

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on Arbitrary Detention; 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 defenders

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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; 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 defenders pursuant to Human Rights Council resolutions 28/23, 24/7, 25/2 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 alleged arbitrary detention and criminal prosecution of Mr. **Khine Myo Htun, an environmental and political activist**, in relation to the publication of statements by the Arakan Liberation Party (ALP), of which he is an official, criticizing the Myanmar military. The ALP is party to a ceasefire agreement with the Government of Myanmar.

According to the information received:

On 24 April 2016, the ALP issued a written statement deploring the consequences for Rakhine State's civilian population of the ongoing armed fights between the Myanmar Army and a local military group, identified therein as the Arakan Army. In this statement, the ALP alleged severe human rights violations committed by the Myanmar Army, including forced labour, forced land relocation, hostage taking, and arbitrary beatings and ill-treatment of combatants. The statement was issued in the name of the Information and Organizing Department of the ALP, and was not attributed to any specific individual.

On 27 April 2016, the authorities stated that Mr. Khine Myo Htun, an official of the ALP, would be prosecuted in relation to the issuance of the above-mentioned statement, if the allegations contained therein could not be substantiated.

On 1 May 2016, Mr. Khine Myo Htun, submitted to the authorities evidence substantiating the allegations, including audio recordings, photographs and video footage.

On 5 May 2016, charges were filed against Mr. Khine Myo Htun, for defamation and incitement under Sections 505(b) and (c) of the Myanmar Penal Code.

On 22 June 2016, Mr. Khine Myo Htun met with the Special Rapporteur on the situation of human rights in Myanmar during her latest visit to the country (20 June-1 July 2016).

On 25 July 2016, Mr. Khine Myo Htun was arrested and detained. He was first brought before a court on 27 July 2016. Further court hearings were held on 5, 12, 19 and 25 August 2016. The judicial proceedings still continue, with the next hearing being scheduled for 2 September 2016. Mr. Khine Myo Htun remains detained to date.

We express grave concern about the allegedly arbitrary arrest and detention of Mr. Khine Myo Htun, as well as the charges brought against him, which represent a criminalization of the legitimate exercise of his right to freedom of expression. We express further concern that this appears to be connected to a matter of high public and political importance, where an open debate should be encouraged, and where public figures and institutions are required to tolerate a greater degree of criticism. In this regard, we express concern at the use of criminal defamation to target views that are deemed critical or dissenting. Moreover, we express concern that the arrest and detention of Mr. Kine Myo Htun may carry an element of reprisal for his cooperation with the United Nations in the field of human rights, considering that these actions took place after he had met with the Special Rapporteur on the situation of human rights in Myanmar.

We also express concern that the actions taken against Mr. Khine Myo Htun 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 opinion and on the work of human rights defenders in general.

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 wish to recall that under international human rights standards, as highlighted in the report of the previous Special Rapporteur on the right to freedom of expression, criminal sanctions, in particular imprisonment for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of expression (E/CN.4/2000/63). 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 which emphasises that freedom of expression plays a central role in the effective functioning of a vibrant democratic political system, recalling States' responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated (A/HRC/26/30).

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).

We would also like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 6. In this context, we remind your Excellency's Government of its commitments to ensuring the protection of and creating a safe and enabling environment for civil society and human rights defenders, expressed during the second cycle of the UPR, in which your Excellency's Government accepted recommendations to that effect (see recommendations 144.82 and 144.83, A/HRC/31/13, A/HRC/31/13 Add.1).

We would also like to appeal to your Excellency's Government to take all necessary measures to guarantee the rights of Mr. Khine Myo Htun not to be arbitrarily deprived of his liberty and 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 International Covenant on Civil and Political Rights ICCPR.

We also wish to refer to Human Rights Council resolutions 12/2 and 24/24 which, inter alia, condemn all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights and calls upon all States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its representatives and mechanisms in the field of human rights. Moreover, the 2015 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/30/29) reiterates the Secretary-General's firm position that any act of

intimidation or reprisal against individuals or groups for their engagement with the United Nations, its mechanisms and representatives in the field of human rights is completely unacceptable and must be halted, immediately and unconditionally (para. 47).

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 person 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 comments you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the prosecution, arrest and detention of Mr. Khine Myo Htun, and indicate how the judicial proceedings against him, including his arrest and detention, are compatible with international norms and standards. In particular, please explain how the use of defamation and incitement charges in this case is compatible with international human rights standards.
3. Please provide information about measures taken to ensure that Mr. Khine Myo Htun is guaranteed a fair trial in accordance with the standards of international human rights law.
4. Please provide information on the measures taken to ensure that article 505 of the Penal Code and its implementation are put in compliance with international human rights law and standards, namely the right to freedom of expression as set forth in article 19 of the UDHR, and the recommendations of the Special Procedures, as also formulated among the UPR recommendations that enjoy the support of Myanmar.
5. Please indicate what measures have been taken to respect and protect Mr. Khine Myo Htun's right to communicate freely and without reprisals with the United Nations, its representatives and mechanisms in the field of human rights.

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 prejudice 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

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Michel Forst
Special Rapporteur on the situation of human rights defenders