

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL MMR 8/2019

26 September 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 40/29, 33/30, 37/12 and 34/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of **Su Yadanar Myint** and **Nyein Chan Soe (also known as Chit Yone)**, members of the Peacock Generation Thangyat troupe, for allegedly defaming Myanmar's armed forces, which are also known as the "Tatmadaw."

According to information received:

From 10 to 17 April 2019 in Yangon Region and Irrawaddy Region, the Peacock Generation Thangyat troupe staged a satirical act featuring the Tatmadaw and its continued role in the nation's parliament, the Tatmadaw-drafted 2008 Constitution, the education system and the plight of civilians forced from their homes by armed conflict. In some skits, the performers wore imitations of Tatmadaw uniforms and one said, "There are senior military officers who covet power and money." The performance was live-streamed on Facebook. Subsequently, several members of the military filed criminal complaints against the members of the troupe.

Su Yadanar Myint was arrested and detained on 17 May, and has been charged under:

- a) Section 66(d) of the Telecommunications Law 2013 and section 505(a) of the Penal Code, in a complaint filed on 3 May by Lieutenant Colonel Myo Min Oo in Botahtaung Police Station in Yangon.
- b) Section 66(d) of the Telecommunications Law 2013, in a complaint filed by Lieutenant Colonel Thet Naing Win in Mayangone Township in Yangon.

Nyein Chan Soe, also known as Chit Yone, was charged under section 66(d) of the Telecommunications Law and section 505(a) of the Penal Code, in a criminal complaint filed on 3 May by Lieutenant Colonel Myo Min Oo in Botahtaung Police Station in Yangon. He was arrested and detained on 17 May 2019.

They both are now detained in Insein Prison, and attending court for hearings every Monday at Botahtaung township court, and every Wednesday at Mayangone township court.

We are concerned that in being charged with defamation for staging a satirical performance, Su Yadanar Myint and Nyein Chan Soe's right to freedom of expression and opinion, including artistic expression, and right to take part in cultural life may have been violated.

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the charges against Su Yadanar Myint and Nyein Chan Soe, as well as the factual and legal basis for their arrest and detention. Please explain how they are compatible with articles 9, 10, 11, 19 and 27 of the Universal Declaration of Human Rights.
3. Please indicate what measures have been taken to ensure that artists and performers, human rights defenders and other civil society actors in Myanmar can operate in an enabling environment and can carry out their legitimate activities, offline and online, without fear of reprisals threats, harassment or criminalisation of any kind.
4. Please provide information about steps taken, if any, to repeal criminal defamation provisions in Myanmar, in favour of civil defamation laws.
5. Please provide information on how the provisions of the Telecommunications Law 2013, in particular section 66(d), and the Penal Code, in particular section 505(a), are in conformity with international human rights standards, in particular with articles 19 and 27 of the Universal Declaration of Human Rights.

We would appreciate receiving a response within 60 days. Thereafter, 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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion

on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and, in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Yanghee Lee
Special Rapporteur on the situation of human rights in Myanmar

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Karima Bennouna
Special Rapporteur in the field of cultural rights

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would further like to refer your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which protects the right to freedom of opinion and expression, and to article 27 of the UDHR, which protects the right of everyone to participate freely in cultural life. Freedom of expression is also guaranteed in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government's stated during the second cycle of the UPR that it had "accepted in principle" to ratify (A/HRC/31/13/Add.1, para 7).

Furthermore, without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the UDHR.

The Special Rapporteur in the field of cultural rights has indicated in her thematic report on freedom of artistic expression that "the effects of art censorship or unjustified restrictions of the right to freedom of artistic expression and creativity are devastating. They generate important cultural, social and economic losses, deprive artists of their means of expression and livelihood, create an unsafe environment for all those engaged in the arts and their audiences, sterilize debates on human, social and political issues, hamper the functioning of democracy and most often also impede debates on the legitimacy of censorship itself." (A/HRC/23/34, para. 86). She also called upon States "to review critically their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions and in cooperation with representatives of independent associations of artists and human rights organizations." (A/HRC/23/34, para. 88).