



**Legal Analysis Statement on the Detention of the ABSDF (Northern) Leader and Members by the Government Authorities in Connection with the So-called Peace Seeking Process in Burma**

1. Detention of the deputy Chairperson of the ABSDF (Northern) U Aung Swe Oo and his two colleagues at Monyin town under Unlawful Association Act on Nov 30, 2018 has threatened not only leaders of the said organization and their members but also the other ethnic armed organizations – regardless of whether non-signatories or signatories to the Nationwide Ceasefire Agreement (NCA) – as well as other innocent civilians. The reason of arrest was that they made trips in the territories controlled by the Kachin Independence Army (KIA) which has already been declared by the authorities as an unlawful association.<sup>1</sup> It has also caused concern for all other ethnic nationalities. It is because there are many KIA controlled territories in Kachin State as well as in northern part of Shan State and arbitrary arrest by the government authorities, particularly by the Myanmar Army,<sup>2</sup> can take place against innocent civilians, who normally make trips those territories, at any time.
2. Such reason of arrest is contrary to Section 17 (1) of the 1908 Unlawful Association Act. It is as follows:

Whoever is a member of any such association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or assists in any way operation of such association, shall be punished with imprisonment for a term (which shall not be less than two years and more than three years and shall also be liable to fine).

In connection with this case, many legal issues have arisen from the aspect of the Rule of Law:
3. Under the genuine principles of the Rule of Law, the practice of selectivity – which leads to discrimination and inequality – is denied as equality before the law is a

<sup>1</sup> BBC interviewed U Sein Aye – a leader from the 8888 New Blood Peace Support Group who was at the police station in Monyin town.

<sup>2</sup> According to U Sein Aye, the first information report was made by Captain Thi Ha Soe, a military official from Light Infantry Battalion No. (15) of Myanmar Army.

universally adopted norm. When the Unlawful Association Act is applied only against the leaders of the ABSDF – out of all other signatory organizations, a total number of 10 – for two times already it means the practice of selectivity. If this legal issue is not resolved properly, timely and effectively, similar practice will go on and on endlessly. The ABSDF leaders themselves are also responsible to resolve this issue legally, peacefully and firmly, rather than requesting mercy of the government authorities and Myanmar military leaders while bowing down their heads.

4. Daw Aung San Suu Kyi, the State Counsellor and Minister of Foreign Affairs, and Myanmar military leaders, led by Senior General Min Aung Hlaing, Commander-in-Chief of the Armed Forces, had already met the leaders of the Ethnic Armed Organizations, which were declared as unlawful associations, for some times officially and unofficially and assisted in any way operation of such associations. Unfortunately, at those times, the Unlawful Association Act was keeping silent. None of them were taken into legal action under the said law. It is evident that selectivity was practiced.
5. After the military coup in Burma, Gen. Ne Win, the then notorious military dictator, initiated the so-called peace oriented dialogue processes with the Burma Communist Party and the Ethnic Resistance Armed Organizations in 1963; and, at that time, he suspended the 1908 Unlawful Association Act.<sup>3</sup> The operation of a law passed by parliament can only be suspended by a government if the law contains a specific provision allowing for such suspension (and the process for such suspension). However, even if the law does not contain such a provision, it is possible for a government – usually with the consent of all political parties – to take a *political* decision to, for example, suspend prosecutions under such law for a certain period because of an ongoing peace process or other similar development.<sup>4</sup> But that is a political decision which does not have legal force. Anyway, Daw Aung San Suu Kyi must resolve this legal issue immediately and is responsible to prove that the status of her NLD government is higher than the dictator Gen. Ne Win government and that they have genuine political will to overcome any hardship relevant to peace seeking process effectively.
6. After a special meeting between the government authorities and the leaders of signatory organizations, convened on October 15-16, 2018, a public statement was issued, mentioning, inter alia, that efforts will be exerted so that non-signatory organizations can participate in the process. Invoking this, the leaders of the PPST, a coalition of the signatory organizations, are in the process of holding meetings with the non-signatory organizations. Unless the Unlawful Association Act issue is resolved properly as explicated in the Paragraph 5, the government authorities are responsible to detain all PPST leaders, who met with the non-signatory organizations. If so, the entire process will collapse; and, if not, upholding the Rule of Law will only be a dream. Intention of this notice made by LAN is to focus on importance of resolving this unlawful association act related legal issue.

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<sup>3</sup> Statement made by Po Thauk Kyar, the most experienced newspaper editor in Burma.

<sup>4</sup> Dr. Venkat Iyer, Constitutional Law and Media Law Expert, United Kingdom

7. The only way to achieve genuine peace in Burma is to apply internationally accepted minimum standards of the Rule of Law during the peace seeking processes. The incumbent President U Win Myint repeatedly, publicly and rhetorically articulated many times that originally he was a Supreme Court Advocate. It is appreciable. Now, U Win Myint is responsible to prove his legal capacity by resolving this legal issue immediately and effectively. The same is for U Nyan Win, who is the Chairperson of the Union Legal Aid Body. Similar responsibility will also go to women leaders who demand for increased participation of women in political affairs, including peace seeking process. However, rather than simply dreaming to participate in one Union Peace Conference after another, which will go nowhere, they are responsible to show their capacity, courage and commitment in defending human rights, the right to self-determination of the ethnic nationalities, the rights of victims of heinous crimes – war crimes, crimes against humanity and genocide – etc. on the ground practically. In so doing, upholding the minimum standards of the Rule of Law would have been facilitated thereby leading to achievement of genuine peace.

Invoking the above-mentioned situations, our Legal Aid Network demands the government authorities and Myanmar military officials to immediately release the leader of the ABSDF (Northern) and his two colleagues; and, abstain from conducting legal embarrassment of other innocent civilians any more by applying Unlawful Association Act. So long as such arbitrary detention continues, the right to a fair trial for detainees must be guaranteed, and reasonable compensation be provided to them after their release.

Aiming to genuine national reconciliation, Legal Aid Network will be happy to facilitate establishment of political dialogues, to be convened within the grassroots ethnic nationalities and their organizations in Ethnic States/Provinces, in addition to dialogues with the government authorities, from the aspect of the Rule of Law.

Legal Aid Network

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