



Permanent Mission of the Republic of the Union of Myanmar to
the United Nations Office and other International Organizations

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15 October 2020

Dear Sirs/Madam,

With reference to your letter UA MMR 3/2020 dated 20 April 2020 regarding the case of alleged arbitrary deprivation of liberty, I wish to convey the information received from authorities concerned in Myanmar as attached.

Please accept, Sirs/Madam, the assurances of my highest consideration.

(Kyaw Moe Tun)

Ambassador/Permanent Representative

Special Rapporteur on the situation of human rights in Myanmar

Special Rapporteur in the field of cultural rights

Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Case Summary

Around 25 members of the Peacock Generation Thangyat satire group led by seven individuals, including Su Yadanar Myint engaged in following activities to insult and undermine the government, the two parliaments, the Tatmadaw, military personnel and constitution;

Case 1: On 10 April 2019, from 1030 to 1125 hrs, the Peacock Generation group performed Thangyat Songs, which defamed and insulted the government, the two parliaments, the Tatmadaw, military personnel and the constitution, in front of Seit Tine Kya tea shop located on Kant Kaw Road, inside the Bayintnaung Market, Mayangone Township, Yangon Region, and posted the video recording on social media (Facebook.)

Case 2: on 13 April 2019, from 2230 to 2330 hrs the group offended and undermined the government, the two parliaments, the Tatmadaw, military personnel and the constitution through Thangyat songs, at the corner of 47 street and Bogyoke Road, Botahtaung Township, Yangon Region.

Case 3: On 19 April 2019 from 1750 to 1850 hrs the group performed Thangyat songs on Bogyoke Road, Dae Dayae Township, Ayeyarwaddy Region, insulting the government, the two parliaments, the Tatmadaw, military personnel and the constitution.

The acts committed by the group

The songs constitute “the Hluttaw is a place for those only chosen by people through voting, not for the quarter of a viss. The non-elected quarter of a viss, non-elected greens, sitting for free without competing, won’t stand up for the people, won’t open any mouth, lack of wisdom and brainless, only obey orders and commands, sitting in Hluttaw shamelessly, quarter of a viss being powerful, go back to barracks, go at your own will, come and go to your own place, people will be joyful if they are not in Hluttaw. After the rooster crowing at the break of dawn, the sun has shone; don’t sit in the darkness. Go back to your homes. Two governments sits in this country. The Constitution gives power to the military, In Myanmar Politics the constitution is F*****g problem. Doesn’t matter who wrote the thick green book, we the people should not accept it.

The songs performed by the Peacock Generation group contained derogatory remarks about the Government and the two parliaments, which have been elected pursuant to the constitution and the Myanmar Tatmadaw. It is therefore, obvious that they did such acts with the intent to besmirch the Tatmadaw, the military leaders and personnel, and to convey a false impression to the public.

As regard to the Case 1, [REDACTED] acts as a plaintiff, filed a lawsuit against 7 members, including Ma Su Yadanar Myint, the owner of the Facebook account, at the Mayangone Township Police Station, on April 19, 2019, under Section 66 (d) of the Telecommunications Law.

For Case 2, [REDACTED] from the Yangon Regional Command, reported the case 2 to the Botataung Township court at around 1130 hrs on 3 May 2019, and the court registered the case as case no 110/2019 under section 505 (a) of the Penal Code.

For case 3, [REDACTED] from No 98 Light Infantry Division, Pyar Phone, Ayarwaddy Region reported the case to the Daedaye Township court, and the case was registered by the court as the case no 349/2019 under Section 505 (a) of the Penal Code.

The local police stations of the Myanmar Police Force carried out investigations into the cases in accordance with the existing laws and police procedures, and sought legal advice and prosecution power from the Ministries concerned. It is learnt that police arrested and prosecuted the perpetrators without torture and bias, in keeping with the criminal procedure code and police codes of conduct.

The Sentence/Punishment

Case 1: The Mayangone Township Court sentenced Zay Yar Lwin, Paing Ye Thu, Paing Phyto Min and Hsu Yadanar Myint to 6 months imprisonment with labour under Section 66 (d) of the Telecommunications Law on 21 August 2019.

Case 2: The Botahtaung Township Court sentenced Zay Yar Lwin, Paing Ye Thu, Paing Min Phyto, Kay Khine Htn, Zaw Linn Htut and Su Yadanar Myint to 1 year sentence with labour, under Section 505 (a) of the Penal Code.

Case 3: Dadeye Township court sentenced Zay Yar Lwin, Paing Ye Thu, Paing Min Phyto Peacock Generation Thangyat team to one year imprisonment under section 505(a) of Penal Code.

While the 7 who were under trial, were sent to court on 18 November 2019, Nyein Chan Soe was acquitted of the case of section 505 (a) of Penal code at the Botahtaung Township Court in accordance with the section 258(1) of the Code of Criminal Procedure and was allow to rebut without detention by the bill of 2 Guarantor of 2 million Guarantee for the case of Section 66 (d) of the Telecommunications Law.

Paing Ye Thu is serving his prison terms of total 2 years and 6 months for 2 cases of section 505 (a) of the Penal code, and the Electronic Ac 66 (d). He is facing another case of the section 20 of the rights of Assembly and the rights of Peaceful Procession at the Bahan Township Court. He is entitled 7 months and 15 days of remission (1/4 of his prison terms) according to the Order No (11/2020) of the President Office dated 17 April 2020. He is in good health condition.

Paing Phyto Minn, is serving his person term of total 3 years for 2 cases of section 505 (a) of the Penal code, and the Electronic Act 66 (d). He is entitled 9 months of

remission (1/4 of his prison terms) according to the Order No (11/2020) of the President Office dated 17 April 2020. He is in good health condition.

Zeyar Lwin is serving his prison terms of total 2 years and 6 months for 2 cases of section 505 (a) of the Penal code, and the Electronic Ac 66 (d). He is facing another case of the section 20 of the rights of Assembly and the rights of Peaceful Procession at the Bahan Township Court. He is entitled 7 months and 15 days of remission (1/4 of his prison terms) according to the Order No (11/2020) of the President Office dated 17 April 2020. He is in good health condition.

Zaw Linn Htut is serving total 2 years for 2 cases of section 505 (a) of the Penal code. He is entitled 6 months of remission (1/4 of his prison terms) according to the Order No (11/2020) of the President Office dated 17 April 2020. He is in good health condition.

Kay Khine Tun, is serving total 2 years and 6 months for 2 cases of section 505 (a) of the Penal code, and the Electronic Ac 66 (d). She is entitled 7 months and 15 days of remission (1/4 of his prison terms) according to the Order No (11/2020) of the President Office dated 17 April 2020. She is in good health condition.

Su Yadanar Myint, is serving total 2 years for 2 cases of section 505 (a) of the Penal code. She is entitled 6 months of remission (1/4 of his prison terms) according to the Order No (11/2020) of the President Office dated 17 April 2020. She is in good health condition.

In accordance with the Prison Act, they all are allowed the full rights including family visits, meeting with legal advisors and healthcare without any restriction. They are being held in conformity with the Standard Minimum Rules for Treatment of Prisoners by enjoying the rights of taking physical exercise, taking part in religious activities and enjoyment of newspapers, journals, books and television.

As Paing Phyto Min submitted that he wanted to sit for the University exam of third year of Geology, he is allowed to sit for exam inside the prison from 18 to 24 March 2020, after negotiation with Dagon University.

The International Covenant on Civil Political Rights provides all members of the human family with the inherent dignity and the equal and inalienable rights as well as economic, social and cultural rights. The Covenant proclaims that the individual, having duties to other individuals and to the community to which they belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in it. The following facts manifest the observance of the ICCPR as regards to the protection of and actions taken against the offenders;

It can be found in police and court files that the offenders were treated in accordance with Article 9 (b), (c), (d) of the ICCPR.

The ICCPR pivots around the inherent dignity and the equal and inalienable rights of all members of the human family, and respect for and observance of human rights and freedom, which apply not only to the offenders but also to all human beings, including civil servants of all ranks, serving governments, parliaments and military organizations.

Is it also according to the Article 17 (1) of the ICCPR, no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation. The criminal charges are also in line with Article 17 (2) which emphasizes that everyone has the right to protection of the law against such interference or attacks.

The case give full right according to the article 2,5 and 7 of UDHR. (Despite the failure of the Peacock Generation group to apply the permission in accordance with local regulations and instructions, the authorities granted them pardon)

The Myanmar Police Force and the Courts not contravening the Article 9 of UDHR, stating that no one shall be subjected arbitrary arrest, can be seen in the different stages of court proceedings.

The formal complaints from the victims against the Peacock Generation group were handled in accordance with the law and Article 8 of the UDHR which states that 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.

If one desire to enjoy the provision set forth in Article 19 of the UDHR, the Article 29 (2) must be respected and observed. In exercising the rights and freedoms, one must respect the right and freedoms of others and meeting the just requirement of morality, public order and the general welfare in a democratic society. The performance of the offenders was more than criticism. It is to detriment the Government, Parliament and Military's dignity, to create misunderstanding between national level organizations. If the action is not taken in accordance with the law, peace and tranquility of the State, rule of law will be undermined, and be in danger of saboteurs. One is therefore required to adhere to Article-29 if they want to enjoy Article 19.

Article 27 mentioned that everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Myanmar's traditional Thingyan water festival is observed with the aim of maintaining a historical tradition or a custom which promotes the mutual friendship and politeness of Myanmar people. The offenders incited hatred and made derogatory remarks about the national level organizations during their performance. The activities they organized in the name of Thangyat (song performance) went against the true nature of Myanmar's traditional Thingyan. It was therefore found that the performance of the group violates Article – 27.

The court hearings and judicial investigation have shown that the offenders enjoyed the rights proscribed in Article -10 of the UDHR.

As regard to the double jeopardy, Article 177 of the Criminal Procedure code, Chapter-15 states that Proceedings in prosecutions of the jurisdiction of the criminal courts in inquiries and trials. Every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed. The township courts of Mayangone, Botahtaung and Daedaye townships exercised the said criminal procedure code to take legal action against offenders.

The acts committed by the Peacock Generation Thangyut satire group, including their social media coverage is the criminal offence insulted and undermined the existing constitution, which plays a key role in the State, driving a wedge between the Tatmadaw and people. The acts can impose dire consequences to damage the rule of law and administrative mechanism.

Permanent Mission of Myanmar

Geneva

4 September 2020