

Statement on the situation of lawyers in Myanmar

17 March 2021

Lawyers for Lawyers is deeply concerned about the current situation in Myanmar, including the situation of lawyers.

According to our information, following the military coup in Myanmar on 1 February 2021, more than 2,100¹ people have been arbitrarily arrested, charged or sentenced in relation to the coup, and grave, systematic human rights violations are occurring on a broad scale. The Special Rapporteur on the situation of human rights in Myanmar reported that many lawyers are amongst those arbitrarily detained.² It has been further reported that some lawyers have gone into hiding to avoid being arbitrarily arrested.

We highlight the following cases, without prejudice to any other cases about which we have not yet received information:

- On 1 February 2021, U Nyan Win, lawyer for Aung San Suu Kyi, was detained.
- On the night of 10 February 2021, U Kyaw Hoe, member of the Legal Aid Committee for Yangon Region was detained.
- On 11 February 21, U Myi Aung, a lawyer detained in Myawaddy, Karen State, was detained.
- On or about 6 March, it was reported that an warrant issued for Mandalay lawyer U Tun Kyi, after he publicly stated that the military coup is illegal.³
- It has been reported that lawyer Khin Maung Zaw, who has been tasked with defending Aung San Suu Kyi, needs to stay in different lodgings each night to avoid arbitrary arrest. We also understand that he has not been given proper access to his client, and that the junta is permitting only two junior lawyers to represent Aung San Suu Kyi.⁴
- It has been reported that lawyer Robert Sann Aung went into hiding on 7 March 2021, after he spoke out against the unlawful coup. Junta leaders have reportedly charged Robert Sann Aung with treason.⁵ On 9 March it was reported that during a raid on his home his daughter and brother-in-law were taken into custody, and their whereabouts are unknown.⁶

¹ See daily updates by the Assistance Association of Political Prisoners in Burma (AAPPB), "Daily Briefing, Detention and Fatality Lists in Relation to Military Coup," 15 March 2021, available at <https://aappb.org/> (scroll down for daily update).

² Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, A/HRC/46/56, 4 March 2021, available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf.

³ Myanmar arrest warrant issued for Mandalay lawyer who condemned military coup as illegal, Jurist, 5 March 2021, available at: <https://www.jurist.org/news/2021/03/myanmar-arrest-warrant-issued-for-mandalay-lawyer-who-condemned-military-coup-as-illegal/>.

⁴ Reuters staff, "Myanmar court adjourns Suu Kyi hearing over internet issues: lawyer," Reuters, 15 March 2021, available at: <https://www.reuters.com/article/us-myanmar-politics-suukyi/myanmar-court-adjourns-suu-kyi-hearing-over-internet-issues-lawyer-idUSKBN2B70QO>.

⁵ IAPL Monitoring Committee on Attacks on Lawyers, "Rights lawyer Robert Sann Aung charged with treason, in hiding," 8 March 2021, available at: <https://defendlawyers.wordpress.com/2021/03/09/burma-rights-lawyer-robert-sann-aung-charged-with-treason-in-hiding/>.

⁶ Martin Ennals Foundation, Tweet dated 9 March 2021, available at: <https://twitter.com/martinennals/status/1369263727191658497>.

– On 11 March, U Lwin Aung, a lawyer, was arrested for protesting against the military coup.⁷

We are alarmed about reports of ongoing intimidation and harassment of lawyers,⁸ as well as reports that lawyers are being prevented from providing legal assistance to detained protesters and journalists.⁹ Lawyers play a vital role in the protection of the rule of law and human rights. It is the responsibility of lawyers to protect and establish the rights of citizens from whatever quarter they may be threatened. Their work is indispensable for ensuring the right of effective access to justice for all.

The intimidation and harassment of lawyers, and preventing them from providing legal assistance, deprive the citizens of Myanmar of the right of access to justice, violate international fair trial guarantees - including the right to have legal representation of one's own choosing - and breach the principle of independence of the legal profession.

Myanmar, as a member of the UN, is legally bound by the *Charter of the United Nations* (UN Charter)¹⁰ to cooperate in the promotion of respect for universal human rights. The *Universal Declaration on Human Rights* (UDHR)¹¹ guarantees that everyone charged with a criminal offence has the right to “a fair and public hearing by an independent and impartial tribunal,” and “the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” These guarantees necessarily include the right to a lawyer of their own choosing.

The UN *Basic Principles on the Role of Lawyers*, which were welcomed by consensus of all States of the General Assembly,¹² elaborates these fundamental principles of international law. Articles 1, 16, 17 and 23, state that:

1. *All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.*
16. *... lawyers (a) [shall be enabled]... to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (...) and (c) shall 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.*
17. *Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.*
23. *Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters*

⁷ Assistance Association for Political Prisoners, “Arrests,” 15 March 2021, available at: <https://aappb.org/wp-content/uploads/2021/03/Recent-Arrest-List-Last-Updated-on-15-March-2021ttt.pdf>

⁸ Eleven Myanmar has been reported that at least 40 Mandalay lawyers have been charged under Section 505 (b) of the penal code. See “Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions,” Malaysia Star, 16 February 2021, available at: <https://www.thestar.com.my/aseanplus/aseanplus-news/2021/02/16/over-40-mandalay-lawyers-face-lawsuits-for-joining-myanmar-protests>.

⁹ E.g. See Video: Lawyer of arrested AP journalist in Myanmar cannot enter Court, Daily Mail, 12 March 2021, available at: <https://www.dailymail.co.uk/video/news/video-2374234/Video-Lawyer-arrested-AP-journalist-Myanmar-enter-Court.html>

¹⁰ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Articles 55, 56, available at: <https://www.un.org/en/sections/un-charter/un-charter-full-text/>.

¹¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 10, 11, available at: <https://www.un.org/en/universal-declaration-human-rights/>.

¹² The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

In view of the above, and Myanmar's international human rights obligations under customary international law and the *Universal Declaration of Human Rights*, Lawyers for Lawyers urge immediate steps to ensure Myanmar's compliance with international law and standards, including the immediate release of all arbitrarily detained persons. In particularly, we urge:

- I. The immediate release of lawyers U Nyan Win, U Kyaw Hoe U Nyan Win, U Kyaw Hoe, U Myi Aung, and the family members of lawyer Robert Sann Aung;
- II. Pending such release, immediately disclosure of the whereabouts of these persons and grant access to their legal representatives and family members, as well as comply with international standards on conditions of detention;
- III. Withdrawal of all charges against lawyers in Myanmar, unless credible evidence of internationally cognizable offences is presented in proceedings that respect fair trial guarantees in accordance with international law and standards;
- IV. Compliance with fair trial guarantees for those currently arrested and in detention, including the right to have access to legal representation of one's own choosing; and
- V. Guarantees that all lawyers in Myanmar can carry out their legitimate professional activities without intimidation, harassment, improper interference or reprisals.