

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the right to education; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on freedom of religion or belief

REFERENCE: AL
MMR 5/2016:

16 December 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar, Special Rapporteur on the right to education; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on freedom of religion or belief pursuant to Human Rights Council resolutions 28/23, 26/17, 24/5, 31/9, 25/5, 25/32 and 22/20.

We would like to recall grave concerns addressed in a previous communication sent to your Excellency's Government (UA MMR 4/2016) on 21 October 2016, and further highlighted in the press release issued by the Special Rapporteur on the situation of human rights in Myanmar on 18 November 2016.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **measures that may amount to systematic discrimination against religious minorities, particularly the Rohingya Muslims, including arbitrary restrictions on the rights to freedom of peaceful assembly and to manifest one's religion or belief in worship, observance, practice and teaching.**

According to the information received:

Curfew orders were first put in place in June 2012 in several townships in Rakhine State (including Buthidaung, Kyaukphu, Maungdaw, Sittwe, Thantwe, and Yanbye) by the General Administration Department (GAD) Township Administrators under Section 144 of the Code of Criminal Procedure. The curfew has reportedly been regularly extended with reports indicating that it is extended every two months. Over time, the curfew order was progressively lifted in different townships. As of July 2015, all curfew orders had been lifted in Rakhine State, except for Maungdaw and Buthidaung.

These curfew orders provide a blanket restriction on gatherings of more than five people, and prohibit movement after certain hours. The enforcement of these orders has had the effect of restricting gatherings in mosques and madrassas, and limiting the ability to gather for worship, including performing Friday prayers in congregation.

On 2 September 2016, the Maungdaw Township Administrator reportedly issued an instruction to the administrators of ward and village tracts in Maungdaw regarding “illegal teaching of Arabic education in mosques/houses.” The letter allegedly stated that, “[M]ullahs are illegally teaching Arabic education in mosques/houses at wards/village tracts within Maungdaw Township” and that the practice seemed to have continued despite a previous instruction issued on 16 August 2016 for the GAD ward and village tracts administrators to stop such practices. This instruction follows a 24 January 2013 letter issued by the Maungdaw Township GAD addressed to ward/village administrators, instructing them to collect signatures from mullahs of mosques/Arabic schools in their respective villages and wards, “assuring that they will not teach without obtaining permission for mosques/Arabic schools existing within the wards and village tracts in Maungdaw Township.”

The letter dated 2 September 2016 follows a similar approach. In addition to instructing the ward/village tracts administrators to stop the teaching of Arabic education at houses/mosques in their respective ward and village tract, the names and lists of mosques, mullahs and owners of houses where the teaching is conducted were requested to be submitted to the Township Administration Office. The letter provided a deadline of 7 September 2016 to collect the said information and concluded with a warning that action will be taken against those who fail to comply with the instruction. The letter did not specify what action and under which law such action would be taken.

Furthermore, on 18 September 2016, the Rakhine State Security and Border Affairs Minister reportedly briefed the media regarding a meeting in Maungdaw attended by the Rakhine State Attorney General, Government officials and Muslim administrators at the General Administration Department Office. The meeting discussed plans to take stock of buildings constructed without permission from local authorities which included mosques and madrassas. The Rakhine State Security and Border Affairs Minister stated that such buildings will be demolished in accordance with the law.

The Rakhine State Security and Border Affairs Minister was reported to have said that the State Government would issue an official announcement and that initial action would be taken in Buthidaung and Maungdaw. While different figures on the number of structures affected have been reported in the media, according to information received, the State Immigration Department had reportedly identified 2,270 buildings constructed without permission in Maungdaw, including 9 mosques, 24 madrassas, 1,667 residential homes, 445 shop stalls/spaces and 125 buildings categorised as “other.” In Buthidaung, a total of 1,056 “illegal”

buildings, including 3 mosques, 11 madrassas, 876 homes, 159 shops stalls/spaces and 7 buildings in the “other” category.

According to further information received, implementation of the instruction to demolish “illegal houses” has begun in Maungdaw north in November 2016. This follows the “security and clearance” operations initiated in northern Rakhine State after the 9 October attacks against three Border Guard Police (BGP) posts.

On 29 November 2016, the BGP ordered villagers to demolish five houses which they stated had been constructed “illegally” in some villages in Maungdaw north. Four other houses were partially demolished. This resulted in some 25 people being made homeless requiring them to seek shelter with host families in the village after the destruction of their houses. Additional instructions from BGP headquarters have been issued for the identification and reporting of “illegal houses” in villages in Maungdaw south, currently affecting some 137 houses.

It is further reported that, subsequent to a 9 June 2016 letter issued by the Maungdaw Township Administrator on the banning of zinc fencing around “Bengali” houses, implementation of this instruction has been accelerated following the attacks on 9 October 2016. The 9 June letter issued by the Maungdaw Township Administrator, and distributed to Village, Ward and Village Tract Administrators, announced the prohibition of the use of zinc sheets as fencing around “Bengali” houses. The letter indicates that the measure was for “security considerations” and was made at a township management committee meeting No. 9/2016. The letter further states that village, ward and village tract administrators are requested to check their respective villages and to prohibit houses using zinc sheets.

During “clearance operations” carried out by security forces following the 9 October 2016 attacks, villagers were allegedly ordered to remove fencing around houses and in certain location around village hamlets. Harassment, arrest and extortion of villagers have been reported during this exercise. In addition, as bathing and toilet facilities are located in the compounds of houses, it is reported that women feel unsafe due to this measure.

We have no further information whether the measures described would be extended across Rakhine State, the timeline for such action nor the criteria on the selection of structures as well as the rationale for focusing only in Maungdaw and Buthidaung. We have noted that the Government has taken action against Buddhist monasteries and other Islamic religious structures that were constructed without official permission in other parts of Myanmar during the year.

Without prejudging the accuracy of the information received, we express serious concern that the measures described above amount to a violation of the rights to education, to freedom of peaceful assembly and to manifest one’s religion or belief in worship, observance, practice and teaching, and to an adequate standard of living. Such restrictions appear to have a particularly disproportionate impact on the Muslim minority

in Rakhine State, which may further contribute to deeply rooted discrimination against specific sectors of the population in Rakhine State.

These concerns echo those highlighted in the June 2016 report of the United Nations High Commissioner for Human Rights to the Human Rights Council on the situation of Rohingya Muslims and other minorities in Myanmar, which documents a wide range of human rights violations and abuses against the Rohingya that may amount to crimes against humanity.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please clarify the legal basis of the curfew orders in northern Rakhine State and the legal grounds for the continuous extension of such orders since 2012. In particular, please clarify whether a Magistrate's decision in each extension of the curfew order has been issued and the grounds put forward in relation thereof.
2. Please clarify the legal basis for the restriction on the gathering of five or more people since 2012, including at mosques and public schools, contained in the above mentioned curfew orders. Please clarify how the ban of gathering of more than five people complies with the Peaceful Assembly and Peaceful Procession Law 2014 and with international standards on the rights to peaceful assembly.
3. Please clarify whether any arrest have been made in relation to breaching the curfew order. Please also indicate if arrests have been made for "illegal teaching" of Arabic education or the construction or extension of "illegal constructed buildings."
4. Please provide details of the legal provisions applicable to declare the teaching of Arabic education in mosques, madrassas and houses as illegal including whether official permission to teach at mosques and madrassas is required as well as the applicable laws or administrative policies and the responsible Ministry or administrative department.
5. Please clarify the applicable law, policy or guidelines used to determine whether buildings are "illegally" constructed including which buildings may be considered under the "other" category. In particular, please clarify which Ministry is responsible for the assessment and designation of buildings as "illegally" constructed and the applicable process for making such a determination.

6. Please clarify what procedure/process are followed once a determination has been made that a building is “illegally” constructed. Please indicate if all feasible alternatives to demolitions have been explored in consultation with individuals and communities and whether interim measures, such as application for requisite permits, are permitted.
7. Please clarify if the implementation of the plan to demolish “illegal constructed buildings” has begun in northern Rakhine State. Please also clarify whether adequate and reasonable notice has been given and what assistance has been provided to families who have been required to demolish houses.
8. Please clarify if the ban against using zinc sheets as fencing applies to all communities in northern Rakhine State, and if only applicable to select groups, the basis for such selection.
9. Please clarify what legal and administrative recourse options that respect due process guarantees would be available and accessible to those affected, including the right to be heard and the right of access to an independent court. Please clarify what alternative measures and less disruptive options have been considered to demolition, which should be viewed as a measure of last resort.
10. Please provide information on guarantees in place to safeguard the rights of minorities, including religious minorities, on an equal footing with others in general as well as in the specific cases as described above.

We would appreciate receiving a response within 60 days.

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(s) responsible for the alleged violations.

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

Boly Barry Koumbou
Special Rapporteur on the right to education

Maina Kiai

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

Leilani Farha

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Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to Article 18 of the UDHR which recognises freedom of religion or belief as a fundamental right and which provides 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.”

The right to freedom of thought, conscience and religion includes the freedom to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance of one’s religion or belief.

Recognising that freedom of religion or belief is closely linked to other human rights and fundamental freedoms, such as, in particular, the freedom of expression, the freedom of assembly and association and the right to non-discrimination.

The freedom to worship includes, but is not limited to, the freedom to assemble in connection with a religion or belief as well as various practices integral to these freedoms, including the building and maintenance of freely accessible places of worship. (UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55, para. 6 (a).)

Noting that places of worship are an essential element of the manifestation of the right to freedom of religion or belief. The freedom to practise and teach religion or belief includes, but is not limited to the freedom to establish religious schools; the right of each individual to give and receive religious education in the language of their choice, whether individually or in association with others, in places suitable for these purposes, including the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

We would like to draw the attention of your Excellency’s Government to the Convention of the Rights of the Child in Article 14(2) and Article 5 of the 1981 Declaration of the General Assembly which provides that “The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.”

We would also like to draw the attention of your Excellency’s Government to Article 20 of the Universal Declaration of Human Rights, which guarantees the right to freedom of peaceful assembly. According to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the imposition of blanket bans (like the ban on all gatherings of more than five people), “are intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peacefully assembly” (A/HRC/23/99, para. 63).

We would like to further draw your Excellency's Government attention to the 2001 Durban Declaration and Programme of Action (paragraph 47) urging States to guarantee the rights of persons belonging to national or ethnic, religious and linguistic minorities, individually or in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference, and to participate effectively in the cultural, social, economic and political life of the country in which they live, in order to protect them from any form of racism, racial discrimination, xenophobia and related intolerance that they are or may be subjected to;

We would also like to draw your Excellency's Government's attention to article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing includes guarantees of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

We further recall general comments No. 4, 7 and 20 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy of those that may be affected by eviction orders. Demolitions and destruction of property are strictly forbidden under international human rights law and standards. According to these general comments, Myanmar must have further explored all feasible alternatives to forced eviction in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of the evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

Furthermore, we would like to draw your Excellency's Government attention to international standards relevant to the protection and promotion of the rights of minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration refers to the obligation of States to protect the existence and identity of national or ethnic, cultural, religious and linguistic minorities within their territories and to adopt the appropriate measures to achieve this end, and article 2 states that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language without discrimination. Furthermore, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1), and to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

In addition, we would like to bring to the attention of your Excellency's Government the Recommendations of the sixth session of the Forum on Minority Issues

(2013) on “Guaranteeing the rights of religious minorities” (A/HRC/25/66), and in particular Recommendations 17, 20 and 22. Recommendation 17 states that “States should ensure that there is no discriminatory treatment in regard to the legal and administrative recognition of all religious and belief groups. Any registration and administrative procedures, including those relating to the property and the functioning of places of worship and other religious-based institutions, should be conducted according to non-discrimination standards. International standards do not allow non-recognition of religious or belief groups to result in denial of their rights. Such standards require an inclusive approach to be taken”. Recommendation 20 indicates that “States should exercise no undue influence over religious minority affairs, including with respect to the appointment of religious leaders, the functioning of places of worship, and any legitimate religion- or belief-based activities”. Recommendation 22 calls on States to “protect the interdependent freedoms of religion and expression that together encompass the rights to teach, proselytize and criticize any religion, while encouraging a respectful and peaceful coexistence”.