

Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar

Yanghee Lee, January 16, 2015

Today is the final day of my second official visit to Myanmar as Special Rapporteur on the situation of human rights in Myanmar. It has been a visit rich in its diversity, geography, viewpoints and experiences. I have engaged with government officials, parliamentarians, religious and community leaders, civil society representatives, victims of human rights violations and members of the international community. My discussions have been frank, open, sometimes passionate but always welcoming. I am feeling more and more a part of this country and am privileged to be accompanying the people of Myanmar on this journey of reform towards greater enjoyment of human rights. My visit would not have been possible without the genuine cooperation of the Government of Myanmar and the committed support of the United Nations Country Team. I wish to express my sincere appreciation to both organisations.

Today I would like to present some preliminary observations based on my visit and developments since my last visit. I have been particularly interested in any changes in key areas of concern that I raised in my report to the General Assembly following my July 2014 visit.

In Yangon, I went to Insein prison where I had private interviews with U Sein Than, U Htin Kyaw, Dr. Tun Aung, U Nay Myo Zin, U Aung Myo Thu and Naw Ohn Hla. I later met with U Brang Shawng, the father of Ja Seng Ing, a Kachin girl who was killed in an encounter with a Tatmadaw patrol. I met with lawyer networks for the Letpadaung case and other issues, land rights activists, people charged under the Peaceful Assembly and Peaceful Procession Act as well as some non-government members of the Prisoner of Conscience Affairs Committee. My meetings in Yangon also included discussions with Civil Society Organizations on women's rights and on electoral reform. I also met with the widow of Ko Par Gyi, some members of the private media and some members of the All Burma Federation of Students Unions. This morning, I called on the Chair of the Myanmar Human Rights Commission.

In Nay Pyi Taw, I held talks with H.E. U Wunna Maung Lwin, Union Minister for Foreign Affairs, the Deputy Minister for Defense, Major-General Kyaw Nyunt, Attorney-General, H.E. Dr. Tun Shin, Union Minister for the Ministry of the President's Office(3), H.E. U Soe Thane, Union Minister for the Ministry of the President's Office (4), H.E. U Aung Min and officials of the Myanmar Peace Center, as well as Union Minister for Social Welfare, Relief and Resettlement, H.E. Dr. Daw Myat Myat Ohn Khin. I also met with the Union Deputy Minister for Labour, Employment and Social Security H.E. U Htin Aung, the Union Deputy Minister for Immigration and Population H.E. U Win Myint, the Union Deputy Minister for Education H.E. U Thant Shin, the Union Deputy Minister for Health H.E. Dr. Win Myint, the Chairman of the Constitutional Tribunal U Mya Theinn, the Chairman of the Union Election Commission U Tin Aye, the Union Minister for Information H.E. U Ye Htut and the Central Committee of Land Use Management.

Yesterday, in Nay Pyi Taw, I met with the Committees of the Upper House of Parliament (Chairs of the Parliamentary Committees and Representatives of Bills Committees), the Committees of the Lower House of Parliament (Including Chairs of Parliamentary Committees, Bills Committee of the Lower House, The Rule of Law and Tranquility Committee of the Lower House, the Legal Affairs and Special Issues Assessment Commission of the Lower House and the Land Acquisition Investigation Commission). I met with the Legal, Economic and Political Advisers of the President, the members of the Constitutional Review Committee, the Chief Justice of the Supreme Court and the Union Minister for Home Affairs. I also had a private meeting with Daw Aung San Suu Kyi.

During my mission I also visited the Rakhine State and Northern Shan State. I will elaborate on those visits later in my statement.

Preliminary observations

Based on all the information I have gathered, I feel assured that in some areas, the Government is continuing to progress in its reform programme. I am pleased to see that programmes to improve education, health care and livelihood are underway, and commend the Government on its proposals for greater community consultation on land related projects. I was heartened by the release of U Kyaw Hla Aung released since my last visit. However, in some areas I have not observed progress since my last visit. In particular, land development projects frequently suffer from poor information and a lack of adequate consultation with affected communities. Consequential disputes have been met with harsh crackdowns. I have also observed areas where reforms fail to live up to expectations due to inadequate capacity or simply disregard, at the local level of implementation. In the area of freedom of expression and freedom of assembly, positive gains risk being lost. Indeed, the possible signs of backtracking I noted in my first report have gained momentum in this area. I urge the Government to address these issues as a priority. I will elaborate this in my report to be submitted to the Human Rights Council in March.

Democratic space

Following my first visit I noted that the opening up of democratic space in Myanmar has been widely acknowledged as one of the significant achievements in Myanmar's reform process. However, I expressed concern that significant challenges remain and highlighted the need for accelerated efforts if such achievements are to be maintained. I noted particular concerns among my interlocutors with article 18 of the Peaceful Assembly and Peaceful Procession Act.

These concerns remain and there are signs that the situation may have even worsened. I was informed that since my visit there have been ongoing arrests and prosecutions of people exercising their rights to peaceful assembly and association, including in relation to land confiscation, environmental degradation and constitutional reform. Protestors are being charged and sentenced under article 18 and under the Penal Code, and it appears that numbers of arrests are increasing. At the end of 2014, official figures were that 27 political prisoners remained in prison. However, I consider that the 78 farmers charged with trespassing during land protests have also been arrested for politically motivated reasons. I was informed that hundreds of persons charged with political offences are currently awaiting trial, including the several persons already arrested this year during protests. The numbers remain unreasonably high, and I am unable to say that progress has been made in this area.

I met with prisoners that are serving sentences under section 18, including U Sein Than who was arrested immediately after my last visit on his way to the United Nations office to provide me with additional documents concerning allegations of land grabbing. I also met with Naw Ohn Hla and U Nay Myo Zin who had been arrested following protests outside the Chinese Embassy concerning the Leptadaung incident last month. As a parent, I have been particularly touched by the case of U Brawn Shawng, the father of Ja Seng Ing, facing charges brought by the military for allegedly providing false information. His case was brought after he wrote to the Myanmar National Human Rights Commission calling for an investigation into the shooting of his 14 year old daughter in Kachin State during fighting between the military and the Kachin Independence Army in 2012. During the two years of court proceedings against him, an official inquiry into the death of his daughter has still not been initiated.

At the end of 2014 the previously constituted Prisoner Review Committee was discontinued and replaced by the 28 member Prisoners of Conscience Affairs Committee, including some but not all of the previous NGO members. The previous committee only met three times during 2014 and did not issue public reports. I encourage the Government to ensure that this new Committee is effective and constructive and works to bring about the release of all persons detained for political reasons.

A free and independent media is another important indicator of democratic society. I am informed that the Government is in the process of reforming media governance and has worked with journalists to this end. But much remains to be done. I received complaints that insufficient consultation has taken place in the development of the current Broadcasting Law. Concerns were also expressed that the publishing and media laws stifle independent media and are unnecessarily restrictive.

I was informed that journalists face regular intimidation and harassment. The tragic death of Ko Par Gyi is an extreme example of this. Following his arrest on 28 September, Ko Par Gyi was shot and killed while reportedly trying to escape military detention in Mon State. The Myanmar National Human Rights Commission has conducted an investigation into this case and called for the case to be tried in a civilian court. I call on the Government to initiate criminal proceedings as a matter of priority in an open and transparent manner.

Further, the four journalists and the editor of Unity Journal sentenced to ten years imprisonment with hard labour shortly before my last visit, remain incarcerated without reprieve.

Such incidents reinforce intimidation and harassment towards persons wishing to voice their concerns against actions of the state, including demands of accountability for human rights violations. Instead of facilitating free expression which is fundamental to credible democratic reform, these events serve to encourage self-censorship and caution. I urge the Government to ensure that space for expression of dissent and demands for accountability is both protected and expanded. Maintaining the space available for independent election reporting will be a key challenge during 2015.

Land and environmental issues

Prominent throughout my visit have been complaints of unfair land confiscation, forced evictions and concerns with land use policy. Government interlocutors have explained the challenges towards sustainable and profitable land development so that all persons in Myanmar can benefit from available opportunities. I commend the development of a legal framework that requires an environmental impact assessment to be conducted before development projects are launched and urge this framework to be implemented consistently and transparently, in full consultation with affected communities.

However, this is not enough. Just as there is an urgent need to independently and transparently address land disputes including involving the State at the very highest levels, there is also a need for more information sharing about farmer's rights and responsibilities of duty bearers. During my visit I heard about the property boom – dramatic increases in land values which have brought extraordinary opportunities for easy profit to Myanmar. Existing laws and systems make it conducive to exploit farmers, heighten intercommunal conflict and facilitate grabbing lucrative tracts of land. Moreover, it is difficult for the people of Myanmar to oppose or criticise such development projects.

I was informed of several cases where excessive force was used against rural farmers and urban residents protesting at the loss of their homes and livelihood. I was also informed that a large number of protestors against land confiscations are charged with trespassing, attracting harsh prison sentences. Notable is the incident at Letpadaung where evicted farmers protesting against a proposed copper mine were met with excessive force by local authorities. Several protestors were injured and one woman died from a bullet wound. A number of protestors were arrested and are currently awaiting trial for trespassing and unlawful protest.

Similarly, on December 22nd and 23rd, persons protesting against confiscation of their land for the Wanbao project were shot by police with rubber bullets and severely injured. During related protests in front of the Chinese Embassy in Yangon, several protestors were arrested under section 18.

If Myanmar is truly serious about transitioning to democracy, it must allow persons aggrieved by its actions to express their frustrations without being punished. The Government must proactively ensure that adequate consultation on land development has taken place and that comments received have been properly considered. Most importantly, the Government must move towards eliminating legal avenues that punish the expression of opinions contrary to state policy.

I reiterate my call for the Government to proactively manage development and investment processes to ensure a rights-based and people centred form of sustainable development. This should include poverty reduction, equitable resource sharing and non-discrimination as its central pillars. While legislative change will assist this process, changes in attitudes and behaviour at all levels of government will also be needed. It will be important for international donors and investors to ensure they do not inadvertently facilitate human rights violations through their development programmes.

Intercommunal situation

Intercommunal violence continues to be a significant barrier to peace and prosperity in Myanmar, both inter-ethnic and inter-religious violence. In this era of reform where a new national identity is emerging, I am disturbed to see some minorities targeted through rumours, discriminatory policies and in extreme cases, hate speech. Here too, misinformation in the different communities is particularly damaging and I urge Government and community leaders to reach out to one another to remedy this. In the past, Myanmar has been celebrated for its rich diversity. I urge the Government to play a more active role in ensuring that Myanmar's future maintains this national treasure.

During my visit I learned that significant progress has been made in the advancement of the peace process. I was informed by the Government that it is confident a nationwide ceasefire agreement will be reached in February. This would represent an important step forward towards improving the human rights situation of some of the most vulnerable people in the country. It is also key to ensuring that persons living in the current conflict zone areas are able to fully participate in the forthcoming national elections.

Skirmishes, attacks and counterattacks continued throughout my visit and I was informed that my planned visit to IDP camps in the Northern Shan State therefore had security risks. It was unfortunate that my plans to visit some IDP camps had to be cancelled at the last minute. The fighting in Kachin State has intensified in recent months and many villagers have once again fled to the safety of IDP camps. During my visit I was informed of recent instances where armies on both sides have injured or killed civilians, or committed other violations of international humanitarian and human rights law. The time for this long standing source of suffering to end is long overdue. However, the stepping up of attacks in Kachin State over this past month is not conducive to negotiation of a comprehensive ceasefire agreement. Here we have the chance for an historic achievement – I urge all parties to focus on the interests of all people of Myanmar and to make this process work and to ensure it is durable.

I had the opportunity to visit Lashio in the Northern Shan State where I held talks with the local authorities and called upon the Venerable Mansu Sayadaw. I also met with Palaung leaders U Maung Kyaw and U Aik Mong, local inter-faith representatives as well as civil society. I was particularly interested to assess the follow up since the intercommunal violence in May 2013 where an organised Buddhist mob had violently attacked the local Muslim community. I commend the authorities and community of Lashio for their cooperative recovery from this incident. I was particularly impressed with the commitment of inter-religious leaders from the Buddhist, Muslim, Hindu and Christian communities to work together towards maintaining a peaceful community. I was disappointed to see that the Muslim orphanage and Hindu premises burnt in the attack have not yet been rebuilt, due to administrative delays. I urge the authorities to speed up this process so that the Lashio experience can serve as a model for other regions in Myanmar where such cooperation has been more difficult to achieve.

During my visit I once again visited the Rakhine State and had frank talks with the Rakhine State Chief Minister U Maung Maung Ohn, as well as members of the Emergency Coordination Centre and the Rakhine Elders. I visited the IDP camps of both the affected communities in Myebon and Sittwe. In Sittwe, I also had discussions with members of the Emergency Coordination Centre. At a frank one and a half hour meeting with Rakhine Elders, I was able to gain more insight into the fears and sufferings of the Rakhine people and the history of the Rakhine State.

With the cooperation and logistical support of the State Government, I was able to visit Myebon where I met the local Rakhine leaders and visited a Buddhist and a Muslim IDP camp. I was grateful, once again, to have the opportunity to listen to the views of both the Buddhist and Muslim communities. I listened to the depth of frustration, suffering and fear held by both communities. The severe under development of the Rakhine State, and the conditions of poverty that people live in, lie at the heart of the frustration and tension. I was pleased to hear that electricity was introduced to the Rakhine State last month. But much more is needed.

Before I go into details of my visit to the Rakhine State, I would like to address the controversial issue of the two words Rohingya and Bengali. These words mean different things to different people and each one brings forth anger and passion for different reasons. To many Rakhine Buddhists, the term Rohingya equates to a claim of indigenous status and secessionist activities. They fear loss of their land, security and livelihood. To those who self-identify as Rohingya, the term Bengali isolates them from the community they were born into. Moreover, legally it brings a loss of rights and entitlements compared with those enjoyed prior to 2012, including unequal access to citizenship. The controversy of both words have been vigorously pointed out to me by many interlocutors.

Without wanting to invalidate either perspective, I would like to suggest that this fixation on which word to use has paralysed progress on important issues. I am not saying that the debate is not important, but I am asking all of us to focus on addressing the urgent humanitarian and human rights needs that continue to exist throughout the State.

I commend the work of the Chief Minister of the Rakhine State and his efforts to ensure that the voices of Buddhists, Muslims, government organisations, UN agencies and INGOs all contribute toward solutions for the ongoing problems in this State. Since my last visit some advancements have been made in addressing the serious humanitarian and human rights issues encountered in July 2014. MSF resumed its work in the Rakhine State on December 18 and permission for increased access has been granted to humanitarian organisations over the past weeks. However, in my view the situation remains at crisis stage. Humanitarian access is still minimal and high risk. On 30 December a UN national staff member was beaten by military authorities in Northern Rakhine during the course of performing his duties. I call on authorities to ensure accountability for these acts and to ensure the safety of UN and INGO staff. I note that the three INGO national staff arrested in connection with the 2012 violence remain in detention in Buthidaung prison. I reiterate my call for their immediate release.

I chose to visit Myebon because the Citizenship Verification pilot exercise has been carried out there. I was informed by the Deputy Minister for Immigration that amongst the 2960 IDPs in the Myebon camp, 1312 persons over 18 qualified for citizenship verification; 88 did not apply and 94 are still to apply. Out of 1280 applications, so far full citizenship has been given to 97 persons, 360 have been naturalized for citizenship. Inside the camp, I was informed by the camp spokesperson that 40 persons have received full citizenship and 169 have been naturalized. The remainder are waiting on the results of the exercise.

I have some important reflections to make on what I saw and heard. Firstly, the lives of the IDPs who have received their citizenship cards in Myebon camp have not changed. They remain inside the camp with minimum food rations, limited access to health care and to other essential services. The despair that I saw in the eyes of the people in the Myebon IDP camp was heartbreaking. The Chief Minister confirmed that the atmosphere remains hostile, a fact that was confirmed in my discussions with local Elders. I do not regard this as an acceptable situation. The severe curtailment

of the rights of the IDPs in conditions of detention, with limited access to essential services must be immediately addressed. Until my arrival, INGOs had been granted limited access to the camps once per week. I understand that permission has now been granted for visits three times a week. This is still far too inadequate. Health services remain abysmal and there is highly limited access to education. Freedom of movement should be available to all IDPs, as well as access to their land and to all other rights enjoyed by other persons in the Rakhine State.

Secondly, when I spoke to persons in the Myebon Muslim camp who had declined to participate in the Citizenship Verification process, they informed me it was because they were Kaman Muslims or Buddhists married to Muslims. They verified this by showing me their identity cards. Yet they could not leave the camp, either out of fear or lack of authorization. This illustrates the severe level of tension and fear that remains. It also shows that this matter is more complex than the Rohingya/Bengali debate.

Thirdly, in my discussions I heard a large number of rumours and misconceptions about both Rohingya Muslims and Rakhine Buddhists that were used as justification for the current situation. By preventing interactions between the two communities such misconceptions will continue and easily spiral into hate speech. Segregation is not the answer.

I discussed the Rakhine Action Plan in my meeting with the Chief Minister. I was promised the latest version but it has not yet been delivered to me. I stress that international human rights norms must be at the centre of a solution in the Rakhine State. Collective punishment of the entire Muslim population of the Rakhine State for the deeds of a limited number of perpetrators from the violence in 2012 is not the answer. Instead, maintaining the current situation of restricting the rights of Rohingya Muslims is merely serving to exacerbate tensions and anger. It also creates a host of challenges for the forthcoming election that will be difficult to address. The issues in the Rakhine State also have international implications which are of concern to all member states. In particular, the human rights violations being committed are encouraging people smuggling and are generating large numbers of asylum seekers, often leading to tragic suffering and loss of life.

I commend the Government for its consensus participation in the 2014 General Assembly resolution on Myanmar. I understand there has been some misreporting in the local press about the terms of the Resolution. I would like to clarify that the Resolution calls for, I quote, “equal access to full citizenship for the Rohingya minority”.

In conclusion, I believe that the Rakhine State remains in crisis. Efforts are being made to address certain issues, but much more is needed. I urgently call on the Government to protect the human rights and fundamental freedoms of all inhabitants of Rakhine State regardless of legal status, to allow full and immediate access for humanitarian agencies across the State and to allow the safe return of all IDPs to their communities of origin including to their land.

The Legislative Package on Race and Religion

I am concerned about a package of four bills that have been tabled for consideration in the next session of the Parliament. I raised my concerns in every government meeting and am grateful for the frank, sometimes vigorous discussions that we had. Several justifications were given for these bills and I was given assurances that international human rights norms had been taken into account in the drafting of the bills. I was also informed that the bills seek to protect the health, welfare and rights of women in particular, as well as addressing administrative needs such as the registration of religious conversion. However, I respectfully maintain my concerns with these laws and call upon all parliamentarians to thoroughly scrutinize these bills and to play a role in building a more tolerant and inclusive community. I would like to offer some specific comments on the bills:

- The Religious Conversion Bill establishes a State-regulated system for religious conversion and regulation, including through interview and discussion with an eleven member Township Registration Board. It is my view that this process is onerous and potentially intimidating. The

freedom to practice religion and to convert is a fundamental human right, a very personal one. I am also concerned at the offences and penalties this Bill proposes for “insulting religion”, which is vague and could be used to discriminate against minority religions.

- I was informed that the Population Control Bill seeks to address issues of health and poverty in an approved region where it is found to have a very high birth rate. This would be done through a number of strategies including birth spacing of 36 months between two pregnancies. While I was assured this Bill does not impose penalties, I believe that a legal requirement for birth spacing is an illegitimate interference by the State into the right of a woman to determine the number and spacing of her children. Strategies to address poverty, maternal and child mortality and the use of birth control is most appropriately done through education, poverty alleviation programmes, accessible health care and other strategies that empower women.

- The Myanmar Buddhist Women’s Special Marriage Bill contains several problematic provisions that I regard as discriminatory. The Bill places a number of additional requirements, restrictions and potential penalties on non-Buddhist men intending to marry, or who are married to, Buddhist women. Further, in relation to guardianship of children in the event of divorce, the guiding principle should be the best interests of the child, but this is not in the Bill. I regard this Bill as an inappropriate use of legislative power by the State.

- I have been informed that the Penal Code already prohibits polygamy so I am unable to understand the purpose of the Monogamy Bill. Moreover, I am concerned by the language of the bill which indicates it is directed towards minority faiths, making it discriminatory.

Tensions and violence between different religious communities is a significant problem in Myanmar. Inter-community education and reconciliation are urgently needed. Already significant steps forward have been taken through interfaith dialogues and more integrated communities like I saw in Lashio, in the Northern Shan State. I am concerned that these four bills could inflame already existing tensions between religious groups. I therefore strongly urge all Parliamentarians to closely scrutinize these bills, in full consultation with affected communities, and to reject them in their entirety. Areas requiring regulation, such as laws for marriage, divorce and succession, should be the subject of a law common to all people of Myanmar, irrespective of their race and religion, in full compliance with international human rights norms. If these bills are passed, it could be viewed as one of the indicators of backtracking in the political reform process.

Community level development and Rule of Law

I am pleased to see that programmes to improve education, health care and livelihood are underway and congratulate the Government for its collaboration with the international community in this area. However, I reiterate my concerns that these programmes must include widespread and genuine consultation with affected communities in a transparent and receptive manner. I observed areas where reforms are failing to live up to expectations due to either inadequate capacity, lethargy or inability to implement new laws at the local level.

The concerns I expressed after my last visit about the need for women to play a greater role in the reform process, both as agents and beneficiaries, remains important. I strongly encourage the involvement of women in the current peace negotiations, as well as in monitoring the agreement after it is concluded. Further, as the forthcoming elections draw closer, the participation of women as candidates, as voters and as observers is crucial.

As a University Professor, I am passionately committed to the education of young people. They hold the key to our future. It will be these young people that will lead Myanmar to the next level of prosperity and an inclusive and peaceful society. I was therefore shocked to hear that at the Yangon University graduation ceremony in December 2014, around 300 students did not receive their diplomas as they did not hold scrutiny cards. This particularly affected Muslim students originating from the Rakhine State, who are currently undergoing the citizenship verification process. Access to education should not be based on citizenship status. I raised this issue with the Deputy Minister for

Education and I thank him for reassuring me that he will remedy this situation. I look forward to receiving the good news that every one of these students who had worked so hard to complete their higher education, received their graduation certificates.

Much was said to me about the importance of the rule of law in Myanmar, and I fully agree. Yet much remains to be done before confidence in the legal system and authorities becomes a feature of this new State. I remain particularly concerned at the failure of measures to ensure accountability of military officials, including sexual and gender based violence in conflict zones. I also call on the ethnic armed groups to address violations of international humanitarian law and international human rights law committed by their personnel. I am also concerned at reports of continued high levels of underage soldiers serving in the Tatmadaw.

Conclusion

These are my preliminary observations from my visit and I will elaborate on these in my report to the Human Rights Council in March. As a Special Rapporteur and as a friend of Myanmar, I look forward to my future cooperation with the Government and people of Myanmar, towards greater promotion and protection of human rights in this country.

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