

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 human rights to safe drinking water and sanitation and the Special Rapporteur on minority issues; and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
UA MMR 8/2017

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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; Special Rapporteur on the right to food; Special Rapporteur on the human rights to safe drinking water and sanitation and Special Rapporteur on minority issues; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 28/23, 32/8, 34/9, 33/10 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning an **evident deterioration of the food security situation in the north of Rakhine State where the majority of the population compose of the Rohingya Muslims. This raises concern regarding the long term, chronic lack of access to adequate food in the context of prolonged security operations in the area. Further concern is raised regarding restrictions imposed on access to livelihoods and heightened freedom of movement restrictions, which negatively impact the population's access to food, access to water and sanitation, food security and poverty rates.**

The Special Procedures mandate holders have previously raised concerns regarding the deteriorating humanitarian situation in northern Rakhine in an Urgent Appeal sent on 9 January 2017 (UA MMR 6/2016). The urgent appeal raised concerns that the current severe food situation was likely to continue to deteriorate during security operations and that longer term food insecurity would be jeopardized as access to land, markets, livelihoods and cultivation of paddy fields was cut off.

The Urgent Appeal highlighted that the townships in the north of Rakhine are characterized by protracted high rates of Global Acute Malnutrition and Severe Acute Malnutrition. Prior to the 9 October attacks (against Border Guard Police (BGP) facilities in Maungdaw and Rathedaung townships), the malnutrition situation in northern Rakhine was reportedly above the World Health Organization emergency threshold of 15 per cent requiring urgent life-saving nutrition interventions with the Global Acute Malnutrition prevalence rate at 19 per cent in Maungdaw and 15.1 per cent in Buthidaung Township. The Urgent Appeal also highlighted that 42,000 people (including 37,000 children) with Moderate Acute Malnutrition were at high risk of becoming severely malnourished if interruptions to their treatment persisted. In addition, some 1,424 acutely malnourished pregnant and lactating women in Maungdaw and Buthidaung were not receiving their

normal treatment which may result in the stunting of their babies with long-term effects on the child's development, growth and mental acuity.

No response to that communication has been received to date.

According to information received:

Maungdaw district is one of the most chronically food insecure areas in Myanmar. One-third of homes are experiencing extreme food deprivation and children are especially vulnerable to a lack of adequate food, as reflected in the high prevalence of malnutrition among children. It is reported that some 80,500 children under the age of five are wasting, with children from the ages of 6 months to 23 months not meeting minimum adequate diet requirements and only a very small proportion of children having access to minimum dietary diversity and meal frequency, necessitating urgent treatment for acute malnutrition. In the first half of 2017, there were 7,568 children suffering from Severe Acute Malnutrition (SAM), which is a 17 per cent increase when compared to same period in 2016.

Access to markets continues to be restricted, as markets in northern Rakhine are only partially functional and food prices have increased for certain foodstuffs such as dried fish, pulses and oils. Combined with reduced purchasing power, these factors have reportedly hindered access of the affected population to minimum adequate food. Restrictions on access to livelihoods such as the forest, agricultural land and fishing grounds and a lack of income generating opportunities have further exacerbated the situation of poverty in the area. According to the 2009/2010 Integrated Household Living Conditions Assessment (IHLCA), Rakhine State had one of the highest poverty rates at 78 percent compared to the national average of 37.5 per cent. The estimated poverty probability in Maungdaw district was 62 per cent, while 19 per cent of the households were considered "food poor" and did not have sufficient means to afford basic human needs. Reportedly, from the second week of July restrictions on the transportation of rice has been imposed on certain Rohingya villages in Maungdaw South, which has contributed to a significant increase in prices and food shortages. The authorities justify the restrictions as a measure to limit supply to "terrorists" and is reported that Rohingya traders have to obtain a recommendation from the sector commander of the BGP to transport rice to Maungdaw South with permission granted only for a limited number of bags. According to further information received, on 8 August 2017, one month after the release of the food security assessment, the General Administration Department in Rakhine State issued a temporary suspension of data collection, surveys and assessments to be conducted by UN and INGOs. It is alleged that this measure suspending assessments was issued to institute a new process for approval of assessments and has impacted on current and ongoing humanitarian needs assessments.

Restrictions of freedom of movement are reported to be among the main causes impeding people's access to food, markets and livelihoods in northern Rakhine. It is alleged that fear of crossing checkpoints and subsequent harassment experienced has also impacted on people's movement. Access to agricultural lands and forests is still limited in the context of heightened security and law enforcement operations and arbitrary restrictions on fishing have been imposed by the authorities and law enforcement. In addition, authorities and law enforcement agents started to request the Identity Card for Verification of Nationality (ICVN) for issuing fishing permits, a measure which mainly affects Rohingya fishermen. Some 38,000 households corresponding to over 225,000 people are experiencing hunger and are considered to be in need of urgent humanitarian assistance. However, the security operations have significantly constrained the operations of humanitarian actors and their ability to access and reach the affected population and those needing assistance. Allegedly, such restrictions in combination with the destruction of houses and villages have negatively affected people's access to drinking water sources. Moreover, individuals and communities who may be perceived by the authorities as providing information to humanitarian agencies on the humanitarian situation may be at risk of reprisals exacerbating protections concerns.

Limited access to essential services including health care and poor access to safe drinking water and sanitation may have exacerbated the malnutrition situation. Nutrition is a key component of the right to health. The health impacts of malnutrition may include heightened risk of preventable deaths and deterioration of pre-existing conditions. It is alleged that households are not able to afford healthcare or education, given the income loss and increased food prices. Malnutrition of pregnant and breastfeeding women can also result in the malnutrition of their children which may have long-lasting consequences, including mental and physical impairment, chronic illness, weak immune systems and reproductive health.

Without making any judgement at this stage as to the accuracy of the above allegations, we express serious concern about the chronic shortage of food and the high prevalence of malnutrition in Maungdaw district, which appears to reflect a *prima facie* violation of the right to adequate food of all persons. Article 11, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), signed by Myanmar in 2015, specifically recognises "the fundamental right to freedom from hunger and malnutrition". As a signatory to the ICESCR, Myanmar is obliged to refrain, in good faith, from acts that would defeat the object and the purpose of the Covenant. On the face value, restrictions of movements hindering the population's access to food and humanitarian assistance appear to be contrary to the ICESCR's "raison d'être", which encompasses the States' "minimum core obligation" to ensure the satisfaction of

minimum essential levels of each of the rights, including essential foodstuffs, essential primary health care, basic shelter and housing, and the most basic forms of education.

In its General Comment No. 12 (1999) on the right to adequate food, the Committee on Economic, Social, and Cultural Rights provides a comprehensive interpretation of the provisions of the right, including its normative content and States's obligations. In Paragraph 19 of the General Comment No. 12 the Committee clarifies that "the prevention of access to humanitarian food aid in internal conflicts or other emergency situations" through the direct action of States or other entities insufficiently regulated by States is considered a violation of the right to adequate food.

The human rights to water and sanitation are essential human rights set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. Article 11 of the ICESCR consecrates the right to an adequate standard of living and article 12 of the ICESCR provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights, in its General Comments 14 and 15, establishes water as an underlying determinant of health and as a human right, derived from the right to an adequate standard of living. UN Human Rights Council in its resolution 15/9 of 2010 and UN General Assembly in its resolution 64/292 of 2010 explicitly recognized the human right to safe drinking water and sanitation.

Furthermore, the Convention on the Rights of the Child, ratified by Myanmar in 1991, guarantees the right of every child to "a standard of living adequate for the child's physical, mental, spiritual, moral and social development" (article 27) as well as the right to the highest attainable standard of health (article 24), which in turn imposes an obligation on the State Party to take appropriate measures to "combat disease and malnutrition" including "through the provision of adequate nutritious foods and clean drinking-water..." in the realization of this right.

Given that the large proportion of the population in northern Rahkine are from the Rohingya Muslim minority, we remain concerned about the disparate impact this crisis is having on this minority group.

We would like to recall the international standards with regard to the protection of persons belonging to minorities, and in particular, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration establishes the obligation of States to protect the existence and identity of minorities within their territories and to adopt the appropriate measures to achieve this end (article 1) and requires States to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law

(article 4.1). In addition, it clearly states that no disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the Declaration (article 3.2).

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), which noted the vulnerability of minorities during crises and in their aftermath including in terms of access to humanitarian aid.

In 2016, the Committee on the Elimination of Discrimination Against Women expressed concern about the stark situation of women and girls, in particular women and girls belonging to ethnic minorities, in northern Rakhine. The Committee made specific reference to the local requirements that women and girls, mainly of Kaman and Rohingya communities, receive permits before travelling, which places undue restrictions on their movement and their access to basic services. The Committee called on Myanmar to repeal all local orders that unduly restrict freedom of movement of women in northern Rakhine, in particular in emergency and life-threatening situations (CEDAW/C/MMR/CO/4-5, paras. 44 and 45).

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 abovementioned 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 responses on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. As the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights, including the rights to health, education and life, please provide information on the measures taken to overcome hunger and malnutrition and realize food security for all.
3. Please provide information on immediate and urgent measures taken to ensure the adequacy and availability of food and drinking water in a quantity and quality sufficient to satisfy the dietary needs of people; and to

ensure the physical accessibility of adequate food and drinking water in order to ensure freedom from hunger in the north of Rakhine State.

4. Please provide information on steps taken to ensure that people's existing access to food and means of obtaining food is respected and protected. Noting that fishing is an important livelihood and source of food for the population, please clarify how the restrictions on fishing imposed on those who do not hold an Identity Card for Verification of Nationality (ICVN) respects their existing access to adequate food.
5. Please provide information on the measures taken to address the malnutrition situation in northern Rakhine, which prior to the 9 October attacks was already above the World Health Organization emergency threshold of 15 per cent requiring urgent life-saving nutrition interventions.
6. Please provide information on existing mechanisms to collect and assess relevant and disaggregated data on the enjoyment of the right to food and the human rights to water and sanitation by all.
7. Please provide information on whether a nutritional surveillance system and water quality surveillance system for early warning and interventions exists and is operational to prevent deaths due to malnutrition, waterborne and related diseases.
8. Please provide information on the measures taken to urgently address malnutrition affecting children and pregnant and lactating women and whether regular and sustained nutrition support and lifesaving assistance is being provided by the government.
9. Please provide information on the main causes for the sharp increase of food insecurity in Maungdaw and Buthidaung Townships in the last six months. Please also provide information on the measures taken and envisaged to address those causes.
10. Please provide information on the specific measures taken and envisaged to ensure that UN humanitarian agencies and other international and national humanitarian partners, have unrestricted access to northern Rakhine to conduct needs assessments and provide humanitarian assistance and that individuals and communities have safe access to humanitarian aid without fear of reprisals.

11. Noting that the problem of hunger and malnutrition in northern Rakhine is also caused by lack of access to available food, please provide information on:
 - a. Measures taken to ensure freedom of movement;
 - b. Measures taken to review and lift restrictions, such as bans on fishing permits and on transportation of food and other necessary items;
 - c. Measures taken to ensure that security operations do not impede access to livelihoods, agricultural lands, forests and fishing grounds and markets. Please provide information on the alternatives provided to the population during the extent of those operations.

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.

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.

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