

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them
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Tuesday, January 17, 2012

U Tun Tun Oo
Chief Justice
Office of the Supreme Court
Office No. 24
Government of the Union of Myanmar
Naypyitaw, MYANMAR
Fax: + 95 67 404 059

Re: Restore professional licenses of thirty-two lawyers

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally. LRWC also engages in international human rights research and education and works in cooperation with other human rights organizations in several parts of the world. LRWC has Special Consultative status with the Economic and Social Council of the United Nations. Lawyers for Lawyers (L4L) is an independent Dutch foundation operating on a worldwide scale. The foundation has a board of directors consisting of lawyers, human rights specialists and an executive director.

LRWC and L4L have been following current statements and efforts of the government of the Union of Myanmar towards reform and respect for human rights. We draw your attention to the processes of revocations of lawyers' licenses in circumstances that suggest violations of international human rights standards and the rule of law. We understand that at least thirty-two lawyers (named below) have had their licenses revoked in judicial hearings that were held in private, without proper representation, and without adherence to the required procedures of the *Bar Council Act*, the *Legal Practitioners Act* and the Courts Manual. It is also reported that the revocations of these lawyers' licenses were motivated not by any breaches of professional codes of conduct, but by the lawyers' political activities, their representation of clients accused in political cases, or by convictions on these latter two factors. To prevent a lawyer from practicing law based either on the lawyer's real or suspected political opinions or on the lawyer's representation of clients or causes unpopular to the government violates international standards. In this case, the freedom of expression, freedom to participate in political affairs, and the freedom to vigorously represent clients free from interference, harassment, or reprisals from state agents or others appear to have been violated.

Restore professional licenses of 32 lawyers

The names of the lawyers (licence numbers in brackets) whose licenses to practice law have been revoked are as follows

SUPREME COURT ADVOCATES

1. U Aye Myint (4377)
2. U Myint Than (2639)
3. U Har Mar Nyunt (1756)
4. U Myint Htay (1827)
5. U Khin Maung Thein (2694)
6. U Thaug Myint
7. Daw Khin San Hlaing (4203)
8. U Kyi Win (1506)
9. U Htay (3860)
10. U Khin Maung Thant (1784)
11. U Thein Than Oo (3695)
12. U Sein Nyo Tun (3978)
13. U Aung Thein (2703)
14. U Khin Maung Shein (4660)
15. U Robert Sann Aung (2469)
16. U Saw Hlaing (4666)
17. Daw Tin Htwe Mu (1447)

18. U Saw Htun (2791)
19. U Htun Htun Han
20. Thura U Tin Oo
21. U San Ni Tin Pe
22. U Aye Myint (Guiding Star) (4821)
23. U Myat Hla (1154)
24. Daw Hla Myint
25. “BBC” U Ne Min (2090)

HIGHER GRADE PLEADERS

1. Daw Ohn Kyi (6764)
2. U Aung Kyi Nyunt (3710)
3. U Htun Oo (11942)
4. U Nyi Nyi Htwe (24702)
5. Saw Kyaw Kyaw Min (28261)
6. Ko Phyo Phyu / Yan Naing Aung
7. U Tin Aung Tun (21483)

Myanmar, as a member of the United Nations since its inception in 1948, is bound by the terms of the UN Charter which includes “promoting and encouraging respect for human rights and for fundamental freedoms for all...” Myanmar also has the obligation to ‘promote and encourage respect for human rights and for fundamental freedoms for all...’ and to uphold the freedoms guaranteed by the Universal Declaration of Human Rights which states in Article 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

The Union of Myanmar is legally bound by customary international law which includes the obligation to ensure impartiality of courts and tribunals.

In addition, we draw to your attention the Basic Principles on the Role of Lawyers (Basic Principles), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 which states in article 10: “Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of ... political or other opinion...”

The Basic Principles articulate widely accepted norms of international law regarding the responsibilities of lawyers and the duty of states to protect lawyers from interference, persecution and harassment in the discharge of their professional duties.

Myanmar has a legal duty to safeguard the right and duty of lawyers to vigorously defend their clients without interference. Identifying lawyers with their clients’ charges, causes, or political beliefs, as was done in these cases, is specifically prohibited by Article 18 of the Basic Principles:

“Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”

The revocation of licenses further violates the Basic Principles by preventing the barred lawyers from “protecting the rights of their client and promoting the cause of justice,” a duty safeguarded by Article 14 of the Basic Principles. The revocation of licences violates the duties of Myanmar, set out in the Basic Principles, to protect lawyers in the conduct of their professional duties, namely the:

1. Duty to guarantee the functioning of lawyers as set in Article 16,
“Governments shall ensure that lawyers
(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
(b) are able to travel and to consult with their clients freely both within their own country and abroad; and
(c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”
2. Duty to protect the personal and professional safety of lawyers as set out in Article 17, which provides,
“Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”
3. Duty to protect lawyers’ freedom of expression and association as set out in Article 23, which provides,
“Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.”

These same principles have also been recognized by the United Nations in General Assembly Resolution 53/144, entitled 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.

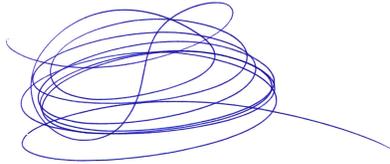
LRWC and L4L ask that the Supreme Court conduct a review of each revocation on an urgent basis with the following conditions:

1. That the reviews are conducted in strict adherence to the *Bar Council Act*, the *Legal Practitioners Act* and the Courts Manual;
2. That each lawyer have legal representation of choice;
3. That all the review hearings are conducted in accordance with international standards of fairness and impartiality; and,
4. That pending completion of reviews, the licenses to practice law of all 32 lawyers named above will be restored.

LRWC and L4L will continue to monitoring this situation.

LRWC and L4L await your response. Thank you for your attention to our concerns.

Sincerely,



Gail Davidson, LRWC Executive Director



Adrie van de Streek, Lawyers for Lawyers

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Restore professional licenses of 32 lawyers

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