

Mandates of 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.

REFERENCE:
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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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/22 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest, and deliberate and targeted torture of two victims in Polaung Police Station: **Khin Maung Latt**, 37 years old, and **Soe Myat Aung**, 26 years old, from Daungchaung village, Daniseik Tract, Labutta Township, Ayeyawady Region, Myanmar.

According to the information received:

At around 5.00 pm on 21 February 2018 nine officers from the Polaung Police Station, including the Station Commander, arrested Khin Maung Latt at his house at Daungchaung village on allegation of house breaking and stealing gold jewellery to the value of about 40 million Kyat (around USD 30,000) from the house of a local pawnbroker. Khin Maung Latt was taken to the police station and was not interrogated until 15 March 2018.

On 15 March 2018 at 9.00 pm, the Station Commander and other police officers allegedly began interrogating and torturing Khin Maung Latt together. Khin Maung Latt was handcuffed and attached to a rope tied to a sack filled with bricks, causing him to hang with his toes just off the ground for around 50 minutes while he was being interrogated. During the interrogation, Khin Maung Latt reportedly said he would admit to the crime as he could not bear the pain any longer. For fear of being tortured again, he admitted that he had an accomplice, Soe Myat Aung, despite denying it at first.

Around midnight on 15 March 2018, Soe Myat Aung was allegedly arrested at his house by the police from Daungchaung Village Section Head. He was reportedly handcuffed and hit on the cheek three times, then taken back to the Polaung Police Station at around 1 am on 16 March 2018, where he was tortured in the same manner for nearly four hours. The next morning handcuffs were removed and Soe Myat Aung was the police removed the handcuffs and forced Soe Myat Aung to

put his legs out straight and they rolled a length of bamboo along his shins. He was later handcuffed and tortured again, put in stocks for the night, and denied food and water during this time. Soe Myat Aung denied committing the crime.

Khin Maung Latt and Soe Myat Aung remained in detention on 17 and 18 March and were not interrogated during that time. On 19 March 2018, the police interrogated the two detainees again. At 9 pm the next day, Soe Myat Aung allegedly still refused to admit to the crime, and so was hit on the cheek with slippers while on the parade ground outside the station. Afterwards, Khin Maung Latt was put in stocks inside the station, handcuffed, and forced to lie backwards. His torture included having his body being pulled up with a rope over a beam held by bricks in a sack, and several of his body parts were burned with burning plastic, the naked flame of a candle, and candlewax was put on his genital area and along his thighs as far as his knees. A police officer also put a burning cheroot in his anus, and he was burned with cigarettes and cheroots. According to Khin Maung Latt, the police also took some diesel fuel from the generator, poured it onto his head and brought a lighter and started flicking it, but the flame did not catch. This continued torture continued up until about 12.30 pm. Khin Maung Latt then said that Soe Myat Aung had taken the stolen goods.

Around 1.00 am the same night, the officers came to Soe Myat Aung and told him that Khin Maung Latt had insisted he had taken the stolen goods. Because Soe had denied it at first, he was tortured in the same manner as Khin Myat Aung. As Soe could not bear the pain any longer, he said that he would admit to having taken the stolen goods, at which point the torture had stopped.

On the morning of 21 March 2018, seven police brought the two accused by boat to their village and took them to their houses to search for the stolen items but were unable to recover anything. While going into his house, Khin Maung Latt was able to inform his wife that they had been tortured to confess to the crime. His wife then called some other villagers and village Section Head for help, who took photographs of the injuries on his body. The police then reportedly took the two of them to Dahnunkyaw Village, located Soe Myat Aung's father, at the Buddhist Monestary. The father was reportedly forced to remove his traditional Monk robe and to dress in civilian clothes, and was then taken with the two victims back to the Polaung Police Station where he was also arrested.

At 5.00 pm that day, the police prepared the accused to go to the court. The police reportedly threatened the victims that if they did not confess as instructed, they would be injected with a lethal substance and would die within months. However, the two victims reportedly did not confess the crime.

It was reported that Soe Myat Aung escaped from custody on the night of 22 March 2018 and fled to the Daungchaung Monastery. On the morning of 23 March 2018, Soe Myat Aung was taken to the Labutta Mile 3 New Town Hospital, and had called the police station to have Khin Maung Latt also sent for treatment. However it was reported that the Station Commander together with other police officers involved in the case brought Khin Maung Latt to Laputta, but did not take him directly to the hospital. Instead, they took him to a guesthouse and kept him there for a night before bringing him to the hospital on the following day. The hospital records of both Khin Maung Latt and Soe Myat Aung indicated dozens of physical injuries such as bruising, burn marks, swelling, inability to move arms, and bleeding and pain in the anus.

The Myanmar Police Department has reportedly opened an internal inquiry into the incident due to the pressure of the local community in response to the torture.

Although it was reported that a commissioner from the Myanmar National Human Rights Commission also came with a team to “inquire” into the case, it is not immediately clear whether any action against the police officers has been recommended. Moreover, the police inquiry team allegedly submitted its findings to the police headquarters in April. The two men have themselves lodged a complaint to open a case against the accused police. The complaint has reportedly been accepted and a case lodged against seven police officers under sections 330 of Myanmar’s Penal Code, for voluntarily causing hurt, and 334/114 for wrongful confinement and abetting wrongful confinement.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concerns regarding the arbitrary arrest, detention and torture, cruel, inhuman and degrading treatment of the aforementioned individuals, which appear to be *prima facie* a violation of international human rights norms and standards.

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 **norm of international customary law and *jus cogens***, and as reflected *inter alia*, in **Article 5 of the Universal Declaration of Human Rights, Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156**.

In this context, we would also like to draw the attention of your Excellency’s Government to paragraph 1 of **General Assembly Resolution 68/156**, which “[c]ondemns 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”.

Moreover, the **Standard Minimum Rules for the Treatment of Prisoners** (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the “Mandela Rules”) provide *inter alia* in Rule 34 that “if, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority, and that “proper procedural safeguards 5 shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm”. We would also like to refer your Excellency’s Government to the Mandela Rules 58 and 61, concerning access to family and legal representation.

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**. The arbitrary detention and subsequent torture of Khin Maung Latt and Soe Myat Aung disregard of these standards by your Excellency’s Government.

We would also like to remind your Excellency’s Government of 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**, which states that in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Principle 20 also states that compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, which in this case is the physical and mental harm inflicted upon the individuals. We urge your Excellency’s Government to ensure the respect for human rights and fundamental freedoms in accordance with international human rights norms and standards 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 hold the individuals or group responsible for the detention and torture of Khin Maung Latt and Soe Myat Aung accountable 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 regarding the legal grounds for the arrest and detention of Khin Maung Latt and Soe Myat Aung and explain how the arrest and detention of these persons are compatible with international human rights norms and standards.
3. Please provide detailed information on the status of the investigation being conducted by the Police Department on the police officers involved in the alleged arbitrary arrest and torture of the two aforementioned individuals. If there are no progressions on the investigation or inquiry, please explain why.
4. Please provide further information on the officers that have been allegedly prosecuted, following the complaint made by the two victims and explain: (1) the offence that the officers are being investigated and charged with (2) the reasons why four of the nine officers were accused of these crimes were released from detention, (3) the anticipated process for the remaining 4 officers, (4) the process that would take to complete the investigation and (5) any outcome of the investigation and prosecution if the procedures have been completed.
5. Please provide information about any investigation being undertaken by the Myanmar's National Human Rights Commission
6. Please provide detailed information concerning the legal grounds for allegedly restricting the individuals access to their families during their detention and postponing their medical treatments, and explain how these measures are compatible with international human rights norms and standards.
7. Please provide additional information about procedural and substantive safeguards to prevent torture, inhuman and degrading treatment and punishment in police custody in Myanmar.
7. Please provide information on what steps have been taken to ensure that the detention conditions in Myanmar, including with regards to torture and ill-treatment of detainees, comply with all relevant international human rights standards.

8. Please provide details of any national legislation, policies or programmes directly relevant to protection of persons being detained, and kindly indicate what specific measures have been taken to ensure that individuals in Myanmar have access to a safe and enabling environment without fear of safety and security.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment