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PROCEDURES SPECIALES DU
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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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; the Special Rapporteur on freedom of religion or belief; 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 situation of human rights defenders; and the Independent Expert on minority issues.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9) Minorities (2005-4) G/SO 214/62-11
MMR 13/2013

24 July 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 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 freedom of religion or belief; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Independent Expert on minority issues and pursuant to Human Rights Council resolutions 22/14, 15/18, 16/4, 15/21, 22/20, 15/22, 16/5, and 16/6.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged detention of Mr. **Kyaw Hla Aung**, a 74 year old Muslim community leader, in Thet Kae Pyin, Sittwe, in relation to a population verification exercise. Mr. Kyaw Hla Aung is a well-respected member of the community having served as a clerk at Sittwe district civil court and section judge court from 1961 to 1965 and as an administrator for the non-governmental organisation Médecins Sans Frontières.

Mr. Kyaw Hla Aung is also a well-known human rights defender and has repeatedly been arrested and detained for these activities. In 1986, he wrote an appeal letter in line with Myanmar's land seizing law following which he was arrested under emergency acts 5 (Nya) and was interned for two years in Sittwe prison. In 1989 he established National Democratic Party for Human Rights in order to get equal rights of the Rakhine Muslims in Rakhine state. In 1990, he stood for the parliament from electorate (1), Sittwe, Rakhine State. While he was campaigning for votes, he was again arrested under emergency acts 5 (Nya) and sentenced to 14 years imprisonment. He was

later released in 1997. Following the violence in June 2012, he was detained again from 11 June to 16 August 2012. Since his release, he has been working actively with international non-governmental organizations and the United Nations to ensure that the rights of Muslims in Rakhine state are respected and protected. Since the displacement of Muslims from Sittwe and other regions he has actively worked to help provide urgent educational and medical facilities and services for displaced persons and others affected by the violence.

According to information received:

On 15 July 2013, Mr. Kyaw Hla Aung was taken by police from his home in Thet Kae Pyin, Sittwe, and since then has been held in police custody for questioning. To date, he is being held for questioning reportedly based on accusations relating to protests against the verification exercise within the Muslim village and internally displaced persons (IDP) areas that took place on 26 April 2013.

On 26 April 2013, the local government of Rakhine State began implementing a 'verification exercise' among Muslim IDPs and villagers currently present in Sittwe Township to provide the Government with accurate household and population data to implement short and long term development plans. The exercise was reportedly conducted by a joint team of immigration officials, police and the border security force (Nasaka). Village household holds and IDPs were reportedly given leaflets informing them about the exercise, and meetings were held with community leaders between 7 and 25 April 2013. In these meetings, the community leaders were told that non-cooperation would be considered a refusal to comply with the rule of the law and that legal action would be taken accordingly. When being told of the forms requiring Muslim IDPs and villagers to be registered as Bengali, the community leaders reportedly repeatedly stated the unwillingness of community members to be registered as Bengali.

The exercise began in Thet Kae Pyin and Baw Du Pha, where several individuals objected to being registered as Bengali. In both locations, children from the local schools, reportedly went into the street and shouted they were Rohingya. Observers described the incident as small in scale and mainly involving children and youths. Some stones were allegedly thrown that resulted in some members of the verification team being lightly injured. Following these incidents the verification exercise was suspended.

Mr. Kyaw Hla Aung is 74 years old and is in ill health with high blood pressure and swollen joints, and is often in pain from his arthritis and cannot move easily. He takes medication for both.

Concerns are expressed that the detention of Mr. Kyaw Hla Aung may be linked to his human rights activities as a community leader. Further concerns are expressed for his physical and psychological integrity while in detention, especially in light of his weak health condition which requires adequate medical treatment.

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).

We would also like to call on your Excellency's Government to take all necessary steps to ensure the right to enjoy the highest attainable standard of health in accordance with fundamental principles as set forth in article 25 of the UDHR which provides that "[e]veryone 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.

With regard to the conditions of detention and allegations concerning continued access of Mr. Kyaw Hla Aung to medication while in detention, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). Rule 22(2) provides that, "(s)ick 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, "(t)he 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". We would also like to refer your Excellency's Government to the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, 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, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly resolution 43/173 provide that "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge" (Principle 24).

We would also like to respectfully remind your Excellency's Government of article 18 of UDHR, which states that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

Furthermore, we would like to draw your Excellency's Government's attention to paragraph 11 (k) of the General Assembly's Resolution 64/164 (A/RES/64/164) on religious intolerance and discrimination in which the General Assembly urges states "To

take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based in religion or belief, as well as incitement to hostility and violence, with particular regard to members of religious minorities in all part of the world"

In this context, we would like to draw the attention of your Excellency's Government to paragraph 4(f) of the Resolution 2005/40 of the former Commission on Human Rights, which urges States, "To ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights."

In addition, we would like to refer your Excellency's Government to article 19 of the UDHR 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."

Similarly, we would also like to refer your Excellency's Government to 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 this connection, we would like to further 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 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 addition, we wish to draw the attention of your Excellency's Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1.1 of the Declaration provides that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity". Article 1.2 also provides that "States shall adopt appropriate legislative and other measures to achieve those ends." Article 4.1 of the Declaration establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."

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 Mr. Kyaw Hla Aung in compliance with the above international instruments.

Moreover, since 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. Please provide information concerning the legal grounds for the detention of Mr. Kyaw Hla Aung, and how this measure is compatible with international human rights norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and paragraph 4(f) of Resolution 2005/40 of the former Commission on Human Rights.
3. Please provide details as to the whereabouts of Mr. Kyaw Hla Aung. Is he able to communicate with his family and legal representatives and are they able to visit him while in detention?
4. Please provide information on measures taken to ensure the freedom of religion or belief and the rights and freedoms, in particular the freedom to manifest and to be identified with one's religion or beliefs.

5. Please provide information on the measures taken to ensure the enjoyment of the right to the highest attainable standard of physical and mental health, including adequate detention conditions and access to medication, of Mr. Kyaw Hla Aung.

6. Please provide information on the measures taken to ensure the physical and psychological integrity of Mr. Kyaw Hla Aung.

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 Mr. Kyaw Hla Aung 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
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai
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