

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on extreme poverty and human rights

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(Please use this reference in your reply)

26 November 2021

Dear General Min Aung Hlaing,

We address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 43/14, 41/15 and 44/13.

We are writing to you in light of your role as Commander in Chief of the Tatmadaw/Myanmar Armed Forces, and in particular, with respect to the role the Tatmadaw has played in the evictions of the informal settlements of Hlaing Thar Yar Township.

In this connection, we would like to bring to your attention the information we have received concerning **ongoing forced evictions and home demolitions affecting the residents living in the informal settlements of Hlaing Thar Yar, in the Yangon region, which are reportedly carried out by the Myanmar Armed Forces with a disproportionate use of force. These evictions have thus far reportedly left 8,000 families homeless, without any compensation for the losses suffered, in a context marked by the continued application of the martial law to the area affected. These forced evictions and home demolitions are taking place in midst of the COVID-19 pandemic, thus further elevating the risk to health and life of the persons concerned. Further evictions are being undertaken, twice per week, in other informal settlements of Hlaing Thar Yar Township, with preparations underway in other townships.**

According to the information received:

On 13 July 1989, the Ministry of Home and Religious Affairs issued Order No.2/306/Atha 2 establishing the township of Hlaing Thar Yar. Hlaing Thar Yar is located in the western part of Yangon and comprises 20 wards and nine village tracts.

After being mainly an industrial center, since 1993 Hlaing Thar Yar has become a residential area. Initially hosting residents that were resettled from the city center of Yangon by the military.

In 2008, after cyclone Nargis hit Myanmar, many internally displaced persons took refuge in Hlaing Thar Yar hoping to find work in its factories. Since 2012, an increasing number of migrants, especially rural dwellers from the

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Ayeyarwady Delta, has settled in the township.

According to the 2014 census, the population of Hlaing Thar Yar Township totals 687,867 individuals. Reportedly, Hlaing Thar Yar currently comprises 181 informal settlements. Estimates suggest that the population of the informal settlements may amount to over 124,000 individuals. The majority of the residents are reportedly economic and environmental migrants, fleeing from a combination of environmental disasters, such as Cyclone Nargis and soil erosion, and economic hardship brought about by stagnating rural wages, landlessness and seasonal unemployment. Over time, the increasing number of migrants reaching the township has resulted in its expansion into unoccupied lands on the fringes, including public land.

In 2015, a resettlement plan was launched along with a campaign to issue Smart Cards (residency certificates) in favour of the informal residents of the Yangon area, as a pre-requisite to allow them to access low-cost housing. Reportedly, informal residents were authorized to remain in the settlements, pending the implementation of the resettlement plans and the allocation of housing. However, obtaining a Smart Card turned out to be complex in practice and, as a result, only a minority of informal residents received one. As of May 2018, out of an estimated total of 440,000 residents in informal settlements in the Yangon area, only a total of 167,738 smart cards were issued. The implementation of the resettlement plans has since been stagnating.

On 4 February 2021, many residents in the informal settlements in the Yangon area participated in mass demonstrations against the coup d'état by the military.

On 14 March 2021, the armed forces of the State Administration Council intervened against the protesters, pulling down sit-up strike camps in Hlaing Thar Yar and opening fire. According to reports, at least 62 deaths were confirmed, many dying of gunshot wounds. Hlaing Thar Yar has been placed under martial law since then.¹

On 10 October 2021, residents of the informal settlements in Hlaing Thar Yar received an eviction notice informing them that the eviction would take place on 28 October. The notice indicated that the eviction was carried out pursuant to section 133 of the Code of Criminal Procedure, which regulates the “removal of public nuisance”. The notice also indicated that the concerned individuals were to remove their homes and businesses from public land by 28 October. According to reports, one week prior to the date scheduled for the evictions, the eviction notice was also affixed in each settlement block.

On 26 October 2021, a group of public officials, including an engineer from the Department of Bridges, a representative of the Ministry of Construction, some local administrators, and some soldiers entered the informal settlements

¹ A/HRC/48/67 and A/HRC/48/CRP.2

and requested owners of small businesses to sign a document whereby they committed to leaving the area in three days and acknowledged being a threat to public peace, health and security.

On 28 October 2021, tens of bulldozers and military trucks entered the area accompanied by armed soldiers, police officers and municipal workers. Makeshift huts and houses were destroyed. Reportedly, many families had already demolished their housing the night before, out of fear of facing arrest or beatings by the soldiers the following day.

Based on the information received, 8,000 families were affected by the evictions carried out on 28 October and were left homeless. They reportedly received no compensation for the loss suffered. Most of the victims cannot afford alternative housing, nor can they afford the trip back to their home villages. According to reports, many may move to other informal settlements near Yangon.

Reportedly, the area where the eviction took place on 28 October has been guarded day and night by armed forces. Further evictions appear to be undertaken, twice per week, in other informal settlements of Hlaing Thar Yar Township. Moreover, according to reports, settlement clearances are also underway in other townships, such as Shwepyithar, and Dagon Seikkan.

Without prejudging the accuracy of the information received, we wish to express our serious concern about the ongoing home demolitions and forced eviction affecting the residents of the informal settlements of the Yangon region. We understand that the affected residents have not been provided with alternative housing and compensation for the loss suffered and a durable solution to their housing needs, identified in consultation with them. Their situation is exacerbated by the deprivation of the means of subsistence for many of them, as the result of the destruction of the small businesses existing in the settlements, in breach of international human rights standards, including those related to the right to an adequate standard of living, including adequate food, housing, water and sanitation. We are also alarmed at the use of force and the pressure, which appear to be used as a means to force residents to destroy their houses and relocate, against their will, in a context marked by the continued application of martial law to the area following the protests against the coup. We are furthermore deeply concerned that home demolitions and evictions are continuing to occur in the context of the COVID-19 pandemic, thereby exposing these families to a great risk for their health and life and heightening the risk of spreading the virus.

We emphasize that the human rights of individuals and groups must be respected, protected and fulfilled, irrespective of the character of the perpetrator(s). At a minimum, actors exercising either government-like functions or de facto control over territory and population must respect and protect the human rights of individuals and groups.

In this regard, we would like to draw your attention to article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified

by Myanmar on 6 October 2017, which recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate housing. This article must be read in conjunction with Article 2.2 of the Covenant, which provides for the exercise of the rights enunciated under the Covenant without discrimination of any kind, including on the ground of economic and social situation.²

As clarified by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.³ Paragraph 15 of the same General Comment provides that if an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances, evictions should result in homelessness, and appropriate measures must be taken to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.⁴ We also wish to recall that whereas some evictions may be justifiable, it is incumbent that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.⁵

We wish to emphasize that no derogation is permitted under the ICESCR due to emergency, and thus the right to adequate housing must be observed under all circumstances, even if martial law is legitimately invoked.

In addition, we would like to refer you to the Principles on security of tenure for the urban poor (A/HRC/25/54) and Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43), notably guideline nos. 6 on forced evictions and 7 on informal settlements, as well as the “COVID-19 Guidance Note: Prohibition of evictions” and the “COVID-19 Guidance Note: Protecting residents of informal settlements” elaborated by the former Special Rapporteur on the right to adequate housing. We also wish to refer you to the report of the Special Rapporteur on “the right to housing for residents of informal settlements” (A/73/310/Rev.1) which provides guidance on the realization of the right to housing in respect of those residents, based on the right to remain in situ where possible, to be adequately housed nearby when relocation is necessary or preferred, meaningful engagement and ending the use of eviction procedures.

Furthermore, we wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) which specify that evictions can only take place in 'exceptional circumstances'; they

² The Committee on Economic, Social and Cultural Rights (CESCR) General comment No.20, para 15-35.

³ The Committee on Economic, Social and Cultural Rights (CESCR) General comment No. 7, para. 4.

⁴ CESCR, General Comment No. 4, para. 8.

⁵ Ibid. para. 11.

must be authorized by law, and ensure full and fair compensation and rehabilitation, among others. The Guidelines indicate that evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected. Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards. It must be ensured that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use. At a minimum, regardless of the circumstances and without discrimination, it shall be ensured that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. Members of the same extended family or community should not be separated as a result of evictions. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies. The Guidelines also specify that urban or rural planning and development processes should involve all those likely to be affected.

Additionally, we would like to bring to your attention that mass evictions under conditions of martial law and civil strife raise also concerns under international criminal law, which condemns deportation and forcible transfer of population when committed as part of a widespread or systematic attack directed against any civilian population.⁶

We would also like to refer to the 1998 Guiding Principles on Internal Displacement, which establish the need to respect and ensure respect for international human rights law to prevent and avoid conditions that might lead to the displacement of persons (Principle 5). We moreover stress that according to the Guiding Principles, every human being shall have the right to be protected against being arbitrarily displaced from his or her home (Principle 6). Principle 18 requires that internally displaced persons shall have an adequate standard of living, which includes basic shelter and housing. Internally displaced persons are entitled to a durable solution of their choice, i.e. safe, voluntary and dignified return to their places or origin, settlement elsewhere in the country or local integration (Principles 28-30).

Given the urgency of the situation of persons affected by the evictions and those at the risk of further evictions and home demolitions, we call upon you to urgently halt any ongoing evictions and home demolitions and ensure that evicted

⁶ See, for example, article 7 of the Statute of the International Criminal Court

persons are provided with alternative accommodation and necessary assistance in accessing food, clothing, water and sanitation facilities and services. We also urge you to identify a permanent solution to fulfil their housing needs in the long term in consultation with them. We further urge you to halt any act of intimidation against the residents and to take measures to protect the people concerned from any risks to their health and life due to the COVID-19 pandemic.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 appreciate receiving your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the home demolitions and the forced evictions conducted since October 2021, and the number of persons affected disaggregated by gender, age, disabilities, socioeconomic status and other indicators.
3. Please indicate the legal basis for such evictions and home demolitions, and how they are compatible with the international law standards recalled in this letter. Please also indicate whether the people affected were consulted and specify in which manner they had access to effective legal remedies and if any such remedies were sought before national courts or other bodies and institutions.
4. Please provide information on any specific measures that you have taken to prevent the negative human rights impact of the evictions and home demolitions, including ensuring the rights of residents to adequate housing (both emergency shelter and long-term accommodation solutions), health, water and sanitation, food, education, and cultural rights.
5. Please elaborate on whether any specific actions were taken or are being taken to protect the residents of the informal settlements that were subjected to evictions and home demolitions in relation to their health risk in the context of the COVID-19 pandemic and whether any considerations were given to suspend or stop any evictions during the pandemic.
6. Please indicate if and how all feasible alternatives to the realized and ongoing evictions have been explored in consultation with the concerned residents. If alternatives to eviction and resettlement have been considered, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable. If no alternatives were considered, please explain why feasible alternatives to the eviction,

including the right to remain in situ, were not explored.

7. Please describe what concrete housing alternatives are currently available to the families evicted to ensure that no one remains homeless or lives in substandard conditions as a result of the eviction.

In view of the urgency of the matter, and while awaiting a response on the above list of questions, we would appreciate a preliminary response as soon as possible on the initial steps taken by you to safeguard the rights of the above-mentioned person(s) in compliance with international instruments and more specifically to immediately halt the forced evictions and home demolitions.

And in this regard, we may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with you to clarify the issue/s in question.

This communication and any response received from you will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Finally, we stress that this letter does not in any way imply the recognition, as a matter of international law, of Tatmadaw as the legitimate government of Myanmar, and is without prejudice to the United Nations positions on these matters.

Yours sincerely,

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