

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on trafficking in persons, especially women and children

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(Please use this reference in your reply)

3 March 2025

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 torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 55/20, 52/7 and 53/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **widespread, arbitrary and indefinite detention of refugees and asylum seekers from Myanmar, many of whom are from the Rohingya and Chin minorities. We have also received reports of inadequate conditions, ill-treatment, and deaths in custody of Rohingya refugees in detention centers. In this connection, we would also like to raise the specific case of Mr. Mohammad Arfat, a Rohingya refugee and human rights defender from Myanmar, who has been detained since 23 December 2020.**

Special Procedure mandate holders have raised concerns about the detention and deportation of refugees from Myanmar, most recently in IND 2/2024. We regret that no reply was received to that communication.

According to the information received:

Hundreds of refugees and asylum seekers from Myanmar are reportedly being detained in India in immigration detention centers and other places of detention, with a large number reportedly detained in holding centers in Jammu and Assam, among other locations. A majority of those detained are reportedly from the Rohingya ethnic minority, while many others are from the Chin minority. Those detained include women, including pregnant women, the elderly and children. Many of those detained had registered with UNHCR as asylum seekers.

Rohingya and other Myanmar refugees and asylum seekers, including children, face long-term indefinite detention in the custody of Indian authorities. Many detainees have reportedly completed court-imposed sentences of imprisonment on immigration charges but remain indefinitely detained. Others face no charges but remain in detention. It is further alleged that many of those who are detained do not have access to due process or legal representation.

In September 2024, it was reported that over 100 Myanmar refugees, including Chin and Rohingya, launched a hunger strike demanding release from prolonged detention in Matia Transit Camp in Assam. These refugees were reportedly

relocated to this detention center after they completed their court-imposed sentences for “illegal border entry”. Some of the refugees have reportedly been in detention for over a decade. Some detainees hold valid UNHCR cards.

Conditions in places of detention are reportedly dire. Detainees from Myanmar, the majority of whom are Rohingya, are reportedly held in severely overcrowded cells, and do not receive adequate nutrition, clean water, or medical care. Facilities are reportedly unsanitary. Detainees lack clean clothes, bedding, and access to sunlight. Many detainees are reportedly suffering from illness, infections and other medical problems and are unable to access adequate medical care. There is reportedly no adequate oversight of places of detention by independent actors, including UNHCR.

Credible reports indicate that a number of detained Rohingya refugees have also died while in custody, with a notable spike of deaths in custody in 2024. This includes a 14-year-old Rohingya refugee girl, who was reportedly trafficked to India from Bangladesh. Despite allegedly being a victim of trafficking, she was detained in India and died in custody in March 2024 at Sewa Sadan detention centre in the Shehzada Bagh neighbourhood of New Delhi. In another case, an elderly Rohingya refugee woman reportedly died in detention in September 2024 after spending 1,287 days in Jammu’s ‘Holding Centre’. Available information suggests that some of these deaths were due to inadequate conditions of detention and detainees’ lack of access to appropriate medical care.

Credible reports further indicate ill-treatment and beatings of refugees in detention which could amount to torture.

Reportedly, over 250 Rohingya refugees and asylum seekers, including children and women, have been detained since March 2021 in Hiranagar sub-jail in Kathua district, Jammu, which has since been converted to a holding center. A petition for release from detention for this group of refugees was filed with the court. However, the court denied the relief and asked the government to proceed with deportation. Those detained remain in indefinite detention and reportedly have no access to visits from family members. In July 2023, authorities reportedly used violence and tear gas to break up protests by detainees at Hiranagar over poor detention conditions, which resulted in injuries and one death.

It has also been reported that informal Rohingya settlements have been targeted in round ups resulting in mass arbitrary arrests and detention. In Uttar Pradesh in July 2023, police officers and members of Anti-Terrorism Squads surrounded Rohingya informal settlements in the early morning and carried out mass arbitrary arrests and detention of Rohingya. This led to the separation of families. In some cases, women have been left to care for children without assistance and to manage legal arrangements for detained family members. With little or no exposure to the outside world, significant language barriers, and very low levels of education, these women face significant burdens.

There are also reports of a number of deportations by the Government of India of Rohingya and other refugees and asylum seekers back to Myanmar despite the irreparable harm they may risk if returned (see for example IND 2/2024).

The case of Mohammad Arfat

Mohammad Arfat is a Myanmar refugee from Maungdaw Township, Rakhine State, Myanmar. He fled to Bangladesh in 2012 when Myanmar security forces and local civilian populations carried out widespread attacks on Rohingya people in northern Rakhine State. Mohammad Arfat was in India from 2013 to 2018, left due to growing security concerns, then in 2020 fled back to India for his safety and to reunite with family members. He was a human rights defender and humanitarian worker.

On 23 December 2020, Mohammad Arfat was arrested in Assam State. He presented his UNHCR refugee card to police at the time of his arrest, and explained his background, refugee status, and reasons for traveling to India. In the following days, he was interrogated and assaulted by security forces, who told him that he was being detained as an “illegal immigrant”. He was then transferred to Karimganj District Prison.

In May 2022, Mohammad Arfat was convicted of violating section 14 of the Foreigners Act and rule 6 of the Passport (entry into India) Rules, 1950. He was sentenced to one year imprisonment and a fine, with the term of imprisonment to be set off by previous periods of detention.

Despite the fact that Mohammad Arfat’s sentence of imprisonment was satisfied by his pre-trial detention, he has remained in indefinite detention since his conviction in Karimganj District Prison, Silchar Central Jail, and Goalpara Matia Detention Center, where he remains held at present.

In an affidavit filed with the Guwahati High Court, the Government of Assam justified Mohammad Arfat’s continued detention by the need to verify his nationality. The affidavit cited instructions from the Ministry of Home Affairs to restrict his movements “to ensure his physical availability for deportation.” The affidavit also stated that the Ministry of External Affairs had contacted the Embassy of Myanmar to verify his nationality and was awaiting a response.

Mohammad Arfat is reportedly being held in poor, overcrowded conditions in Goalpara Matia Detention Center, and he has not been given access to adequate medical care.

While we do not wish to prejudge the accuracy of these allegations, we are extremely concerned about the arbitrary and indefinite detention of Rohingya, including Mohammad Arfat, and other refugees from Myanmar in India. We are also concerned about the conditions of detention for these individuals, allegations of ill-treatment and beatings that could constitute ill-treatment or torture, lack of access to adequate medical treatment, deaths in custody, and deportations. We remain concerned that asylum-seeking children are also being arbitrarily and indefinitely detained. We wish to stress that detention of any child for reasons related to their, their parents’ or their legal

guardians' migration status is never in the best interests of the child; it is always a child rights violation and may constitute cruel, inhuman or degrading treatment of migrant children. We would like to recall that India has an obligation to identify victims of trafficking and to ensure comprehensive assistance and protection, with heightened obligations to safeguard the rights of child victims. Victims of trafficking have the right to seek asylum and international protection and must be protected against refoulement. Furthermore, the non-punishment principle requires that victims of trafficking are not penalized or detained for unlawful acts committed as a result of trafficking.

We are further alarmed that refugees from Myanmar, including UN-registered refugees like Mohammad Arfat, are at risk of refoulement to Myanmar. Mohammad Arfat and other Rohingya refugees fled Myanmar due to legitimate fears of violence and persecution, including by the Myanmar armed forces. Deporting Mohammad Arfat or any Rohingya refugee or asylum seeker to Myanmar would expose them to serious risk of arbitrary arrest, detention, torture, and ill-treatment. Deportation would likely breach India's obligation under customary international law to respect the principle of non-refoulement.

The Myanmar military junta, similar to Myanmar's previous governments and military regimes, does not recognize the citizenship of the Rohingya people. Therefore, the Myanmar Embassy in Delhi is extremely unlikely to verify Mohammad Arfat's citizenship, suggesting that his detention could be extended indefinitely.

In light of the escalating crisis inside Myanmar, we strongly urge your Excellency's Government to strengthen measures that protect those fleeing Myanmar who are currently in India in line with India's international human rights law obligations to respect and protect the rights of all people on its territory, regardless of their citizenship or immigration status. This includes ending the arbitrary detention of Myanmar nationals, including Rohingya, ending the detention of children, allowing for independent access to sites of detention, engaging with UNHCR to allow it to support refugees and asylum seekers across India, and streamlining pathways for refugee registration and asylum determination, including by ratifying the Convention Relating to the Status of Refugees 1951.

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 information about refugees and asylum seekers from Myanmar, including Rohingya refugees, detained in India, including their number and location, and please respond to the allegations outlined above.

3. Please describe any steps taken by your Excellency's Government to improve conditions for detained refugees and asylum seekers from Myanmar.
4. Please describe your Excellency's Government's policies concerning the ongoing detention of refugees and asylum seekers from Myanmar, including children, including plans for those who have already completed court-imposed sentences.
5. Please describe any steps taken by your Excellency's Government to hold accountable officials responsible for violence or other human rights violations against refugees and asylum seekers from Myanmar.
6. Please explain what measures have been taken to ensure that refugees and asylum seekers from Myanmar can seek refuge safely and humanely in India in line with India's obligations under customary international law.
7. Please provide any additional information and any comments that you may have on Mohammad Arfat's arrest and detention and clarify whether there are any plans for his deportation.

This communication and any response received from your Excellency's Government 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.

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

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 6(1), 7, 8, 9, 10, 16, and 24(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Republic of India on 10 April 1979, that guarantee the inherent right to life of every individual, the prohibition of torture and slavery, as well as the right to liberty and security of the person. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add.13 (2004), para. 10).

On administrative detention

According to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for the shortest period of time following an individualized assessment of the need to detain, when no less restrictive measure is available and must be reviewed periodically with clear limits of the duration of detention set out in the legislation. If not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the Universal Declaration of Human Rights (UDHR) and article 9.1 of the ICCPR. Furthermore, we recall that commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195). In addition, we would like to draw your government's attention to the revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, "alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure" in order to ensure that such detention is not arbitrary. The Working Group also underlined that such "[D]etention must be justified as reasonable, necessary and proportionate in the light of the circumstances specific to the individual case" and that it "must not be punitive in nature and must be periodically reviewed as it extends in time" to ensure detention in the immigration context is not arbitrary. We also wish to refer to the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, which state that the detention of asylum-seekers should normally be avoided and be a measure of last resort (guidelines 2, 4.1, 9.2). If detained, asylum-seekers are entitled to conditions of detention that must be humane and dignified (guideline 8).

In addition, the need to detain should be assessed on an individual basis and not based on a formal assessment of the migrant's current migration status, and a maximum detention period in the course of migration proceedings must be set by legislation, permissible only for the shortest period of time. Excessive detention in the course of migration proceedings is arbitrary. Additional guidance on human rights standards in

the context of immigration detention is available in the Office of the United Nations High Commissioner for Human Rights Principles and Guidelines on migrants in vulnerable situations.

On conditions of detention

Regarding the conditions of detention, we wish to refer to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. We also wish to draw your attention to paragraph 25 of general comment No. 36 of the Human Rights Committee on article 6 of the ICCPR, on the right to life (CCPR/C/GC/36), which establishes that States parties also have a heightened duty of care to take any necessary measures to protect the lives and bodily integrity of individuals deprived of their liberty by the State, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. We would like to also remind your Excellency's Government of article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the Republic of India acceded on 10 April 1979, which enshrines the right of everyone, including prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. Accordingly, States have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 34). Furthermore, we would like to draw your Government's attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). We further recall that detention conditions and treatment should always comply with international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), taking into account any personal vulnerability due to factors such as migration status, age, gender, disability, medical condition, previous trauma or membership in a minority group.

On the prohibition of torture and ill treatment

We wish to stress the absolute and non-derogable prohibition of torture and ill-treatment codified in article 5 of the Universal Declaration for Human Rights; article 7 of the ICCPR; article 15 of the Convention on the Rights of Persons with Disabilities (CRPD), to which the Republic of India acceded on 1 October 2007; and articles 2 and 16 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), which the Republic of India signed on 14 October 1997, creating an obligation to refrain from acts that would defeat the object and the purpose of the treaty. While encouraging the Government of India to ratify the CAT, we would like to recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We also wish to draw the attention to the report on migration-related torture and other cruel, inhuman or degrading treatment, in which the former Special Rapporteur on Torture highlighted that "any detention regime that, as a matter of deliberate policy or as a consequence of negligence, complacency or impunity, subjects or exposes migrants to treatment or conditions of detention grossly inconsistent with universally recognized standards, most notably the United Nations Standard

Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), is incompatible with the prohibition of torture and ill-treatment” (A/HRC/37/50, para. 19). He also stressed that the threshold of prohibited ill-treatment generally will be reached sooner with regard to migrants with an irregular status or with other vulnerabilities. In addition, we draw your Government’s attention to article 2 of the ICCPR, which creates an obligation on States to ensure that any person who has been subjected to torture has access to an effective remedy; and article 12 of CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of CAT, which requires State parties to prosecute suspected perpetrators of torture.

On the principle of non-refoulement

We call your Excellency’s attention to the State’s obligation of non-refoulement, as protected under customary international law and international human rights law, including as stipulated in article 3 of the CAT. The Working Group on Arbitrary Detention on deprivation of liberty of migrants clarifies the non-derogability of non-refoulement in revised deliberation No. 5, which states in para. 43 that “[t]he principle of non-refoulement must always be respected, and the expulsion of non-nationals in need of international protection, including migrants regardless of their status, asylum seekers, refugees and stateless persons, is prohibited by international law.” The obligation not to extradite, expel or otherwise transfer in article 6 of the ICCPR may also require the protection of aliens not entitled to refugee status. Therefore, the principle of non-refoulement under international human rights law applies to any form of removal or transfer of persons regardless of their legal status as well as to victims of trafficking and persons at risk of trafficking as specified in the Convention on the Rights of the Child and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol). In addition, principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions establishes that no one shall be returned or extradited against his or her will to a country where there are substantial grounds for believing that he or she may be subjected to extra-legal, arbitrary or summary execution in that country.

Furthermore, we would like to bring to your attention to the Convention on the Elimination of All Forms of Discrimination against Women, which India ratified on 9 July 1993. In particular, we would like to recall Committee on the Elimination of Discrimination against Women general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, in which the Committee recognizes the forms of exploitation concomitant with displacement, such as trafficking for purposes of sexual or labor exploitation, slavery and servitude. We would also like to refer to the Committee’s general recommendation No. 38 (2020) on trafficking in women and girls, which calls States to apply the principle of non-refoulement to governance measures taken at international borders (para. 85). States have positive obligations to identify victims of trafficking, irrespective of the lack of self-identification by a victim (para. 38). Victims of trafficking have the rights to a special status and a right of special assistance and protection measures provided by the State, including access to information on their rights, information regarding their availability to services and safe and appropriate

accommodations (paras. 39-41). Moreover, States Parties are obliged to protect victims of trafficking from revictimization, which includes guaranteeing victims of trafficking protection against forcible return (para. 41).

In May 2024, UNHCR issued a Guidance Note on Myanmar describing the intensification of violence and serious human rights violations in Myanmar. UNHCR called on all States to “to allow civilians fleeing Myanmar access to their territories, to guarantee the right to seek asylum, and to ensure respect for the principle of non-refoulement at all times” and “suspend the forcible return of nationals and former habitual residents of Myanmar, including those who have had their asylum claims rejected.”

On 2 July 2024, the UN Committee on the Elimination of Racial Discrimination issued a statement under its early warning and urgent action procedure expressing concerns about racial discrimination and restrictions faced by Rohingya people in India. The Committee called on India to “end the arbitrary mass detention of the Rohingya” and “refrain from forcible deportation and returns of the Rohingya to Myanmar.”

Rights of children in detention

We draw your attention to the rights of children, including child refugees and asylum seekers, as protected by the Convention on the Rights of the Child (CRC), to which the Republic of India acceded on 11 December 1992. Article 3 states that “the best interests of the child shall be the primary consideration” in all actions concerning children. Article 22(1) states that States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights. Article 35 requires States Parties to take measures to prevent the abduction, sale of or traffic in children for any purpose and article 36 requests States Parties to protect the child against all other forms of exploitation. Article 37 requires that the detention of children should be used “only as a measure of last resort and for the shortest appropriate period of time,” and that they should be detained “in a manner which takes into account the needs of persons of his or her age.” Detained children should “be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.” In 2020, the UN General Assembly passed resolution 74/133 calling on States to “Promot[e] alternatives to detention for children and tak[e] steps to minimize the risk of violence against children in detention, ... and to ensure that no child should be subject to torture or other cruel, inhuman or degrading treatment or punishment.”