

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL MMR 4/2019

10 May 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/22, 34/18 and 34/5.

In this communication, we would like to bring to the urgent attention of your Excellency's Government information we have recently received regarding **Min Htin Ko Ko Gyi**, a prominent film director, who has been arrested and detained under section 505(a) of the Penal Code and section 66(d) of the Telecommunications Law.

Concerns about sections 505(a) of the Penal Code and section 66(d) of the Telecommunications Law have been raised in a number of prior communications by UN Special Procedures mandate holders to your Excellency's Government. We regret that the responses provided failed to address the concerns raised..

Min Htin Ko Ko Gyi is a human rights defender, filmmaker and founder of the Myanmar Human Rights Human Dignity Film Festival.

According to the information received:

On 29 March 2019, Lieutenant Colonel Lin Tun of Yangon Regional Command filed a complaint against Min Htin Ko Ko Gyi at Insein Police Station under section 505(a) of the Penal Code and section 66(d) of the 2013 Telecommunications Law.

The complaint against Min Htin Ko Ko Gyi alleges that he used a communication network to degrade the dignity and respect of the Tatmadaw chief and troops, and intended to decrease the respect of the Tatmadaw. The complaint relates to posts and comments Min Htin Ko Ko Gyi allegedly made online from his Facebook account between 15 February 2019 and 22 March 2019 that criticised the Myanmar military for human rights violations, the 25% of seats reserved for the military in Parliament under the 2008 Constitution of Myanmar and military opposition to constitutional amendment.

The Facebook posts included photographs of the Commander in Chief of Defence Services and Tatmadaw troops stated, among other things (according to the English translation received):

Constitution is not concerned with you from the beginning, Mr. Nitwit. Anything is not concerned with you was written illegally and you reached at Hluttaw, which is not concerned with you. Hluttaw is not a place for you Mr. Nitwit. Your god father Than Shwe let you defend. The constitution, you keep it in your mouth and you reached at Hluttaw.

The difference cannot be compared, Mr Nitwit said to the truth, people wish to kick out all of you from Hluttaw like kicking out the dogs.

Mr. Nitwit, you are wet with saliva spat by the people.

It is no[t] needed to know the whole constitution the persons who are not satisfied to give adversities to the nation and this constitution is sure that non effect the full benefit to the state. ... Amendment shall be made, unless amendment is made, new constitution may be drawn up.

Military vision is only to steal anything what it sees.

The amendment of 2008 constitution that is beneficial to the folk of powermonger dissatisfied, hated and no beneficial to the state is objected or opposed by you, you will be floated by the people's spittoon.

On 1 April 2019, Min Htin Ko Ko Gyi was summoned to Insein police station and he presented himself on 2 April 2019 for questioning; he was then detained in Insein prison. On 12 April 2019, he appeared at Insein Township Court and made an application for bail, which was denied.

Min Htin Ko Ko Gyi's second court hearing took place on 25 April 2019, and his application for bail was once again denied. He remains in detention at Insein Prison.

Section 505(a) is a non-bailable offence. However, Min Htin Ko Ko Gyi is seriously ill with liver cancer and has recently had major surgery in which part of his liver was removed. Bail therefore could have been granted under section 497 of the Criminal Procedure Code.

We express serious concern at the arrest and detention of Min Htin Ko Ko Gyi, and the charges against him under the Penal Code and Telecommunications Law, which represent a criminalisation of his exercise of freedom of opinion and expression in relation to criticism of the government and military and his work defending human rights. These charges continue the worrying trend of undue restrictions to freedom of expression in Myanmar, and what appears to be a crackdown on human rights defenders and media

workers in the country. We are also concerned that this case may amount to violations of Min Htin Ko Ko Gyi's right freedom from arbitrary arrest and detention. Furthermore, we are seriously concerned for the health of Min Htin Ko Ko Gyi while he is being detained in Insein Prison suffering from liver cancer and recovering from surgery.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information you have on the above allegations.
2. Please provide information on how section 505(a) of the Penal Code and section 66(d) of the Telecommunications Law afford individuals protection in conformity with international standards, in particular with article 19 of the Universal Declaration of Human Rights.
3. Please provide information on what provisions are in place to ensure that Min Htin Ko Ko Gyi has full access to appropriate medical care and cancer treatment while being detained.
4. Please indicate what measures have been taken to ensure that human rights defenders in Myanmar can operate in an enabling environment and can carry out their legitimate activities without fear of reprisals threats, harassment or criminalisation of any kind.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure the health of Min Htin Ko Ko Gyi and to halt the alleged violations and prevent their re-occurrence, and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Yanghee Lee

Special Rapporteur on the situation of human rights in Myanmar

David Kaye

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which provides for the right to freedom of expression, as well as to the Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. While noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions that are not consistent with paragraph 3 of that article, including on: (i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We also recall a recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the General Assembly, which raises concerns about the fact that "punishment for defamation of government officials is widespread and directly interferes with freedom of expression, whether by imposing penalties on expression or dissuading individuals from criticizing officials or government policy" (para 34 of A/71/373). The report further stresses that "particularly with respect to public figures, national laws should be careful to ensure that any respondent in a criminal case may raise a public interest defence, and even untrue statements made in error and without malice should not be rendered unlawful or subject to penalty" (ibid).

We also refer to your Excellency's Government's commitment expressed in November 2015 during the second cycle of the Universal Periodic Review (UPR), in which your Excellency's Government accepted recommendations to work to ensure that freedom of opinion and expression be protected, and in particular that those who legitimately exercise their rights to freedom of expression and peaceful assembly be not subject to reprisals (see recommendations 143.88, 143.98 and 143.99, A/HRC/31/13).

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provision of the UN Declaration on Human Rights Defenders: article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.