



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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 Independent Expert on minority issues; 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 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214/62-11 G/SO 214 (53-24) Minorities (2005-4)
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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; Independent Expert on minority issues; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 22/14, 15/18, 16/4, 15/21, 16/6, 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 following situation.

According to information received:

Seven Muslim community leaders and community members in Sittwe, Rakhine State, have allegedly been arrested in a police operation following a "population verification exercise" conducted on 26 April 2013. The seven individuals, **U Kyaw Myint, U Ba Thar, Sawlima (female), [REDACTED], [REDACTED], U Kyaw Khin, U San Lin, and U Hla Myint**, were arrested between 26 and 29 April and have subsequently been charged with offences relating to a protest against the verification exercise within the Muslim village and IDP areas which took place on 26 April.

On 26 April, the local government of Rakhine State began implementation of a "verification exercise" among Muslim IDPs and villagers currently present in Sittwe Township with the stated objective of providing 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

households and IDPs were reportedly given notice by leaflet, and in meetings community leaders were given instructions to cooperate with the exercise and that non-cooperation would be considered a refusal to comply with the rule of law; legal action would be taken against those who failed to cooperate fully with the exercise.

Meetings were reportedly held with community leaders between 7 and 25 April in which some of those now accused were informed about the exercise and the use of the term “Bengali” on the registration forms. During the meetings, it is also alleged that leaders consistently stated the unwillingness of community members to be registered as Bengali without their consent. On 26 April, it is reported that teams of verification officials began the exercise in the Muslim village of Thet Kae Pyin and visited a number of households. Documentation used in the course of the verification exercise reportedly required Muslims to be registered as “Bengali” rather than being able to register under their preferred identification as “Rohingya”. Some individuals objected to being registered as Bengali and stated that they were Rohingya and wished to be registered as Rohingya. Reportedly some school children at the village schools in two locations, Thet Kae Pyin and Baw Du Pha villages, went into the street where they shouted that they were Rohingya. Observers report that the incident was small in scale and involved mainly children and youth. It is reported that some stones were thrown and that some members of the verification teams were lightly injured in the incidents.

The exercise was suspended following these incidents and a police operation was subsequently initiated leading to the arrest between 26 and 29 April, of U Kyaw Myint, U Ba Thar, Sawlima, [REDACTED], U Kyaw Khin, U San Lin, and U Hla Myint in the Thet Kae Pyin area. Two leaders out of the seven accused were reportedly detained on 26 April, after being required to attend a meeting relating to the verification exercise with public officials in Sittwe. The seven individuals have reportedly been charged under the Penal Code: Section 506 relating to organizing violence, Section 148 relating to rioting or inciting violence with groups of people holding weapons, Section 133 relating to causing injury to service personnel while on duty, and Section 382 relating to robbery or looting.

Unverified reports indicate that those arrested may have been subjected to ill-treatment in detention in Sittwe Police Station Number 1 where they were reportedly held until 23 May. Particular concern has been expressed that [REDACTED] is a juvenile, allegedly aged 15 or 16 and that U Ba Thar is in poor health and suffering from serious medical condition including heart disease for which he requires daily medical treatment. It is reported that he has not received access to medication. U San Lin is also reported to have suffered serious injury to his legs allegedly as a result of his treatment while in detention. According to information received these individuals have appeared before the courts in Sittwe. However no further information is available on the court case relating to the accused and sources have noted concern regarding due process rights and procedural safeguards accorded to the accused. It is further alleged that they have not been granted contact with their family members or the outside world during their detention.

According to information received, the arrests are arbitrary and are reported to be based on their refusal to register as “Bengali”, their presence in the locality in which a demonstration took place, or their status as community leaders. The seven individuals are now reported to have been remanded in Sittwe Prison where they await trial, on 6 June at Sittwe Township Court – Case No. 36/2013. A number of additional detentions and arrests have also been reported in the Muslim areas of Sittwe and the police operation is reported to be ongoing in the region, with lists of those wanted by police being circulated, allegedly causing many community leaders to go into hiding in fear of arrest. Concern is also expressed over the arrest and detention of a further 14 individuals reported to have also been detained on charges relating to the incidents on 26 April.

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).

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 the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. 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.)

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would further like to draw your Excellency's Government's attention to Principle 19 of 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

which 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 [...]”. I would also like to draw your attention to rule 37 of 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, 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.”

We would also like to remind your Excellency’s Government of 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 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 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 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 4.1 of the Declaration further 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.*”

We would also like to draw your attention to article 30 of the Convention on the Rights of the Child that provides that “*In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*”

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, 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 relating to the case and the arrests of these individuals correct?
2. Has any complaint been made by any party relating to the arrest of the seven named individuals?
3. Please confirm the dates of arrest of the seven named individuals and clarify the exact charges against the individuals in question and the relevant sections of the Penal Code.
4. Please provide information concerning the legal grounds for the arrest and detention of U Kyaw Myint, U Ba Thar, Sawlima, [REDACTED], U Kyaw Khin, U San Lin, and U Hla Myint and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights.
5. Please confirm the current location of the named individuals.
6. Please provide information on the dates of appearance of the seven named individuals before the courts. Have those individuals charged been granted access to appropriate legal defence by independent lawyers? What measures are in place to ensure appropriate legal representation for members of the Muslim minority community in Rakhine State?
7. Have the seven accused had the right to communicate and be visited by members of their family while in detention? Have the individuals had adequate opportunity to communicate with the outside world?
8. Have there been any independent medical examinations of the seven accused? Have the named individuals been granted medical assistance where necessary?

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.

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