

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 5/2019

14 June 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 Mr. **Aung Marm Oo**, human rights defender and the editor-in-chief and executive director of the Development Media Group (DMG) in Rakhine State, who has been charged under section 17(2) of the Unlawful Associations Act 1908.

We have previously raised serious concerns about whether the Unlawful Associations Act, including section 17, complies with international standards, in particular that it may violate the rights to freedom of association and freedom of expression. We have raised concerns with your Excellency's Government about the use of the Unlawful Associations Act several times, see MMR 3/2018, 4/2017, 4/2016, 15/2013, 3/2009, 5/2008, 10/2005, 5/2005.

According to information received:

DMG has been reporting extensively on the conflict currently ongoing between the Tatmadaw and the Arakan Army, during which thousands of civilians have been displaced from their homes, and several civilians, including children, have been killed and injured as a result of the violence. The Arakan Army is designated by the Government as an unlawful association under the Unlawful Associations Act.

On 1 May, Special Branch police filed a complaint against Mr. Aung Marm Oo at the Sittwe Myoma Police Station No. 1 in Rakhine State. Police are currently seeking his arrest and he has gone into hiding.

In the period around late April and early May 2019, Special Branch police visited and questioned Mr. Aung Marm Oo's mother, wife and brother about Mr. Aung Marm Oo. They also visited the village in which he was born in Pauktaw Township and questioned villagers about Aung Marm Oo.

On the afternoon of 5 May 2019, two journalists from DMG were taken by police to Sittwe Myoma Police Station No. 1. They were questioned by police, detained overnight and released on the morning of 6 May. During questioning, they were asked about DMG coverage of the conflict in Rakhine State, including an incident in which a child was reportedly injured by an artillery explosion after the Tatmadaw entered Mee Hla village in Rathedaung Township. They were also questioned about an article published by DMG entitled “Moonless Night in Mrauk-U” in relation to an incident in which police violently suppressed a demonstration in Mrauk-U in January 2018, killing seven demonstrators and injuring others. Questions also related to DMG’s daily activities, including its circulation and staff names. Following their questioning, Sittwe Police Captain Aung Mya Oo told the Irrawaddy news outlet, “We are questioning [the DMG reporters] because SB has filed a case against the Editor-in-Chief U Aung Marm Oo under 17(2).”

We express serious concern at the charge filed against Mr. Aung Marm Oo under the Unlawful Association Act. The charge appears to be laid in relation to him carrying out his professional duties as editor-in-chief of DMG, a news outlet reporting information about the conflict in Rakhine State which is of high public interest. This is particularly problematic in circumstances where media access to the conflict affected areas of Rakhine State is extremely restricted. The charge under a controversial law, that we have recommended be amended or repealed on many occasions, represents a criminalization of media freedom in Rakhine State and Mr. Aung Marm Oo’s exercise of freedom of expression and association. This seems to contribute to the worrying trend of declining 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 members of Mr. Aung Marm Oo’s family, colleagues, and villagers in his birthplace may have suffered intimidation and harassment by authorities when they were questioned about him.

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 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 about the factual basis of the charge against Aung Marm Oo under section 17(2) of the Unlawful Associations Act, including his alleged conduct that is prohibited by section 17(2).

3. Please provide information on any plans to amend the Unlawful Associations Act to ensure its conformity with international human rights standards.
4. Please indicate what measures have been taken to ensure that human rights defenders and journalists in Myanmar are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation directed against them or their family members and harassment of any sort.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 halt the alleged violations and prevent their re-occurrence. It is imperative that journalists and other media workers be able to conduct their work in the public interest. I again highlight the need for the Unlawful Associations Law to be repealed or amended to bring it in line with international human rights standards.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

The right to freedom of expression and opinion is included in the Universal Declaration of Human Rights (1948) Article 19, as well as in several international human rights treaties, particularly the International Covenant on Civil and Political Rights, Article 19, which Myanmar is yet to ratify, and the Convention on the Rights of the Child Article 13, which Myanmar acceded to on 15 July 1991.

Article 19 to the UDHR states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” In his 2012 report, the former Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression issued the following recommendation:

“Bearing in mind that standards exist in international human rights law for the protection of professional journalists outside of armed conflict situations, the Special Rapporteur urges States, with whom the primary responsibility for the protection of journalists lies, to implement those standards at the national level. This includes ensuring that no legislation is passed to unduly limit the freedom of expression of journalists, ensuring the physical and psychological integrity of journalists, and taking steps to tackle impunity for perpetrators of human rights violations against journalists.

[...]

As part of their positive obligation to promote the right to freedom of expression, States should give full political support to strengthening media freedom and ensuring that independent, plural and diverse media can flourish. Any laws regulating the work of the media should adhere to the highest international standards on freedom of opinion and expression and allow uninhibited debate in the media, in line with principles of diversity and plurality.” (A/HRC/20/17 paras. 100 and 104)

Similarly, in resolution 12/16 (A/HRC/12/L.14/Rev.1), the Human Rights Council has called upon States to “take all necessary measures to put an end to violations of [the freedom of opinion and expression] and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented” (para 5(b)). This includes ensuring “that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (ordre public) or of public health or morals” (para. 5 (n)). Lastly, the Human Rights Council called upon States to “respect freedom of expression in the media and broadcasting, in particular the editorial independence of the media” (para. 5 (g)).

In relation to the allegations that the charges against Mr. Aung Marm Oo are related to his work reporting on human rights related issues, 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 wish to refer to 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.