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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11
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18 March 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; 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, 16/4, 15/21 and 16/5.

The Special Rapporteur on the situation of human rights in Myanmar acknowledged in his recent report to the Human Rights Council (A/HRC/22/58) the important progress that Myanmar had made in creating a more open environment for people to assemble and demonstrate. However, the report also highlighted significant shortcomings that needed to be addressed, including with regard to the 2011 Peaceful Assembly and Peaceful Procession Act and the associated Decree.

The adverse effects of the 2011 Peaceful Assembly and Peaceful Procession Act were also the subject of an urgent appeal sent on 30 November 2012 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 regret that no response to this appeal has been received as of today.

We would like now to bring to the attention of your Excellency's Government concerns we have regarding the **Decree on the Right to Peaceful Assembly and Peaceful Procession**, which was adopted on 5 July 2012, and gives effect to the aforementioned Act.

The Decree contains a number of provisions which curtail the right to freedom of peaceful assembly.

1) Regime of authorization

Article 1, under Chapter 2, establishes a regime of authorization (application for permission required at least 5 days in advance), which is burdensome. In his first thematic report to the Human Rights Council (please see attached for ease of reference), the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that “the exercise of fundamental freedoms should not be subject to previous authorization by the authorities..., but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others. Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place” (A/HRC/20/27, para. 28).

The Special Rapporteur added that “[s]hould the organizers fail to notify the authorities, the assembly should not be dissolved automatically... and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer. In this context, the Special Rapporteur holds as best practice legislation allowing the holding of spontaneous assemblies, which should be exempted from prior notification.” (A/HRC/20/27, para. 29). In this regard, the Special Rapporteur recommended to Member States that: “[s]pontaneous assemblies should be recognized in law, and exempted from prior notification (A/HRC/20/27, para. 91). The Decree should therefore be amended in accordance with international human rights standards.

Similarly, the Decree does not govern the holding of simultaneous assemblies and counter-demonstrations, which are healthy expressions in a democracy. According to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, “[i]n the case of simultaneous assemblies at the same place and time, the Special Rapporteur considers it good practice to allow, protect and facilitate all events, whenever possible. In the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial” (A/HRC/20/27, para. 30). The Special Rapporteur concluded that “[s]imultaneous assemblies should be allowed, protected and facilitated, whenever possible” (A/HRC/20/27, para. 92).

Finally, it is worth noting that the Special Rapporteur recommended that “[a] presumption in favour of holding peaceful assemblies should be established in law in a clear and explicit manner” (A/HRC/20/27, para. 88).

2) Undue restrictions

Article 6, under Chapter 3, provides that “[t]he application [for permission to assemble] should not be denied unless the security of the State, rule of law, public tranquillity and the existing laws protecting the public are to be breached”. Such a provision fails to meet international human rights standards. The Human Rights Council, in its resolution 15/21, recalled that “in accordance with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the exercise of the rights to freedom of peaceful assembly and of association can be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others” (A/HRC/RES/15/21, OP4).

In addition, in his thematic report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon States “[t]o ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness...” (A/HRC/20/27, para. 84(e)).

He further stressed the “importance of the regulatory authorities providing assembly organizers with ‘timely and fulsome reasons for the imposition of any restrictions...’” (A/HRC/20/27, para. 42). A provision in this regard is presently missing in the Decree.

Article 7, under Chapter 3, gives those who have applied for permission to hold an assembly the right to appeal only before the divisional or State-level Police Commander. Such a provision is problematic as the entity before which the appeal has to be made has also the function of policing/supervising assemblies. The Special Rapporteur stressed that “[i]n case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court... which should take a decision promptly” (A/HRC/20/27, para. 90 and 42).

3) Policing of assemblies

Noteworthy is article 1, under Chapter 4, which provides that “[d]uring peaceful assemblies and peaceful processions, the attendees are to be given the protection by the officer with a rank of no less than police lieutenant and the sufficient number of police must be used depending on the number of the attendees at the assembly and procession”.

Yet it is regrettable that the law does not contain any provision on the use of force by law enforcement authorities when policing assemblies, as exemplified by the allegations of excessive use of force brought to the attention of your Excellency's Government in November 2012. In this regard, in accordance with report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, we are of the opinion that "States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, "where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force" (Council resolution 19/35, para. 6)" (A/HRC/20/27, para. 89). The Special Rapporteur further pointed that "[t]he right to life (art. 3 of the Universal Declaration on Human Rights...) and the right to be free from torture or cruel, inhuman or degrading treatment or punishment (art. 5 of the Declaration...) should be the overarching principles governing the policing of public assemblies... In this regard, soft law provisions – the Code of Conduct for Law Enforcement Officials (in particular articles 2 and 3) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (in particular principles 4, 9 and 13) – aim at guiding law enforcement officials when policing peaceful protests" (A/HRC/20/27, para. 35).

In the same report, the Special Rapporteur on the rights to freedom of assembly and to association called upon States to "ensure that law enforcement authorities which violate the rights to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law" (A/HRC/20/27, para. 84(i)) and "[t]o ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have to the right to an effective remedy and obtain redress" (A/HRC/20/27, para. 84(j)).

Finally, we take this opportunity to point out the recommendation that "States should also ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies" (A/HRC/20/27, para. 94).

4) Liability of organizers

Article 4, under Chapter 4, provides that "[t]he main applicant or organisation must take the responsibilities of all attendees during the peaceful assembly or peaceful procession, or that the peaceful assembly and peaceful procession is carrying out in accordance with the permission granted".

In this regard, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that "[a]ssembly organizers and participants should not be held responsible and liable for the violent behaviour of others (A/HRC/20/27, para. 93)". The individual responsibility of participants should be upheld.

We call on your Excellency's Government to amend the Decree on the Right to Peaceful Assembly and Peaceful Procession with a view to address the aforementioned concerns raised in a spirit of constructive dialogue. While acknowledging the cooperation extended to the Special Rapporteur on the situation of human rights in Myanmar, we regret that your Excellency's Government responded negatively to the request of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, issued in September 2011, to visit Myanmar. We therefore call on your Excellency's Government to consider once again the said request, which would assist it towards the full realization of the right to freedom of peaceful assembly in the country.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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

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