

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 situation of human rights defenders

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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 situation of human rights defenders pursuant to Human Rights Council resolutions 28/23, 25/2, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged arbitrary arrest and detention of two individuals for exercising their right to freedom of expression on social media.**

Ms. Chaw Sandi Tun is a member of the local chapter of the National League for Democracy (NLD) and was working on the party's election campaign.

Mr. Patrick Khum Jaa Lee is a human rights defender and Kachin peace activist, who provides support to internally displaced people, undertakes research on the conflict in northern Myanmar, and raises awareness on the peace building process.

According to information received:

On 12 October 2015, Ms. **Chaw Sandi Tun (aka Chit Tha Mee)** was arrested in Yangon for a satirical post she had shared on Facebook. She is currently detained in Maubin prison. The Facebook post showed a collage of three pictures depicting

leader of the opposition Aung San Suu Kyi, Commander-in-Chief Senior General Min Aung Hlaing and army officers.

Ms. Chaw Sandi Tun attended a hearing on 27 October 2015 in Ma U Pin Township court. She currently faces two charges. The first is under article 66 (d) of the 2013 Telecommunication Law, which carries a maximum sentence of three years in prison for anyone convicted of “extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunication Network”. Ms. Chaw Sandi Tun is also facing charges under section 500 of the Penal Code, which can lead to up to two years imprisonment. The next court hearing is scheduled for 9 November 2015.

On 14 October 2015, Mr. **Patrick Khum Jaa Lee** was arrested without a warrant at his home in Yangon. His laptop and phone were confiscated upon arrest. He is currently detained in Insein prison. He attended a court hearing on 27 October 2015 at the Hlaing Township court and is facing charges under article 66 (d) of the Telecommunication Act. The accusation relates to an image posted on Facebook of a man wearing a Kachin longyi stepping on a portrait of Commander-in-Chief Senior General Min Aung Hlaing. Mr. Patrick Khum Jaa Lee allegedly simply commented on the photo stating: “Don’t share this post – if you do you will be arrested”. He is being investigated under article 66 (d) of the Telecommunication Act.

Mr Patrick Khum Jaa Lee suffers from several health conditions including high blood pressure, breathing difficulties caused by asthma, a high cholesterol and steatosis (fatty liver). He has been seen by the prison doctor but continues to have high blood pressure. His medical conditions require a specific diet, which he reportedly does not have access to in prison. On 27 October, the court rejected the request for bail on grounds of ill-health. The next court hearing is scheduled for 6 November 2015.

On 20 October, in response to media reports, the Government explained that recent arrests of people over Facebook posts were aimed at protecting “the honour of someone who has been insulted”.

Ms. Chaw Sandi Tun and Mr. Patrick Khum Jaa Lee are among the first individuals arrested in Myanmar for comments posted on social media.

Civil society organizations have further reported that over the past 3 months, there has been an increase in the number of arrests as well as direct or indirect attacks against human rights defenders and non-governmental organizations, including in particular those working on electoral matters.

Serious concern is expressed at the alleged arbitrary arrest and detention of Ms. Chaw Sandi Tun and Mr. Patrick Khum Jaa Lee, which appears to be motivated by their exercise of the right to freedom of opinion and expression and, in the case of Mr. Patrick Khum Jaa Lee also because of his peaceful activities as a Kachin human rights defender. We are also concerned at the potential chilling effect of these arrests in the public debate in the country, particularly as the arrests took place three weeks before the general elections scheduled for 8 November.

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on whether or not the detention of the above-mentioned individuals is arbitrary, the allegations appear in contravention of the right of persons not to be arbitrarily deprived of their liberty and the right to a fair hearing by an independent and impartial tribunal as set forth in articles 9 and 10 of the Universal Declaration of Human Rights (UDHR). The above alleged facts also indicate a prima facie violation of the right to freedom of opinion and expression as set forth in article 19 of the UDHR.

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.

Further, we note with concern that article 66 (d) of the Telecommunications Law is vaguely worded and does not conform with international standards on the right to freedom of opinion and expression which requires that restrictions to this right to be drafted clearly and narrowly, designed.

The rights to freedoms of expression, assembly and association are essential for the effective exercise of the right to vote and must be fully protected. In order for the election outcomes to be accepted as credible and legitimate, the environment and preparations for, as well as their actual conduct, are equally important in determining whether the elections are transparent, inclusive, participatory, free and fair, and in line with international standards. In this regard, we are concerned that ongoing efforts to censor, block or chill political speech violating the right to freedom of opinion and expression, consequently affecting the right to take part in public affairs.

We also wish to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 6.

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 rights of the above-mentioned person(s) 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 or comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of Ms. Chaw Sandi Tun and Mr. Patrick Khum Jaa Lee and how these measures are compatible with international norms and standards as stated, *inter alia*, in the Universal Declaration of Human Rights.
3. Please indicate what measures have been or will be taken to guarantee the exercise of the right to freedom of opinion and expression, particularly in the electoral context.
4. Please provide information on the compatibility of article 66 (d) of the Telecommunications Law and section 499 and 500 of the penal code with internal norms and standards regarding freedom of opinion and expression.
5. Please indicate what measures have been or will be taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear and threats or acts of intimidation and harassment of any sort.

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 responsible of the alleged violations.

We may publicly express our concerns in the near future as we are of the view that the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders