

Mandates of the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on minority issues

REFERENCE:
UA MMR 3/2017

11 July 2017

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 28/23 and 25/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged deaths in custody, including of a child, and arrests and detentions in the context of the security clearance operations following the attacks against Border Guard Police facilities in the north of Rakhine State on 9 October 2016.**

It is recalled that a related previous communication (case no. MMR 4/2016) was sent regarding allegations of, *inter alia*, summary executions, arbitrary arrests, and ill-treatment in detention by security forces carrying out security clearance operations. The communication also referred to cases of arbitrary arrests of Rohingya, including children.

In the response provided by your Excellency's Government dated 20 January 2017, it was stated, *inter alia*, that, the reports on ill-treatment of the arrested are not true and to prevent abuse by police and to protect the rights of persons being interrogated, photo and video records are made during the investigations; and investigation is continuing on 470 suspects.

According to the information received:

A former UN worker, Mr. [REDACTED], was reported to have died in custody on 17 October 2016. (This is the same former United Nations employee referred to in UA MMR 4/2016.) He had allegedly been arrested with his three sons and two brothers on 14 October 2016 in relation to the security clearance operations subsequent to the 9 October attacks, and all of them were taken to Kyein Chaung police station. On the evening of 16 October 2016, Mr. [REDACTED] was taken from the police station to an unknown location for interrogation and then brought back to the police station by military troops the next day in the morning. (No information was available on the rationale for transfer between police and military custody for interrogation purposes.) It was further reported that Mr. [REDACTED] died while being transferred back to Kyein Chaung police station indicating that Mr. [REDACTED] had grabbed a firearm from a military soldier and that 'responsible personnel' had

attempted to subdue him, but he lost consciousness as a result. He reportedly died at 5.30am on 17 October while on the way to hospital and an investigation into the death would have been opened. No further details are known regarding the location and condition of the others who were arrested and detained at the same time as Mr. [REDACTED].

On 3 February 2017, it was reported that a man, who had been detained in connection with the 9 October 2016 attacks, had also died in custody but while receiving treatment for an "inflammation of the stomach." To date, the Government has admitted to a total of seven deaths in custody but without providing satisfactory explanation for them. It is not clear whether an independent investigation into any of the deaths has been launched. Moreover, the figures of deaths in custody are allegedly much higher, with reports of some sixty deaths in custody occurring since the 9 October attacks.

Separately, on 19 October 2016, it was reported that two Rohingya men from among eleven people who had been arrested in relation to the security clearance operations conducted following the 9 October attacks subsequently died in detention. At the time, there was no investigation into their deaths, and the only information provided indicated that they had been in poor health on arrest and had died of asthma-related health problems.

However later on 21 February 2017, it was reported that the Ministry of Home Affairs was investigating an alleged 'cover-up' by the Border Guard Police (BGP) of the deaths in custody of the two Rohingya men as reported on 19 October 2016. This followed a leak of an internal document to an independent media outlet. The internal document was allegedly compiled by a BGP unit in northern Rakhine outlining that the two men had died in custody but without specifying the cause of death, and that it had been recorded by the responsible BGP officers that the two had not died in their custody but had been transferred with others to another place of detention. Subsequently, the Home Ministry stated that there was no cover-up and the two, who were father and son, had died from asthma on the way to a hospital on 18 October. No other information is known regarding any investigation into the deaths of the two Rohingya men or on the internal probe into allegations of a 'cover-up' related to this case.

Your Excellency's Government had also stated in response to communication (UA MMR 4/2016) on 20 January 2017 that, "[t]here were no children arrested, detained and/or killed in the context of security operation".

However, further information has been received regarding the arrest and detention of children, including death in custody. Thirteen children, all male and under the age of 18, were arrested, detained and allegedly charged under the Unlawful

Associations Act during the security operations conducted following the 9 October 2016 attacks. It is reported that the youngest among the 13 children is 10 years old. In addition, it has been reported that one of them has died in custody from stomach problems. Two other child detainees are reported to be seriously ill, requiring urgent medical attention.

On 2 March 2017, the Ministry of Information website published an article entitled, 'Child Detainee hospitalised for 2nd time', which included a picture of a child detainee, stating that the child was detained at a BGP facility and "undergoing medical treatment as an in-patient for the second time in Buthidaung Township Hospital." The child reportedly suffered from stomach problems and muscle weakness at the time the story was featured, and had previously received treatment for five days in February 2017 for chest pain and respiratory problems. The child was charged under section 302/34 of the Penal Code and (Child) Unlawful Association Act 17 (1)/(2) and (Child) Arms Law." While it was stated in the media that the age of the child is 16, it is reported that he is actually 13 years of age.

On 6 June, a statement by the State Counsellor's Office Information Committee reported that a teenage boy died in the custody of border security officials on 2 February. It stated that, "Government security forces apprehended six boys aged 12-16 years on suspicion of attacking border police while on patrol and detained them by the order of a Maungdaw Township judge at No. 3 Border Police Force camp. One boy, ..., believed to be less than 15 years old died while in border police custody, he had been hospitalised twice in January at Buthidaung hospital for stomach inflammation. A medical report determined that the boy died on 2 February while receiving treatment. The remaining five boys are being tried in juvenile court overseen by Judge U Ba Thaug."

No information is known regarding the access that the detained children had to timely medical attention, and whether the child who died had access to treatment from the time of his arrest and detention. No information is available on where the 13 children are detained, their detention conditions, and whether their families have been informed of their arrest and detention, or have been given access to visit them.

In the context of the security operations in the north of Rakhine State, no further information is available on whether other children have been arrested and detained, their location and current conditions, charges against them, court appearances and whether they have regular access to medical care, family and lawyers.

While we do not wish to prejudge the accuracy of these allegations, they indicate a prima facie violation of the right of every individual to life, liberty and security of person and not to be arbitrarily deprived of his or her life as set forth in articles 3 of the Universal Declaration of Human Rights (UDHR) and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR). In its General Comment No. 31, the Human Rights Committee stated that a failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR / C / 21 / Rev.1 / Add.13, paras. 8 and 18). In addition, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions recall the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions (principle 9).

We would like to recall that 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. 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 (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This obligation includes identifying and bringing to justice those responsible; granting adequate compensation to the victim or his family; and taking steps to end impunity and the recurrence of such executions.

We express grave concern about the detention conditions of the children stated above, including the lack of adequate medical attention and treatment, which may have resulted in the death of one of the child detainees. We recall that under article 37 (c) of the Convention of the Rights of the Child, ratified by Myanmar in 1991, children deprived of liberty shall be treated with humanity and respect and in a manner that takes into account the needs of persons of his or her age. The Special Rapporteur on the situation of human rights in Myanmar has previously expressed concerns regarding the general situation of those arrested within the context of the post 9 October security operations where those arrested and detained had not been informed of the charges against them, did not have legal representation and whose families had not been informed of the fact of their detention.

Moreover, as the victims of the alleged violations belong to a minority group, we would like to recall the international standards with regard to the protection of persons belonging to minorities, and in particular, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration establishes the obligation of States to protect the existence and identity of minorities within their territories and to adopt the appropriate measures to achieve this end (article

1) and requires States to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1).

Furthermore, we would like to refer to the Recommendations of the eighth session of the Forum on Minority Issues on “Minorities in the criminal justice system” (2015). In particular, we would like to bring to your Government’s attention recommendations 64 and 65 on the detention of children. Recommendation 64 states that “in compliance with the Convention on the Rights of the Child, children must be detained strictly as a measure of last resort, in exceptional circumstances, and for the shortest appropriate period of time. Alternatives to detention should be given preference. In the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) are set out a variety of non-custodial options for children facing criminal charges, including “diversion” from detention, which keeps children in or channels them into age-appropriate processes or programmes in the community instead. In accordance with the recommendations of Committee on the Rights of the Child, the minimum age of criminal liability should start at age 18”. Recommendation 65 calls on States to ascertain “whether juveniles from religious, ethnic, national or linguistic minority communities are incarcerated at a disproportionately higher rate than their representation in the overall population. In such cases, they should create and implement robust crime prevention programmes providing alternative measures to incarceration, focusing on rehabilitation while emphasizing imprisonment as a last resort”.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 the above-mentioned persons in compliance with international instruments.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please clarify how many deaths in custody have occurred since the 9 October 9.
3. Please clarify if a thorough, prompt and impartial investigation to clarify the circumstances of the deaths in custody and establish responsibility has been undertaken for all cases of death in custody.

4. Please clarify if detailed and accurate records concerning the dates of detention, location of detention and transfers between places of detention have been kept including those who had died in custody.
5. Please clarify if photo and video records of these interrogations are kept. Please clarify if audio visual recording of investigations involving children were also conducted.
6. Please also clarify if forensic and post mortem examination by trained personnel have been conducted for each death in custody and please provide the results.
7. Please clarify if family members of the deceased were kept informed of any progress and findings of investigations conducted. Please clarify if a death certificate has been issued in each case of a death in custody and if it has been issued to the next of kin
8. Please clarify what steps have been taken to prevent the recurrence of deaths in custody.
9. Please clarify how many children have been arrested and detained in the context of security operations since 9 October 2016.
10. Please clarify in all cases the location of children detained including information on transfer between different locations of detention and what was the time period between arrest and first appearance before a court as well as the frequency of review of their detention. Please further provide information in each case on how often a judicial review of the pre-trial detention of children is conducted.
11. Please clarify if all children detained are kept separate from adults and provide further information on the conditions of detention.
12. Please clarify if the parents, guardians or family members of all child detainees have been informed of the arrests and at what stage of the child's arrest and detention they were contacted, and if they are allowed access to the child detainees in a safe and confidential setting.
13. As children should have prompt access to medical examination upon deprivation of liberty, please provide further information on whether all children detained were provided with an examination and prompt access to medical assistance and treatment. Please also clarify if all children

detained have access to a lawyer and the ability to challenge the legality of their detention.

14. Please provide details on the date of arrest of the child who died in custody and dates of when the child had access to medical assistance and at what facility. Please clarify the cause of death.
15. Please clarify when and how the family was informed of the death and if the body was handed over to the family for burial. Please clarify also if compensation has been provided to the family.
16. As the best interests of the child should be a primary consideration in all actions that concern the child, including in the criminal justice system, please clarify if any best interests determination has been carried out for all children arrested and detained.
17. Please provide information on what measures have been taken in ensuring that the arrested children comprehend the charges against them including the possible consequences and penalties. Please also clarify if any special assistance and specially adapted and amended proceedings for the children accused were provided to enable them to fully and effectively participate and understand their rights, including the charges against them, in the conduct of their trial.
18. Please clarify if the children have been present at all stages of their trial, able to understand and participate in the proceedings and that they have the right to be heard either through representation or directly if it is in their best interests.
19. Please clarify if any child has been convicted and provide further information on the conviction and sentencing.

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 person responsible of 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.

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