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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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11 G/SO 214 (53-24)
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2 May 2013

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 22/14, 15/18, 15/21, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding alleged cases of arbitrary arrest and detention, ill-treatment and forced eviction of farmers from their lands in the Letpadaung copper mine area.

According to information received:

At 9 am on 25 April 2013 in the Letpadaung copper mine area, at Sal Tal village, Sagaing Region, around 100 riot police and 50 soldiers arrived to remove dozens of farmers who had refused compensation from the owners of the Letpadaung copper mine, Chinese state-owned company Wanbao and the military-owned Union of Myanmar Economic Holdings Ltd. The farmers reportedly started ploughing their fields three days previously and the police and military arrived to remove the farmers. The farmers were reportedly beaten with batons and had rubber bullets fired at them by the police and military, resulting in injuries to ten of the farmers who are now in Monywa hospital, including one farmer who was allegedly shot in his arm and rib. Three activists involved in the protest were reportedly arrested and sent to the Wan-Bao company building. Stones were reportedly thrown at police lines by protestors and 15 police officers were reportedly injured.

Subsequently, the commander of the Sagaing Region Police Force reportedly announced that the police will lodge charges against eight persons for allegedly provoking demonstrations and other alleged illegal actions. The persons named reportedly include six members of the Yangon People's Support Network: **Ko Aung Soe** (14 charges), **Ba Htoo** (9 charges), **Thar Kyi** (6 charges), **Ko Latt** (8 charges), **Thaw Zin** (5 charges) and **Ko Thu** (1 charge). The two other persons are reportedly **Han Win Aung** of the Political Prisoners Families' Beneficial Network (5 charges) and **Thaung Taik Oo** of the Yangon Institute of Technology Students Union (18 charges). The announcement reportedly goes on to warn that failure to provide information leading to the apprehension of these persons or harbouring of them constitute criminal offenses.

Aung Soe along with two other demonstrators are reportedly already being detained at Nyaungbingyi Police Station.

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 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. No one may be compelled to belong to an association."

We would also 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 connection, we would like to further 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, and in particular to 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.

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would 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.

We would also like to draw your Excellency's Government's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

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. No one may be compelled to belong to an association."

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 cooperation and 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. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide details, including the legal basis and reasons, of the arrest and detention of the abovementioned persons and how these measures are compatible with the aforementioned international human rights norms and standards.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Has the Myanmar National Human Rights Commission taken up this case?

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

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

Margaret Sekaggya
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Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
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