

**Mandate of the Special Rapporteur on the situation of human rights in Myanmar**

Ref.: OL USA 2/2026  
(Please use this reference in your reply)

12 January 2026

Dear Secretary Noem,

**I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Myanmar**, pursuant to Human Rights Council resolution 58/20. In line with the communications procedure for comments on legislation and policy, I wish to provide observations regarding your decision taken on **25 November 2025** to terminate the **Temporary Protected Status** for nationals of Burma (Myanmar) and to seek clarifications of facts cited and the compatibility of the termination with international human rights standards.

*Background*

According to the public notice announcing the termination, your Department has concluded that conditions in Myanmar **no longer hinder the safe return** of its nationals and cited **improvements in governance and stability** as the basis for ending TPS. While recognising domestic prerogatives governing TPS, I am concerned about **conditions on the ground that appear inconsistent** with those conclusions and about the implications of this decision for individuals who, upon return, may face **serious harm as I have documented in my various reports**.<sup>1</sup>

**Formal steps** (e.g., ending a nationwide state of emergency or moving toward electoral processes) **do not, by themselves, demonstrate reduced human rights risk** for potential returnees. **Persistent fighting** in several regions, **restrictions on participation**, and **constraints on civic space** undermine assumptions of stability or safe return. Assessments of safety must be grounded in **protection indicators** (cessation of attacks on civilians, release of political detainees, meaningful civic space), rather than solely on **institutional changes** or **electoral timetables**.

I respectfully note that **recent official U.S. positions** appear to recognise ongoing, serious risks in Myanmar: the ***national emergency regarding Burma*** (Myanmar) was continued on **4 February 2025**, citing **continued detentions** of government leaders, politicians, human rights defenders, journalists, and religious leaders;<sup>2</sup> **targeted sanctions** were announced on **25–26 September 2025** against actors facilitating arms for the junta;<sup>3</sup> and remarks at the UN General Assembly on **30 September 2025** described violence and instability as worsening, with the regime

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- <sup>1</sup> A/80/490, Report of the Special Rapporteur on the situation of human rights in Myanmar, <https://www.ohchr.org/sites/default/files/documents/countries/myanmar/a-80-490-aurv-en.pdf>.
  - <sup>2</sup> Continuation of the National Emergency With Respect to the Situation in and in Relation to Burma, 4 February 2025, <https://www.federalregister.gov/documents/2025/02/06/2025-02405/continuation-of-the-national-emergency-with-respect-to-the-situation-in-and-in-relation-to-burma>.
  - <sup>3</sup> U.S. Department of State, “Targeting Illicit DPRK Weapons Sales to Burma and a DPRK Financial Facilitator,” 25 September 2025, <https://www.state.gov/releases/office-of-the-spokesperson/2025/09/targeting-illicit-dprk-weapons-sales-to-burma-and-a-dprk-financial-facilitator>; U.S. Department of the Treasury, “Treasury Targets Arms Trafficking Network and Financial Facilitators for DPRK Weapons Programs,” 25 September 2025, <https://home.treasury.gov/news/press-releases/sb0264>.

continuing to oppress minorities and bomb civilians.<sup>4</sup>

I would be grateful for clarification on how the **TPS termination** assessment aligns with these positions.

*Compliance of the decision with international human rights norms and standards.*

As a State party to the **International Covenant on Civil and Political Rights (ICCPR)**, the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, and the **1967 Protocol relating to the Status of Refugees**, the United States is bound to ensure that any policy decision affecting removal or return of Myanmar nationals complies with the applicable international protections—above all the **prohibition of refoulement**. These obligations apply to all persons under U.S. jurisdiction and must guide the assessment and implementation of measures that could foreseeably expose individuals to irreparable harm upon return.

Under **CAT article 3**, States must not expel, return (refouler) or extradite a person to another State where there are **substantial grounds** for believing they would be in danger of **torture**. The **Committee against Torture’s general comment No. 4 (2017)** clarifies that this is an **absolute obligation** and requires **individualised assessment** by competent administrative and/or judicial authorities. In addition, **article 3(2)** provides that, to determine whether such grounds exist, 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**.

The Committee also explains that authorities should consider **non exhaustive indicators of risk** when deciding on removal. In **paragraph 29 of General Comment No. 4**, it points to human rights situations that may indicate a danger of torture and therefore trigger **non refoulement**, and advises that such indicators be given due weight in removal decisions (for example, generalised or widespread violence, patterns of arbitrary detention, torture or ill treatment, persecution of particular groups, and other serious human rights violations).

The Committee further highlights the **procedural safeguards and preventive guarantees** required to ensure that removal does not proceed where a credible risk is raised: an **objective and individual examination**, the **guarantee of a prompt and transparent process**, **review of any deportation decision**, and an **appeal with suspensive effect**, together with **access to legal assistance, interpretation**, and, where relevant, **medical evaluation**. Any person found to be at risk of torture if deported

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<sup>4</sup> Charles Harder, U.S. Special Envoy for Best Future Generations, “Remarks at High-level Conference on the Situation of Rohingya Muslims and Other Minorities in Myanmar,” 30 September 2025, <https://usun.usmission.gov/remarks-at-a-high-level-conference-on-the-situation-of-rohingya-muslims-and-other-minorities-in-myanmar/>. In addition, the U.S. Department of State’s 2024 Country Report on Human Rights Practices: Burma (released 12 August 2025) documents intensifying airstrikes and arbitrary detentions, extrajudicial killings, torture, and severe restrictions on fundamental freedoms (U.S. Department of State, *2024 Country Reports on Human Rights Practices: Burma* (released 12 Aug 2025), <https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/burma/>).

should be allowed to remain in the territory so long as the risk persists; and must **never** be removed to another State from which they may subsequently face removal to a third State where substantial grounds exist to believe they would be in danger of torture (i.e., **indirect/chain refoulement**). These standards are the benchmark against which any decision affecting potential returns must be measured.

The **ICCPR** further requires States to **respect and ensure** Covenant rights to all individuals within their territory and subject to their jurisdiction. This entails an obligation not to return a person to a real risk of irreparable harm, such as **arbitrary deprivation of life (article 6)** or **torture/cruel, inhuman or degrading treatment (article 7)**, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The decision to terminate protection must therefore be assessed against these duties to **prevent, not facilitate, exposure to grave violations**.

In refugee law, the United States’ accession to the 1967 Protocol entails application of articles 2–34 of the 1951 Refugee Convention, including **article 33 of the 1951 Refugee Convention** which codifies the core principle of **non-refoulement**: no State shall “expel or return (‘refouler’) a refugee in any manner whatsoever” to territories where their **life or freedom** would be threatened. The obligation is engaged by **direct and indirect (chain) refoulement**, and it requires decision makers to look beyond formal developments to **actual protection outcomes** - whether risks of lethal violence, persecution or serious harm have materially abated. **Consistent with UNHCR’s Guidance Note on the International Protection Needs of People Fleeing Myanmar (May 2024), which issues a non-return advisory and calls on States to suspend forced returns of Myanmar nationals and habitual residents until conditions permit safe, dignified and sustainable return (paras. 21–22),**<sup>5</sup> references to elections or ceasefire announcements must be corroborated by evidence of **sustained reductions in attacks on civilians, release of political detainees, and unimpeded humanitarian access**, before any conclusion can be drawn that return is safe.

Finally, the broader framework of international protection situates these duties within the **right to seek and enjoy asylum (UDHR article 14)** and reflected in the architecture of refugee and human rights treaties. While the UDHR is not itself binding, it informs interpretation of the above-mentioned treaty commitments and underscores the imperative that removal measures **do not defeat** the very purpose of international protection where a real risk persists.

As it is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful if you would address the following:

1. Please explain the evidentiary basis and risk assessment methodology underlying the conclusion that conditions “no longer hinder the safe return” of Myanmar nationals—including sources, timeframes, and how generalised risks and individual protection needs were weighed—consistent with the prohibition of refoulement under international law and the obligation to assess real risk of persecution,

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<sup>5</sup> *Guidance Note on the International Protection Needs of People Fleeing Myanmar*, <https://www.refworld.org/policy/countrypos/unhcr/2024/en/147974>.

torture/ill treatment, and other irreparable harm prior to removal and to respect and ensure Covenant rights to all persons under jurisdiction (CAT art. 3; CAT general comment No. 4; ICCPR art. 2 read with arts. 6, 7; HRC general comment No. 31, 1951 Refugee Convention).

2. Please provide additional information on safeguards to prevent direct/indirect refoulement where a “foreseeable, personal, present and real” risk of torture/ill-treatment, arbitrary deprivation of life, or other irreparable harm exists, including: objective individualised risk assessment; prompt and transparent procedure; review of the removal decision with suspensive-effect appeal; access to counsel/interpretation; and timely notification—applicable to all forms of transfer (CAT art. 3; CAT GC 4 (paras. 12–13); 1951 Refugee Convention art. 33, and ICCPR arts. 6–7).
3. Please provide additional information on the evaluation of high-risk profiles (e.g., activists, human rights defenders, journalists, members of minorities) and how ongoing conflict dynamics are factored into return risk determinations, in light of the right to life, prohibition of torture/ill treatment, and security of person (ICCPR arts. 6, 7, 9; HRC GC No. 31, applicability to all persons under jurisdiction/effective control).

In light of conditions inside of Myanmar, non-refoulement obligations and the risks documented, I respectfully invite your Department to reexamine the TPS termination decision and, in the meantime, to ensure that no removal occurs in violation of international obligations. I remain available for constructive dialogue and technical engagement, including on screening procedures and protection safeguards.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Sincerely,

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