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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 rights to freedom of peaceful assembly and of association; 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 capacities as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders; and pursuant to Human Rights Council resolutions 25/26, 24/5, 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 **draft Law relating to Registration of Organizations**.

The below comments are based on an unofficial English translation of the latest draft made available to the Special Rapporteurs.

We understand that the draft law was adopted by both the Lower and Upper Houses, and is due to be discussed at the Union Parliament.

The Special Rapporteurs welcome the constructive dialogue between Members of Parliament, representatives of civil society and members of the international community, including the United Nations. This dialogue should continue, including with Government officials, with a view to ensuring that the draft law complies with international human rights norms and standards governing freedom of association.

While acknowledging efforts undertaken so far to bring the law into compliance with such international norms and standards, we were informed that the version recently adopted still contains a series of provisions which are of concern to us, as explained below.

1) Definitions

Article 2(h) provides that a “[l]ocal organization means an association formed with two or more than two people; organization means a non-profit association, in line with fundamental rights stated in the Constitution, which works for the common interest or public interest, and is formed by two or more persons for the common objective or program. It also includes branch of an association”.

Article 2(e) provides that “[i]nternational non-governmental organization” means an organization that was registered in another country and registered with the Union level registration committee to carry out any social activity in the country”.

While welcoming the improvements made in relation to both definitions, we are concerned that the scope of activities envisaged for both local and international organizations is still unduly restrictive. The terms “for the common interest or public interest” are vague, and may be used in an arbitrary way with a view to preventing organizations from working on issues such as good governance and corruption. In this regard, the then Special Representative of the Secretary General on the situation of human rights defenders defined ‘associations’ as any groups of individuals or any legal entities brought together to “collectively express, promote, pursue and defend *common interests*” (A/59/401, para. 46, emphasis added). Such interests may therefore be limited to those of a defined group of individuals.

Likewise, allowing international organizations to only undertake social activities is restrictive. They should be allowed to undertake other activities, such as the promotion and protection of all human rights.

Article 3(c) stipulates that the “[o]bjectives of this law are... [t]o ensure that the activities of an organization are put to the benefits of the State and citizens”. Again, the wording of this provision is vague, restrictive and may lead to arbitrary decisions by the registration committee when reviewing an application for registration.

We would also caution against increasing the minimum number of members of an association beyond two.

2) Registration Committees

According to article 4, “[t]he government must form a Registration Committee as below: (a) Union level registration committee; (b) State; (or) Regional Level registration committee; (c) Nay Pyi Daw Council areas level registration committee; and (d) Township level registration committee”. Article 5 details the composition of the committees, which are led by the Ministry of Home Affairs and several high level officials from other Ministries, including the Attorney General’s Office, hence making the procedure of

registration not only overly bureaucratic as all decisions will be collectively studied and taken, but also highly politicized. In this regard, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “[a]ssociations should be established after a process that is simple, easily accessible, [and] non-discriminatory...” (A/HRC/20/27, para. 95).

Furthermore, multiple and hierarchical layers of registration raise concerns regarding a possible inconsistent implementation of the law. More importantly, it unnecessarily restricts the activities of associations at the geographic level. Those registered at the local level should be able to operate freely at the regional or national levels, and vice versa.

In addition, article 6(f) which allows registration committees “to take necessary action and reject the organizations’ registration which does not comply with rules, orders, directives and procedures according to this law” is redundant and could potentially lead to arbitrary or abusive application of the law. Article 6(a) already provides that the same committees are entrusted with the task “to make decisions on the registration of organizations”.

3) Registration vs. notification, and Registration certificate

The Special Rapporteur on the situation of human rights in Myanmar has stated that, “a prior authorization procedure that requires the approval of the authorities to establish an association as a legal entity does not comply with international human rights standards”, and recommends the establishment of notification procedure (A/68/397, para 25).

Article 7 provides that the applicants for registration must submit their application “as per their free will”. This term may be misleading as it suggests that the procedure of registration may be of voluntary nature, which it is not, according to the present draft law. The former UN Special Representative of the Secretary General on the situation of human rights defenders stated that “[r]egistration should not be compulsory. Non-governmental organizations should be allowed to exist and carry out activities without having to register if they wish” (A/59/401, para. 82(a)).

Article 8(a) provides that the application of an organization will be examined “against prescribed criteria”. However, the draft law fails to detail such criteria. It is of utmost importance to clearly define such criteria.

Articles 8(a)(1)(2) and (3) further provide that the registration period at the state/regional and Nay Pyi Taw levels is 60 days, whereas this period is 30 days at the township level. We are concerned that 60 days is an excessive period and should be reduced to 30 days. As for international NGOs, the registration period is 90 days, as per article 14(a). Likewise, we believe that this period is excessive and should be aligned with domestic organizations, i.e. 30 days.

Article 10 sets the registration fee for local organizations at 30,000 Kyats (USD 30). We are concerned that this amount can be prohibitive and deter individuals from associating freely, especially in rural areas. The Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that “[a]ssociations should be established after a process that is... non-onerous or free of charge” (A/HRC/20/27, para. 95).

4) Right to appeal

Article 9 provides for the right to appeal decisions of the registration committee. However, the entity entrusted with reviewing the appeal is the same registration committee. We believe that such a provision does not allow for a fair review of the appeal.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that “[a]ssociations should be able to challenge any rejection before an impartial and independent court” (A/HRC/20/27, para. 95). The Special Rapporteur on the situation of human rights in Myanmar previously suggested that the decisions of the committee should be subject to judicial review (A/68/397, para. 24).

The same concerns apply to international organizations, as provided under article 15.

5) Renewal and extension of registration certificate

According to article 17(b), local and foreign organizations are expected to renew their registration certificates every five years. Failure to do so will have as a consequence that the organizations will cease to legally exist.

We believe that this provision is an undue restriction on the right to freedom of association as it does not meet the test of ‘necessity in a democratic society’ to protect national security, public safety, public order, public health, morals or the rights and freedoms of others, as recalled in Human Rights Council resolution 24/5.

6) Unregistered organizations

Article 25 provides that “[a]ny registered local organization under this law shall have the right to file a law suit, do fundraising activities, receive funding and open a bank account and own properties or assets”. A contrario, unregistered associations are not allowed to undertake fundraising activities.

In this regard, the Special Rapporteur on the rights to freedom of peaceful assembly and association underlined that “the right to freedom of association equally

protects associations that are not registered” (A/HRC/20/27, para. 56). He called upon States to “ensure that associations – registered and *unregistered* – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities” (A/HRC/23/39, para. 82(b), emphasis added).

Similarly, according to article 24, only registered local organizations can accept support from foreign governments, international and local NGOs and individuals. This provision raises concerns for the same reason: unregistered organizations should similarly be entitled to receive support, regardless its nature (capacity building, knowledge sharing, etc.).

Finally, article 26 limits the use of a logo and uniforms by registered organizations. Again, this provision unduly interferes with the functioning of unregistered organizations.

In connection with the above, we would like to refer your Excellency’s Government to article 20 of the Universal Declaration of Human Rights 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 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.”.

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 article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

We would also like to draw your attention to Human Rights Council resolution 22/6 which calls upon States to respect, protect and ensure the right to freedom of association of human rights defenders. States should ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive. Such procedures should allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and should be in conformity with international human rights law. (A/RES/22/6/OP8)

In light of the above, we call on the Parliament to amend this draft law with a view to ensuring its compliance with the aforementioned international human rights norms and standards.

We would be grateful to Your Excellency’s Government if the present letter could be shared with Members of the Union Parliament for their attention.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

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

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