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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: AL G/SO 214 (107-9) G/SO 214/62-11 G/SO 214 (33-27) G/SO 214 (53-24)  
MMR 12/2013

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 22/14, 16/5, 17/5, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received allegations of torture and the subsequent death in custody of **Mr. U Than Htun** on 22 May 2013, by police officers of the Pandaung Township Police Station, Pyay District, Bago Region, Myanmar.

According to the information received:

On 5 April 2013, Mr. U Than Htun, resident of Pandaung Township, Pyay District, Bago Region, was brought to the Pandaung Township Police Station after an argument with another villager and was released on bail three days later. It is reported that Mr. U Than Htun was actively working for farmers in the Kyar Inn Village (Old) Tract where the National Resource Development Cooperation Company (NRDC) is in a dispute with cultivators over rights to the land. As a result of his role in supporting the farmers, he had been interrogated four times, and was among 17 people sued by the company.

On 17 May 2013, over a month after the incident, Mr. U Than Htun received a letter from the police calling him in for interrogation at the Pandaung Township Police Station on 19 May 2013 at 4.00 p.m. A family member brought Mr. Than Htun to the police station where he immediately got detained despite the fact that he was previously granted bail by a court's decision.

On 23 May 2013 at 10.30 a.m, police officers came to the residence of Mr. U Than Htun and informed the family that he had been hospitalized at the Pandaung Township Hospital due to his alcoholism. Later that day, the family was reportedly informed that he died due to the effects of alcoholism before arriving at the hospital. Furthermore the police authorities explained that Mr. U Than Htun allegedly hit himself with an iron pole during interrogations as a result of his alcoholism.

It is reported that the family took photographs of Mr. U Than Htun's body that depict scars and bruising on his face, legs, and ribs from what is alleged to be the results of beatings with a rubber truncheon; there are lacerations on his two wrists from allegedly prolonged handcuffing. According to the information received, other photographs showed that his face was heavily bruised and deeply swollen. Furthermore, it is reported that the ribs on his left side were broken and there were scars and bruising on his legs from the rolling of a rubber truncheon, which is allegedly a well-known technique of torture in the country.

It is also alleged that the post mortem examination revealed that Mr. U Than Htun did not die due to any type of organ failure. It is also reported that when the family tried to recover Mr. Than Htun's clothes as evidence, the police refused to hand them over. Furthermore, it is reported that the police agreed to cover the expenses of the funeral, but did not agree on returning the body of Mr. U Than Htun back to his family.

According to the information received, the family tried to lodge a complaint against the commander of Pandaung Township Police Station on 24 May 2013. According to the information received, the death was listed for an inquest which allegedly hindered the family from registering a complaint.

It is also reported that on 28 May 2013 the family allegedly succeeded in lodging a complaint. However, it is reported that the court of first instance dismissed the complaint for unknown reasons.

Finally, it is reported that in Myanmar, torture is widespread in police stations where it most commonly takes the form of beatings and other blunt methods intended to cause pain and obtain a confession. According to information received, this is also due to the pressure on police officers to take immediate action in criminal cases and to report any results immediately to the higher authorities, which allegedly leads to the use of torture to obtain confessions from suspects. Furthermore, torture is not defined as a criminal offence in the national legislation and police officers are rarely held accountable for abuses committed on detainees in custody. It is also reported that in similar cases, police authorities usually claim that the victims have died as a result of their medical condition.

While we do not wish to prejudge the accuracy of these allegations, we would like to bring to the attention of your Excellency's Government our concerns relating to the

alleged torture and subsequent death in custody of Mr. U Than Htun, as well as to appeal to your Excellency's Government to seek clarification of the circumstances regarding the death of Mr. U Than Htun.

In this context, we would like to draw the attention of your Excellency's Government to paragraphs 11 to 13 of the report to the Human Rights Council of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/22/58), in which he expressed concern about the ongoing practice of torture in places of detention in Myanmar and highlighted the information he continues to receive on professionalised torture techniques being used by police officers on suspects of violent crime with the aim of extracting confessions. He also highlighted that addressing human rights violations through the criminal justice system was necessary to combat the culture of impunity that exists for acts of torture in police stations, prisons and in other places of detention, particularly during the interrogation of suspects. He encouraged the Government to initiate human rights training programmes for police officers and prison officials, and to develop the capacity of the relevant public officials, including judges and doctors, who can intervene on suspected cases of torture.

In the report, the Special Rapporteur commended the Government on the steps being taken to address the ongoing practice of torture in Myanmar, including allowing the International Committee of the Red Cross to resume prison visits. He encouraged the Government to allow national and other international monitoring groups to be provided with access to prisons. He also recommended the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol (OPCAT).

We would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to draw the attention of your Excellency's Government to paragraph 60 of the Vienna Declaration and Programme of Action of 1993, which stipulates that, "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law".

We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons

who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

We urge your Excellency’s Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of the above-mentioned person, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. In this respect we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed.”

With regard to the subsequent death of Mr. U Than Htun, we would like to refer your Excellency’s Government to article 3 of the Universal Declaration of Human Rights (UDHR), which stipulates that “everyone has the right to life, liberty and security of person”. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. Article 6 of the Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, provides that “Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required”.

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). Principle 18 further provides that “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice”.

We would further like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive

for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration, and in particular to article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We wish to refer your Excellency’s Government to the report of the Special Rapporteur on the situation of human rights defenders to the Human Rights Council in 2012 (A/HRC/19/55), in which she expressed serious concern about the risks faced by human rights defenders working on land and environmental issues in connection with extractive industries and construction and development projects, notably the high risk they face of violations related to their physical integrity. The Special Rapporteur urged States in this connection to “combat impunity for attacks and violations against these defenders, particularly by non-State actors and those acting in collusion with them, by ensuring prompt and impartial investigations into allegations and appropriate redress and reparation to victims” (para. 126).

Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Has an appeal against the decision of the court of first instance been lodged? Please provide information and the reasons of the court of first instance’s decision to dismiss the case concerning Mr. U Than Htun’s death.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation

to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide information concerning the legal grounds for the arrest and detention Mr. U Than Htun, and how these measures are compatible with international norms and standards.

5. Please provide the full details of any prosecutions which have been undertaken? Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

6. Please indicate whether compensation has been provided to the victim or the family of the victim.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Tomás Ojea Quintana  
Special Rapporteur on the situation of human rights in Myanmar

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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