

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on minority issues; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL
MMR 1/2015:

5 February 2015

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 minority issues; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on the issue of discrimination against women in law and in practice; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 25/26, 25/5, 26/12, 25/13, 23/7, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Ms. **Maran Lu Ra** and Ms. **Tangbau Hkwan Nana Tsin**.

According to the information received:

During the night of 19/20 January 2015, two ethnic Kachin schoolteachers were allegedly physically abused, raped and murdered in their rooms in the dormitory inside the Kachin Baptist Convention church compound. The incident occurred in Kaung Kha village between Nan Taung and Mung Baw village tracts, Muse Township in Northern Shan State. The bodies of the two female victims, Maran Lu Ra, 20, and Tangbau Hkwan Nan Tsin, 21, were allegedly found in their rooms by villagers on 20 January in a state of undress with signs of having been beaten with a blunt instrument, and one of the girls allegedly had knife wounds on her face and hands. A large, bloodstained stick was reportedly found near the bodies.

Soldiers of the 503rd Light Infantry Battalion of the Myanmar Army (Tatmadaw) are stationed around 100 metres from where the incident occurred. Reports suggest that locals have accused the soldiers of raping and murdering the victims.

Reports have also been received of statements by the military that an investigation into the double murder had failed to implicate government soldiers. A military representative has been quoted as saying “The Tatmadaw will take action based on the rule of law against those who accuse [soldiers] and write about it after the official report is released by the investigation team.”

It has been reported that Kachin Baptist Convention humanitarian staff are often threatened by the military during the course of their work or while delivering humanitarian assistance or trying to access IDP camps.

We are concerned that these alleged cases of rape, torture and summary executions take place in a wider context of allegations of human rights violations including rape and other crimes of sexual violence by members of the armed forces, in particular in Kachin and Northern Shan States, where the Myanmar armed forces resumed offensive military operations in June 2011. We are further concerned that failure to conduct an independent investigation into these allegations and the alleged intimidation by the military to prevent the reporting of accusations and evidence prevents the holding to account of those responsible for the rapes and murders, which would deny the victims and their families justice and contribute to an ongoing climate of impunity for rape and other crimes of sexual violence, in particular in conflict-affected and ethnic minority areas. The country mandate of the Special Rapporteur on the situation of Human Rights in Myanmar has consistently raised concerns over violations of international human rights law and international humanitarian law in ethnic border areas where armed conflict is ongoing, by both the military and ethnic armed groups. Furthermore, the mandate holder has consistently highlighted the issue of impunity for human rights violations committed by members of the armed forces in such areas, which includes a failure to conduct prompt, thorough, effective, independent and impartial investigations into allegations of human rights violations, and to prosecute those responsible for human rights violations and provide appropriate penalties which are proportionate to the gravity of the offence.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the results of the autopsy and forensic examinations that have been conducted.
3. Please provide information on any investigations that have been conducted or that will be conducted in this case and how your Excellency’s

Government will ensure a thorough and independent investigation into this case.

4. Please provide information on the measures taken to prevent the military from threatening to take measures and thus intimidating potential witnesses. Please provide information on how the evidence gathered will be used in criminal proceedings and how your Excellency's Government will ensure an independent and impartial trial that will hold the perpetrators accountable for this crime.
5. Please provide information on any intention of your Excellency's Government to provide reparations for the families of the victims.
6. Please provide information on the steps that your Excellency's Government is taking in order to prevent such incidents happening again.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any persons responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Yanghee Lee
Special Rapporteur on the situation of human rights in Myanmar

IZSÁK Rita
Special Rapporteur on minority issues

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Emna Aouij
Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles; resolution 1989/65 Economic and Social Council), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). The Council added that this includes the obligation "to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions."

We would also like to bring to your Excellency's attention article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 22 July 1997), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

We also deems it appropriate to make reference to Commission on Human Rights Resolution 2005/41, which strongly condemns violence against women and girls committed in situations of armed conflict, such as murder, rape, including widespread and systematic rape, sexual slavery and forced pregnancy, and calls for effective responses to these violations of human rights and international humanitarian law. In this context, reference is further made to the 1949 Geneva Convention relative to the

Protection of Civilian Persons in Time of War (IV Geneva Convention), which provides that women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault (art. 27). The Protocol additional to the Geneva Conventions of 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) states that outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any forms of indecent assault are prohibited at any time (art. 4(2)(e)). According to these general principles of international law, rape during armed conflict is considered to be a war crime and States have an affirmative duty to prevent, punish and prosecute perpetrators of such crimes.

Finally, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as codified, inter alia, in Human Rights Council resolution 25/13 and General Assembly resolution 68/156.

We would also like to draw your Excellency's Government's attention to paragraph 7 of General Assembly resolution 68/156, which stresses that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there is reasonable ground to believe that such an act has been committed, and that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence[...]

Furthermore, we would like to draw your Excellency's Government attention to international standards relevant to the protection and promotion of the rights of minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration refers to the obligation of States to protect the existence and identity of national or ethnic, cultural, religious and linguistic minorities within their territories and to adopt the appropriate measures to achieve this end, and article 2 states that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language without discrimination. Furthermore, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1), and to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

We also would like to draw your Excellency's Government attention to the recommendations of the seventh session of the Forum on Minority Issues on "Preventing and addressing violence and atrocity crimes targeted against minorities" (2014), in particular recommendation 44, which calls on States to recognize that women belonging to minorities may be exposed to gender-specific forms of violence and to take appropriate steps to protect women from the risks and threats of such violence, including deliberate targeting from rape and sexual assault used as a "weapon" in conflict situations.