

Statement objecting the legal action against the three youths who painted graffiti to raise public awareness in the midst of battling against COVID-19 in Myitkyina, Kachin State

1. The drawing of artists Ko Zay Yar Naung, Naw Htun Aung and Sicilia Ja Seng, informing the public through graffiti illustrating the precautions for the prevention of the COVID-19 pandemic does not violate any law. They just exercise freedom of expression.



(Photo: Kachin News group)

2. However, U Htun Myint Aung, deputy director of State Department of Religious Affairs, filed a libel case against the youths on charge of Penal Code section 295(A) claiming that such action is deemed to constitute defamation of Buddhism.¹

3. It is obvious that this graffiti harms no rights and freedom of others nor disrupt public order, morality and general welfare in society.² Noticeably, the graffiti does not constitute ill-

1 <https://burmese.kachinnews.com/2020/04/03/အုတ်နီရုံတွင်-covid-19-အသိပညာပေး/>

2 Universal Declaration of Human Rights; Article 29(b): ‘In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due

intention to insult religious belief. It only conveys a message about the COVID-19 global pandemic in order to warn the public to take preventive measures. In the contentious graffiti, a red cloaked skeleton holding a pot-like rounded container seems to be similar to a Buddhist monk. The State Department of Religious Affairs accuses three young artists of defaming Buddhism. In fact, the red cloaked skeleton, which is commonly known as Grim Reaper,³ was first illustrated during the 14th century when Europe was dealing with the world's worst pandemic. Evidently, the three youths have been trying to warn the public about the hazard of pandemic for the sake of community by solely enjoying the right to freedom of expression.⁴

4. Thus, the youths' artistic action cannot be recognized as deliberate and malicious attempt intended to outrage religious feeling of a particular group by insulting its religion or religious beliefs under section 295 (A) of the Penal Code.⁵ Ko Zay Yar Naung himself, one of the three painters of the contentious graffiti, is a Buddhist and has made it clear that he utterly has no intention to insult his own religion. He, therefore, has made an apology to the Buddhist community and said that he would remove the graffiti if they feel offended.⁶ Apparently, it has already been wiped off.

5. Additionally, Myanmar and India share the same Penal Code already since the British colonial rule. In 1957, the ruling *Ramji Lal Modi Vs The State of U.P* (5 April 1957)⁷, the supreme court of India averred:

‘...section 295 (A) does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalizes only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within this section.’

6. Therefore, LAN strongly objects the lawsuit against the three youths indicted by deputy director of State Department of Religious Affairs U Htun Myint Aung. The Myitkyina Township Court has issued a warrant for proceeding of petition no.341/2020 under section 295 (A) of Penal Code. LAN condemns such improper and illegal action of the court and demands to dismiss the proceeding immediately pursuant to section 203 of the Code of Criminal Procedure.

recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.’

3 <https://www.britannica.com/story/where-does-the-concept-of-a-grim-reaper-come-from>

4 Universal Declaration of Human Rights UDHR article 19 and International Covenant on Civil and Political Rights ICCPR article 19(2) are recognized as international customary law; ICCPR art 19(2): ‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’

5 Penal Code Section 295(A): ‘Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of (persons resident in the Union), by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.’

6 ‘The State Department of Religious Affairs has filed a complaint to the court claiming that the graffiti, which warn the threat of COVID-19, defame Buddhism (Burmese)’ *Eleven* (online edn 4 April 2020) <<https://news-eleven.com/article/167741>> accessed 27 April 2020.

7 <https://indiankanoon.org/doc/553290/>

7. Moreover, the elected NLD government must withdraw all charges against media, journalists and rights activists⁸ and eliminate draconian laws that deny the right to freedom of expressions.⁹ In addition, LAN calls for the reformation of the Burma's judicial system. Currently, judges are not allowed to decide freely whether to proceed or dismiss a case in lawsuits brought by military and government officials against journalists and rights activists¹⁰ exercising their fundamental rights.

Legal Aid Network (LAN)

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For more information, please contact:

Mr. Lahpai Naw San
Management Team member, Legal Aid Network
Head Office, Mai Ja Yang, Kachin State, Burma/Myanmar

Website: legallaidnetwork.org
E.mail: legallaidnetwork@gmail.com
Phone: +95 949246116, +86 18488520779

8 Founder and editor of Voice of Myanmar media U Ne Myo Linn and chief editor of Narinjara news website, based in Rakhine State, U Khaing Myat Kyaw face charges under the Counter-Terrorism Law 2014; the government blocked 221 ethnic news websites; see also Human Rights Watch, 'Myanmar: Editor Wrongfully Charged' (2 April 2020) <<https://www.hrw.org/news/2020/04/02/myanmar-editor-wrongfully-charged>>; Article 19, 'Myanmar: Immediately lift ban on ethnic news websites' (1 April 2020) <<https://www.article19.org/resources/myanmar-immediately-lift-ban-on-ethnic-news-websites/>> accessed 27 April 2020.

9 For instance, Electronic Transaction Law 2004, Telecommunication Law 2013, The Peaceful Procession and Peaceful Assembly Law 2011, and The Myanmar Official Secrets Act 1923.

10 Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar' (Advanced Unedited Version 4 March 2020) UN Doc A/HRC/43/59 para 15-19. Available at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_59_AdvanceUneditedVersion.docx accessed on 27 April 2020.