

NATIONS UNIES
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AUX DROITS DE L'HOMME

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in Myanmar; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 Health (2002-7) G/SO 214 (3-3-16) G/SO 214/62-11 G/SO 214 (53-24)
MMR 10/2012

29 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 19/21, 15/18, 15/22, 17/2, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the conviction and sentencing to 15 years in prison of Dr. **Tun Aung** by the Sittwe Criminal Court.

According to the information received:

Dr. Tun Aung is the chairman of the Islamic Religious Affairs Council in Rakhine State and a practising medical doctor. In the morning of 8 June 2012, Dr. Aung held a meeting with the Office of the Director of Border Immigration and other authorities involved in controlling the violence that had erupted in Rakhine State that same day. The authorities asked Dr. Tun Aung, due to his position of respect in the community, to help defuse tensions in Maungdaw, Rakhine State. However, as the crowd became more difficult to control, the authorities asked Dr. Aung to return home for his own security. Later in the day, the police called Dr. Aung to another location to help control a crowd, after which he returned to his home. Eyewitness accounts confirm that Dr. Aung was actively trying to calm the crowd.

On 11 June, Dr. Aung was arrested on charges of inciting violence and held incommunicado for three months.

In September 2012, he was convicted and sentenced under the Foreign Exchange Regulation Act, 1947, Section 24 (1) to three years imprisonment.

Furthermore, on 21 November he was convicted and sentenced by the Sittwe Criminal Court to seven years imprisonment under the Myanmar (Emergency Provisions) Act 1950, Section 5 (e); to two years imprisonment under the Penal Code, section 505 (b); to two years imprisonment under Penal Code, section 153 (a) (these last three sentences to be served concurrently); and to four years imprisonment under the Myanmar Wireless Telegraph Act, Section 6 (1); totalling eleven years imprisonment.

Under these laws, Dr. Aung was convicted of possessing a 100 Chinese Yuan banknote, a 20 Malaysian Ringit banknote, and a 20 Bangladesh Taka banknote (Foreign Exchange Regulation Act, 1947, Section 24 (1)); of spreading false news and gathering people together (Myanmar (Emergency Provisions) Act 1950, Section 5 (e)); of circulating/publishing text with an 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 public tranquility (Penal Code, section 505 (b)); of sending documents, photos, emails which “promote enmity between classes” (Penal Code, section 153 (a)); and of possessing a mobile phone SIM card from Bangladesh (Myanmar Wireless Telegraph Act, Section 6 (1)).

Since Dr. Aung’s initial arrest on 11 June and throughout his subsequent trials, he has been denied the right to appoint a lawyer of his choice, instead being allocated a state lawyer whom he had not been allowed to meet privately. He has also been denied contact with his family since his detention.

Dr. Aung is 65 years old and suffers from a pituitary tumour and requires medication to manage this condition. In prison, he is not receiving medication for his condition and the poor sanitation and lack of ventilation in detention are further worsening his condition.

In light of these allegations, we are seriously concerned about possible violations of the fair trial and due process rights of Dr. Aung, including access to legal counsel of his choice and to bail, the disproportionate severity of prison sentences handed down by the court, and the conditions of his detention, including access to healthcare.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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).

The right to be assisted by a lawyer of one’s choice is set forth in the Basic Principles on the Role of Lawyers, 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, and in particular in principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”; and principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”

Principle 8 of the Basic Principles on the Role of Lawyers further states that: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.” And principle 22 stipulates that: “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”

We would also like to draw the attention of your Excellency's Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that “Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person”.

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person 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.

With respect to Dr. Aung's deteriorating health conditions and the alleged denial of medical treatment, we would like to stress that each State has the obligation to protect the right to physical and mental integrity of all persons as reflected in international legal instruments. The right to health is set forth inter alia in Article 25 (I) of the Universal Declaration of Human Rights, which states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

We would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.” Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom

his attention is specially directed.” (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

We would further like to draw your Excellency's Government's attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 according to which “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (Principle 9).

Furthermore, Principle 19 states that, “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]”. In this sense we would also like to draw your attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

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 person 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 summary accurate?
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of ill-treatment of Dr. Tun Aung while in detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information on the measures taken to ensure the enjoyment of the right to the highest attainable standard of health, including access to specialized medical care, by Dr. Tun Aung.
4. Please provide information concerning the legal grounds for the arrest and detention of Dr. Tun Aung and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR.
5. Please explain why Dr. Aung could not appoint a lawyer of his choice for his defence and how such a decision is compatible with international norms and standards on the right to a fair trial, including the Basic Principles on the Role of Lawyers. Please further explain why Dr. Aung could not meet privately with his State appointed lawyer and how such a decision is compatible with international norms and standards on the right to a fair trial, including the Basic Principles on the Role of Lawyers.

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 person are respected and, in the event that your investigations support or suggest the above allegations to be correct, that the accountability of any person responsible of the alleged violations is 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

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