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Human rights situations that require the Council's attention

Note verbale dated 23 March 2012 from the Permanent Mission of Myanmar to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council

The Permanent Mission of the Union of Myanmar to the United Nations Office and other international organizations in Geneva presents its compliments to the secretariat of the Human Rights Council, and has the honour to refer to the report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/19/67).

The Permanent Mission has the honour to request that the documents attached* by the delegation of Myanmar in response to the above-mentioned report be distributed to States Members and observer States of the Human Rights Council, and also be included on the list of documents of the nineteenth session.

* Reproduced in the annex as received, in the language of submission only.

Annex

Observations of the Government of Myanmar on the report of the Special Rapporteur on the situation of human rights in Myanmar submitted to the Human Rights Council at its nineteenth session

Prisoners of conscience

1. In relation to the issue of imposing conditions on some released prisoners, Myanmar wishes to inform that according to Chapter (5), paragraph (204) of the Constitution, the President has the power to grant amnesty in accord with the recommendation of the National Defence and Security Council. Section 401 (1) of the Code of Criminal Procedure also states that “when any person has been sentenced to punishment for an offence, the President may suspend or remit the whole or any part of the sentence with or without condition.” While granting amnesties to the prisoners, the authorities read out the regulations and the prisoners were released without signing any undertaking. All released prisoners enjoy the provisions of fundamental rights and duties of the citizens under Chapter VIII of the Constitution.

2. The prisoners mentioned in paragraph 28 of the Special Rapporteur’s report are not prisoners of conscience. They were sentenced for offending the existing laws. One of the prisoner known as Naing Aung was sentenced to death for involvement in terrorist activities and the death sentence was reduced to life imprisonment in 2011. Another prisoner known as Naing Yekha was sentenced to 25 years imprisonment. He was convicted of plotting to blow up the Bagan Archaeological and Research Museum. His prison sentence was reduced to 20 years in 2011. Phyo Wai Aung is facing court proceedings for his alleged involvement in the bombing of the X2O pandal during the New Year water festival. Myint Aye was sentenced to 28 years imprisonment for the crime of involvement in bombing, connection to insurgent groups and illegal departure from the country. His sentence was reduced to 20 years in 2012.

Conditions of detention and treatment of prisoners

3. All detainees put under prison’s custody are detained in accord with the detention order given by a court. While in custody, they are held in accord with the Prison Manual. There are no incidents of torture and ill-treatment of detainees because interrogations are not conducted in the prisons. When detainees are found guilty of violating prison regulations, appropriate disciplinary actions are taken. If prisoners are tortured, they can file complaints with the prison authority. Prisoners are never used as porters or human shields for the military. Prisons in Myanmar are administrated in line with the Prison Manual and the UN Standard Minimum Rules for Treatment of Prisoners.

Assessing the transition to democracy

Laws Reform

4. We are planning to collect the suggestions from scholars and the expertise in practical fields, so as to contribute to more comprehensiveness of data regarding with amending the existing laws, rules and procedures.

5. The respective Union level organizations are taking measure for revocation, amending and enacting of new laws. They prepare draft legislations and subsequently seek

legal advice from the Union Attorney-General's Office. Thereafter, the draft legislations are submitted to the Pyidaungsu Hluttaw (Union Parliament)

6. Chief Justice of the Union, Judges of the Supreme Court of the Union and Judges of the High Courts are appointed in accordance with the provisions of the Constitution of the Republic of the Union of Myanmar. Regarding the independence of Judiciary, Section 19 of the Constitution of the Republic of the Union of Myanmar and Section 3 of the Union Judiciary Law 2010 provide the judicial principles of administering justice independently according to law, dispensing justice in open court before public unless otherwise prohibited by laws and guaranteeing in all cases the right of defence and right of appeal under the law. Myanmar courts follow these principles. In relating to the capacity, to perform the judicial functions effectively and to enhance the ability of Judges, the Supreme Court of the Union conducts on-job training programmes for Judicial Officers at different levels. Furthermore, the Supreme Court sends elite judges to attend the training and workshop abroad. In addition, the Supreme Court engages with the International Consultants to conduct the training for specialized field such as Juvenile Justice System.

Revocation of license of lawyer

7. There is no such name of lawyer Tin Tin Aung, a member of NLD, in the list of license revocation in the Supreme Court of the Union.

Alleged detention of Daw Sumlut Roi Ja

8. U Daung Lwan, who lives in the Kaingban village, Momauk Township, Kachin State files a petition to the Supreme Court of the Union to grant the writ of Habeas Corpus on the ground that his wife Daw Sumlut Roi Ja was detained by the military personnel. The Supreme Court of the Union accepted the petition and opened a case as Criminal Miscellaneous Case No. 3/ 2012 and summoned the respondent for hearing. After hearing both sides, the application was dismissed because there was no evidence that the applicant's wife was detained by the military personnel.

9. According to Section 11(a) of the Constitution, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves. The judicial power is shared among the Supreme Court of the Union, High Courts of the Region, High Courts of the State and Courts of the different levels. The different levels of courts have empowered the appellate jurisdiction and revisional jurisdiction. Thus the body of judiciary is independent.

Holding of free and fair by-elections

10. After scrutinizing and recognition of the electoral candidates standing for the by-elections which will be held on 1st April, the Union Election Commission allowed electoral campaign activities during 14-2-2012 to 31-3-2012 to all 17 political parties and independent candidates standing for upcoming by-election.

11. The Commission has not imposed any restriction on campaign activities of candidates if it is in line with the respective electoral laws, rules and regulations. The news and information about the electoral campaign of respective political parties being published in the daily newspapers and periodicals are the good evidence. With regard to the campaign irregularities, the Union Election Commission is overseeing and taking charge to manage without any bias.

12. The Commission is aware that there were some unfavourable situations during the campaign trips of some political parties. As soon as the Commission know such complaints, the Commission and respective sub-commissions take prompt actions in a mediator role and solves problems which run smoothly afterwards.

13. With regard to the voters list, upon request by the respective contesting political parties, the Commission allows each and every candidate to copy one set of the voters list free of charge amending the standing electoral rules. Besides, the Commission has announced through the media that the electoral rolls of the eligible voters were being prepared since 2nd January 2012 and notified the respective parties and the public to cooperate to have a flawless list. Any eligible voters whose name is not yet included in the list may apply for their inclusion to the respective ward/ village tract sub-commission and a letter of amendment or letter of complaint concerning with the names and facts included in the voters list can be submitted to the respective sub-commission within seven days from the announcement of the voters list. But as there come out some complaints with the flaws in the voters list, the Commission has extended to allow such acts to include, amend or complaint until 7 days before election day.

14. At present, the Union Election Commission is doing its utmost, the best dedicating to be a free and fair election. In this regard, the best cooperation of the respective political parties and the public is needed.

Situation of ethnic minorities

15. Article 3 of the Myanmar Citizenship law (1982) which is currently being practiced prescribes that “Kachin, Kayah, Kayin, Chin, Bamar, Mon, Rakhine and Shan national races and tribes permanently living in any region of the country before 1185 ME(1823 AD) as their original country are Myanmar citizen.” According to the Law, if anyone is not component of national races or tribes, he or she needs to submit certifications to strongly confirm as a citizen.

16. Issuing national scrutiny card is not based on race and religion. It is concerned with the competence of a citizen’s features prescribed in the Myanmar Citizenship Law which was passed on 15 October 1982.

17. Due to the illegal immigration and association of Bengalis from the neighbouring country, there are complications of population difficult to define who is who. Therefore, it is necessary to take time to cope with such issues because of national security and national affairs. Still, submitting the required certification is a key to changing of national scrutiny card. Illegal migration of Bengalis from the neighbouring country has effect not only on adjoining region but also on inner part of the country including Kachin, Kayin, Shan and Mon states. Why travel form 4 is used because it is a necessity. In travelling across the country, everybody is to submit overnight guest list and request to renew it. Action will be taken if he or she does not follow it. It is a system to ensure national security. Using travel form 4 does not mean deterrence of travel. It is just to facilitate inspection in a systematic manner. In the system, anyone can go around the township freely. If needed to travel to another township in a state, he or she is to have permission of township / district / state staff officers. To travel to other state, local authorities are reported with the permission of state staff officer. The Ministry has permitted those who have immigration qualifications to travel and extended their stay when they report on their purpose of education, health and social affairs. Therefore, for the state security and national concern, immigration form 4 is used to deter illegal migration. The Ministry is strictly carrying out the task as a necessity.

18. Maungtaw District has a significant geographical location sharing border with Bangladesh in land and water; the deprivation could happen as paddy production do not meet the demand of northern Maungtaw District including Maungtaw, Buthidaung and Yathedaung Townships if compared with its coverage, the population becomes denser and the birth rate outnumbers international standard at a breakneck speed; one-squire-mile land in Maungtaw Township host 870 persons, that in Taungpyoletwe sub-Township, 701, and that in the entire Rakhine State, 233 persons; the population density of Bangladesh which is adjacent to the region is 1217 persons in one square mile; disproportionate ratio of

population density and land areas could lead to a population explosion in the future. It was hard to handle illegal migration in western Rakhine State from the neighbouring Bangladesh by the Immigration Department alone. Therefore, the Border Immigration Headquarters was formed with Tatmadaw (Armed Forces), the Myanmar Police Force and the Immigration and National Registration Department tasked with three main duties- to safeguard the State, to ensure border region security and to control border region population - and with five goals.
