

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; the Independent Expert on minority issues; the Special Rapporteur on the situation of human rights in Myanmar; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 214 (56-23) G/SO 214 (3-3-16) Minorities (2005-4) G/SO 214/62-11 G/SO 214 (53-24)
MMR 15/2013

10 October 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the independence of judges and lawyers; Independent Expert on minority issues; Special Rapporteur on the situation of human rights in Myanmar; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 22/20, 17/2, 16/6, 22/14, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged deprivation of liberty of Mr. **Brang Yung**, who is reportedly at risk of torture or cruel, inhuman or degrading treatment.

According to the information received:

Mr. Brang Yung, a national of Myanmar and an ethnic Kachin, worked as a herdsman in the Kachin State. Mr. Brang Yung, together with his wife and three children, moved from his home village of Waing Maw Township to the Internal Displacement Camp run by Shwe Tset Kachin Baptist Church in Myitkyina when fighting broke out between the Myanmar army and the Kachin ethnic factions.

On 9 June 2012, Mr. Brang Yung set out with another Kachin herder, Lahpai Gam, for Tar Law Gyi village to work as cattle herders. On 12 June 2012, they were both arrested by the Myanmar army. Many other Kachin men living in Internal Displacement Camps were also reportedly arrested on the same date. Mr. Brang Yung was initially taken to a monastery in Tar Law Gyi village but was later sent to Myitkyina prison on 2 July 2012, where he remains to date.

It is unknown whether any warrant was shown for Mr. Brang Yung's arrest. The accusation against him was of being associated with the Kachin Independence Army. He was later tried in court under article 17 of the Unlawful Associations Act 1908.

It is reported that since his arrest Mr. Brang Yung has: (i) been held incommunicado, without access to a lawyer or his family; (ii) not had the right of access to an independent and impartial judicial tribunal; (iii) not had a fair hearing represented by counsel to secure his release; (iv) not been accorded regular prison visits from his family; (v) not had access to adequate medical facilities or treatment since his torture and incarceration; (vi) not been allowed to read newspapers or other information material; (vii) and, not been afforded any opportunity to complain about the conditions of his detention. Moreover, any lawyer who seeks to defend him in a domestic tribunal is liable to being arrested and incarcerated for so doing.

While in detention, Mr. Brang Yung has reportedly been subjected to inhuman and degrading treatment, torture or other risk, including being subjected to involved forcible dancing, being made to have same sex with another male ethnic Kachin, prisoner and having his genitals burnt with candle fire. Allegedly, disparaging comments were also made about Mr. Brang Yung's Christian faith and he was ordered to stand in a crucifixion position. As he was standing in this position, reportedly the military security officers shouted "Your Christ died on the cross, right! You will die like that too". He was also stripped naked and made to kneel naked on gravel stones.

Grave concerns are expressed at the indiscriminate targeting of Kachin individuals by the Myanmar authorities on suspicion of links to the Kachin Independence Army. Further, torture and inhuman and degrading treatment in detention by the Myanmar authorities have been reported in the detention of prisoners from ethnic minorities.

These concerns regarding the arbitrary arrest of Kachin men from IDP camps and subsequent torture in detention to extract confessions are consistent with previous concerns raised by the Special Rapporteur on the situation of human rights in Myanmar in his report to the Human Rights Council in March 2013 (A/HRC/22/58, para 11) and the specific cases of Brang Shawng and Manam Tu (*ibid*, para 37). These concerns were also raised following the Special Rapporteur's visit to IDP camps in Myitkyina and Myitkyina Prison on 16 and 17 February 2013 (see post-mission statement <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13004>).

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Brang Yung is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Bran Yung. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR.

We would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular

- principle 1, which states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings";
- principle 5, which states: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence";
- principle 7, which states: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention"; and
- principle 8, which states: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials".

We would also like to draw your Excellency's Government's attention to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this context, 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 also like to draw your Government's attention to paragraph 6 b and e of Human Rights Council Resolution 8/8 adopted in June 2008 which urges States "to take persistent, determined and effective measures to have all allegations of torture or

other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold persons, who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed [...] and “to ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation [...].

With regard to the allegation that disparaging comments were made about Mr. Brang Yung’s Christian faith and he was ordered to stand in a crucifixion position, we would like to draw your Government’s attention to paragraph 11 (k) of the General Assembly’s Resolution 64/164 (A/RES/64/164) on religious intolerance and discrimination in which the General Assembly urges states “To take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based in religion or belief, as well as incitement to hostility and violence, with particular regard to members of religious minorities in all part of the world.”

We furthermore draw the attention of your Excellency’s Government to international standards for the protection and promotion of the rights of minorities. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires under Article 1.1 that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.” Article 4.1 establishes that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.”

In this context, we would like to remind your Excellency’s Government paragraph 4(f) of the Resolution 2005/40 in which the former Commission on Human Rights urges States, “To ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Brang Yung in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates 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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim(s)?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Brang Yung and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR.
4. 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.
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.
7. Please provide information on measures taken to ensure the protection of the rights of persons belonging to the ethnic Kachin minority and the freedom of religion or belief of religious minorities, in particular implementation of paragraph 4(f) of the former Commission on Human Rights' Resolution 2005/40 and paragraph 11 (k) of the General Assembly's Resolution 64/164 (A/RES/64/164) by your Excellency's Government.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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 the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the 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.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

•

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

IZSÁK Rita
Independent Expert on minority issues

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

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment