

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE:
UA MMR 7/2019

28 August 2019

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 torture and other cruel, inhuman or degrading treatment or punishment Working Group on Arbitrary Detention and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 40/29, 34/19, 33/30 and 35/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of **Naing Aung Htun, Kyaw Thu Soe, Maung Tun Sein**, and **Min Hlaing Soe** also known as Maung Phyu Daung in Rakhine State.

According to the information received:

On 8 August 2019, the Myanmar military rounded up all inhabitants of the village of Kyaukyan in Buthidaung Township, numbering around 100 people, as well as around 50 others from nearby villages who had fled their from fighting between the military and the Arakan Army (AA). Several people were arrested by the military on suspicion of being associates of the AA.

Those arrested included:

- a) Ba Tha Maung, father of primary school teacher Naing Aung Htun, , received information that his son was receiving medical treatment and went to visit him in hospital on 15 August 2019. They spoke for one hour in the presence of a police officer, and Ba Tha Maung reported that his son was beaten and received electric shocks several times by soldiers using an electric device while in the custody of the military. Naing Aung Htun then confessed to having ties with the AA. He was then transferred to the custody of the Border Guard Police. Ba Tha Maung says his son has sustained injuries to his face and was complaining of pains in his chest and back, headaches and being unable to chew. On 15 August 2019, he was taken from the civilian hospital to a military hospital before being returned to detention on 18 August 2019.
- b) Kyaw Thu Soe was arrested because he had a tattoo which the military suspected indicated that he was linked to the AA, according to his family.

However his family maintains it is an old tattoo that he got during a trip to Yangon when he was younger.

- c) Maung Tun Sein was visiting his mother-in-law in Kyaukyan to bring her buffalo as she is a buffalo breeder. He was arrested when he arrived there.
- d) Min Hlaing Soe also known as Maung Phyu Daung was in Kyaukyan as he was displaced from his village. When he was detained in Kyaukyan, the military took his phone and told him that if he wanted it back, he had to go and sign a document. He did, and then drank alcohol with the soldiers, who then arrested him.

On 13 August 2019, the four appeared in court in Buthidaung township and were charged under the Counter-Terrorism Law 2014 section 50(a) and remanded in custody. They are due in court again on 27 August 2019 and face up to ten years in prison. Naing Aung Htun was separately brought to court on 21 August and was additionally charged with section 52(a) of the Counter-Terrorism Law. He was held incommunicado until 22 August when his father was permitted to visit him in Buthidaung prison. While in detention, none of the men have been able to see a lawyer or their family (with the exception of Naing Aung Htun on 22 August).

Without expressing at this stage an opinion on the facts of the case and on whether the arrest and detention of the abovementioned individuals was arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We are gravely concerned about the allegations of torture and ill-treatment, and that Kyaw Thu Soe, Maung Tun Sein, and Min Hlaing Soe are being detained incommunicado. We note that Naing Aung Htun was held incommunicado for 13 days. We note that the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Principles) states that communication with the outside world, in particular family or a lawyer, shall not be denied for more than a matter of days (Principle 15). We note that under Principle 18, a detained person is entitled to communicate and consult with their lawyer, and under Principle 19, a detained person has the right to be visited by and correspond with members of their family. The UN Special Rapporteur on torture has stated that incommunicado detention may facilitate torture and other cruel, inhuman and degrading treatment and punishment. While Myanmar is not a state party to the Convention Against Torture or the International Covenant on Civil and Political Rights, the prohibition of torture and other ill-treatment is a rule of customary international law, binding on all states whether or not they are parties to particular treaties which contain the prohibition.

We note that under Principle 21:

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

We are seriously concerned about the use of incommunicado detention and that the detainees' right to a fair trial may not be upheld, in particular their right to have access to a lawyer. Additionally, Naing Aung Htun may not be receiving necessary medical treatment. We have received information about recent deaths in custody in Rakhine amid credible claims of torture and other cruel, inhuman and degrading treatment, and we are especially concerned about Naing Aung Htun's health and safety. We refer to the earlier communication (MMR 3.2019) made regarding the detention of 275 men and boys in Kyauk Tan village, Rathedaung during which fourteen men were shot in a commotion and six were killed and eight injured that day, after which two injured men died. We note that we have received information regarding at least seven other deaths in custody of men alleged to be associates of the AA in Rakhine State.

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.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual bases for the alleged arrests, incommunicado detention and charges against the above-mentioned individuals and explain how these arrests, detentions and charges conform to international human rights standards.

3. We note that Naing Aung Htun has reportedly been able to see his father, however please provide detailed information on steps taken for all the above-mentioned individuals to meet with both family members and legal representation while they are detained. If steps have not been taken, please explain why.
4. We note that the allegations indicate that none of the men detained have had access to a lawyer, please therefore provide information on how fair trial guarantees will be afforded to these detainees in line with international human rights standards. If no steps have been taken to provide these guarantees, please explain why.
5. Noting our concerns about the appropriateness of the conditions of detention, please provide detailed information on how the conditions of detention of all of the above-mentioned detainees meet international human rights standards, including the provision of adequate medical care where necessary. Please also provide specific information about the provisions that are in place to ensure that Naing Aung Htun received medical treatment that he needs. If no provisions are in place, please explain why.
6. Please provide information about any investigation you have undertaken regarding the allegations of inappropriate conditions of detention and lack of fair trial guarantees for the detainees. If no investigation has taken place, please explain why.
7. Please provide information on the measures taken to investigate the allegations of torture and ill treatment of Naing Aung Htun. If no investigation has taken place, please explain why.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions