

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 human rights of internally displaced persons and the Working Group on Enforced or Involuntary Disappearances

REFERENCE:
AL MMR 3/2018

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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 extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of internally displaced persons and Working Group on Enforced or Involuntary Disappearances, pursuant to Human Rights Council resolutions 34/22, 35/15, 32/11 and 36/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the arbitrary arrest, and deliberate and targeted extrajudicial killings of two internally displaced persons in Mansi township, Kachin State: **Hpaugan Yaw**, age 65, from Maing Hkawng KBC Camp 1, and **Nhkum Naw San (also known as Dauje Naw San Maing Hkawng)**, age 35, from the Catholic IDP Camp allegedly shortly after having been arrested by the Myanmar Army (Tatmadaw).

According to the information received:

The two IDPs were reportedly arrested around midday on 31 January 2018 near Hkat Pra village in Mansi Township while they were farming a field. Eyewitnesses saw them being taken from a shelter in the field by Myanmar Army soldiers wearing green military uniforms, some of whom reportedly had baskets and guns and wore short pants. Following the arrest, Hpaugan Yaw's and Nhkum Naw San's hands were tied behind their backs and they were forced to sit in the middle of around 30 soldiers. An eyewitness reportedly saw that Nhkum Naw San was wearing a Kachin Independence Army (KIA) uniform that looked new and his face was swollen, red and blue. Some of the soldiers took Nhkum Naw San to the nearby field shelter and returned with two handmade guns often used for hunting. When the soldiers brought Nhkum Naw San up the hill, a witness heard some of the other soldiers saying, "This guy is just a disturbance. We should kill him."

Villagers allegedly saw that soldiers were putting a KIA uniform on Hpaugan Yaw, and despite the fact that it did not fit him, the soldier tried to make the clothes fit. Five or six minutes later, the villagers heard a man shouting a word that Kachin people use when in pain, and heard two gun shots. The villagers did not hear anything else.

On 1 February 2018, Camp Committee leaders from the Maing Hkawng IDP camp met with military personnel, who did not give their names, at Battalion 602's headquarters in Maing Hkawng from the Myanmar Army Light Infantry Battalion 602 stationed in Maing Hkawng, Mansi Township in order to request permission to search for Hpaugan Yaw and Nhkum Naw San. The military personnel at the meeting reportedly refused to grant the permission, and instead blocked the road from the Maing Hkawng and Hkat Pra villages. Soldiers from Battalion 602 made an oral announcement in which they stated that residents of Maing Hkawng were not to leave their village or IDP camp, respectively, between the hours of 8pm and 6am.

On 4 February 2018, family members of Hpaugan Yaw and Nhkum Naw San's notified the Mansi Township police station that the two men were missing. The chief police officer Myo Thant told the Irrawaddy news outlet that the police "informed the authorities in other locations about the two missing persons" and Myo Thant oversaw posting of photographs of the two men in areas around Mansi Township. Between 12-19 February 2018, family members approached various authorities, including the Northern Commander who has command of Battalion 602, the State Chief Minister of Kachin State, Mr Chin Pe Lin, and a Member of Parliament, Lower House, from Mansi in order to seek support to discover the whereabouts of the two persons.

On the morning of 8 March 2018, 24 villagers, including men and women, and the families and friends of the missing persons, went to the forest to look for their missing relatives. They discovered a place with little grass where the soil was soft and flies were around. The villagers started digging and found human legs and clothes. They took photographs and returned to the village, where they informed the camp managers, village administrator and Mansi Township police.

Several villagers continued to guard the location where the bodies were found until authorities arrived on the afternoon of 9 March 2018. Allegedly, a post-mortem was conducted by a medical doctor, who observed on examination of the heads of the victims that they were shot in their mouths. According to the witnesses who were present there, the two bodies did not have visible injuries, however their brains and the backs of their skulls were reportedly missing. Pieces of bones from the back of the skulls were picked up by witnesses about three meters away from where the bodies were buried. The bodies were identified by eyewitnesses, including family members, as those of Hpaugan Yaw and Nhkum Naw San.

On 9 March, following the discovery of their bodies, family members of Hpaugan Yaw and Nhkum Naw San reportedly filed a complaint at Mansi Township Police Station, demanding an investigation into the killing of the two men. On 13 March, the Kachin State Government launched an investigation, questioning the families of the two men at Mansi Township General Administration Office as well as four eyewitnesses who saw Hpaugan Yaw and Nhkum Naw San in the custody of the

Myanmar Army. Reportedly, the State Government's investigation found that the eyewitness account of the killings was correct.

On 19 March, Myanmar Military Operations Command-20 Captain Kyaw Htun Aung reportedly filed a complaint at Mansi Township Police Station against a relative of one of the victims- under section 17(1) of the Unlawful Associations Act. The complaint alleges that the relative failed "to report to police and military, despite knowing that U Hpaugan Yaw and Dauje Naw San were KIA insurgents and having contact with an unlawful association", the KIA, and that Hpaugan Yaw, Nhkum Naw San, and two others described as "Kachin insurgents" opened fire on Myanmar Army Infantry Battalion 105 at around 1:45 p.m. on 31 January after the latter arrived to a site east of Hkat Pra village, Mansi Township. The complaint reportedly states that "The Tatmadaw unit returned fire at the insurgents and then proceeded to search the farm hut when they found a body, in green military fatigue, about 100 meters from the hut and another body in KIA uniform inside the hut..."

While we do not wish to prejudge the accuracy of these allegations, we express our serious concerns regarding the arbitrary arrest, detention and alleged deliberate and targeted killing of Hpaugan Yaw and Nhkum Naw San, after they were arrested by the Tatmadaw which appear to be prima facie violation of international human rights norms and standards. Concern is also expressed regarding the charges brought against a relative of one of the victims under the 1908 Unlawful Associations Act which is not in conformity with international standards. Further concern is expressed that the Tatmadaw allegedly was aware of the killing of the two individuals but concealed their fate and whereabouts for several weeks despite the individuals being reported missing.

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

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 concerning the legal grounds for the arrest and detention of abovementioned two individuals and explain how the arrest and detention of the aforementioned persons was compatible with international human rights norms and standards.
3. Please explain why permission to search for the IDPs after they were reported missing was denied and why information on the alleged killing was not provided by the Tatmadaw until several weeks later.

4. Please provide information on measures taken by the Government to carry out an immediate, impartial, and transparent investigation of the military personnel involved in the alleged arbitrary arrest and unlawful killing of the two IDPs. Please include information on the Kachin State Government's investigation and any other investigations conducted.
5. Please provide further information on the findings of the aforementioned investigation(s) should they already have been completed, and particularly if anyone was held accountable.
6. 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.
7. Please provide details of any national legislation, policies or programmes directly relevant to protection of persons facing internal displacement and kindly indicate what specific measures have been taken to ensure that individuals and specifically IDPs in Myanmar have access to a safe and enabling environment without fear of safety and security.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Cecilia Jimenez
Special Rapporteur on the human rights of internally displaced persons

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, 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. Furthermore, we remind that 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.

With regards to allegations that the two individuals were intentionally killed after having been arrested by members of the Tatmadaw, we highlight that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights.

We would also like to remind your Excellency of the obligations of your state to protect its civilians under Common Article 3 of the Geneva Convention relating to non-international armed conflicts, which provides 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 the violence to life and person, in particular murder of all kinds, taking of hostages, and outrages upon dignity. It is important to note that internally displaced persons are part of the civilian population and are thus entitled to the protections afforded to all persons who are not, or are no longer, taking a direct part in hostilities.

We would also like to recall to your Excellency that everyone should have the right to liberty and security and to be free from arbitrary arrest, detention, or exile, guaranteed by Articles 3 and 9 of the Universal Declaration of Human Rights.

We would like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practise, permit or tolerate enforced disappearances (Art 2(1)). Furthermore, victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation (art. 19).

We would also like to refer your Excellency's Government to the 1998 Guiding Principles on Internal Displacement, in particular Principle 3(1), according to which national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons (IDPs) within their jurisdiction, and Principle 10(1), and (2), which guarantee and protect the inherent right to life of

IDPs, and prohibit attacks or other acts of violence against IDPs who no longer participate in hostilities. IDPs shall be protected against murder, summary or arbitrary executions; and enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death. Principle 12(3) states that IDPs shall be protected from discriminatory arrest and detention as a result of their displacement.

Thus, the enforced disappearances and the subsequent killing of the two IDPs Hpaugan Yaw and Nhkum Naw San disregards these international obligations incumbent on your Excellency's Government.

Finally, 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.