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Myanmar: ICJ marks 2nd year anniversary of the killing of lawyer U Ko Ni

On the second anniversary of the killing of prominent lawyer U Ko Ni, in public view at Yangon International Airport, the International Commission of Jurists (ICJ) repeats its calls for a thorough and impartial investigation with a view to establish the facts, to deliver justice and to deter the repetition of similar crimes.

"This brazen killing of a prominent democracy advocate demands a rigorous State response to show this type of crime will be fully punished," said Frederick Rawski, the ICJ's Director for Asia and the Pacific.

Despite an official investigation and reports of more than 100 court hearings, nobody has been held accountable for U Ko Ni's death – criminally or otherwise – and the circumstances have not yet been satisfactorily explained.

"Myanmar simply cannot satisfy its international law obligations without conducting an impartial and independent investigation that is free of military influence. Such an investigation is a pre-requisite for conducting an effective prosecution in a fair trial setting," added Rawski.

U Ko Ni was well known as a vocal advocate for human rights and democratic reform in Myanmar. As an adviser to the National League for Democracy party, he was involved in creating the position of State Counselor, which formalized a leadership role for Daw Aung San Suu Kyi, despite a constitutional provision barring her from the Presidency. At the time of his death, it is understood that U Ko Ni was working on proposals to replace Myanmar's 2008 Constitution, the source of law underpinning military power.

"A credible justice process is required not only for U Ko Ni and his family, but to demonstrate the State will protect the right to life of all people including democracy advocates," said Sean Bain, legal adviser for the ICJ.

"A crime of this nature stifles participation in the democratic process and so an effective justice process is imperative to deter its repetition," Bain said.

Myanmar has a particular obligation to ensure that lawyers and others acting as human rights defenders are protected in carrying out their work.

Any justice process must be timely, effective and shed light on the facts.

The investigation into U Ko Ni's killing has been beset by obstacles, including the unknown whereabouts of a primary suspect, the incorrect identification of a deceased individual as a suspect and the arrest of a person with the same name, and reported military involvement in the police investigation. Lines of inquiry related to the political motivations for the killing, particularly considering the military links of many suspects, do not appear to have been pursued satisfactorily, nor impartially, given military involvement in the investigation.

Criminal proceedings in Yangon's Northern District Court, and related proceedings in the Yangon High Court, have been sluggish. Observing lawyers and individuals including from the ICJ have noted multiple instances of admission into evidence of testimony that appears to be irrelevant, failures of key witnesses to appear, and the long drawn out process of court proceedings whereby weeklong delays are common while continuances over successive days are rare.

These issues are emblematic of challenges in Myanmar's justice system previously identified by the ICJ in which police, prosecutors and courts generally

lack the independence and or will to effectively administer justice, particularly in politically sensitive cases.

“Two years is an incredibly long time to get to the position we are in now, and in our experience this highlights broader problems with the administration of justice in Myanmar,” added Bain.

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Background

U Ko Ni was, among many roles, a member of the International Bar Association and the Independent Lawyers’ Association of Myanmar, a founder of the Laurel Law Firm, a patron of the Myanmar Muslim Lawyers Association, and a generous contributor to the work of many individuals and organizations, including the ICJ.

At around 5pm on 29 January 2017, U Ko Ni was shot dead in the back of the head at close range, outside the main public terminal of Yangon International Airport. At the time he was holding his young grandson who, with other family members, were greeting him following a trip to Indonesia taken with government officials and activists. The gunman, Kyi Lin, while being apprehended, also fatally shot taxi driver Ko Nay Win. The next day, thousands of people attended U Ko Ni’s traditional Muslim burial in Yangon, and the Office of the President publically characterized his killing as an assassination. An official investigation has implicated several other individuals in a conspiracy to commit murder.

On 17 March 2017, four men were brought before the Yangon’s Northern District Court on various charges in Criminal Cases 45/2017 and 46/2017. Law clerks and officers told the ICJ the charges ultimately confirmed by the Court are as follows:

- For Kyi Lin: Penal Code Section 302(1)(b)/34 for joint criminal liability in the premeditated murder of U Ko Ni and Section 302(2) for the non-premeditated murder of Ko Nay Win; and under The Arms Act, Section 19(f) for the unlawful possession of firearms.
- For Aung Win Zaw: Penal Code Section 302(1)(b)/34 for joint criminal liability in the premeditated murder of U Ko Ni (note for this defendant the Court did not confirm a charge under Arms Act Section 19(f)).
- For Zey Yar Phyo: Penal Code Section 302(1)(b)/109 for abetting in the premeditated murder of U Ko Ni.
- For Aung Win Tun: Penal Code Section 212 for harboring an offender (note the Court granted bail to this defendant).

Media reporting by Frontier Magazine, and the ICJ’s enquiries, indicate that the Yangon Northern District Court will hear final arguments in relation to the charges on 1 February. A fifth suspect, Aung Win Khine (also invariably spelt in English as Aung Win Khaing) remains at large and is subject to an Interpol notice.

Under international human rights law, the State must protect human rights is the obligation to investigate, prosecute and punish acts that amount to the arbitrary deprivation of life. The ultimate goal of an investigation must be to determine whether or not there was a breach of the right to life, and to enable for an effective prosecution of perpetrators in a competent court in accordance with rule of law principles including the right to a fair trial.

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