

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
UA MMR 2/2018

4 June 2018

Excellency,

We have the honour to address you in our capacity as 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 and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 34/22, 35/15, 34/5 and 33/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the killing of Mr. **Saw O Moo** near his home in the Ler Mu Plaw area of Kayin State by the Myanmar Army, or Tatmadaw.

Mr. Saw O Moo, 42 years old, a permanent resident of Ler Mu Plaw, Kayin State was an environmental activist and indigenous rights defender. Mr. O Moo was employed at a long-time environmental community partner of the Karen Environmental and Social Action Network (KESAN), a community-based, non-governmental, and non-profit organization that works to improve the livelihood and security of indigenous peoples in Kayin State. Mr. Saw O Moo was also known for his commitment and passion to preserving indigenous Karen cultural traditions, promoting customary land stewardship, and leading local community forest conservation activities. At the time of his death, Mr. Saw O Moo was serving as an Advisor and Indigenous Wildlife Researcher on the Kheshorter Community Forest Committee and as a member of the Salween Peace Park Committee.

According to the information received:

On April 5, 2018, Mr. Saw O Moo travelled from his home on the plains of Ler Mu Plaw for a meeting with community members at the Ler Mu Plaw community center to coordinate humanitarian assistance for the displaced population residing in the village as a result of the ongoing hostilities in the area. On his way home following the meeting, Mr. Saw O Moo reportedly offered a ride on his motorbike to a soldier of the Karen National Liberation Army (KNLA). The soldier who was allegedly assigned by the KNLA to provide security and protection to civilians in

the Ler Mu Plaw area of Kayin State. At 5.20 p.m., when the two men arrived near Mr. Saw O Moo's home in Ler Mu Plaw, it was reported that they were ambushed and shot at by Myanmar military officials at Wah Klo Hta. According to the report, Mr. Saw Hser Blut Doh was able to flee the scene, however Mr. Saw O Moo could not stop his motorbike in time and was shot by the soldiers.

In this connection, we have been informed that since February 27, 2018, Myanmar Army soldiers have shot at villagers on at least 6 separate occasions, and have shelled civilian areas with mortar fire on at least 8 occasions. Information furthermore indicate that there have been increased military operations in order to construct an extended road between Ler Mu Plaw and Kay Pu in Hpapun District to connect the military bases of the Tatmadaw. Reportedly, nearly 2,500 people have been displaced by recent clashes.

Repeated attempts by family members and civil society organisations to retrieve the body of Mr. Saw O Moo have been unsuccessful. As a result of the ongoing shootings by Myanmar's military at passer-by in the area, Mr. Saw O Moo's family has been unable to perform their indigenous funeral rites. Mr. Saw O Moo's wife and 7 young children were forced to flee from Ler Mu Plaw on March 4, 2018 due to the attacks launched by Myanmar's military in Ler Mu Plaw. Mr. Saw O Moo however chose to remain at his home in Ler Mu Plaw reportedly to be with his community.

The KNLA are signatory to the Nationwide Ceasefire Agreement.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern regarding the alleged killing of Mr. Saw O Moo, by members of the Tatmadaw as well as the targeting of human rights defenders and indigenous rights activists for their peaceful human rights activities in Myanmar which appears to be prima facie violation of international human rights norms and standards including the right of every individual to life, security and not to be arbitrarily deprived of his or her life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR) and in violation of international humanitarian law. We are also deeply concerned over the renewed clashes between Myanmar's military and the KNLA following violations of the Nationwide Ceasefire Agreement, and alarmed by reports that civilians have been repeatedly shot at and hit with mortar fire in the area.

We would like to bring to your Excellency's attention article 3 of the Universal Declaration of Human Rights which guarantees the protection of the right to life without distinction or discrimination of any kind, and provides that all persons shall be guaranteed equal and effective access to remedies for the violation of that right. We note that the right to life is a non-derogable human right. Furthermore, the right not to be arbitrarily deprived of one's life is recognized as part of customary international law and

the general principles of law, and is also recognized as a *jus cogens* norm, a fundamental principle of international law that is universally binding at all times.

In this regard, we note that under human rights law use of lethal force is only permitted if it is required to protect life (making lethal force *proportionate*) and there is no other means, such as capture or nonlethal incapacitation, of preventing that threat to life (making lethal force *necessary*). The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimize the level of force used, regardless of the amount that would be proportionate, through for example, the use of warnings, restraint and capture. We further note that although these standards are sometimes referred to as the “law enforcement” model, they do not in fact apply only to police forces or in times of peace. The “law enforcement officials” who may use lethal force include all government officials who exercise police powers, including a State’s military and security forces, operating in contexts where violence exists, but falls short of the threshold for armed conflict” (A/HRC/14/24/Add.6)

In addition, without expressing a view on the applicability of international humanitarian law in Kayin State, obligations under international human rights law continue to apply in the context of armed conflict. We further note that should IHL be applicable, Common Article 3 of the Geneva Conventions requires that “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. This includes the prohibition of violence to life and person. Customary international humanitarian law moreover prohibits the “arbitrary deprivation of the right to life,” which also encompasses unlawful killing in the conduct of hostilities such as the killing of civilians not in the power of a party to the conflict not justified under the rules on the conduct of hostilities.

We also note that under customary international humanitarian law, attacks may only be directed against combatants (Rule 1 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). Within this context, Rule 15 under Customary International Law requires parties to the conflict during the conduct of military operations, should take constant care to spare the civilian population, civilians and civilian objects. Further, all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.” In addition effective advance warning of attacks which may affect the civilian population, must be given unless circumstances do not permit (Rule 20 of the Customary Rules).

In this case, we express serious concern that Mr. Saw O Moo appears to have been killed either intentionally or through excessive use of force, in particular that an ambush was set up, that it does not appear that resort to force was strictly necessary or that nonlethal options were considered or precautions taken to reduce the risk to his life. It does not appear that Mr. Saw O Moo was asked to stop his motorbike and no warning was given of the intention to use force.

We would also like to remind your Excellency's Government of the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. Moreover, according to principle 4 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, States have an obligation to investigate all allegations of prohibited murders of civilians committed by their armed forces or nationals. Where there is sufficient evidence of the commission of an offence, States have a duty to prosecute those responsible.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. In particular, we would like to recall article 7 of the UNDRIP which provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

We would also like to recall to Your Excellency's Government Articles 1, 2 and 12(2) of the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly on 9 December 1998 which ensure that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, and 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 present Declaration."

We urge your Excellency's Government to ensure the respect for human rights and fundamental freedoms in accordance with international human rights norms and under all circumstances.

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 ensure the above mentioned person 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on;
 - Whether any non-lethal options for stopping the motorbike considered and why these were not used.
 - any precautions taken to avoid the killing of Mr. Saw O Moo.
 - any warnings given. If warnings were not given please explain why.
3. Please provide information on measures taken by the Government to carry out an immediate, impartial, and transparent investigation into the killing of Mr. Saw O Moo.
3. Please provide further information on the findings of the aforementioned investigation should it already had been completed, and particularly if an individual or group were held accountable. If no investigations have been conducted please explain why.
4. Please provide information on if any individual or group was prosecuted, and the result of the prosecution should the investigation have been completed by your Excellency's Government.
5. Please kindly indicate what measures have been taken to ensure that human rights defenders and humanitarian workers in Myanmar are able to carry out their legitimate work in a safe and enabling environment without fear of safety and security.
6. Please provide information on the steps taken to ensure members of the Tatmadaw abide by international human rights and international humanitarian laws and standards. Please include information on the allegations that civilians have been repeatedly shot at in the area, and civilian areas hit with mortar fire and any steps taken to investigate these or similar alleged incidents.

While awaiting a reply, we urge that all necessary provisional measures be taken to halt the alleged violations and preclude their re-occurrence and, in the event that the investigations support or suggest the allegations to be correct, to guarantee 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.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michel Forst
Special Rapporteur on the situation of human rights defenders

Victoria Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples