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the United Nations Office and other International Organizations

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Dear Sirs and Madams,

With reference to your letter UA MMR 10/2019 dated 10 October 2019, I would like to convey the following information received from the authority concerned in Myanmar, regarding the detention of Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Tun Aye, Shwe Hlaing Than and Aung Myo Win : -

- Tint Shwe, Police Major, filed First Information report at the Mayangone Police Station with (Pa) 818/2019 on 12-7-2019 to take action against Tin Hlaing Oo, Aye Myat Mon, Ye Kyaw Htet, Hein Zaw, Aung Myat Kyaw, Htun Aye and Shwe Hlaing Than under the Counter Terrorism Law because they are members of ULA/AA which is a terrorist organization and they finance this organization; they were examined under sub-sections (a) (b) and (c) of section 52 of the Counter Terrorism law; the police filed a criminal case against them at the Western District Court on 9-8-2019 under sub-section (j) of section 50 and sub-section (a) of section 52 of the Counter Terrorism Law as they violate existing laws and are being examined under criminal case No. 78/2019; [REDACTED], [REDACTED], [REDACTED] are advocates and [REDACTED] and [REDACTED] who are High Grade Pleaders appear in the court on the side of defendants.
- Tint Shwe, Police Major, filed First Information Report at the Mayangone Police Station with (Pa) 915/2019 on 8-8-2019 to take action against Aung Myo Win under the Counter Terrorism Law due to acting as the Chairman of

Daung Yan Myo Chit Fund Foundation at Pathum Thani Town in Pathum Thani Province, Thailand, collecting monthly funds from workers of Meyaing Wood Factory to provide AA Headquarters (Lizar) and monthly contribution of 300 to 500 baht to ULA/AA; and he was examined under sub-section (j) of section 50 of the Counter Terrorism Law. After that, the police filed a criminal case against him at the Western District Court on 6-9-2019 under sub-section (j) of section 50 of the Counter Terrorism Law for violation of the existing law and is being examined under criminal case No. 87/2019; U Aung Kyaw Sein and U Khin Nu who are advocates appear in the court on the side of Aung Myo Win.

- It is stated that “All States shall prevent and suppress the financing of terrorist acts” and “criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;” in paragraph 1 of the United Nations Security Council resolution 1373 (2001), “UN calls upon States to cooperate fully in the fight against terrorism” and “to strengthen international cooperation in the fight against terrorism and to intensify their interaction with the United Nations” in paragraphs 2 and 6 of the United Nations Security Council resolution 1566/2004.
- The accused persons are the members of ULA/AA which is a terrorist organization and they finance, and collect monthly funds for the terrorist organization. Therefore, action taken against them is in accordance with the United Nations Security Council resolutions 1373 and 1566.
- The above accused persons are taken action according to an offence they committed as they violate existing laws of the State. They are in presence before the court during the trial proceedings and they have right to defense with their lawyers in accordance with law.



- The section 3, sub-section (b) of anti-terrorism law 2014 defines terrorism and sub-section (d) defines the properties of terrorist groups.
- The Chapter 12, Section 41 to 45 defines prohibition and enforcement regarding financial support to terrorism. In section 41 (a), anyone, who gains money legally or illegally, who intends to support a terrorist or terrorist group fully or partially, collecting or receiving directly or indirectly, supporting and transferring are assumed as committing a terrorist financing.
- Seven peoples including Aung Myat Kyaw @ Tun Aung Naing organized United League of Arakan (ULA) (Singapore) led by Aung Myat Kyaw @ Tun Aung Naing and Maung Pann and collected fund monthly, held anniversary ceremony and supported ULA / AA. They were charged accordingly under the existing anti-terrorism law.
- Although they committed the crime in a foreign country, they could be filed against the existing law under section 2(b).
- AA insurgent group committed terror attacks and it has not been designated as a terrorist group. However, Section 69 of anti-terrorism law mentions that whatever exists in the current law, it must be prosecuted by the anti-terrorism law. Thus, AA insurgent group is charged under the existing anti-terrorism law.
- According to Myanmar Constitution section 11(a), the three branches of sovereign power namely legislative power, executive power and judicial power are separated and independent and, provide for check and balance.
- According to Myanmar Constitution section 19 and Union Judiciary law section 3, it is prescribed to administer justice independently according to law, to dispense justice in open court unless otherwise prohibited by law and to guarantee in all cases the right of defense and the right of appeal under law.

- In Myanmar Constitution section 375, an accused shall have the right of defence in accord with the law and according to criminal procedure code of section 340(2), an accused shall have the right to prove for himself or herself.
- Therefore, anyone can get equal judgment according to the existing law, Myanmar Constitution, Union Judiciary Law, Criminal Procedure Code, and can have the right to defend in accordance with the law, appeal and to prove for him or herself.
- According to the Criminal Procedure Code section 340 (1), any accused can defend with a lawyer.
- It has been found out that Aung Myat Kyaw @ Tun Aung Naing including 8 people defend their case with a lawyer.
- Aung Myat Kyaw @ Tun Aung Naing including 8 people are taken action in accordance with anti-terrorism law section 52 (a) (b) (c) on 12-7-2019 at Mayenkone Police Station and arrested on the same day.
- Anti-terrorism law section 52 (a) (b) (c) is a non-bailable offence and requested a remand from a court according to criminal procedure code 167. During investigation, they were under custody at Mayenkone Police Station. They were not detained secretly at Mayenkone Police Station. The necessary interrogation was conducted.
- After filing 8 people under anti-terrorism law section 52 (a) (b) (c) on 12-7-2019 at Mayenkone Police Station, it was observed 164 people involved in crime. Among them, only 2 persons were charged under anti-terrorism law as their addresses and personal facts could be approved. In this case, they were not yet arrested. According to criminal procedure code section 512, they were regarded as absconders and took proof in their absence.



- A court conducts judiciary cases of absconders according to criminal procedure code and other existing laws.
- Judiciary policies are ratified by Myanmar constitution law section 19 and Union Judiciary law section 3. According to criminal procedure code 340, an accused can defend with a lawyer and can prove for him or herself. According to 2014 formal Letter section 4 and rules, a formal Letter can be applied.
- The above rules and regulations are the guarantee for the equal judgment.
- According to criminal procedure code section 54(1), it is a cognizable offence and can arrest a person without a warrant. If the detainee cannot get a bail, a remand is requested at the court according to criminal procedure code section 167. They can be detained under the text based on the remand and can be transferred to other place for detaining in accordance with the court's permission.
- According to criminal procedure code Chapter (14), investigation is not a kind of judiciary issue and it is a sort of collection evidence in accordance with the law. After suing at a court, an accused can defend in line with the law and can carry out the consultation freely.
- Anti-terrorism law was ratified on 4<sup>th</sup> June, 2014. The purposes are described in Chapter(1), section 4 and in sub-section (d), United Nations Conventions, decisions of United Nations Security Council and ASEAN Convention of anti-terrorism to enforcement bodies are described.
- Therefore, terrorism under anti-terrorism law section 3(b), is defined based on United Nations Security Council decisions, United Nations and ASEAN Conventions.

Please accept, Sirs and Madams, the assurances of my highest consideration.



(Kyaw Moe Tun)

Ambassador/ Permanent Representative

Special Rapporteur on the situation of human rights in Myanmar

Vice-Chair of the Working Group on Arbitrary Detention

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Special Rapporteur on extrajudicial, summary or arbitrary executions

Special Rapporteur on the human rights of migrants

Special Rapporteur on minority issues

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism