

TIME RECEIVED July 31, 2015 5:18:39 PM GMT+02:00	REMOTE CSID 0041227327377	DURATION 156	PAGES 5	STATUS Received
31/07 2015 5:26 PM FAX 0041227327377		MISSION OF MYANMAR		0001/0005



**Permanent Mission of the Republic of the Union of Myanmar to
the United Nations Office and other International Organizations**

47 avenue Blanc, 1202 Geneva, Switzerland

Tel. (+41-22) 906 9870, 906 9871 / Fax. (+41-22) 732 8919

E-mail: mission@myanmargeneva.org

No. 414/3-27/91

31st, July 2015

Dear Madams and Sirs,

In response to your letter UA MMR/4/2015 dated 10 April 2015, we would like to provide our observations as follows:

- The security forces did not give any responsibility to either civilian or civilian-clothed people to take part in responding to the situation. Following the announcement made on 8 March, a mob of about 1000 protesters started to break out while 325 members of the security forces tried to stop them in accordance with rules and regulations.
- The security forces dispersed the group of protesters in accordance with the riot control manual, and took legal action against 131 protesters. Twenty-eight students and two media workers were released unconditionally, and 11 persons were released on bail. Seventy persons, who were mainly involved in the riots, were charged at Letpadan court and detained in Thayarwady prison. Following the investigations, it was found out that most of the people in detention are not genuine students.

We reject the allegations that 20 women were administered forced pregnancy test while in detention, following their arrest in Letpadan on 10 March. According to the prison manual, it is a routine practice to conduct a medical check up on inmates upon their registration at the prison. Information such as health condition, injuries on the body and other medical data are required to be recorded. Status of health of female prisoners is observed and recorded by female medical staff. In the case of female inmates, urine test are also taken to observe whether she is pregnant or not. The purpose is none other than to continue to provide maternal health care, if found pregnant.

We also reject the allegation that Phyo Phyo Aung and Ei Thinzar Maung were severely beaten and verbally abused by female police officers after their arrest.

So also, we reject the following allegations:-

- Access to healthcare has been limited and inadequate for the detainees, including those who suffered injuries on 10 March.

- Prisoners with injuries were sent to the prison hospital, and the medical staff led by the head of the prison hospital offered daily healthcare services to prisoners. Furthermore, prisoners who need to have a specialist treatment were sent to outside hospitals.

Similarly, we reject the allegations that there were new arrests in different parts of the country after 10 March. No such things took place. Only the absconders were subsequently arrested.

We also reject the allegations that those who were charged under sections 143, 145, 147, 332 and 505 (b) may be sentenced up to 20 years' imprisonment. The maximum punishment under section 143 of the penal code (unlawful assembly), section 145 (joining or continuing in unlawful assembly), section 147 (rioting), section 332 (voluntarily causing harm to deter public servants) and section 505 (b) (public mischief) are six months, two years, two years, three years, and two years, respectively; therefore, the total years of imprisonment would be nine years and six months if they are found guilty on all counts. Even in such a scenario, judges could possibly use their own discretion to pass a more reasonable punishment.

So also, we reject the allegations that apart from the 11 detainees, who were charged under section 143, 145 and 147 of the penal code, the remainder of the initial number of 127 detainees were released on the undertaking that they will not repeat the violation of Article 18 of the Right to Peaceful Assembly and Peaceful Procession Act. The fact is that they were arrested without a warrant, under section 54 of the Code of Criminal Procedure. But they were not charged at the court for lack of sufficient evidence; eventually they were released.

Legal grounds for the arrest and detention on 27 March of Nyan Myint Than (aka Nyan Gyi) and others.

- On 27 March in the town of Myingyan, Nyan Myint Than, Sein Win, Sithu Myat, Kyaw Than Tun (aka Kyaw San Tun) and Ma Phyu took part in an unlawful assembly to demand the release of the students, who were arrested concerning the National Education Law. Not only refusing the order given by the authorities to discontinue the unlawful assembly, they also intimidated the authorities and made public incitements to defame the government. They were taken action by Myingyan Police Department under section 143/145/505 (b) of the penal code. On 10 April, they were charged in the Myingyan township court. Their case was unbailable and therefore they were placed in detention in the Myingyan prison.

- On 11 March, Soe Hlaing (son of U Kyaw Htay) was received at Myingyan prison for detention under section 16 of the Union Flag Law. He was a student at the Monywa Technological University. He took part in the riots. He was arrested for pulling down the Union Flag and hoisting the student union flag instead at the Myingyan Degree College on 26 January.
- Nyan Myint Than, Sithu Myat, Kyaw Than Tun, Sein Win and Ma Phyu were sent to the Myingyan prison on 27 March. (In Myingyan prison, there is no inmate by the name of Kyaw San Tun. So also, there is no inmate by the name of Ma Phyu aka Khin Ma Thandar Tun. There is only one inmate called Ma Phyu aka Ma Thandar Tun.)

Legal grounds for the arrest on 29 March of Sithu Htun.

- Sithu Htun was arrested on 29 March for organizing an unlawful assembly and procession in Monywa in protest against the National Education Bill. He was taken action under section 18 of the Right to Peaceful Assembly and Peaceful Procession Act. Later, he was released on bail, and is no longer in detention.

Legal grounds for the issuing of arrest warrants against Ye Yint Kyaw, Kyaw Ko Ko and Myat Thu.

- ABFSU leaders -- Ye Yint Kyaw and Kyaw Ko Ko -- took part in the unlawful assembly in Letpadan on 9 March. Later, they absconded, to avoid arrest by the authorities. Therefore, after being charged under section 143/505(b) of the penal code/section 512 of the Code of Criminal Procedure, the arrest warrants were issued against them by the court. Myat Thu -- another ABFSU leader -- took part in the unlawful assembly in Letpadan on 10 March. Despite the command given by the township administrator to those belonging to the unlawful assembly to disperse, as required under section 127 of the Code of Criminal Procedure, they failed to disperse accordingly, thereby necessitating the authorities to proceed to disperse them. Myat Thu was one of them. He absconded, to avoid arrest by the authorities. After being charged under section 143/145/505 (b) of the penal code/section 512 of the Code of Criminal Procedure, an arrest warrant was issued against him by the court.

How the various arrests are compatible with international norms and standards as stated in the UDHR.

- When dealing with law and order issues, the Police Department makes every effort to handle them in accordance with the existing laws, bye-laws, rules and regulations, and the police manual as well. If police personnel do not perform their duties in accordance with the law, they are liable to be taken

action under the prescribed laws, including the police disciplinary laws. The allegations contained in your joint appeal are one-sided and do not reflect the reality.

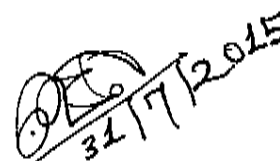
Measures to ensure that citizens can exercise the rights to freedom of peaceful assembly and association.

- Article 9 of the UDHR says: "No one shall be subjected to arbitrary arrest, detention or exile." Concerning Myanmar, the various arrests and detentions mentioned in the joint appeal are compatible with Article 9 of the UDHR. As per section 54 of the Code of Criminal Procedure (CCP), the arrests were made under sections 46, 47, 48, 49 and 50 of the CCP.
- Article 19 of the UDHR says: "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 and ideas through any media and regardless of frontiers."
- Article 354 of the State Constitution of the Republic of the Union of Myanmar says: "Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:
 - (a) to express and publish freely their convictions and opinions;
 - (b) to assemble peacefully without arms and holding procession;
 - (c) to form associations and organizations;
 - (d)"
- Pursuant to the relevant provisions in the State Constitution, the Right to Peaceful Assembly and Peaceful Procession Act and the Media Law were enacted in 2011 and 2014, respectively. The Right to Peaceful Assembly and Peaceful Procession Act prescribes that, if not contrary to the laws enacted for Union security, rule of law, community peace and tranquility, or public morality, every citizen shall be at liberty to assemble and hold a procession peacefully without arms. The citizens or organizations that want to exercise the right to peaceful assembly and peaceful procession and express themselves are required to apply for the permission at least five days in advance. The permission can be issued or denied with approval from the chief administrator of the Township Department of General Administration. It cannot be denied when it is not in breach of the security of the State, rule of law, community peace and tranquility, and public morality. Only those who engage in an assembly or procession without prior permission are liable

to be taken action under Article 18 of the said Act. In this light, it is obvious that the measures taken were in line with Article 19 of the UDHR.

- Article 5 of the Media Law prescribes that publications of the News Media industry shall be free from censorship. In this light, it is obvious that Myanmar is in line with Article 19 of the UDHR as well.
- Article 20 (2) of the UDHR says: "No one may be compelled to belong to an association." In Myanmar, the right to peaceful assembly and peaceful procession can be exercised in accordance with the Right to Peaceful Assembly and Peaceful Procession Act of 2014. No one is compelled to belong to an association or organization against his or her own will.

Please accept, Madams and Sirs, the assurances of my highest consideration.



(Maung Wai)

Ambassador and Permanent Representative

Ms. Yanghee Lee

Special Rapporteur on the situation of human rights in Myanmar

Mr. Mads Andenas

Chair Rapporteur of the Working Group on Arbitrary Detention

Mr. David Kaye

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

Mr. Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mr. Michel Forst

Special Rapporteur on the situation of human rights defenders

Ms. Rashida Manjoo

Special Rapporteur on violence against women, its causes and consequences