

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; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues

REFERENCE:
AL MMR 9/2019

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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 40/29, 33/30, 37/12, 34/18, 41/12, 34/5 and 34/6.

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 minority rights defenders **Khu Kyue Phe Khel, Dee De, Myo Hlaing Win, Khun Thomas, Khun John Paul** and **Khu Ree Du**, members of the Karenni ethnic minority.

According to information received:

Since June 2018, Karenni youth and minority rights defenders have been protesting against the Government's erection of a statue of General Aung San in Loikaw. They regard the statue as a misuse of public funds and suppression of their ethnic identity by the central Government which they view as prioritising Bamar identity. On 18 June 2018, they began a letter campaign, demanding the realization of General Aung San's long-unfulfilled promise of autonomy and federalism instead of the statue. Nine people, including Dee De, Myo Hlaing Win and Khun Thomas, were charged under section 505(b) and (c) of the Penal Code in relation to their letter.

On 3 July 2018, Karenni defenders held a demonstration that was reportedly violently suppressed by police using tasers and batons, and over a dozen people were injured. Twenty-two people, including Khun John Paul, Dee De, Myo Hlaing Win and Khun Thomas, were the subject of criminal complaints filed in July 2018 under the Right to Peaceful Assembly and Peaceful Procession Law 2012. Some of them were arrested and detained in Loikaw before being released on bail after a month. The defenders had some discussion with the State Government following this, and it agreed to conduct public consultations and decide whether to erect the statue on that basis. It also issued an emergency declaration that placed restrictions on certain areas for demonstrations.

The statue was erected in Ganderma Garden, a public park, on 29 January 2019 without the agreed public consultation. On 1 February, a sit in demonstration was conducted at Ganderma Garden and 20 people were arrested and charged under section 19 of the Right to Peaceful Assembly and Peaceful Procession Law 2012. They received bail that day. From 2-7 February, the defenders continued their sit in demonstration and it was suppressed by police on the afternoon of 7 February with the arrest of 36 people who were charged under section 19 of the Right to Peaceful Assembly and Peaceful Procession Law 2012. They received bail at 11pm that night. The following day, the protestors continued their sit in demonstration and ten people were arrested, including three journalists. The seven non-journalists were charged under section 19 of the Right to Peaceful Assembly and Peaceful Procession Law 2012.

On 9 February 2019, youth leaders applied to hold a demonstration on 12 February 2019. That application was denied but on 12 February 2019, 7,000 people assembled around Ganderma Garden and thousands of other people were stopped by police roadblocks. Some people crossed the roadblocks and police fired rubber bullets and used a water cannon, injuring 22 people. Following this, the State Government offered to negotiate with the protestors and entered into an agreement that included dropping the charges against the defenders who had been arrested and engaging in consultations regarding the statute.

There were two meetings between the Government and the protestors in February and March 2019. Following the March meeting, the protestors released a statement signed by Khu Kyue Phe Khel, Dee De, Myo Hlaing Win, Khun Thomas, Khun John Paul and Khu Ree Du. The statement criticised the State Government over its handling of the statue controversy, and recorded an agreement that proposed meeting to hold further discussions on the issue. On 14 May, the Government announced that it would not relocate the statue and the Chief Minister initiated law suits under section 8(f) of the Law Protecting the Privacy and Security of Citizens 2017 against the six signatories to the March statement.

On 2 June 2019, Khu Kyue Phe Khel was arrested. Suits were also filed against Dee De, Myo Hlaing Win, Khun Thomas, Khun John Paul and Khu Ree Du and police raided the homes of their family and friends in June.

In June, around 300 people signed the March statement. On 21 June, a ceremony was held for Karenni National Day at which Dee De, Myo Hlaing Win, Khun Thomas, Khun John Paul and Khu Ree Du were arrested. All six individuals have been held in detention since they were arrested. They have appeared in court for hearings since 4 July and they were formally charged in court on 26 August 2019 under section 8(f) of the Law Protecting the Privacy and Security of Citizens, which states that “No one shall unlawfully interfere with a citizen’s personal or family matters or act in any way to slander or harm their reputation”.

Without prejudging the accuracy of the information received, we are concerned that the charges against these individuals, which relate to defamation, may constitute an undue restriction to their rights to freedom of expression and freedom of peaceful assembly. We

would like to stress that criminal sanctions, in particular imprisonment, for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of opinion and expression. We wish also to express our concern over the reported criminalization of the human rights advocacy and work of the above-mentioned individuals, and in particular their work and advocacy for the protection of the existence and national or ethnic identity of minorities in Myanmar.

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 Khu Kyue Phe Khel, Dee De, Myo Hlaing Win, Khun Thomas, Khun John Paul and Khu Ree Du 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, 20 and 27 of the Universal Declaration of Human Rights.
3. Please explain why Khu Kyue Phe Khel, Dee De, Myo Hlaing Win, Khun Thomas, Khun John Paul and Khu Ree Du have not been released on bail.
4. Please indicate what measures have been taken to ensure that human rights defenders, in particular defenders and advocates of the rights of persons belonging to minorities, and other civil society actors 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.
5. Please provide information on how the provisions of the Law Protecting the Privacy and Security of Citizens, in particular section 8(d), and the Right to Peaceful Assembly and Peaceful Procession Law 2012, in particular section 19, are in conformity with international human rights standards, in particular with articles 19, 20 and 27 of the Universal Declaration of Human Rights.
6. Please provide information about how sections 505(b) and (c) of the Penal Code are in conformity with international human rights standards.

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 Bennoune
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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
Special Rapporteur on minority issues

Annex
Reference to international human rights law

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 Universal Declaration of Human Rights (UDHR).

We would like to draw the attention of your Excellency's Government to articles 19 and 20 of the Universal Declaration of Human Rights, which guarantees the right to freedom of expression and of peaceful assembly.

In this regard, we would like to refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality. In his report E/CN.4/2000/63, the former Special Rapporteur on the right to freedom of opinion and expression highlighted that criminal sanctions, in particular imprisonment for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of expression (para. 52).

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 primary 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 provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;
- article 6 (b) and (c) which provide that everyone has the right, individually and in association with others to freely 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.

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Human Rights Council Resolution 22/6 calls upon States to ensure that defenders can perform their important role in the context of peaceful assemblies, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law. States should ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts.

The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including the Universal Declaration of Human Rights (A/71/317, para. 14). The right of access to and enjoyment of cultural heritage includes the right of individuals and collectivities to, inter alia, know, understand, enter, visit, make use of, maintain, exchange elements of and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation and safeguard policies and programmes (see A/HRC/17/38 and Corr.1, paras. 78-79). While calling for a human rights approach to cultural heritage, the Special Rapporteur in the field of cultural rights has noted that “Adopting a human rights approach entails consulting the people who have particular connections with heritage, including for the purpose of understanding and incorporating the multiplicity of interpretations of that heritage, and determining whether (or not) they wish to rebuild, reconstruct and re-establish such a heritage and if so, how. Such consultations must include marginalized groups; further, women must be fully involved. Consultations must aim at obtaining free, prior and informed consent, in particular where the rights of indigenous peoples are at stake.” (A/71/317, para. 58).

Finally, we draw the attention of your Excellency’s Government to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the General Assembly in 1992. Article 1 of this Declaration refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end. Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that “States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.