

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL MMR 13/2019

15 November 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 40/29, 42/22, 41/12 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Than Hla** who has been arrested and charged with offences under section 19 of the Right to Peaceful Assembly and Peaceful Procession Law 2012.

According to information received:

Since December 2018, there has been an armed conflict in Rakhine State between the military and the Arakan Army. Up to 65,000 civilians have been displaced, many civilians have been killed and injured, and there have been up to 14 deaths in custody. Additionally, there have been several arrests and prosecutions of individuals and journalists reporting on alleged violations that have occurred during the conflict.

On 2 July 2019, six young Rakhine men and women, including Than Hla, held a peaceful protest in U Ottama Park in Sittwe, Rakhine State. They held up banners in Burmese and English reading "We want justice for the dead civilians in custody," "Stop targeting and killing civilians" and "Stop fighting and make peace now." That same day, Sittwe Township police officers searched Than Hla's parent's house in Sittwe without a warrant.

On 4 July 2019, an arrest warrant was issued for the six protestors. Following the arrest warrant, Mr Than Hla went into hiding. He was however arrested during the afternoon of 20 September. He was detained for several hours at the Sittwe Myoma Police Station before being released. He was charged under Section 19 of the Right to Peaceful Assembly and Peaceful Procession Law 2012 for failing to notify authorities of the demonstration under that Law. He faces a custodial sentence of three months or a fine of 30,000 kyat. The other five individuals are in hiding. Than Hla is facing a second charge under the same provision in relation to a protest he took part in on 12 January 2018 in Sittwe to call for justice in relation

to people who were killed by police during a demonstration earlier that month in Mrauk-U.

On 23 and 30 September 2019, Than Hla attended Sittwe Court and he is represented by a lawyer and was granted bail. Sittwe Township Court will consider the case against him each week.

We are concerned that Than Hla's arrest and prosecution for participating in a peaceful demonstration may be a violation of his rights to freedom of expression and freedom of peaceful assembly. Furthermore, we are concerned that both the prosecution and punishment that Than Hla is liable for are not proportionate to his alleged act of not informing authorities of a demonstration in a public park involving six individuals. We are also concerned about the Peaceful Assembly and Peaceful Procession Law, which is used to arrest organisers of, and participants at, peaceful assemblies, in violation of international standards. The Law provides no exception to the requirement to notify for spontaneous assemblies, in violation of international standards.

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.

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 therefore be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis for the arrest of and charges against Mr. Than Hla, and explain how these are compatible with international human rights norms and standards.
3. Please provide information about how Than Hla's prosecution is proportionate with his alleged acts and complies with Myanmar's international human rights obligations.
4. Please provide information on the status of any investigations against Mr. Than Hla. Please also provide detailed information on what steps have been taken to ensure that fair trial guarantees have been afforded to him.
5. Please provide information as to what steps have been taken to ensure that human rights defenders in Myanmar are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be

made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individual is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR).

We would like to refer your Excellency's Government to ensure the right to freedom of assembly in accordance with article 20 of the Universal Declaration of Human Rights.

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully;
- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.