

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues and the Special Rapporteur on the situation of human rights in Myanmar

REFERENCE:
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25 November 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues and Special Rapporteur on the situation of human rights in Myanmar, pursuant to Human Rights Council resolutions 43/16, 43/8 and 43/26.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the targeting and intimidation of a Rohingya human rights defender living in the United Kingdom.**

Mr. Maung Tun Khin is a human rights defender and the President of the Burmese Rohingya Organization UK (BROUK), a UK based organisation that advocates for the protection of the rights of the Rohingya minority in Myanmar, and for aid and support for Rohingya refugees in Bangladesh, and justice and accountability for the killings of the Rohingya minority by the Myanmar armed forces, the Tatmadaw. Mr. Maung Tun Khin is recognized internationally as a prominent defender of the human rights of the Rohingya minority and is particularly active in the media.

According to the information received:

Concerning Mr. Maung Tun Khin

In July 2012, the front door of Mr. Maung Tun Khin's home was reportedly smashed by unknown individuals. Mr. Maung Tun Khin believes the perpetrators were members of the Burmese community in London, with whom he was familiar from working together in previous years on advocacy against alleged human rights and international humanitarian law violations in Myanmar, who now support Aung San Suu Kyi and the National League for Democracy (NLD) party. The incident occurred the night before a planned demonstration that Mr. Maung Tun Khin had organized, to protest against the actions of the military against the Rohingya in Myanmar. Prior to his door being smashed, Mr. Maung Tun Khin had received a number of anonymous phone calls, threatening him and swearing at him. Police came to his home to take details of the incident. It is alleged that no investigation was opened.

Mr. Maung Tun Khin continued to receive offensive comments on social media in response to his media engagement, advocating against ongoing violations of humanitarian and human rights law against the Rohingya. Following the concerted violence against, killing and mistreatment of the Rohingya minority by the Tatmadaw in August 2017, Mr. Maung Tun Khin spent one month in Bangladesh. Whilst there, he gave interviews to a number of media outlets, detailing the human rights violations perpetrated against the Rohingya.

On 13 November 2019, with the support of the human rights organizations *Las Abuelas de Plaza de Mayo* (Grandmothers of the Plaza de Mayo) and the *Fundación Servicio Paz y Justicia* (Foundation for Justice and Peace), the Burmese Rohingya Organisation UK (BROUK) filed a criminal complaint in the Federal Court of Argentina under universal jurisdiction, against the “genocide and crimes against humanity committed against the Rohingya community in Myanmar”. BROUK is legally represented by former UN Special Rapporteur on the situation of human rights in Myanmar and human rights lawyer, Mr Tomás Ojea Quintana.

In the days following the widely publicised filing of the universal jurisdiction case in Argentina by BROUK, Mr. Maung Tun Khin received phone calls from a number of friends within the Burmese community in London. They warned him they had heard that two Burmese men allegedly connected to the Myanmar embassy in London had been asking around the community about his home address. Having moved house since the 2012 incident, he now feared that a similar incident might occur at his new address, where he lives with his young family. Mr. Maung Tun Khin is aware of the identity of one of the men allegedly inquiring about his address.

In early December, Mr. Maung Tun Khin noticed two Burmese men sitting in a car outside his home, whilst walking home at night. The window of the car was open and Mr. Maung Tun Khin reportedly heard them say something in Burmese whilst pointing at him. He pretended not to see them, for fear they would get out of the car, and his residential area was quiet at night. Mr. Maung Tun Khin reported the incident to the police, and the following day installed a security camera outside his home. On a separate occasion, when Mr. Maung Tun Khin was not in London, his wife noticed two Burmese men walking close by to their home and surveying.

On 10 December 2019, Mr. Maung Tun Khin travelled to The Hague to observe and engage in advocacy around the first public hearing in the case filed by the Republic of Gambia before the International Court of Justice (ICJ) against Myanmar. The complaint, filed on 11 November 2019 with the support of the 57 member nations of the Organisation of Islamic Conference (OIC), alleged that actions adopted, taken and condoned by the Government of Myanmar against the Rohingya minority since October 2016, amounted to a violation of the Convention on the Prevention and Punishment of the Crime of Genocide. During the hearing, which lasted from 10-12 December, Mr. Maung Tun Khin believes he saw one of the men who had allegedly inquired about his address, participating in a demonstration outside The Hague in support of Aung San Suu Kyi. Following his participation in the hearing, he continued to receive anonymous calls and heard through friends that some people in the Burmese community in London had been threatening him. He did not report these to the police.

On 29 May 2020, the Federal Appeals Court in Buenos Aires accepted the complaint filed by BROUK to investigate the actions of Aung San Suu Kyi and senior officers in the Tatmadaw against the Rohingya group, overturning a

decision by a court of first instance in December 2019 not to pursue the case. The court of first instance deemed that the case duplicated the investigation by the International Criminal Court (ICC) into the crimes committed against the Rohingya within the Court's jurisdiction, authorized on 14 November 2019. In its decision, the Appeals Court requested that the ICC provide further information about its investigation, in line with the principle of complementarity, to prevent overlap and duplication in the cases.

In July 2020, Mr. Maung Tun Khin noticed two Burmese men walking around his area and nearby his home. They were reportedly speaking in aggressive tones and pointing towards his home. He could not hear what they were saying, but judged by their body language and their expressions that they were speaking in an aggressive manner. He attempted to take a photo of them discreetly with his phone, but did not manage to. Mr. Muang Tun Khin did not report the incident to the police. However, as the high profile cases that he is involved in against the treatment of the Rohingya in Myanmar progress, he fears that incidents like this one may continue, and escalate into an incident similar to that of 2012.

Without prejudging the accuracy of the allegations, we wish to express our serious concern regarding the threats, intimidation and reported surveillance of Mr. Muang Tun Khin, which appears to be in retaliation for his advocacy against the human rights and international humanitarian law violations against the Rohingya minority in Myanmar. An area of particular concern is the apparent escalation of such attempts to survey his home, and inquire about his home address, soon after Mr. Muang Tun Khin, as President of BROUK, filed a high profile universal jurisdiction criminal complaint in Argentina against the actions of the Myanmar state authorities. The alleged connection with the Myanmar Embassy of the two individuals who reportedly asked about the defender's address is cause for serious concern. Such inquiries and indirect threats appear to be a troubling attempt to stifle Mr. Muang Tun Khin's advocacy and criticism of grave human rights violations against the Rohingya minority in Myanmar, and retaliation for his cooperation with national or international justice mechanisms. These actions have caused Mr. Muang Tun Khin to fear for his safety and the safety of his family, which should not be the personal toll of advocating against human rights violations.

In this regard, we remind your Excellency's Government of the general duty to take appropriate and reasonable measures in response to reasonably foreseeable threats, in order to prevent human rights abuse committed by private actors or third States within its territory or jurisdiction. We express alarm at the alleged connection with the Myanmar Embassy of the two individuals surveying Mr. Muang Tun Khin. We urge your Excellency's government to conduct an investigation into these matters and to take necessary measures to protect Mr. Maung Tun Khin and his family in a manner that would allow him to continue his human rights activities safely and without fear of retaliation.

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 and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the reported threats against and intimidation of the human rights defender Mr. Muang Tun Khin.
3. Please provide information on the measures taken by your Excellency's Government, including criminal investigations, to ensure the protection of Mr. Muang Tun Khin and his family in response to the above-mentioned intimidation and inquiries regarding his home address, and so as to ensure he can continue to carry out his legitimate human rights activities.
4. Please provide information on the measures your Excellency's Government plans to implement, to ensure the protection of Mr. Muang Tun Khin and his family.
5. Please indicate what measures have been taken to ensure that human rights defenders in the United Kingdom of Great Britain and Northern Ireland are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

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.

We would like to inform your Excellency's Government that a similar letter has been transmitted to the Government of Myanmar.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
Special Rapporteur on minority issues

Thomas Andrews
Special Rapporteur on the situation of human rights in Myanmar

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and while we do not wish to prejudge the accuracy of these allegations, we would like to refer to your Excellency's Government to the international norms and standards applicable to the case.

We call to the attention of your Excellency's Government the international standards regarding the right to liberty and security of all persons and the right to freedom of expression, enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United Kingdom of Great Britain and Northern Ireland on 20 May 1976. Article 19 (2) of the ICCPR upholds the right of everyone to freedom of expression, including the freedom to seek, receive and impart information of all kinds.

In this regard we note that the duty to ensure the rights under the Covenant in article 2 (1) entails certain positive obligations. As held by the Human Rights Committee, "[t]here may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities" (General Comment no. 31 para. 8). As further held in its General Comment on the right to life, "States parties are thus under a due diligence obligation to undertake reasonable positive measures, which do not impose on them disproportionate burdens, in response to reasonably foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State." (General Comment no. 36 para. 21)

In this regard, we note the importance of the right to freedom of opinion and expression for the fulfilment of other rights, for the principle of democracy and for ensuring accountability (General Comment no. 34 paras. 2 – 3). Attacks against individuals for exercising their right to freedom of expression are particularly serious and we note the State's duty not only to respect the right to freedom of expression, but to act with due diligence to protect from such attacks by private actors or third-States (compare *id.* para. 23).

We would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

We would also 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 would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 9, paragraph 4, point a), which provides for the right to unhindered access to and communication with international bodies;
- and 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.