

Mandates of the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolutions 28/23 and 25/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations on criminal prosecutions and conviction of several media workers in Myanmar for publishing articles criticising government officials or departments, or the content of a Bill before the legislative.**

According to information received:

In February 2014, a military member of Parliament from Mon State filed a lawsuit against two journalists from The Myanmar Post, Chief Editor Mr. **Than Htaik Thu** and Deputy Chief Reporter Mr. **Hsan Moe Tun**, under article 500 of Myanmar's Penal Code. The journalists had published a news story on 29 January 2014 featuring remarks from that member of Parliament, entitled "A military MP says they have to take parliamentary seats because of low educational standards." On 19 March 2015, Mawlamyine Township Court in Mon State convicted them of defamation under Article 500 of the Penal Code and sentenced them to two months in prison.

On 28 March 2014, the Madaya Township Court in Mandalay Region convicted Mr. **Ko Si Thu Lwin**, senior reporter at The Myanmar Times, under articles 499 and 500 of the Penal Code. Mr. Ko Si Thu Lwin was found guilty of damaging the reputation of the electricity department and its staff after publishing a series of articles on a conflict over the installation of power lines in Madaya Township. He was given the choice between a one month prison sentence or a fine.

In October 2014, the Director General of News and Periodical Enterprise in the Ministry of Information filed a complaint against five workers from the Eleven Media Group (EMG): Mr. **Nay Htun Naing**, Mr. **Thein Myint**, Mr. **Wai Phyo**, Mr. **Myat Thit** and EMG CEO Mr. **Than Htut Aung**. They currently face prosecution for defamation under article 500 for a news publication dated 2 June 2014 criticising the proposed Public Service Media Bill. The article alleged that the Bill would facilitate the misuse of public funds to further the interests of the government.

On 28 November 2014, Mr. **Than Myat Soe**, a journalist at the Myanmar Thandawsint (also known as the Myanmar Herald), was charged under article 9 (g) of the News Media Law after he published an article alleging that local police were accepting bribes from gamblers. Article 9 (g) refers to news which “deliberately affect the reputation of a specific person or an organization”. The penalty for violating article 9 (g) is a fine ranging from 300,000 kyats to 1,000,000 kyats.

Eleven other persons from the Myanmar Thandawsint are currently facing a lawsuit filed by the Ministry of Information under article 9 (g) following the publication of an interview with an opposition party leader, who criticised President Thein Sein.

We express serious concern on the use of criminal proceedings against journalists under defamation charges for reporting on and expressing dissenting opinions or criticism to the Government, Parliamentarians or public institutions. We express serious concern that such proceedings could represent a form of intimidation and harassment and impose undue restrictions on the legitimate enjoyment of the right to freedom of expression and opinion. This could also result in producing ‘a chilling effect’ that could contribute to deterring the legitimate exercise of the right to freedom of expression and opinion and the right to seek, impart and receive information.

We wish to recall that judicial proceedings under defamation laws should not serve, in practice, to stifle the right to freedom of expression. However unpleasant or inconvenient, the mere fact that forms of expression are considered to be insulting is not sufficient to justify the imposition of criminal penalties. Any restriction to the right to freedom of expression should be consistent with international human rights law and standards. Any restriction imposed on the right to freedom of expression, must be: (i) provided by law, which is clear, unambiguous, precisely worded and accessible to everyone; (ii) proven by the State as necessary and legitimate to protect the rights or reputation of others; national security or public order, public health or morals; (iii) proven by the State as the least restrictive and proportionate means to achieve the purported aim.

We acknowledge that the State of Myanmar endorsed the recommendation formulated during the Universal Periodic Review in 2011 to “[t]ake steps to review domestic laws with a view to guaranteeing the right to freedom of expression, association and assembly, including assuring a free and independent media” (A/HRC/17/9,

recommendation 104.10) and encourage your Excellency's Government to take the necessary measures to ensure that the Myanmar legislation and its implementation are in line with international human rights law and standards.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the convictions of Mr. Ko Si Thu Lwin, Mr. Than Htaik Thu, and Mr. Hsan Moe Tun.
3. Please provide information on the legal grounds for the ongoing prosecutions against Mr. Than Myat Soe, the 11 other staff members of the Myanmar Thandawsint, EMG workers Mr. Nay Htun Naing, Mr. Thein Myint, Mr. Wai Phyo, and Mr. Myat Thit, and EMG CEO Mr. Than Htut Aung.
4. Please indicate how the various judicial proceedings mentioned above are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights (UDHR) and recommendations of the Special Procedures.
5. Please provide information on the measures taken to ensure that article 500 of the Penal Code and articles 9 (g) and 25 (b) of the News Media Law and their implementation are put in compliance with international human rights law and standards, namely the right to freedom of expression as set forth in article 19 of the UDHR, and the recommendations of the Special Procedures, as also formulated among the UPR recommendations that enjoy the support of Myanmar.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that judicial proceeding do not serve, in practice, to stifle the right to freedom of expression of journalists. In that end, we kindly request your Excellency's Government to share a copy of the present communication with the relevant judicial authorities.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Yanghee Lee
Special Rapporteur on the situation of human rights in Myanmar

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to article 19 of the Universal Declaration of Human Rights, which provides for the right to freedom of opinion and expression, which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression which emphasizes that freedom of expression plays a central role in the effective functioning of a vibrant democratic political system, recalling States' responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated. He added that States must remove any regulation of or restriction upon political speech and expression, outside of restrictions that fall within well-recognized understandings of the permissible limitations on freedom of expression as recognized in international human rights law (A/HRC/26/30).

We also take the opportunity to reiterate the recommendations made in the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/2000/63, para.52 and E/CN.4/2001/64, para.48), which urged all States to review their defamation laws in order to ensure that they do not restrict the right to freedom of expression and to bring them in line with their international human rights obligations, which inter alia stressed that civil sanctions for defamation should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of non-pecuniary remedies.

We would further like to refer to Human Rights Council resolution 21/12 on safety of journalists (A/HRC/RES/21/12) adopted on 27 September 2012, which calls upon "States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference" (paragraph 8).

Finally, we would like to reiterate the recommendations made in the report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/28/72, para. 64), which urged the Government of Myanmar to: remove the broad range of restrictions on the rights to peaceful assembly and freedom of expression in the Right to Peaceful Assembly and Peaceful Procession Act that go beyond the permissible restrictions laid down in international law; remove criminal sanctions, including provisions for imprisonment, for acts protected under international standards on freedom of expression and peaceful assembly; and amend the News Media Law to ensure the code of conduct for media workers is voluntary, and strengthen the independence of the Media Council.