

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights in Myanmar

Ref.: AL OTH 112/2024
(Please use this reference in your reply)

5 August 2024

Mr. Min Aung Hlaing,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights in Myanmar, pursuant to Human Rights Council resolutions 52/4, 54/14, 52/9 and 55/20.

In this connection, we would like to bring to your attention information we have received concerning the **alleged arbitrary deprivation of liberty, followed by acts tantamount to enforced disappearance of human rights defender and village tract leader Saw Doh Kyaw by soldiers of the State Administration Council (SAC)**.

Mr. **Saw Doh Kyaw** is a human rights defender and village tract leader. As part of this role and to guarantee the safety of villagers, he negotiated with armed actors to deter fighting, reduce human rights violations against communities and helped villagers to develop resiliency strategies. Since the military coup on 1 February 2021, Mr. Saw Doh Kyaw facilitated the relocation of individuals involved in the Civil Disobedience Movement (CDM) and assisted in the humanitarian response for internally displaced people.

According to information received:

In December 2021, in the context of the increased intensity of fighting between the State Administration Council (SAC) and the anti-military armed groups, Mr. Saw Doh Kyaw negotiated the release of fighters from the Karen National Liberation Army (KNLA) who had been detained by the Light Infantry Battalion (LIB) #603. The soldiers were reportedly not detained during armed confrontation. He personally negotiated with the Commander of the LIB #603, [REDACTED], who was reportedly planning to execute the KNLA fighters. Mr. Saw Doh Kyaw first attempted the negotiation in a public meeting with [REDACTED] but was refused. Following this, he contacted the Operation Commander, who reportedly ordered [REDACTED] to release the KNLA fighters. In response [REDACTED] reportedly attempted to retaliate against Mr. Saw Doh Kyaw and began searching for him, forcing him to flee to safety. Subsequently, the SAC reportedly issued an arrest warrant for Mr. Saw Doh Kyaw and his alleged support of armed resistance groups.

Tatmadaw (Armed forces of Myanmar)

On 2 February 2023, Mr. Saw Doh Kyaw was travelling to Leik Tho Town, Daw Hpa Hkoh Township in Taw Oo District when he was allegedly arbitrarily arrested by SAC soldiers from the LIB #603 at 'Za Lel' checkpoint near Leik Tho Town. When Mr. Saw Doh Kyaw saw the soldiers on the road ahead, he was able to briefly contact his family by phone to inform them but was unable to tell them of the purported reason for his arrest. This was the last contact that Mr. Saw Doh Kyaw had with his family.

On 21 February 2023, SAC soldiers went to Mr. Saw Doh Kyaw's home in Thandaung Myo Thit town, Taw Oo District in search of his family, who were not there at the time. The soldiers reportedly took from the house a mobile phone, a laptop and a family photo hanging on the wall, before setting the house on fire. Before leaving, the soldiers reportedly placed explosive devices in the kitchen area and at the front of the house as a booby-trap. They reportedly showed the photo they had taken from the house to other villagers in the area, asking them if they knew their whereabouts. Following this, Mr. Saw Doh Kyaw's family had to flee from their home in search of safety.

Mr. Saw Doh Kyaw's family reported his enforced disappearance to the Karen National Union (KNU) authorities seeking assistance in searching for him. The KNU reportedly tried to mediate with SAC intelligence to gather information about his whereabouts, but to no avail.

At the time of the present communication, Mr. Saw Doh's Kyaw's fate and whereabouts remain unknown.

The disappearance of Mr. Saw Doh Kyaw has reportedly impacted the health and well-being of his family, with some family members unable to work due to illness and requiring medical care, as well as the family's livelihood.

Without prejudging the accuracy of the information received, we wish to express our grave concern in relation to the alleged arbitrary deprivation of liberty, followed by acts tantamount to enforced disappearance of human rights defender Mr. Saw Doh Kyaw, in apparent connection with his efforts to mitigate and prevent human rights violations committed by SAC soldiers in his village and the wider area, and protect villagers from such violations. We are concerned by the lack of information regarding the factual and legal basis for his detention and ongoing deprivation of liberty. The reported outright and consistent failure by the SAC to ensure due process, provide accurate information to his family after his deprivation of liberty regarding his well-being, whereabouts and conditions of deprivation of liberty, are constitutive of gross human rights violations under international law. As a result, the fact that Mr. Saw Doh Kyaw's family members were not only denied this right but were then themselves reportedly pursued by the SAC is further cause for serious concern.

We reiterate that the concealment of the fate and whereabouts of the disappeared persons, as well as the failure or refusal to adequately acknowledge a deprivation of liberty are constitutive of acts tantamount to enforced disappearance, regardless of the duration of the deprivation of liberty or concealment concerned. When persons deprived of liberty are not adequately acknowledged, their rights are placed in a legal limbo, a situation of total defencelessness. Acts tantamount to enforced disappearance put the detainee outside of the protection of the law, deny the

person's legal existence and prevent the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms. In this sense, we reiterate that the prohibition of enforced disappearance is a peremptory norm of *jus cogens* and applicable *erga omnes*, in accordance with conventional and customary international law.

We also wish to express our concern in response to the reported raid on Mr. Saw Doh Kyaw's home by SAC soldiers, the damage caused and the items confiscated, forcing Mr. Saw Doh Kyaw's family to flee in search of safety and for fear of arbitrary arrest. In this connection, we are appealing to the *de facto* authorities to ensure the right to life, liberty and security of person, the prohibition of slavery or servitude, torture or cruel, inhuman or degrading treatment or punishment, and the right not to be subjected to arbitrary detention, and the absolute prohibition of enforced disappearance enshrined in arts. 3, 4, 5, and 9 of the Universal Declaration on Human Rights (UDHR).

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 detailed information on the fate and whereabouts of Mr. Saw Doh Kyaw, as well as on his state of health.
3. Please provide information as to the factual and legal grounds for the deprivation of liberty of Mr. Saw Doh Kyaw.
4. Please provide information as to the factual and legal grounds for the arrest warrant reportedly issued against Mr. Saw Doh Kyaw in 2021.
5. Please indicate whether Mr. Saw Doh Kyaw or his family were informed about the reason for the deprivation of his liberty, and whether accurate information regarding his fate, whereabouts and well-being was immediately provided to his family.
6. Please provide information on the measures taken to effectively remove any undue restrictions to the free communication of Mr. Saw Doh Kyaw with his family, legal representatives and persons with a legitimate interest, whether in writing or over the phone.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received 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.

We would also like to inform your Excellency's Government that given the allegations of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit this case through its humanitarian procedure. The Government is required to respond separately for the present communication and the humanitarian procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of Mr. Saw Doh Kyaw, to halt the alleged violations and prevent their re-occurrence in the future.

We may publicly express our concerns in the near future as, in our view, the information upon which the statement and/or press release will be based is sufficiently reliable to indicate a matter warranting immediate attention.

Please accept the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

In this regard, we would like to refer to the general provisions of the Universal Declaration on Human Rights, read alone and in conjunction with the right to non-discrimination (article 2), particularly the right to be recognized as a legal person (article 6), the right to an effective remedy (article 8), the prohibition of arbitrary detention (article 9), the right of everyone not to be subjected to arbitrary interference with his or her privacy, family, home or correspondence (article 12) and the right to freedom of opinion and expression (article 19).

We would also like to emphasize that the prohibition of enforced disappearances and the corresponding obligation to investigate has attained the status of *jus cogens* under international law. In addition, we recall that, under certain circumstances, acts tantamount to enforced disappearance perpetrated by non-State actors in the context of a widespread or systematic attack against any civilian population may amount to crimes against humanity.

Moreover, the guiding principles for the Search for Disappeared Persons of the Committee on Enforced Disappearances stipulate that the search for the disappeared should respect human dignity (principle 2), be considered as a continuing obligation (principle 7) and be conducted on the basis of a comprehensive strategy (principle 8). The guiding principles further establish that the search should be carried out safely (principle 14) and be independent and impartial (principle 15).

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 article 6 paragraph (b), which guarantees the right to freely publish, impart or disseminate views, information and knowledge on human rights and fundamental freedoms; and article 6 paragraph (c), which guarantees the right to study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and to draw attention to these matters. We would also like to make explicit reference to article 9 of the Declaration, and its third clause in particular, which in its paragraph (c) states that everyone has the right, individually and in association with others, to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. Finally, we would like to reference article 11 of the Declaration, which states that everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession.