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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 Special Rapporteur on the independence of judges and lawyers; 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: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (3-3-16) G/SO 214/62-11
MMR 1/2012

23 February 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the independence of judges and lawyers; 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 16/24, 17/2, 16/4, and 15/21.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **conviction of 32 lawyers in relation to the exercise of their legitimate rights to freedom of opinion and expression, and freedom of peaceful assembly and association, as well as for providing legal representation and assistance, and their subsequent disbarment following proceedings in violation of fair trial safeguards.**

According to the information received:

From 1989 to 2011, 32 lawyers have allegedly been convicted of a variety of offences under the Penal Code of 1860, the Emergency Provisions Act of 1950, the 1988 Law Relating to Forming Organizations, and the Public Property Protection Act of 1947. All 32 of the convicted lawyers were either members of dissident political parties, involved in anti-government protests, or involved in activities of legal assistance and defense and/or advocacy work likely to identify Government wrongdoing.

In particular, the lawyers were allegedly prosecuted in relation to the following activities:

- Association with, including having been elected as a member of Parliament for, a dissident political party. Of the 32 lawyers, 12 lawyers were members of the National League for Democracy and of these, 7 had been elected to Parliament; one lawyer was a member of the Burma Socialist Program Party,

one lawyer was a member of the Burma Communist Party and two were members of the National Political Front;

- Involvement in the 1988 or 2007 protests;
- Publication or distribution of print or audio materials in contravention of section 5(j) of the Emergency Provisions Act (EPA) or section 505(b) of the Penal Code. Section 5 (j) of the EPA prohibits actions, “to incite the morality or conduct of the public...in a way that would undermine the security of the Union or the restoration of law and order.” Section 505 (b) of the Penal Code prohibits publication or distribution of “any statement or rumor or report with intent to cause, or likely to cause fear or alarm to the public...” It is alleged that these provisions are so broadly formulated that they may be used to criminalize the right to freedom of opinion and expression.
- Involvement with an organization – including working with a group to provide legal aid – not authorized by the Law Relating to Forming Organizations and/or which is not registered. Under this law it is an offence to be involved with an organization that “attempts, instigates, incites, abets, or commits acts that cause or may cause a disruption to law and order, peace and tranquility, safe and secure communications, or affect or disrupt the regularity of State mechanisms.”
- Providing legal representation or attempting to arrange legal representation for prisoners in Insein Central prison and farmers with land claims.

It is reported that the lawyers’ licences to practice law were consequently revoked for misconduct on the basis of their criminal conviction, and in the absence of a fair hearing and/or independent review of their case and without legal representation.

The names of the lawyers and their licence number, 25 of whom were registered with the Supreme Court and 7 with High Courts, are included in an annex to the present communication.

Concern is expressed that these lawyers were not guilty of any breaches of professional codes of conduct, but that they have been targeted for their political activities and advocacy work, and/or for their involvement in the legal representation of clients in sensitive cases. Concern is further expressed that the criminal conviction and ensuing disbarment of the lawyers may have been motivated by the purpose of silencing and punishing criticism of public policies, rather than maintaining public order.

While we do not wish to prejudge the accuracy of these allegations, we wish to seek clarification about the situation of these 32 lawyers and draw the attention of your Excellency’s Government to the international norms and standards applicable to the present cases.

Lawyers like other citizens are entitled to the rights to freedom of expression, religion or belief, association and peaceful assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights without suffering professional restrictions by reason of their lawful action in accordance with guideline 23 of the United Nations Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Moreover, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing undue restrictions, 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. In this regard, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights (UDHR), which stipulates 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."

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the rights to freedom of peaceful assembly and of association, as recognized in article 20(1) of the UDHR, which provides that "[e]veryone has the right to freedom of peaceful assembly and 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... 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."

Regarding the alleged interference in the lawyers' work, we wish to refer to principle 16 of the aforementioned basic principles that requires Governments to ensure that lawyers: (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

In any case, lawyers, like anyone else, shall be entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them in accordance with article 10 of the UDHR. Principle 18 of the Basic Principles on the Role of Lawyers stipulates that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. In this regard and in respect of the allegations that the decisions to disbar the lawyers were made in the absence of an independent and fair hearing and/or in violation of the lawyers' right to a to an independent judicial review, we wish to refer to principles 27 to 29 of Basic Principles on the Role of Lawyers:

“27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice;

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review;

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.”

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the lawyers whose names are mentioned in the annex are respected. We also appeal to your Excellency's Government to undertake a proper review of their cases and to grant the lawyers the possibility to challenge the decision against them and a fair trial in full compliance with international standards. In the event that your investigations support or suggest the above allegations to be correct, we would appeal to your Excellency's Government to re-instate the lawyers' licences and to ensure that the independence of lawyers is respected.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, 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 accurate?
2. Please indicate the legal grounds on the basis of which the 32 lawyers were convicted. Please provide information on the criminal proceedings against them, and to what extent these comply with international standards as set forth inter alia in articles 10, 19, 20 and 21 of the UDHR and in

articles 16, 18, 23 and 27 of the UN Basic Principles on the Role of Lawyers.

3. Please indicate which body pronounced the decision to disbar the lawyers and to what extent the decision was made in accordance with principles 27 to 29 of the aforementioned instrument.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

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 association

Annex

Supreme Court lawyers:

1. U Aye Myint (4377)
2. U Myint Than (2639)
3. U Har Mar Nyunt (1756)
4. U Myint Htay (1827)
5. U Khin Maung Thein (2694)
6. U Thaung Myint
7. Daw Khin San Hlaing (4203)
8. U Kyi Win (1506)
9. U Htay (3860)
10. U Khin Maung Thant (1784)
11. U Thein Than Oo (3695)
12. U Sein Nyo Tun (3978)
13. U Aung Thein (2703)
14. U Khin Maung Shein (4660)
15. U Robert Sann Aung (2469)
16. U Saw Hlaing (4666)
17. Daw Tin Htwe Mu (1447)
18. U Saw Htun (2791)
19. U Htun Htun Han
20. Thura U Tin Oo
21. U San Ni Tin Pe
22. U Aye Myint (Guiding Star) (4821)
23. U Myat Hla (1154)
24. Daw Hla Myint
25. “BBC” U Ne Min (2090)

Higher Court lawyers:

26. Daw Ohn Kyi (6764)
27. U Aung Kyi Nyunt (3710)
28. U Htun Oo (11942)
29. U Nyi Nyi Htwe (24702)
30. Saw Kyaw Kyaw Min (28261)
31. Ko Phyo Phyu / Yan Naing Aung
32. U Tin Aung Tun (21483)