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UNITED NATIONS
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 and the Special Rapporteur on freedom of religion or belief.

REFERENCE: AL G/SO 214 (56-23) G/SO 214/62-11
MMR 3/2013

2 April 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on freedom of religion or belief pursuant to Human Rights Council resolution 19/21 and 14/11.

In this connection, we would like to draw the attention of your Excellency's Government to the detention of **Mr. Ha Ri Shin Nyana** in Myitkyina Prison, Kachin State, Myanmar. The Special Rapporteur on the situation of human rights in Myanmar, conducted his latest country visit to Myanmar from 11 to 16 February 2013. This included a visit to Myitkyina Prison on Saturday, 16 February, during which he interviewed Mr. Ha Ri Shin Nyana.

According to the information gathered during this interview:

Mr. Ha Ri Shin Nyana, a 75 year old Buddhist monk, has been convicted and sentenced to 20 years in prison under section 67 of the Myanmar penal code. Mr. Nyana's conviction is related to his activities in organizing and establishing an association which practiced a different form of Buddhism from the Theravāda branch.

Serious concern is expressed that the conviction of Mr. Nyana may be the result of his choice and practice of religion. Further concern is expressed for the health and safety of the aforementioned prisoner in light of his advanced age.

We wish to appeal to your Excellency's Government to seek clarification on this case and share our concerns in relation to present circumstances in light of the applicable international human rights norms and standards.

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with article 18 of the Universal Declaration of Human Rights.

Furthermore, we would like to recall to your Excellency's Government the principles set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. Article 1 (1) of the Declaration provides that "[E]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." Article 1 (2) emphasized that "[N]o one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice." Art. 6 (a) further provides that the right to freedom of thought, conscience, religion or belief includes the freedom to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.

Furthermore, the General Assembly, in its resolution 65/211, "urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end: (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practice freely one's religion, including the right to change one's religion or belief, is violated; (b) To ensure that existing legislation is not implemented in a discriminatory way or does not result in discrimination based on religion or belief, and 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 other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights; g) To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief" (resolution 65/211, para.12).

In addition, Human Rights Council resolution 6/37 para.9 (g) urges States, "To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief." Similarly, paragraph 9 (h) urges States "[t]o ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected."

We would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of religious minorities in Myanmar 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 in the summary accurate?
2. Have complaints been lodged on behalf of Mr. Nyana?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the case above. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate the legal basis and reasons for the 20-year prison sentence against Mr. Nyana? How is this sentence compatible with international norms and standards?
5. Please provide information on measures taken to ensure the freedom of religion or belief and the rights of religious minorities in Myanmar are protected.

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.

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. Ha Ri Shin Nyana 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

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief