

**Mandates of the Special Rapporteur on the situation of human rights in Myanmar and the
Special Rapporteur on the rights to freedom of peaceful assembly and of association**

REFERENCE:
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9 November 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/26 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **new tax compliance requirements for non-profit organizations introduced by the Ministry of Planning, Finance and Industry (Notification 79/2020). The new requirements have been in effect as of 1 October 2020.**

According to this notification¹, the Ministry of Planning, Finance and Industry introduced new tax procedures to facilitate tax exemption for non-profit organizations, deduct expenses for donors, and improve transparency. The notification applies to any national or international civil society organization in the country, including associations conducting "aid activities contributable to the public good such as aid towards education or health and relief activities for the poor and victims of natural disasters", and private foundations.

In this regard, non-profit organizations are now required to apply for a Tax Payer Identification Number (TIN) and for official recognition to benefit from tax exemptions and deduction allowances for donors. To apply for tax exemption, entities should include in their application a bank account associated with the TIN in a bank licensed by the Central Bank of Myanmar, a registration certificate for non-profit organizations (if applicable), information regarding its organizational structure, and a financial statement of the previous year.

Article 7 of the notification lists broad criteria for the Director General of the Internal Revenue Department to grant recognition for tax exemption. Notably, the organization is to be established to carry out "aid activities" exclusively for the public good, it should be reflected in its founding documents, including memorandums, articles of association or constitution, and limit itself to only perform such activities. Incomes, funds and assets of the organization ought not to be used for "personal benefits" by its members or person associated with a member, and funds and property left following closure of a non-profit organization can only be used for "aid activities" for the public good.

The right to freedom of association as stipulated in article 22 of the International Covenant on Civil and Political Rights and in paragraph 354 of the 2008 Constitution implies a presumption in favour of establishing associations without prior registration

¹ [https://www.ird.gov.mm/sites/default/files/Notification79-2020%20\(Eng\)_0.pdf](https://www.ird.gov.mm/sites/default/files/Notification79-2020%20(Eng)_0.pdf)

or approval. To acquire legal personality, and therefore tax exemption benefits, the organization's constitution, memorandum or articles of association or other founding documents should generally suffice to be duly certified or recognized by a competent authority. However, similar to the restrictions set forth in the Association Registration Law, the notification grants overriding powers to an administrative entity, the Director General of the Internal Revenue Department, to deny tax exemption on vague and arbitrary interpretations of the meaning of the criteria set out in article 7. Additionally, the notification provides for no recourse or appeals mechanism to challenge the decision of the Director General.

We wish to express our concerns for the potential for abuse and arbitrary interpretation of the law. The requirement to submit information about the organizational structure of the association seeking official recognition could be too intrusive, and therefore be inconsistent with the right to freedom of association. While some additional requirements can be reasonably expected for organizations seeking a "special status", including for tax exemption purposes, documentation should be as minimal and exhaustive as possible. In this regard, the prerogative given to the Director General to assess whether an association "exclusively" focuses its work on "aid activities" can be subject to bias and arbitrary interpretation and therefore inhibit their functional autonomy. The requirement to submit financial records should include sufficient safeguards to protect the associations from abuse, and be fair and transparent. Any use of financial records to intimidate or harass project beneficiaries or companies working with non-profit organizations should be adequately prevented.

The process of recognition should be as easy as possible, and decisions to deny tax exemption should be provided in writing specifying the reasons for rejecting an application without undue delays. Moreover, applications should not be rejected solely on technical grounds, such as missing documents or incomplete information. Applicants should be given a specified and reasonable time period in which to rectify any omissions. Additionally, associations should be allowed to appeal the decisions denying recognition before an independent and impartial tribunal, and be given the opportunity to reapply in case of failure to comply with technical formalities.

As regards submission of financial statements, non-profit organizations seeking recognition can be reasonably expected to use income generated to support its aid activities. However, this should not be interpreted as a means to prevent these organizations from paying their staff and reimbursing any expenses resulting from its work. They should also have the ability to use property and assets for this purpose.

Given the nature of non-profit organizations, it is reasonable to expect some form of public support for their activities, including State incentives for tax exemption. As associations play a fundamental role in a democratic society, it is essential that measures are made available to promote non-profit activities, including support for the Rohingya and other ethnic minorities and internally displaced communities. Regarding efforts to prevent terrorist activity, it is worth noting that freedom of association should not be unduly restricted by surveilling and monitoring non-profit activities. It is therefore crucial that any such surveillance be carried out following a civilian court order, and be subjected to judicial review. In the event of lawful state intervention on a non-profit organization, its members should have the ability to seek redress for undue surveillance.

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 above-mentioned communities 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 observations on the following matters:

1. Please provide information on the legal basis of the notification on new tax compliance requirements for non-profit organizations.
2. Please provide further information on the approval process for granting tax exemption, including any appeals or complaints procedure for rejected applications, and whether the Director General is required to notify in writing his decision for denying official recognition.
3. Please clarify the time-frame for the process of granting official recognition for tax exemption.
4. Please clarify how the data provided by non-profit organizations is protected and stored, and whether police or military entities can access these data without a civilian court order.
5. Please explain the need to provide information on the organizational structure of non-profit organizations, and how this requirement is consistent with the right to freedom of association.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

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