



Law Society
of Ontario

Barreau
de l'Ontario

Tab 5

HUMAN RIGHTS MONITORING GROUP

Letter of Intervention on Behalf of Thein Hlaing Tun and Ayeyar Lin Htut

June 23, 2021

Committee Members:

Julian Falconer (Co-Chair)

Tanya Walker (Co-Chair)

Paul Cooper

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FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION

That Convocation approve the letter and public statement in the following case:

Thein Hlaing Tun and Ayeyar Lin Htut – Myanmar – letter of intervention and public statement presented at TAB 5.1

Rationale

The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,

- a. review information that comes to its attention about human rights violations that target members of the professions and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- b. determine if the matter is one that requires a response from the Law Society; and
- c. prepare a response for review and approval by Convocation.

Key Issues and Considerations

The Monitoring Group considered the following factors when making a decision about the case:

- a. there are no concerns about the quality of sources used for this report; and
- b. the letter and public statement regarding the arrests of lawyers Thein Hlaing Tun and Ayeyar Lin Htut fall within the mandate of the Monitoring Group.

KEY BACKGROUND

MYANMAR – ARRESTS OF THEIN HLAING TUN AND AYEYAR LIN HTUT

Sources of Information

The background information for this report was retrieved from the following sources:

- a. Human Rights Watch^{1, 2, 3}
- b. Assistance Association for Political Prisoners^{4, 5}
- c. United Nations Human Rights Council⁶
- d. Eleven News⁷
- e. International Association of People's Lawyers⁸
- f. New York Times⁹

Background

On February 1, 2021, the Myanmar military arrested the elected civilian leaders of the national and state governments and announced the start of year-long state of emergency. The state of emergency is intended to be in place until a new round of elections could be held. The military arrested leader Aung San Suu Kyi, President Win Myint, and several dozen other senior officials in early morning raids in the capital, Naypyidaw. The officials were in Naypyidaw for the lower house of parliament to convene after the November 2020 national elections, which were won decisively by the National League for Democracy (NLD). The military also detained NLD officials and civil society activists in other parts of Myanmar, and cut telecommunications and the internet so that citizens and journalists within the country could not publicly report on the military's actions.

¹ Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

² Human Rights Watch. "Myanmar: End Crackdown on Media, Communications" Press release. February 5, 2021. Online: [Myanmar: End Crackdown on Media, Communications | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/05/myanmar-end-crackdown-on-media-communications)

³ Human Rights Watch. "Myanmar: Post-Coup Legal Changes Erode Human Rights". Press release. March 2, 2021. Online: [Myanmar: Post-Coup Legal Changes Erode Human Rights | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights)

⁴ Assistance Association for Political Prisoners. "Daily Briefing in Relation to the Military Coup". May 29, 2021. Online: [AAPP | Assistance Association for Political Prisoners » Blog Archive » Daily Briefing in Relation to the Military Coup \(aappb.org\)](https://www.aappb.org/daily-briefing-in-relation-to-the-military-coup)

⁵ Assistance Association for Political Prisoners. "Daily Briefing in Relation to the Military Coup". June 3, 2021. Online: [AAPP | Assistance Association for Political Prisoners » Blog Archive » Daily Briefing in Relation to the Military Coup \(aappb.org\)](https://www.aappb.org/daily-briefing-in-relation-to-the-military-coup)

⁶ Andrews, Thomas H. "Report of the Special Rapporteur on the situation of human rights in Myanmar". United Nations Human Rights Council. March 4, 2021. Online: [Report of the Special Rapporteur on the situation of human rights in Myanmar \(ohchr.org\)](https://www.ohchr.org/en/hrbodies/hrc/special-reports/sr-situations/situation-of-human-rights-in-myanmar)

⁷ Nay Yaing and Aung Min Thein. "Lawyer for Dr. Myo Aung arrested after Nay Pyi Taw court proceedings" Eleven News. May 25, 2021. Online: [Lawyer for Dr Myo Aung arrested after Nay Pyi Taw court proceedings | Eleven Media Group Co., Ltd \(elevenmyanmar.com\)](https://www.elevenmyanmar.com/news/lawyer-for-dr-myio-aung-arrested-after-nay-pyi-taw-court-proceedings)

⁸ International Association of People's Lawyers. "Burma: Lawyer U Thein Hlaing Tun arrested". May 25, 2021. Online: [Burma: Lawyer U Thein Hlaing Tun arrested | IAPL Monitoring Committee on Attacks on Lawyers \(wordpress.com\)](https://www.iapl.org/burma-lawyer-u-thein-hlaing-tun-arrested)

⁹ Hannah Beech. "Aung San Suu Kyi Makes First Court Appearance Since Coup". New York Times. May 25, 2021. Online: [Aung San Suu Kyi Makes First Court Appearance Since Coup - The New York Times \(nytimes.com\)](https://www.nytimes.com/2021/05/25/asia/aung-san-suu-kyi-court-appearance.html)

Additionally, the military's commander-in-chief Senior General Min Aung Hlaing has been credibly implicated in crimes against humanity on several occasions, most recently for his role in the military's actions against Rohingya Muslims in 2017. Similar reports have also been made regarding several other members of the military-installed government.

According to the International Commission of Jurists, since the February 1 coup the military has made changes to several laws that have eliminated many human rights for citizens. For example, laws against arbitrary detention have been suspended and the penal code has been amended to create the offence of speaking critically of the military.

Current Status

Since the February 1 coup by the military, Myanmar citizens have been protesting in increasingly large numbers. Unfortunately, the arrest, detention, and death numbers continue to steadily grow as well, according to reports by the Assistance Association for Political Prisoners. As of June 17, 2021, 6134 people have been arrested, charged, or sentenced; 4962 continue to be detained; and 865 people have been killed.

The targeting of lawyers, along with civil servants, doctors, and healthcare workers, has been documented by the United Nations (UN). In the past week, the junta has begun to arrest lawyers for defending their clients in court. On May 24, lawyer Thein Hlaing Tum was arrested while exiting the courthouse after representing his client Dr. Myo Aung, the elected chairman of the Nay Pyi Taw regional council, in a proceeding. Dr. Myo Aung was one of several politicians who were arrested by the junta on Feb 1. On May 27, lawyer Ayeyar Lin Htut was arrested at the Hinthada District Court. In both cases the lawyers were charged under section 505 of the penal code, one of the new sections added by the junta. This section of the code makes it an offense to cause fear, spread false news or agitate crimes against the junta. This includes making statements that call the junta, or the coup that led to the junta seizing power, illegitimate. No further details on either case, including possible court dates, or details of the alleged offenses have been released.

Human rights activists see these actions as part of the junta's increasingly intolerant stance against dissent. While the junta has begun to take action against lawyers defending clients arrested by the junta, a report from the New York Times indicates that junta-installed election officials are investigating the National League for Democracy with the goal of dissolving the party.

The LSO has sent intervention letters to Myanmar on seven separate occasions, most recently in March 2021 when reports began surfacing of the junta deliberately targeting lawyers for arrest. This intervention can be found at **Tab 5.2**.

June 23, 2021

General Min Aung Hlaing
Chairman, State Administrative Council
Naypyiddaw
Myanmar

c/o Ambassador U Kyaw Myo Htut
Embassy of the Republic of the Union of Myanmar
336 Island Park Dr.
Ottawa, ON
Canada, K1Y 0A7

General Min Aung Hlaing:

Re: Arrest and detention of lawyers Thein Hlaing Tun and Ayeyar Lin Htut in Myanmar

I write on behalf of the Law Society of Ontario to voice our grave concern over the recent reports regarding the arrest and detention of lawyers Thein Hlaing Tun and Ayeyar Lin Htut. When reports of serious issues of injustice to legal professionals and the judiciary come to our attention, we speak out.

The Law Society of Ontario continues to be deeply troubled by the numerous reports regarding the arrest and detention of lawyers and law students that have taken place since the military junta overrode the November 2020 election results and assumed power following a widely reported coup on February 1, 2021. Ever since the Myanmar military illegally seized power from all three branches of government, there have been protests and unrest throughout the country. In response, the military junta has reacted with violence against Myanmar citizens, resulting in the deaths of 845 people. Over 4500 people continue to be detained.

In our previous letter, dated March 18, 2021, we referenced several troubling legislative changes made by the junta that violate the United Nations' *Universal Declaration of Human Rights*. It now appears those amendments are being used to target lawyers and prevent them from defending their clients. On May 24, lawyer Thein Hlaing Tun was arrested while exiting the courthouse after representing his client Dr. Myo Aung, the chairman of the Nay Pyi Taw council, in a proceeding. On May 27, lawyer Ayeyar Lin Htut was arrested at the Hinthada District Court. In both cases the lawyers were charged under section 505 of the penal code, one of the new sections added by the junta. This section of the code makes it an offense to speak out against the junta, or call the coup that led to the junta seizing power illegitimate. By directly targeting lawyers, and arresting them immediately after representing their clients in court, the junta is making a direct attack on rule of law and violating several United Nations articles on the role of lawyers.

In light of these circumstances, the Law Society urges you to demand that the military junta comply with Myanmar's obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 16 of *The Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; 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.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Article 20 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Furthermore, Article 23 states:

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 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.

The Law Society urges Myanmar's military junta to:

- a. immediately and unconditionally release Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;
- b. immediately and unconditionally withdraw all charges against Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;
- c. put an end to all acts of harassment against all lawyers, paralegals, judges, law students and human rights defenders in Myanmar;
- d. ensure that all lawyers, paralegals, judges, law students and human rights defenders in Myanmar can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Teresa Donnelly
Treasurer

**The Law Society of Ontario is the governing body for more than 55,000 lawyers and 9,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest, and the Law Society has a duty to advance the cause of justice and the rule of law.

cc:

The Honourable Marc Garneau, Minister of Foreign Affairs

The Honourable Bob Rae, Canadian Ambassador to the United Nations

Ketty Nivyabandi, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Sophie de Graaf, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Mary Lawlor, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

Public Statement on Myanmar

The Law Society of Ontario calls for the immediate release of lawyers Thein Hlaing Tun and Ayeyar Lin Htut

Toronto, ON — The Law Society of Ontario is calling for the immediate release of lawyers Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021. When reports of serious issues of injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society of Ontario continues to be deeply troubled by the numerous reports regarding the arrest and detention of lawyers and law students that have taken place since the military junta overrode the November 2020 election results and assumed power following a widely reported coup on February 1, 2021. Ever since the Myanmar military illegally seized power from all three branches of government, there have been protests and unrest throughout the country. In response, the military junta has reacted with violence against Myanmar citizens, resulting in the deaths of 845 people. Over 4500 people continue to be detained.

In a previous letter, dated March 18, 2021, the Law Society referenced several troubling legislative changes made by the junta that violate the United Nations' *Universal Declaration of Human Rights*. It now appears those amendments are being used to target lawyers and prevent them from defending their clients.

On May 24, lawyer Thein Hlaing Tun was arrested while exiting the courthouse after representing his client Dr. Myo Aung, the chairman of the Nay Pyi Taw council, in a proceeding. On May 27, lawyer Ayeyar Lin Htut was arrested at the Hinthada District Court. In both cases the lawyers were charged under section 505 of the penal code, one of the new sections added by the junta. This section of the code makes it an offense to speak out against the junta, or call the coup that led to the junta seizing power illegitimate. By directly targeting lawyers, and arresting them immediately after representing their clients in court, the junta is making a direct attack on rule of law and violating several United Nations articles on the role of lawyers.

In light of these circumstances, the Law Society urges you to demand that the military junta comply with Myanmar's obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 16 of *The Basic Principles of the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; 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.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Article 20 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Furthermore, Article 23 states:

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The Law Society urges Myanmar's military junta to:

- a. immediately and unconditionally release Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;
- b. immediately and unconditionally withdraw all charges against Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;
- c. put an end to all acts of harassment against all lawyers, paralegals, judges, law students and human rights defenders in Myanmar;
- d. ensure that all lawyers, paralegals, judges, law students and human rights defenders in Myanmar can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.



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March 18, 2021

General Min Aung Hlaing
Chairman, State Administrative Council
Naypyiddaw
Myanmar

c/o Ambassador U Kyaw Myo Htut
Embassy of the Republic of the Union of Myanmar
336 Island Park Dr.
Ottawa, ON
Canada, K1Y 0A7

General Min Aung Hlaing:

Re: Arrest and detention of lawyers and law students in Myanmar

I write on behalf of the Law Society of Ontario to voice our grave concern over the numerous reports regarding the arrest and detention of lawyers and law students that have taken place since the military junta overrode the November 2020 election results and assumed power following a widely reported coup on February 1, 2021. When reports of serious issues of injustice to legal professionals and the judiciary come to our attention, we speak out.

Ever since the Myanmar military illegally seized power from all three branches of government, there have been protests and unrest throughout the country. The arrests of the legitimately elected civilian leaders of the national and state governments, including National League for Democracy leader Aung San Suu Kyi and President Win Myint, have sparked the outrage of Myanmar's citizens and the international community. Myanmar's citizens took to the streets and began peacefully protesting the military's actions and demanded the restoration of their democracy. In response to those peaceful protests, the military junta have arrested and detained citizens who participated in these protests or spoke out against military actions. In addition, there are reported amendments to several pieces of legislation contrary to the United Nations' *Universal Declaration of Human Rights*. For example, amendments to the Penal Code 1860 (s124A) criminalize anti-government protests with a maximum penalty of 20 years in jail. Additionally, the suspension of certain sections of the Law Protecting the Privacy and Security of Citizens (2017) has eliminated the obligation for state authorities to bring detainees before a court within 24 hours. The junta have also used live ammunition on its own citizens, killing at least 149 to date according to the UN High Commissioner for Human Rights.

At least 45 lawyers and 15 law students are among those who have been arrested and detained without charges. These are only a few of the many examples of the human rights violations currently being undertaken by the military against its own citizens including lawyers and law students:

- Lawyer Khin Maung Zaw was threatened for defending Aung San Suu Kyi. His family has also been threatened.
- U Nyan Win, another lawyer for Aung San Suu Kyi, was detained, and his whereabouts remain unknown.
- Over 40 lawyers were arrested for peacefully protesting the military coup, and remain in custody without charges.
- 15 law students were arrested and continue to be detained without charges, also for protesting peacefully.

Considering these circumstances, the Law Society urges you to demand that the military junta comply with Myanmar's obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 5 of *The Universal Declaration of Human Rights* states:

No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Article 9 states:

No one shall be subjected to arbitrary arrest, detention, or exile.

Article 19 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20 states:

Everyone has the right to freedom of peaceful assembly and association.

Article 8 of the *Basic Principles on the Role of Lawyers* states:

All arrested, detained, or imprisoned persons shall be provided with adequate opportunities, time, and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception, or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Article 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; 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.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 states:

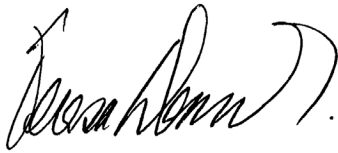
Lawyers like other citizens are entitled to freedom of expression, belief, association, and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or 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.

The Law Society urges Myanmar's military junta to:

- a. immediately and unconditionally release all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;
- b. immediately and unconditionally withdraw all charges against all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;
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