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Permanent Representative

No. 260 / 3-27/ 91

18 July 2018

Dear Madam/Sir,

I would like to refer to your letter No. UA MMR 2/2018 of 4 June 2018, with regard to the death of Mr. Saw O Moo. In this connection, I have the honour to convey the information received from the Ministry of Defence on the aforementioned matter, as attached.

Please accept, Madam/Sir, the assurances of my highest consideration.

(Kyaw Moe Tun)

Ambassador and Permanent Representative

Special Rapporteur on the situation of human rights in Myanmar

Special Rapporteur on extrajudicial, summary or arbitrary executions

Special Rapporteur on the situation of human rights defenders

Special Rapporteur on the rights of indigenous peoples

OHCHR REGISTRY

25 JUL 2018

Recipients: *SPB*

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**Information received from the Ministry of Defence
in response to the alleged killing of Saw O Moo**

- On 5 April 2018, while a platoon of a battalion was conducting a clearance operation in the area, two men riding a motorbike, with a man at the passenger seat carrying an armed RPG rocket, were found suspicious. When the members of security force asked them to stop for an inspection, the man with a rocket, attempted to shoot them. For the sake of self-protection, the members of security force took action against them and one man died in the incident. The dead body was buried by the members of security force in a dignified manner.
- Six small batteries, one video recorder, three memory cards, one voice recorder, one mobile phone, two envelopes with Karen National Union (KNU) logo, one temporary border pass, one National Identification Card and one Immigration Card were found near the dead body. According to the National Identification Card, he was identified as Saw Kalo Par who was currently living in Ler Mu Plaw Village. Based on the data from the voice recorder and video recorder, it was found out that Saw Kalo Par, had a connection with armed groups which were discussing a plan to attack a military post.
- A civilian has the right to be protected in an armed conflict. However, if a civilian takes a direct part in hostilities, he/she forfeits this immunity. The Article 13 (3), Section (4) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts stated that "Civilians shall enjoy the Protection afforded by this part, unless and for such time as they take direct part in hostilities". Though a clear and uniform definition of direct participation in hostilities has not been developed yet, a specific act that meets (1) Threshold of harm; (2) Direct Causation; and (3) Belligerent Nexus can qualify as direct participation in hostilities, according to the study made by military and legal experts with the support of International Committee of the Red Cross (ICRC).
- In the case of Saw Kalo Par, despite wearing plain outfit like a civilian, he was found together with a man with weapon who attacked the members of security force. In addition, from the exhibits, it was revealed that Saw Kalo Par had connection with the armed group. His death was occurred in hostilities, not by arbitrary killing, since he took direct part in hostilities.

- The person died on 5 April 2018 was identified as Saw Kalo Par and the incident was published on 10 April 2018 by Tatmadaw True News Information Team.
