

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/26, 43/4, 43/16 and 43/20.

In this connection, we would like to draw the urgent attention of your Excellency's Government to the information we have received regarding **Mr. Aung Thein Htike, Ms. Zun Sithu, Mr. Min Tun, Mr. Kyaw Zayar Win and Ms. Aye Aye Tun**, who are detained in Thailand, and are facing possible return to Myanmar where they are at high risk of being subjected to torture and ill-treatment. The aforementioned are all journalists associated with the Democratic Voice of Burma, a Burmese media organization that works for the defense of human rights and fundamental freedoms in Myanmar.

Mr. Aung Thein Htike, is a Program leader of Democratic Voice of Burma Debate. **Ms. Zun Sithu and Ms. Aye Aye Tun** are both members of the Democratic Voice of Burma. **Mr. Min Tun**, is a former reporter of the Democratic Voice of Burma and a current member of Search for Common Ground. **Mr. Kyaw Zayar Win**, is a Senior Reporter of the Democratic Voice of Burma.

According to the information received:

Since April 2021, the Myanmar military junta has reportedly been publishing lists of journalists wanted for providing information about the pro-democracy protests on national TV news programmes and printed media. In response to the military junta's systematic policy of human rights violations and persecutions of journalists and human rights defenders, many people had no option but to abscond or to seek asylum outside of the country.

On Sunday 9 May 2021, the Thai police detained a group of journalists and human rights defenders from Myanmar in Chiang Mai, after a random police check for irregular entry into Thailand. Following their detention, these journalists and defenders pleaded not guilty to the charges of irregular entry and violations of Covid-19 emergency measures after appearing before a Court. A second hearing was held on 17 May 2021 and the detainees are currently awaiting for the bailing process and the Court proceeding to conclude. The Thai police is expected to present a lawsuit against the

detainees by 21 May 2021. They are currently being held in an immigration detention Centre in Chiang Mai.

The above mentioned journalists and human rights defenders were covering the pro-democracy demonstrations in Myanmar until they were forced to flee into Thailand for their own safety on 8 May 2021. On that day, the Myanmar military junta arbitrarily revoked the TV license of the Democratic Voice of Burma and prohibited the organization from carrying on with its legitimate work for the defense of human rights and fundamental freedoms. The Democratic Voice of Burma has maintained its essential and legitimate reporting work from abroad.

These allegations have been brought to our attention in the broader context of reports about the Myanmar military junta responsibility in systematic policy of killings, arbitrary detentions, enforced disappearances, torture and ill-treatment of human rights defenders and pro-democracy journalists since it staged a coup on 1 February 2021. In March 2021, the junta raided the offices of the Democratic Voice of Burma in Yangon, and it has persecuted, and arbitrarily detained several of its members. We are seriously alarmed that the aforementioned persons are at an extreme risk of arbitrary detention, torture and ill-treatment should the Thai authorities decide to return them to Myanmar.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern for the physical and psychological integrity of the aforementioned journalists and human rights defenders, and their family members and acquaintances. We are very concerned that the charges brought against them for irregular entry into Thailand may facilitate their forced return into Myanmar, where they are at a heightened risk of arbitrary detention, torture and ill-treatment. We note that the circumstances that led to their irregular entry into Thailand are the result of a well-founded fear of persecution and violence by the Myanmar military junta.

We further are alarmed by the reports that the Myanmar military junta may be responsible for a systematic policy of murder, enforced disappearance, persecution, torture, and arbitrary detention in violation of fundamental rules of international law, acts that may constitute crimes against humanity.

In this connection, we wish to draw the attention of your Excellency's Government to the absolute prohibition of refoulement codified in article 3 of the Convention against Torture, which provides that, "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture"; and that, "[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights". Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be

circumscribed.

We would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee in which it states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement.”

Article 19 of the International Covenant on civil and political rights protects the right to receive and impart information and ideas of all kinds, regardless of frontiers. In General Comment no. 34 (2011) the Human Rights Committee highlighted that States should “put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression”. It further highlighted that journalists frequently are subjected to threats, intimidation and attacks because of their activities, stating that such attacks must be “vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims... be in receipt of appropriate forms of redress.”

In this context, we would also like to refer to the Human Rights Council resolution 45/18 on safety of journalists (A/HRC/RES/45/18) adopted on 6 October 2020, in which the Council expressed “deep concerns that the work of journalists and media workers often puts them at specific risk of human rights violations and abuses, including killing, torture, enforced disappearance, arbitrary arrest and arbitrary detention, arbitrary expulsion, physical and sexual violence, as well as intimidation, threats and harassment of all kinds, including by the targeting of their family members or arbitrarily raiding and searching their residency, which often deters journalists from continuing their work or encourages self-censorship, consequently depriving society of important information. [Further, the Council expressed concern] about incidents of the extraterritorial targeting of journalists and media workers, including harassment, surveillance and the arbitrary deprivation of life.”

The full texts of the human rights instruments and standards recalled above are available on 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 person(s) 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/or comment(s) you may have on the above-mentioned allegations;
2. Please provide information about the factual and legal basis for their detention, and any subsequent prosecutions and trials. Please clarify whether measures have been taken to provide free legal assistance and translation to the detainees.

3. Please provide information about the measures taken to ensure that the detainees are able to seek asylum, and are provided with an individualized assessment of their protection needs that might militate against their forced return into Myanmar.
4. Please describe the conditions of detention for individuals described above. In particular, please provide information on individual's access to reasonable accommodation in detention, drinking water and food, their ability to take medication, the duration of their detention, whether they were handcuffed, conditions of interrogation, access to lawyers, and any other relevant details.

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 responsible of 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.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment