

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on minority issues; the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA  
MMR 3/2016

5 October 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar, Special Rapporteur on minority issues; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 28/23, 25/5, 24/7, 26/12 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary killing and torture of one fisherman and alleged torture of two fishermen.

According to the information received:

On 21 June 2016, around 9 pm, three Rohingya fishermen, Mr. [REDACTED] and two other men, were fishing in Maungdaw close to the Border Guard Police (BGP) point of exit camp, when two BGP boats approached them and seven BGP personnel, in uniform and carrying weapons, disembarked. The officers pointed their guns at the fishermen and asked them what they were doing, in the men's native language. The victims responded that they had received permission from the Magyi Chaung BGP camp to go fishing for eight days and showed their registration book and permission granted by the BGP.

Subsequently, the BGP officers addressed the fishermen in Burmese, a language they could not understand, apart from the word 'kalar', a pejorative term used against the victims' ethnicity. The fishermen's feet were tied up as were their wrists and upper arms with their arms behind their backs. The fishermen were made to sit on the bank of the river where the officers beat them with wooden posts on all parts of their body including their heads, chest, upper and lower back and on their joints. They also received punches to the face and one victim was bitten on the ear. All seven BGP personnel were involved in the beating, taking turns to beat the three victims. The victims were not informed of any charges against them and were repeatedly called 'kalar'. The beating lasted for approximately one hour until 10 pm.

The seven officers were later joined by approximately 18 BGP in two speedboats. The boat of the victims was tied to one of the speedboats and was dragged close to the Point of Entry/Exit BGP camp in Maungdaw. Upon reaching this point, all 25 officers started to beat the fishermen. They were beaten, kicked and punched on all parts of their body. The second round of beating lasted from approximately 10 pm on 21 June until 2 am on 22 June. The victims believe they were not asked any questions, but could not be sure as they could not understand the language.

During this time, Mr. [REDACTED] who was the owner of the boat was singled out and reportedly received harsher treatment. Between 1 and 1.30 am, he was separated from the other two victims and was tied around the waist with a rope by two BGP. The rope around his waist was in addition to the rope around his ankles, wrists and upper arms. He was subsequently thrown into the water by three BGP and left there for approximately 30 minutes to one hour while he was dragged back and forth in the water, making him hit his head against the side of the boat on several occasions and consuming river water. He was also hit with a wooden post. When he was pulled back on the boat, the victim vomited and was subsequently hit one more time with a wooden post, rendering him unconscious.

The BGP subsequently dragged the victim's boat to approximately 20 metres away from the river bank and ordered them to get off the boat, after untying them. The owner of the boat, who appeared unconscious and had his left eye hanging out, was carried by the other two victims to the bank of the river. No assistance was provided by the BGP whom departed with the victims' fishing boat.

Two of the victims tried to reach a nearby village to seek assistance but the villagers were reluctant to provide assistance due to fear of the BGP. After approximately one hour, at around 3 am, seven to eight villagers assisted in carrying the body of the third victim back to the village. The three victims remained in the village until approximately 6 am, due to a curfew in place restricting movement at night. However, the owner of the boat died sometime between 2 am and 6 am. According to witnesses, the victim's left eye was missing, his head was swollen, his knees were broken and he had cuts on his back, forehead and both knees. At approximately 6 am, the remaining two victims hired a car to bring them to Maungdaw town and took the body of the deceased to a relative's house.

At approximately 10 am on 22 June, the officer in charge of the BGP Magyi Chaung camp received information about the incident and came to the house where the victims were. The officer took pictures of the deceased and biographical data from the other victims, including their father's names and address. At approximately 4.30 pm the victims were told to take the body to the hospital.

At the hospital, the officer in charge of the BGP camp asked the father of the victim to sign a blank document which would state, upon his signature, that the victim had died after falling from his fishing boat. The BGP officer indicated that if he signed, money would be given and he would instruct the hospital not to perform a post-mortem. The father refused. Subsequently the father was informed by an assistant at the hospital that if he paid 120,000 kyats, the family would be allowed to take the body without a post mortem, to which the family agreed. At 7.30 pm, the body of the deceased was buried in his village of origin without post-mortem examination.

No medical treatment was provided by the BGP to the surviving victims who subsequently had to take out loans to pay for it. The physical impact of the beating have severely compromised their ability to work and earn a livelihood. The victims could not resume fishing due to their remaining injuries as well as fear. The surviving victims and the family of the deceased have further been subjected to various forms of intimidation.

On 24 June, the wife of the deceased received a call requesting her to go to the BGP Point of Exit camp in Maungdaw and offering six million kyats in compensation for her husband's death. The wife refused the offer and did not go to the BGP camp. Seven to eight days later, the boat of the deceased was returned to his wife together with 160,000 kyats.

On 28 June, around midnight, two BGP officers came to the house of the father-in-law of the deceased and checked their family household list. As the wife of the deceased was not on the list, her father was arrested and held in the BGP camp overnight. The following morning the family was requested to pay 100,000 kyats for his release. The family paid 60,000 kyats and the father was released at 5 pm the following day.

On 8 July, the father of the deceased was detained by the BGP and accused of an illegal marriage. He was told to pay 100,000 kyats for his release. He was released after paying 40,000 kyats.

On 17 July, the surviving victims and the father of the deceased were called to Magyi Chaung BGP camp. They had previously been asked to report to the Magyi Chaung camp but had refused on two occasions. On this occasion they were required to provide their biographical data and their fingerprints on a piece of paper but were not informed of the reasons. Three other men from their village, who had assisted the BGP with arrangements related to the fishing, were asked to do the same.

On 20 and 22 July, the father of the deceased was brought to Maungdaw Township Court and was asked to sign a letter stating that he will not make a complaint against the BGP, to which he refused.

Grave concern is expressed at the allegations of excessive use of force and torture against the abovementioned victims at the hands of the BGP, as well as arbitrary killing in respect of one victim. Further concern is expressed at allegations of harassment, alleged arbitrary detention and bribing of relatives of the deceased and the surviving victims.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the rights of every individual to life, liberty, and security, the right not to be deprived arbitrarily of life and liberty, and the right to fair proceedings before an independent and impartial tribunal as set out in article 3, 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We would like to draw your Excellency's Government's attention to the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 9, recall the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*.

We furthermore draw your attention to the heightened level of diligence in protecting an individual's rights when that individual is detained or otherwise under the control of the State. When an individual dies as a consequence of injuries sustained while in State custody, there is a *presumption of State responsibility*. In order to overcome the presumption of State responsibility there must be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, as reaffirmed in Human Rights Council in resolution 8/3).

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group 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 appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working

Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

We also draw your attention to the relevant international principles and norms governing the use of force by law enforcement authorities, mainly the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal.

Furthermore, we would like to draw your Excellency's Government attention to international standards relevant to the protection and promotion of the rights of minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration refers to the obligation of States to protect the existence and identity of national or ethnic, cultural, religious and linguistic minorities within their territories and to adopt the appropriate measures to achieve this end, and article 2 states that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language without discrimination. Furthermore, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1), and to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

We also would like to draw your Excellency's Government attention to the recommendations of the seventh session of the Forum on Minority Issues on "Preventing and addressing violence and atrocity crimes targeted against minorities" (2014).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 and any comment you may have on the above-mentioned allegations.

2. Please provide information on whether the above mentioned individuals were placed under arrest when intercepted, and on the legal grounds for their arrest and detention.
3. Please provide the full details of any investigations which may have been undertaken concerning the allegations of excessive use of force and torture by BGP officers, and with regards to the death of the owner of the boat, Mr. [REDACTED]. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please provide any information on the measures taken to protect the physical and psychological integrity of the surviving victims.
5. Please clarify whether any form of reparation for the surviving victims and relatives of the deceased have been provided.
6. Please clarify what regulations and supervision officers of the BGP are subjected to and what training they have received, including human rights training.
7. Please clarify the duties, roles and responsibilities of the BGP and the legislation establishing the BGP.
8. Please clarify the powers of arrest and detention of the BGP and whether BGP posts and camps are officially recognized and designate places of detention.
9. Please provide information on the measures taken to protect the existence and identity of minorities in the territory, including the Rohingya, and to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law, as established by international human rights norms and standards.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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