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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the situation of human rights in Myanmar.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11
MMR 6/2012

2 October 2012

Excellency,

We have the honour to address you in our capacity as 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, Special Rapporteur on the situation of human rights in Myanmar pursuant to Human Rights Council resolutions 16/4,15/21,16/5, and 19/21.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the charges pressed, for reportedly demonstrating with permission, against Mr. **Moe Thway** and Mr. **Kyaw Bo Bo** from Generation Weave; Ms. **Khin Sandar Nyunt** and Ms. **Phwe Yu Mon** from Peace Network; Ms. **May Sabe Phyu** and Mr. **Jaw Gun** from Kachin Peace Network; Mr. **U Win Cho**, a member from an organization defending land rights; Mr. **Nay Myo Zin**, a former political prisoner and member of the Myanmar Social Development Network; Mr. **Wai Lu**, a former political prisoner, a member of Yangon public service network; and other human rights activists, under section 18 of the Law on Peaceful Assembly and Peaceful Procession.

According to the information received:

On 17 September 2012, Mr. Moe Thway, Mr. Kyaw Bo Bo, Ms. Khin Sandar Nyunt, Ms. Phwe Yu Mon, Mr. U Win Cho, Mr. Nay Myo Zin, Mr. Wai Lu, and others, all representatives from the Peace Network, a network of more than 20 civil society organizations in Myanmar, applied for assembly permits in all townships in Yangon, with a view to conducting a procession from Sule pagoda to Inya Lake on International Peace Day on 21 September 2012. They submitted, in their capacity as organizers of the said event, slogans and other protest materials to the authorities, in compliance with section 18 of the 2011 Law Relating to Peaceful Assembly and Peaceful Procession.

On 18 and 19 September 2012, the applications for assembly permits in Yangon were rejected by the authorities who claimed that the event would allegedly disrupt traffic, pose a threat to the public and trigger violence. However, the organizers reportedly decided to go ahead with the event in spite of the rejection.

On 19 and 20 September 2012, the authorities tried to arrest four organizers at their homes, to no avail.

Ms. May Sabe Phyu and Mr. Jaw Gun from the Kachin Peace Network, also a member of the Peace Network, had separately applied for permission to travel by bus from Yangon to Naypyidaw, in order to hold a peaceful demonstration on 21 September calling for peace in Kachin state. Their application was later rejected and their appeal was left unanswered. The organizers decided to go ahead with the trip to Naypyidaw. In the early hours of 21 September, the police in Yangon prevented demonstrators from boarding the buses which had been hired for the trip to Naypyidaw. Reports claim that the police actively encouraged the drivers of the hired buses to leave the area. Since they were unable to leave for Naypyidaw, around 120 demonstrators then decided to join the other demonstration in Yangon, and the police threatened to arrest them under section 18 of the Law.

On the day of the protest on 21 September, demonstrators peacefully took to the streets, singing peace songs, observing moments of silence and erecting a small peace monument at Inya Lake. Upon completion of the march, a group of Special Branch police in civilian clothes tried to apprehend several organizers in a taxi, but refrained from doing so when one of them reportedly shouted: “They are trying to arrest us! We came from the peaceful march!”. Later that day, Yangon Police Maj. Myint Htwe stated that the Government would press charges against the demonstrators for violating section 18 of the Law Relating to Peaceful Assembly and Peaceful Procession, which entails a penalty of up to one year in prison and a fine of 30,000 kyat.

On 22 September 2012, one of the aforementioned organizers of the proposed trip to Naypyidaw, Mr. Jaw Gun, received a call from a police officer to come to a local tea shop and upon arrival was presented with a summons and taken to the Sanchaung police station. When he arrived at the station, he was told that he should get two ‘guarantors’, otherwise he would not be released. Likewise, Ms. Mae Sabe Phyu received a call to present herself at a Yangon police station, together with two ‘guarantors’. Other protesters have received similar summons to present themselves, in some cases separately at as many as ten police stations. They had to sign documents in which they agreed to appear before a court if formal charges were brought or face a 1 million kyat fine. Since charges have reportedly been pressed by different police stations in between four and ten locations, they reportedly face cumulative sentences.

The two members of the Kachin Peace Network, Ms. Mae Sabe Phyu and Mr. Jaw Gun, are due to appear in court in Sanchaung township on 3 October 2012 and in Dagon township 10 October 2012. They had sent a letter requesting a postponement of the court hearing because they do not have a lawyer to represent them, but the request was not accepted.

Serious concerns are expressed that the charges pressed against the aforementioned organizers and participants in the demonstrations may be linked to their legitimate human rights activities, in the exercise of their rights to freedom of peaceful assembly, and of opinion and expression. In addition, serious concern is expressed at allegations indicating that some defenders are facing cumulative charges and sentences and that two of the defenders Ms. Mae Sabe Phyu and Mr. Jaw Gun, who are due to appear in court on 3 October 2012, have not had a lawyer to represent them, all of which may undermine their right to a fair trial.

Without in any way implying any determination on the facts of the case, we would like to recall articles 10 and 11.1 of the Universal Declaration of Human Rights (UDHR) which state that everyone is entitled to full equality to a fair trial and public hearing by an independent and impartial tribunal (...) (art. 10) and that everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (art. 11.1)

We would also like to refer 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 like to remind your Excellency’s Government of 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.”

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... 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.”

Furthermore, we would like to highlight the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), in which the Special Rapporteur recommends that “[t]he exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by the authorities, but at the most to a prior notification procedure, which should not be

burdensome. In case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court” (para. 90). The Special Rapporteur also calls on States “to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals” (para. 84(c)) and “to ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. Any restrictions should be subject to an independent, impartial, and prompt judicial review” (para. 84(d)).

In addition, regarding allegations that the aforementioned defenders are facing charges due to their legitimate human rights work, 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 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully; and

- 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.

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 persons in compliance with the above international instruments.

Moreover, 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 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 indicate the legal basis of the charges pressed against the 13 aforementioned organizers or participants in the peaceful demonstrations, and please indicate how these are compatible with international norms and standards as contained, inter alia, in the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders.
3. Please explain whether it is correct that demonstrators reportedly face cumulative charges and sentences, and that some of them have had no access to lawyer. Kindly indicate how this is compatible with general legal and human rights ?? principles.

We undertake to ensure that your Excellency's Government's response 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 the above mentioned persons 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.

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
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