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Dear Madam and Sir,

Referring to your letter AL MMR 6/2018 dated 26 December 2018, I would like to convey the information received from the authorities concerned in Myanmar as follows :

- The summary of the case is that during the video interview broadcasted at 21:44 hours on 10-8-2017 by RFA, Aung Ko Htwe said wrong facts about the Myanmar Tatmadaw and it can effect on the other military officials, who are serving for the country, in their respect and belief on Tamadaw and cause the irresponsible attitude in performing their duties. As it was intentionally conducted for inducing to commit an offence against the State or against the public tranquillity, Lieutenant Colonel Myo Myint Aung of No.1 Army of Collecting Recruitment filed directly to the court of Dagon Myothit Township (Port).
- Township court accepted and examined the case by Criminal Case No.446/2017 and Aung Ko Htwe was arrested on 18-8-2017 under the warrant of Township court.
- At the court, Advocate U Zaw Min Naing performed as the lawyer of the accused, and Lieutenant Colonel Myo Myint Aung and 5 others were examined as witnesses of complainant. According to the evidence of the examination, Aung Ko Htwe was charged under Section 505 (b) of Penal Code.
- Aung Ko Htwe presented the names of 8 witnesses for the accused to the court and though the court gave four appointments, the witnesses did not apperar before the court. Aung Ko Htwe applied himself for cancelling the witnesses by written statement.

- Concerned with the above said case, at the date of 17-1-2018 when Aung Ko Htwe was charged, he roared to the presiding judge using the word “Cow Judge” repeatedly and, U Chit Ko Ko, the presiding judge filed to the Township Court of Dagon Myothit to take action upon Aung Ko Htwe for insulting intentionally a public servant who is serving for his duty under Section 228 of the Penal Code.
- The said application was accepted and examined by the court by Criminal Case No.82/2018 under Section 242 of Criminal Procedure as summon case.
- Aung Ko Htwe denied to give the statement about the case and while he was being examined, he shouted “don’t believe the jurisdiction of Myanmar and No Cow Judge” loudly. It was found that he was committed the crime under Section 282 of Penal Code and he was sentenced to 6 months imprisonment without hard labour.
- Concerned with the case under Section 505 (b) of Penal Code which was charged upon Aung Ko Htwe, it was found that his witnesses of the accused were cancelled by himself and he was examined himself as witness under Section 345 (1) of Criminal Procedure Code.
- After examining the trial in line with the law, as he was found guilty under Section 505 (b) of Penal Code, he was sentenced to 2 years imprisonment with hard labour dated on 28-3-2018.
- In examining the trial of Aung Ko Htwe, it was conducted in conformity with Constitution of Myanmar and the principles of jurisdiction under Union Judiciary Law, it was examined under administer justice independently according to law, Section 19 of Constitution of the Republic of the Union of Myanmar, according to Section 375 of Constitution of the Republic of the Union of Myanmar and Section 3 of the Union Judiciary Law, the accused has the right to hire the lawyer before the court and chance to defend the complaint. It has shown that he has fully received the right under law.
- Similarly, he could appeal to upper courts for his cases according to law. As his rights were not confined and he was sentenced legally in line with the

existing law, it was found that any right of him under law was not damaged or affected. He fully enjoyed the rights under law.

- Under Section 354, Chapter 8 of the Constitution of the Republic of the Union of Myanmar, Citizen, Fundamental Rights and Duties of the Citizens, it is explicitly stated that every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality and in Sub-Section (a), it is described that their conviction and opinions can be expressed and published freely.
- Every citizen has the right for freedom of expression. However, if his statement is contrary to the existing law, he shall be taken action.
- Therefore, taking action on Aung Ko Htwe does not mean that it stops his right for freedom of expression. The legal action has taken due to his statement which clearly violated the provision under existing Penal Code.

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



(Kyaw Moe Tun)
Permanent Representative

Special Rapporteur on the situation of human rights in Myanmar

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Special Rapporteur on the situation of human rights defenders