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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the situation of human rights in Myanmar.

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 14/2013

3 October 2013

Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the situation of human rights in Myanmar pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, and 22/14.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the continuous targeting of peaceful demonstrators and human rights defenders opposing the Letpadaung Copper Mine project in Myanmar.**

Urgent appeals on this issue were sent to your Excellency's Government on 30 November 2012, 2 May 2013, and 20 June 2013 by the Special Rapporteur on the situation of human rights in Myanmar; the Chair-Rapporteur of 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. We acknowledge the receipt of a response from your Excellency's Government dated 1 July 2013 to the urgent appeal dated 2 May 2013 but regret that the concerns expressed therein remain. Responses from your Excellency's Government to the remaining appeals dated 30 November 2012, and 20 June 2013 are yet to be received.

According to the new information received:

On 13 August 2013, Ms. Naw Ohn Hla and nine other protesters were reportedly arrested by the police while peacefully protesting together with around 50 local villagers against the Letpadaung Copper Mine project in Monywa. It is reported that several hundred police officers surrounded the protesters, before forcibly seizing and arresting Ms. Naw Ohn Hla along with the nine other protesters. Allegedly, the force used by the police against Ms. Naw Ohn Hla led to her clothes being partially torn off. Following their arrest, it is also reported that about 60 villagers staged a peaceful sit-in next to the police station where the protesters were being detained demanding their release. The nine other protesters who were arrested together with Ms. Naw Ohn Hla were later released after having signed a declaration that they would not protest again.

On 29 August 2013, Ms. Naw Ohn Hla was 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” and was sentenced to two years in prison with hard labour. According to reports, during the three day trial which took place from 27 to 29 August 2013, intelligence officers were taking pictures of both the courtroom and the offenders. It is reported that Ms. Naw Ohn Hla’s defence lawyer will be submitting an appeal against this verdict.

Serious concerns are expressed regarding the continuous targeting of peaceful demonstrators and human rights defenders opposing the Letpadaung Copper Mine project, which may be linked to their legitimate human rights activities, including their legitimate exercise of their rights to freedom of peaceful assembly, association and of opinion and expression. Further concerns are expressed for the conviction and the severity of sentence handed down to Ms. Naw Ohn Hla.

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.

We would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human

Rights which provides that “[e]veryone 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.”

We would also like to refer your Excellency's Government to article 20 of the Universal Declaration of Human Rights, which provides that “Everyone has the right to freedom of peaceful assembly and association.”

In this connection, 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 addition, we would 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”.

Furthermore, 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.

Moreover, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the Special Representative of the Secretary-General on the situation of human rights defenders) and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials”.

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, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide information concerning the legal grounds for the arrest and detention and the use of force against the aforementioned peaceful protesters. Please indicate how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights.
4. Please provide information on whether Ms. Naw Ohn Hla has access to family members and medical personnel.
5. Please provide information concerning access of human rights monitors and independent civil society representatives to where Ms. Naw Ohn Hla is being detained.

6. Please explain what measures have been taken to ensure that all human rights defenders in Myanmar, in particular those engaged in peaceful demonstrators, defending and promoting economic and social rights, can carry out their peaceful and legitimate activities without fear of assault or arrest, or other restrictions.

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.

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

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

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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

