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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11
MMR 11/2012

30 November 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 19/21, 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the targeting of peaceful demonstrators defending economic and social rights in Myanmar.

According to the information received:

On 23 November 2012, **Ye Yint Htun, Naing Win, Nay Zaw Htet and Saw Naung**, four miners from Moehti Moemi gold mine in Yemathin township, were reportedly assaulted and arrested by security forces while peacefully marching, together with around 70 fellow protestors, to Naypyidaw to protest the closure of their mine following an order issued by the Ministry of Mining. It is reported that about 100 police officers, along with 20 officers in plainclothes, armed with sticks, charged the group and beat the peaceful demonstrators, before arresting the aforementioned individuals.

On 27 November 2012, Government authorities reportedly ordered demonstrators who had been peacefully opposing forced evictions of villagers, due to the exploitation of a copper mine in the Letpadaung mountains, to abandon their protest sites or face criminal action. On 28 November 2012, **Ko Wai Lu, Daw Shan Ma, Ko Myo Chit, Ko Ye Lin, Daw Naw Ohn Hla and Ko Nyi Nyi,**

leaders of the protest movement, were arrested by police forces under article 18(b) of the Peaceful Assembly and Peaceful Procession law for protesting without permission. The six activists have since been charged under article 505(b) of the penal code which provides that “whoever makes, publishes or circulates any statement, rumour or report... with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility”. They are reportedly being detained at the Insein prison, and the first hearing will take place on 3 December 2012. In addition, on 28 November 2012, arrest warrants were issued against the following activists: **Ko Han Win Aung, Ko Thi Ha Win Tin, Ko Aung Naing Thu** and **Ko Moe Thway**. They are presently in hiding because they fear for their physical safety. On 29 November 2012, the riot police dispersed hundreds of protestors from six protests sites, using first water cannons, then incendiary devices. According to reports, more than 80 persons have been injured. 30 monks were taken to Monywa Hospital to be treated. One of them is reportedly in critical condition, and had to be transferred to a hospital in Mandalay.

Serious concerns are expressed that the arrest and detention of Ye Yint Htun, Naing Win, Nay Zaw Htet, Saw Naung, Ko Wai Lu, Daw Shan Ma, Ko Myo Chit, Ko Ye Lin, Daw Naw Ohn Hla and Ko Nyi Nyi, the arrest warrants against Ko Han Win Aung, Ko Thi Ha Win Tin, Ko Aung Naing Thu and Ko Moe Thway, and the alleged excessive use of force against aforementioned peaceful protestors, may be related to their human rights activities in the exercise of their rights to freedom of peaceful assembly and of opinion and expression. Further concerns are expressed for the physical and psychological integrity of all the aforementioned individuals.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR.

In addition, we would like to remind your Excellency's Government of article 20 of the UDHR which provides that “[e]veryone has the right to freedom of peaceful assembly and association...”.

Furthermore, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons

espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In this context, 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Finally, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental

freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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 persons in compliance with the above international instruments.

Moreover, 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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide or confirm information concerning the legal grounds for:
 - (a) the arrest and detention of Ye Yint Htun, Naing Win, Nay Zaw Htet, Saw Naung, Ko Wai Lu, Daw Shan Ma, Ko Myo Chit, Ko Ye Lin, Daw Naw Ohn Hla and Ko Nyi Nyi;
 - (b) the arrest warrants against Ko Han Win Aung, Ko Thi Ha Win Tin, Ko Aung Naing Thu and Ko Moe Thway; and
 - (c) the use of force against the aforementioned peaceful protestors.
3. Please indicate how these measures are compatible with the aforementioned international human rights norms and standards.
4. Please provide information, and where available results, of any investigation and judicial or other inquiries carried out in relation to the injuries of peaceful protestors as a consequence of the alleged excessive use of force during the said assemblies. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please indicate whether and how the alleged victims will be compensated.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in Myanmar

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
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