chin State, and Sagaing and Magway regions, as well as 10,000 people in Shan and Kachin states. More than 15,000 people have crossed the border to India or Thailand. Many more people have been temporarily displaced and there is a large, pre-existing protracted-displaced population including over 220,000 persons in Rakhine State and over 106,000 on Kachin and northern Shan states.²⁰³ (Internal citations omitted, emphasis and underscoring supplied)

175. As concluded by the UN High Commissioner of Human Rights in the 28 June 2023 Annual Report, it raised grave concerns about the effect of the "Four cuts" strategy on the civilian population of Myanmar:

64. Meanwhile, duty bearers have failed to meet their obligation to protect civilians. Security across the country has deteriorated as the military has persistently targeted civilians through airstrikes and razing of populated areas. Widespread use of landmines by multiple actors has also furthered insecurity. As a result, many organizations have forgone or drastically modified operations in affected areas, negatively impacting a wide range of human rights protections for individuals affected by violence. Local actors, who are overwhelmingly carrying out operations, are continuously risking death, arrest, torture, and harassment. Violations and restrictions documented in this report, when conducted as part of a widespread or systematic attack against a civilian population, and if they resulted in severely depriving

²⁰² Page 10, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

²⁰³ Page 9, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," A/HRC/49/72.

fundamental rights of individuals perceived as part of a group opposing military rule may constitute the crime against humanity of persecution.²⁰⁴ (Emphasis in the original, underscoring supplied)

176. The Myanmar military's intentional airstrikes and artillery shelling against civilians, among its other actions violating human rights, from 1 February 2021 onwards has, consequently, forced more civilians from Myanmar to be either internally displaced or become refugees.

177. To illustrate, [REDACTED] of the Chin Human Rights Organization, previously testified that the actions of Myanmar military "... *forced displacement of an estimated 120,000 people, which constitute 20 percent of the entire population of Chin State.*"²⁰⁵

178. Further, the UN High Commissioner of Human Rights in its 28 June 2023 Annual Report observed that the Myanmar military's "Four cuts" strategy has resulted in the mass displacement of over a million people:

1. Military's "four cuts" strategy

42. The military's "four cuts" strategy, traditionally directed at cutting off ethnic armed organizations' access to food, funds, intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts. **Its systematic implementation, which relies on tactics including burnings of entire villages, use of airstrikes and artillery shelling, as well as arbitrary arrests, enforced disappearances, torture and ill-treatment, has resulted in mass displacements of over a million people.**²⁰⁶ (Emphasis and underscoring supplied)

B.3 The Myanmar Military's Intentional Burning in Chin State, Myanmar of Civilian Houses and Other Buildings Including Churches and Food Stores from 1 February 2021 onwards

179. In the 28 June 2023 Annual Report of the UN High Commissioner of Human Rights, it made numerous references to the Myanmar military's burning of entire villages as part of the latter's "Four cuts" strategy:

1. Military's "four cuts" strategy

42. The military's "four cuts" strategy, traditionally directed at cutting off ethnic armed organizations' access to food, funds,

²⁰⁴ Page 14, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

²⁰⁵ Chin Human Rights Organization, "Testimony of Salai Za Uk Ling, Deputy Executive Director of CHRO at the 4th Hearing of International Parliamentary Inquiry on Myanmar" (20 July 2022) online: https://www.chinhumanrights.org/wp-content/uploads/2022/07/Testimony_Oral_Presentation.pdf

²⁰⁶ Page 10, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts. **Its systematic implementation, which relies on tactics including burnings of entire villages,** use of airstrikes and artillery shelling, as well as arbitrary arrests, enforced disappearances, torture and ill-treatment, has resulted in mass displacements of over a million people.

... ..

44. **Documentation of numerous burning incidents around the country highlight the widespread and systematic nature of this tactic, which appears to carry both an element of collective punishment of the entire local civilian population perceived as opposing the military, and a strategic goal of depriving them of shelter, food, water, livelihoods, and life-saving aid. Numerous interlocutors stressed that while burning villages, the military targeted livestock, food storage facilities, and other essential agricultural materials. Where they exist, health facilities were also targeted.**

45. **Groups with specific vulnerabilities, such as persons with disabilities, the elderly, or those unable to flee upon the military's arrival, are at serious risk of being killed, including being burned alive. In March 2023, an interviewee reported that around 80 soldiers entered a village in Sagaing and set fire on an estimated 175 houses. Seven elderly persons, including two with disabilities, were burned to death.**²⁰⁷ (Emphasis and underscoring supplied)

180. In its 25 February 2022 Annual Report, the UN High Commissioner of Human Rights reported on the extent of the Myanmar military's burning of houses and other buildings including churches and food stores and the adverse extent of these mass burnings in Chin State and the Magway and Sagaing regions of Myanmar:

51. **Over 400 Tatmadaw attacks on populated areas involved property destruction, destroying thousands of houses and other buildings including churches and food stores.** It has been well-documented that arson is a hallmark of Tatmadaw operations, mostly perpetrated after villagers are displaced. **Most egregiously, in Thantlang town in Chin State, Tatmadaw Light Infantry Brigade 222 burned over 900 buildings over the course of at least 23 successive attacks in the town from September, including two non-government organization offices, eight churches and 12 other religious buildings, continuing a trend of Tatmadaw forces targeting Chin ethnic and religious minorities. There were over 250 mass burnings across Magway and Sagaing regions since the middle of the year. Satellite imagery obtained by OHCHR of the largest burnings reveals that 171 buildings were destroyed and 36**

²⁰⁷ Page 10, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

damaged in June 2021 when the Tatmadaw attacked Kin Ma Village in Magway Region.²⁰⁸ (Emphasis and underscoring supplied)

181. Complainant [REDACTED] of the Chin Human Rights Organization, previously testified on the adverse extent of these mass burnings in Chin State by the Myanmar military:

The deliberate and intentional destruction of livelihood and civilian properties, including the burning of over 1800 houses across Chin State, the vast majority of which took place in my hometown Thantlang over the course of more than 30 separate attacks[.]²⁰⁹

182. Further, Complainant [REDACTED] testified on the destruction by the *Tatmadaw* of 65 religious buildings, including over 50 churches or places of worship.²¹⁰ Thantlang is one of nine townships in Chin State.

B.4 The Myanmar Military's Intentional Denial of Humanitarian Aid Deliveries to Civilians in Chin State, Myanmar, In General, from 1 February 2021 onwards and the Specific Denial of Humanitarian Aid to Areas Hard-hit in Myanmar by the May 2023 Cyclone Mocha, including Chin State.

183. In the 28 June 2023 Annual Report of the UN High Commissioner of Human Rights, noted the Myanmar military's severe and arbitrary restrictions on access to food assistance:

17. In addition to the direct attacks on healthcare personnel and infrastructure and severe restrictions arbitrarily imposed on access to food assistance, the military has continued to instrumentalise the legal and administrative framework of Government to control and limit life-saving humanitarian assistance/relief. Imposition of martial law on an additional 40 townships across the country in February 2023 has further diminished access to aid of populations-in-need.²¹¹ (Internal citation omitted)

184. The UN High Commissioner of Human Rights concluded in its 28 June 2023 Annual Report that in areas under the control of the Myanmar military the latter strategically decides on aid beneficiaries, types of aid to be delivered, and its timing in violation of principles of international law:

²⁰⁸ Page 10, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," A/HRC/49/72.

²⁰⁹ Chin Human Rights Organization, "Testimony of Salai Za Uk Ling, Deputy Executive Director of CHRO at the 4th Hearing of International Parliamentary Inquiry on Myanmar" (20 July 2022) online: https://www.chinhumanrights.org/wp-content/uploads/2022/07/Testimony_Oral_Presentation.pdf

²¹⁰ *Ibid.*

²¹¹ Page 5, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

66. **While the military restricts movements of people through several measures, the instrumental use of the pre-existing arbitrary and discriminatory travel authorizations regime plays a critical role. In all areas under its control, the military strategically decides on the groups of beneficiaries and types of aid to be delivered, as well as its timing, in violation of principles of humanity, neutrality, impartiality, and independence. Similarly, the military prevents the movement of goods and humanitarian items through systemic restrictions, and the ability of individuals to transfer and safely access funds.**²¹² (Emphasis in the original)

185. In its 25 February 2022 Annual Report, the UN High Commissioner of Human Rights already reported on the Myanmar military's denial of humanitarian aid, in general, and enumerated these in Chin and Kayah States:

50. Military authorities largely blocked humanitarian access to new and pre-existing areas of need, through delayed or denied travel authorizations, tightened bureaucratic requirements, or establishment of new roadblocks and checkpoints. Disruptions in supply chains and failure of the banking sector, because of the coup, also impacted humanitarian access and response. **Military authorities also specifically stopped humanitarian agencies from distributing aid to populations they perceived to be affiliated with opposition. Since October in Kayah State, the military required organizations to seek permission to transport more than 10 bags of rice, significantly impacting on delivery of food assistance. In Chin State, the military deliberately blocked travel routes which restricted essential deliveries, further exacerbating the situation.** In several instances, Tatmadaw targeted people assisting internally displaced persons (IDPs), burning food and other items. Security forces also arrested volunteers assisting IDPs in Kayah and Chin states, and at least 30 displaced persons reportedly died due to preventable health problems in Mindat Township in Chin State resulting from no access to healthcare. In areas affected by armed conflicts these restrictions could amount to a violation of the obligation of parties to the conflict to allow and facilitate unimpeded passage of humanitarian relief for civilians in need. As a result of arbitrary access restrictions, affected communities lack access to food, healthcare, shelter, safe drinking water and sanitation facilities and are at increased risk of disease including COVID-19. IDPs struggle to realize their basic rights including food, health, education and work, and their displacement is impacting future food security due to their inability to plant and harvest crops.²¹³

²¹² Page 14, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

²¹³ Pages 9-10, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," A/HRC/49/72.

186. Among the highlights of the 8 June 2023 Situation Report No. 4 entitled “*Myanmar: Cyclone Mocha*,” the U.N. Office for the Coordination of Humanitarian Affairs highlighted the deterioration of humanitarian access to Cyclone Mocha-hit Rakhine and Chin States:

HIGHLIGHTS

The humanitarian access situation in cyclone-hit Rakhine state has deteriorated with existing travel authorizations (TAs) for humanitarian organizations suspended this week pending new, centralized discussions in Nay Pyi Taw.

Initial approval for humanitarian distribution and transportation plans for cyclone-affected townships in Rakhine have also been rescinded pending further Nay Pyi Taw-level deliberations. Similar plans in Chin are also pending.²¹⁴

187. In a 30 June 2023 Press Briefing Note delivered by the Spokesperson for the UN High Commissioner for Human Rights, the OHCHR sounded the alarm on the Myanmar military’s restriction on humanitarian aid especially in the aftermath of the May 2023 Cyclone Mocha:

The already dire situation on the ground has been compounded by the military’s restrictions on aid imposed in the aftermath of Cyclone Mocha in May, bringing further suffering and misery to wide swathes of the population in the west and northwest of the country.

As the report makes clear, intentional obstruction or denial of humanitarian assistance may amount to gross violations of international human rights law, and serious violations of international humanitarian law.

Aiming in part at cutting off support for its opponents, the military has employed its four-cuts strategy to kill and injure thousands of civilians while destroying goods and infrastructure necessary for survival, including food, shelter, and medical centres, the report says. Myanmar’s human rights and humanitarian crisis is massive. An estimated 1.5 million people have been internally displaced, and approximately 60,000 civilian structures have reportedly been burnt or destroyed. Over 17.6 million people, or one-third of the overall population, require some form of humanitarian assistance.²¹⁵

188. Ultimately, the Chin people of Chin State, Myanmar are discriminated and have become the victims of war crimes by the Myanmar Military because they are Chin, they are Christians, and they carry the cross.

²¹⁴UN Office for the Coordination of Humanitarian Affairs, Situation Report no. 4 (8 June 2023) online: <https://reliefweb.int/report/myanmar/myanmar-cyclone-mocha-situation-report-no4-1400-8-june-2023-enmy>

²¹⁵ UN Office of the High Commissioner for Human Rights, Press Briefing Notes (30 June 2023) online: <https://www.ohchr.org/en/press-briefing-notes/2023/06/myanmar-dire-humanitarian-and-human-rights-situation-compounded>

VI. THE WAR CRIMES FOR WHICH RESPONDENTS ARE CHARGED IN THIS JOINT COMPLAINT-AFFIDAVIT

A. [REDACTED], WITH THE REST OF THE COMPLAINANTS, CHARGE RESPONDENTS THUS: THE NEPHEW OF COMPLAINANT [REDACTED], PASTOR CUNG BIAK HUM, WAS WILLFULLY KILLED AND HIS FINGER MUTILATED BY SOLDIERS OF THE MYANMAR MILITARY ON SEPTEMBER 18, 2021 IN THANTLANG, CHIN STATE, MYANMAR.

THIS IS A WAR CRIME IN VIOLATION OF SECTION 4(B)(1) OF R.A. 9851.

189. Complainant [REDACTED] and the rest of the Complainants charge Respondents for being criminally responsible for the war crime under Section 4(b)(1) of R.A. 9851, which provides that:

SEC. 4. War Crimes. – For the purpose of this Act, “war crimes” or “crimes against International Humanitarian Law” means:

...

(b) In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;

...

(emphasis and underscoring supplied)

190. Specifically, Complainant [REDACTED] and the rest of the Complainants charge Respondents for being criminally responsible for the war crime under Section 4(b)(1) of R.A. 9851, Respondents having committed violence to life and person, in particular, by the willfully killing Complainant [REDACTED] nephew, Pastor Cung Biak Hum, who was shot to death by soldiers of the Myanmar military; in addition, Respondents subsequently mutilated the remains of Pastor Cung Biak Hum by cutting off his finger. These war crimes were all committed on 18 September 2021 in Thantlang, Chin State, Myanmar. *From here on, photographs, screenshots of lists incorporated in the text of this Pleading were gathered by CHRO’s human rights investigations.*

191. War victim Pastor Cung Biak Hum, aged thirty (30) years old at the time of his death, was the pastor of Thantlang Centenary Baptist Church (TCBC) in Thantlang, Chin State, Myanmar. He was a passionate youth leader who was active in helping the Thantlang community. He was accomplished academically, having graduated from the Tedium Christian College in Yangon and having studied in a master’s degree program at the Myanmar Institute of

Theology. He was well-loved in Thantlang, an area which is predominantly Christian.

192. Pastor Cung Biak Hum was a civilian taking no active part in the hostilities.



Photograph 1. Pastor Cung Biak Hum (30), war crime victim who was shot to death on 18 September 2021 by soldiers of LIB 222 in Thantlang, Chin State, Myanmar.

193. On or about August 24, 2021, soldiers of the Myanmar Light Infantry Battalion No. 222 (“LIB 222”) under the command of Respondent Major Nay Myo Oo arrived in Thantlang town to reinforce the Myanmar military Light Infantry Battalion No. 269 (“LIB 269”) which is historically stationed in Thantlang town, Chin State, Myanmar. LIB 222—which is based in Homalin, Monywa District, Sagaing Region—was a reinforcement battalion to LIB 269 in Thantlang town.

194. Another Myanmar military unit, the Light Infantry Division No. 66 (“LID 66”), was additionally detailed in Thantlang town for three (3) months from August to October 2021. LID 66 is a mobile force and under the direct command and control of the commanders already in Thantlang, who are Major Nay Myo Oo and Lt. Col. Myo Zin Tun.

195. The reinforcement of LIB 269 by the LIB 222 and LID 66 was due to the non-international armed conflict (NIAC) in Chin State between the Myanmar military and the armed groups composed of the Chinland Defense Force (CDF) and the Chin National Army (CNA).

196. In the afternoon of 18 September 2021, an armed encounter occurred in Thantlang, between the Myanmar military and a combined force

of the armed groups Chinland Defense Force-Thantlang (CDF-T) and Chin National Army (CNA). There was a clash in Block 1 in Thantlang. More than 30 Myanmar military soldiers were killed in the armed encounter.

197. Local residents hid in their homes while the armed encounter was happening. When the fighting stopped, some residents went out.

198. In the afternoon of 18 September 2021, when the armed encounter was already over and after sustaining a large number of casualties, soldiers of the Myanmar military randomly opened fire on the residential area in Thantlang using heavy weapons and explosives. The soldiers of LIB 222 launched heavy artillery strikes of 60 mm mortar targeting civilian houses in Thantlang, setting many civilian houses on fire.

199. Pastor Cung Biak Hum, who was staying at Block 2 in Thantlang, wanted to help put out raging fires then leaping across the civilian houses, in order to try to save his town. Attached as **ANNEX A** is the video of the raging fire in Thantlang on 18 September 2021 due to the artillery attack by the soldiers of the Myanmar military.

200. Pastor Cung Biak Hum organized a group of young men to step out of their homes and help extinguish the raging fires in Block 1. He then jumped on his motorcycle to speed towards Block 1 where the fires were raging across civilian houses. He was joined by the young men, who also rode on motorcycles.



Photograph 2. Fires were raging across Thantlang town due to the heavy artillery strikes on the civilian houses by soldiers of the Myanmar military.

201. When the group organized by Pastor Cung Biak Hum reached the junction between Block 1 and Block 2, soldiers of the Myanmar military stopped him and fired on him. As a result of the attack by soldiers of the Myanmar military, Pastor Cung Biak Hum was killed. He lay dead on the roadside near his fallen motorcycle.

202. When he was shot dead by the soldiers of the Tatmadaw, Pastor Cung Biak Hum was a civilian, wearing civilian clothes, using a civilian motorcycle, and was a civilian taking no active part in the hostilities. The fighting between the Myanmar military and the CDF-T and the CNA had already ceased at that time, which was the reason why Pastor Cung Biak Hum headed towards the blazing houses to stop the fires. Nevertheless, Pastor Cung Biak Hum was willfully killed by the Myanmar military, whose soldiers willfully shot him to death.



Photograph 3. Pastor Cung Biak Hum, 30, was found dead on the roadside near his fallen motorcycle in Block 2. He was the first pastor to be killed in Chin State by the soldiers of the Myanmar military.

203. The soldiers of LIB 222 and LID 66 are the ones stationed in the vicinity of the killing at that time. The soldiers of LIB 222 and LID 66 were responsible for the willful killing of civilian Pastor Cung Biak Hum as they shot him to death.

204. No soldier of LIB 222 was allowed to shoot anyone or fire any gun without permission from their Column Commander, Respondent Major Nay Myo Oo.

205. The soldiers of LIB 222 and LID 66 were also responsible for the burning of Thantlang on 18 September 2021. The raging fires that Pastor Cung Biak Hum tried to help put out gutted around 20 civilian structures, including homes and a government building.²¹⁶

206. It took about two (2) hours for others to retrieve Pastor Cung Biak Hum's remains from the roadside where he fell since the soldiers of the Myanmar military remained in the area and were randomly shooting at people.

207. When the friends of Pastor Cung Biak Hum and his father-in-law, Rev. Neely Lai Uk, finally reached the pastor's lifeless body where it lay, they saw that his body bore two gunshots in the chest and neck area. The soldiers also cut off Pastor Cung Biak Hum's ring finger and stole his wedding ring, watch, and mobile phone.



Photograph 4. The ring finger of Pastor Cung Biak Hum, 30, was cut off and his wedding ring was stolen by soldiers the Myanmar military.

208. Pastor Cung Biak Hum was the first pastor to be killed in Chin State by the soldiers of the Myanmar military.

209. The willful killing of Pastor Cung Biak Hum generated extensive domestic coverage in Myanmar as well as international coverage across the world.²¹⁷

²¹⁶Irrawaddy, 'Brother of Slain Myanmar Pastor Says Regime Fails to Take Accountability for Atrocities' (21 September 2021) online: <https://www.irrawaddy.com/news/burma/brother-of-slain-myanmar-pastor-says-regime-fails-to-take-accountability-for-atrocities.html>

²¹⁷Ibid; see also UCA News Reporter, 'Baptist pastor shot dead in Myanmar' (20 September 2021) online:

210. The State Department of the United States even noted the killing of Pastor Cung Biak Hum in its “2021 Report on International Religious Freedom: Burma.”²¹⁸

211. Due to the vicious heavy artillery strikes that the Myanmar military launched on 18 September 2021 against the civilian population of Thantlang, which razed houses, at least 11,000 of the 13,000 civilian residents of Thantlang were forced to flee to Mizoram, and at least 1,000 residents to the capital town of Hakha.

212. The family of Pastor Cung Biak Hum could not even bury his body properly as they needed to rush to leave Thantlang on 19 September 2021. This was a most difficult period for the family of Pastor Cung Biak who were still suffering and mourning his violent death, but who had to flee to escape the Myanmar military’s indiscriminate shelling.

Superior Responsibility under the IHL Act

213. Under Section 10(a) of RA 9851, **RESPONDENT MAJOR NAY MYO OO** – as the superior and military commander of the soldiers of LIB 222 and of LID 66 who perpetrated the war crime under Section 4(b)(1) of RA 9851 of *violence to the life and person* against Pastor Cung Biak Hum by willfully killing him and, subsequently, mutilating him – is criminally responsible as a principal for the war crimes committed by his subordinates-- soldiers of LIB 222-- under his effective command and control as a result of his failure to properly exercise control over his subordinates, given the circumstances that he should have known that his subordinates were committing or about to commit such war crimes.

214. Further, under Section 10(b) of RA 9851, **RESPONDENT MAJOR NAY MYO OO** – as the superior and military commander of the soldiers of LIB 222 and of LID 66 who perpetrated the war crime under Section 4(b)(1) of RA 9851 of *violence to the life and person* against Pastor Cung Biak Hum by willfully killing and mutilating him – failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

215. Further, the failure of **RESPONDENT MAJOR NAY MYO OO**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities

<https://www.ucanews.com/news/baptist-pastor-shot-dead-in-myanmar/94210>; Radio Free Asia, ‘Baptist Group in Myanmar’s Chin State Condemns Army Killing of Local Pastor’ (20 September 2021) online: <https://www.rfa.org/english/news/myanmar/pastor-09202021172814.html>; LiCAS News, ‘Baptist group in Myanmar’s Chin state condemns killing of local pastor’ (21 September 2021) online: <https://www.licas.news/2021/09/21/baptist-group-in-myanmars-chin-state-condemns-killing-of-local-pastor/>;²¹⁸ Nu Nu Lusan and Emily Fishbein, ‘A “living hell”: Churches, clergy targeted by Myanmar military’ Al Jazeera (14 October 2021) online: <https://www.aljazeera.com/news/2021/10/14/a-living-hell-churches-suffer-in-myanmar-military-attacks>; Leonardo Blair, The Christian Post (21 September 2021) online: <https://www.christianpost.com/news/youth-pastor-shot-dead-while-trying-to-help-congregant.html>.

²¹⁸ United States State Department, Office of International Religious Freedom, ‘2021 Report on International Religious Freedom: Burma’ (2 June 2022) online: <https://www.state.gov/reports/2021-report-on-international-religious-freedom/burma/>.

for investigation and prosecution, was despite the extensive domestic coverage in Myanmar and international coverage that the willful killing of Pastor Cung Biak Hum generated across the world.²¹⁹

216. Respondent Major Nay Myo Oo of LIB 222 directly reports to **RESPONDENT LT. COL. MYO ZIN TUN** of LIB 269. Thantlang Towns is the original base of LIB 269 whose Commander is Respondent Lt. Col. My Zin Tun. On the other hand, LIB 222, whose Commander is Respondent Major Nay Myo Oo, was a reinforcement battalion to LIB 269 which is under Respondent Lt. Col. Myo Zin Tun. Thus, **RESPONDENT LT. COL. MYO ZIN TUN** of LIB 269 has ultimate command responsibility over Respondent Major Nay Myo Oo of LIB 222.

217. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT LT. COL. MYO ZIN TUN** -- as the superior of Respondent Major Nay Myo Oo of LIB 222 whose soldiers perpetrated the war crime under Section 4(b)(1) of RA 9851 of *violence to the life and person* against Pastor Cung Biak Hum by willfully killing him-- failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the war crimes against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

218. Further, the failure of **RESPONDENT LT. COL. MYO ZIN TUN**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities for investigation and prosecution, was despite the extensive domestic coverage in Myanmar and international coverage that the willful killing and mutilation of Pastor Cung Biak Hum generated across the world.²²⁰

219. Respondent Lt. Col. Myo Zin Tun of LIB 269 directly reports to **RESPONDENT COL. SAW TUN**, who is the Tactical Operations Commander based at Light Infantry Battalion 266 in Northern Chin State, which is based in the capital of Chin State in Hakkha. The Tactical Operation Command supervises three battalions in Northern Chin State: LIB 266, LIB 269 and LIB 268. Thus, **RESPONDENT COL. SAW TUN** has ultimate command responsibility over Lt. Col. Myo Zin Tun of LIB 269.

220. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT COL. SAW TUN** -- as the superior of Respondent Lt. Col. Myo Zin Tun -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

221. Further, the failure of **RESPONDENT COL. SAW TUN**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities for investigation and prosecution, was despite the extensive domestic

²¹⁹Irrawady, *supra* note 216; UCA News, *supra* note 217; LiCAS News, *supra* note 217; Al Jazeera, *supra* note 217; The Christian Post, *supra* note 217; Radio Free Asia, *supra* note 217.

²²⁰Irrawady, *supra* note 216; UCA News, *supra* note 217; LiCAS News, *supra* note 217; Al Jazeera, *supra* note 217; The Christian Post, *supra* note 217; Radio Free Asia, *supra* note 217.

coverage in Myanmar and international coverage that the willful killing and mutilation of Pastor Cung Biak Hum generated across the world.²²¹

222. Respondent Col. Saw Tun directly reports to **RESPONDENT BRIG. GEN. MYO HTUT HLAING**, who is the Deputy Commander of the North Western Regional Command. The North Western Regional Command oversees all military operation in Chin State, Sagaing and Magway Region. Thus, **RESPONDENT BRIG. GEN. MYO HTUT HLAING** has ultimate command responsibility over Respondent Col. Saw Tun.

223. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT BRIG. GEN. MYO HTUT HLAING** - as the superior of Respondent Col. Saw Tun – failed to take all necessary and reasonable measures within his power to prevent or repress the war crime under Section 4(b)(1) of RA 9851 against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

224. Further, the failure of **RESPONDENT BRIG. GEN. MYO HTUT HLAING**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities for investigation and prosecution, was despite the extensive domestic coverage in Myanmar and international coverage that the willful killing and mutilation of Pastor Cung Biak Hum generated across the world.²²²

225. Illustration No. 1 below shows the military chain of command in Thantlang and over who has the command responsibility over the soldiers of LIB 222 who willfully killed and mutilated Pastor Cung Biak Hum’s remains.

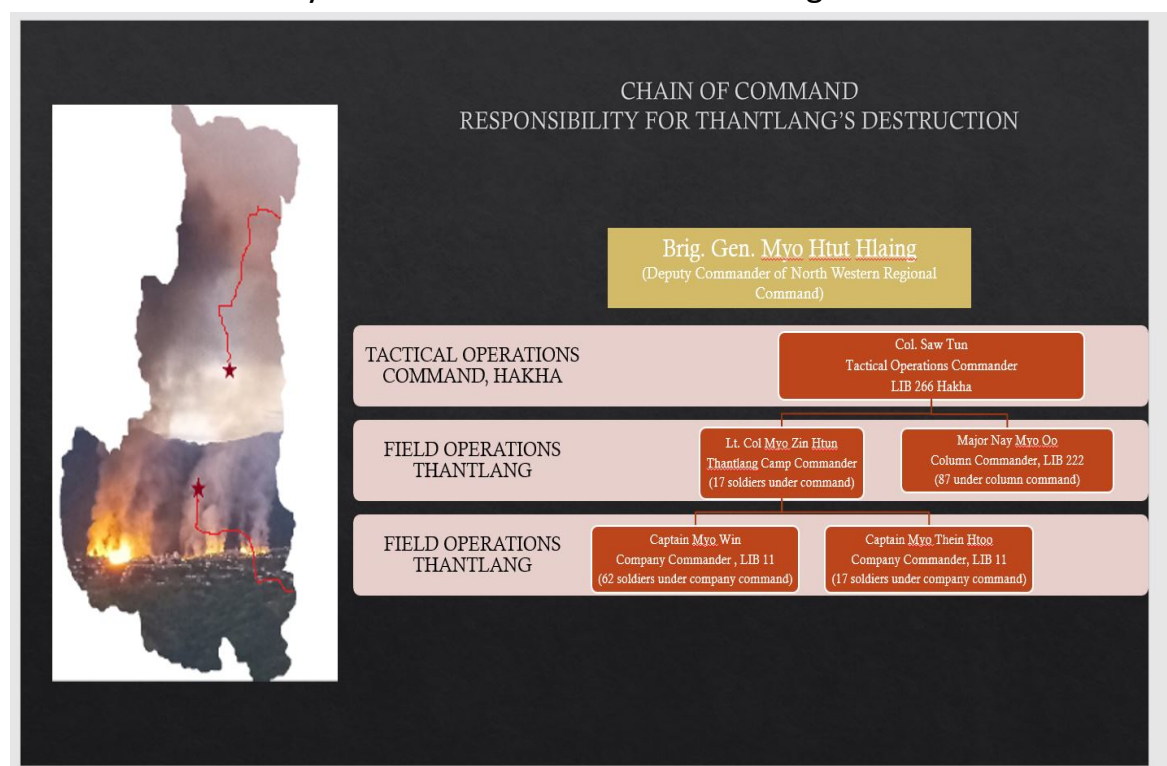


Illustration 1. The military chain of command in Thantlang who has the command responsibility over the soldiers of LIB 222 who willfully killed Pastor Cung Biak Hum.

²²¹ Irrawady, *supra* note 216; UCA News, *supra* note 217; LiCAS News, *supra* note 217; Al Jazeera, *supra* note 217; The Christian Post, *supra* note 217; Radio Free Asia, *supra* note 217.

²²² Irrawady, *supra* note 216; UCA News, *supra* note 217; LiCAS News, *supra* note 217; Al Jazeera, *supra* note 217; The Christian Post, *supra* note 217; Radio Free Asia, *supra* note 217.

226. Respondent Brig. Gen. Myo Htut Hlaing directly reports to **RESPONDENT MAJOR GEN. PHYO THANT** who is the Commanding General of the North Western Regional Military Command which is based on Monywa. Thus, **RESPONDENT MAJOR GEN. PHYO THANT** has ultimate command responsibility over Respondent Brig. Gen. Myo Htut Hlaing.

227. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT MAJOR GEN. PHYO THANT** – as the superior of Brig. Gen. Myo Htut Hlaing – failed to take all necessary and reasonable measures within his power to prevent or repress the war crime under Section 4(b)(1) of RA 9851 against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

228. Further, the failure of **RESPONDENT MAJOR GEN. PHYO THANT**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities for investigation and prosecution, was despite the extensive domestic coverage in Myanmar and international coverage that the willful killing and mutilation of Pastor Cung Biak Hum generated across the world.²²³

229. Respondent Major Gen. **PHYO THANT** directly reports to the Myanmar military Chief of Bureau of Special Operations 1, **LT. GEN. TAY ZAR KYAW**, who is based in the capital city of Naypyidaw. **LT. GEN. TAY ZAR KYAW**, as the Chief of Bureau of Special Operations 1, has command over three (3) regional military commands:

- a) North Western Regional Military Command;
- b) Northern Regional Military Command; and
- c) Central Regional Military Command.

230. Thus, **RESPONDENT LT. GEN. TAY ZAR KYAW** has ultimate command responsibility over Respondent Major Gen. Phyo Thant.

231. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT LT. GEN. TAY ZAR KYAW** -- as the superior of Major Gen. Phyo Thant -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crime under Section 4(b)(1) of RA 9851 against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

232. Further, the failure of **RESPONDENT LT. GEN. TAY ZAR KYAW**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities for investigation and prosecution, was despite the extensive domestic coverage in Myanmar and international coverage that the willful killing and mutilation of Pastor Cung Biak Hum generated across the world.²²⁴

²²³Irrawady, *supra* note 216; UCA News, *supra* note 217; LiCAS News, *supra* note 217; Al Jazeera, *supra* note 217; The Christian Post, *supra* note 217; Radio Free Asia, *supra* note 217.

²²⁴Irrawady, *supra* note 216; UCA News, *supra* note 217; LiCAS News, *supra* note 217; Al Jazeera, *supra* note 217; The Christian Post, *supra* note 217; Radio Free Asia, *supra* note 217..

233. Lt. Gen. Tay Zar Kyaw, based in Naypyidaw reports to **SR. GEN. MIN AUNG HLAING** who is the Commander-In-Chief of the Myanmar Defence Services, and the Commander-In Chief of the Myanmar Military known as the Tatmadaw. As such, **SR. GEN. MIN AUNG HLAING** has command over all the Myanmar military. He is also the Chairman of the State Administration Council, which is the current de facto government of Myanmar. Thus, **RESPONDENT SR. GEN. MIN AUNG HLAING** has ultimate command responsibility over Respondent Lt. Gen. Tay Zar Kyaw.

234. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT SR. GEN. MIN AUNG HLAING** – as the superior of Lt. Gen. Tay Zar Kyaw – failed to take all necessary and reasonable measures within his power to prevent or repress the war crime under Section 4(b)(1) of RA 9851 against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

235. Further, the failure of **RESPONDENT SR. GEN. MIN AUNG HLAING**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities for investigation and prosecution, was despite the extensive domestic coverage in Myanmar and international coverage that the willful killing and mutilation of Pastor Cung Biak Hum generated across the world.²²⁵

236. All the elements of the war crime under Section 4(b)(1) of RA 9851 against Respondents **MAJOR NAY MYO OO, LT. COL. MYO ZIN TUN, COL. SAW TUN, BRIG. GEN. MYO HTUT HLAING, MAJOR GEN. PHYO THANT, LT. GEN. TAY ZAR KYAW,** and **SR. GEN. MIN AUNG HLAING** are present in this case.

237. *First*, the perpetrator killed and also mutilated the victim Pastor Cung Biak Hum. *Second*, Pastor Cung Biak Hum was a civilian taking no active part in the hostilities. *Third*, the perpetrators were aware of the factual circumstances that established this status of Pastor Cung Biak Hum that he was a civilian. *Fourth*, the conduct took place in the context of and was associated with an armed conflict not of an international character. *Fifth*, the perpetrators were aware of factual circumstances that established the existence of an armed conflict.

238. Under Section 10(a) of RA 9851, **RESPONDENT MAJOR NAY MYO OO--** as the superior and military commander of the soldiers of LIB 222 and of LID 66 who perpetrated *violence to the life and person* against Pastor Cung Biak Hum by willfully killing him and, subsequently, mutilating him – is criminally responsible as a principal for the war crime under Section 4(b)(1) of RA 9851 committed by his subordinates – soldiers of LIB 222-- under his effective command and control as a result of his failure to properly exercise control over his subordinates, given the circumstances that he should have known that his subordinates were committing or about to commit such war crimes.

²²⁵ Irrawady, *supra* note 216; UCA News, *supra* note 217; LiCAS News, *supra* note 217; Al Jazeera, *supra* note 217; The Christian Post, *supra* note 217; Radio Free Asia, *supra* note 217.

239. Further, Respondents **MAJOR NAY MYO OO** is criminally responsible for the war crime under Section 4(b)(1) of RA 9851 by virtue of the criminal responsibility of superiors under Section 10(b) of RA 9851 since – as the superior and military commander of the soldiers of LIB 222 and of LID 66 who perpetrated *violence to the life and person* against Pastor Cung Biak Hum by willfully killing and mutilating him—Respondent failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

240. Moreover, **LT. COL. MYO ZIN TUN, COL. SAW TUN, BRIG. GEN. MYO HTUT HLAING, MAJOR GEN. PHYO THANT, LT. GEN. TAY ZAR KYAW,** and **SR. GEN. MIN AUNG HLAING,** are criminally responsible for the war crime under Section 4(b)(1) of RA 9851 by virtue of the criminal responsibility of superiors under Section 10 of RA 9851 since, as military superiors, they failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes against Pastor Cung Biak Hum or to submit the matter to the competent authorities for investigation and prosecution.

B. COMPLAINANT [REDACTED], TOGETHER WITH THE REST OF THE COMPLAINANTS, CHARGE RESPONDENTS, THUS: THE FATHER OF COMPLAINANT [REDACTED], CHURCH ELDER PU RAL TU, AND HER FATHER’S FRIEND, CHURCH ELDER PU HRAM CUNG, WERE WILLFULLY KILLED WHEN THEY WERE SHOT TO DEATH ON SEPTEMBER 29, 2021 BY MEMBERS OF THE MYANMAR MILITARY UNDER THE COMMAND OF RESPONDENTS.

THIS IS A WAR CRIME IN VIOLATION OF SECTION 4(B)(1) OF R.A. 9851.

241. Complainant [REDACTED] together with the rest of the Complaints charge herein Respondents for being criminally responsible for the war crime under Section 4(b)(1) of R.A. 9851, which provides that:

SEC. 4. War Crimes. – For the purpose of this Act, “war crimes” or “crimes against International Humanitarian Law” means:

...

(b) In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;

...

242. Specifically, Complainant [REDACTED] and the rest of the Complainants charge herein Respondents for being criminally responsible for the war crime under Section 4(b)(1) of R.A. 9851 by committing violence to life and person, in particular, by the willful killings of Complainant [REDACTED]'s father, war victim Elder Pu Ral Tu, together with her father's friend, war victim Pu Hram Cung, both on 29 September 2021.

243. Victim Elder Pu Ral Tu, aged seventy-eight (78) years old at the time of his death, was a former Township judge and a well-known civic leader in Thantlang, Chin State, Myanmar. Pu Ral Tu used to be the auditor of the Thantlang Baptist Church because he was well known in financial management. Pu Ral Tu has been a long time elder of the Thantlang Baptist Church. During the 2020 elections, he ran as Thantlang mayor. Elder Pu Ral Tu was a civilian taking no active part in the hostilities.



Photograph 4. Elder Pu Ral Tu, 78, war crime victim who was shot to death on 29 September 2021 by the soldiers of LIB 222 in Thantlang, Chin State, Myanmar.

244. Victim Elder Pu Hram Cung, aged fifty-nine (59) years old at the time of his death, was also a well-known civic leader in Thantlang, Chin State, Myanmar. Elder Pu Hram Cung was a civilian taking no active part in the hostilities.



Photograph 5. Pu Hram Chung, 59, war crime victim who was shot to death on 29 September 2021 by the soldiers of LIB 222 in Thantlang, Chin State, Myanmar.

245. On 18 September 2021, soldiers of the Light Infantry Battalion No. 222 (“LIB 222”) under the command of Respondent Major Nay Myo Oo reinforced the Myanmar military already stationed in Thantlang town, Chin State, Myanmar. LIB 222 is based in Homalin, Monywa District, Sagaing Region.

246. Respondent Major Nay Myo Oo was the Column Commander of LIB 222 that staged a vicious assault in Thantlang Town, Chin State against the armed group Chin Defense Force, forcing 15,000 residents of Thantlang to flee to remote villages of the border with India, Thantlang township and the capital town of Hakha, which is about forty (40) kilometers away. Victims Elders Pu Ral Tu and Pu Hram Cung were among the 15,000 residents who fled from Thantlang to Hakha and who were forced to temporarily stay in Hakha City as internally displaced persons (IDPs).

247. Elders Pu Ral Tu, Pu Hram Cung, and their three (3) other friends, were forced to temporarily stay in Hakha City to escape from the scorched-earth operations committed by the Tatmadaw.

248. However, due to the urgent and essential need for medicines in the IDP camps in Hakha, Elders Pu Ral Tu, Pu Hram Cung and their three (3) friends wanted to enter Thantlang town to retrieve urgently needed medicines from their respective homes.

249. Thus, the group of Elder Pu Ral Tu made a telephone call to Respondent Major Nay Myo Oo and asked permission from Major Nay Myo Oo for them to enter Thantlang town and asked him if they can safely enter Thantlang town. They asked for permission from Major Nay Myo Oo since he is the Column Commander of LIB 222 which was conducting military operations against the armed groups in Thantlang.

250. Respondent Major Nay Myo Oo asked the group of Elders Pu Ral Tu and Pu Hram Cung about their arrival time and date of arrival in Thantlang and the car number of the vehicle that they will use when entering Thantlang.

251. Elders Pu Ral Tu and Phu Hram Cung directly communicated to Major Nay Myo Oo the following specific details about their arrival in Thantlang town:

- a. their arrival time at about 6:30 pm
- b. their vehicle type-white pick-up truck
- c. the vehicle number.

252. After the group of Elders Pu Ral Tu and Pu Hram Cung gave the details of their planned 29 September 2021 visit to Thantlang to Respondent Major Nay Myo Oo, Major Nay Myo Oo explicitly permitted Elder Pu Ral Tu, Pu Hram Cung, and their three (3) friends to enter Thantlang and Respondent gave assurances to them that they were going to be safe when they will enter Thantlang.

253. On 29 September 2021 at about 6:30 PM, when the white pick-up truck of Elders Pu Ral Tu, Pu Hram Cung, and their three (3) friends arrived at the military checkpoint at the entrance to Thantlang town, LIB 222 soldiers, under the command of Respondent Major Nay Myo Oo, who were in duty station, located at Na Ta Lah School, indiscriminately and immediately fired upon the vehicle carrying Pu Ral Tu, Pu Hram Cung, and their three (3) friends.

254. The Myanmar military had no encounter at that time with any armed groups.

255. Nevertheless, the soldiers of LIB 222 and LID 66 immediately shot the white pick-up truck of Elders Pu Ral Tu, Pu Hram Cung and their group, without even asking any questions to the group of Elder Pu Ral Tu, and despite the safe-passage assurances given by their column commander, Respondent Major Nay Myo Oo to the group of Elders Pu Ral Tu and Pu Hram Cung.



Photograph 7. The white pick-up truck of Elders Pu Ral Tu, Pu Hram Cung, and their group after it was attacked by the soldiers of LIB 222 on 29 September 2021 in Thantlang, Chin State, Myanmar.

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Photograph 8. What remains of an exploded MG-2 40mm rifle grenade near a pool of blood in the bed of the pick-up truck used by Elders Pu Ral Tu and Pu Hram Cung.

256. The soldiers of LIB 222 and LID 66 took one (1) Million Myanmar Kyats from one of the victims who was killed on the spot.

257. The violence to life and person committed by the soldiers of LIB 222 and LID 66, under the command of Respondent Major Nay Myo Oo, with their unwarranted attack on Elders Pu Ral Tu, Pu Hram Cung, and their three (3) friends, resulted in the death of Pu Ral Tu (78 years old), Pu Hram Cung (59 years old), and head injury to Zo Peng (50 years old), and back injury to Than Heng (78 years old).²²⁶

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²²⁶ International Christian Concern, 'Elderly Chin Christians Shot Dead by The Tatmadaw in Chin State'(5 October 2021) online: <https://www.persecution.org/2021/10/05/elderly-chin-christians-shot-dead-tatmadaw-chin-state/>



Photograph 9. The remains of Elder Pu Hram Cung.

258. After the incident, Major Nay Myo Oo met with the survivors and said to them that his soldiers in the ground did not know who they were, and that is why his soldiers shot them accidentally. Major Nay Myo Oo pretended that he did not know and that he did not order the shooting, for his protection.

259. The photograph below shows the Christian burial ceremony for victims Elders Pu Ral Tu and Pu Hram Cung.

[This space is intentionally left blank]



Photograph 10. Christian burial ceremony for elders Pu Ral Tu and Pu Hram Cung.

260. No one in LIB 222 was allowed to shoot anyone or fire any gun without permission from their Column Commander, Respondent Major Nay Myo Oo.

261. The soldiers of LIB 222 and LID 66 shot to death Elders Pu Ral Tu, Pu Hram Cung, and their friends, despite the assurances of LIB 222 column commander, Respondent Major Nay Myo Oo's specific knowledge of the arrival details of the group of Elder Pu Ral Tu and despite his specific assurances to the group of Elder Pu Ral Tu that they were going to be safe when they will enter Thantlang.

262. Under Section 10(a) of RA 9851, **RESPONDENT MAJOR NAY MYO OO**-- as the superior and military commander of the soldiers of LIB 222 and LID 66 who perpetrated the war crimes under Section 4(b)(1) of RA 9851 of *violence to the life and person* against Elders Pu Ral Tu and Pu Hram by willfully killing them-- is criminally responsible as a principal for the war crimes committed by his subordinates-- soldiers of LIB 222-- under his effective command and control as a result of his failure to properly exercise control over his subordinates, as he as the superior knew, having knowledge of the arrival details of the group of Elder Pu Ral Tu and even gave affirmative assurances of their safe passage upon their arrival. Thus, with these circumstances, he should have known that his subordinates were committing or about to commit such war crimes.

263. Further, under Section 10(b) of RA 9851, **RESPONDENT MAJOR NAY MYO OO**-- as the superior and military commander of the soldiers of LIB 222 and LID 66 who perpetrated the war crimes under Section 4(b)(1) of RA 9851 of *violence to the life and person* against Elders Pu Ral Tu and Pu Hram by willfully killing them-- failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

264. Further, the failure of **RESPONDENT MAJOR NAY MYO OO**, under Section 10(b) of RA 9851, to submit the matter to the competent authorities for investigation and prosecution, was despite his personal knowledge of the killings of the two elders as after the incident, Major Nay Myo Oo met with the survivors. Nevertheless, Major Nay Myo Oo said to the survivors that his soldiers in the ground did not know who they were, and that is why his soldiers shot them accidentally. Major Nay Myo Oo pretended that he did not know and that he did not order the shooting, for his protection. Thus, Major Nay Myo Oo clearly failed to submit the matter to the competent authorities for investigation and prosecution.

265. Respondent Major Nay Myo Oo of LIB 222 directly reports to **RESPONDENT LT. COL. MYO ZIN TUN** of LIB 269. Thantlang Towns is the original base of LIB 269 whose Commander is Respondent Lt. Col. My Zin Tun. On the other hand, LIB 222, whose Commander is Respondent Major Nay Myo Oo, was a reinforcement battalion to LIB 269 which is under Respondent Lt. Col. Myo Zin Tun. Thus, **RESPONDENT LT. COL. MYO ZIN TUN** of LIB 269 has ultimate command responsibility over Respondent Major Nay Myo Oo of LIB 222.

266. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT LT. COL. MYO ZIN TUN** –as the superior of Respondent Major Nay Myo Oo of LIB 222 whose soldiers perpetrated the war crimes under Section 4(b)(1) of RA 9851 of *violence to the life and person* against Elders Pu Ral Tu and Pu Hram Cung by willfully killing them – failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the war crimes against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

267. Respondent Lt. Col. Myo Zin Tun of LIB 269 directly reports to **RESPONDENT COL. SAW TUN**, who is the Tactical Operations Commander of Light Infantry Battalion 266, which is based in the capital of Chin State in Hakkha. Thus, **RESPONDENT COL. SAW TUN** has ultimate command responsibility over Lt. Col. Myo Zin Tun of LIB 269.

268. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT COL. SAW TUN** -- as the superior of Respondent Lt. Col. Myo Zin Tun -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(b)(1) of RA 9851 against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

269. Respondent Col. Saw Tun directly reports to **RESPONDENT BRIG. GEN. MYO HTUT HLAING**, who is the Deputy Commander of the North Western Regional Command. The North Western Regional Command oversees all military operation in Chin State, Sagaing and Magway Region. Thus, **RESPONDENT BRIG. GEN. MYO HTUT HLAING** has ultimate command responsibility over Respondent Col. Saw Tun.

270. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT BRIG. GEN. MYO HTUT HLAING** -- as the superior of Respondent Col. Saw Tun- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(b)(1) of RA 9851 against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

271. Illustration No. 1 below shows the military chain of command in Thantlang and over who has the command responsibility over the soldiers of LIB 222 who willfully killed elders Pu Ral Tu and Pu Hram Cung.

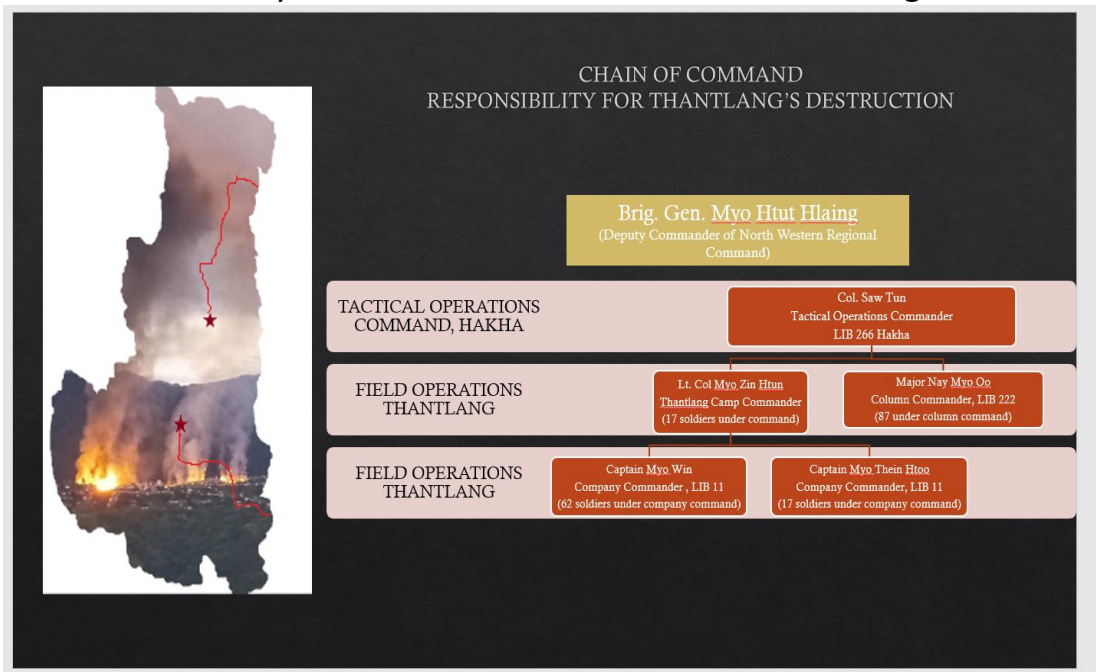


Illustration 1. The military chain of command in Thantlang who has the command responsibility over the soldiers of LIB 222 who willfully killed elders Pu Ral Tu and Pu Hram Cung.

272. Respondent Brig. Gen. Myo Htut Hlaing directly reports to **RESPONDENT MAJOR GEN. PHYO THANT** who is the Commanding General of the North Western Regional Military Command which is based on Monywa. Thus, **RESPONDENT MAJOR GEN. PHYO THANT** has ultimate command responsibility over Respondent Brig. Gen. Myo Htut Hlaing.

273. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT MAJOR GEN. PHYO THANT** -- as the superior of Brig. Gen. Myo Htut Hlaing -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(b)(1) of RA 9851 against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

274. Respondent Major Gen. **PHYO THANT** directly reports to the Myanmar military Chief of Bureau of Special Operations 1, **LT. GEN. TAY ZAR KYAW**, who is based in the capital city of Naypyidaw. **LT. GEN. TAY ZAR KYAW**, as the Chief of Bureau of Special Operations 1, has command over three (3) regional military commands:

- a) North Western Regional Military Command;
- b) Northern Regional Military Command; and
- c) Central Regional Military Command.

275. Thus, **RESPONDENT LT. GEN. TAY ZAR KYAW** has ultimate command responsibility over Respondent Major Gen. Phyo Thant.

276. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT LT. GEN. TAY ZAR KYAW** -- as the superior of Major Gen. Phyo Thant -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(b)(1) of RA 9851 against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

277. Lt. Gen. Tay Zar Kyaw, based in Naypyidaw reports to **SR. GEN. MIN AUNG HLAING** who is the Commander-In-Chief of the Myanmar Defence Services, and the Commander-In Chief of the Myanmar Military known as the Tatmadaw. As such, **SR. GEN. MIN AUNG HLAING** has command over all the Myanmar military. He is also the Chairman of the State Administration Council, which is the current de facto government of Myanmar. Thus, **RESPONDENT SR. GEN. MIN AUNG HLAING** has ultimate command responsibility over Respondent Lt. Gen. Tay Zar Kyaw.

278. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT SR. GEN. MIN AUNG HLAING** -- as the superior of Lt. Gen. Tay Zar Kyaw -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(b)(1) of RA 9851 against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

279. All the elements of a war crime under Section 4(b)(1) of RA 9851 against Respondents **MAJOR NAY MYO OO, LT. COL. MYO ZIN TUN, COL. SAW TUN, BRIG. GEN. MYO HTUT HLAING, MAJOR GEN. PHYO THANT, LT. GEN. TAY ZAR KYAW,** and **SR. GEN. MIN AUNG HLAING** are present in this case.

280. *First*, the perpetrator killed victims Elders Pu Ral Tu and Pu Hram Cung. *Second*, Elders Pu Ral Tu and Pu Hram Cung were civilians taking no active part in the hostilities. *Third*, the perpetrators were aware of the factual circumstances that established this status of Elders Pu Ral Tu and Pu Hram Cung that they were civilians. *Fourth*, the conduct took place in the context of and was associated with an armed conflict not of an international character. *Fifth*, the perpetrators were aware of factual circumstances that established the existence of an armed conflict.

281. Under Section 10(a) of RA 9851, **RESPONDENT MAJOR NAY MYO OO** -- as the superior and military commander of the soldiers of LIB 222 and of LID 66 who perpetrated *violence to the life and person* of Elders Pu Ral Tu and Pu Hram Cung by willfully killing them -- is criminally responsible as a principal for the war crimes under Section 4(b)(1) of RA 9851 committed by his subordinates-- soldiers of LIB 222-- under his effective command and control as a result of his failure to properly exercise control over his subordinates, given the circumstances that he should have known that his subordinates were committing or about to commit such war crimes.

282. Further, Respondent **MAJOR NAY MYO OO** is criminally responsible for the war crimes under Section 4(b)(1) of RA 9851 by virtue of the criminal responsibility of superiors under Section 10(b) of RA 9851 since-- as the superior and military commander of the soldiers of LIB 222 and of LID 66 who perpetrated *violence to the life and person* of Elders Pu Ral Tu and Pu Hram Cung by willfully killing them—Respondent failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

283. Moreover, **LT. COL. MYO ZIN TUN, COL. SAW TUN, BRIG. GEN. MYO HTUT HLAING, MAJOR GEN. PHYO THANT, LT. GEN. TAY ZAR KYAW,** and **SR. GEN. MIN AUNG HLAING,** are criminally responsible for the war crimes under Section 4(b)(1) of RA 9851 by virtue of the criminal responsibility of superiors under Section 10 of RA 9851 since, as military superiors, they failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes against Elders Pu Ral Tu and Pu Hram Cung or to submit the matter to the competent authorities for investigation and prosecution.

C. COMPLAINANTS CHARGE THE RESPONDENTS, THUS: INTENTIONALLY DIRECTING ATTACKS AGAINST BUILDINGS DEDICATED TO RELIGION, SPECIFICALLY CHRISTIAN CHURCHES, ON MULTIPLE DATES FROM AUGUST 2021 UNTIL JUNE 2022.

THESE ARE WAR CRIMES IN VIOLATION OF SECTION 4(C)(10) OF R.A. 9851.

284. Complainants charge herein Respondents for being criminally responsible for the war crimes under Section 4(c)(10) of R.A. 9851, which states that:

SEC. 4. War Crimes. – For the purpose of this Act, “war crimes” or “crimes against International Humanitarian Law” means:

...

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

...

(10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;

285. Specifically, Complainants charge herein Respondents for being criminally responsible for the war crimes under Section 4(c)(10) of R.A. 9851, for intentionally directing attacks against buildings dedicated to religion,

specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022.

286. The majority of the people in Chin State are Christians. American missionaries went to Chin State in order to spread the Gospel of Jesus Christ. Thus, most of the churches in Chin State are Christian churches. Chin State is the only Christian majority state in Myanmar.

287. In June and July 2021, Christian leaders, Pastors and community leaders of Thantlang town were met by Respondent Col. Saw Tun and Lt. Col. Thaung Hlaing and by Respondent Brg. General Myo Htut Hliang. At that time, they accused that the Pastors were the main leaders who control the Chinland Defense Force (CDF) in Thantlang, although they had no basis for their accusations. These Myanmar military officers then warned the Christian leaders, Pastors and community leaders of Thantlang town that if the CDF continues to attack the Myanmar military, Thantlang will be burned down to ashes.

288. In the June 2021 meeting with Respondent Brg. Gen. Myo Htut Hlaing with Christian leaders, he said that it is the responsibility of the religious leaders to harmonize and keep the peace in Thantlang and to control the youth who fight against the Myanmar military. He then warned the Christian leaders that if the youth are not controlled, the consequences will be huge: Thantlang Town might be under fire.

289. In July 2021 meeting with Respondent Brg. Gen. Myo Htut Hlaing in Hakha, where he summoned the Christian leaders to a meeting, he told the same warning again.

290. For years, the Myanmar military Light Infantry Battalion No. 269 ("LIB 269") has been the only historically based military unit in Thantlang. It is composed of about 26 personnel. In order to project its military power, LIB 269 has an artillery base on the uphill portion of Thantlang town, which has a good vantage point of the town itself.

291. On or about August 24, 2021, soldiers of the Myanmar Light Infantry Battalion No. 222 ("LIB 222") under the command of Respondent Major Nay Myo Oo arrived in Thantlang town to reinforce LIB 269.

292. Another Myanmar military unit, the Light Infantry Division No. 66 ("LID 66") was additionally detailed in Thantlang town for three (3) months from August to October 2021. LID 66 is a mobile force and under the direct command and control of the commanders already in Thantlang, who are Major Nay Myo Oo and Lt. Col. Myo Zin Tun.

293. The reinforcement of LIB 269 by the LIB 222 and LID 66 was due to the non-international armed conflict (NIAC) in Chin State between the Myanmar military and the armed groups composed of the Chinland Defense Force (CDF) and the Chin National Army (CNA). LIB 222 conducts the ground operation and is at the frontline and the back of any military operation in

Thantlang. As the frontline unit, LIB 222 requests for artillery shelling from the LIB 269 artillery base.

294. In the “**Report of the Independent Investigative Mechanism for Myanmar**”²²⁷ dated 30 June 2023 submitted to the United Nations Human Rights Council, which covers the activities carried out by the Mechanism between 1 July 2022 and 30 June 2023, the Mechanism reports on the war crimes committed by the Myanmar military and its affiliated militias, specifically the following war crimes including “large-scale and intentional burning of civilian dwellings and other civilian buildings”:

26. Based on the evidence collected to date, there is strong evidence that the Myanmar military and its affiliate militias have committed three types of combat-related crimes with increasing frequency and brazenness: (a) indiscriminate or disproportionate targeting of civilians using bombs; (b) killings of civilians or combatants detained during operations; and (c) large scale and intentional burning of civilian dwellings and other civilian buildings.

295. The “Report of the Independent Investigative Mechanism for Myanmar”²²⁸ submitted to the United Nations Human Rights Council is herein attached as **ANNEX B**. The multiple intentional attacks by the Myanmar military against Christian churches are enumerated in the succeeding paragraphs.

ON 25 AUGUST 2021, 14 SEPTEMBER 2021, 3 JANUARY 2022, AND 24 MAY 2022 — MULTIPLE INTENTIONAL ATTACKS BY THE MYANMAR MILITARY AGAINST THE JOHNSON MEMORIAL BAPTIST CHURCH (JMBC) IN THANTLANG, CHIN STATE, MYANMAR.

296. Johnson Memorial Baptist Church is the second largest church in Thantlang with about 2,800 members and served by eight (8) pastors. It is named after Rev. Dr. Robert Johnson, the last American Baptist missionary to serve in Chin State. It was established in 1989 and is located in Block 1, Thantlang, Chin State, Myanmar.

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²²⁷United Nations Independent Investigative Mechanism for Myanmar, Report (30 June 2023) A/HRC/54/19 online: <https://digitallibrary.un.org/record/4017802?ln=en>

²²⁸ *Ibid.*



Photograph 11. The Johnson Memorial Baptist Church before it was completely burned down by the Myanmar military.

297. On 25 August 2021, the Myanmar military launched a deliberate mortar shelling attack against the Johnson Memorial Baptist Church in Thantlang, Chin State, Myanmar. Due to the mortar attack of the Myanmar military, heavy weaponry landed on the roof of Johnson Memorial Baptist Church causing damage, and bullets from single shots broke multiple windows.²²⁹

298. On 14 September 2021, the Myanmar military again launched a deliberate mortar shelling attack against the Johnson Memorial Baptist Church. Heavy weaponry landed on the roof causing damage, and bullets from single shots broke multiple windows.²³⁰ On 3 January 2022, the Myanmar military launched a targeted raid against the Johnson Memorial Baptist Church (JMBC), burning down the JMBC office and the JMBC Children Home Center.

299. On 24 May 2022, the Myanmar military again target the Johnson Memorial Baptist Church. But this time, the Myanmar military completely burned down the Johnson Memorial Baptist Church including its Pastor's Quarter.

²²⁹ Chin Human Rights Organization (CHRO), Human Rights Briefing (August-September 2021) online: <https://www.chinhumanrights.org/wp-content/uploads/2021/10/Reign-of-Terror-ReportCHRO-1.pdf>

²³⁰ *Ibid.*



Photograph 12. What remains of the Johnson Memorial Baptist Church after it was completely burned down by the Myanmar military on 24 May 2022.



Photograph 12-A. What remains of the Johnson Memorial Baptist Church after it was completely burned down by the Myanmar military on 24 May 2022.

300. Due to the multiple intentional attacks by the Myanmar military directed against the Johnson Memorial Baptist Church, all of the 2,800 members of the JMBC were forced to be internally displaced persons (IDPs) or to be refugees in Mizoram State, India.

301. On that same day on 24 May 2022, at least one hundred thirty five (135) houses were also burned down by the Myanmar military.



Photograph 13. Drone shot of the burned down Johnson Memorial Baptist Church after it was intentionally attacked by the Myanmar military on 24 May 2022.

ON 09 SEPTEMBER 2021, 29 OCTOBER 2021, 17 DECEMBER 2021, 30 DECEMBER 2021, AND 09 JUNE 2022 — MULTIPLE INTENTIONAL ATTACKS BY THE MYANMAR MILITARY AGAINST THE THANTLANG BAPTIST CHURCH IN THANTLANG, CHIN STATE, MYANMAR.

302. The Thantlang Baptist Church is one of the biggest and oldest Baptist churches in Thantlang. It is located in Block 2 of Thantlang, Chin State, Myanmar.



Photograph 14. The Thantlang Baptist Church before it was completely burned down by the Myanmar military.



Photograph 15. The Thantlang Baptist Church before it was completely burned down by the Myanmar military.

303. On 09 September 2021, the Myanmar military launched a deliberate mortar shelling attack against the Thantlang Baptist Church in Thantlang Town, Chin State, Myanmar.

304. On 29 October 2021, the Myanmar military launched a targeted raid of Thantlang Baptist Church, burning down the office and hall of the Thantlang Baptist Church.

305. On 17 December 2021, the Myanmar military burned and destroyed the Community Hall, Prayer Rooms, and Evangelista Quarters of the Thantlang Baptist Church.

306. On 30 December 2021, the Myanmar military burned the following buildings of the Thantlang Baptist Church:

- a) Jubilee Memorial Hall;
- b) Guesthouse;
- c) Pre-school.

307. On 9 June 2022, the Myanmar military burned down and destroyed the Thantlang Baptist Church together with at least one hundred seventeen (117) houses.



Photograph 16. What remains of the Thantlang Baptist Church, after it was burned down on 9 June 2022 by the Myanmar military.



Photograph 16-A. What remains of the Thantlang Baptist Church, after it was burned down on 9 June 2022 by the Myanmar military.

308. There was no armed encounter on that day between the Myanmar military and Chin rebel groups.

ON 30 DECEMBER 2021—INTENTIONAL ATTACK BY THE MYANMAR MILITARY AGAINST THE THANTLANG ASSOCIATION OF BAPTIST CHURCHES IN THANTLANG, CHIN STATE, MYANMAR.

309. On 30 December 2021, the Myanmar military burned the office building of the Thantlang Association of Baptist Churches- an association which has fifty-four (54) churches under it.

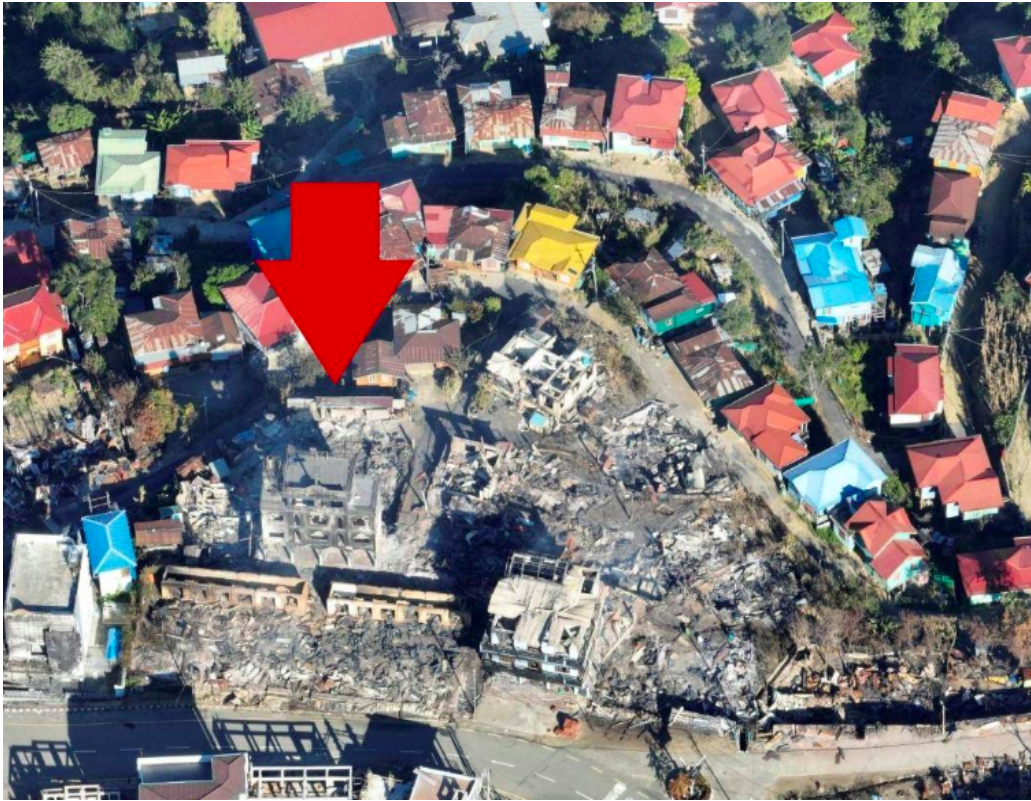
ON 29 OCTOBER 2021, AND 30 DECEMBER 2021—INTENTIONAL ATTACK BY THE MYANMAR MILITARY AGAINST THE ASSEMBLY OF GOD IN THANTLANG, CHIN STATE, MYANMAR.

310. The Thantlang Assembly of God Church is one of the Christian churches in Thantlang.

Photograph 17. The Thantlang Assembly of God Church before it was completely burned down by the Myanmar military.

311. On 29 October 2021, the Myanmar military launched a targeted raid against the Assembly of God Church, burning down its office.

312. On 30 December 2021, the Myanmar military completely burned down the Assembly of God Church and its Pastor's quarter.



Photograph 18. What remains of the Thantlang Assembly of God Church, after it was completely burned down by the Myanmar military on 30 December 2021.

313. Another fifty-five (55) houses were also burned down by the Myanmar military.



Photograph 19. The burning of Thantlang by the Myanmar military on 30 December 2021.

314. The soldiers of the Light Infantry Battalion 222 and Light Infantry Battalion 269 were responsible for the fires, which started from four different blocks and lasted for nearly nine hours.

ON 6 NOVEMBER 2021—INTENTIONAL ATTACK BY THE MYANMAR MILITARY AGAINST THE PENIEL CHILDREN HOME 1, PENIEL CHILDREN HOME 2, AND PENIEL CHILDREN HOME 3 IN THANTLANG, CHIN STATE, MYANMAR.

315. On 6 November 2021, the Myanmar military launched a targeted raid against the Peniel Children Home, burning down its Home 1, Home 2, and Home 3.

ON 27 DECEMBER 2021—INTENTIONAL ATTACK BY THE MYANMAR MILITARY AGAINST THE CATHOLIC OFFICE IN THANTLANG, CHIN STATE, MYANMAR.

316. On 27 December 2021, the Myanmar military launched a targeted raid against the Catholic office in Thantlang, burning it down.

ON 23 JUNE 2022 (1x) —INTENTIONAL ATTACK BY THE MYANMAR MILITARY AGAINST THE BELIEVER CHURCH.

317. On 23 June 2022, the Myanmar military burned down the Believers Church in Thantlang.

318. It is near the house of Dr. Hmuh Thang, who is Chair of Union Solidarity Development Party of Chin State and the current Central Member of State Administration Council.



Photograph 20. What remains of the Believers Church after it was burned down by the Myanmar military on 23 June 2022.

THE MYANMAR MILITARY OFFICERS AND SOLDIERS RESPONSIBLE FOR INTENTIONALLY DIRECTING ATTACKS AGAINST BUILDINGS DEDICATED TO RELIGION, SPECIFICALLY CHRISTIAN CHURCHES ON MULTIPLE DATES FROM AUGUST 2021 UNTIL JUNE 2022.

319. For years, the Myanmar military Light Infantry Battalion No. 269 (“LIB 269”) has been the only historically based military unit in Thantlang. It is composed of about 26 personnel. In order to project its military power, LIB 269 has an artillery base on the uphill portion of Thantlang town, which has a good vantage point of the town itself.

320. On or about August 24, 2021, soldiers of the Myanmar Light Infantry Battalion No. 222 (“LIB 222”) under the command of Respondent Major Nay Myo Oo arrived in Thantlang town to reinforce LIB 269.

321. Another Myanmar military unit, the Light Infantry Division No. 66 (“LID 66”) was additionally detailed in Thantlang town for three (3) months from August to October 2021. LID 66 is a mobile force and under the direct command and control of the commanders already in Thantlang, who are Major Nay Myo Oo and Lt. Col. Myo Zin Tun.

322. LIB 222 conducts the ground operation and is at the frontline and the back of any military operation in Thantlang. As the frontline unit, LIB 222 requests for artillery shelling from the LIB 269 artillery base.

323. The soldiers of the LIB 222 and LIB Battalion 269 were responsible for intentionally directing attacks against Christian churches on multiple dates from August 2021 until June 2022. The soldiers of LID 66, were responsible for intentionally directing attacks against Christian churches on multiple dates from August 2021 until October 2021.

324. In the **“Report of the Independent Investigative Mechanism for Myanmar”** dated 30 June 2023 submitted to the United Nations Human Rights Council, which covers the activities carried out by the Mechanism between 1 July 2022 and 30 June 2023, the Mechanism reports on the war crimes committed by the Myanmar military and its affiliated militias, specifically the following war crimes including “large-scale and intentional burning of civilian dwellings and other civilian buildings”:

26. Based on the evidence collected to date, there is strong evidence that the Myanmar military and its affiliate militias have committed three types of combat-related crimes with increasing frequency and brazenness: (a) indiscriminate or disproportionate targeting of civilians using bombs; (b) killings of civilians or combatants detained during operations; and (c) large scale and intentional burning of civilian dwellings and other civilian buildings.

27. The Myanmar military has attempted to justify several aerial bombardment that have led to substantial loss of civilian life, on the basis that there was a military target in the vicinity of the attack.

However, the Mechanism has collected evidence indicating that the military should have known, or did know, that large numbers of civilians were present in or around alleged military targets at the same time of some of those attacks. The circumstances are manifestly indicative of a pattern of indiscriminate or disproportionate attacks, which is a war crime. The Myanmar military has not announced investigations into any of these extremely grave incidents.²³¹

325. In the same “Report of the Independent Investigative Mechanism for Myanmar,” the Mechanism Report pointed out the *“the large-scale burning and destruction of civilian objects by the Myanmar military forces and their affiliates has continued during the reporting period.”* And that these events have occurred in several areas particularly, inter alia, Chin State, as the UN report stated:

29. The evidence collected by the Mechanism further indicates that the large-scale burning and destruction of civilian objects by the Myanmar military forces and their affiliates has continued during the reporting period. These events have occurred across several areas particularly in Sagaing, Magway, Chin, Kayin and Kayah, and typically involve civilian objects such as shops, places of worship and civilian vehicles. In some cases, entire villages have been destroyed. The evidence collected indicates that the fires were deliberately set by military forces on the ground or were caused by artillery strikes. The documented cases of burning often have taken place alongside incidents of detentions and killings and have contributed to massive displacement of persons across Myanmar. The Myanmar military has not announced investigations into any of these extremely grave incidents.

30. The Myanmar military’s failure to investigate or to otherwise curtail the pattern of combat-related war crimes described above is significant. Military commanders have a duty under international law to prevent or repress war crimes committed by those under their command. The failure to do so may make them criminally responsible under the principle of command responsibility; repeatedly ignoring such crimes may indicate that higher authorities intended the commission of these crimes.²³²

326. Under Section 10(a) of RA 9851, **RESPONDENT MAJOR NAY MYO OO**-- as the superior and military commander of the soldiers of LIB 222 and LID 66 who intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022-- is criminally responsible as a principal for the

²³¹ UN Report, A/HRC/54/19, *supra* note 227.

²³² *Ibid.*

war crimes under Section 4(c)(10) of R.A. 9851 committed by his subordinates-- soldiers of LIB 222 and LID 66-- under his effective command and control as a result of his failure to properly exercise control over his subordinates, as he as the superior knew or, owing to the circumstances at the time specifically the multiple dates of attacks directed against numerous Christian churches and buildings from August 2021 until June 2022, should have known that his subordinates were committing or about to commit such war crimes.

327. Further, under Section 10(b) of RA 9851, **RESPONDENT MAJOR NAY MYO OO** – as the superior and military commander of the soldiers of LIB 222 and LID 66 who intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022-- failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the war crimes under Section 4(c)(10) of R.A. 9851 or to submit the matter to the competent authorities for investigation and prosecution.

328. Under Section 10(a) of RA 9851, **RESPONDENT LT. COL. MYO ZIN TUN** -- as the superior and military commander of the soldiers of LIB 269 who intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 – is criminally responsible as a principal for the war crimes under Section 4(c)(10) of R.A. 9851 committed by his subordinates – soldiers of LIB 269 – under his effective command and control as a result of his failure to properly exercise control over his subordinates, as he as the superior knew or, owing to the circumstances at the time specifically the multiple dates of attacks directed against numerous Christian churches and buildings from August 2021 until June 2022, should have known that his subordinates were committing or about to commit such war crimes.

329. Further, under Section 10(b) of RA 9851, **RESPONDENT LT. COL. MYO ZIN TUN** – as the superior and military commander of the soldiers of LIB 269 who intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 –failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the war crimes under Section 4(c)(10) of R.A. 9851 or to submit the matter to the competent authorities for investigation and prosecution.

330. Respondent Lt. Col. Myo Zin Tun of LIB 269 directly reports to **RESPONDENT COL. SAW TUN**, who is the Tactical Operations Commander of Light Infantry Battalion 266, which is based in the capital of Chin State in Hakkha. Thus, **RESPONDENT COL. SAW TUN** has ultimate command responsibility over Lt. Col. Myo Zin Tun of LIB 269.

331. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT COL. SAW TUN** – as the superior of Respondent Lt. Col. Myo Zin Tun – failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing

attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

332. Respondent Col. Saw Tun directly reports to **RESPONDENT BRIG. GEN. MYO HTUT HLAING**, who is the Deputy Commander of the North Western Regional Command. The North Western Regional Command oversees all military operations in Chin State, Sagaing and Magway Region. Thus, **RESPONDENT BRIG. GEN. MYO HTUT HLAING** has ultimate command responsibility over Respondent Col. Saw Tun.

333. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT BRIG. GEN. MYO HTUT HLAING** -- as the superior of Respondent Col. Saw Tun -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

334. Illustration No. 1 below shows the military chain of command in Thantlang and over who has the command responsibility over the soldiers of LIB 222 and LIB 269 who committed the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022.

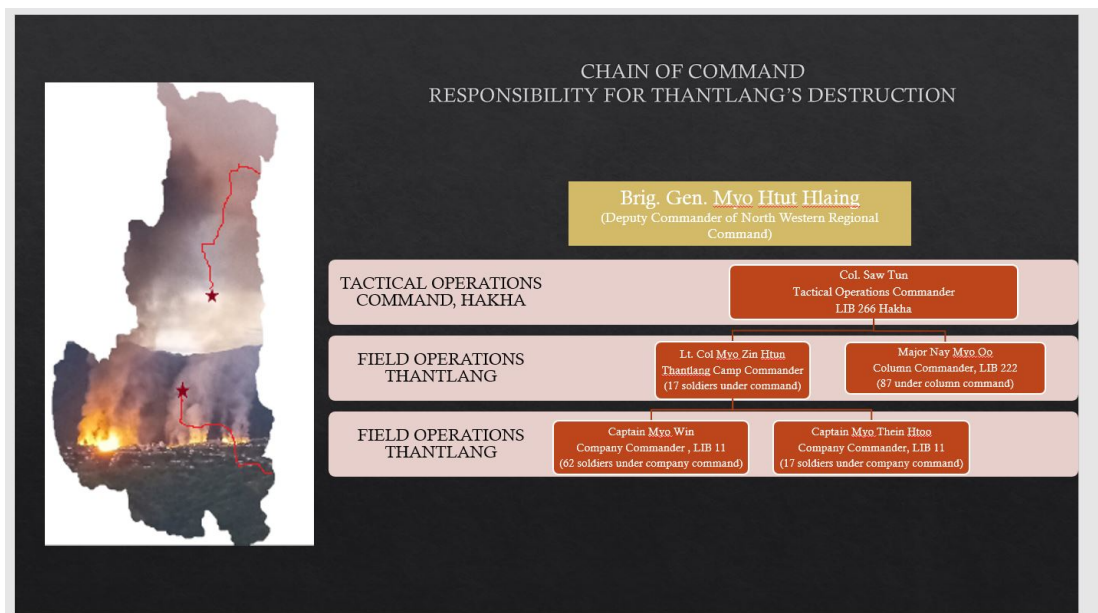


Illustration 1. The military chain of command in Thantlang who have command responsibility over the soldiers who intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022.

335. Respondent Brig. Gen. Myo Htut Hlaing directly reports to **RESPONDENT MAJOR GEN. PHYO THANT** who is the Commanding General of the North Western Regional Military Command which is based on Monywa. Thus, **RESPONDENT MAJOR GEN. PHYO THANT** has ultimate command responsibility over Respondent Brig. Gen. Myo Htut Hlaing for the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until January 2022.

336. Nevertheless, under Section 10(b) of RA 9851, **RESPONDENT MAJOR GEN. PHYO THANT** -- as the superior of Brig. Gen. Myo Htut Hlaing -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until January 2022 or to submit the matter to the competent authorities for investigation and prosecution.

337. Sometime on January 2022, **RESPONDENT MAJ. GEN. THAN HTIKE** replaced **RESPONDENT MAJOR GEN. PHYO THANT** as the Commanding General of the North Western Regional Military Command which is based on Monywa. Consequently, **RESPONDENT MAJOR GEN. THAN HTIKE** has ultimate command responsibility over Respondent Brig. Gen. Myo Htut Hlaing for the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from January 2022 until June 2022.

338. Thus, under Section 10(b) of RA 9851, **RESPONDENT MAJ. GEN. THAN HTIKE** -- as the superior of Brig. Gen. Myo Htut Hlaing -- failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from January 2022 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

339. Respondent Major Gen. **PHYO THANT** and, subsequently, Major Gen. **THAN HTIKE** directly report to the Myanmar military Chief of Bureau of Special Operations 1, **LT. GEN. TAY ZAR KYAW**, who is based in the capital city of Naypyidaw. **LT. GEN. TAY ZAR KYAW**, as the Chief of Bureau of Special Operations 1, has command over three (3) regional military commands:

- a) North Western Regional Military Command;
- b) Northern Regional Military Command; and
- c) Central Regional Military Command.

340. Thus, **RESPONDENT LT. GEN. TAY ZAR KYAW** has ultimate command responsibility over Respondent Major Gen. Phyo Thant.

341. Under Section 10(b) of RA 9851, **RESPONDENT LT. GEN. TAY ZAR KYAW** -- as the superior of Major Gen. Phyo Thant and, subsequently, of Major Gen. Than Htike -- failed to take all necessary and reasonable measures

within his power to prevent or repress the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

342. Lt. Gen. Tay Zar Kyaw, based in Naypyidaw reports to **SR. GEN. MIN AUNG HLAING** who is the Commander-In-Chief of the Myanmar Defence Services, and the Commander-In Chief of the Myanmar Military known as the Tatmadaw. As such, **SR. GEN. MIN AUNG HLAING** has command over all the Myanmar military. He is also the Chairman of the State Administration Council, which is the current de facto government of Myanmar. Thus, **RESPONDENT SR. GEN. MIN AUNG HLAING** has ultimate command responsibility over Respondent Lt. Gen. Tay Zar Kyaw.

343. Under Section 10(b) of RA 9851, **RESPONDENT SR. GEN. MIN AUNG HLAING** – as the superior of Lt. Gen. Tay Zar Kyaw – failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

344. All the elements of a war crime under Section 4(c)(10) of RA 9851 against Respondents **MAJOR NAY MYO OO, LT. COL. MYO ZIN TUN, COL. SAW TUN, BRIG. GEN. MYO HTUT HLAING, MAJOR GEN. PHYO THANT, MAJOR GEN. THAN HTIKE, LT. GEN. TAY ZAR KYAW,** and **SR. GEN. MIN AUNG HLAING** are present in this case.

345. *First*, the perpetrators intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022. *Second*, these Christian churches and buildings are civilian objects and not military objects. *Third*, the perpetrators were aware of the factual circumstances that established the status of these Christian churches and buildings as civilian objects. *Fourth*, the conduct took place in the context of and was associated with an armed conflict not of an international character. *Fifth*, the perpetrators were aware of factual circumstances that established the existence of an armed conflict.

346. Under Section 10(a) of RA 9851, **RESPONDENT MAJOR NAY MYO OO**-- as the superior and military commander of the soldiers of LIB 222 and of LID 66 who intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022-- is criminally responsible as a principal for the war crimes under Section 4(c)(10) of R.A. 9851 committed by his subordinates-- soldiers of LIB 222 and of LID 66-- under his effective command and control as a result of his failure to properly exercise control over his

subordinates, given the circumstances that he should have known that his subordinates were committing or about to commit such war crimes.

347. It is clear from the “Report of the Independent Investigative Mechanism for Myanmar,” that the Myanmar military has not announced investigations into any of these extremely grave incidents:

29. The evidence collected by the Mechanism further indicates that the large-scale burning and destruction of civilian objects by the Myanmar military forces and their affiliates has continued during the reporting period. These events have occurred across several areas particularly in Sagaing, Magway, Chin, Kayin and Kayah, and typically involve civilian objects such as shops, places of worship and civilian vehicles. In some cases, entire villages have been destroyed. The evidence collected indicates that the fires were deliberately set by military forces on the ground or were caused by artillery strikes. The documented cases of burning often have taken place alongside incidents of detentions and killings and have contributed to massive displacement of persons across Myanmar. The Myanmar military has not announced investigations into any of these extremely grave incidents.

30. The Myanmar military’s failure to investigate or to otherwise curtail the pattern of combat-related war crimes described above is significant. Military commanders have a duty under international law to prevent or repress war crimes committed by those under their command. The failure to do so may make them criminally responsible under the principle of command responsibility; repeatedly ignoring such crimes may indicate that higher authorities intended the commission of these crimes.²³³

348. Thus, Respondents **MAJOR NAY MYO OO** is criminally responsible for the war crime under Section 4(b)(1) of RA 9851 by virtue of the criminal responsibility of superiors under Section 10(b) of RA 9851 since-- as the superior and military commander of the soldiers of LIB 222 and of LID 66 intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022—Respondent failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes under Section 4(c)(10) of R.A. 9851 of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

349. Under Section 10(a) of RA 9851, **RESPONDENT LT. COL. MYO ZIN TUN** – as the superior and military commander of the soldiers of LIB 269 who intentionally directed attacks against buildings dedicated to religion,

²³³ UN Report, A/HRC/54/19, *supra* note 227.

specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 – is criminally responsible as a principal for the war crimes under Section 4(c)(10) of R.A. 9851 committed by his subordinates, the soldiers of LIB 269 under his effective command and control, as a result of his failure to properly exercise control over his subordinates, given the circumstances that he should have known that his subordinates were committing or about to commit such war crimes.

350. Further, Respondent **LT. COL. MYO ZIN TUN** is criminally responsible for the war crime under Section 4(c)(10) of RA 9851 by virtue of the criminal responsibility of superiors under Section 10(b) of RA 9851 since – as the superior and military commander of the soldiers of LIB 269 who intentionally directed attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022—Respondent failed to take all necessary and reasonable measures within his power to prevent or repress the war crimes of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

351. Moreover, **COL. SAW TUN, BRIG. GEN. MYO HTUT HLAING, MAJOR GEN. PHYO THANT, MAJOR GEN. THAN HTIKE, LT. GEN. TAY ZAR KYAW,** and **SR. GEN. MIN AUNG HLAING,** are criminally responsible for the war crime under Section 4(c)(10) of RA 9851 by virtue of the criminal responsibility of superiors under Section 10 of RA 9851 since, as military superiors, they failed to take all necessary and reasonable measures within their power to prevent or repress the war crimes of intentionally directing attacks against buildings dedicated to religion, specifically Christian churches and buildings, on multiple dates from August 2021 until June 2022 or to submit the matter to the competent authorities for investigation and prosecution.

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D. COMPLAINANTS CHARGE RESPONDENTS, THUS: INTENTIONALLY DIRECTING ATTACKS AGAINST CIVILIAN OBJECTS, BY SPECIFICALLY BURNING CIVILIAN HOUSES, ON MULTIPLE DATES FROM AUGUST 2021 UNTIL JUNE 2022.

THESE ARE WAR CRIMES IN VIOLATION OF SECTION 4(C)(2) AND SECTION 4(C)(7) OF R.A. 9851.

352. Complainants charge herein Respondents for being criminally responsible for committing the war crimes under Section 4(c)(2) and Section 4(c)(7) of R.A. 9851, which provides that:

SEC. 4. War Crimes. – For the purpose of this Act, “war crimes” or “crimes against International Humanitarian Law” means:

...

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

...

(2) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

...

(7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;

(Emphasis and underscoring supplied)

353. Chin State is majority Christian, thanks to the efforts of American Protestant Baptist missionaries in the late 19th century. Thus, most of the churches in Chin State are Christian churches. Chin State is the only Christian majority state in Myanmar.

354. In June and July 2021, Christian leaders, pastors and community leaders of Thantlang town were met by Respondent Col. Saw Tun and Lt. Col. Thaung Hlaing and by Respondent Brg. General Myo Htut Hliang. At that time, they accused that the Pastors were the main leaders who control the Chinland Defense Force (CDF) in Thantlang, although they had no basis for their accusations. These Myanmar military officers then warned the Christian leaders, Pastors and community leaders of Thantlang town that if the CDF continues to attack the Myanmar military, Thantlang will be burned down to ashes.

355. In the June 2021 meeting with Respondent Brg. Gen. Myo Htut Hlaing with Christian leaders, he said that it was the responsibility of the religious leaders to harmonize and keep the peace in Thantlang and to control the youth who fight against the Myanmar military. He then warned the Christian leaders that if the youth are not controlled, the consequences will be huge: Thantlang Town might come under fire.

356. In a July 2021 meeting with Respondent Brg. Gen. Myo Htut Hlaing in Hakha, where he summoned the Christian leaders to a meeting, he told the same warning again.

357. For years, the Myanmar military Light Infantry Battalion No. 269 (“LIB 269”) has been the only historically based military unit in Thantlang. It is composed of about 26 personnel. In order to project its military power, LIB 269 has an artillery base on the uphill portion of Thantlang town, which has a good vantage point of the town itself.

358. On or about August 24, 2021, soldiers of the Myanmar Light Infantry Battalion No. 222 (“LIB 222”) under the command of Respondent Major Nay Myo Oo arrived in Thantlang town to reinforce LIB 269.

359. Another Myanmar military unit, the Light Infantry Division No. 66 (“LID 66”) was additionally detailed in Thantlang town for three (3) months from August to October 2021. LID 66 is a mobile force and under the direct command and control of the commanders already in Thantlang, who are Major Nay Myo Oo and Lt. Col. Myo Zin Tun.

360. The reinforcement of LIB 269 by the LIB 222 and LID 66 was due to the non-international armed conflict (NIAC) in Chin State between the Myanmar military and the armed groups composed of the Chinland Defense Force (CDF) and the Chin National Army (CNA).

361. LIB 222 conducts the ground operation and is at the frontline and the back of any military operation in Thantlang. As the frontline unit, LIB 222 requests for artillery shelling from the LIB 269 artillery base.

362. In the “Report of the Independent Investigative Mechanism for Myanmar”²³⁴ submitted to the United Nations Human Rights Council, it reports on the war crimes committed by the Myanmar military and its affiliated militias, specifically the following war crimes including “large-scale and intentional burning of civilian dwellings and other civilian buildings”:

26. Based on the evidence collected to date, there is strong evidence that the Myanmar military and its affiliate militias have committed three types of combat-related crimes with increasing frequency and brazenness: (a) indiscriminate or disproportionate targeting of civilians using bombs; (b) killings of civilians or combatants detained during operations; and (c) large scale and intentional burning of civilian dwellings and other civilian buildings.²³⁵

The “Report of the Independent Investigative Mechanism for Myanmar”²³⁶ submitted to the United Nations Human Rights Council is herein attached as **ANNEX B**.

²³⁴ UN Report, A/HRC/54/19, *supra* note 227

²³⁵ *Ibid.*

²³⁶ *Ibid.*

363. The multiple instances wherein the Myanmar military intentionally directed attacks against civilian objects, by specifically burning civilian houses, on multiple dates from August 2021 until June 2022, are enumerated in the succeeding paragraphs.

25 AUGUST 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

364. The Myanmar military at Thantlang town was stationed at Block 3, which is at the entrance to the town. The military bases is in the uphill part of Block 3. The Thantlang town proper is only about 4-5 kilometers from the military base.

365. The first burning happened when the Myanmar military fired artillery shells and burned down house.

366. On 25 August 2021, the Myanmar military stationed at Block 3, fired artillery shells of 60 mm mortars against Block 2, although there was no fighting at that time. The armed groups were not shooting the military.

367. The Myanmar military was shooting anywhere, and were shelling civilian areas.

368. Due to the shelling by the Myanmar military, a 10-year old boy was killed and ten (10) civilians were injured. After the shooting stopped, civilians saw an unexploded ordinance near a house which is about half a kilometer from a church.

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Photograph 21. Unexploded Ordinance which landed near a house in Thantlang.

27 AUGUST 2021 (FRIDAY)--BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

369. In the first time, one mortar landed on one particular house in Block 2. And then another mortar landed near another house.

370. Two (2) civilians were killed and around eleven (11) civilians were injured. The two (2) civilians were church members of Johnson Memorial Baptist Church.

18 SEPTEMBER 2021--BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

371. In the afternoon of 18 September 2021, an armed encounter occurred in Thantlang, between the Myanmar military and a combined force of the armed groups Chinland Defense Force-Thantlang (CDF-T) and Chin National Army (CNA). There was a clash in Block 1 in Thantlang. More than 30 Myanmar military soldiers were killed in the armed encounter.

372. Every local resident were hiding and staying inside their homes while the armed encounter was happening. When the fighting stopped, some residents went out.

373. When the armed encounter was already over and after sustaining a large number of casualties, soldiers of the Myanmar military randomly opened fire on the residential area in Thantlang using heavy weapons and explosives. The soldiers of LIB 222 launched heavy artillery

strikes of 60 mm mortar targeting civilian houses in Thantlang, setting many civilian houses on fire.



Photograph 22. Fires raging across Thantlang town on 18 September 2021 due to the heavy artillery strikes on the civilian houses by soldiers of the Myanmar military.

374. The intentional attacks of the Myanmar military against civilian objects, specifically civilian houses, resulted in fires raging across civilian houses in Thantlang.

375. This was the reason why Pastor Cung Biak Hum organized a group of young men to go out and help extinguish the raging fires in Block 1. He then jumped on his motorcycle to speed towards Block 1

376. As herein narrated earlier, when the group of Pastor Cung Biak Hum, while riding on his motorcycle, reached the junction between Block 1 and Block 2, soldiers of the Myanmar military stopped him and opened fire on him. As a result of the attack by soldiers of the Myanmar military, Pastor Cung Biak Hum was killed. He lay dead on the roadside near his fallen motorcycle. Pastor Cung Biak Hum was the first pastor to be killed in Chin State by the soldiers of the Myanmar military.

377. The soldiers of LIB 222 and LID 66 were responsible for the burning of Thantlang on 18 September 2021. The raging fires that Pastor Cung Biak Hum tried to help put out burned around twenty (20) civilian structures, including homes and a government building.²³⁷

²³⁷ *Irrawady*, *supra* note 217.

19- 20 SEPTEMBER 2021— BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

378. Due to the vicious heavy artillery strikes that the Myanmar military launched on 18 September 2021 against the civilian population of Thantlang, which razed houses, at least 11,000 of the 13,000 civilian residents of Thantlang were forced to flee Thantlang into remote villages in Thantlang Township and the capital town of Hakha.

379. From 19-20 September 2023, due to the burning of civilian houses by the Myanmar military in Thantlang, about 11,000 residents of Thantlang fled the town and it became almost an empty town. Only a few residents were left in Thantlang.



Photograph 23. Thantlang local residents fleeing the town on 19 September 2021.



Photograph 24. Thantlang local residents fleeing the town on 19 September 2021.



Photograph 25. Thantlang local residents fleeing the town on 19 September 2021.

29 OCTOBER 2021-- MAJOR BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

380. On 29 October 2021, the Myanmar military burned down one hundred sixty-four (164) civilian houses in Thantlang , with the following details below.

381. Also, attached as **ANNEX C** is the video of the raging fire in Thantlang on 29 October 2021 due to the burning committed by the soldiers of the Myanmar military.

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Houses' List Of Fire Victims in Thantlang		
29-Oct		
No	House Owner's Name	Number of Houses
	Zunghmun Sang	
1	Pu Ngun Hnah	1
2	Pu Lian Hlei	1
3	Pi Sui Tang	1
4	Pu Hram Hmung	1
5	Pu Thla Uk	1
6	Rev.Sang Hleih	1
7	Mang Ling	1
8	Pu Thla Kam	1
9	Pu Hniar Cin	1
10	Pu Hram Lian Thang	1
11	Pu Wanna	1
12	Dawt Lian Nu	1
13	Pu Buan hrang	1
14	Pu Tial Bik	1
15	Pu Sai Hmung	1
16	Nau Chin	1
17	Aung Bo	1
18	Pu Khen Lal	2
19	Pu Sang Lawm	1
20	Sang Ku Nu te inn	1
21	Pu Veng Kam	1
22	Pu Ram Uk Ceu	1
23	Pi Ngun Zing	1
24	Pu Cung Bik	1
25	Pi Tha Thluai	1
26	Nunu te Inn (Sang Hei)	1
27	Pu Hre Lian	1
28	Kyaw Kyaw	1
29	Sayamah Mah Tin	1
30	Pu Ceu Cin	1
31	Rev.Than Hnin	1
32	Paan Cherry Hotel	1
33	Rev.Biak Kam	1
34	Far Hoi Nu	1
35	Pu Thla Kung	1
36	Thla Bik Nu	1
37	Pu Joshua +1	2
38	Presbyterian Church	1
39	Pastor Malvin	2
40	Pu Mang Uk	1
41	Pu Tuan Sang	1
42	Pu Mang Hleih	1
43	Pu Kap Hlei Thang	1
44	Pu Thla Nak	1
45	Pu Kio Kung	1
46	Pu Val Hleih Thang	1
47	Pi Za Tlem+1	2
48	Pu Ni Khar	1
49	Pastor Cung Lian Mang	1
50	Pi Ngun Tlem	1
51	Pi Aye Than	1
52	Pu Sui Kam	1
53	Pu Lian Hram	1
54	Education Office Querter	1
	Zung Hmun Sang	58

No	Market Sang	Number of Houses
1	Pu Siang Awr+1	2
2	Pu Tha Peng	1
3	Pu Hre Kam	1
4	Pu Thang Thai	1
5	Pu Ceu Kam	1
6	Sui Chin Nu	1
7	Pu Hrang Tum	1
8	Rev.Ram Hre	1
9	Moe Moe Aye Nu	1
10	Pu Biak Nawl	1
11	Pu Chan Ham	1
12	Pu Thawng Lian	1
13	Pi Sun Zing	1
14	Pu Ram To	1
15	Nu Mi	1
16	Pu Lian Hmung	1
17	Pu Than Ceu	1
18	Pu Vai Maung	1
19	Pu Thla Kung	1
20	Pu Nam Hmung	1
21	Pastor Ria Ce	1
22	COTR Biak inn	1
23	Sui Bawi	1
24	Fung Cung Nu	1
25	Pu Tha Cung	1
26	Pu Sang Hmung	1
27	Pu Mang Bik	1
28	Evan. Tial Uk	1
29	Saya Lian Cung	1
30	Pu Ngun Or	1
31	Pu Al Cung+1	2
32	Rev.Tawk Lian Bawi	1
33	Pu Ni Chawn	1
34	Pu Aung Kung	1
35	Pu Thawng Hmung	1
36	Pu Chan Tum	1
37	Pu Ling Uk	1
38	Pu Lal Luai	1
39	Pu Thawng Hmun	1
40	Nu Mi Dawr	1
41	Pu Tha Cung	1
42	Henry Siang Bik Cung	1
43	Pu Run Remh Thang	1
44	Pu Van Bawi Lian	1
45	Pu Chan Hleih (Van Lian Pa)	1
46	Pu Huat Hnin	1
47	Pi Ni lang	1
48	Saya Ing Cem	1
49	Pu Sang Khum+1	2
	Market Sang total	52

6-7 NOVEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

382. On 6 November 2021, when some shooting happened, the Myanmar military fired artillery shells.

383. There were some minor clashes between Chin Defense Force and the nearby military camp. The military fired artillery shells burning nine (9) houses including an orphanage belonging to the Thantlang Association of Baptist Churches. The Myanmar military further burned down three (3) orphanage homes.

384. On 7 November 2023, the Myanmar military burned down seven (7) civilian houses in Thantlang.

11 NOVEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

385. On 11 November 2021, the Myanmar military burned down three (3) civilian houses in Thantlang , with the following details below.

List of Houses Burned in Thantlang				
No.	Name of house owner	Number of Houses	Block	Date of Burned
1	Lai Villa Kitchen		1Lungtial	11-Nov-21
3	Pu Ngun Thang		1Lungtial	11-Nov-21
3	Pu Khai Pi		1Lungtial	11-Nov-21
Total		3		

24 NOVEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

386. On 24 November 2021, the Myanmar military burned down forty-nine (49) civilian houses and other civilian structures including the Thantlang Centenary Baptist Church and its Pastor's quarters. The 49 civilian houses and structures burned down by the Myanmar military, have the following details below:

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List of Houses Burned Down in Thantlang				
No	House Owner's Name	Number of Houses	Block	Date of Burned
1	Pu Joshoua	1	Zunghmun Block	24.11.2021
2	Pu Tei Nawn	1	Zunghmun Block	24.11.2021
3	Pu Bual Ceu	2	Zunghmun Block	24.11.2021
4	Pi Ngun Tawl	1	Zunghmun Block	24.11.2021
5	NUP office & Market Room	3	Zunghmun Block	24.11.2021
6	TCBC Church	1	Zunghmun Block	24.11.2021
7	TCBC quarter	1	Zunghmun Block	24.11.2021
8	Sung Kil nu	1	Zunghmun Block	24.11.2021
9	Pu Run Remh Thang	1	Zunghmun Block	24.11.2021
10	Pu Biak Muan	2	Zunghmun Block	24.11.2021
11	Sai Cung Nu	1	Zunghmun Block	24.11.2021
12	Pu Mang Tar	1	Zunghmun Block	24.11.2021
13	Pu Ram Cung	2	Zunghmun Block	24.11.2021
14	Ye Aung Kunza store	1	Zunghmun Block	24.11.2021
15	Pu Hang Cai	1	Zunghmun Block	24.11.2021
16	Biak Zing pa	1	Zunghmun Block	24.11.2021
17	Pu Chan Hnock	1	Zunghmun Block	24.11.2021
18	Pu Baun Khar	1	Zunghmun Block	24.11.2021
19	Pu Henry	2	Zunghmun Block	24.11.2021
20	Pu Hmun Thang	2	Zunghmun Block	24.11.2021
21	Sung Ku nu	2	Zunghmun Block	24.11.2021
22	Pu Bual Cung	1	Zunghmun Block	24.11.2021
23	Pu Za Thawng	1	Zunghmun Block	24.11.2021
24	Ca Thlual Pa	1	Zunghmun Block	24.11.2021
25	Pu Chan Thieng	2	Zunghmun Block	24.11.2021
26	Agriculture Quarters	2	Zunghmun Block	24.11.2021
27	Pu Thang Chuang	1	Zunghmun Block	24.11.2021
28	Pu Siang Lian Hmung	1	Zunghmun Block	24.11.2021
29	Pu Tawk Tling	1	Zunghmun Block	24.11.2021
30	Pu Khin Mawng Sui	1	Zunghmun Block	24.11.2021
31	Pu BVN	1	Zunghmun Block	24.11.2021
32	Pu Sui Ling	1	Zunghmun Block	24.11.2021
33	Pu Rual Eng	1	Zunghmun Block	24.11.2021
34	Pu Nawl Bik	1	Zunghmun Block	24.11.2021
35	Pu Je Hu	1	Zunghmun Block	24.11.2021
36	Pu Van Lal Uk	1	Zunghmun Block	24.11.2021
37	Pu Kio Luai	2	Seihpoizi Block	24.11.2021
38	Tamah house	1	Seihpoizi Block	24.11.2021
	Total	49		

26 NOVEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

387. This is the YouTube link to the video showing the effect of the Myanmar military burning of civilian houses and other civilian structures on 26 November 2021 <https://www.youtube.com/watch?v=TdIY28-OoyU>.

27 NOVEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

388. On 27 November 2021, the Myanmar military burned down ninety-six (96) civilian houses, although there were no significant armed fighting. Whenever an armed fight happened, the Myanmar military get out and burned houses because they are not able to hit the armed groups they are fighting against. Most of the artillery shells that the Myanmar military fire land on civilian areas.

389. Photographs of what remained of the civilian houses burned down by the Myanmar military last 27 November 2021, are shown below:



Photograph 26. What remains of the civilian houses burned down by the Myanmar military last 27 November 2021.



Photograph 27. What remains of the civilian houses burned down by the Myanmar military last 27 November 2021.



Photograph 28. What remains of the civilian houses burned down by the Myanmar military last 27 November 2021.

390. The 96 civilian houses burned down by the Myanmar military last 27 November 2021 have the following details below:

List of Houses Burned Down in Thantlang

No.	House Owner's Name	Number of Houses	Block	Date of Burned
1	Sayama Nu Tha	1	Zunghmun Block	27.11.2021
2	Pu Zung Kam	1	Zunghmun Block	27.11.2021
3	Pu Ceu Khar	1	Zunghmun Block	27.11.2021
4	Mawi Mawi Pa	2	Zunghmun Block	27.11.2021
5	Pu Tha Bik	1	Zunghmun Block	27.11.2021
6	Sui Ci Nu	1	Zunghmun Block	27.11.2021
7	Pu Van Bawi	1	Zunghmun Block	27.11.2021
8	Pi Cin Tawi	1	Zunghmun Block	27.11.2021
9	Pu Fung Ling	1	Zunghmun Block	27.11.2021
10	Pu Joshua	1	Zunghmun Block	27.11.2021
11	Pastor Tin Hmung	1	Zunghmun Block	27.11.2021
12	Pu Thang Pen	1	Zunghmun Block	27.11.2021
13	Pu Tial Awi	1	Zunghmun Block	27.11.2021
14	Saya Ngun Zam Thang	1	Zunghmun Block	27.11.2021
15	Leng Zi Pa	1	Zunghmun Block	27.11.2021
16	Pu Sui Mang	1	Zunghmun Block	27.11.2021
17	Pi Nawn Te	1	Zunghmun Block	27.11.2021
18	Pu Van Lal Awi	1	Zunghmun Block	27.11.2021
19	Sui Nawl Pa	1	Zunghmun Block	27.11.2021
20	Aye Lah Pa	1	Zunghmun Block	27.11.2021
21	Tha Thawng Pa	1	Zunghmun Block	27.11.2021
22	Bung Khua Pa	1	Zunghmun Block	27.11.2021
23	Pi Ma Cin	1	Zunghmun Block	27.11.2021
24	Pu Lian Hlun	1	Zunghmun Block	27.11.2021
25	Pa Chiah Nu	1	Zunghmun Block	27.11.2021
26	Pu Chan Ham	1	Zunghmun Block	27.11.2021
27	Pu Khin Hrang	1	Zunghmun Block	27.11.2021
28	Pi Sui Tin	1	Zunghmun Block	27.11.2021
29	Chin Chin Nu	1	Zunghmun Block	27.11.2021
30	Aria	1	Zunghmun Block	27.11.2021
31	Pu Sui Mawng	1	Zunghmun Block	27.11.2021
32	Ceu Cung Pa	1	Zunghmun Block	27.11.2021
33	Sang Lian Thu Nu	1	Zunghmun Block	27.11.2021
34	Sayama Hlei Cuai	1	Zunghmun Block	27.11.2021
35	Joshua Nu	1	Zunghmun Block	27.11.2021
36	Pi Men Tial	1	Zunghmun Block	27.11.2021
37	Cer Thai Pa	2	Zunghmun Block	27.11.2021
38	Pu Biak Thawng	1	Zunghmun Block	27.11.2021
39	Pi Ca Zi	1	Zunghmun Block	27.11.2021
	Total	41		

List of Houses Burned Down in Thantlang

No.	House Owner's Name	Number of Houses	Block	Date of Burned
1	Pi Ngun Za Men	1	Saihpiozi Block	27.11.2021
2	Pu Lal Kung	1	Saihpiozi Block	27.11.2021
3	R.C.M	1	Saihpiozi Block	27.11.2021
4	R.C.M Quarter	2	Saihpiozi Block	27.11.2021
5	Pu Duh Lal	1	Saihpiozi Block	27.11.2021
6	Pu Duh Ceu	1	Saihpiozi Block	27.11.2021
7	Pu Cung Nawl	2	Saihpiozi Block	27.11.2021
8	Pi Ngun Duh Cuai	1	Saihpiozi Block	27.11.2021
9	Nilar Nu	1	Saihpiozi Block	27.11.2021
10	Pi Tum Thai	1	Saihpiozi Block	27.11.2021
11	Pu Thawng Cem	1	Saihpiozi Block	27.11.2021
12	Pu Thawng Hnin	2	Saihpiozi Block	27.11.2021
13	Dr. Hmuh Thang	1	Saihpiozi Block	27.11.2021
14	Pi Iang Ki	2	Saihpiozi Block	27.11.2021
15	Pi Lam Thluai	1	Saihpiozi Block	27.11.2021
16	Pu Hei Sang	1	Saihpiozi Block	27.11.2021
17	Pi Tlem Cia	1	Saihpiozi Block	27.11.2021
18	Ngun Khe Nu	1	Saihpiozi Block	27.11.2021
19	Ni Tin Khai Pa	1	Saihpiozi Block	27.11.2021
20	Pu Khamh Cung	1	Saihpiozi Block	27.11.2021
21	Dr. Hmuh Thang	2	Saihpiozi Block	27.11.2021
22	Pi Ngun Bor	1	Saihpiozi Block	27.11.2021
23	Pu Chan Kung	1	Saihpiozi Block	27.11.2021
24	Aa Lian Pa	1	Saihpiozi Block	27.11.2021
25	Thluai Thluai	1	Saihpiozi Block	27.11.2021
26	Pu Ngun Ceu	1	Saihpiozi Block	27.11.2021
27	Forest Department	1	Saihpiozi Block	27.11.2021
28	Rev. Dr. Chan Thawng Lian	1	Saihpiozi Block	27.11.2021
29	Pu Thawng Hmun	1	Saihpiozi Block	27.11.2021
30	Pu Ram Khar	1	Saihpiozi Block	27.11.2021
31	Pu Nuai Hmung	1	Saihpiozi Block	27.11.2021
32	Pi Ting Ting	1	Saihpiozi Block	27.11.2021
33	Pi Ngun Tha Len	1	Saihpiozi Block	27.11.2021
34	Pu Mang Lian Hmung	1	Saihpiozi Block	27.11.2021
	Total	39		

List of Houses Burned Down in Thantlang

No.	House Owner's Name	Number of Houses	Block	Date of Burned
1	Pu Thuang Nawl	1	Lungtial Block	27.11.2021
2	Pi Tuan Zing	2	Lungtial Block	27.11.2021
3	Pu Val Cung	1	Lungtial Block	27.11.2021
4	Pu Ngun Hu	1	Lungtial Block	27.11.2021
5	Pi Mang Cer	1	Lungtial Block	27.11.2021
6	Pu Van Chum	1	Lungtial Block	27.11.2021
7	Pu Tin Tlung	1	Lungtial Block	27.11.2021
8	Pu Kio Nawn	1	Lungtial Block	27.11.2021
9	Pu Than Herh	1	Lungtial Block	27.11.2021
10	Pu Hrang Ling	2	Lungtial Block	27.11.2021
11	Pi Mang Hlawn	1	Lungtial Block	27.11.2021
12	Pu Van Hniang	1	Lungtial Block	27.11.2021
13	Pu Khua Tin Bawi	1	Lungtial Block	27.11.2021
14	Pu Sui Za Hmung	1	Lungtial Block	27.11.2021
	Total	16		

Total Burned Down 96

4 DECEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

391. On 4 December 2021, the Myanmar military burned down nineteen (19) civilian houses in Thantlang, with the following details below:

List of Houses Burned Down in Thantlang				
No.	House Owner's Name	Number of Houses	Block	Date of Burn
1	Salai Van Za Ling	1	Biakinn Sang	12/4/2021
2	Sayaci Tei Nawn	1	Biakinn Sang	12/4/2021
3	Pu Van Dawt Thang	1	Market Sang	12/4/2021
4	Pu Thla Hre	1	Market Sang	12/4/2021
5	Pu Mawng Khin	1	Market Sang	12/4/2021
6	Pu Tluang Thang	1	Market Sang	12/4/2021
7	UPC Biakinn	1	Market Sang	12/4/2021
8	UPC Quarter	1	Market Sang	12/4/2021
9	Pu Cung Dun	1	Market Sang	12/4/2021
10	Pu Ngun Tha Cung	1	Market Sang	12/4/2021
11	Pu V Sang Cung	1	Market Sang	12/4/2021
12	Sayama Far Meng	1	Market Sang	12/4/2021
13	Pu Siang Zel	1	Market Sang	12/4/2021
14	Pu Biak Lian Cung	1	Market Sang	12/4/2021
15	Pu Bawk Cung	1	Market Sang	12/4/2021
16	Pu Mawng Cung	1	Market Sang	12/4/2021
17	Pu Hlei Hmung	1	Market Sang	12/4/2021
18	Pu Tum Lian	1	Market Sang	12/4/2021
19	Pu Uk Ling	1	Market Sang	12/4/2021
	Total	19		

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5 DECEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

392. On 5 December 2021, the Myanmar military burned down thirty-eight (38) civilian houses in Thantlang, with the following details below.

List of Houses Burnt down in Thantlang(5. Dec.2021)			
No.	Name of House's owner	Number of houses	Block
1	Pu Sang Kam	1	Lungtial Sang
2	Pu Ni Dun	1	Lungtial Sang
3	Kyaw Khai Oo	1	Lungtial Sang
4	Pu Heral Hmung Tha Lian	1	Lungtial Sang
5	Pu Than Kim	2	Lungtial Sang
6	Pu Leng Aawi	1	Lungtial Sang
7	Pu Thla Kam	1	Lungtial Sang
8	Pu Tei Kim	1	Lungtial Sang
9	Pu Sui Hu	1	Lungtial Sang
10	Zing Meng Pa	1	Lungtial Sang
11	Mary Stock Zung	1	Lungtial Sang
12	Sym Ngun Chin Thluai	2	Lungtial Sang
13	Pu Khar Aawi	1	Lungtial Sang
14	Pi Man Ni	1	Lungtial Sang
15	Pi Tial Hoi	1	Lungtial Sang
16	Pu Lal Nuai	1	Lungtial Sang
17	အထက (ခ)	1	Lungtial Sang
Total		19	
1	Thla Kung Pa	1	Market Sang
2	Pu Nawl Bik	1	Market Sang
3	Pi Khuag Tang	1	Market Sang
4	Pu Thawng Hmun	1	Market Sang
5	Pu David	1	Market Sang
6	Pastor Cung Bawi Bik	1	Market Sang
7	Ram Zi Pa	1	Market Sang
8	Chan Hre Lian Nu	1	Market Sang
Total		8	
1	Chan Hre Lian Nu	1	Biakinn Sang
2	Pu Sang Iap	1	Biakinn Sang
3	Pastor Tial Hre Ling	1	Biakinn Sang
4	Pu Tum Lian	1	Biakinn Sang
5	Pu Ral Uk	1	Biakinn Sang
6	Pu Chiah Hlun	1	Biakinn Sang
7	Pu Hrang Pian	1	Biakinn Sang
8	Pu Tin Hmung	2	Biakinn Sang
9	Pu Ram Ceu	1	Biakinn Sang
10	Pu Zung Kam	1	Biakinn Sang
Total		11	
Lungtial Sang		19	
Market Sang		8	
Biakinn Sang		11	
Total		38	

8 DECEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

393. On 8 December 2021, the Myanmar military burned down twenty-three (23) civilian houses in Thantlang, by firing artillery rounds. Some of the artillery fired landed on a church.

394. The 23 civilian houses burned down by the Myanmar military last 8 December 2021 have the following details below.

List of Houses Burnt down in Thantlang (8 Dec. 2021)			
No.	Name of House's owner	Number of houses	Block
1	Cung Bawi Pu	1	Zunghmun Sang
2	Pu Ngun Hnah	1	Zunghmun Sang
3	Pi Sun Zing	1	Zunghmun Sang
4	Pi Khawm Zing	1	Zunghmun Sang
5	Pu Biak Lian	1	Zunghmun Sang
6	Pu Sui Myint	1	Zunghmun Sang
7	Ca Lian Pa	1	Zunghmun Sang
8	Pu Thawng Hlun	1	Zunghmun Sang
9	Pu Kep Cung	1	Zunghmun Sang
10	Pi Sem Tin Thluai	1	Zunghmun Sang
11	Lian Bawi	1	Zunghmun Sang
12	Pu Phun Thang	1	Zunghmun Sang
13	Pu Biak Tha Thawng	1	Zunghmun Sang
14	Rev. Hial Ling	1	Zunghmun Sang
15	Pu Ngun Hngak	1	Zunghmun Sang
16	Pu Sii Bik	1	Zunghmun Sang
17	Pu Za Peng	1	Zunghmun Sang
18	Pu Mang Bawi Ling	1	Zunghmun Sang
	Total	18	
1	Rev. Lian Cung	2	Biakinn Sang
2	Pu Thang Hmung	1	Biakinn Sang
3	Pu Tin Nawl	1	Biakinn Sang
4	Pu Za Mawng	1	Biakinn Sang
	Total	5	
	Zunghmun Sang	18	
	Biakinn Sang	5	
	Total	23	

395. Photographs showing the civilian houses burned down by the Myanmar military as a result last 8 December 2021, are shown below.



Photograph 29. What remains of the civilian houses and Christian church burned down by the Myanmar military last 8 December 2021.

ON 08 DECEMBER 2021— BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR.

396. On 8 December 2021, the Myanmar military burned down twenty-three (23) civilian houses in Thantlang, with the following details below.

List of Houses Burnt down in Thantlang (8 Dec. 2021)			
No.	Name of House's owner	Number of houses	Block
1	Cung Bawi Pu	1	Zunghmun Sang
2	Pu Ngun Hnah	1	Zunghmun Sang
3	Pi Sun Zing	1	Zunghmun Sang
4	Pi Khawm Zing	1	Zunghmun Sang
5	Pu Blak Lian	1	Zunghmun Sang
6	Pu Sul Myint	1	Zunghmun Sang
7	Ca Lian Pa	1	Zunghmun Sang
8	Pu Thawng Hlun	1	Zunghmun Sang
9	Pu Kep Cung	1	Zunghmun Sang
10	Pi Sem Tin Thluai	1	Zunghmun Sang
11	Lian Bawi	1	Zunghmun Sang
12	Pu Phun Thang	1	Zunghmun Sang
13	Pu Blak Tha Thawng	1	Zunghmun Sang
14	Rev. Hial Ling	1	Zunghmun Sang
15	Pu Ngun Hngak	1	Zunghmun Sang
16	Pu Sii Bik	1	Zunghmun Sang
17	Pu Ze Peng	1	Zunghmun Sang
18	Pu Mang Bawi Ling	1	Zunghmun Sang
	Total	18	
1	Rev. Lian Cung	2	Blakinn Sang
2	Pu Thang Hmung	1	Blakinn Sang
3	Pu Tin Nawl	1	Blakinn Sang
4	Pu Ze Mawng	1	Blakinn Sang
	Total	5	
	Zunghmun Sang	18	
	Blakinn Sang	5	
	Total	23	

17 DECEMBER AND 20 DECEMBER 2021--BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

397. On 17 December and 20 December 2021, the Myanmar military burned down thirty-nine (39) civilian houses in Thantlang, with the following details below.

List of House Burned Down in Thantlang

No.	House Owner's Name	Number of Houses	Block	Date of Burned
1	TBC Hei Mang	4	Saihpiozi Sang	17-12-2021
2	Pu Sang Chin	2	Saihpiozi Sang	17-12-2021
3	Saya Lal Aung	1	Saihpiozi Sang	17-12-2021
4	Pu Tin Uk	1	Saihpiozi Sang	17-12-2021
5	Pu Thla Lian	2	Saihpiozi Sang	17-12-2021
6	Pu Ba Win	1	Saihpiozi Sang	17-12-2021
7	Pu Ral Hlei Thang	1	Saihpiozi Sang	17-12-2021
8	Pu Biak Cung	1	Saihpiozi Sang	17-12-2021
9	Pu That Ceu	1	Saihpiozi Sang	17-12-2021
10	RCM Quarter	2	Saihpiozi Sang	17-12-2021
11	Ptr Thawng Za Lian	1	Saihpiozi Sang	17-12-2021
12	Pi Ngun Khua	1	Saihpiozi Sang	17-12-2021
13	Pu Ci Kha	1	Saihpiozi Sang	17-12-2021
14	Ngia Cha Nu	1	Saihpiozi Sang	17-12-2021
15	RCM Saya	1	Saihpiozi Sang	17-12-2021
16	Maung Hla	1	Saihpiozi Sang	20-12-2021
17	Pu Thla Lian	1	Saihpiozi Sang	20-12-2021
18	Parku Pa	1	Saihpiozi Sang	20-12-2021
19	Saya Duh Ling	1	Saihpiozi Sang	20-12-2021
20	Pu Thla Nawl	1	Saihpiozi Sang	20-12-2021
21	Pu Ca Van	1	Saihpiozi Sang	20-12-2021
22	C. Za Cung	1	Saihpiozi Sang	20-12-2021
23	Pu Khia Cin	1	Saihpiozi Sang	20-12-2021
24	Pu Thawng Mang	1	Saihpiozi Sang	20-12-2021
25	Pu Veih Khar	1	Saihpiozi Sang	20-12-2021
26	UPC Quarter	1	Saihpiozi Sang	20-12-2021
27	Saya Ciyie Dar Thawng	1	Saihpiozi Sang	20-12-2021
28	Pa kap Pa	1	Saihpiozi Sang	20-12-2021
29	Min theih lo	5	Saihpiozi Sang	20-12-2021
Total		39		

18 DECEMBER 2021--BURNING IN THANTLANG, CHIN STATE, MYANMAR

398. On 18 December 2021, the Myanmar military burned down sixty-five (65) civilian houses in Thantlang, with the following details below:

List of House Burned Down in Thantlang

No.	House Owner's Name	Number of Houses	Block	Date of Burned
1	Pi Len Zing	1	Lungtial Sang	18-12-2021
2	Saya Thla Thawng	1	Lungtial Sang	18-12-2021
3	Hram Khar Nu	1	Lungtial Sang	18-12-2021
4	Pu Thawng Za Hmung	1	Lungtial Sang	18-12-2021
5	Pi Sung Cem	1	Lungtial Sang	18-12-2021
6	Bawi Cung Pa	1	Lungtial Sang	18-12-2021
7	Pi Thuang Ci	1	Lungtial Sang	18-12-2021
8	Rosy Pa	1	Lungtial Sang	18-12-2021
9	Mara	1	Lungtial Sang	18-12-2021
10	Aye Aye Nu	1	Lungtial Sang	18-12-2021
11	Saya Nei Sang	1	Lungtial Sang	18-12-2021
12	Pu Thawng Hnin Thang	1	Lungtial Sang	18-12-2021
13	Pu Thawng Bik Ceu	1	Lungtial Sang	18-12-2021
14	Pu Bawi Hram	1	Lungtial Sang	18-12-2021
15	Pu Zung Mang	1	Lungtial Sang	18-12-2021
16	Pu Ca Thawng	1	Lungtial Sang	18-12-2021
17	Pi Dawt Sui	1	Lungtial Sang	18-12-2021
18	Pu Uk Luai	2	Lungtial Sang	18-12-2021
19	Ptr Duh Sang	1	Lungtial Sang	18-12-2021
20	Pu Siang Bik	1	Lungtial Sang	18-12-2021
21	Pu Ngun Ham	1	Lungtial Sang	18-12-2021
22	Pu Khua Hlei	1	Lungtial Sang	18-12-2021
23	Pi Ni Sui Lian	1	Lungtial Sang	18-12-2021
24	Pu Ni Ceu	1	Lungtial Sang	18-12-2021
25	Pu Hrang Lian	1	Lungtial Sang	18-12-2021
Total		26		

Saihpiozi Sang	39
Lungtial Sang	26
Total	65

30 DECEMBER 2021-- BURNING OF CIVILIAN HOUSES IN THANGLANG, CHIN STATE, MYANMAR

399. On 30 December 2021, the Myanmar military burned down fifty-five (55) civilian objects, including the Assembly of GOD Church and its Pastor's quarter, the Thantlang Baptist Church and its guesthouse, the Thantlang Baptist Church nursery school and the office of the Association of Thantlang Baptist Churches and the women department office.

400. Photographs showing the civilian objects being burned by the Myanmar military on 30 December 2021, are shown below.



Photograph 30. Civilian houses and Christian churches being burned by the Myanmar military last 30 December 2021.



Photograph 31. Civilian houses and Christian churches being burned by the Myanmar military last 30 December 2021.



Photograph 32. Civilian houses and Christian churches being burned by the Myanmar military last 30 December 2021.



Photograph 33. Civilian houses and Christian churches being burned by the Myanmar military last 30 December 2021.

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401. The 55 civilian objects burned down by the Myanmar military have the following details below:

Houses' List Of Fire Victims in Thantlang				
No	House Owner's Name	Number of Houses	Block	Date
1	Pu Za Thawng	2	Biakinn Sang	30-Dec-21
2	Pu Chan Duh Sang	1	Biakinn Sang	30-Dec-21
3	Ngun Khar Lian	1	Biakinn Sang	30-Dec-21
4	Saya Tin Lian Cham	1	Biakinn Sang	30-Dec-21
5	Pu Tha Ceu	1	Biakinn Sang	30-Dec-21
6	Pi Ngun lang Hnem	1	Biakinn Sang	30-Dec-21
7	Pu Ai Cung	1	Biakinn Sang	30-Dec-21
8	Pu Tial Khup	1	Biakinn Sang	30-Dec-21
9	Pu Lal Mang	1	Biakinn Sang	30-Dec-21
10	AG Biakinn	1	Biakinn Sang	30-Dec-21
11	AG Quarter	1	Biakinn Sang	30-Dec-21
12	Marker	1	Biakinn Sang	30-Dec-21
13	Pu Hmun Cem	1	Biakinn Sang	30-Dec-21
14	Pu Za Eng	1	Biakinn Sang	30-Dec-21
15	Pi Ngeih Hnem	1	Biakinn Sang	30-Dec-21
16	Pu Thang Chum	2	TABC Sang	30-Dec-21
17	Pu Bawi Khamh Cung	1	TABC Sang	30-Dec-21
18	Pu Bawi Khing	1	TABC Sang	30-Dec-21
19	Pi Ni Pen	2	TABC Sang	30-Dec-21
20	Pu Kap Cung	1	TABC Sang	30-Dec-21
21	Pu Ral Hnin	1	TABC Sang	30-Dec-21
22	Pu Tin Chum	1	TABC Sang	30-Dec-21
23	Far Tial Nu	1	TABC Sang	30-Dec-21
24	Pu Sang Dun	1	TABC Sang	30-Dec-21
25	Pi Tin Cer	1	TABC Sang	30-Dec-21
26	Pu Khaw! Thang	1	TABC Sang	30-Dec-21
27	TBC Nursing School	1	TABC Sang	30-Dec-21
28	TBC Hall	1	TABC Sang	30-Dec-21
29	TBC Guest House	1	TABC Sang	30-Dec-21
30	TABC Office	1	TABC Sang	30-Dec-21
31	TABC Nubu inn	1	TABC Sang	30-Dec-21
32	Pu Uk Lian	1	TABC Sang	30-Dec-21
33	Pu Ngun Er	1	TABC Sang	30-Dec-21
34	Pu No Hmung	1	TABC Sang	30-Dec-21
35	Pu Mang Tial	1	TABC Sang	30-Dec-21
36	Pu Hrang Khirh	1	Lungtial Sang	30-Dec-21
37	Pu Thla Mang	1	Lungtial Sang	30-Dec-21
38	Pi Sui Tha	1	Lungtial Sang	30-Dec-21
39	Pu Zo Peng	1	Lungtial Sang	30-Dec-21
40	Pu Hrang Pum	1	Lungtial Sang	30-Dec-21
41	Pu Moses	1	Lungtial Sang	30-Dec-21
42	Pu Ram Luai	1	Lungtial Sang	30-Dec-21
43	Pu Tum Cung	1	Lungtial Sang	30-Dec-21
44	Pi Mang Tha Len	1	Lungtial Sang	30-Dec-21

45	Pu Tin De	1	Lungtial Sang	30-Dec-21
46	Pu Rual Heih	2	Lungtial Sang	30-Dec-21
47	Pu Lian Hmung	1	Lungtial Sang	30-Dec-21
48	Pu Za Kham	1	Lungtial Sang	30-Dec-21
49	Pu Ram Hre	1	Lungtial Sang	30-Dec-21
50	Pi Sui Khen	1	Lungtial Sang	30-Dec-21
51	Saya Ne Sang	1	Saihpiozi Sang	30-Dec-21
	Total	55		

22 APRIL 2022-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

402. On 22 April 2022, the Myanmar military burned down fifteen (15) civilian houses in Thantlang, with the following details below:

List of Houses Burnt down in Thantlang (22 April, 2022)			
No.	Name of House's owner	Number of houses	Block
1	Pu Thla Kung	1	TABC Sang
2	Pu Siang Lian	1	TABC Sang
3	Pi Rem Par	1	TABC Sang
4	Pu Ni Awi	1	TABC Sang
5	Pu Khar Cem	1	TABC Sang
6	Pu Ceu Kung	1	TABC Sang
7	Pu Pha Lian	1	TABC Sang
8	Pu Hup Luai	1	TABC Sang
Total		8	
1	Pu Biak Or	1	Lungtial Sang
2	Pu Biak Hmun	1	Lungtial Sang
3	Pu Cung Or	1	Lungtial Sang
4	Sayakyi Za Tling	1	Lungtial Sang
5	Sym Khun Mya	2	Lungtial Sang
6	Pu Huat Mang	1	Lungtial Sang
Total		7	
TABC Sang		8	
Lungtial Sang		7	
Total		15	

24 MAY 2022-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

403. On 24 May 2022, the Myanmar military burned down at least ninety-seven (97) civilian houses.

404. Photographs showing the civilian objects being burned by the Myanmar military on 24 May 2022, are shown below:

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Photograph 34. Civilian houses being burned by the Myanmar military last 24 May 2022.



Photograph 35. Civilian houses being burned by the Myanmar military last 24 May 2022.

405. The 97 civilian houses burned down by the Myanmar military have the following details below.

List of Houses Burnt down in Thantlang (24May, 2022)			
No.	Name of House's owner	Number of houses	Block
1	Pu Hram Ceu	1	Sianginn Sang
2	Pu Za Biak	1	Sianginn Sang
3	Pu Cung Ling	1	Sianginn Sang
4	Pu Mang Hnin	1	Sianginn Sang
5	Pu Baw Nn Tluang	1	Sianginn Sang
6	San Teih	1	Sianginn Sang
7	Pu Van Lal	1	Sianginn Sang
8	Rev. Van Duh Tling	1	Sianginn Sang
9	Pu Ni Hup	1	Sianginn Sang
10	Pu Van Tha Lian	1	Sianginn Sang
11	Pu Na Shing	1	Sianginn Sang
12	Pu Ngun Hei	1	Sianginn Sang
13	Pu Lai Ting	1	Sianginn Sang
14	Pu Cung Cem	1	Sianginn Sang
15	Pu Dar Lian Kim	1	Sianginn Sang
16	Pu Phun Hnin	1	Sianginn Sang
17	Pu Sang Hngak	1	Sianginn Sang
18	Pu Biak Thawng	1	Sianginn Sang
19	Pi Cer Hliang	1	Sianginn Sang
20	Pu Ram Cung	1	Sianginn Sang
21	Dr. Hmuh Thang	1	Sianginn Sang
22	Pu Van Ro Mawi	1	Sianginn Sang
23	Unknown(Lungler pa)	1	Sianginn Sang
24	Pu Duh Cung	1	Sianginn Sang
25	Rev Van Lal Hngak	1	Sianginn Sang
26	Pu Siang Kam	1	Sianginn Sang
27	Pu Ni Kio	1	Sianginn Sang
28	Sayama Bawi Hnem	1	Sianginn Sang
29	Pu Thawng Awi	1	Sianginn Sang
30	Pu Ro Ceu	1	Sianginn Sang
31	Pu Lian Hi	1	Sianginn Sang
32	Nu Zai Te (sammet)	1	Sianginn Sang
33	Pu Sang Hup	1	Sianginn Sang
34	Pu Biak Nawl	1	Sianginn Sang
35	Pu Tha Tin Thang	1	Sianginn Sang
36	Pu Sang Cut	1	Sianginn Sang
37	Pu Tawk Luai	1	Sianginn Sang
38	Pu Chan Nawl	1	Sianginn Sang
39	Pu Lian Ci	1	Sianginn Sang
40	Pu Van Khar	1	Sianginn Sang
41	Pu Thia Hup	1	Sianginn Sang
42	Pu Za Hu	1	Sianginn Sang
43	Pu Tial Herh	1	Sianginn Sang
44	Pu Sui Peng	1	Sianginn Sang

45	Pu Nawl Hmung	1	Sianginn Sang
46	Pu Sang Klan	1	Sianginn Sang
47	Pu Hrang Hnun	1	Sianginn Sang
48	Pu Dawt Cung	1	Sianginn Sang
49	Pu Biak Cung	1	Sianginn Sang
50	Unknown(Lungjer)	1	Sianginn Sang
51	Pu Hram Ceu	1	Sianginn Sang
52	Iang Tawipa	1	Sianginn Sang
53	Paling Pa	1	Sianginn Sang
54	Pu Za Mawng	1	Sianginn Sang
55	Pu That Kulh	1	Sianginn Sang
56	Pu Obet (Arcirh)	1	Sianginn Sang
57	Pu Rai Hu	1	Sianginn Sang
58	Paling (Thangzang)	1	Sianginn Sang
59	Pi Sang Men Sung	1	Sianginn Sang
60	Pastor Sui Lian Kam	1	Sianginn Sang
61	Pastor Ceu Tum (Tlangte)	1	Sianginn Sang
62	Sayama Nu Tha	1	Sianginn Sang
63	Pu Ram Peng	1	Sianginn Sang
64	Pu Ai Bik	1	Sianginn Sang
65	Unknown(Fungkah hna)	1	Sianginn Sang
66	Siizung	2	Sianginn Sang
67	Siizung quarter	1	Sianginn Sang
68	Pu Kep Tu	1	Sianginn Sang
69	Pu Ngun Buai	1	Sianginn Sang
70	Saya Ngun Uk	1	Sianginn Sang
71	Sayama Sai Iang	1	Sianginn Sang
72	Pu Thluak Cin	1	Sianginn Sang
73	Saya Lian Aung	1	Sianginn Sang
74	Pi Sui Hluan	1	Sianginn Sang
75	Pu Simon	1	Sianginn Sang
76	JMBC Biakinn	1	Sianginn Sang
77	Constructure Quarter	1	Sianginn Sang
	Total	78	

1	Ni Sui Nu	1	Zunghmun Sang
2	Pi Hnem Par	1	Zunghmun Sang
3	Dawt Bik Pa	1	Zunghmun Sang
4	Pu Ruang Kam	1	Zunghmun Sang
5	Pu Van Bawi Lian	1	Zunghmun Sang
6	Iang Zi Pa	1	Zunghmun Sang
7	Pi Lalrammawi	1	Zunghmun Sang
8	Pu Van Lal	1	Zunghmun Sang
9	Pu Robinson	1	Zunghmun Sang
10	Pu Lalnunnem	1	Zunghmun Sang
11	Pu Tluang Hre	1	Zunghmun Sang
12	Pu Bawi Ling Hmung	1	Zunghmun Sang
13	Cung Bawi pa	1	Zunghmun Sang
14	Saya Vai Hu	1	Zunghmun Sang
15	Pi Iang Tial	1	Zunghmun Sang
16	Saya Obert Nawl Ceu	1	Zunghmun Sang
17	Pu Maung Tin	1	Zunghmun Sang
18	Pu Tial Iap	1	Zunghmun Sang
19	Pu Ceu Uk Pa	1	Zunghmun Sang
	Total	19	

9 JUNE 2022-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

406. On 9 June 2022, the Myanmar military burned down at least thirty-seven (37) civilian houses, with the following details below.

List of Houses Burnt down in Thantlang (9June, 2022)			
No.	Name of House's owner	Number of houses	Block
1	Sang Lian Cin Nu	1	Lungtial Sang
2	Pu Lian Thang	1	Lungtial Sang
3	Pu Ral Hnin	1	Lungtial Sang
4	Pu Van Hmung	2	Lungtial Sang
5	Pastor Ram Er	1	Lungtial Sang
6	Pu Khian Cin	1	Lungtial Sang
7	Tin Tlem Nu	1	Lungtial Sang
8	Sym Cer Men	1	Lungtial Sang
9	Pu Kham Cung	1	Lungtial Sang
10	Uk Mang Pa	1	Lungtial Sang
11	Pastor Thuam	1	Lungtial Sang
12	Pi Thla Ku	1	Lungtial Sang
13	Sang Tial Nu	1	Lungtial Sang
14	Pu Sang Kung	1	Lungtial Sang
15	Pu Tial Ceu	1	Lungtial Sang
16	Julien Pa	1	Lungtial Sang
17	Pa Thli	1	Lungtial Sang
18	Pu Than Kim	2	Lungtial Sang
19	Pu Tum Ceu	1	Lungtial Sang
20	Pu Thla Pu	1	Lungtial Sang
21	Church (Sevenday)	1	Lungtial Sang
	Total	23	
1	Pu Sui Hnin	1	TABC Sang
2	Biak Par Nu	1	TABC Sang
3	Hmunlipi hna inn	1	TABC Sang
4	Pu Aung Bik	1	TABC Sang
5	Pu Sang Pui	1	TABC Sang
6	Van Van Pa	1	TABC Sang
7	Pu Van Hu	1	TABC Sang
8	Thlualam hna inn	1	TABC Sang
9	Pu Cung Hu	1	TABC Sang
10	Pu Phun Lian Hre	1	TABC Sang
11	Pu Maung Cin Thang	1	TABC Sang
12	Pastor That Cung Nung	1	TABC Sang
13	Pu Deniel	1	TABC Sang
14	TBC Biakinn	1	TABC Sang
	Total	14	

Lungtial Sang	23
TABC Sang	14
Total	37

TPAC

11 JUNE 2022-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

407. On 11 June 2022, the Myanmar military burned down at least thirty-two (32) civilian houses, with the following details below.

List of Houses Burnt down in Thantlang (11June, 2022)			
No.	Name of House's owner	Number of houses	Block
1	Rev. Joseph Thla Hmung	1	Biakinn Sang
2	Thla Ceu Pa	1	Biakinn Sang
3	Thau khuami (Unknown)	1	Biakinn Sang
4	Pu Van Herh	1	Biakinn Sang
5	Zung Bawi	1	Biakinn Sang
6	Khe Rin Pi	1	Biakinn Sang
7	Pu Van Nun Ceu	1	Biakinn Sang
8	Pu Tha Lian Hmung	1	Biakinn Sang
9	Pu Rual Hup	1	Biakinn Sang
10	Pu Ceu Hu Lian	1	Biakinn Sang
11	Pu Lai Hre	1	Biakinn Sang
12	Pu Sa Vung	1	Biakinn Sang
13	Pu Thawng Uk	1	Biakinn Sang
14	Pu Peng Lian Uk	1	Biakinn Sang
15	Pu Chum Hu	1	Biakinn Sang
16	Za Uk Nawl	1	Biakinn Sang
17	Za Uk Nawl Far	1	Biakinn Sang
18	Pu Chan Khar	1	Biakinn Sang
19	Bawi Rum Pa (Mara)	1	Biakinn Sang
20	Pastor Lian Tling	1	Biakinn Sang
	Total	20	
1	Pu Chan Cung	1	TABC Sang
2	Pi Doi Tang	1	TABC Sang
3	Pi Rem Thlia	1	TABC Sang
4	Pi Ngun Za	1	TABC Sang
5	Pu Than Duh	1	TABC Sang
6	Pu Biak Uk	1	TABC Sang
7	Pu Lal Mang	1	TABC Sang
8	Pu Cung Uk	1	TABC Sang
9	Pu Ram Khar	1	TABC Sang
10	Pu Bawi Tin Sang	1	TABC Sang
11	Pu Van Ceu	1	TABC Sang
12	Pu Za Sang	1	TABC Sang
	Total	12	
1	Pi Hlei Vang	1	Market Sang
2	Aa Uk Nu	1	Market Sang
3	Pu Duh Ling	1	Market Sang
4	Pu Biak Thawng	1	Market Sang
5	Pu Sang Te	1	Market Sang
6	Pu Tei Nawn	1	Market Sang
7	Unknown (Tihbual khuami)	1	Market Sang
	Total	7	

Lungtial Sang	20
TABC Sang	12
Market Sang	7
Total	32

TPAC

16 JUNE 2022-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

408. On 16 June 2022, the Myanmar military burned down six (6) civilian houses, with the following details below.

List of Houses Burnt down in Thantlang (16June, 2022)			
No.	Name of House's owner	Number of houses	Block
1	Pi Dawt Zi	1	Biakinn Sang
2	Pu Ram Uk	1	Biakinn Sang
3	Pu Lian Peng	1	Biakinn Sang
4	Unknown (Tiangte khuami)	1	Biakinn Sang
5	Bawi Tha Pa	1	Biakinn Sang
6	Unknown (Mara)	1	Biakinn Sang
	Total	6	

Biakinn Sang	6
Total	6

20 JUNE 2022-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

409. On 20 June 2022, the Myanmar military burned down at least nineteen (19) civilian houses, with the following details below.

List of Houses Burnt down in Thantlang (20June, 2022)			
No.	Name of House's owner	Number of houses	Block
1	COTR Quarter	1	Market Sang
2	Rev. Ria Ce	1	Market Sang
3	Pu Siang Kio	1	Market Sang
4	Pu Hram Nawn	1	Market Sang
5	Pu Duh Cung	1	Market Sang
6	Pi Sung Vang	1	Market Sang
7	Pi Hniar Cii	1	Market Sang
8	Pu Sang Hmung	1	Market Sang
9	Pu Ngun Ceu	1	Market Sang
10	Ram Uk Pi	1	Market Sang
11	Pu Lian Kil	2	Market Sang
12	Pu David	1	Market Sang
13	Rev. Lian Hre	1	Market Sang
14	Pu Hup	1	Market Sang
15	Pu Za Tling	1	Market Sang
	Total	16	

1	Pu Than Ceu	2	Biakinn Sang
2	Cia Cia	1	Biakinn Sang
	Total	3	

Market Sang	16
Biakinn Sang	3
Total	19

23 JUNE 2022-- BURNING OF CIVILIAN HOUSES IN THANTLANG, CHIN STATE, MYANMAR

410. On 23 June 2022, the Myanmar military burned down sixteen (16) civilian houses, with the following details below.

411. Photographs showing what remained of the civilian houses burned down by the Myanmar military last 23 June 2022, is shown below.



Photograph 36. What remains of the civilian houses burned down by the Myanmar military last 23 June 2022.

412. The details of the sixteen (16) civilian houses burned down on 23 June 2022 by the Myanmar military burned as below.

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List of Houses Burnt down in Thantlang (23June, 2022)			
No.	Name of House's owner	Number of houses	Block
1	Sym Happy	1	Market Sang
2	Pu Duh Tlung	1	Market Sang
3	Pu Duh Cin Thang	1	Market Sang
4	Pi Nu Pen	1	Market Sang
5	Believer Biakinn	1	Market Sang
6	Saya Vai Se	1	Market Sang
7	Van Hu Nu	1	Market Sang
8	Thawng Lian Nu	1	Market Sang
9	GAD Quarter	3	Market Sang
10	Dr. Hmuh Thang	2	Market Sang
	Total	13	
1	Sianginn Office	1	Sianginn Sang
2	Sianginn Quarter	2	Sianginn Sang
	Total	3	

Market Sang	13
Sianginn Sang	3
Total	16

Total Burnt Down in June, Thantlang

Sianginn Sang	3	23.6.22
	13	23.6.22
Market Sang	16	20.6.22
	7	11.6.22
Biakinn Sang	3	20.6.22
	6	16.6.22
TABC Sang	12	11.6.22
	14	9.6.22
Lungtial Sang	20	11.6.22
	23	9.6.22
Total	117	

TPAC

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E. COMPLAINANTS CHARGE RESPONDENTS THUS: INTENTIONALLY USING STARVATION OF CIVILIANS OF CHIN STATE, MYANMAR IN THE AFTERMATH OF THE MAY 2023 CYCLONE MOCHA, AS A METHOD OF WARFARE BY DEPRIVING THEM OF OBJECTS INDISPENSABLE TO THEIR SURVIVAL, INCLUDING WILLFULLY IMPEDING RELIEF SUPPLIES AS PROVIDED FOR UNDER THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS.

THIS IS A WAR CRIME IN VIOLATION OF SECTION 4(C)(21) OF R.A. 9851.

413. Complainants charge Respondents for being criminally responsible for committing the war crime under Section 4(c)(21) of R.A. 9851, which provides that:

SEC. 4. War Crimes. – For the purpose of this Act, “war crimes” or “crimes against International Humanitarian Law” means:

...

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

...

(21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;

(Emphasis and underscoring supplied)

414. Specifically, Complainants charges Respondents for being criminally responsible for the war crime under Section 4(c)(21) of R.A. 9851 by intentionally using starvation of civilians of Chin State, Myanmar in the aftermath of the May 2023 Cyclone Mocha, as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols.

415. Chin State has been under martial law since February 1, 2023.

416. On May 2023, in particular to the Cyclone Mocha response, **SR. GEN. MIN AUNG HLAING** appointed **LT. GEN. MIN NAING** as Chair of the Mocha Emergency Response in Chin State. Lt. Gen. Min Naing directly reports to **SR. GEN. MIN AUNG HLAING**

417. **DR. VOM SUAN THANG**, who is the Chief Minister of Chin State, is formally a military officer under the Myanmar military who has ultimate responsibility for Chin State. With respect to the Cyclone Mocha response, Dr. Vom Suan Thang, as Chief Minister, has to report to Lt. Gen. Min Naing who directly reports to **SR. GEN. MIN AUNG HLAING**.

418. In the 28 June 2023 Annual Report of the UN High Commissioner of Human Rights, noted the Myanmar military's severe and arbitrary restrictions on access to food assistance:

17. In addition to the direct attacks on healthcare personnel and infrastructure and severe restrictions arbitrarily imposed on access to food assistance, the military has continued to instrumentalise the legal and administrative framework of Government to control and limit life-saving humanitarian assistance/relief. Imposition of martial law on an additional 40 townships across the country in February 2023 has further diminished access to aid of populations-in-need.²³⁸ (Internal citation omitted)

419. The UN High Commissioner of Human Rights concluded in its 28 June 2023 Annual Report that in areas under the control of the Myanmar military the latter strategically decides on aid beneficiaries, types of aid to be delivered, and its timing in violation of principles of international law:

66. **While the military restricts movements of people through several measures, the instrumental use of the pre-existing arbitrary and discriminatory travel authorizations regime plays a critical role. In all areas under its control, the military strategically decides on the groups of beneficiaries and types of aid to be delivered, as well as its timing, in violation of principles of humanity, neutrality, impartiality, and independence. Similarly, the military prevents the movement of goods and humanitarian items through systemic restrictions, and the ability of individuals to transfer and safely access funds.**²³⁹ (Emphasis in the original)

420. Among the highlights of the 8 June 2023 Situation Report No. 4 entitled "*Myanmar: Cyclone Mocha*," the U.N. Office for the Coordination of Humanitarian Affairs highlighted the deterioration of humanitarian access to Cyclone Mocha-hit Rakhine and Chin States:

HIGHLIGHTS

The humanitarian access situation in cyclone-hit Rakhine state has deteriorated with existing travel authorizations (TAs) for humanitarian organizations suspended this week pending new, centralized discussions in Nay Pyi Taw.

²³⁸ Page 5, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

²³⁹ Page 14, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

Initial approval for humanitarian distribution and transportation plans for cyclone-affected townships in Rakhine have also been rescinded pending further Nay Pyi Taw-level deliberations. Similar plans in Chin are also pending.²⁴⁰

421. In a 30 June 2023 Press Briefing Note delivered by the Spokesperson for the UN High Commissioner for Human Rights, the OHCHR sounded the alarm on the Myanmar military's restriction on humanitarian aid especially in the aftermath of the May 2023 Cyclone Mocha:

The already dire situation on the ground has been compounded by the military's restrictions on aid imposed in the aftermath of Cyclone Mocha in May, bringing further suffering and misery to wide swathes of the population in the west and northwest of the country.

As the report makes clear, intentional obstruction or denial of humanitarian assistance may amount to gross violations of international human rights law, and serious violations of international humanitarian law.

Aiming in part at cutting off support for its opponents, the military has employed its four-cuts strategy to kill and injure thousands of civilians while destroying goods and infrastructure necessary for survival, including food, shelter, and medical centres, the report says. Myanmar's human rights and humanitarian crisis is massive. An estimated 1.5 million people have been internally displaced, and approximately 60,000 civilian structures have reportedly been burnt or destroyed. Over 17.6 million people, or one-third of the overall population, require some form of humanitarian assistance.²⁴¹

422. In fact, the resort by the Myanmar military to intentionally using starvation of civilians of Chin State as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols, has occurred not just in the aftermath of the May 2023 Cyclone Mocha but even as early as October 2021.

423. In its 25 February 2022 Annual Report, the UN High Commissioner of Human Rights already reported on the Myanmar military's denial of humanitarian aid, in general, and specifically, inter alia, in Chin State:

50. Military authorities largely blocked humanitarian access to new and pre-existing areas of need, through delayed or denied travel authorizations, tightened bureaucratic requirements, or

²⁴⁰UN Office for the Coordination of Humanitarian Affairs, Situation Report no. 4 (8 June 2023) online: <https://reliefweb.int/report/myanmar/myanmar-cyclone-mocha-situation-report-no4-1400-8-june-2023-enmy>

²⁴¹ UN Office of the High Commissioner for Human Rights, Press Briefing Notes (30 June 2023) online: <https://www.ohchr.org/en/press-briefing-notes/2023/06/myanmar-dire-humanitarian-and-human-rights-situation-compounded>

establishment of new roadblocks and checkpoints. Disruptions in supply chains and failure of the banking sector, because of the coup, also impacted humanitarian access and response. **Military authorities also specifically stopped humanitarian agencies from distributing aid to populations they perceived to be affiliated with opposition. Since October in Kayah State, the military required organizations to seek permission to transport more than 10 bags of rice, significantly impacting on delivery of food assistance. In Chin State, the military deliberately blocked travel routes which restricted essential deliveries, further exacerbating the situation.** In several instances, Tatmadaw targeted people assisting internally displaced persons (IDPs), burning food and other items. Security forces also arrested volunteers assisting IDPs in Kayah and Chin states, and at least 30 displaced persons reportedly died due to preventable health problems in Mindat Township in Chin State resulting from no access to healthcare. In areas affected by armed conflicts these restrictions could amount to a violation of the obligation of parties to the conflict to allow and facilitate unimpeded passage of humanitarian relief for civilians in need. As a result of arbitrary access restrictions, affected communities lack access to food, healthcare, shelter, safe drinking water and sanitation facilities and are at increased risk of disease including COVID-19. IDPs struggle to realize their basic rights including food, health, education and work, and their displacement is impacting future food security due to their inability to plant and harvest crops.²⁴²

424. Ultimately, the Chin people of Chin State, Myanmar are discriminated and have become the victims of war crimes by the Myanmar Military because they are Chin, they are Christians, and they carry the cross.

425. All the elements of a war crime under Section 4(c)(21) of RA 9851 against Respondents **DR. VUNG SUAN THANG, LT. GEN. MIN NAING,** and **SR. GEN. MIN AUNG HLAING** are present in this case.

426. *First*, the perpetrator deprived civilians of objects indispensable to their survival. *Second*, the perpetrator intended to starve civilians as a method of warfare. *Third*, the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

427. On May 2023, in particular to the Cyclone Mocha emergency response, **SR. GEN. MIN AUNG HLAING** appointed **LT. GEN. MIN NAING** as Chair of the Mocha Emergency Response in Chin State. Lt. Gen. Min Naing directly reports to **SR. GEN. MIN AUNG HLAING**

428. **DR. VUNG SUAN THANG**, who is the Chief Minister of Chin State, was formerly a military officer under the Myanmar military and is the Myanmar military's highest appointed state official government for Chin State

²⁴² Pages 9-10, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," A/HRC/49/72.

and has ultimate responsibility for the Chin State. With respect to the Mocha response, Dr. Vom Suan Thang, as Chief Minister, has to report to Lt. Gen. Min Naing who directly reports to **SR. GEN. MIN AUNG HLAING**.

429. Under Section 10(a) of RA 9851, **RESPONDENT DR. VUNG SUAN THANG** – as the Myanmar military’s highest appointed state official government for Chin State and who has ultimate responsibility for the Chin State – is ultimately criminally responsible as a principal for the war crime under Section 4(c)(21) of RA 9851 for the Myanmar military’s action in Chin State of intentionally using the starvation of civilians of Chin State, Myanmar in the aftermath of the May 2023 Cyclone Mocha, as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols, as a result of his failure to properly exercise control over his subordinates, as he as the superior knew or, owing to the circumstances at the time specifically during the aftermath of the May 2023 Cyclone Mocha, should have known that his subordinates were committing or about to commit such war crimes.

430. Further, under Section 10(b) of RA 9851, **RESPONDENT DR. VUNG SUAN THANG** – as the Myanmar military’s highest appointed state official government for Chin State and who has ultimate responsibility for the Chin State – is ultimately criminally responsible as a principal for the war crime under Section 4(c)(21) of RA 9851 for the Myanmar military’s action in Chin State of intentionally using the starvation of civilians of Chin State, Myanmar in the aftermath of the May 2023 Cyclone Mocha, as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols, for his failure to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

431. With respect to the Cyclone Mocha emergency response, Dr. Vung Suan Thang, as Chief Minister, has to report to Lt. Gen. Min Naing who is the Chair of the Mocha Emergency Response in Chin State. Thus, **LT. GEN. MIN NAING** has ultimate command responsibility over Respondent Dr. Vung Suan Thang.

432. Thus, under Section 10(b) of RA 9851, **RESPONDENT LT. GEN. MIN NAING** -- as the superior of Dr. Vung Suan Thang with respect to the Cyclone Mocha emergency response -- is criminally responsible for the war crime under Section 4(c)(21) of RA 9851 for his failure to take all necessary and reasonable measures within his power to prevent or repress the war crimes of intentionally using starvation of civilians of Chin State, Myanmar in the aftermath of the May 2023 Cyclone Mocha, as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols, or to submit the matter to the competent authorities for investigation and prosecution.

433. Further, under Section 10(a) of RA 9851, **RESPONDENT LT. GEN. MIN NAING** – as the superior and military commander of all Myanmar soldiers based and deployed in Chin State with respect to the Cyclone Mocha emergency response who intentionally used starvation of civilians of Chin State, Myanmar in the aftermath of the May 2023 Cyclone Mocha, as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols – is criminally responsible as a principal for the war crime under Section 4(c)(21) of RA 9851 committed by his subordinates under his effective command and control as a result of his failure to properly exercise control over his subordinates, as he as the superior knew or, owing to the circumstances at the time specifically during the aftermath of the May 2023 Cyclone Mocha, should have known that his subordinates were committing or about to commit such war crimes.

434. Lt. Gen. Min Naing directly reports to **SR. GEN. MIN AUNG HLAING** who is the Commander-In-Chief of the Myanmar Defence Services, and the Commander-In Chief of the Myanmar Military known as the Tatmadaw. As such, **SR. GEN. MIN AUNG HLAING** has command over all the Myanmar military. He is also the Chairman of the State Administration Council, which is the current de facto government of Myanmar. Thus, **RESPONDENT SR. GEN. MIN AUNG HLAING** has ultimate command responsibility over Respondent Lt. Gen. Min Naing.

435. Thus, under Section 10(b) of RA 9851, **RESPONDENT SR. GEN. MIN AUNG HLAING** -- as the superior of Lt. Gen. Min Naing – is criminally responsible as a principal for the war crime under Section 4(c)(21) of RA 9851 for his failure to take all necessary and reasonable measures within his power to prevent or repress the war crimes of intentionally using starvation of civilians of Chin State, Myanmar in the aftermath of the May 2023 Cyclone Mocha, as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols or to submit the matter to the competent authorities for investigation and prosecution.

436. Thus, **RESPONDENTS DR. VUNG SUAN THANG, LT. GEN. MIN NAING, AND SR. GEN. MIN AUNG HLAING** are all criminally responsible under Section 10 of RA 9851 for the war crime under Section 4(c)(21) of RA 9851.

VII. UNDER SECTION 9 OF RA 9851, THE WAR CRIMES FOR WHICH THE RESPONDENTS ARE INDIVIDUALLY CRIMINALLY RESPONSIBLE FOR ARE NOT COVERED BY IMMUNITY

On the Immunity under International Law of the Myanmar military, called *Tatmadaw*, from Prosecution before Foreign Courts ²⁴³

We continue to improve mechanisms such as the AO35 inter-agency committee to enhance accountability. The Philippines' commitment to fight impunity for atrocity crimes is solid and unwavering, notwithstanding the withdrawal of the country from the Rome Statute...

"The Philippines has a national legislation punishing heinous crimes. We have vigorously exercised our jurisdiction to investigate and prosecute crimes, including those allegedly committed in the context of the anti-illegal drugs campaign."²⁴⁴

-President Ferdinand Marcos Jr., video message to the Plenary Session for the Summit for Democracy (30 March 2023)

437. Finally, the question of procedural immunity comes up: if mandatory universal jurisdiction obtains in Philippine law as to the situation in Chin State, are not members of the Myanmar military protected by the procedural immunity of state officials under international law?

438. This Joint Complaint-Affidavit argues that the *Tatmadaw* may not claim immunity *ratione personae* as they do not represent the legitimate government of the people of Myanmar under international law. Section 9 of the IHL Act states:

Section 9. Irrelevance of Official Capacity. - This Act shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. However:

(a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising jurisdiction over such a person;

²⁴³ See International Committee of the Red Cross, "How Does Law Protect in War?", online: <https://casebook.icrc.org/glossary/immunities>

²⁴⁴ Quoted in Filane Mikee Cervantes, 'PBBM: Rule of law prevails, justice system fully functional in PH' Philippine News Agency (30 March 2023) online: <https://www.pna.gov.ph/articles/1198542>

(b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law.²⁴⁵

439. The general rule under Sections 9 is that official capacity *per se* may not be invoked as a defense from prosecution for crimes punishable under the IHL Act, thus rejecting immunity *ratione materiae*.²⁴⁶

440. However, Section 9(b) recognizes *ratione personae* immunity, a procedural immunity attaching to persons by virtue of their office (as an incumbent Head of State, Head of government, foreign affairs minister, or diplomat and covers both official and private acts committed prior to and during office²⁴⁷), to the extent allowed under international law. Indeed, under customary international law, incumbent heads of state and government representatives enjoy protection from prosecution for international crimes before foreign courts.²⁴⁸

441. With the exception of Respondent Brig. Gen. Myo Htut Hlaing, who may said to be part of the *Tatmadaw*'s inner circle and is in fact its Prime Minister and Head of the State Administration Council, none of the Respondents occupy the office of an incumbent Head of State, Head of government, foreign affairs minister, or diplomat; If anything, as shown early on in this pleading, the *Yamashita* precedent establishes that even the highest ranking military generals are not immune from prosecution for war crimes under the Philippine jurisprudence and practice under the Law of Humanity.²⁴⁹

442. In any case, the *Tatmadaw* may not claim procedural immunity for Brig. Gen. Myo Htut Hlaing or any other top officers implicated in this proceeding under the IHL Act, for the reason that the junta does not represent the people of Myanmar under international law. The following facts showing the *Tatmadaw* are not recognized as the lawful representative of the people of Myanmar, support this view:

²⁴⁵ IHL Act, Section 9, *supra* note 3.

²⁴⁶ Immunity *ratione materiae*, which attaches to the functions of the official, "does not cover personal acts, but continues to subsist even after the official ceases to perform his or her official functions." Alexandre Skander GALAND, "Article 13 (b) vs Immunity of State Officials" in *UN Security Council Referrals to the International Criminal Court* (Leiden: Brill 2019) 154.

²⁴⁷ *Ibid.* However contemporary discussions before the UN Sixth Committee on immunity *ratione materiae* echoes the position of the IHL Act thus: Although varied, the practice showed a clear trend towards considering the commission of international crimes as a bar to the application of immunity *ratione materiae* of State officials from foreign criminal jurisdiction, for the reason that such crimes did not constitute official acts, that the crimes concerned were grave or that they undermined the values and principles recognized by the international community as a whole. Report of the International Law Commission on the work of its Sixty-Ninth Session (2017), Chapter VII, para. 83 115 online: <https://legal.un.org/ilc/reports/2017/english/chp7.pdf>

²⁴⁸ *Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium)

²⁴⁹ *Yamashita v Styer*, *supra* note 9.

(1) the UN General Assembly has rejected the *Tatmadaw*'s bid to be accepted as the official representative of the people of Myanmar to the UN;²⁵⁰

(2) The UN has continued to recognize Ambassador Kyaw Moe Tun as Myanmar's Permanent Representative, but not in representation of the *Tatmadaw*;²⁵¹ The ambassador was appointed to the UN by Aung San Suu Kyi's government before the coup;²⁵²

(3) The European Union has voted to recognize the opposition National Unity Government as the official representative of Myanmar;²⁵³

(4) the *Tatmadaw* neither has the support of the people of Myanmar nor effective control of the country;²⁵⁴

(5) even the ASEAN has refused to meet with junta leader Senior General Min Aung Hlaing;²⁵⁵

(6) the *Tatmadaw* has been the subject of sanctions;²⁵⁶ and finally,

(7) the Philippines itself has called on the restoration of the "*status quo ante*" in Myanmar by the junta (meaning, the immediate return of power to the government of Aung San Suu Kyi by the junta),²⁵⁷

443. These are all matters of mandatory judicial notice under the Rules of Court.²⁵⁸ The illegitimacy of the *Tatmadaw* before the world stage is palpable and deprives it of any credible claim of protection of procedural immunity from prosecution for war crimes and other serious crimes under international law before any foreign court.

²⁵⁰UN General Assembly, Seventy-sixth Session, Report of the Credentials Committee on Agenda item 3 (b) Credentials of representatives to the seventy-sixth session of the General Assembly A/76/550 para 1 at 2

²⁵¹ Ingyin NAING, "Myanmar's UN Ambassador Reportedly Renewed for Another Year Despite Junta's Opposition" Voice of America (12 December 2022) online: <https://www.voanews.com/a/myanmar-s-un-ambassador-reportedly-renewed-for-another-year-despite-junta-s-opposition/6873801.html>

²⁵² *Ibid.*

²⁵³ Sebastian STRANGIO, "EU Parliament Voices Support for Myanmar's Opposition Government" The Diplomat (11 October 2021) online: <https://thediplomat.com/2021/10/eu-parliament-voices-support-for-myanmars-opposition-government/>

²⁵⁴ Thitinan PONGSUDHIRAK, "Myanmar military fails sovereignty test" Bangkok Post (4 February 2022) online: <https://www.bangkokpost.com/opinion/opinion/2258375/myanmar-military-fails-sovereignty-test>

²⁵⁵ *Ibid.*

²⁵⁶ Sebastian STRANGIO, "US Imposes Fresh Sanctions on Myanmar's Military Junta" The Diplomat (5 July 2021) online: <https://thediplomat.com/2021/07/us-imposes-fresh-sanctions-on-myanmars-military-junta/>

²⁵⁷ Joyce Anne L. ROCAMORA, "DFA Calls for Restoration of 'Status Quo Ante' in Myanmar", Philippine News Agency (9 February 2021) online: <https://www.pna.gov.ph/articles/1130184>

²⁵⁸ Rule 129, Section 1, Revised Rules of Evidence:

Judicial notice, when mandatory. - **A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions [emphasis supplied].**

444. As can be seen in the preceding discussion, there is clear probable cause against Respondents for the war crimes charged against them in this Joint Complaint-Affidavit.

445. The acts and/or omissions for which they are sought to be prosecuted all fall within the *Tadić* criteria that include murder; cruel treatment; attacks on civilians or civilian objects; destruction and devastation of property, including cultural or religious property;²⁵⁹ the matters Complainants being brought to the attention of the Philippine Department of Justice are all serious violations of IHL or are serious international crimes that are a concern to the international community subject to mandatory universal jurisdiction.

446. Therefore, the Complainants respectfully pray that the Honorable Office find that there is probable cause against Respondents for the war crimes charged against them in this Joint Complaint-Affidavit and, consequently, file the necessary Information in Court.

447. *Complainants bring these War Crimes Complaints before the Philippine Department of Justice against the Tatmadaw's officers and members named in this Joint Complaint-Affidavit, on the basis of the Philippine government's assurances to the international community that it has a well-functioning legal and judicial system able to investigate and prosecute serious crimes that are a concern to the international community as a whole.*²⁶⁰

Respectfully filed by the Complainants:

²⁵⁹Gideon BOAS, James L. BISCHOFF, and Natalie L. REID (eds.) *Elements of Crimes under International Law: International Law Practicioners Library Series Vol. III* (Cambridge: Cambridge University Press 209) 262 (in-text citations omitted)

²⁶⁰ Cervantes, *supra* note 244.

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SUBSCRIBED AND SWORN to before me this _____ in the City of Manila. And I personally examined the affiants and I am satisfied that they have voluntarily executed and understood the above Affidavit.

HON. PUBLIC PROSECUTOR