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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11
MMR 11/2013

16 July 2013

Excellency,

We have the honour to address you in our capacity as the Special Rapporteur on the situation of human rights in Myanmar; Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 22/14, 15/18, 16/4, 15/21 and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged arbitrary arrest and detention of Mr. **Wai Phyo**, Secretary of the NGO Generation Wave.

According to information received:

Mr. Wai Phyo, Secretary of the NGO Generation Wave, was allegedly arrested by the Chief of Pyay Township police station in Bago Region at 11:30 a.m. on 10 July 2013. He was arrested at a hotel called Sweet Golden Land in Pyay, where he was running a Sustainable Development workshop. It is also alleged that the police came to the hotel and recorded the training and, after it was finished, asked him to go with them for a cold drink and took him to the police station where they arrested him. The police allegedly arrested him for a "Free Political Prisoners" poster campaign, which he organized in July 2011, charging him under the 1962 Printing and Publications Registrations Act for distributing unlawful printed documents. The campaign was organized in several cities, with Mr. Wai Phyo leading the campaign in Pyay. Two other members of Generation Wave had previously been arrested in July 2011 in relation to the poster campaign and

sentenced to three months imprisonment in February 2012. The warrant for the arrest of Mr. Wai Phyo had been outstanding since then.

Following Mr. Wai Phyo's arrest on 10 July, police took him to Pyay Township court and asked permission from the judge to detain him for interrogation for two weeks. He was taken to the court again on 12 July and his lawyers applied for bail, which the judge denied. He is currently in Pyay prison, Bago Region. He will reportedly appear in court on 25 July 2013 for prosecution.

Concern is expressed that the arrest and detention of Mr. Wai Phyo may be linked to his legitimate human rights activities, in the exercise of his rights to freedom of expression, association and peaceful assembly. Further concern is expressed for his physical and psychological integrity while in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Wai Phyo is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We would like to refer your Excellency's Government to article 19 of the UDHR which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Similarly, we would also like to refer to article 20 of the UDHR which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

We would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In addition, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental

freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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 rights of Mr. Wai Phyoi in compliance with the above international instruments.

Moreover, since 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 cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest, detention and denial of bail of Mr. Wai Phyoi and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights.

3. Please provide information on the measures taken to ensure a safe and enable environment for human rights defenders in the country.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Wai Phyo are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in Myanmar

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
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Maina Kiai
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Margaret Sekaggya
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