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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 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; 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 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11
MMR 1/2014

17 March 2014

Excellency,

We have the honour to address you in our capacity as 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; and Special Rapporteur on the situation of human rights in Myanmar pursuant to Human Rights Council resolutions 24/7, 16/4, 24/5, 16/5, and 22/14.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of Mr. **Thaw Zin**, member of the Yangon People's Support Network and advocate of the rights of people affected by the Letpadaung copper mine in Salingyi Township, Sagaing Region. He was previously arrested and detained under Article 18 of the Peaceful Assembly and Peaceful Procession Law, for failing to seek the authorities' permission prior to organizing protests. He was subsequently released thanks to a presidential amnesty granted on 31 December 2013.

Mr. Thaw Zin was the subject of an urgent appeal sent on 2 May 2013 by the Special Rapporteur on the situation of human rights in Myanmar; the Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 torture and other cruel, inhuman or degrading treatment or punishment. We acknowledge receipt of the response of Your Excellency's Government of 1 July 2013.

According to the new information received:

On 11 February 2014, six police officers reportedly arrested Mr. Thaw Zin in Salingyi Township, and brought him to Monywa prison. He was charged under the following sections of the penal code allegedly in relation to several demonstrations he organised in 2013 against the Letpadaung copper mine:

- 505(b) (“whoever makes, publishes or circulates any statement, rumour or report... with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility”);
- 188 (“disobedience to order duly promulgated by public servant”),
- 143 (“member of unlawful association, assembly and related action”); and
- 447 (“trespass”).

Serious concern is expressed that the arrest and detention of Mr. Thaw Zin may be linked to his legitimate human rights activities, in the exercise of his rights to freedom of association, peaceful assembly and opinion and expression. Further concerns are expressed for his physical and psychological integrity while in detention. Similar concerns are expressed for human rights defenders engaged in promoting and protecting the rights of people affected by the Letpadaung copper mine.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Thaw Zin 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.

We would like to refer to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and to the right to freedom of assembly, as recognized in article 20 of the Declaration.

In this connection, we would also like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 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.”

We would also like to further 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”.

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. Thaw Zin 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 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 confirm the legal basis for the arrest and detention of Mr. Thaw Zin, and how such measures are compatible with the aforementioned international human rights norms and standards.
3. Please indicate what measures have been taken to ensure that human rights defenders can operate in an enabling environment and carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We undertake to ensure that your Excellency’s Government’s response will be available 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. Thaw Zin 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.

Mads Andenas
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
opinion and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of
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Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders

Tomás Ojea Quintana

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