

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues and the Special Rapporteur on the situation of human rights in Myanmar**

REFERENCE:  
AL MMR 17/2020

27 November 2020

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues and Special Rapporteur on the situation of human rights in Myanmar, pursuant to Human Rights Council resolutions 42/22, 37/12, 43/4, 43/16, 43/8 and 43/26.

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 detention of an environmental rights defender in Chin State, Myanmar**.

Mr. **Gei Om** is an environmental rights defender from Mindat Township, Chin State. He works to promote environmental protection in Chin State and is a member of the Myanmar Alliance for Transparency and Accountability (MATA), a network of over 400 civil society organizations and individuals who advocate for transparency and accountability in regard to the exploitation of natural resources. Mr. Gei Om is also a member of the Chin Aung Ta Man, a youth organization of the Chin minority, the Chin Chin Civil Society Network, and the Man Eain Working Committee, a community based organization.

According to the information received:

*Concerning Mr. Gei Om*

Since 2015, Mr. Gei Om had assisted local community leaders in Chin State, Myanmar in monitoring the impact of a model farm project designed by the Management Committee of Mindat Township, to harvest oil seed plants. Through their monitoring work, the group reported that the local government body responsible for the farms had engaged in illegal logging, which had caused environmental damage to the Natma Taung National Park (NTNP), a UNESCO World Heritage site. Mr. Gei Om and the community leaders involved had complained about the reported damage to the relative government body in Mindat Township, but had received no response.

On 1 June 2020, having received no response to their complaints, Mr. Gei Om and the community leaders filed a complaint with the Environmental Conservation Department (ECD) of the Ministry of Natural Resource and Environmental Conservation (MONREC), demanding that the Forest

Department of Mindat Township carry out an investigation into the environmental damage caused by the model farms.

Following this formal complaint, Mr. Gei Om and two of the community leaders attended a meeting with officials from the Forest Department, to discuss the matter. Mr. Gei Om acted as a negotiator and translator from Chin to Burmese and vice versa for the community leaders. He advised the two leaders not to sign a document put forward/proposed by the officials, which claimed that an investigation into the environmental damage had been conducted and concluded there was no wrongdoing.

On 13 July 2020, reportedly in follow-up to this meeting, an official from the Ohn Village Tract sent a complaint letter to the Mindat Township authorities, alleging that Mr. Gei Om had spread false news throughout minority Chin villages about illicit activities, that he had been involved in an illegal land dispute settlement in 2016, and that he had unlawfully been collecting taxes from villagers.

The accusation regarding the illegal land dispute is reportedly in reference to Mr. Gei Om's involvement in a land dispute in 2015-16, which was authorized to be resolved through the Chin traditional dispute mechanism by an official from the township's General Administration Department (GAD). The dispute, regarding the relocation of a village following a landslide in 2015, was reportedly authorized to be resolved via this mechanism, as the area of land in question did fall within the remit of the township's land management committee. According to Chin custom, Mr. Gei Om was one of two appointed "Aungtaman" – Chin community negotiators – to settle the dispute. The two "Aungtaman" allegedly settled the dispute according to Chin customs and submitted their decision to the authorities for enforcement. Following the settlement, Mr. Gei Om had no further involvement with the land in question.

According to information received, the allegation that Mr. Gei Om collected taxes from villages in Chin State is supposedly linked to his role in the land dispute in 2015-16, however the basis for this allegation is not known. Mr. Gei Om reportedly did not accept any form of compensation for his role as Aungtaman in the land dispute, as according to Chin custom, the individual appointed Aungtaman must be highly respected amongst the community and not receive any form of compensation to preclude bias.

On 24 July 2020, Mr. Gei Om was allegedly arbitrarily detained in response to the letter of complaint filed against him on 13 July 2020, and placed in police custody in the jail in Mindat Town. No arrest warrant was presented by police at the time of the arrest. Mr. Gei Om reportedly did not have access to his family upon being detained, and since being detained, his family have been unable to visit him in detention due to COVID-19 restrictions. In August, Mr. Gei Om underwent surgery for appendicitis whilst in police custody.

On 7 August 2020, the Deputy Police Chief charged Mr. Gei Om with inciting conflict under Section 5 (1) (F) (G) of the Restriction of Movement and Probation of Habitual Offenders Act of 1961, for his participation in the land dispute settlement in 2016. The dispute resolution mechanism, which is legally

recognised under the National Land Use Policy, was retroactively deemed by the authorities to be illegal and therefore Mr. Gei Om's involvement allegedly amounted to inciting conflict. Mr. Gei Om was also accused of instigating conflict amongst ethnic tribes, for claiming that the land belonged to one tribe over another, which allegedly caused discord between tribes. His involvement with the Maninn Tribe Association as supposed evidence of Mr. Gei Om's intent to inflame ethnic tension.

After the charges were brought against Mr. Gei Om, he was reportedly offered conditional release, provided that he did not leave Mindat Township and reported to the police on a bi-monthly basis from six months to one year. Mr. Gei Om refused this conditional release offer.

On 20 August 2020, Mr. Gei Om appeared before a court in Mindat town in Mindat Township for trial, which was also the first time that he met his lawyer since being detained in July. The lawyer submitted a bail application for Mr. Gei Om, citing medical reasons given his recent appendicitis operation. Despite the provision of medical records, and highlighting legal provisions of the criminal procedure law which state that bail may be granted on medical grounds at the judge's discretion, the judge denied the bail application.

On 7 September 2020, the second hearing took place, during which the complainant brought a witness testimony. The witness described the land dispute in 2016 and confirmed Mr. Gei Om's involvement in the land dispute settlement.

The next hearing, due to take place two weeks later, was postponed due to COVID-19 measures and travel restrictions. Since then, Mr. Gei Om's lawyer has persistently inquired about the date of the rescheduled trial, however the judge presiding over the case has routinely postponed the trial every two weeks. Mr. Gei Om remains in pre-trial detention, despite the fact that if convicted, the charge against him does not carry a prison sentence. If found guilty, Mr. Gei Om's movement would be restricted for a year, and he would only then face imprisonment if such restrictions were violated.

One of the community leaders who was involved in the land dispute, went into hiding following the arrest of Mr. Gei Om, for fear for his safety.

Without prejudging the accuracy of the allegations, we wish to express our concern with regard to the alleged arbitrary detention of Mr. Gei Om and the charges against him, which appear to be in retaliation for his efforts to advocate against the environmental damage to Natma Taung National Park and expose the irregularities of the government authority responsible for overseeing the project. An issue of particular concern is the basis for the charge of "inciting conflict", which relies upon his participation in a land dispute in 2016 that was authorised by the local land authority at the time and is a respected land dispute resolution mechanism in traditional minority Chin customs.

We wish to express our serious concern with regard to the apparent retroactive criminalisation of the traditional land dispute resolution mechanism used in the land dispute, in which Mr. Gei Om participated in, on the alleged basis that the relevant

mechanism is deemed illegal by the authorities, despite its legal recognition under the National Land Use Policy and authorisation at the time of the dispute. More troubling still is the apparent targeting and criminalisation of Mr. Gei Om specifically for his involvement in a dispute using the mechanism, four years after the fact and without precedent.

Furthermore, we are also concerned with the use of the Restriction of Movement and Probation of Habitual Offenders Act of 1961 against Mr. Gei Om, which has historically been used by the military to silence dissidents, and has rarely been invoked since the 1990s. We also wish to express our concern regarding the pre-trial detention of Mr. Gei Om and the lack of access to his lawyer and family, particularly considering that the charge against him does not carry an imprisonment sentence, if he was convicted. Therefore, his refusal of the conditional release offer does not warrant being held in pre-trial detention for more than three months, also given that the date for his trial is unclear due to postponements in response to the COVID-19 pandemic.

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 on the factual and legal basis for the arrest of the human rights defender Mr. Gei Om, and the reasons for the pre-trial detention of the defender and the charges against him as well as how his right to legal assistance is being respected
3. Please indicate what measures have been taken to ensure that human rights defenders in Myanmar are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this deadline, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that having transmitted an allegation letter 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 communications in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Karima Bennoune  
Special Rapporteur in the field of cultural rights

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Mary Lawlor  
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Fernand de Varennes  
Special Rapporteur on minority issues

Thomas Andrews  
Special Rapporteur on the situation of human rights in Myanmar

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, and while we do not wish to prejudice the accuracy of these allegations, we would like to refer to your Excellency's Government to the international norms and standards applicable to the case.

Many of the provisions in the Universal Declaration of Human Rights are reflective of customary international law, binding on Myanmar. The right to freedom of opinion and expression, the right to freedom of association, the prohibition of retroactive criminal laws (*nulla poena sine lege*) and the prohibition of arbitrary detention, enshrined in articles 9, 11 (2), 19, and 20, are such provisions.

Furthermore, we also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions, including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. As highlighted by the United Nations General Assembly and the United Nations Human Rights Council, human rights apply equally online and offline (UNGA Resolution 68/167 (18 December 2013), HRC Resolution 26/13 A/HRC/RES/26/13 (June 26, 2014)). As such, any restriction on the exercise of freedom of expression online has to meet three requirements in order to be justified. First, it must pursue a legitimate aim. Second, it must be in accordance with the law. That is, the law, to comply with the requirement, must be sufficiently precise so as to enable an individual to regulate his or her conduct accordingly, and it must be made accessible to the public. Lastly, the measure must be necessary and proportionate. The necessity requirement means that the State must demonstrate the precise nature of the threat justifying the restriction. The requirement of proportionality entails that the restriction is the least restrictive means among the alternatives, and that the restriction is proportionate to its protective function and the legitimate aim pursued. Even if a restriction complies with these requirements, it can nonetheless be unlawful if it is discriminatory, see e.g. UDI-IR Article I on the principle of equality. The State cannot, for example, implement restrictive measures that are discriminatory against ethnic minorities.

We would like to remind your Excellency's Government of its obligations with respect to the right not to be deprived arbitrarily of one's liberty and to fair proceedings before an independent and impartial tribunal, the right to be treated with humanity and respect for the inherent dignity of the human person.

We call to the attention of your Excellency's Government the international standards regarding the right to liberty and security of all persons, the right not to be subjected to arbitrary arrest or detention, and the right to freedom of expression, enshrined in articles 3, 9 of the Universal Declaration on Human Rights (UDHR). We wish to remind your Excellency's Government that article 3 of the UDHR guarantees the right to liberty of person. We would also like to remind your Excellency's Government that article 9 of the UDHR guarantees the right of everyone not to be subjected to arbitrary arrest, detention or exile. Furthermore, we also refer your Excellency's Government to article 19 of the UDHR, which provides that "everyone

has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information through any media and regardless of frontiers.” In addition, we would like to recall that a deprivation of liberty may be arbitrary when it results from the peaceful exercise of these protected rights or freedoms, as guaranteed by articles 3,9 and 19 of the UDHR. These rights are of universal nature and apply to everyone.

We also wish to refer your Excellency’s government to the Annual Report of the Working Group on Arbitrary Detention, [A/HRC/45/16](#), which highlights that legal assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees.

The freedom of expression is crucial for the enjoyment of other human rights, and to ensure accountability (General Comment no. 34 paras. 2 – 3). The criminalisation of individuals for exercising their right to freedom of expression is incompatible with the Covenant (*id.* para. 23).

We would like to bring to your Excellency’s Government’s attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the 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 and in full equality before the law (article 4).

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

-article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;

-article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

-and article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats,

retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

The Special Rapporteur in the field of cultural rights in a report to the General Assembly regarding cultural heritage recommended that states “Respect the rights of cultural heritage professionals and other defenders of cultural heritage”... and “In accordance with Human Rights Council resolution 31/32 on protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights, respect, protect, promote and facilitate the work of those defending cultural rights, recognizing that those who work to promote access to cultural heritage, and to preserve and safeguard it, in accordance with international human rights norms, should be considered human rights defenders.” (A/71/317), para. 78(k) and (l).