

**Mandates of the Special Rapporteur on the situation of human rights in Myanmar; 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:  
UA MMR 3/2020

20 April 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; 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, 37/12 and 34/18.

We refer to AL 8/2019 regarding **Su Yadanar Myint** and **Nein Chan Soe** also known as Chit Yone, members of the Peacock Generation Thangyat troupe, who were arrested and detained for allegedly defaming Myanmar's armed forces, the Tatmadaw.

We would also like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of **Paing Ye Thu**, **Zayar Lwin**, **Paing Phyto Min** also known as Deyay, **Zaw Lin Htut** also known as Phoe Thar and **Kay Khaing Htun** also known as Kay Gyi. These individuals are also members of the Peacock Generation Thangyat troupe.

According to information received:

Su Yadanar Myint, Nein Chan Soe, Paing Ye Thu, Zayar Lwin, Paing Phyto Min, Zaw Lin Htut and Kay Khaing are members of the Peacock Generation Thangyat troupe. They had performed their act in April 2019 in the Yangon and Ayeyarwady regions of Myanmar. The act had been live-streamed on Facebook.

Shortly after the performances, the performers were charged under section 505 (a) of the Penal Code and section 66(d) of the Telecommunications Law of 2013 in several districts for their performances. Section 505(a) criminalises expression "with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such". Section 66(d) criminalises the use of the telecommunication network to extort, coerce, wrongfully restrain, defame, disturb, cause undue influence or threat individuals. In several instances, the individuals have been charged with, and convicted for, the same subject matter at different district courts. Reportedly, the charges and convictions are for the defamation of the armed forces of Myanmar (the Tatmadaw).

The charges brought against the individuals were as follows:

- Zayar Lwin, Paing Ye Thu and Paing Phyi Min were charged under section 505(a) of the Penal Code and section 66(d) of the Telecommunications Law 2013 at Mayagone Township Court in Yangon.

- Zaw Lin Htut and Kay Khaing Htun were charged under section 505(a) of the Penal Code at Mayagone Township Court in Yangon.

- Su Yadanar Myint had been charged under section 66(d) of the Telecommunications Law 2013 at Mayagone Township Court in Yangon.

- Zayar Lwin, Paing Ye Thu, Paing Phyo Min, Zaw Lin Htut, Kay Khaing Htun, Su Yadanar Myint and Nyein Chan Soe were charged under section 505(a) of the Penal Code and section 66(d) of the Telecommunications Law 2013 at Botahtaung Township Court in Yangon.

- Zayar Lwin, Paing Ye Thu and Paing Phyo Min have been charged under section 505(a) of the Penal Code at Dedaye, Pyapone and Maubin Townships, Ayeyarwady region.

On 30 October 2019, Zayar Lwin, Paing Ye Thu, Paing Phyo Min, Zaw Lin Htut and Kay Khaing Htun were convicted under section 505(a) of the Penal Code at Mayagone Township Court and sentenced to one year imprisonment with hard labour.

On 18 November 2019, Zayar Lwin, Paing Ye Thu, Paing Phyo Min, Zaw Lin Htut, Kay Khaing Htun, Su Yadanar Myint were convicted at Botahtaung Township Court under section 505(a) of the Penal Code and sentenced to one year in prison with hard labour. Nyein Chan Soe was acquitted.

On 11 December 2019, Su Yadanar Myint, Paing Ye Thu, Zayar Lwin and Paing Phyo Min were convicted under section 66(d) of the Telecommunications Act 2013 at the Mayangon Township Court and sentenced to six months in prison with hard labour.

On 17 February 2020, Su Yadanar Myint, Paing Phyo Min and Kay Khaing Htun were convicted under section 66(d) of the Telecommunications Act 2013 at Botahtaung Township Court and sentenced to six months in prison with hard labour. Zayar Lwin, Paing Ye Thu, Zaw Lin Htut and Nyein Chan Soe were discharged.

Zayar Lwin, Paing Ye Thu and Paing Phyo Min continue to face charges at three township courts in Ayeyarwady region, however their trials have not begun.

Without prejudice to the accuracy of these allegations, we express serious concern that that the charges against and convictions of the individuals is contrary to their right to freedom of opinion and expression, including artistic expression, and the right to take part in cultural life. We recall, in this regard, the obligations of Myanmar under Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified

by the State on 6 October 2017, and its obligations under the Universal Declaration of Human Rights, expressive of customary international law.

The effective implementation of the right to freedom of expression is indispensable for the effective exercise of other human rights, for democracy and the accountability of public authorities. As highlighted by all international human rights monitoring mechanisms, it protects even expressions that shock, offend or disturb. Political expression, even when presented as satire, is deserving of special protection. Measures penalising criticism of public authorities or expressions of dissent are therefore contrary to the freedom of expression. Likewise, the imprisonment of individuals for defamation is never compatible with the freedom of expression.

We are further concerned that, with the exception of Nyein Chan Soe, all individuals have been convicted under the same offence in two different courts, and that as such their right to a fair trial (including the principle of double jeopardy) may have been violated. This concern is heightened since Zayar Lwin, Paing Ye Thu and Paing Phyo Min face further charges, under provisions they have already been convicted under, in courts in Ayeyarwady Region.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 and any comment you may have on the above-mentioned allegations
2. Please provide information about how the charges and convictions against the individuals in the Peacock Generation comply with articles 19 and 27 of the Universal Declaration of Human Rights.
3. Please provide information about the trials of the members of the Peacock Generation in Mayangone and Botahtaung Township Courts and how their right to a fair trial was ensured.
4. Please provide information about how the conviction of members of the Peacock Generation under section 505(a) of the Penal Code and section 66(d) of the Telecommunications Law 2013 by both the Mayangone Township Court and Botahtaung Township Court, and the charges in three courts in Ayeyarwady Region, comply with article 10 of the Universal Declaration of Human Rights and the principle of double jeopardy.

5. Please provide information about how the sentences of imprisonment with hard labour are proportionate to the alleged offences and comply with the Standard Minimum Rules for the Treatment of Prisoners.

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 responsible for the alleged violations.

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.

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

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

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