

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association,

REFERENCE: UA
MMR 11/2015:

5 November 2015

Excellency,

We have the honour to address you in our capacity as 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; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 28/23, 25/2, and 24/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **actions that undermine the right to freedom of opinion and expression and other fundamental rights in advance of the parliamentary election on 8 November, 2015.**

Concerns on other restrictions to freedom of opinion and expression in the ongoing electoral process were also addressed in another urgent appeal (UA MMR 9/2015) sent on 29 October 2015.

According to information received:

Allegations on the arrest, detention and harassment of candidates and supporters

On 10 October 2015, more than 100 trishaw drivers and supporters rode around Monywa bearing flags and shirts with the logo of the National League for Democracy (NLD). On 12 October 2015, four individuals were charged under Article 18 of the Peaceful Assembly and Peaceful Procession Law for allegedly failing to seek official permission for the procession. The four persons charged are a campaign staffer with the NLD's Sagaing Division office, a freelance

photographer and two activists. The freelance photographer claims that he and his associates did not plan the event but merely provided trishaw drivers with campaign materials. Each of the accused faces up to nine months in prison.

On 16 October 2015, an independent candidate standing for election in the Phyu constituency in Pegu Division was arrested for allegedly participating in a peaceful protest outside the Chinese Embassy in Yangon on 29 December 2014. She was arrested in the Bago region and brought to the Dagon Township Police Station in Yangon. On 19 October 2015, the Dagon Township Court charged her with several violations of the Penal Code including rioting (Article 147), performing “obscene acts and songs” in public (Article 294), “assaulting or obstructing public servant when suppressing riot” (Article 152), “assaulting or preventing a public servant from the discharge of his duty” (Article 353) and, inciting the public to commit offences “against the State or the public tranquility” (Article 505). This independent candidate was additionally charged with participation in an unauthorized assembly under Article 18 of the Peaceful Assembly and Peaceful Procession Law. She has been denied bail and is currently detained in Insein prison in Yangon. If convicted, she faces up to nine years and nine months in prison.

On 26 October 2015, the authorities barred an NLD campaign group led by a well-known singer from entering Tatkon Township (Nay Pyi Taw) for several hours. The group was on its way back to Yangon from Pyawbwe after a campaign tour. The authorities questioned the group about whether they planned to hold any events. The group replied that they had no plans to perform and simply wanted to pass the capital on their way back to Yangon. After a few hours of questioning, they were allowed to pass.

Allegations on censorship and restrictions on political rallies

On August 27, 2015, the Union Election Commission (“the UEC”) announced that it would permit parties standing for election to only broadcast 15-minute statements on state television and radio. Furthermore, full transcripts of the broadcasts were allegedly to be submitted in advance to the UEC and the Ministry of Information which would vet these statements to ensure that they do not contain language “that can split the Tatmadaw [the military] or that can disgrace and damage the dignity the Tatmadaw.” Statements that encourage “protest against the government,” damage security, rule of law, and tranquility or violate existing laws were also banned.

Allegations were also made on restrictions to political rallies. Under the UEC’s “Directive 1/2014”, election candidates must seek permission from the township

election commission office to conduct public gatherings, processions, and the use of loudspeakers.

Lack of access to information about the elections

Sources indicate that there is a lack of publicly available information about the elections, particularly in rural areas. Reportedly some rural communities remain unaware that an election has been scheduled. Additionally, many of the townships and village tracts where the UEC has cancelled elections are in rural areas. On October 13, 2015, the UEC, acting under Section 8(f) of the Union Election Commission Law, announced that the election would be cancelled in 212 village-tracts in Kachin state, 94 village-tracts in Kayin state, 41 village-tracts in Bago region, 1 village-tract in Mon state, and 56 village-tracts in Shan state. The UEC did not consult parties before its decision, and its decision cannot be appealed.

We are concerned that the alleged arrest, detention and harassment of electoral candidates and their supporters excessively and disproportionately restricts their rights to freedom of expression, peaceful assembly and association. We are further concerned about the reported censorship of electoral candidates' speech on broadcast media and restrictions on public rallies. Finally, we are concerned about the lack of access to basic information about the parliamentary election. The aforementioned incidents could have a chilling effect on public debate ahead of the election.

While we do not wish to prejudge the accuracy of these allegations, the allegations indicate a prima facie violation of the rights to freedom of opinion and expression and freedom of peaceful assembly and of association as set forth in articles 19 and 20 of the Universal Declaration of Human Rights.

In this regard, we would like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. Under international human rights standards, the mere fact that forms of expression might be considered insulting to a public figure is not sufficient to justify the imposition of penalties and restrictions on the right to freedom of expression.

In this connection, we also recall that the Human Rights Council stressed that peaceful protests should not be viewed as a threat and encouraged States to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes (A/HRC/RES/22/10). We further note that it is the obligation of States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including persons espousing minority or dissenting views (A/HRC/RES/24/5, op. 2).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the above-mentioned rights in compliance with international instruments.

As 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 be grateful for your observations on the following matters:

- 1) Please provide any additional information and/or comment(s) you may have on the above mentioned issues.
- 2) Please provide information concerning the legal grounds for the arrest and detention of the electoral candidates and supporters described above, and explain how these measures are consistent with international human rights law and standards.
- 3) Please explain how the UEC's rules restricting the content of political broadcasts including some content critical of the government or the military and requiring candidates to seek permission for public speeches and rallies are consistent with international human rights law and standards. We would be grateful if you enclose a copy of these laws.
- 4) Please provide information any steps your Excellency's Government's has taken or is planning to take to:
 - (a) Provide the electorate with access to information about electoral candidates, their programs and backgrounds, electoral debates, voter identification requirements, and other news and information concerning the election, particularly in rural areas; and
 - (b) Protect and promote the ability of journalists and media outlets to impart information about all parties and candidates, regardless of their views of the government or their political beliefs.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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, your Excellency, the assurances of our highest consideration.

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