

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA MMR 10/2019

10 October 2019

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 40/29, 33/30, 36/6, 35/15, 34/21, 34/6 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye, Shwe Hlaing Than and Aung Myo Win.**

According to the information received:

Since December 2018, there has been an armed conflict in Rakhine State between the Tatmadaw and the Arakan Army. Numerous individuals have been charged under the Counter-Terrorism Law 2014 in relation to allegedly supporting or being associates of the Arakan Army in 2019, which the Government has reportedly declared a terrorist organisation.

Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye and Shwe Hlaing Than were all members of the Arakanese Association in Singapore. During 2019, the Arakanese Association of Singapore held fundraising events to raise money to support people in need in Rakhine State. On 10 July, Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye and Shwe Hlaing Than were required to leave the country by the Government of Singapore. The Government of Singapore has said that their work permits were cancelled because they were trying to garner support for armed violence in Myanmar, and that they chose to return to Myanmar.

In the days after they returned to Myanmar, each of the men listed above was arrested. Aung Myo Win, a Rakhine man who had returned to Myanmar from

Thailand one year ago, was also arrested in Yangon at that time. These eight Rakhine men were arrested and detained incommunicado for nearly one month during which time their fate and whereabouts were unknown. They were charged and are now being tried under section 50 of the Counter-Terrorism Law 2014.

On 9 August 2019, the Chair of the Myanmar Central Committee Task Force Senior Lieutenant General Kyaw Swe filed an order at the Mayamgone Police Station under the Counter-Terrorism Law 2014. That order noted that Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye, Shwe Hlaing Than and Aung Myo Win had been arrested under sections 50(c) and 52(a) of that Law.

The order also says that 165 other people are fugitives and wanted by police in relation to section 50(c) of that Law. The order then lists the names of those 165 men and women and seeks their arrest. All people listed on the order for arrest are members of the Rakhine minority, and the majority of them currently live in Singapore.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the people listed on the order have been targeted due to their belonging to the Rakhine minority, as opposed to alleged criminal acts as individuals. We are therefore concerned that if any of the people listed as being wanted by police is arrested, it would be arbitrary. We are also concerned by allegations that the fate and whereabouts of Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye, Shwe Hlaing Than and Aung Myo Win were not known for nearly one month after their return.

We bring your Excellency's Government attention to the "principle of legal certainty" under international law which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted in her report the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para.34). We note the exceptionally wide definition of terrorism contained in the 2014 Counter-Terrorism law including but not limited to damage to variously listed state property, engaging in 'unlawful acts' and environmental damage. The abovementioned report also underscores that the use of counter-terrorism law to quell legitimate activities are protected by international law is inconsistent with the State's human rights obligations.

We further remind your Excellency's Government that the United Nations Declaration on the Protection of All Persons from Enforced Disappearances states that no State shall practice, permit or tolerate enforced disappearances (article 2) and that accurate information on detention persons and their place or places of detention,

including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (article 10 (2)).

The full texts of relevant human rights instruments and standards 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 person(s) 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 about the above allegations.
2. Has the Arakan Army been designated a terrorist organisation under the Counter-Terrorism Law 2014? If so, please provide information about the process that was followed and any public notification that was made.
3. Please provide the factual and legal basis of the charges against Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye, Shwe Hlaing Than and Aung Myo Win and what is being done to guarantee their right to a fair trial.
4. Please provide information on whether Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye, Shwe Hlaing Than and Aung Myo Win had access to a lawyer and also why their location was unknown for nearly a month.
5. Please provide the factual and legal basis for each of the other 165 individuals whose arrest is sought in the order under the Counter-Terrorism Law, and how this is compatible with international human rights standards.
6. Please provide information about how fair trials would be guaranteed for the other 165 people whose arrest is sought in the order.
7. Please provide information on the legislation and policies in place to ensure accurate information on the detention of an individual and their place or places of detention, including transfers, is made promptly available to their family members and their counsel in all cases.
8. Please provide information on why charges related to terrorist acts, raising funds for terrorist acts, conspiracy, recruitment for terrorist acts, being a

member of a terrorist organisation, offences relating to membership of a terrorist organisation, and offences relating to raising funds for a terrorist organisation have been levied against Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye, Shwe Hlaing Than and Aung Myo Win and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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.

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.

We would like to inform your Excellency's Government that a similar letter will be transmitted to the Government of Singapore.

Please accept, Excellency, the assurances of our highest consideration.

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

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

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fernand de Vareennes
Special Rapporteur on minority issues

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism