

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 and the Special Rapporteur on extrajudicial, summary or arbitrary executions

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; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/26, 42/22, 45/3 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **enforced disappearance, arbitrary detention and ill-treatment of [REDACTED]** (aged 17) and **his father, Mr. Serajul Mustafa, and the subsequent death while in custody of Mr. Mustafa**. These two persons were detained in connection to operations launched by security forces in Tha Ey Oke, Gwa Son, and Nga Khu Yar villages in Rakhine State in September and October 2020.

According to information received:

On 5 September 2020, two Border Guard Police (BGP) officers went missing in Tha Yet Oke village, Maungdaw. The body of one of the BGP officers was later found with stab wounds, while the other officer is believed to still be missing.

On 6 September 2020, in response to these incidents, security forces carried out a series of detentions in Tha Ey Oke village and Gwa Son village of Rakhine State. While some detainees were released a week later, others were transferred to Maungdaw town. 17-year-old [REDACTED] was one of those detained and transferred to Maungdaw town.

Additionally, on 9 October 2020, one of the detainees, Mr. Serajul Mustata, who was the father of Mr. [REDACTED] (aged 17), was detained in Nga Khu Yar village and transferred to Maungdaw town where he died shortly after whilst in custody. The circumstances of his death are unclear. Mr. Mustafa's 17-year-old son is currently awaiting trial along with other adult detainees.

It is further reported that no information on the fate or whereabouts of [REDACTED] and Mr. Serajul Mustata, was made available to their relatives, since their detention on 5 and 6 September, and until 6 October 2020.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern about the physical and psychological integrity of

Mr. [REDACTED], members of his family and his acquaintances. Similarly, we are deeply alarmed by the lack of information available regarding the conditions that led to the death of his father, Mr. Serajul Mustafa, while being held in police custody. When an individual dies while in states custody, there is a presumption of responsibility and there is also obligation to conduct a thorough, prompt and impartial investigation into the death, arising under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and Human Rights Resolution 8/3.

We would like to refer to articles 9 and 10 of the Universal Declaration on Human Rights which prohibits in absolute terms arbitrary arrest and guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. In this context, we would also like refer to relevant provisions of the United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court. More specifically, Principles 7 and 10 refer to the right to be informed of the reasons justifying the deprivation of liberty as well as the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of the deprivation of liberty.

Under international humanitarian and human rights law, the detention of juvenile persons is to be considered only as a measure of last resort, and authorities are required to seek all measures to apply alternatives to detention. In this regard, we would like to recall United Nations Convention on the Rights of the Child, acceded to by Myanmar on 15 Jul 1991. In particular, article 37(b) provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Furthermore, article 40 (b) provides the following guarantees: (i) be presumed innocent until proven guilty according to law; (ii) o be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; (iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law.

It has been well established that the detention of children can inflict serious emotional trauma, resulting in physical and psychological harm, and has long-lasting and irreversible negative consequences for their psychosocial development and well-being. According to the information we have received, authorities are preparing to try [REDACTED] as an adult, notwithstanding the fact that he is only 17-years-old and therefore a minor.

Additionally, detaining individuals without permitting access to counsel or legal recourse, and withholding information of their whereabouts constitutes a form of incommunicado detention, a violation of their right to liberty and security of the person, and their fundamental right to a fair trial and judicial safeguards. Moreover, where an individual is detained by government officials and the deprivation of liberty is not

acknowledged by the authorities, this may also constitute an enforced disappearance. Fears as to the physical and mental well-being of individuals and the possibility of torture and other cruel, inhuman and degrading treatment or punishment are heightened in situations where detainees are held in situations of incommunicado detention.

Furthermore, loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a thorough, prompt and impartial investigation which establishes the State's compliance with the right to life as guaranteed under article 3 of the Universal Declaration of Human Rights. The right to life constitutes a jus cogens norm that is universally binding at all times.

Finally, in relation to the allegations according to which the fate and whereabouts of [REDACTED] and Mr. Serajul Mustata were unknown for a month, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, which sets out the necessary protection by the State, in particular article 10 (2), which provides that accurate information on the detention of persons deprived of liberty 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 unless a wish to the contrary has been manifested by the persons concerned.

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 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, I 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, including details regarding the factual and legal basis for the detention of Mr. [REDACTED] and his father, Mr. Serajul Mustafa.
2. Please provide information about the alleged death in custody of Mr. Serajul Mustafa, the conditions that led to his passing, whether any independent investigations have been carried out in connection to his death, the results of the investigations and, if his death was from unnatural causes, whether any perpetrators have been identified and brought to justice.
3. Please provide information how the detention of Mr. [REDACTED] along with other adult detainees, and that of Mr. Serajul Mustafa, is

consistent with international humanitarian and human rights law, including the standards laid out in the UN Rules for the Protection of Juveniles Deprived of their Liberty, the Standard Minimum Rules for the Treatment of Prisoners and United Nations Convention on the Rights of the Child.

4. Please indicate what measures have been taken to ensure that the human rights of persons living in conflict affected areas in Rakhine state are being protected, including their rights to liberty and security of the person.

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 would like to inform your Excellency's Government that 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 communications in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure

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.

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

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

Tae-Ung Baik
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