

Mandates of 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; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE:
UA SGP 4/2019

10 October 2019

Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment., pursuant to Human Rights Council resolutions 33/30, 36/6, 35/15, 34/21, 34/6, 40/16 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 case of seven members of the Rakhine minority of Myanmar, Messrs **Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye and Shwe Hlaing Than**, who were returned from Singapore to Myanmar and then arrested upon their return, forcibly disappeared for nearly one month, and charged with terrorism offences, as well as the case of Rakhine men and women who currently live in Singapore and who reportedly also face arrest if returned to Myanmar.

According to the information received:

Since December 2018, there has been an armed conflict in Rakhine State in Myanmar between the Myanmar military and the Arakan Army, a non-state armed group of ethnic Rakhine individuals. Numerous ethnic Rakhine individuals have been charged under the Counter-Terrorism Law 2014 in relation to allegedly supporting or being associates of the Arakan Army, which the Myanmar Government has reportedly declared a terrorist organisation. Several of those individuals have been detained incommunicado and there have been a number of deaths in custody following allegations of torture. The armed conflict has had a significant negative impact on civilians, with up to 65,000 people having been displaced from their homes, as well as civilians being injured and wounded as a result of the fighting.

During 2019, the Arakanese Association of Singapore held fundraising events to raise money to support people in need in Rakhine State. Messrs Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye and Shwe Hlaing Than were members of the Arakanese Association of Singapore. On 10 July, each of those men were required to leave Singapore by the Government. The Government of Singapore has said that their work permits were cancelled because they were trying to get support for armed violence in Myanmar, and that they chose to return to Myanmar. In the days after their arrival in Myanmar, the men were arrested and detained incommunicado for nearly one month during which time their fate and whereabouts were unknown. They have been charged and are now being tried under section 50 of the Counter-Terrorism Law 2014. They now have legal representation for their trial and their families are able to visit them.

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 eight men had been arrested under sections 50(c) and 52(a) of that Law, including the seven men returned from Singapore to Myanmar in July.

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 at the absence of information concerning the basis and the procedure followed for the return from Singapore to Myanmar of Messrs Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye and Shwe Hlaing Than. We also wish to express our serious concerns over allegations that upon their return to Myanmar, these individuals were forcibly disappeared for nearly one month and whether they are receiving a fair trial. There is a serious risk of incommunicado detention and torture if any of the Rakhine men and women whose names appear on the Myanmar arrest order that are currently living in Singapore were to be returned to Myanmar.

We wish to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly which urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

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 expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

Although Singapore is not a party to the International Covenant on Civil and Political Rights, we wish to refer to the Human Rights Committee's General Comment No. 15 (11 April 1986) on the position of aliens under the Covenant. In its interpretation of article 13 of ICCPR, the Committee states that national law concerning the requirement for entry and stay must be taken into account in determining the scope of protection under article 13. However, "if the legality of an alien's entry or stay is in dispute, any decision on this point leading to [the alien's] expulsion or deportation ought to be taken in accordance with article 13", by observing also requirements such as equality before the law, enshrined in article 26 of the Covenant.

We would also like to remind your Excellency's Government that principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions establishes that no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country. As party to the ASEAN Charter, we wish to recall your Excellency's Government commitment, under article 2(2)(i), to act with "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice".

Finally, we wish to recall the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

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 law.

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. Please provide information on the factual and legal grounds for the Government's decision requesting Messrs Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye and Shwe Hlaing Than to leave Singapore.
3. Please indicate the procedures followed for the return to Myanmar of Messrs Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye and Shwe Hlaing Than, and whether such procedures are compatible with Singapore's obligations under international human rights law, and in particular with regard to the principle of non-refoulement.
4. Please provide updated information on the existing national legal and policy framework ensuring the respect of the principle of non-refoulement for all persons at risk of irreparable harm, including persecution, torture, ill-treatment, enforced disappearance and other serious human rights violations.
5. Please provide information on any request for extradition addressed to your Excellency's Government concerning any members of the Rakhine minority currently living in Singapore. If such a request has been submitted, please indicate how it will be handled by your Excellency's Government.

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.

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 Myanmar.

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

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 Varennes
Special Rapporteur on minority issues

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

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