

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights in Myanmar

REFERENCE:
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19 December 2017

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 and Special Rapporteur on the situation of human rights in Myanmar, pursuant to Human Rights Council resolutions 34/18 and 34/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest of the two reporters, Mr. Wa Lone and Mr. Kyaw Soe Oo, in Yangon.

Mr. Wa Lone and Mr. Kyaw Soe Oo are reporters working for Reuters, based in Myanmar. They had recently been reporting on Rakhine State's refugee crisis, where over 600,000 Rohingya Muslims have fled into neighbouring Bangladesh.

According to the information received:

On 12 December 2017, Mr. Wa Lone and Mr. Kyaw Soe Oo were arrested by the police in Yangon. The arrest was confirmed on 13 December by the Government spokesman in a public statement, without providing additional details on the circumstances of their arrest.

A local news outlet reported later that the Yangon's Htaukkyant Police Station had accepted charges against the two reporters under the 1923 Official Secrets Act, filed by an unnamed military officer. Reuters had not received information about the charges. Charges under the law allow for 14 years prison terms for unlawful possession of military documents.

It has been reported that the police allegedly found military reports related to recent security operations in the Rakhine State in the journalists' possession.

The authorities released a staged image of the two journalists wearing handcuffs with documents displayed before them. The information ministry said the reporters were accused of intending "to send important security documents regarding security forces in Rakhine state to foreign agencies abroad".

We express serious concern at the arrest of Mr. Wa Lone and Mr. Kyaw Soe Oo, and the charges against them brought under the Official Secrets Act, which represents a criminalization of the exercise of journalism in a context of humanitarian crisis. We express concern that these actions are the latest in what appears to be a crackdown on journalists and media freedom in Myanmar, with severe consequences for the general situation of freedom of expression in the country.

Without prejudice about the above allegations, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee freedom of expression of individuals and of media outlets, in accordance with article 19 of the Universal Declaration of Human Rights (UDHR). In this regard, we would like to refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality. We would similarly like to recall that, while national security is a legitimate basis for restricting the right to freedom of expression under international human rights standards), it is not enough to claim it as a justification to pursue illegitimate purposes such as silencing critical voices. Governments have to demonstrate that the measures adopted are necessary to achieve a legitimate objective, and proportional in the means used to implement them. In any case, restrictions to freedom of expression may never be invoked as a justification for the hindering of any advocacy of human rights (CCPR/C/GC/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 Mr. Wa Lone and Mr. Kyaw Soe Oo 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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the evidence used to charge Mr. Wa Lone and Mr. Kyaw Soe Oo under the Official Secrets Act, and explain how this is compatible with Myanmar's obligations under international human rights law, in particular article 19 of the UDHR.

While awaiting a reply, we urge that all necessary interim measures be taken to release Mr. Kyaw Soe Oo and Mr. Wa Lone, to halt the alleged violations and to prevent their re-occurrence.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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

Yanghee Lee
Special Rapporteur on the situation of human rights in Myanmar