

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the right to food; 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 human rights of internally displaced persons; and the Special Rapporteur on minority issues

REFERENCE:
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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 food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of internally displaced persons; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 28/23, 22/9, 33/9, 32/11, and 25/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the humanitarian situation in Kachin State**.

According to information received:

Following the resumption of the armed conflict between the Myanmar Armed Forces (*Tatmadaw*) and the Kachin Independence Army (KIA) in June 2011 after a 17-year long ceasefire agreement, fighting has particularly intensified since August 2016 through to January 2017 but more so in November and December 2016 in the *Tatmadaw*'s attempts to capture Gidon and Lai Hpawng posts. The fighting has been characterized as being sporadic and unpredictable, and has resulted in civilian casualties, new as well as repeated displacement, and threats to the life, security and dignity of the civilian and internally displaced persons (IDP) population. Military offensives reportedly involve the use of helicopter and jet airstrikes and the use of heavy artillery, including mortars in proximity to civilian and IDP locations. The affected civilians and IDPs are predominantly of Kachin ethnicity.

As of November 2016, there were reportedly between 100,000 and 120,000 civilians who remained displaced across 190 camps in Kachin State and in northern Shan State. Since May 2016, the United Nations has not been able to conduct assessments with international staff or deliver humanitarian relief in areas beyond government control, including to those recently displaced by fighting in Kachin. Reportedly, the Ministry of Foreign Affairs conveyed in July 2016 a Ministry of Defence proposal regarding delivery/collection of aid and relief supplies. The proposal stated that IDPs in KIA-controlled territory would need to cross into government-held areas to pick up aid and relief supplies at distribution points as designated on a map. This has raised serious concerns about the safety

and security of IDPs crossing active conflict lines and mined areas to receive humanitarian assistance.

The humanitarian situation is particularly exacerbated by the lack of unfettered and regular humanitarian access in areas beyond government control. Approximately 40% of the IDP population across Kachin and northern Shan State are located in non-Government controlled areas, and only local/national humanitarian organizations are allowed to provide assistance in non-Government controlled areas. Access to these areas is currently worse than at any point in the past few years. Further, increased restrictions have been reported to be recently placed on local organizations including a requirement for them to get prior permission from the State Government to distribute humanitarian food assistance to any IDP camp, regardless of location. The military has reportedly set up check-points that hinder humanitarian actors from proceeding to deliver humanitarian assistance to the IDPs in the non-government controlled areas. Such additional restrictions have reportedly resulted in unmet humanitarian needs including food and medicines shortages for those displaced.

According to information received, urgent humanitarian needs resulting from multiple displacements remain. Among the essential needs which have been reported are lack of adequate shelter, access to healthcare, food security issues and serious concerns regarding the safety and security of the IDPs. Since late December 2016, about 6,500 to 7,000 people have been displaced multiple times, the majority of whom are women, children and the elderly. This number includes the population of three camps in non-Government controlled areas (Zai Awng/Mung Ga Zup, Hkau Shau and Maga Yang), as well as additional displacement in Mansi and Shwegu townships.

On 18 December 2016, fighting between the *Tatmadaw* and the KIA close to the three IDP camps resulted in the evacuation of approximately 400 to 500 IDPs from Mung Lai Hkyet camp to Laiza after mortars reportedly landed near the camp, damaging three shelters and a building. On 27 December 2016, during the fighting between the *Tatmadaw* and the KIA in Lai Hpawng, mortar rounds allegedly fired by the *Tatmadaw* landed near Zai Awng/Mung Ga Zup IDP camp on five separate occasions. As a consequence, some 2,500 IDPs fled to a location several miles north of the camp while IDPs from Hkau Shau, Maga Yang and Mai Jai Yang reportedly packed their belongings in fear of artillery shelling and in preparation of further displacement. Displacement occurred on different dates across these camps throughout December and January as the fighting got closer affecting some 6,500 people. It is reported that IDPs had to construct makeshift shelters on the side of the road and to date remain in a dire condition. With winter temperatures at night falling to below five degrees Celsius, and unexpected rainfalls, conditions for those displaced including the elderly, children and pregnant and lactating mothers were reported as difficult and chaotic. By 8 January 2017, all remaining IDPs from Zai Awng/Mung Ga Zup IDP camp were reportedly evacuated and temporarily displaced on the road between Hkau Shau

and Zai Awng camp – approximately 10 miles away from their original IDP camps.

Further reports are received regarding continuing displacement of IDPs, including those originally from Zai Awng/Mung Ga Zup IDP camp as well as from Hkau Shau camp, as a result of the escalation in fighting on 10 and 13-17 January. According to information received, Chinese state security forces reportedly forced back to Myanmar IDPs who had attempted to cross on 11 January 2017 at dawn. This was later generally denied by the Chinese Embassy in Yangon on the 18 January. Following the push back, a significant number of the 4,000 IDPs returned to Zai Awng, Maga Yang and Hkau Shau IDP camps from where they had previously fled due to fear of fighting and shelling. As of 25 January 2017, approximately 1,000 IDPs from (Zai Awng/Mung Ga Zup, Hkau Shau and Maga Yang), who were initially displaced to temporary locations within non-government areas, had arrived in government controlled areas, with some of the temporary locations in non-government controlled areas initially identified now being vacated, due to the deteriorating security situation.

Grave concern is expressed about the lack of a comprehensive assessment of needs, full access for humanitarian actors and urgent attention to lifesaving assistance, which heightens the vulnerability and acute risk facing the affected population. The fact that the rainy season will soon be coming to Myanmar could significantly worsen the humanitarian situation of the IDPs in the camps. The Government of Myanmar is reminded of its obligations to ensure protection and humanitarian access to internally displaced persons and other affected communities under international law and standards and humanitarian principles.

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 provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide further information on measures taken to ensure the protection of civilians and civilian objects including homes, IDP locations, and places of worship, hospitals and healthcare facilities, and schools in the area of fighting referenced. Please provide information on how children of school-age have been able to continue their schooling given the fact that end of school examinations are usually held in February.

3. Please clarify what measures were taken to distinguish between civilians, civilian objects and combatants and what steps were taken to minimize harm to civilians, especially children.
4. Please clarify what precautions were taken to avoid or minimize the loss of civilian life and damage to civilian objects.
5. Please provide further information on whether any attempts were made to remove, offer safe passage or evacuate the civilian or IDP population from the vicinity of the attacks and military objectives
6. Please also provide further information on military instructions and rules in such cases, the definition of military objectives used and what precautionary measures are required.
7. Please clarify if any effective advance warning was given to the civilian and IDP population prior to attacks.
8. Please clarify if any assessment was made regarding civilian injuries, and damage to property after the attacks. Has an investigation been initiated?
9. Please clarify if medical treatment was offered and provided to any civilian injured.
10. Please clarify what steps have been taken to initiate a cessation of hostilities between the Tatmadaw and the KIA.
11. Please explain how the humanitarian needs of the IDP population affected are being met.
12. Please provide further information on what has been done to facilitate rapid and unimpeded passage of humanitarian relief to the affected population including IDPs.
13. Please explain, in the context of the current military offensives, how humanitarian relief including, food, medicine, basic shelter and housing, appropriate clothing, and essential healthcare services and sanitation and other items essential to survival are reaching the displaced and affected civilian population without discrimination and wherever they are located.
14. Please explain what is being done to ensure the freedom of movement of humanitarian personnel and the current levels of access of humanitarian agencies, national and international, to the affected areas.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to enable the full and unhindered humanitarian access by humanitarian actors to IDPs and civilian populations in both government and non-government controlled areas and 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

Hilal Elver
Special Rapporteur on the right to food

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Cecilia Jimenez
Special Rapporteur on the human rights of internally displaced persons

Rita Izsák-Ndiaye
Special Rapporteur on minority issues

Annex

Reference to international human rights law

We would like to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, signed by your Excellency's Government on 16 July 2015, which imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil*. Violations of the right to health can occur either through the direct action of States or other entities insufficiently regulated by States, or through the omission or failure of States to take necessary measures arising from legal obligations. General Comment 14 of the Committee on Economic, Social and Cultural Rights, indicates that Each State should contribute to this task to the maximum of its capacities and priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population. States have a joint and individual responsibility to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. (GC 14, Paras.3, 40, 48 and 49).

We recall that the Guiding Principles on Internal Displacement establish the responsibilities of States relating to internally displaced persons. Principle 3(1) stipulates that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, without discrimination of any kind. Principle 18 requires that, at the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation. Principle 25 further stipulates that international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced. Furthermore, we recall that Principle 10 of the Guiding Principles states that attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against: (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted; (b) Starvation as a method of combat; (c) Their use to shield military objectives from attack or to shield, favor or impede military operations; (d) Attacks against their camps or settlements; and (e) The use of anti-personnel landmines.

In addition, in connection with above alleged facts and concerns, 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. 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 consider appropriate measures so they may participate fully in the economic progress and development in their country (article 4.5).

We also would like to draw your Excellency's Government attention to the report by the Special Rapporteur on minority issues on "minorities in situations of humanitarian crises" (A/71/254) and to the recommendations of the ninth session of the Forum on Minority Issues on the same topic (2016).