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No. 377/3-27/ 91

24th October 2017

Dear Madam and Sirs,

Allow me to refer to your letter UA MMR 4/2017 dated 17 July 2017, concerning the arrest and detention of three journalists.

I have received the following information from the authorities concerned on the aforementioned matter:

Information on the detention of three journalists

- The three journalists, namely; Lawi Weng, U Aye Nai, Pye Bone Aung were charged under Section 17 (1) of the Unlawful Associations Act (1908) for covering the drug burning ceremony by the Ta'ang National Liberation Army, an unlawful association. They had been arrested as they broke the existing laws of the Union of Myanmar. It was learnt that, on 1 September 2017, they are dismissed without charges.

Legal grounds for the arrest and detention of above-mentioned case

- As the section 17(1) of the Unlawful Association Acts is a cognizable offence and does not provide for the taking of bail, police officer filed against three journalists under section 17(1) of the Unlawful Associations Acts in line with the section 154 of the Code of Criminal Procedure. Detention of three journalists was conducted with a warrant from a Magistrate to article 167 of the Code of Criminal Procedure.
- The three journalists were arrested from 28 June to 11 July 2017 at Hsipaw Prison, with the order of Hsipaw Township Judge.
- Since 28 June 2017, they had been arrested at Hsipaw prison and records had been made for every detention places where they were detained.
- Although they were filed under section 17(1) of the Unlawful Associations Acts, it was learnt that the case was placated and they were dismissed without charges.

Access to legal counsel, family and medical examination

- Access to legal counsel and family had been provided with a regular basic to all detainees. Additionally, daily medical examination had been furnished to them. Detainees shall be transferred to Township hospital in case of urgent medical attention is needed. In Lawi Weng's case, his health situation was not necessary to receive urgent healthcare service; therefore, prison health officer had been providing daily medical care service for him.

Seeking and receiving a special order of a judicial Magistrate under Section 167 of the Myanmar Criminal Procedure Code to extend pretrial detention, as guaranteed in Article 21 of the 2008 Myanmar Constitution

- According to the article 21(a) of the 2008 Myanmar Constitution, every citizen shall enjoy the right of equality, the right of liberty and the right of justice, as prescribed in this Constitution. Despite article 21(b) stated that "no citizen shall be placed in custody for more than 24 hours without the permission of a Court", article 376 stated that "no person shall, except matters on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquility in accord with the law in the interest of the public, or the matters permitted according to an existing law, be held in custody for more than 24 hours without the remand of a competent magistrate."
- Therefore, the case of three journalists was needed to take precautionary measure for the security of the Union or prevalence of law and order, peace and tranquility in accord with the law in the interest of the public.

Measures to ensure that journalist in Myanmar are able to carry out their legitimate work in a safe and enabling environment

- Journalists are able to access information in line with the Media Law (2014).
- Under the article 7 (a) of the Media Law, if a journalist collect news in compliance with regulations specified by relevant and responsible organizations, in the areas where wars and conflicts break out, he/she shall be exempt from being detained by a certain security related

authority, or his/her equipment being confiscated or destroyed. In addition, journalists are also entitled to receive protective measures from the security related organizations, in line with 7 (b) of the Media Law.

Measures to ensure that criminal laws are not used to arrest, detain and intimidate journalist.

- The Media law was adopted in March 2014, to practice the Penal Code effectively and properly which can prevent journalists from arrestment, detention and intimidation.

Measures to enforce the application of Section 3(7) of the 2014 Media Law

- Journalist has to abide by duties and ethics stated in the Media Law to strengthen the objectives of the law.

Right to fair trial and public hearing

- The case of journalists had been hearing by the court with transparent manner in comply with the international human rights norms and standards. The accused were represented by pleaders in the proceedings. Besides, appeal can be applied to the Kautmae district court if the decision of the Hsipaw Township Court is not satisfied.

Steps to ensure that the Unlawful Association Act is not use to limit freedom of expression

- The article 15 (2) stated that “unlawful association” means an association;
 - (a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or
 - (b) which has been declared to be unlawful by the President of the Union- under the powers hereby conferred.
- Therefore, any journalist who connects to such unlawful association shall be punished by existing laws of Myanmar.

Measure to revise the 1908 Unlawful Association Act

- Debates on the 1908 Unlawful Association Act to amend consistent with international norms and standards in both parliaments are ongoing.

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Please accept, Madam and Sirs, the assurances of my highest consideration.



(Hau Khan Sun)

Ambassador/ Charge de Affairs a.i.

Ms. Yanghee Lee

Special Rapporteur on the situation of human rights in Myanmar

Mr. Elina Steinerte

Chair-Rapporteur of the Working Group on Arbitrary Detention

Mr. Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health