

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

REFERENCE:  
AL MMR 12/2019

29 October 2019

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 40/29, 42/22, 34/18 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning excessive use of force during protests against the expansion of a coal-powered cement plant in the village of Aung Tha Pyay in Mandalay, including allegations of arbitrary detention of journalist Mr **Kyi Myint Aung**.

According to the information received:

Protests against the expansion of a coal-powered cement plant in the village of Aung Tha Pyay in Mandalay have occurred since July 2018. On 14 and 15 May 2019, there was a new protest which was violently suppressed by police using rubber bullets, injuring at least 17 people, and arrested four demonstrators.

**Kyi Myint Aung**, a journalist with Channel Mandalay TV, filmed the demonstrations and the police's actions and live-streamed them on Facebook. He held his phone in one hand and his camera in the other. He was then arrested on 15 May 2019, with the police alleging that he attacked them with a stick. Numerous eyewitnesses refuted that allegation.

Kyi Myint Aung was only informed on 14 June 2019 that he was charged under sections 114, 174, 332, 333 and 353 of the Penal Code and detained in Patheingyi before being transferred to Oboe Prison in Mandalay the next day. He then had access to a lawyer. He is currently being tried and his lawyer applied for him to be released on bail however that application was denied.

A total of 18 demonstrators were charged under the Regional Road and Transportation Law and the Right to Peaceful Assembly and Peaceful Procession Law in relation to the demonstration. One of the persons arrested during the protest died while in detention in May.

The Editor in Chief of Channel Mandalay TV contacted the Myanmar Press Council about Kyi Myint Aung's case and the Council published a statement on 16 May 2019 about the situation of Kyi Myint Aung and other journalists facing charges. Kyi Myint Aung went on hunger strike for two days in early September and two days in late September. As a consequence, he was not allowed to meet with any visitors until he stopped his hunger strike.

We are concerned about allegations of excessive force during the demonstration of 14 and 15 May 2019. We are further concerned about Kyi Myint Aung's arrest, detention and charge for performing his professional duties as a journalist reporting on a demonstration, and that this may amount to a violation of his freedom of expression. We are also seriously concerned by the allegation that Kyi Aung Myint spent one month in detention without being informed of the charges against him, or having access to a lawyer.

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 about the above allegations.
2. What is the factual and legal basis of the charges against Kyi Aung Myint and his detention?
3. Was Kyi Aung Myint informed of the charges against him one month after he was detained? Please explain the reasons for any delay in providing this information?
4. Was Kyi Aung Myint not have able to access to a lawyer immediately after his arrest? If not, please explain the reasons for any delay in providing access to legal representation.
5. Has Kyi Aung Myint been granted bail? If not, please explain the reasons for not granting bail.

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.

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 prejudge 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 re-occurrence 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

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

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we are concerned that the allegations contained therein appear to be in violation of the right not to be subjected to arbitrary arrest and detention and the right to a fair and public hearing by an independent tribunal (articles 9 and 10 of the Universal Declaration of Human Rights), and the right to freedom of peaceful assembly and of association and the right to freedom of opinion and expression (articles 19 and 20 of the Universal Declaration of Human Rights). We would furthermore like to draw your attention to principle 9 and guideline 8 of the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court, which stipulate the right to access a lawyer immediately after the apprehension.

In its resolution 25/38, the Human Rights Council “call[ed] upon all States to pay particular attention to the safety of journalists and media workers covering peaceful protests, taking into account their specific role, exposure and vulnerability (paragraph 8). In a previous resolution 21/12, the Council “condemn[ed] in the strongest term all attacks and violence against journalists, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment,” and “call[ed] upon States to ensure accountability through the conduct of impartial, speedy and effective investigations into such acts falling within their jurisdiction, and to bring to justice those responsible and to ensure that victims have access to appropriate remedies.” (paragraphs 4 and 7) The human Rights Council has called upon States “to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including by means of (a) legislative measures; (b) awareness-raising in the judiciary, law enforcement officers and military personnel, as well as journalists and civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; (c) the monitoring and reporting of attacks against journalists; (d) publicly Condemning attacks; and (e) dedicating necessary resources to investigate and prosecute such attacks” (Human Rights Council resolution 33/2, paragraph 5).

We would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”, and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force. In addition, we refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27, which clearly states that “States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (para. 89). Acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (A/HRC/23/39, para. 49; A/HRC/20/27, para. 25).