

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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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; Working Group on Arbitrary Detention and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 28/23, 33/30 and 33/9.

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 three journalists: Mr. **Lawi Weng**, Senior Reporter for the Irrawaddy; Mr. **U Aye Nai** and Mr. **Pyae Bone Aung**, reporters for the Democratic Voice of Burma (DVB); in relation to their reporting on conflict issues in Myanmar.

According to information received:

On 26 June 2017, at approximately 3:30 p.m., the Myanmar Armed Forces (Tatmadaw) arrested the above named journalists and four other civilians travelling in two cars on the road between Hsipaw and Namhsan, in northern Shan State. The journalists were returning from a drug burning ceremony, which marked the UN International Day against Drug Abuse and Illicit Trafficking, organised by the Ta'ang National Liberation Army (TNLA).

The Office of the Commander in Chief of the Tatmadaw stated that soldiers stopped the cars and arrested all seven passengers on suspicion of contact with the TNLA, which the Office deems a terrorist group that harms rule of law, peace and stability.

The three journalists were detained *incommunicado* for two days by the Tatmadaw, and it is unclear whether they were kept in officially recognized places of detention. During this period, they were not informed of the charges against them, unable to contact a lawyer and were relocated to several different places of detention. One of the detainees, Mr. Lawi Weng, has pre-existing kidney and heart conditions, for which he takes medication. It is unclear if a medical examination of the detainees was conducted and if they have access to medical services while detained.

On 28 June 2017, the Tatmadaw filed charges against the three journalists and three civilians under Article 17(1) of the 1908 Unlawful Associations Act. The journalists were transferred to police custody and subsequently to Hsipaw prison where they will remain in pre-trial detention until 21 July 2017.

On 2 July 2017, the case was transferred to Namhsan Township Court, the place where the arrest occurred, however, the charged journalists remain remanded at Hsipaw prison.

It is alleged that the equipment belonging to the journalists including laptops, cameras and mobiles were confiscated by the Tatmadaw.

On 3 July 2017, family members of the three detained journalists were allowed a 45-minute prison visit, the first one since the arrests.

On 7 July 2017, an impromptu remand hearing was called for the three journalists, which was not scheduled to be held until 11 July 2017; where the three journalists were remanded in custody until the start of their trial on 21 July 2017. However, it remains unclear if the three journalists appeared before court before being remanded to prison on 28 June 2017 or if the Myanmar Police Force received a special order of a Magistrate under Section 167 of the Myanmar Criminal Procedure Code to extend the pre-trial detention. Currently, the journalists remain detained at Hsipaw Prison, without any legal assistance.

The identities and whereabouts of the four other men detained and the charges against them, if any, remain unknown.

We express serious concern about the alleged arbitrary arrest and detention of the three journalists listed above and the charges brought against them. We are also concerned about the lack of information regarding the fate and whereabouts of the other four men who were allegedly arrested and detained along with the three journalists.

We are concerned that the Unlawful Association Act continues to be misused to arrest journalists who report on sensitive or critical matters of public interest which limits the ability of journalists to perform their work independently and without interference, thereby suppressing information of relevance to the public and representing criminalization of the legitimate exercise of their right to freedom of expression and peaceful assembly.

We also express concern that the actions taken against Mr. Lawi Weng, Mr. U Aye Nai and Mr. Pyae Bone Aung, may have a 'chilling effect' on the exercise of the right to freedom of expression on the issue of human rights, on the expression of dissenting or critical opinions, and on the work of journalists in general.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues brought forth by the situation described above.

We would like to first refer to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights (UDHR). This right is also guaranteed in article 19 of the International Covenant on Civil and Political Rights (ICCPR). We welcome in this regard your Excellency's Government's statement during the second cycle of the UPR, in which it stated that it had "accepted in principle" the ratification of the ICCPR (A/HRC/31/13/Add.1, para 7).

We also refer to your Excellency's Government's commitment expressed in November 2015 during the second cycle of the Universal Periodic Review (UPR), in which your Excellency's Government accepted recommendations to ensure that freedom of expression be protected, and in particular that those who legitimately exercise their rights to freedom of expression and peaceful assembly be not subject to reprisals (see recommendations 143.88, 143.98 and 143.99, A/HRC/31/13).

Without expressing an opinion on whether or not the detention of the aforementioned individuals is arbitrary, we would like to appeal to your Excellency's Government to take all measures necessary to guarantee their rights to not be deprived arbitrarily of their liberty, as well as their right to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR. In addition, we would like to recall the General Comment no 35 of the Human Rights Committee, which states that incommunicado detention that prevents prompt presentation before a judge inherently Art 9 (3) of the ICCPR.

We would also like to draw your Excellency's Government's attention to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any

time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.” Further, the right to be free from torture and other cruel, inhuman and degrading treatment or punishment as set forth in article 7 of the ICCPR.

In addition, we would like to refer your Excellency’s Government to principle 7 of the Basic Principles on the Role of Lawyers according to which, all arrested, detained or imprisoned persons shall have access to lawyer within 48 hours of detention.

We would like to refer your Excellency's Government to article 12 of the Covenant on Economic, Social and Cultural Rights, signed by Myanmar on 16 July 2015, which establishes that States have an obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services. (General Comment 14, Para.34).

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 persons 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 and comments you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of the above named and unnamed individuals and the compatibility with international norms and standards.
3. Please clarify the powers of arrest and detention of civilians by the Tatmadaw including under the Unlawful Association Act.
4. Please provide information on whether the three journalists and the other four civilians were informed of the reason for arrest and whether they were detained by the Tatmadaw in a recognized place of detention.

5. Please clarify if a record of transfer between places of detention and between the Tatmadaw and the Myanmar Police Force has been kept.
6. Please clarify if the detainees had access to legal counsel, family and medical examination and when it was provided.
7. Please clarify the reasons for not granting bail.
8. Please clarify if the Myanmar Police Force have sought and received a special order of a judicial Magistrate under Section 167 of the Myanmar Criminal Procedure Code to extend pretrial detention, as guaranteed in Article 21 of the 2008 Myanmar Constitution.
9. Please provide information on the measures to ensure access to appropriate health care to the detainees, in particular to Mr. Lawi Weng who reportedly has a heart and kidney condition requiring urgent medical attention. Please clarify families' access to the detainees.
10. Please indicate what measures have been taken to ensure that journalists in Myanmar are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
11. Please clarify what measures are in place to ensure that criminal laws are not used to arrest, detain and intimidate journalists.
12. Please clarify measures taken to enforce the application of Section 3(7) of the 2014 News Media Law protecting journalists from being detained by security forces in the course of their coverage of conflicts.
13. Please provide detailed information on the measures taken to ensure the right to a fair trial and public hearing by a competent, independent and impartial tribunal and the availability of legal assistance, as a key element of human rights protection and to ensure the proper administration of justice.
14. Please provide information on what steps have been taken to ensure that the Unlawful Association Act is not used to limit freedom of expression by leading to the arrest and detention, or to the fear of arrest and detention, among journalists.

15. Please provide information on measures envisaged to revise the 1908 Unlawful Associations Act in accordance with international norms and standards.
16. Please clarify what measures were taken during the arrest and detention to secure the journalist communication and protect the confidentiality of journalists' sources.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

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.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Dainius Pūras
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