

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL MMR 14/2020

5 November 2020

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 promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/26, 43/4, 42/22 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government allegations we have received concerning **possible arbitrary detention of peaceful protesters after joining protests or sticker campaigns critical of the Government or the military, including of specific Government policies, such as the mobile internet shutdown in Rakhine and Chin states.**

According to the information received:

Student protesters

On 9 September 2020, the police in Sittwe, Rakhine State arrested ethnic Rakhine student protesters – **Ko Kyaw Naing Htay, Ko Toe Toe Aung, and Ko Oo Than Naing** – as they staged a demonstration in front of the Arakan state's government building in Sittwe and calling for the restoration of 4G internet connection. Posters allegedly read: “No Bloody Government”, “No Murder Army” and “Oppose Murdering Fascism”. It is reported that family members of the detainees were not able to visit them due to the ongoing conflict and inability to freely move from remote villages.

On 10 September, the three students were charged under the Natural Disaster Management Law for holding a protest while COVID-19 regulations were in place. Those charges were dropped on 22 September however the three were released on bail. Authorities stated the three individuals would instead face charges under Section 19 of the Peaceful Assembly and Peaceful Procession Law.

On 19 October, a protest was organized against the ongoing armed conflict and the alleged Government's failure to protect civilians. Four students, Ko Kaung Tun, Ko Mrat Soe Win, and two other students who participated in the previous protest, Ko Kyaw Naing Htay and Ko Oo Than Naing, were detained by the police. The four students were charged with defamation under article 505 b) of the Penal Code, which carries a penalty of up to 2 years of imprisonment and/or a fine. They were charged also for violation of article

19 of the Peaceful Assembly and Peaceful Procession Law, which has a penalty of up to 6 months and/or a fine. Ko Kyaw Naing Htay and Ko Oo Than had been charged already in relation to the previous protest.

In a separate incident, on 12 September 2020, plain clothed officers of the Special Branch unit of the police, allegedly acting without a warrant, conducted a nighttime raid on the home of **Wai Yan Phyo Moe**, a student in North Okkala, Yangon, and another student. The officers said that they were there to conduct health checks in relation to COVID-19 but then detained and threatened the students with being charged under section 19 of the Peaceful Assembly and Peaceful Procession Law and possible additional charges under section 505(b) of the Penal Code.

Reports indicate that students in Mandalay, Meiktila and Monywa townships have also been charged, arrested, or intimidated with prison time under various laws for joining demonstrations and carrying out a sticker campaign. Several students are now in hiding as a result. Additionally, information points to some students' family members being threatened and intimidated due to the students' activities, and that some student leaders have been sought for detention despite not participating in the demonstrations. Furthermore, some of the detained students were forced to hand over their mobile phones and laptops to be searched by police.

Karen women protesters

In another separate incident, on 12 August 2020, a group of ethnic Karen women held a public ceremony to commemorate the Karen Martyrs Day. It is reported that the event was allowed by the authorities to take place on that day from 8:00 am to 2:00 pm. However, it is reported that the Kyauktada Township police allegedly forced the event to end at 11:00am and detained two organizers, **Saw Has Kwar Lar** and **Sa Thein Zaw Min**, and a third person, [REDACTED]. Authorities allegedly charged the protesters under section 20 of the Peaceful Assembly and Peaceful Procession Law, which were later sentenced by the Kyauktada Court to 15 days imprisonment on 8 September. It is reported that Myanmar police routinely disrupt such ceremonies in Yangon without a clear justification.

While we do not wish to prejudge the accuracy of these allegations, we wish to express grave concern for the physical and psychological wellbeing of the abovementioned protesters and the members of their families. We are concerned that violations of fundamental human rights may have occurred during the above-mentioned incidents, and that customary international law relating to freedom of expression, peaceful assembly and the prohibition of arbitrary detention was contravened.

Student activists play an essential role in shaping the political discourse of a country and with a national election scheduled to take place in Myanmar in November, it is imperative that student activists, journalists, artists and human rights defenders are not prosecuted for expressing their opinions, including criticism of the Government or the military. Myanmar has a long tradition of student activism and student demonstrations have been the catalyst for positive change in the country. It is

crucial that the authorities facilitate students' freedom of expression and peaceful assembly. Unfounded criminal charges should be dropped immediately.

Additionally, as Myanmar advances towards its democratic transition, it is imperative that its rich and multicultural heritage is recognized fully and ethnic minorities are adequately integrated into society. Authorities should ensure that activities to promote their cultural and political contributions, such as events commemorating national days, public gatherings or cultural exhibitions are not unduly restricted, irrespective of whether such activities express dissenting opinions to that of the Government or the military.

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 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 a detailed description of the circumstances that resulted in the detention of the aforementioned persons, and share information about the charges levelled against them and its compliance with international human rights norms and standards, the status of any criminal proceedings, and information as to the location and wellbeing of any students who are detained.
3. Please provide information about any measures taken to ensure that the family members of the abovementioned students are informed on their whereabouts and wellbeing, and given unrestricted access.
4. Please provide information on how the charges brought against the abovementioned peaceful protesters are in conformity with the principle of non-discrimination and the standards laid out in the Universal Declaration of Human Rights, including articles 9, 19, and 20. .
5. Please provide information about measures taken by your Excellency's Government to protect the rights to freedom of expression, peaceful assembly and protection from arbitrary detention of the people of Myanmar, in accordance with international human rights law.

We would appreciate receiving a response within 60 days. Passed this delay, 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 allegation letter 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.

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.

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

Thomas Andrews
Special Rapporteur on the situation of human rights in Myanmar

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Elina Steinerte
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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Many of the provisions in the Universal Declaration of Human Rights are reflective of customary international law. The right to freedom of opinion and expression, the right to freedom of peaceful assembly and of association, and the prohibition of arbitrary detention, enshrined in articles 9, 19, and 20 of the UDHR, are such provisions.

We would like to remind your Excellency's Government of its obligations with respect to the right not to be deprived arbitrarily of one's liberty and to fair proceedings before an independent and impartial tribunal, the right to be treated with humanity and respect for the inherent dignity of the human person. In this regard, provisions under articles 3 and 9 of the UDHR uphold rights to liberty and security of person and the prohibition of arbitrary arrest. Furthermore, the authorities need to follow appropriate procedures when executing arrests and that arrest purely for peaceful exercise of rights protected by international law may be arbitrary. With regard to conditions of detention I wish to recall the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which provide guidance for specific characteristics and needs for women in prison in particular Rules 10, 11, 12 and 13.

Furthermore, we also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions, including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

As such, any restriction on the exercise of freedom of expression must conform to the strict tests of legality, legitimacy, necessity and proportionality.. Even if a restriction complies with these requirements, it can nonetheless be unlawful if it is discriminatory, see e.g. UDI-IR Article I on the principle of equality. The State cannot, for example, implement restrictive measures that are discriminatory against ethnic minorities. The Special Rapporteur on freedom of opinion and expression previously underlined, in this context, that: "States should "demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight." (A/71/373).

Additionally, the importance of the rights to peaceful assembly and of association are rooted in the role they play "as a platform for the exercise of other rights, inter alia the right to freedom of expression, cultural rights and the right to political participation" (A/61/267, para 9). No restrictions may be placed on the right

of peaceful assembly and of association unless they comply with the principles of necessity (and exercised with due proportionality and non-discrimination). These interests are limited to interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Furthermore, we wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them.

Finally, we would 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 wish to draw the attention of your Excellency's Government to the UN Declaration on Human Rights Defenders. In particular, articles 1, 2, 5, 6 and 12, which state that everyone has the right to promote the protection and realization of human rights, that the State has a prime responsibility and duty to protect, promote and implement all human rights, that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights.