

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right to privacy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women and girls, its causes and consequences**

Ref.: AL OTH 82/2025  
(Please use this reference in your reply)

4 August 2025

Mr. Min Aung Hlaing,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the right to privacy; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 58/14, 54/14, 53/4, 52/9, 50/17, 53/12, 55/3, 52/7 and 50/7.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the Special Procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments, duty bearers and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

State Administration Council (SAC)

In this connection, we would like to bring to your attention concerns we have regarding: **(a) the arrest, detention and acts tantamount to enforced disappearance of at least 221 journalists or former journalists on the basis of various laws, including Myanmar’s 2014 Counter-Terrorism Law (The Pyidaungsu Hluttaw Law No. 23/2014), as unlawfully amended by the military in 2021 and 2023, at least 51 of whom are still detained in prison, including on charges or convictions related to terrorism; (b) the abuse of counter-terrorism legislation to stifle dissent and restrict legitimate activities by journalists and civil society; and (c) vague and overbroad provisions in Myanmar’s 2014 Counter-Terrorism Law and the unlawful amendments of 2021 and 2023 (State Administration Council laws No. 21/2021 and No. 56/2024), and in the counter-terrorism rules unlawfully enacted in March 2023 (Notification No. (239/2023)).**

We stress that this letter does not in any way imply the recognition, as a matter of international law, of the State Administration Council as the legitimate Government of Myanmar, or of its capacity to apply, make or amend the law of Myanmar, and is without prejudice to the United Nations’ positions on these matters.<sup>1</sup> We further emphasize that all parties to an armed conflict must respect international humanitarian law, and that *duty bearers* must respect international human rights law as applicable, again without conferring any rights as a lawful government and to make or apply “laws”.

According to the information received:

Since the illegal military coup in 2021, the Myanmar military launched a crackdown on media freedom in an effort to control information and deter dissent and popular uprising. The military has reportedly detained at least 221 journalists, some multiple times, from almost 100 media outlets, and charged over 175 with a crime under nine separate laws, including counter-terrorism provisions, causing a chilling effect across media outlets. At least 16 per cent of journalists detained since 2021 are women. Some journalists were arrested while documenting protests against the military while others were detained during raids on their homes or offices, or after having been summoned to police stations. Most journalists are from Myanmar though a few foreign journalists have also been arrested. In addition, the military reportedly detained several media owners, CEOs, chief editors and publishers in an effort to censor entire media outlets.

Myanmar’s military has instrumentalised the counter-terrorism framework to suppress political opposition, dissidents, civil society and the media. The military has also illegally purported to remove constitutional protections for human rights and placed a moratorium on some sections of the Constitution. Penalties for terrorism-related offences have been illegally increased and political opponents labelled as terrorists.

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<sup>1</sup> <https://docs.un.org/en/A/79/613>.

### *Arrests, detentions and acts tantamount to enforced disappearance*

Journalists have reportedly been arrested on illegal and arbitrary grounds or no grounds at all, without being informed of the reasons for their detention and without being brought before a judge within a reasonable time. Detained journalists have been held in police stations immediately after their arrest before being transferred to a military interrogation centre for varying periods of time and then to prison, without being granted access to a lawyer and with their families generally not being informed of their fate or whereabouts for varying periods of time, resulting in acts tantamount to enforced disappearances.

It is also reported that the military has arrested, detained or threatened some of the journalists' family members to coerce journalists into handing themselves in, confessing to a crime, or implicating other journalists, sources or networks. Some journalists' children have also been detained and interrogated for several days.

Of the 221 journalists arrested, 170 were eventually released, most without having been tried or convicted and having spent an average of 205 days in detention. The military reportedly warned some journalists that charges could be revived should they criticize the military or support the opposition while others were forced to sign agreements not to continue their journalistic work as a condition of their release. Some journalists were detained again after having been released. At least 51 journalists are still detained in prison after being charged or sentenced, including for terrorism-related offences.

### *Severity of charges and disproportionate sentencing*

Some journalists are reported to have faced charges with disproportionate sentences of over 10 years. Around 175 journalists faced a combined total of 238 charges under nine different laws, including articles 124(A) and 505 of the Penal Code, the Counter-Terrorism Law (2014), Myanmar's digital laws including the Telecommunications Law (2013), and the Unlawful Association Act (1908).

Since the enactment of the 2014 Counter-Terrorism Law, vague and overbroad provisions have been systematically misused to suppress dissent and restrict legitimate activities of journalists, civil society organizations and human rights defenders. "Terrorism" is defined under section 3(b) of this Law as an act or omission to intentionally commit any of the 18 offences under section 3(b)(i)-(xviii).

Some provisions of these laws allow for exceedingly lengthy prison sentences, such as article 124(A) of the Penal Code which punishes with life imprisonment – a term defined as 20 years imprisonment under article 57– anyone who "excites or attempts to excite disaffection" towards the Government, or Section 49 of the Counter-Terrorism Law, which provides for life imprisonment or the death penalty for certain offences. It is reported that lengthy prison sentences are handed down to demonstrate the military's determination to quash any dissent. Around 88 journalists have been sentenced to a total of 497 years

imprisonment with most sentences being the maximum allowed under the law. Some journalists have been convicted to 10 to 20 years in prison, with many sentences enhanced or aggravated, leading to detention with hard labour (“rigorous imprisonment” under article 53 of the Penal Code).

From data available, between 2022 and 2024 (a period since the coup), the average sentence handed down to a journalist charged with a terrorism-related offence increased from 8.4 to 14.9 years of imprisonment.

#### *Proceedings before military-controlled courts*

Since the coup, the military has subsumed the judiciary, eliminating judicial independence and impartiality, fair trial and the rule of law. Proceedings before these military-controlled courts have been marred by procedural irregularities and violations of fair trial rights, including: lack of legal representation; inadequate time and facilities to prepare a defence; proceedings behind closed doors without justification; inability to present evidence or call or cross-examine witnesses; pre-determined judgments and expedited trials; and the use of forced confessions. Defence lawyers have been subjected to surveillance and harassment, threatened, and even arrested and tortured for carrying out their work.

In townships where the military has declared martial law, it has established military tribunals with no basis in law that have purportedly exercised jurisdiction concerning certain laws, including media-related laws. Little information is publicly available on the proceedings which take place behind closed doors, without regular procedures and with defendants having no right to legal representation or appeal.

The military also set up special tribunals inside prisons that conduct closed trials that deny legal representation. Adjudicators appointed by the military are reported to ignore the rights of those involved under national and international law. The military has full control over all military tribunals, so called “special courts”, and criminal courts, such that these bodies do not qualify as independent and impartial judicial institutions affording a fair trial.

#### *Torture or cruel, inhuman or degrading treatment or punishment and deaths in custody*

It has been documented that widespread torture and/or other cruel, inhuman or degrading treatment or punishment are widely inflicted on journalists in detention and during interrogations, including for the purpose of extracting confessions. Methods include beatings, stabbings, the use of stress positions, mock executions, burnings, electric shocks as well as sexual violence against both women and men. Journalists have also been pressured to provide information about their peers, networks and sources. At least three journalists have reportedly died due to torture or ill-treatment.

Furthermore, detained individuals are held in poor and overcrowded conditions, without access to adequate food and health care. As a result, some journalists

reportedly died from Covid-19 while in detention. Since Covid-19, the military has denied access to places of deprivation of liberty to independent monitors.

Additionally, at least four journalists have died after being taken into the custody of the military. In several cases their bodies had injuries apparently indicative of torture.

It is submitted that all the acts mentioned above have been perpetrated in a climate of impunity that enabled the reoccurrence of violations, including due to the lack of independent and impartial investigations with a view to prosecute those responsible in line with international law.

#### *Abuse of technology and social media*

Since 2021, the military has increased surveillance and interception of communications to locate and detain dissenters and journalists, including by issuing secret so-called “Directives” which include names of individuals to be targeted for surveillance and interception of communications. Civilians, particularly youth, are routinely subjected to arbitrary phone searches and can be detained, tortured, killed, or imprisoned merely for possessing digital content such as images of protests or posts critical of the military. The military has also allegedly used drones, biometric ID systems, and registered SIM cards to silence the opposition and civil society.

The military has reportedly used social media to disseminate hate speech campaigns and circulate personal information of perceived opposition or dissenting voices, “doxing” and intimidating them and deterring others by fabricating accusations and encouraging arrests, torture and killings.

The military has reportedly issued formal “Directives” to State-owned, military-owned, and private telecommunications companies to restrict or shut down internet access.

Financial institutions have also been compelled to monitor, report to the military, freeze or transfer funds of civil society actors accused of activities labelled as terrorism.

It is also reported that the military has deliberately destroyed monitoring systems such as CCTV networks to prevent the documentation of violence and brutality against street protesters. Conversely, the traffic control system in major cities has been strengthened and used to monitor protests and opposition movements.

#### *Suppression of media activities*

Mass detentions of journalists have had a chilling effect on freedom of expression, leading many journalists and critics of the military to self-censor, hide or flee Myanmar.

The military unlawfully revoked the licences of at least 15 print media outlets on the basis of the Printing and Publishing Law (2014), which imposes compulsory licensing requirements for print media. In 2021, the military unlawfully amended the Broadcasting Law (2015) to make it a crime for individuals to work for unlicensed outlets, with a penalty of up to five years imprisonment.

Out of 105 media outlets in Myanmar, at least 91 have had one or more of their journalists detained, leading to reduced reporting capacity and increased costs and fear.

#### *Unlawful amendments to existing laws*

After seizing power in 2021, the military unlawfully imposed a number of amendments and orders. Most of these related to freedoms of expression, assembly and association. For instance, an amendment to article 124 of the Penal Code broadened the definition of treason to include protests while article 124(A) criminalized sedition, namely the act of “encouraging disaffection towards the military”. Article 505 (A) criminalized “spreading false news”, “causing fear” and “committing or agitating for an offence against a government employee”. The military also unlawfully removed due process protections from the Code of Criminal Procedure (1898) and suspended privacy rights under the Law Protecting the Privacy and Security of Citizens (2017).

In addition, the military unlawfully amended the Broadcasting Law (2015) to establish some media-related crimes and expand the scope of the Law to apply to all media content, without defining the latter. In 2023, the Printing and Publishing Law (2014) was unlawfully amended to reduce procedural safeguards and allow for easier revocation of media licences.

#### *Unlawful amendments to the 2014 Counter-Terrorism Law*

The military also unlawfully created two addendums to the 2014 Counter-Terrorism Law and a set of rules which purport to broaden surveillance and investigative powers. These amendments have reportedly had a significant impact on the work of civil society organizations and human rights defenders, and the exercise of rights and freedoms, particularly in the digital field.

On 1 August 2021, the military unlawfully amended the Counter-Terrorism Law to increase penalties for “acts of exhortation, persuasion, propaganda, recruitment of any person to participate in any terrorist group or activities of terrorism” (section 3(b)(xv)) from one to three years’ imprisonment and a fine to three to seven years’ imprisonment and a fine. It is reported that section 3(b)(xv) as amended has been used to arrest and imprison pro-democratic forces, in particular journalists.

In March 2023, the military unlawfully amended a set of rules (Notification No. (239/2023)) (“rules”) consisting of 20 chapters and 120 articles which allow for broad surveillance and asset seizure against individuals suspected of belonging to or being associated with terrorist organizations. Notably,

article 75(a) of the rules provides that the Working Committee for the prevention and suppression of terrorism (“Working Committee”):

Shall establish an inspection team consisting of representatives from relevant departments for this purpose and instruct it to conduct regular or random inspections in order to monitor the money and assets of non-governmental organisations and associations or not-for-profit organisations so that they do not reach terrorists, terrorist groups or associated organisations and persons.

Article 76 of the rules grants broad powers to the investigation team and a prevention and suppression force, including to, upon instruction from the relevant court, “transfer, confiscate as public property or destroy money and assets belonging to a terrorist, terrorist organisation or associated organisations and persons in accordance with the law” (subparagraph (g)).

Article 80 provides that, having obtained permission from the Central Committee, the Working Committee may direct to force a telecommunications business licence holder “to cut off, limit, and intercept electronic communications” and the business licence holder may not refuse. Such decision relies on information collected by an investigation team with no opportunity for the individual or organization concerned to intervene or present exculpatory evidence. In accordance with article 84 of the rules, information intercepted may be used in an investigation and presented at trial.

On 26 September 2024, the military unlawfully issued law No. 56/2024 amending Sections 6(d) (concerning weapons of mass destruction) and 53 of the Counter-Terrorism Law on the powers granted to the Central Committee and penalties. Section 53 in particular was amended to establish and enhance penalties.

### *Listing of organizations*

Chapter 3 of the 2023 rules sets out the framework for designating and revoking the designation of terrorists and terrorist groups. Rule 11 authorizes the Central Committee, upon verifying the information submitted to it by the Working Committee or a foreign State making the request, to “with the approval of the Union Government, designate by notification those who commit, attempt, or aid and abet any offence under section 3(b) Counter-Terrorism Law, or participate as an accomplice in any such offence, as terrorist, terrorist group or associated organisations and persons”.

Rule 14 provides that a person, group or organisation that has been designated as terrorist or terrorist organization may request “with strong evidence to review and revoke the designation”. The Central Committee will then review the Working Committee’s investigation report and ask the United Nations Counter Terrorism Committee Executive Directorate (CTED) whether it objects to the revocation.

On 8 May 2021, the military declared the National Unity Government (NUG), the Committee Representing Pyidaungsu Hluttaw (CRPH) and the People's Defence Forces (PDFs) as terrorist organizations. On 2 September 2024, the military declared the Ta'ang National Liberation Army (TNLA), the Myanmar National Democratic Alliance Army (MNDAA) and the Arakan Army (AA) as terrorist organizations.

Without prejudging the accuracy of the allegations above, we express serious concern at what appears to be the widespread targeting of journalists and media workers, and more generally any dissenting voices, including through the use of broad and vague counter-terrorism provisions. We are gravely concerned by the military's apparent aim of controlling information and deterring dissent and uprising and the resulting chilling effect on legitimate reporting activities and the exercise of protected rights. We are also gravely concerned by the alleged widespread infliction of torture and/or other cruel, inhuman or degrading treatment or punishment on detained journalists and by several cases of deaths reported in custody.

Should the above allegations be true, they would constitute serious violations of article 3 (right to life, liberty and security of person), article 5 (right to be free from torture and cruel, inhuman or degrading treatment or punishment), article 8 (right to an effective remedy), article 9 (right to be free from arbitrary arrest, detention or exile), article 10 (right to a fair trial), article 11 (principle of legality), article 12 (right to privacy), article 19 (right to freedom of opinion and expression), and article 20 (right to freedom of peaceful assembly and association) of the Universal Declaration of Human Rights, reflecting customary international law, and of corresponding rights under applicable treaty law.

#### *Media censorship and restrictions on journalistic activities*

We are alarmed at the widespread allegations of media censorship and crackdown on journalists and media outlets since the military coup, which appear to be contrary to the right to freedom of expression and opinion under article 19 of the Universal Declaration of Human Rights and customary and treaty law. A free and uncensored press is essential in any society and constitutes one of the cornerstones of a democratic society. In line with international standards, journalists, media outlets and publishers should not be penalized for reporting or disseminating critical views and dissenting opinions. We stress the obligation to create an enabling environment for the free communication of information and ideas about public and political issues (see A/HRC/50/29).

We also express concern at the allegations of increased surveillance and interception of communications in order to locate and detain dissenters and journalists, as well as the extensive surveillance powers provided for under the rules. Such broad powers violate the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence under article 12 of the Universal Declaration of Human Rights and treaty law, and risk deterring the legitimate exercise of the right to freedom of expression and reporting on human rights abuses. The General Assembly, in its resolutions 68/167 and 71/199, has condemned unlawful or arbitrary surveillance and interception of communications as "highly intrusive acts", noting that such measures interfere with fundamental human rights (see resolutions 68/167 and 71/199).

Noting the “extraordinary risk of abuse of surveillance technologies”, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in a 2019 report on Surveillance and Human Rights, highlighted that surveillance operations must “be approved for use against a specific person only in accordance with international human rights law and when authorized by a competent, independent and impartial judicial body, with all appropriate limitations on time, manner, place and scope of the surveillance” (A/HRC/41/35, paras. 50(c) and 60).

We also note the 2025 report on the Situation of Human Rights in Myanmar, in which the United Nations High Commissioner for Human Rights highlighted the repressive context in which journalists and media workers operate, including restrictions, shutdowns and surveillance, and which has forced many to relocate (A/HRC/59/57, para. 28). We echo the concerns expressed by the High Commissioner in his 2024 report regarding the use of vague provisions of the Counter-Terrorism Law against individuals perceived as supporting anti-military groups and against journalists and media workers to restrict and control information as well as the imposition of harsh sentences by military-controlled courts (A/HRC/57/56, paras. 25-27).

#### *Vague and overbroad provisions of the counter-terrorism framework*

We are concerned that Myanmar’s counter-terrorism legislative and regulatory framework, including the amendments unlawfully enacted by the military in 2021 and 2023 as well as the 2023 rules, contains vague and over-broad language that is being systematically instrumentalised to infringe on fundamental rights and criminalize certain conduct that is not genuinely terrorist in nature according to best practice international standards.

#### Terrorism definition and offences

We note that the Special Rapporteur on the situation of human rights in Myanmar raised concerns in 2019 that the 2014 Counter-Terrorism Law contained broad definitions and did not conform with international human rights standards (A/74/342, para. 29).

Echoing these concerns, we note that the definition of “terrorism” and terrorist offences in section 3(b) of the pre-existing Counter-Terrorism Law is vague and overbroad and does not satisfy the requirements of legal certainty under international law, and is inconsistent with best practice international standards (see Annex). Firstly, section 3(b) of the Counter-terrorism Law does not contain a general specific intent element as reflected in international standards, but rather provides a circular definition only requiring that the act be committed or omitted “with the intent to commit an act of terrorism”. Under the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, an act of terrorism must be “done or attempted with the intention of: (a) Provoking a state of terror in the general public or a segment of it; or (b) Compelling a Government or international organization to do or abstain from doing something” (A/HRC/16/51, para. 28).

Secondly, of particular concern is that, in not specifying a specific intent element to limit their scope, many of the 18 offences under section 3(b)(i)-(xviii) go

well beyond conduct that is genuinely terrorist in nature according to international standards, by incriminating conduct that is not intended to cause death or serious personal injury and is not otherwise covered by the international counter-terrorism instruments. While it may be appropriate to criminalize some of this conduct under ordinary criminal law, such conduct cannot properly be characterized as terrorism according to international standards. The treatment of such conduct as terrorism also risks infringing on internationally protected fundamental rights, including freedoms of expression, assembly and association, and having a chilling effect on the legitimate activities of civil society, journalist and human rights defenders.

Thirdly, some of the offences are vague, uncertain and overbroad, particularly sections 3(b)(x) (concerning public security, property and infrastructure) and 3(b)(xiv) (public health, safety and the environment). We recall that the principle of legal certainty requires that criminal laws be 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 open to arbitrary application and abuse, leading to infringements of other fundamental rights.

Fourthly, best practice international standards exclude from terrorism protest activities that do not intentionally kill or seriously injure persons, and the activities of armed forces in armed conflict (including non-state armed groups) and other acts targeting military personnel in armed conflict.

#### Speech-related offences

We are particularly concerned that the criminalization as terrorism of acts of “exhortation, persuasion, propaganda, recruitment of any person to participate in any terrorist group or activities of terrorism” under section 3(b)(xv) may unduly restrict the right to freedom of expression and opinion. We note that Section 3(b)(xv) uses vague and overbroad terms not defined anywhere in the law and does not require any intent to incite terrorism or an objective risk that it will be committed, contrary to international standards. Such vaguely phrased and over-broad provisions allow for arbitrary enforcement and misuse, and risk having a chilling effect on the exercise of the right to freedom of expression and on meaningful participation in civic and political life. We recall that laws addressing terrorism-related expression must be precisely prescribed by law and avoid vague terms; be based on a precise definition of terrorism; be strictly necessary and proportionate; and include both an intent to incite terrorism and an objective risk that it will be committed (A/HRC/16/51, para. 31).

#### Death penalty

We express further concern that section 49 of the Counter-terrorism Law provides for the possibility to impose the death penalty, including where the offence does not involve intentional killing. The possible imposition of the death penalty is all the more worrying given the vague and over-broad definitions of terrorism-related offences under the Counter-terrorism Law, as above. In this context, we are alarmed that the military has unlawfully ended the long moratorium on the death penalty in place

since the late 1980s.<sup>2</sup> We are especially troubled that death sentences are being handed down by military courts that fail to meet fair trial guarantees. We recall that the right to life is protected under article 3 of the Universal Declaration of Human Rights and is a *jus cogens*, peremptory norm from which no derogation is permitted under any circumstances. We emphasize that all executions must be suspended and the moratorium on the death penalty respected as a step towards abolition.

#### Other issues

We stress that all measures to counter terrorism and protect national security must comply with international law, including human rights law, international humanitarian law and international refugee law. Counter-terrorism legislation with penal sanctions should never be misused against individuals exercising their rights protected under international law, and measures to combat terrorism and preserve national security should not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10(a)). A proper definition of terrorism according to international standards would preclude the kinds of arrests, charges and prosecutions under terrorism laws referred to in this communication.

Finally, we emphasize that the United Nations Global Counter-terrorism Strategy requires addressing the conditions conducive to violence, which are stated to include prolonged unresolved conflicts, lack of the rule of law and violations of human rights, political exclusion and lack of good governance, ethnic, national and religious discrimination and socio-economic marginalization. We are concerned that none of these conditions are adequately addressed in Myanmar at present and that the military is itself the source of grave human rights violations driving grievances.

#### *Listing of terrorist organizations*

We are concerned that the framework for the designation of terrorists and terrorist groups and the revocation of such designation under chapter 3 of the 2023 rules, unlawfully adopted by the military, does not comply with international standards (see annex). We emphasise that any designation of “terrorist” individuals or organizations must meet the requirements of due process and judicial safeguards under international human rights law, and that the military is not able to satisfy these conditions. Further, the designation framework under chapter 3 of the rules does not establish any standard of proof required for the Working Committee to justify its proposal for designation to the Central Committee, or for the Central Committee to make the designation. Under rule 11, the Central Committee may simply proceed to make the declaration if “it has been verified and it is found according to the information and evidence obtained that acts of terrorism were committed”.

In addition, the rules are silent on any clear obligation to provide timely or direct notification to the affected individual or entity, merely providing that the Central Committee’s designation is made “by notification”. While rule 14(b) provides for the possibility to challenge the designation, the request is to be examined by the same

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<sup>2</sup> [Myanmar: Bachelet condemns executions, calls for release of all political prisoners | OHCHR](#), 25 July 2022; [Myanmar: UN Human Rights Chief alarmed at death sentences by secretive military courts | OHCHR](#), 2 December 2022.

Committee who made the designation, calling into question the availability of an effective remedy as required under article 8 of the Universal Declaration of Human Rights and treaty law.

The rules also fall short of international standards in so far as they do not require that listed persons or entities be informed of their right to challenge the designation; provide for legal representation or legal aid in the review processes; provide for a right to appeal a decision to refuse revoking the designation; guarantee adequate disclosure of evidence, including where classified evidence is involved; ensure that listings expire after 12 months unless renewed; or provide for compensation for wrongful listings. These procedural shortcomings are all the more worrying given that the designation is based on a vague and overbroad definition of terrorism that is open to arbitrary application and abuse, as discussed above.

*Right to a fair trial and due process*

We are alarmed that journalists appear to be tried by military courts or special courts controlled by the military, behind closed doors and without effective legal representation or other judicial safeguards. While international law does not prohibit the creation of military or special courts, trials in such courts must fully conform with guarantees of fair trial and due process, which include the right to a fair and public hearing by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and under international humanitarian law.

The lack of effective due process and fair trial guarantees in practice is especially alarming in view of the harsh penalties imposed on some journalists and the provision of the death penalty for certain offences under the Counter-Terrorism Law (section 49). We share the view of the Special Rapporteur on extrajudicial, summary or arbitrary executions that where fair trial rights cannot be guaranteed, an immediate moratorium on the application of the death penalty for all offences should be adopted (A/HRC/14/24, para. 51(a)), as a step toward its eventual abolition.

*Arbitrary detention, acts tantamount to enforced disappearances, torture and other ill-treatment and inhumane detention conditions, and deaths in custody*

We express grave concern at the allegations of arbitrary arrest and detention of journalists, dissidents and other members of civil society, including arrest without charge, as well as the abuse of counter-terrorism and other criminal charges, and the lack of effective judicial supervision of detention.

We are also deeply concerned about the allegations that some detainees' fate and whereabouts were unknown from the moment of detention to the moment where they were allowed access to a lawyer and contact with their family members, resulting in acts tantamount to enforced disappearances.

We express further serious concern at allegations of torture and other forms of cruel, inhuman or degrading treatment reportedly inflicted on individuals detained by the military. Such allegations are corroborated by the 2024 report of the United Nations High Commissioner for Human Rights, which observed the pervasive nature of torture and ill-treatment during military custody and interrogations, including both physical

and psychological abuse inflicted to obtain information or as punishment (A/HRC/57/56, paras. 30-34). We emphasize that the prohibition on torture and other cruel, inhuman or degrading treatment or punishment is absolute and non-derogable under treaty and customary international law.

Allegations of torture and ill-treatment must be independently investigated, prosecuted in regular, independent courts affording a fair trial, and effective remedies must be provided to victims, in line with international human rights and humanitarian law as set out in the Annex to this letter. Because the military is presently not capable of fulfilling these requirements, we reiterate the call by numerous United Nations human rights mechanisms for international accountability for grave human rights violations, including war crimes, crimes against humanity, and genocide, and for the military to cooperate with relevant international actors.

We note with concern the reports of poor detention conditions, including lack of adequate food and housing, and in particular the reported deaths in custody due to the denial of medical care. We recall that all persons deprived of their liberty have the right to be treated “with the respect due to their inherent dignity and value as human beings” (rule 1, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)). Additionally, the absolute and non-derogable prohibition of arbitrary deprivation of life implies a positive obligation to investigate every death in custody to determine the circumstances and cause of death, and whether it resulted from an unlawful act.

Finally, we call on the military to immediately cease any further violations of international law, including international humanitarian law and human rights law.

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, please provide 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 a list of all journalists currently deprived of their liberty and their respective places of detention.
3. Please provide information on the measures taken to prevent acts tantamount to enforced disappearances.
4. Please indicate what steps will be taken to end the unlawful and arbitrary arrest, detention and prosecution of journalists and media workers for legitimate reporting activities and violations of their right to freedom of expression and opinion, which includes the right to seek, receive and impart critical information and ideas.

5. Please detail what measures are being taken to ensure that citizens, including journalists and media workers, are able to exercise their right to freedom of expression in a safe and enabling environment without fear of harassment, criminalization or acts of intimidation of any kind in retaliation for expressing views critical of the military.
6. Please provide detailed information about the operation of military tribunals and special courts in prison. Please indicate what steps will be taken to end prosecutions before such courts to prevent further violations of the right to fair trial and humanitarian law.
7. Please explain what steps will be taken to ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference.
8. Please detail what steps will be taken to cease the application of the 2014 Counter-Terrorism Law, as unlawfully amended in 2021 and 2023. Please explain what steps will be taken to end the terrorist listing of individuals or entities.
9. Please detail what steps will be taken to end unlawful surveillance and respect the right to privacy.
10. Please indicate what steps the military is taking to immediately end all violations of international human rights law and humanitarian law addressed in this letter.
11. Please explain whether the military will cooperate with international mechanisms to facilitate the independent and impartial investigation of violations, to bring perpetrators to justice, and to provide effective remedies and reparation to victims.
12. Please provide information concerning investigations and related prosecutions for aforementioned allegations of torture and other ill-treatment, and the outcome of any such investigations and/or prosecutions.
13. Please provide information on measures taken to ensure that all deaths in custody are promptly, effectively, and impartially investigated in accordance with international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), and where possible, to allow independent international monitoring bodies to conduct or observe such investigations, with a view to ensuring accountability and prosecuting those responsible for deaths resulting from unlawful acts.

This communication and any response received from you 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.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and personal integrity of all the journalists currently detained and their families, to halt the alleged violations and to 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 urge you to take all necessary interim measures to prevent further reprisals or harm against journalists, media workers and their families, ensuring full respect for the rights to freedom of expression and opinion and due process.

We would also like to inform you that, given the allegations of acts tantamount to enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit those cases not already transmitted through its humanitarian procedure. We urge you to respond separately to the present communication and to the humanitarian procedures.

Please accept the assurances of our highest consideration.

Ben Saul

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

Gabriella Citroni

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan

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

Gina Romero

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

Ana Brian Nougrères

Special Rapporteur on the right to privacy

Alice Jill Edwards

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

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

## Annex

### Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to the relevant international norms and standards, including customary international law as reflected in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights, as well as authoritative guidance on their interpretation.

#### *Respect for human rights while countering terrorism*

Many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirm that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.<sup>3</sup> Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. The adoption and application of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society.

Although no universal treaty generally defines “terrorism”, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,<sup>4</sup> the General Assembly’s Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004).<sup>5</sup> Based on these authoritative sources, the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides clear “best practice” guidance by identifying conduct that is genuinely terrorist in nature and precisely defining the elements (A/HRC/16/51, para. 28).

Under article 11(2) of the Universal Declaration of Human Rights and article 15(1) of the ICCPR, the principle of legality requires that criminal laws be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. This principle seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse to target civil society on political or other unjustified grounds ([A/70/371](#), para. 46(b)).

In addition, measures to combat terrorism and preserve national security must comply with obligations under international law and must not hinder the work and

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<sup>3</sup> 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); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others.

<sup>4</sup> See [https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml](https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml).

<sup>5</sup> A/RES/49/49, annex, para. 3.

safety of individuals, groups and organs of society engaged in promoting and defending human rights.<sup>6</sup> As stated by the Special Rapporteur on the situation of human rights defenders, counter-terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights protected under international law, including to freedom of expression, peaceful assembly and association. These rights enjoy international legal protection and non-violent criticism of the State or its institutions cannot be made a criminal offence in any society governed by the rule of law and abiding by human rights principles and obligations. Countering terrorism should not be used as an excuse to suppress peaceful critics.<sup>7</sup> In addition, any restriction on expression or information that are invoked on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (Human Rights Committee, general comment No. 34).

### *Designation of terrorist individuals or organizations*

The designation of “terrorist” individuals or organizations must meet the requirements of due process and judicial protection under international human rights law, as set out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Specifically: (a) there must be reasonable grounds to believe that the person or entity has knowingly engaged in terrorism, as properly defined according to international standards, including the requirement of legality; (b) the listed person or entity must be promptly informed of the listing and its factual grounds, the consequences of such listing and the applicable procedural rights; (c) there must be a right to apply for de-listing and to have it reviewed within a reasonable time, and a right to judicial review of any resulting decision, in both cases affording due process, including sufficient disclosure of evidence and access to a lawyer; (d) the listed individual or entity must be afforded the right to make a fresh application for de-listing or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing; (e) listings must lapse automatically after 12 months unless renewed afresh; and (f) reparation, including compensation, must be available for any wrongful listing (A/HRC/16/51, para. 35).

### *Right to life*

Article 3 of the Universal Declaration of Human Rights and article 6 of the ICCPR enshrine the right to life and security of the person. Loss of life occurring in custody creates a presumption of arbitrary deprivation of life, which can only be rebutted on the basis of a proper investigation which establishes the authorities’ compliance with international law. Investigations and prosecutions of potentially unlawful deprivations of life should be independent, impartial, prompt, thorough, effective, credible and transparent and undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death. Investigations must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. In the event that a violation is found, full reparation must be provided, including, in view of the particular

<sup>6</sup> See [A/HRC/RES/22/6](#), para. 10(a); A/70/371, para 46(c).

<sup>7</sup> A/HRC/RES/25/18.

circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction (Human Rights Committee, general comment No. 36). The death penalty should be abolished.

*Absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment*

The absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law; it has been codified in various human rights treaties, including in article 5 of the Universal Declaration of Human Rights, article 7 of the ICCPR, and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification for torture (article 2(2), CAT). No order by a superior officer or public authority may be invoked to justify torture (article 2(3), CAT).

Attached to such prohibition are obligations to criminalize and investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute suspects, to punish those responsible and to provide remedies to victims (articles 4, 5, 12 and 13, CAT).<sup>8</sup>

*Prohibition of arbitrary detentions*

Article 9 of the Universal Declaration of Human Rights and article 9 of the ICCPR, reflecting customary international law, provide that no one shall be subjected to arbitrary arrest, detention or exile. Article 9 of the ICCPR enshrines the right to liberty and security of person and provides that “no one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law.” The prohibition of arbitrary detention is part and parcel of customary law that bears an absolute character and is in fact a peremptory norm (*jus cogens*) of international law and therefore binding upon all States, irrespective of their treaty obligations (A/HRC/30/37, para. 11; A/HRC/22/44, paras. 37-75).

In addition, under article 9(2) of the ICCPR, anyone arrested must be informed of the reasons for the arrest at the time of the arrest, and of the charges against them promptly.

Article 9(3) of the ICCPR specifically requires that anyone arrested or detained on a criminal charge “be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” As noted by the Human Rights Committee, “[i]t is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with” and consequently, “a public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3” (general comment No. 35, para. 32). Article 9(3) further provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”. In this regard, the Human Rights Committee has noted that “[d]etention pending trial must

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<sup>8</sup> See A/HRC/52/30 for further explanations.

be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime” (para. 38).

Article 9(4) of the ICCPR guarantees the right to take proceedings before a court, in order for that court to decide without delay on the lawfulness of the detention and order the person’s release if the detention is not lawful. Access to a lawyer, including immediately after arrest, is an essential safeguard of the right to challenge the legal basis of one’s detention. As highlighted by the Human Rights Committee, where legislation provides for proceedings before a specialized tribunal, such tribunal “must be established by law and must either be independent of the executive and legislative branches or enjoy judicial independence in deciding legal matters in proceedings that are judicial in nature” (para. 45).

Furthermore, in accordance with the jurisprudence of the Working Group on Arbitrary Detention and general comment No. 35, arrest or detention of an individual as punishment for the legitimate exercise of protected rights, including freedom of expression and opinion, freedom of peaceful assembly and freedom of association, is arbitrary.

#### *Right to a fair trial and due process*

Article 10 of the Universal Declaration of Human Rights and article 14 of the ICCPR protect the right to a fair and public hearing by an independent and impartial tribunal. In its general comment No. 32, the Human Rights Committee stated that “[t]he requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception” and refers to, *inter alia*, “the actual independence of the judiciary from interference by the executive and legislative branches” (para. 19).

The right to a fair trial and due process enshrined in article 14 of the ICCPR includes the right of everyone charged with a criminal offence to “have adequate time and facilities for the preparation of [their] defence and to communicate with counsel of [their] own choosing”. In its general comment No. 32, the Human Rights Committee noted that “[t]he right to communicate with counsel requires that the accused is granted prompt access to counsel” (para. 34). In that regard, principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court provide that the right to legal assistance is applicable at any time during the detention, including immediately after apprehension. All persons apprehended must be promptly advised of this right and access to legal counsel must be provided without delay. The right to legal assistance at all times is inherent to the right to liberty and security of the person and to the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, enshrined in articles 3, 9, 10 and 11(1) of the Universal Declaration of Human Rights. In accordance with the Basic Principles on the Role of Lawyers, lawyer must be able “to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and should “not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics” (para. 16).

In addition, the Human Rights Committee has noted that the right to “adequate time and facilities” under article 14 of the ICCPR “must include access to documents and other evidence”, including all inculpatory and exculpatory materials that the prosecution plans to offer in court (para. 33). In that regard, guideline 5 of the United Nations Basic Principles and Guidelines provide that “[t]he factual and legal basis for the detention shall be disclosed to the detainee and/or his or her representative without delay so as to provide adequate time to prepare the challenge. Disclosure includes a copy of the detention order, access to and a copy of the case file, in addition to the disclosure of any material in the possession of the authorities or to which they may gain access relating to the reasons for the deprivation of liberty.”

The provisions of article 14 apply to all courts and tribunals whether ordinary or specialized, civilian or military and trials of civilians in military or special courts must fully conform with the requirements of article 14 (general comment No. 32, para. 22). The Human Rights Committee has raised concern that trials of civilians before such courts may not comply with the equitable, impartial and independent administration of justice and should therefore be exceptional, limited to cases where it can be shown that “resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials” (para. 22).

Article 14(3) of the ICCPR guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard necessarily implies that no evidence obtained under duress or in violation of article 7 of the ICCPR may be used at trial (paras. 41 and 60).

Finally, in relation to the application of the death penalty, the Human Rights Committee has affirmed that: “In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant)” (para. 59).

#### *Right to freedom of expression and opinion*

Article 19 of the Universal Declaration of Human Rights and article 19 of the ICCPR guarantee the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline and protects the freedom of the press as one of its core elements. It includes not only the exchange of information that is favourable, but also that which may criticize, shock or offend. Any restriction to the right to freedom of expression must be “provided by law” and meet the criteria established by international human rights standards. Under these standards, limitations must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

In general comment No. 34, the Human Rights Committee emphasized the obligation to guarantee the right to freedom of expression, including “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (para. 11). The Committee also underscored the obligation to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23).

Further, Human Rights Council resolution 12/16 called for refraining from imposing restrictions that are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

### *Rights to freedom of peaceful assembly and freedom of association*

Article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the ICCPR guarantee the rights to freedom of peaceful assembly and of association. In its resolution 24/5, the Human Rights Council recalled the obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline (A/HRC/26/29, para. 22).

Article 21 of the ICCPR specifically provides that “[n]o restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” In its general comment No. 37, the Human Rights Committee noted that “the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants” (para. 8). The Committee further emphasized that while the right to freedom of peaceful assembly may in some cases be restricted under the conditions listed in article 21, “[r]estrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government” (para. 49).

Article 22 of the ICCPR guarantees the right to freedom of association, including the rights of everyone to associate with others and to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. It can only be limited through necessary and proportionate restrictions that serve a legitimate public purpose that is consistent with international standards.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that access to justice is an integral element of the protection of the rights to freedom of peaceful assembly and of association, and obstructed justice for violations related to the exercise of these rights undermines their essence

(A/HRC/47/24, paras 22 and 72). Further, the Special Rapporteur in his report on advancing accountability and ending impunity, found that broad and ambiguous security-related legislation have been misused and instrumentalized as tools to suppress and crack down on activists and protesters, and legitimize abuses (A/HRC/53/38, para. 18). The rights to peaceful assembly and association entail both a negative obligation to refrain from undue interference with these rights and a positive obligation to ensure their facilitation and protection, in accordance with international human rights standards (A/HRC/17/27, para. 66, and A/HRC/29/25/Add.1).

### *Conditions of detention*

The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. Paragraphs 12, 13, 15, 16 and 17 of the General Assembly resolution 77/209 (2022) emphasize that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and call for addressing and preventing detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment. The United Nations Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and referred to as the “Nelson Mandela Rules”) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly on 9 December 1988, set out the international standards regarding detention conditions, including access to adequate food (rule 22, Nelson Mandela Rules), medical care (rule 24), and contacts with the outside world (rule 58). Also relevant is article 10 of the ICCPR, requiring that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

### *Sexual and gender-based violence*

The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, recalls that non-State actors, including parties to an armed conflict or armed groups with identifiable political structure exercising significant control over territory and population, are bound by international humanitarian law (CEDAW/C/GC/30). The Committee also clarified that while non-State actors are not parties to Conventions, they are obliged to respect international human rights and that gross violations of human rights and serious violations of humanitarian law could entail individual criminal responsibility.

Furthermore, the Special Rapporteur on violence against women and girls, its causes and consequences, in her report on combating violence against women journalists (A/HRC/44/52), noted that “beyond the threat of ill-treatment and even torture, many women journalists in detention also face threats of rape and sexual violence” (para. 28). She further found that many women journalists are “being held in appalling conditions,” and “[o]f those detained, many have faced sexual harassment and threats of rape during police interrogation, while those enduring detention under conservative regimes have been rejected by family and friends who believe they were raped in prison” (ibid.). In that regard, the Special Rapporteur called for the combatting of impunity for violations against women journalists, including by “prohibit[ing] and

criminaliz[ing] sexual harassment and other forms of gender-based violence against women journalists, including threats of rape and other forms of gender-based violence ... , encourag[ing] reporting of harassment or violence, remov[ing] [of] any statute of limitation for prosecution and provid[ing] adequate reparations and compensation for victims” (para. 93 (d)).

### *Right to privacy*

Article 12 of the Universal Declaration of Human Rights and article 17 of the ICCPR prohibit arbitrary interferences with individuals’ privacy, family, home or correspondence. In particular, article 17 of the ICCPR provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”, and that “[e]veryone has the right to the protection of the law against such interference or attacks”.

In general comment No. 16, the Human Rights Committee noted that “[s]urveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited” (para. 8). The right to privacy is not absolute and an individual under suspicion and subject to formal investigation may be subjected to surveillance for legitimate counter-terrorism and law enforcement purposes (A/HRC/13/37, para. 13). However, any limitations to the right to privacy enshrined in article 17 “must be provided for by law, and the law must be sufficiently accessible, clear and precise so that an individual may look to the law and ascertain who is authorized to conduct surveillance and under what circumstances. The limitation must be necessary for reaching a legitimate aim, as well as in proportion to the aim and the least intrusive option available” (A/HRC/27/37, para. 23). As noted by the Human Rights Committee, surveillance measures and interception of personal communications must be accompanied by robust, independent oversight systems, including the involvement of the judiciary in the authorization of such measures, the availability of effective remedies in cases of abuse, and the notification *ex post facto* that the person was placed under surveillance (CCPR/C/ITA/CO/6, para. 37).

### *Absolute prohibition of enforced disappearances and acts tantamount to enforced disappearances*

The prohibition of enforced disappearances is a peremptory norm of *jus cogens*, which establishes obligations applicable *erga omnes*.

Under international law, a deprivation of liberty (including in the form of incommunicado detention), followed by the failure or refusal to acknowledge a deprivation of liberty or the concealment of the fate or whereabouts of the person, are constitutive elements of an enforced disappearance, regardless of the duration of the said deprivation of liberty or concealment. The joint statement of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances on so-called “short-term” enforced disappearances states that duration is not a constitutive element of enforced disappearance under international human rights law. Enforced disappearance produces serious harm and consequences for the

disappeared and their families, and also presents practical challenges as regards seeking protection as well as defence of their rights.

The non-derogable prohibition of enforced disappearance is enshrined in articles 2 and 7 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 on 18 December 1992. The Declaration sets forth States' obligations to prevent and eradicate this practice. In particular, articles 2 and 3 provide that no State shall practice, permit or tolerate enforced disappearances and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In its jurisprudence, the Working Group on Arbitrary Detention has reiterated that enforced disappearances constitute an aggravated form of arbitrary detention.

Furthermore, articles 9-13 of the Declaration spell out the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to ensure that all involved in the investigations are protected against ill-treatment, intimidation or reprisal. Article 14 further establishes that any lawful and appropriate action must be taken to bring to justice persons presumed to be responsible for acts of enforced disappearance.

Furthermore, article 19 of the Declaration establishes that victims or family relatives have the right to obtain redress, including adequate compensation. In its general comment No. 36 on article 6 of the ICCPR, the Human Rights Committee observed that extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life (para. 57). It emphasized the obligation to take adequate measures to prevent the enforced disappearance of individuals and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance (para. 58).

The Working Group's study on Enforced disappearance and economic, social and cultural rights (A/HRC/30/38/Add.5), in particular paragraphs 33-37, highlights the chilling effect of the disappearance of journalists and human rights defenders. Accordingly, it is necessary to "ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defender" (para. 49). The Working Group's study on new technologies and enforced disappearances raises concern with regards to targeted and mass surveillance to suppress dissent and target human rights defenders (A/HRC/54/22/Add.5, para. 57). The report of the Working Group on Enforced and Involuntary Disappearances on Standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3) and the

2019 Guiding Principles for the Search for Disappeared Persons provide further guidance.

### *Rights of children*

In relation to the allegations of detention of journalists' children and of youth being routinely subjected to arbitrary searches, detention, torture and even executions for possessing digital content related to protests or criticism of the military, the rights of children must be respected under the Convention on the Rights of the Child, ratified by Myanmar on 15 July 1991, particularly articles 2, 6, 13, 15, 16 and 37. In accordance with article 2(2), children must be "protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of [their] parents, legal guardians or family members".

### *Human Rights Defenders*

Articles 1 and 2 of 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, protect the right of everyone to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and impose a responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Also relevant are the following provisions of the Declaration:

- article 6(a) provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6(b)-(c) provide 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(1) provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and
- article 12(2)-(3) provide that all necessary measures should be taken 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.