

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

REFERENCE:
AL MMR 1/2019

22 March 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 34/22 and 34/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of Mr **Myo Aung** related to a satirical cartoon and short story. Mr Myo Aung is a journalist, a co-founder of Dawei Watch and editor-in-charge of the Tanintharyi Journal. The Tanintharyi Journal is a local newspaper published weekly as part of Dawei Watch, a news agency created in 2012 covering issues in South-Eastern Myanmar.

According to information received:

On 18 February 2019, Mr Myo Aung was convicted and sentenced to a fine of MMK 500,000 in connection with a short story and cartoon that was published in the Tanintharyi Journal in November 2017. The satirical article and cartoon concerns an imaginary character who, according to the original complaint filed, allegedly resembles the Tanintharyi Chief Minister, Lei Lei Maw. The satirical article in question was titled 'Electioneering Smile', and featured a fictional local administrator called "Shin Gwan Gwep" who is campaigning for re-election. Neither the article, nor the cartoon identifies Lei Lei Maw. Myo Aung did not write the article or draw the cartoon.

The complaint was filed by Aye Lu, Tanintharyi Deputy Regional Director, on 23 November 2017. He is a civil servant appointed to his position by Chief Minister Lei Lei Maw. The complaint asserted that the article and cartoon damaged the reputation of Lei Lei Maw.

The Dawei local prosecutor charged Myo Aung under Article 25 (b) of the 2014 News Media Law, which, among others, defines 'Responsibilities and Codes of Conduct to be complied by News Media workers'. Myo Aung is considered to have violated Article 9 (g), which states that 'writing style which deliberately affects the reputation of a specific person or organization (...) shall be avoided'. The case was opened on 21 December 2017 in the Dawei Township court and hearings took place every two weeks approximately.

The nature of the pieces to which the charges relate only expressed opinions and cannot be considered as factual reporting. Additionally, Myo Aung denied being the author of the article and the cartoon, which appeared under the byline ‘Mu Say Ooh’, but he refused to release the real identity of the author.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern at the conviction of Myo Aung to a fine of MMK 500,000 based on provisions of the 2014 News Media Law, which places vague restrictions on freedom of expression. Sections 9 and 25 (b) of the News Media Law go beyond what is necessary in a democratic society to protect reputation and effectively prevents legitimate criticism of public officials, even in the form of satire, without even referring explicitly to the person in question. We express further concerns due to the fact that provisions of the News Media Law have been used on several occasions to file cases against journalists expressing unpopular or unflattering opinions against political and public figures. Similarly, we express a broader concern at the use of criminal defamation charges against political expression, journalistic activities, and human rights defenders. We also wish to express serious concern regarding the chilling effect this sentence may have on the exercise of freedom of expression in general, and on journalists voicing critical or unpopular opinions.

In connection with above alleged facts and concerns, we 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 would welcome information regarding the steps taken in order to implement this commitment.

We wish to recall that under international human rights standards, any restriction to the right to freedom of expression must be provided by law, and necessary and proportionate for the protection of a legitimate objective. In this regard, we also refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions on the discussion of government policies and political debate; reporting on human rights and government activities; and expression of opinion and dissent.

We also recall a recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the General Assembly, which raises concerns about the fact that “punishment for defamation of government officials is widespread and directly interferes with freedom of expression, whether by imposing penalties on expression or dissuading individuals from criticizing officials or government policy” (para 34 of A/71/373). The report further stresses that “particularly with respect to public figures, national laws should be careful to ensure that any respondent in a criminal case may raise a public interest defence, and even untrue

statements made in error and without malice should not be rendered unlawful or subject to penalty” (ibid).

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 work to ensure that freedom of opinion and 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). We would be interested in receiving information regarding the review and amendment of the relevant laws, in particular the existing criminal defamation provisions.

We also wish to refer to your Excellency’s Government’s commitment expressed in November 2015 during the second cycle of the UPR, in which your Excellency’s Government accepted a number of recommendations to review the News Media Law and the Printing and Publication Enterprise Law of 2014, in order to bring it in conformity with international standards regarding freedom of expression (see recommendations 144.80, 144.81, 145.32 in A/HRC/31/13).

In connection with the above alleged facts and concerns, please also refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 you may have on the above allegations.
2. Please provide information about measures taken to ensure that Mr. Myo Aung was guaranteed a fair trial in accordance with the standards of international human rights law.
3. Please provide information on how the provisions of the 2014 News Media Law, in particular sections 9 and 25 (b) are in conformity with international human rights standards, in particular with article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations. Please accept, Excellency, the assurances of our highest consideration.

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Yanghee Lee

Special Rapporteur on the situation of human rights in Myanmar

David Kaye

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

Annex

Reference to international human rights law

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