

Mandates of the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL VNM 5/2023
(Please use this reference in your reply)

7 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 49/23 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **your Excellency's Government's participation in activities organized by the ASEAN Defense Ministers' Meeting-Plus (ADMM-Plus) Experts' Working Group on Counter Terrorism, co-chaired by the Myanmar military junta, the "State Administration Council" (SAC), and the Russian Federation.**

According to the information received:

The ADMM-Plus is a platform for ASEAN member states and eight Dialogue Partners, namely, Australia, China, India, Japan, New Zealand, the Republic of Korea, the Russian Federation, and the United States (collectively referred to as the "Plus Countries"), to strengthen security and defence cooperation for peace, stability, and development in the region.

Since 2017, the ADMM-Plus has met annually to enhance dialogue and cooperation among ASEAN and the Plus Countries. Experts' Working Groups have also been established to facilitate cooperation in specific areas. The Expert Working Groups are each co-chaired by one ASEAN Member State and one Plus Country, operating in a three-year cycle.

The ADMM-Plus Working Group on Counter Terrorism is currently co-chaired by the Myanmar military junta, the "State Administration Council" (SAC) that overthrew the democratically elected government in 2021, and the Russian Federation. A Final Planning Conference of the Working Group that was held in June 2023 in Khabarovsk, the Russian Federation was attended by all ASEAN member states, and ADMM-Plus Dialogue Partners China and India. Five of the ADMM Dialogue Partners, namely Australia, Japan, New Zealand, the Republic of Korea, and the United States of America, did not attend the planning conference. Some of these States publicly indicated they did not participate as a result of the SAC's involvement as co-chair.

As part of the current cycle of the Working Group, the SAC will host an ADMM-Plus counter-terrorism tabletop exercise in Myanmar in August 2023. The Russian Federation will host a counter-terrorism field training exercise in September in the Russia Federation.

The planned exercises allegedly include simulated military activities designed to improve the capabilities of militaries to “counter-terrorism.” Previous ADMM-Plus counter-terrorism exercises have reportedly included live ammunition simulations of attacks in public places and hostage-taking scenarios and have incorporated tactics including air assaults, mobile strikes, reconnaissance missions, sniper activity, medical rescue, and intelligence gathering.

Participating in these Working Group activities may enhance the combat capabilities of participants, including the SAC. The SAC has allegedly been using its position in the Working Group as a propaganda opportunity by attacking the National Unity Government and pro-democracy groups in Myanmar as ‘terrorists’ and by unlawfully projecting itself as the legitimate government of Myanmar.

On a website that the SAC maintains as co-chair of the Working Group, it has regularly accused pro-democracy forces in Myanmar, including the National Unity Government (NUG), Ethnic Revolutionary Organizations (EROs), and Peoples Defense Forces (PDFs) as being terrorists, and even has a terrorist news page on the site. A recent post on the website condemned a meeting between the President of Timor-Leste and the NUG’s foreign minister, calling the NUG a “terrorist group” and saying that the meeting could “abet terrorism.”

In presentations to the ADMM-Plus Working Group, the SAC has allegedly spread misinformation and propaganda concerning the NUG, EROs, and PDFs. According to *Global New Light of Myanmar*, the junta-controlled media outlet, Aung Myo Thant, Deputy Chief of the Myanmar Armed Forces Training, gave a speech to the Working Group in December 2021, “highlighting the threats to the national security, including armed ethnic conflicts, drug issues and the terrorist activities of NUG and PDF, electoral fraud which led to the state of emergency declared by Tatmadaw to maintain the State affairs, efforts of Tatmadaw in various ways to peacefully find a solution on vote-rigging, the NLD government’s multiple rejections on the discussion and its intent to form a new government with controversial election results [and noted] CRPH, NUG and PDF terrorist groups which targeted civilians...”.

In light of the information above, we are concerned by reports that your Excellency’s Government participated in the June 2023 planning conference in the Russian Federation and the tabletop exercise in Myanmar in August. We are also concerned that your Excellency’s Government may participate in the ADMM-Plus counter-terrorism field training exercise that will be held in the Russian Federation in September.

We note with concern that the Myanmar military has been repeatedly identified as having committed war crimes and crimes against humanity under the pretext of countering terrorism, including attacks against the Rohingya in Rakhine State, Myanmar in 2016 and 2017 that may reach the threshold of genocide, and widespread attacks on civilian populations since the February 2021 military coup. We are further concerned about the inclusion of the Myanmar military in training exercises that may enhance abusive combat capabilities. These capabilities have a

high probability to be used to carry out attacks on civilians and other grave human rights violations.

We also express concern about the broad application of terrorism utilised by the SAC to target political dissidents, and pro-democracy groups, including EROs.¹

In this respect, we respectfully remind your Excellency's Government that any measures taken to combat terrorism must comply with all its obligations under international law, including humanitarian law and human rights law, and comply with the principles of legality, necessity, proportionality, and non-discrimination. We, therefore, encourage your Excellency's Government, as part of the ADMM-Plus, to ensure that any decision-making in the framework of the activities of the Counter-Terrorism Working Group aims at acts that are "genuinely" terrorist in nature, in accordance with the elements identified by the Security Council in its resolution 1566 (2004), as well as the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in order to avoid arbitrary application and abuse.

We likewise worry that your Excellency's Government's participation in exercises co-chaired by the SAC will further legitimize the action of a military that lacks democratic and constitutional legitimacy, and which does not exercise its governance in accordance with international law. The SAC has repeatedly used its participation and position in international meetings and fora to project a veneer of legitimacy to audiences in Myanmar and abroad. We would like to draw the attention of your Excellency's Government to the obligation of Member States to ensure that all counter-terrorism capacity-building and technical assistance activities integrate a comprehensive analysis, scoping and diagnosis of States' human rights records, assess human rights risks, develop risk mitigation strategies focused on the rights of affected individuals and communities, and ensure the inclusion of available, adequate, effective, prompt and appropriate remedies as essential elements for effective capacity-building and technical assistance" (A/76/261, para. 58).

We strongly encourage your Excellency's Government to work with other ADMM-Plus members to bar the SAC from ADMM and ADMM-Plus activities at all levels and cancel these military exercises led by the SAC and the Russian Federation. Failing that, we urge your Excellency's Government to refrain from participating in these military exercises and other ADMM activities in which the SAC participates.

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 clarify whether your Excellency's Government intends to participate in future military exercises organized by ADMM-Plus

¹ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted these concerns in her recent [Global Study on the Impact of Counter-Terrorism on Civil Society](#)

Experts' Working Group on Counter-Terrorism.

2. Please provide any additional information or comments you may have regarding the above-mentioned military exercises.
3. Please provide any information or comments you may have regarding your Government's policies concerning engagement with the Myanmar military, the Myanmar military's counter-terrorism measures, the Myanmar military's participation in ASEAN defense forums, and your Government's recognition or non-recognition of the SAC.
4. Please indicate the manner in which your Excellency's Government will ensure that all decisions taken in the framework of the ADMM-Plus Expert Working Group of Counter-Terrorism Experts comply with the relevant Security Councils and the General Assembly resolutions addressing counter-terrorism in compliance with human rights and specifically with regard to the principle of legality, necessity, proportionality and non-discrimination.

We would appreciate receiving a response within 60 days. Past 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.

Please be informed that a letter on this subject matter has been also sent to those States that participated in the ADMM-Plus Working Group in June and September 2023.

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

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

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to applicable international human rights norms and standards.

The involvement of Myanmar military personnel in military training exercises designed to enhance combat capabilities is likely to contribute to the violation of human rights enshrined in the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR), as well as other human rights instruments. In its ongoing attacks on civilian populations throughout the country, the Myanmar military has violated the right to life, liberty, and security of person (UDHR, article 3; ICCPR, articles 6 and 9); the prohibition against slavery, servitude or forced labor (UDHR, article 4; ICCPR, article 8) the prohibition against torture or cruel, inhuman or degrading treatment (UDHR, article 5; ICCPR, article 7); the prohibition against arbitrary arrest, detention or exile (UDHR, article 9; ICCPR, article 8); and the right to freedom of movement and residence (UDHR, article 13; ICCPR, article 11), among other rights. Additionally, the Myanmar military's coup and failure to respect the will of the Myanmar people as expressed in the November 2020 general elections violate the right to take part in government and freely choose representatives (UDHR, article 21; ICCPR, article 25). Both the UDHR and ICCPR commit Member States to promoting "universal respect" for human rights.

Many of the above-described human rights violations have been committed in the context of a widespread and systematic attack on the people of Myanmar and therefore likely constitute crimes against humanity under international criminal law. The situation in many parts of the country may constitute a non-international armed conflict, and, therefore, some human rights violations perpetrated by the military may constitute war crimes and violations of international humanitarian law, including violations of Common Article 3 of the Geneva Conventions.

We would also like to make reference to the January 2023 Conference Room Paper of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/52/CRP.2) where through legal analysis it is argued that the SAC has no legitimate claim to be the government of Myanmar.

According to international law, the SAC has failed to meet two core doctrines that have informed the formal recognition of governments since World War II: (1) the effective control standard and (2) the legitimacy standard. The SAC has not met the three common criteria of "effective control": it does not (a) enjoy "with a reasonable prospect of permanence, the obedience of the mass of the population," (b) control the greater part of Myanmar's territory, or (c) comply with obligations under international law.

As for the legitimacy standard, the SAC has attempted to overthrow the legitimate representatives of the people of Myanmar as expressed through democratic elections relying on baseless claims of widespread election fraud as justification. The SAC also failed to comply with its own standards of legitimacy by failing to adhere to the requirements of the 2008 constitution that it drafted, including criteria for the imposition of a state of emergency.

We bring your Excellency's Government attention to the "principle of legal certainty" under international law which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse. We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, must comply with all their obligations under international law. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy (resolution 60/288), effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.

We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice (A/59/565 (2004), para. 164 (d)). As explained by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report (E/CN.4/2006/98, para 37), the model definition includes acts that have the following cumulative characteristics:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; and
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; and
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

We also note that best international practice encourages States to thoroughly and independently review counter-terrorism and emergency law regularly to ensure that it remains both necessary and international law compliant. Ordinary law, where sufficient, should be used to address security and terrorism challenges experienced by the State and when exceptional or emergency law is utilised, it should be applied in accordance with international law and the framework of derogation on the basis of necessity, proportionality, and nondiscrimination (A/HRC/37/52, paras 10 to 12).

We remind your Excellency Government that the definition of terrorism and terrorism offences must be 'genuinely' terrorist in nature in accordance with the elements identified by the Security Council in its resolution 1566 (2004). We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct

to be proscribed and best practice (A/59/565 (2004), para. 164 (d)). In this regard, we also bring your Excellency's Government attention to the "principle of legal certainty" under international law which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse.

We bring your Excellency's Government attention to the "principal of legal certainty" under international law which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse.