

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 the situation of human rights defenders; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: UA
MMR 4/2015:

10 April 2015

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 the situation of human rights defenders; Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 28/23, 24/7, 25/2, 24/5, 25/18 and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary arrest and detention of individuals between 10 and 29 March 2015 in relation to peaceful assemblies held in different parts of the country calling for amendments to the National Education Law and/or the release of previously detained protesters.**

The situation of peaceful protesters and their supporters calling for changes to the National Education Law was the subject of a previous communication to your Excellency's Government on 6 March 2015 by the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the rights to freedom of peaceful assembly and of association (MMR 2/2015). To this date, no response has been received.

According to information received:

On 30 September 2014, the National Education Law (the Law) was passed by Parliament. In November 2014, the Action Committee for Democratic Education (ACDE) started leading nationwide peaceful protests calling for amendments to the legislation, including more autonomy for education institutions, an increase in the national education budget and mother tongue instruction. The ACDE is composed of members of the All Burma Federation of Student Unions (ABFSU), the Confederation of University Student Unions, and the University Student Union – Myay Latt.

On 20 January 2015, at the call of ACDE, a group of students began marching peacefully from Mandalay to Yangon to seek amendments to the Law.

On 2 March 2015, a large number of police officers surrounded around 200 protesters at a monastery in Letpadan (Bago region, north of Yangon) preventing them from continuing their march towards Yangon.

Events and arrests related to 10 March 2015

On 10 March 2015, the negotiations between protestors and the authorities broke down. Protestors reportedly refused to be escorted to Yangon in separate groups and to be denied the right to chant their slogans and wave their banners. Some of the protestors allegedly attempted to break through police barricades, which authorities had erected around the protestors. The police and plain-clothed individuals operating alongside the police, responded with excessive and disproportionate force, assaulting students, supporters and journalists with batons and injuring an estimated 70 people. It is alleged that police officers also assaulted medical workers who were carrying injured protesters into ambulances and smashed students' vehicles.

Following the clashes, 127 protestors (107 men and 20 women) were arrested and subsequently detained in Tharawaddy prison. Students and members of ABFSU were among those arrested.

The 20 female detainees were administered forced pregnancy tests while in detention. Following their arrest, Ms. Phyo Phyo Aung, general secretary of ABFSU, as well as Ms. Ei Thinzar Maung, an ABFSU member from Mandalay, were allegedly severely beaten and verbally abused by female police officers.

It is reported that access to healthcare has been limited and inadequate for the detainees, including for those who suffered injuries during the events of 10 March 2015.

On 25 March 2015, 69 (58 men and 11 women) out of the 127 arrested on 10 March 2015 in Letpadan, appeared before the Letpadan Township Court. They

were charged on five counts under the penal code and were remanded in custody. The protestors were charged under article 143 of the penal code (unlawful assembly); article 145 (joining or continuing in unlawful assembly); article 147 (rioting); article 332 (voluntarily causing harm to deter public servants); and article 505(b) (public mischief). Their next hearing (6th hearing) is scheduled for 23 April 2015. They may face up to twenty years imprisonment if convicted on all counts.

Out of the initial 127 detainees, 11 other individuals were charged under articles 143, 145 and 147 of the penal code and released on bail on 25 March 2015.

The remainder of the 127 individuals were released in various batches on 12, 13, 15, 18, 24 and 25 March 2015. The charges against them were dropped after they signed a document stating that they will not break article 18 of the Law on the Right to Peaceful Assembly and Peaceful Procession in the future.

On 11 March 2015, in addition to the 127 detainees, another protestor, Mr. Soe Hlaing, was arrested in Monywa (Sagaing region) in relation to the events on 10 March 2015. He is currently detained in the Myingyan prison (Bago Region).

Subsequent arrests

Following the arrests on 10 March 2015, further arrests took place in various parts of the country over the coming days, against individuals who kept calling for amendments to the Law and/or the release of protesters detained. Many of these arrests were directed against members of ABFSU.

On 17 March 2015, the Magway police filed a case against Mr. Pyae Phyo Kyaw, leader of a protest in central Myanmar, for violating article 18 of the Law on the Right to Peaceful Assembly and Peaceful Procession following a speech he had given in the township.

On 27 March 2015, Mr. Nyan Myint Than (aka Nyan Gyi), Mr. Kyaw San Tun, and Mr. Sithu Myat, members of the ABFSU from the Myingyan branch, as well Myingyan human rights activist, Ms. Khin Thandar Tun (aka Ma Phyu), and Mr. Sein Win, member of the National League for Democracy from Myingyan, were detained and charged in Myingyan. They were charged under articles 143, 145 and 505 (b) of the penal code and denied bail. Their first court hearing is scheduled for 10 April 2015.

In a separate incident on 27 March 2015, student leaders from ABFSU, namely Mr. Nandar Sitt Aung, Mr. Shein Yarza Tun, and Mr. Aung Htet Aung (aka Aung Lay), were arrested on their return from a protest demanding the release of all detained students. The protest was held in front of the Thaingyi Market near Sule

in downtown Yangon. Mr. Nandar Sitt Aung remains in detention in Tharyarwaddy prison, while Mr. Shein Yarza Tun and Mr. Aung Htet Aung were charged under article 18 of the Law on Peaceful Assembly and Peaceful Procession and released on bail.

On 29 March 2015, Mr. Sithu Htun, a student from ABFSU's Monywa branch, was arrested following a protest in Monywa, in which he called for amendments to the Law. He was charged under article 18 of the Law on the Right to Peaceful Assembly and Peaceful Procession and released on bail.

It is further reported that arrest warrants were issued by the Tharyarwaddy Township Court against ABFSU student leaders Mr. Ye Yint Kyaw, Mr. Kyaw Ko Ko and Mr. Myat Thu on charges under 143, 145, 147, 332, 505(b) of the penal code.

Serious concern is expressed at the allegations of excessive use of force by the police and plain-clothed individuals against the protestors assembled in Letpadan on 10 March 2015, and the ill and degrading treatment against some detainees, including forced pregnancy tests against female detainees. We express further serious concerns about the series of arrests that have been taking place since 10 March 2015 in relation to peaceful protests against the National Education Law, including the targeting of members of ABFSU.

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on whether or not the detention of the above-mentioned individuals is arbitrary, the allegations appear to be in contravention of the right of persons not to be arbitrarily deprived of their liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR).

The above alleged facts also indicate a *prima facie* violation of the rights to freedom of opinion and expression and to freedom of peaceful assembly and association as set forth in articles 19 and 20 of the UDHR.

In addition, we would like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, 6 and 12.

We would also like to refer to the United Nations Declaration on the Elimination of Violence against Women, which stipulates in article 4 (b) that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women, as well as article 4 (c & d) which states the responsibility of States to exercise due diligence to

prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by private persons or by the State.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 international instruments.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of the 69 individuals still detained in relation to the student protests in Letpadan on 10 March 2015 and charged under five provisions of the penal code, the further 11 individuals charged under three provisions of the penal code and released on bail on 25 March 2015 and Mr. Soe Hlaing, arrested on 11 March 2015 and currently detained in the Myingyan prison.
3. Please provide information concerning reports that 20 women were administered pregnancy test while in detention following their arrest on 10 March 2015 in Letpadan and allegations that Ms. Phyto Pyo Aung and Ms. Ei Thinzar Maung were severely beaten and verbally abused by female police officers after their arrest.
4. Please provide information concerning the legal grounds for the arrest and detention on 27 March 2015 of Mr. Nyan Myint Than (aka Nyan Gyi), Mr. Kyaw San Tun, Mr. Sithu Myat, Ms. Khin Thandar Tun (aka Ma Phyu), and Mr. Sein Win. Please also provide information concerning the legal grounds for the arrest and detention of Mr. Nandar Sitt Aung, Mr. Shein Yarza Tun, and Mr. Aung Htet Aung (aka Aung Lay).
5. Please provide information concerning the legal grounds for the arrest on 29 March 2015 of Mr. Sithu Htun.
6. Please provide information concerning the legal grounds for the issuing of arrest warrants by the Tharyarwaddy Township Court against Mr. Ye Yint Kyaw, Mr. Kyaw Ko Ko and Mr. Myat Thu.

7. Please indicate how the various arrests mentioned above are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights (UDHR).

8. Please provide detailed information on the measures in place to ensure that anyone in Myanmar can exercise the right to freedom of peaceful assembly and association as set forth in article 20 of the UDHR.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as we are of the view that the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Yanghee Lee
Special Rapporteur on the situation of human rights in Myanmar

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences

