

**THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)
AND
THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS
(AICHR)**

APPLICATION AGAINST MYANMAR:

on the Gross Human Rights Violations, War Crimes,
and Crimes against Humanity
being committed in Chin State and the Other States
of Myanmar
by the Military Junta and its armed forces (Tatmadaw),
calling on the ASEAN AND AICHR to ensure that the,
perpetrators of gross human rights violations, war crimes,
and crimes against humanity
in Myanmar are prosecuted

11 August 2023

The Association of Southeast Asian Nations (ASEAN) and
The ASEAN Intergovernmental Commission on Human Rights (AICHR)

Thru: The ASEAN Secretariat
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"I have to be honest that on the implementation of the five-point consensus, there's been no significant progress."¹

"There cannot be a party within or outside ASEAN that can benefit from internal strife in Myanmar. The violence must end."²

- Indonesian President Joko Widodo, 11 May 2023
42nd ASEAN Summit

"In all honesty, I believe that non-interference is not a license for indifference."³

- Malaysian Prime Minister Anwar Ibrahim, 2 March 2023
visit at the University of the Philippines in Diliman, Quezon City, Philippines.

"According to the description of the challenges, potential, and impact of the implementation of universal jurisdiction by a country, *the Court believes that...it would be better if universal jurisdiction is held at the regional level due to proximity to the location of the crime and the availability of evidence, making it easier to make arrangements between parties...* In this regard, it is more certain to bring a forum for resolving serious cross-border human rights violations at the regional level, based on an international agreement without interfering with a country's jurisdiction. When countries agree to submit themselves to an agreement, there is no longer an assumption or judgement of differences between developed and developing countries. With such an agreement, each country has the same rights and obligations and is bound by the agreed arrangements. In this regard, arrangements regarding the mechanism of the court or procedural law, up to the model of punishing perpetrators, are agreements of each country in a region through an international agreement."

- *Constitutional Court of the Republik of Indonesia, Darusman, Muqoddas and Alliance of Independent Journalists Case* (No. [89/PUU-XX/2022](#), 14 April 2023, para. 3.16.4 166 [trans. ours])

I. APPLICANT

1. This Application is filed on behalf of **MR. SALAI ZA UK LING**.

He serves as the Deputy Executive Director of Chin Human Rights Organization (CHRO), where he has spent two and a half decades working for human rights and religious freedom in Myanmar. CHRO is a non-governmental organization in Special Consultative Status with the UN Economic and Social Council (ECOSOC) since 2018. It

¹Agence France-Presse, 'Indonesian president says no real progress on Myanmar peace plan' France 24 (5 November 2023) online:

<https://www.france24.com/en/live-news/20230511-indonesia-s-widodo-says-limited-progress-on-myanmar-peace-plan>

² *Ibid.*

³CNN Philippines Staff, "Malaysian PM: ASEAN non-interference important but not license for indifference" CNN Philippines (2 March 2023) online:

<https://www.cnnphilippines.com/news/2023/3/2/malaysia-asean-non-interference-indifference.html>

works to protect and promote human rights through monitoring, documentation, education and advocacy on behalf of indigenous Chin people and other oppressed and marginalized communities in Myanmar. A native of Chin State, Myanmar, **MR. SALAI ZA UK LING** recently gave testimony about the *Tatmadaw's* atrocities against the people of his native country before the International Parliamentary Inquiry on Myanmar.

He brings this application in light of the war crimes, crimes against humanity, and gross human rights violations being committed against the people of Myanmar by the *Tatmadaw*, through its "Four Cuts" military strategy – *essentially a horribly inhumane tactic to defeat the political opposition and rising insurgencies against the military regime by attacking the civilian populace and depopulating areas not in the military regime's control.*

In summary, under the Charter of the ASEAN, this Application seeks of the ASEAN and its Intergovernmental Commission on Human Rights the following relief:

- 1) Declare Myanmar to be in violation of its international obligation to protect human rights and fundamental freedoms in the territory of Myanmar;
- 2) Urgently call on the Myanmar Junta and its Military (*Tatmadaw*) to immediately cease and desist from committing gross human rights violations and war crimes committed in the territory of Myanmar;
- 3) Urgently call on the Myanmar Junta and its Military (*Tatmadaw*) to, under applicable rules of international law, provide adequate reparations and satisfaction to the victims of gross human rights violations and war crimes committed in the territory of Myanmar;
- 4) Establish a fact-finding mission to Myanmar to investigate the gross human rights violations and war crimes committed in the territory of Myanmar;
- 5) Establish a regional tribunal for the prosecution of war crimes and other international crimes committed in the territory of Myanmar from 1 February 2021;
- 6) Implement an effective and functioning individual complaints mechanism in the ASEAN system that is consistent with international human rights law and standards, in order to effectively protect human rights and fundamental freedoms and to prevent future gross human rights violations and war crimes from occurring.

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II. ASEAN MEMBER STATE AGAINST WHICH THE COMMUNICATION IS BROUGHT.

THE UNION OF MYANMAR

III. LEGAL BASIS OF THE COMMUNICATION

A. ASEAN Charter

1) The Communication is made under the purpose of the ASEAN to “*promote and protect human rights and fundamental freedoms*” provided in Article 1 of the ASEAN Charter, namely:

ARTICLE 1
PURPOSES

The Purposes of ASEAN are:

7. To strengthen democracy, enhance good governance and the rule of law, and **to promote and protect human rights and fundamental freedoms**, with due regard to the rights and responsibilities of the Member States of ASEAN; (Emphasis and underscoring supplied)

2) Further, the Communication is made under the principle of the ASEAN and its Member States to act in accordance with “*respect for fundamental freedoms*” and the “*protection of human rights*” provided under Article 2 of the ASEAN Charter, namely:

ARTICLE 2
PRINCIPLES

1. In pursuit of the Purposes stated in Article 1, ASEAN and its Member States reaffirm and adhere to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties and other instruments of ASEAN.

2. **ASEAN and its Members States shall act in accordance with the following Principles:**

-
- (i) **respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;**
 - (ii) **upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;** (Emphasis and underscoring supplied)

3) Further, the Communication is made under the purpose of the ASEAN Intergovernmental Commission on Human Rights (AICHR) for the “*protection of human rights and fundamental freedoms*” under Article 14 of the ASEAN Charter, namely:

ARTICLE 14

ASEAN HUMAN RIGHTS BODY

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and **protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.**

2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting. (Emphasis and underscoring supplied)

B. Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (AICHR)

4) Further, the Communication is made under Paragraph 1 of the Terms of Reference of the AICHR and pursuant to its purposes, namely:

1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;

1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and

1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and

Programme of Action, and international human rights instruments to which ASEAN Member States are parties.⁴

5) Further, the Communication is filed before the AICHR as the “*overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN*” under Paragraph 6.8 of the AICHR Terms of Reference.

C. ASEAN Human Rights Declaration

6) Moreover, the Communication is made under the ASEAN Member States’ “*common interest in and commitment*” to the “*protection of human rights and fundamental freedoms*” under Paragraph 39 of the ASEAN Human Rights Declaration, which states that:

COOPERATION IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter. (Emphasis and underscoring supplied)

C. Further Legal Basis for this Communication

7) As a member of the ASEAN, Myanmar pledged to support the aims and objectives of the AICHR towards the protection and promotion of human rights within its territory and in the region as a whole.

8) Indeed, Myanmar gave its full support to the creation of the AICHR, signing on 23 October 2009 the “*Cha-am Hua Hin Declaration on the Intergovernmental Commission on Human Rights,*” pledging full cooperation with this new ASEAN body and emphasizing the Member States’ commitment to further develop cooperation to promote and protect human rights in the region.

9) The slaughter of innocents perpetrated by the Military Junta and the *Tatmadaw* of Myanmar violated the Right to Life of the victims under Article 3 of the Universal Declaration of Human Rights (UDHR),⁵ and other human rights instruments under which Myanmar is a state-party.

10) Indeed, Myanmar has the obligation under international law to protect the fundamental rights of individuals, especially the rights to life, to dignity, and to be provided with adequate remedies for the violation of fundamental rights.

⁴Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights.

⁵ Article 3. Everyone has the right to life, liberty and the security of person.

11) Moreover, Myanmar violated its duty not to provide impunity, considering that its very own agents were behind the gross human rights violations and war crimes enumerated in this Communication and for its failure to prevent these from being carried out.

12) Further, this obligation is rooted in international treaties to which Myanmar is a state-party to.

13) In particular, the United Nations Charter – as interpreted by the subsequent practice of State Parties⁶ - impose the obligation to promote and protect human rights.⁷

14) Moreover, Myanmar has the same obligation of not to provide impunity for core international crimes under customary international law, as evidenced by the widespread acceptance of numerous international conventions⁸ and instruments stating this hallowed principle,⁹ such conventions being evidence of the existence of a customary norm.¹⁰

⁶ Universal Declaration of Human Rights, art. 7, UN General Assembly Resolution 217A (III), 10 December 1948; General Assembly Resolution 40/144, A/RES/40/144, 13 December 1985, ANNEX, Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, Preamble; General Assembly Resolution 54/109, A/RES/54/109, 25 February 2000, article 9, nos. 3-4, articles 17, 21; General Assembly Resolution 54/164, A/RES/54/164, 24 February 2000, no. 4, Preamble, 1st par., 10th par., 15th par., 16th par.; General Assembly Resolution 50/186, A/RES/50/186, 6 March 1996, no. 3, Preamble, paras. 9, 13, ; General Assembly Resolution 52/133, A/RES/52/133, 27 February 1998, no. 4, Preamble, paras. 9, 14. See Vienna Convention, art. 31(3); Beyani *supra* note 92, at 24, citing B. Simma and P. Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUSTRALIAN YRBK INT'L L 82, 83 (1988-89).

⁷ Charter of the United Nations, Preamble, para. 2, articles 1 (1), 55, 56; International Covenant on Civil and Political Rights, arts. 2, 8, 9. See also Beyani, *supra* note 92, at 24; Criton G. Tornaritis, *The Individual as a Subject of International Law and International Criminal Responsibility*, 1 A TREATISE ON INTERNATIONAL CRIMINAL LAW 103-105, 114 (M. Cherif Bassiouni, Ved P. Nanda, eds. 1973).

⁸ Charter of the United Nations, Preamble, para. 2, articles 1 (1), 55,56. See European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov.4, 1950, 312 U.N.T.S. 221; American Convention on Human Rights, Nov. 22, 1969, 9 I.L.M. 673 (1970); African Charter on Human and People's Rights, June 27, 1981, 21 L.L.M. 59 (1981). See *Beyani*, *supra* note 92, at 33, citing MERON, *supra* note 77, at 198).

⁹ Universal Declaration of Human Rights, article 7, UN General Assembly Resolution 217A (III), 10 December 1948. General Assembly Resolution 40/144, A/RES/40/144, 13 December 1985, ANNEX, Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, Preamble; General Assembly Resolution 54/109, A/RES/54/109, 25 February 2000, article 9, nos. 3-4, articles 17, 21; General Assembly Resolution 54/164, A/RES/54/164, 24 February 2000, no. 4, Preamble, 1st par., 10th par., 15th par., 16th par.; General Assembly Resolution 50/186, A/RES/50/186, 6 March 1996, no. 3, Preamble, paras. 9, 13, ; General Assembly Resolution 52/133, A/RES/52/133, 27 February 1998, no. 4, Preamble, paras. 9, 14.

¹⁰ Michael Akehurst, *Custom as a Source of International Law*, 47 BRIT. YRBK. OF INT'L. L. 1, 53 (1974-75) [hereafter Akehurst], See also R. Baxter, *Multilateral Teaties as Evidence of Customary International Law*, BRIT. YRBK. OF INT'L. L. 275, 298 (1965-66); and Akehurst at 43, citing Fisheries Jurisdiction Case, 1974 ICJ Reports 3, 26, and Lauritzen v. Government of Chile (1956) 23 INT'L. L.R. 703, 729-31.

15) All the nations of the world would be entitled to invoke the liability of Myanmar if it violates this duty.¹¹

16) It is in the interest of the ASEAN and of the AICHR to express its concern on behalf of the victims of these gross human rights violations and their heirs, and to engage the commitment of Myanmar to ensure its compliance to its positive duty under international law to investigate, prosecute, and bring to justice (a) all its agents responsible for the gross human rights violation; and to provide (b) adequate reparations to the heirs of the victims, including compensation and satisfaction.

17) Under international law, Every State has a legal duty to respect and enforce human rights and humanitarian law and prevent and repress their violation, and such obligation includes the duty to “afford remedies and reparation to victims.”¹²

18) The Permanent Court of International Justice ruling in the 1928 *Chorzow Factory* case¹³ that the obligation to make prompt, effective and adequate reparation for an international wrongful act is a “general principle of law” has now developed into a legal and moral duty.¹⁴

19) According to the UN General Assembly’s *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*:

In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international

¹¹ *Barcelona Traction, Light, and Power Company, Ltd. Case (Second Phase)* 1970 ICJ Reports 3, 32, para. 33. See Hugh Thirlway, *The Law and Practice of the International Court of Justice, 1960-1989*, 60 BRIT. YRBK. INT’L. L. 1, 98 (1989); and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports, 1971, p. 56, para. 126. See also OPPENHEIM’S INTERNATIONAL LAW 937-939 (R. Jennings, A. Watts, 9th ed., 1994), *Ireland vs. United Kingdom* (1978), 58 INT’L. L. REP. 188, 291-292, Hersch Lauterpacht, 1 COLLECTED PAPERS 145 (1970).

¹² Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, Judgement, The Hague, The Netherlands, 4 December 2001, para. 1021, citing the Vn Boven Principles, 1996, Principles 1 & 2, and the revised set of basic principles and guidelines on the right to reparation of victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1195/117, 24 May 1996, Annex, Basic Principles and Guidelines on the Right to Reparation for Victims of Gross violations of Human Rights and Humanitarian Law, principles 1 & 2, also known as the Revised Basic Principles, van Boven, 1996.

¹³ (*Indemnity case*) *Germany v. Poland*, 1928 PCIJ Series, A. No. 17, at 29.

¹⁴ Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, Judgement, The Hague, The Netherlands, 4 December 2001, para. 1021.

judicial organs competent in the investigation and prosecution of these violations.¹⁵

20) Indeed, the Women's International War Crimes Tribunal, citing what is now known as the 1993 *Van Boven* guidelines, has ruled that in regard to reparation, "particular attention must be paid to gross violations of human rights and fundamental freedoms, which include at least the following: genocide, slavery and slavery-like practices...and systematic discrimination, in particular based on gender."¹⁶

21) Victims are entitled to adequate, effective and prompt reparation, as a matter of promoting justice through redress of gross violations of international human rights law or serious violations of international humanitarian law. Moreover, international law requires that reparation be proportional to the gravity of the violations and the harm suffered.¹⁷ States have the legal duty to provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.¹⁸ Where the perpetrator is found responsible for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.¹⁹

22) The UN GA *Basic Principles* embrace a wide scope for the duty on the part of the State to provide reparations:

... In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

...Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

¹⁵ UN GA Reso 60/147 15 December 2005 online:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

¹⁶ Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, Judgement, The Hague, The Netherlands, 4 December 2001, para. 1022, citing E/CN.4/Sub.2/1993/8, 2 July 1993, at 7-8.

¹⁷Ibid, Chapter IX, 15

¹⁸ Ibid.

¹⁹ Ibid.

...Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Rehabilitation should include medical and psychological care as well as legal and social services.

...Satisfaction should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.²⁰

23) The acts committed in the slaughter of civilians by Myanmar State agents belong to this class of gross human rights violations for which the State must answer.

²⁰UN GA Reso 60/147, *supra* note 15, Chapter IX, 18-22.

24) Moreover, ASEAN states have accepted the principle of universal jurisdiction on the question of gross human rights violations as firmly established in customary international law.²¹ The acceptance of universal jurisdiction over such core international crimes demonstrates that states in the region recognise that all states, apart from the territorial and nationality state, have an interest in ensuring accountability and pursuing justice for such crimes. ASEAN is well-positioned to facilitate such accountability and justice efforts in the region. In 2017, the General Assembly decided to establish a working group of the Sixth Committee for discussions on universal jurisdiction.²² Several ASEAN states, affirmed the legitimacy and value of universal jurisdiction in discussions before the Sixth Committee.

25) Through statements submitted to the Sixth Committee, ASEAN state representatives have recognized that universal jurisdiction is a “generally accepted principle of international law”.²³ In its 2022 statement in the U.N. Sixth Committee, Indonesia stated that the principle of universal jurisdiction is “a crucial tool for putting an end to impunity for grave breaches of International Humanitarian Law and other international crimes”.²⁴

26) Vietnam has recognized “universal jurisdiction as “an important instrument to combat international crimes and fight against impunity”²⁵. Thailand has described this principle of jurisdiction as a “valuable means to end impunity”²⁶ when perpetrators are able to “slip through fragmented national jurisdictions”.⁶ Malaysia has explained that by giving an “opportunity to all states to possess jurisdiction” over “serious crimes of international concern”, universal jurisdiction ensures that “at least some perpetrators”²⁷ are prosecuted.

²¹ CHEAH Wui Ling, Associate Professor, Faculty of Law of the National University of Singapore, Submission to the Constitutional Court of the Republik of Indonesia, Case Number 89/PUU-XX/2022.

²² Ibid, citing ‘The scope and application of the principle of universal jurisdiction,’ UN Doc. A/RES/72/120, 18 December 2017 online: <https://www.legal-tools.org/doc/0ef888/>

²³ Ibid., citing the Statement of the Republic of the Philippines, “The scope and application of the principle of universal jurisdiction”, Sixth Committee, 74th session of the UN General Assembly, 17 October 2019.

²⁴ Ibid., citing the Statement of the Republic of Indonesia, “The scope and application of the principle of universal jurisdiction”, Sixth Committee, 77th session of the UN General Assembly, 13 October 2022.

²⁵ Ibid, citing Statement of the Socialist Republic of Viet Nam, “The scope and application of the principle of universal jurisdiction”, Sixth Committee, 75th Session of the UN General Assembly, 3 November 2020.

²⁶ CHEAH, supra note 17, citing the Statement of Thailand, “The scope and application of the principle of universal jurisdiction”, Sixth Committee, 69th session of the UN General Assembly, 15 October 2014.

²⁷ Ibid, citing the Statement of Malaysia, “The scope and application of the principle of universal jurisdiction”, Sixth Committee, 68th Session of the UN General Assembly, 17 October 2013.

27) In *Bayan Muna v Romulo*,²⁸ mandatory universal jurisdiction was recognized by the Philippine Supreme Court as a consequence of *jus cogens* norms binding on the international community, in respect of genocide, war crimes, and crimes against humanity:

The term “*jus cogens*” means the “compelling law.” Corollary, “a *jus cogens* norm holds the highest hierarchical position among all other customary norms and principles.” As a result, *jus cogens* norms are deemed “peremptory and non-derogable.” When applied to international crimes, “*jus cogens* [prohibitions on serious international]”²⁹ crimes have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement.”

These *jus cogens* [prohibition on serious international] crimes relate to the principle of universal jurisdiction, i.e., “any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists.” “The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community” and thus granting every State jurisdiction over the crime [emphasis supplied].³⁰

28) The Association of Southeast Asian Nations saw the light of day in 1967 via a five-article Bangkok Declaration (a means to defuse the tensions wrought by the birth of the state of Malaysia)³¹ but it was not until 2008 when it formally assumed a distinct and separate international legal personality. As Article 3 of the ASEAN Charter puts it: “ASEAN, as an inter- governmental organization, is hereby conferred legal personality.”³² After nearly 53 years of existence, the regional body has given birth to at least 81 legal instruments.

²⁸*Bayan Muna v Romulo* [2011] G.R. No. 159618 [En Banc] 1 February 2011, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Merits, I.C.J. judgment, February 26, 2007, para. 161 and M. Cherif BASSIOUNI, “International Crimes: *Jus Cogens* and *Obligatio Erga Omnes*” (1996) 59 *AUT Law & Contemp. Probs.* 63, 68.

²⁹The editorial emendation is necessitated by the awkward phraseology used by the Philippine Supreme Court (PSC). The original phrase, taken literally, would result in a patently absurd meaning: that the crimes referred to are binding on all states; i.e., states are under a legal obligation to commit them. What the PSC meant is that the said crimes are subject to *jus cogens* prohibitions. In other words, every state in the world is duty-bound to criminalize and prosecute these crimes, as they are prohibited without exception under international law under a prohibition that cannot be derogated from.

³⁰*Bayan Muna v Romulo*, *supra* note 95.

³¹ Kevin Y. L. Tan, “ASEAN Law: Content, Applicability, and Challenges” in *ASEAN Law and Regional Integration*, Diane Desierto and David Cohen eds. (Singapore: NUS 2021) 42

³² *Ibid*

29) Yet the question of human rights – although the constituent and relevant documents of the ASEAN formally recognize their central importance – have largely taken a back seat.³³ Its AICHR has often struggled to find its purpose beyond informational and promotional activities.³⁴ The events in Myanmar have underlined the fact that ASEAN can no longer afford to ignore the question. It must take action by putting in place effective mechanisms for the protection of the human rights of the peoples of the ASEAN. Given the scale and effects of the violations committed on a daily basis against the people of Myanmar, it would be the interest of ASEAN as regional organization to establish such mechanisms. Very recently, on the question of universal jurisdiction, the Constitutional Court of the Republik of Indonesia agreed that such may indeed be the most realistic approach to take on the events in Myanmar:

According to the description of the challenges, potential, and impact of the implementation of universal jurisdiction by a country, *the Court believes that...it would be better if universal jurisdiction is held at the regional level due to proximity to the location of the crime and the availability of evidence, making it easier to make arrangements between parties...*In this regard, it is more certain to bring a forum for resolving serious cross-border human rights violations at the regional level, based on an international agreement without interfering with a country's jurisdiction. When countries agree to submit themselves to an agreement, there is no longer an assumption or judgement of differences between developed and developing countries. With such an agreement, each country has the same rights and obligations and is bound by the agreed arrangements. In this regard, arrangements regarding the mechanism of the court or procedural law, up to the model of punishing perpetrators, are agreements of each country in a region through an international agreement.³⁵

30) As this Application has shown, under the relevant constituent documents of the ASEAN, the creation of such a mechanism, among other things, would not be contrary to the purpose of the organization. In fact, being a signatory to the very same documents, the Union of Myanmar has accepted responsibility and accountability for human rights within its own territory. It is now time for ASEAN to come together to provide effective ASEAN-based and ASEAN-oriented solutions to the gross violations of human rights, war crimes, and crimes against humanity in

³³See Jose Duke Bagulaya, "ASEAN as Wayang Kulit: A Critique of the Constitutional, Extra-constitutional, and Practical Fetters of ASEAN," *Asian Journal of International Law* (2019) 1-23 online: <https://www.cambridge.org/core/terms> <https://doi.org/10.1017/S2044251319000018>

³⁴ See Hsien-Li Tan, "Adaptive Protection of Human Rights: Stealth Institutionalisation of Scrutiny Functions in ASEAN's Limited Regime," *Human Rights Law Review* (2022) 22, 1–28 <https://doi.org/10.1093/hrlr/ngac017>

³⁵ See the third epigraph in this Application. *Darusman, Muqoddas and Alliance of Independent Journalists Case* [2023] No. 89/PUU-XX/2022 [14 April 2023] para. 3.16.4 166

Myanmar. Specifically, AICHR should facilitate a regional solution with respect to peace and justice in Myanmar by establishing a fact-finding mission, a regional tribunal or accountability mechanisms, and initiating a victim-focused reparations program.

D. Summary: the Legal Basis and Acts Required by this Communication

31) Thus, this Communication is consistent with the principle and purpose of the ASEAN, its Members States, and the AICHR for the “*protection of human rights and fundamental freedoms*” under the ASEAN Charter, the Terms of Reference of the AICHR, the ASEAN Human Rights Declaration, and the principles of International Human Rights Law and General International Law.

32) Further, this Communication is consistent with the principle enunciated in the AICHR’s *Terms of Reference*, wherein it adopts an evolutionary approach that would contribute to the development of human rights norms and standards in the region.³⁶

33) Lastly, this Communication is filed before the AICHR as the “*overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN*” under Paragraph 6.8 of the AICHR Terms of Reference.

The above legal grounds require AICHR to take steps to establish a fact-finding mission, work towards setting up a regional tribunal or accountability mechanism, and put in place a reparations process that will benefit victims.

IV. FACTS DENOUNCED: GROSS HUMAN RIGHTS VIOLATIONS AND WAR CRIMES OF THE MYANMAR MILITARY JUNTA AND ITS MILITARY (TATMADAW) AGAINST THE PEOPLE OF MYANMAR

34) The gross human rights violations and war crimes committed by the Myanmar Junta and its military (herein collectively “Myanmar military”) denounced in this Communication, and which form the factual basis for this Communication, are the following four (4) violations:

1. The “Four Cuts” Strategy of the Myanmar Military perpetrated against the Civilian Population of Myanmar from 1 February 2021 onwards;
2. The Myanmar Military’s Intentional Airstrikes and Artillery Shelling against the Civilian Population of Myanmar, and the Consequent Forcing of More Civilians from Myanmar to be Refugees from 1 February 2021 onwards;

³⁶TOR Principle 2.5.

3. The Myanmar Military's Intentional Burning in Myanmar of Civilian Houses and Other Buildings Including Churches and Food Stores from 1 February 2021 onwards;
4. The Myanmar Military's Intentional Denial of Humanitarian Aid Deliveries to Civilians in Myanmar, In General, from 1 February 2021 onwards and the Specific Denial of Humanitarian Aid to Areas Hard-hit in Myanmar by the May 2023 Cyclone Mocha.

35) The United Nations Office of the High Commissioner for Human Rights (OHCHR) has extensively reported on the above-enumerated gross human rights violations committed by the Myanmar military authorities.

36) The relevant OHCHR report will be accordingly cited in this Communication.

A. The "Four Cuts" Strategy of the Myanmar Military Perpetrated against the Civilian Population of Myanmar from 1 February 2021 Onwards

37) The Myanmar military's "Four Cuts" strategy is *"traditionally directed at cutting off ethnic armed organizations' access to food, funds, intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts."*³⁷

38) The "Four Cuts" strategy is being directed by the Myanmar Junta and its military against the civilian population of Myanmar from 1 February 2021 and has resulted in gross human rights violations and war crimes in Myanmar.

39) *With its "Four Cuts" strategy, the Myanmar military is literally waging war against the civilian population of Myanmar. In other words, the strategy is an official policy of the Tatmadaw to commit war crimes, crimes against humanity and gross human rights violations against the civilian populace, with the aim to deprive the insurgency against the Military Junta of civilian support.*

40) According to the latest 28 June 2023 Annual Report of the UN High Commissioner of Human Rights,³⁸ the "Four Cuts" strategy continue to adversely affect the human rights of civilians in Myanmar:

13. As previously reported, military actions since February 2021, including through its "four cuts" strategy against the civilian population, continue to expose the people in

³⁷ Page 10, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

³⁸ 28 June 2023 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

Myanmar to pervasive human rights violations, resulting in staggering humanitarian impacts.³⁹ (Internal citation omitted)

41) The “Four Cuts” strategy of the Myanmar military from the period of February 2021 to April 2023 has resulted in at least 3,452 deaths, the arrest of 21,807 individuals, the burning of about 60,000 civilian structures, and an estimated 1.5 million people having been internally displaced.⁴⁰ As observed by the UN High Commissioner of Human Rights in the 28 June 2023 Annual Report:

14. Between February 2021 and April 2023, credible sources verified that at least 3,452 persons have died at the hands of the military and its affiliates, 21,807 individuals were arrested, and 5,839 convicted without any respect for judicial guarantees. Additionally, 154 have been sentenced to death and four known to be executed. An estimated 1.5 million people have been internally displaced, with nearly one million in the central regions alone, and approximately 60,000 civilian structures have been reportedly burnt or destroyed. Over 75,000 people have reportedly fled to neighbouring countries. More than one million Rohingya already live under appalling conditions in refugee camps in Bangladesh and recent reductions to food rations due to limitations on available humanitarian funds are expected to have devastating consequences. Of the remaining 600,000 Rohingya in Rakhine, nearly 150,000 live in camps where they are deprived of fundamental rights including freedom of movement. Under the current conditions, safe, dignified, and sustainable returns remain impossible.⁴¹ (Internal citations omitted)

42) In its previous 25 February 2022 Annual Report,⁴² the UN High Commissioner of Human Rights also reported on the “Four cuts” strategy of the Myanmar military, observing that:

³⁹ Page 4, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

⁴⁰ Page 4, 28 June 2023 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

⁴¹ Pages 4-5, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

⁴² 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” A/HRC/49/72.

45. Myanmar is wrought with devastation that has destroyed the increasingly prosperous lives that many around the country had in recent years begun to enjoy. Concurrently, ethnic minorities who have been persecuted for decades face intensified violence and insecurity. In attempting to crush armed opposition, the Tatmadaw continued its “Four Cuts Policy”, conducting offensives using airstrikes, helicopter gunships, artillery, and mortars. Indiscriminate attacks often in populated areas, in flagrant disregard for human life and property were reported. Tatmadaw forces committed many violations during “clearance operations”, combing areas in search of members of armed groups and arresting, torturing, and summarily executing individuals, as well as looting and destroying property. In these operations, individuals were demonstrably at high risk of harm from small arms fire, which killed over 400 individuals; while airstrikes, mortar and artillery shelling and other explosions killed approximately 150 persons. For example, in September 2021, Tatmadaw forces, occupying a school, launched an artillery attack in Kone Thar village in Kayah State, ostensibly targeting positions of the Karenni Nationalities Defence Force. Shell explosions caused residents to flee. Thereafter, Tatmadaw units searched the village, shot and killed three civilians before burning their bodies, and shot and killed an elderly man who had remained behind. During their occupation of the village, Tatmadaw units destroyed 26 buildings and damaged 13 others.⁴³ (Emphasis and underscoring supplied)

43) As concluded by the UN High Commissioner of Human Rights in the 28 June 2023 Annual Report, it raised grave concerns about the effect of the “Four cuts” strategy on the civilian population of Myanmar:

63. As the post-coup human rights crisis continues to worsen, Myanmar’s overall humanitarian situation has also deteriorated to alarming levels. Through the implementation of its “four cuts” policy aimed at severing support for anti-military groups, the military has killed and injured thousands of civilians while destroying goods and infrastructure necessary for survival, including food, shelter, and medical centres. In violation of international obligations, the military has targeted humanitarian actions and actors through an all-encompassing system of military measures and the instrumentalization of the legal and administrative

⁴³ Page 9, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” A/HRC/49/72.

spheres, forcing aid providers to either renounce support to people in desperate need of life-saving aid or to deliver at enormous personal risks.⁴⁴ (Emphasis in the original)

B. The Myanmar Military’s Intentional Airstrikes and Artillery Shelling against the Civilian Population of Myanmar, and the Consequent Forcing of More Civilians from Myanmar to be Refugees from 1 February 2021 onwards

44) In the 28 June 2023 Annual Report of the UN High Commissioner of Human Rights,⁴⁵ it noted the Myanmar military’s use of airstrikes and artillery shelling against civilians as part of the latter’s “Four cuts” strategy:

1. Military’s “four cuts” strategy

42. The military’s “four cuts” strategy, traditionally directed at cutting off ethnic armed organizations’ access to food, funds, intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts. Its systematic implementation, which relies on tactics including burnings of entire villages, use of airstrikes and artillery shelling, as well as arbitrary arrests, enforced disappearances, torture and ill-treatment, has resulted in mass displacements of over a million people.

43. Through the “four cuts” policy, limitations of movements, denial of humanitarian assistance, and the use of scorched-earth tactics, the military intended to sever grassroots support for anti-military groups. Following resumption of hostilities with the Arakan Army in late 2022, the military imposed a complete ban on movements and humanitarian actions in eight townships in Rakhine and southern Chin amidst airstrikes and artillery shelling. They enforced these restrictions through checkpoints on main roads, waterways, bridges, and other supply routes, effectively preventing access to food, medicines, healthcare, and other essential items, with tremendous impact on all communities, including the Rohingya. Despite a ceasefire in November 2022, numerous restrictions remain in place and humanitarian access remains inadequate.

... ..

⁴⁴ Page 14, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

⁴⁵ 28 June 2023 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

... ..

46. In addition to deaths and injuries, systematic implementation of the “four cuts” strategy has resulted in massive displacement and continuous increases in protection and humanitarian needs. **Repeated airstrikes and artillery shelling expose civilians to risks of recurring displacement with the military not sparing formal displacement sites or temporary shelter solutions. Interlocutors reported an increased targeting of shelters for displaced persons and monasteries since early 2023 and of monks being killed and arrested for providing assistance. Interlocutors added that, as a consequence, monasteries have become reluctant to provide shelter to people fleeing violence.**⁴⁶ (Emphasis and underscoring supplied)

45) The earlier 25 February 2022 Annual report of the United Nations High Commissioner for Human Rights already observed the Myanmar military’s use of airstrikes and artillery shelling against civilians and the consequent displacement of the civilian population in large areas of Myanmar, specifically:

49. Tatmadaw “clearance operations”, airstrikes and use of heavy weapons in populated areas purposely instil fear in villagers, forcibly displacing local populations. This has resulted in over 441,500 people being displaced from their homes around the country since February 2021. This included at least 240,000 people in Kayah and Kayin states and other parts of south-east Myanmar, 191,500 people in Chin State, and Sagaing and Magway regions, as well as 10,000 people in Shan and Kachin states. More than 15,000 people have crossed the border to India or Thailand. Many more people have been temporarily displaced and there is a large, pre-existing protracted-displaced population including over 220,000 persons in Rakhine State and over 106,000 on Kachin and northern Shan states.⁴⁷ (Internal citations omitted, emphasis and underscoring supplied)

46) As concluded by the UN High Commissioner of Human Rights in the 28 June 2023 Annual Report, it raised grave concerns about the effect of the “Four cuts” strategy on the civilian population of Myanmar:

⁴⁶ Page 10, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

⁴⁷ Page 9, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” A/HRC/49/72.

64. **Meanwhile, duty bearers have failed to meet their obligation to protect civilians. Security across the country has deteriorated as the military has persistently targeted civilians through airstrikes and razing of populated areas.** Widespread use of landmines by multiple actors has also furthered insecurity. As a result, many organizations have forgone or drastically modified operations in affected areas, negatively impacting a wide range of human rights protections for individuals affected by violence. Local actors, who are overwhelmingly carrying out operations, are continuously risking death, arrest, torture, and harassment. Violations and restrictions documented in this report, when conducted as part of a widespread or systematic attack against a civilian population, and if they resulted in severely depriving fundamental rights of individuals perceived as part of a group opposing military rule may constitute the crime against humanity of persecution.⁴⁸ (Emphasis in the original, underscoring supplied)

47) The Myanmar military's intentional airstrikes and artillery shelling against civilians, among its other actions violating human rights, from 1 February 2021 onwards has, consequently, forced more civilians from Myanmar to be either internally displaced or become refugees.

48) To illustrate, Applicant Salai Za Uk Ling, Deputy Executive Director of the Chin Human Rights Organization, previously testified that the actions of Myanmar military "... forced displacement of an estimated 120,000 people, which constitute 20 percent of the entire population of Chin State."⁴⁹

49) Further, the UN High Commissioner of Human Rights in its 28 June 2023 Annual Report observed that the Myanmar military's "Four cuts" strategy has resulted in the mass displacement of over a million people:

1. Military's "four cuts" strategy

42. The military's "four cuts" strategy, traditionally directed at cutting off ethnic armed organizations' access to food, funds, intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts. **Its systematic implementation, which relies on**

⁴⁸ Page 14, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

⁴⁹ Chin Human Rights Organization, "Testimony of Salai Za Uk Ling, Deputy Executive Director of CHRO at the 4th Hearing of International Parliamentary Inquiry on Myanmar" (20 July 2022) online: https://www.chinhumanrights.org/wp-content/uploads/2022/07/Testimony_Oral_Presentation.pdf

tactics including burnings of entire villages, use of airstrikes and artillery shelling, as well as arbitrary arrests, enforced disappearances, torture and ill-treatment, has resulted in mass displacements of over a million people.⁵⁰ (Emphasis and underscoring supplied)

C. The Myanmar Military’s Intentional Burning in Myanmar of Civilian Houses and Other Buildings Including Churches and Food Stores from 1 February 2021 onwards

50) In the 28 June 2023 Annual Report of the UN High Commissioner of Human Rights, it made numerous references to the Myanmar military’s burning of entire villages as part of the latter’s “Four cuts” strategy:

1. Military’s “four cuts” strategy

42. The military’s “four cuts” strategy, traditionally directed at cutting off ethnic armed organizations’ access to food, funds, intelligence, and recruits, has been redeployed against a broader set of anti-military armed groups and civilians perceived to support them with devastating impacts. **Its systematic implementation, which relies on tactics including burnings of entire villages,** use of airstrikes and artillery shelling, as well as arbitrary arrests, enforced disappearances, torture and ill-treatment, has resulted in mass displacements of over a million people.

... ..

44. **Documentation of numerous burning incidents around the country highlight the widespread and systematic nature of this tactic, which appears to carry both an element of collective punishment of the entire local civilian population perceived as opposing the military, and a strategic goal of depriving them of shelter, food, water, livelihoods, and life-saving aid. Numerous interlocutors stressed that while burning villages, the military targeted livestock, food storage facilities, and other essential agricultural materials. Where they exist, health facilities were also targeted.**

45. **Groups with specific vulnerabilities, such as persons with disabilities, the elderly, or those unable to flee upon the military’s arrival, are at serious risk of being killed, including being burned alive. In March 2023, an interviewee reported that around 80 soldiers entered a village in Sagaing and set fire on an estimated 175 houses. Seven elderly persons,**

⁵⁰ Page 10, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

including two with disabilities, were burned to death.⁵¹
(Emphasis and underscoring supplied)

51) In its 25 February 2022 Annual Report, the UN High Commissioner of Human Rights reported on the extent of the Myanmar military's burning of houses and other buildings including churches and food stores and the adverse extent of these mass burnings in Chin State and the Magway and Sagaing regions of Myanmar:

51. Over 400 Tatmadaw attacks on populated areas involved property destruction, destroying thousands of houses and other buildings including churches and food stores. It has been well-documented that arson is a hallmark of Tatmadaw operations, mostly perpetrated after villagers are displaced. **Most egregiously, in Thantlang town in Chin State, Tatmadaw Light Infantry Brigade 222 burned over 900 buildings over the course of at least 23 successive attacks in the town from September, including two non-government organization offices, eight churches and 12 other religious buildings, continuing a trend of Tatmadaw forces targeting Chin ethnic and religious minorities. There were over 250 mass burnings across Magway and Sagaing regions since the middle of the year. Satellite imagery obtained by OHCHR of the largest burnings reveals that 171 buildings were destroyed and 36 damaged in June 2021 when the Tatmadaw attacked Kin Ma Village in Magway Region.**⁵² (Emphasis and underscoring supplied)

52) Applicant Salai Za Uk Ling, Deputy Executive Director of the Chin Human Rights Organization, previously testified on the adverse extent of these mass burnings in Chin State by the Myanmar military:

The deliberate and intentional destruction of livelihood and civilian properties, including the burning of over 1800 houses across Chin State, the vast majority of which took place in my hometown Thantlang over the course of more than 30 separate attacks[.]⁵³

⁵¹ Page 10, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

⁵² Page 10, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," A/HRC/49/72.

⁵³ Chin Human Rights Organization, "Testimony of Salai Za Uk Ling, Deputy Executive Director of CHRO at the 4th Hearing of International Parliamentary Inquiry on Myanmar" (20 July 2022) online: https://www.chinhumanrights.org/wp-content/uploads/2022/07/Testimony_Oral_Presentation.pdf

53) Further, Applicant Salai Za Uk Ling testified on the destruction by the *Tatmadaw* of 65 religious buildings, including over 50 churches or places of worship.⁵⁴

D. The Myanmar Military’s Intentional Denial of Humanitarian Aid Deliveries to Civilians in Myanmar, In General, from 1 February 2021 onwards and the Specific Denial of Humanitarian Aid to Areas Hard-hit in Myanmar by the May 2023 Cyclone Mocha.

54) In the 28 June 2023 Annual Report of the UN High Commissioner of Human Rights, noted the Myanmar military’s severe and arbitrary restrictions on access to food assistance:

17. In addition to the direct attacks on healthcare personnel and infrastructure and severe restrictions arbitrarily imposed on access to food assistance, the military has continued to instrumentalise the legal and administrative framework of Government to control and limit life-saving humanitarian assistance/relief. Imposition of martial law on an additional 40 townships across the country in February 2023 has further diminished access to aid of populations-in-need.⁵⁵ (Internal citation omitted)

55) The UN High Commissioner of Human Rights concluded in its 28 June 2023 Annual Report that in areas under the control of the Myanmar military the latter strategically decides on aid beneficiaries, types of aid to be delivered, and its timing in violation of principles of international law:

66. While the military restricts movements of people through several measures, the instrumental use of the pre-existing arbitrary and discriminatory travel authorizations regime plays a critical role. In all areas under its control, the military strategically decides on the groups of beneficiaries and types of aid to be delivered, as well as its timing, in violation of principles of humanity, neutrality, impartiality, and independence. Similarly, the military prevents the movement of goods and humanitarian items through systemic restrictions, and the ability of individuals

⁵⁴ *Ibid.*

⁵⁵ Page 5, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled “Situation of human rights in Myanmar since 1 February 2021,” (Advance unedited version), A/HRC/53/52.

to transfer and safely access funds.⁵⁶ (Emphasis in the original)

56) In its 25 February 2022 Annual Report, the UN High Commissioner of Human Rights already reported on the Myanmar military's denial of humanitarian aid, in general, and enumerated these in Chin and Kayah States:

50. Military authorities largely blocked humanitarian access to new and pre-existing areas of need, through delayed or denied travel authorizations, tightened bureaucratic requirements, or establishment of new roadblocks and checkpoints. Disruptions in supply chains and failure of the banking sector, because of the coup, also impacted humanitarian access and response. **Military authorities also specifically stopped humanitarian agencies from distributing aid to populations they perceived to be affiliated with opposition. Since October in Kayah State, the military required organizations to seek permission to transport more than 10 bags of rice, significantly impacting on delivery of food assistance. In Chin State, the military deliberately blocked travel routes which restricted essential deliveries, further exacerbating the situation.** In several instances, Tatmadaw targeted people assisting internally displaced persons (IDPs), burning food and other items. Security forces also arrested volunteers assisting IDPs in Kayah and Chin states, and at least 30 displaced persons reportedly died due to preventable health problems in Mindat Township in Chin State resulting from no access to healthcare. In areas affected by armed conflicts these restrictions could amount to a violation of the obligation of parties to the conflict to allow and facilitate unimpeded passage of humanitarian relief for civilians in need. As a result of arbitrary access restrictions, affected communities lack access to food, healthcare, shelter, safe drinking water and sanitation facilities and are at increased risk of disease including COVID-19. IDPs struggle to realize their basic rights including food, health, education and work, and their displacement is impacting future food security due to their inability to plant and harvest crops.⁵⁷

⁵⁶ Page 14, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

⁵⁷ Pages 9-10, 25 February 2022 Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," A/HRC/49/72.

57) Among the highlights of the 8 June 2023 Situation Report No. 4 entitled “*Myanmar: Cyclone Mocha*,” the U.N. Office for the Coordination of Humanitarian Affairs highlighted the deterioration of humanitarian access to Cyclone Mocha-hit Rakhine and Chin States:

HIGHLIGHTS

The humanitarian access situation in cyclone-hit Rakhine state has deteriorated with existing travel authorizations (TAs) for humanitarian organizations suspended this week pending new, centralized discussions in Nay Pyi Taw.

Initial approval for humanitarian distribution and transportation plans for cyclone-affected townships in Rakhine have also been rescinded pending further Nay Pyi Taw-level deliberations. Similar plans in Chin are also pending.⁵⁸

58) In a 30 June 2023 Press Briefing Note delivered by the Spokesperson for the UN High Commissioner for Human Rights, the OHCHR sounded the alarm on the Myanmar military’s restriction on humanitarian aid especially in the aftermath of the May 2023 Cyclone Mocha:

The already dire situation on the ground has been compounded by the military’s restrictions on aid imposed in the aftermath of Cyclone Mocha in May, bringing further suffering and misery to wide swathes of the population in the west and northwest of the country.

As the report makes clear, intentional obstruction or denial of humanitarian assistance may amount to gross violations of international human rights law, and serious violations of international humanitarian law.

Aiming in part at cutting off support for its opponents, the military has employed its four-cuts strategy to kill and injure thousands of civilians while destroying goods and infrastructure necessary for survival, including food, shelter, and medical centres, the report says.

Myanmar’s human rights and humanitarian crisis is massive. An estimated 1.5 million people have been internally displaced, and approximately 60,000 civilian structures have reportedly been burnt or destroyed. Over 17.6 million

⁵⁸UN Office for the Coordination of Humanitarian Affairs, Situation Report no. 4 (8 June 2023) online: <https://reliefweb.int/report/myanmar/myanmar-cyclone-mocha-situation-report-no4-1400-8-june-2023-enmy>

people, or one-third of the overall population, require some form of humanitarian assistance.⁵⁹

E. Urgency of the Reliefs Prayed in this Communication based on the Factual Grounds

59) The urgency of the relief prayed for in this Communication is clear from the factual grounds enumerated and discussed above.

60) Further, the urgency of the relief prayed for in this Communication echoes what the UN High Commissioner of Human Rights recommends that Myanmar military authorities:

(a) Cease immediately all violence and attacks directed against the people of Myanmar and civilian infrastructures across the country, in compliance with Security Council resolution S/RES/2669(2022);

(b) Ensure full compliance with international human rights law and international humanitarian law and, in particular, refrain from planting anti-personnel landmines which are inherently indiscriminate weapons greatly contributing to the suffering of the civilian population. Accurate recording and marking must be implemented and, whenever possible, implement humanitarian demining activities.

(c) Release immediately all those arbitrarily detained, prosecuted and/or sentenced, particularly those deprived of liberty for carrying out humanitarian action, as well as those who exercise their rights to freedom of expression, association, and peaceful assembly. Discontinue politically-motivated prosecutions of all persons expressing opposition to the military's assertion of power;

(d) Immediately cease implementation of the unilateral amendments made to the 2014 Organizations Registration Law and all other actions aimed at restricting humanitarian and civic space and ensure that humanitarian organizations have unrestricted and predictable access to all people-in-need across the country without fear of retaliation for the exercise of rights;

(e) Take all prompt and necessary action, including in the banking and financial sectors, to guarantee the

⁵⁹ UN Office of the High Commissioner for Human Rights, Press Briefing Notes (30 June 2023) online: <https://www.ohchr.org/en/press-briefing-notes/2023/06/myanmar-dire-humanitarian-and-human-rights-situation-compounded>

availability, accessibility, acceptability, and quality of food and healthcare products and services essential to meet the pressing needs of all people in Myanmar, without any discrimination.⁶⁰ (Emphasis in the original)

VI. RELIEF PRAYED FOR FROM THE ASEAN AND THE AICHR

Based on the factual and legal grounds enumerated and discussed above, the Applicant respectfully prays that the ASEAN and the AICHR urgently grant the following relief:

- 1) Declare Myanmar to be in violation of its international obligation to protect human rights and fundamental freedoms in the territory of Myanmar;
- 2) Urgently call on the Myanmar Junta and its Military (Tatmadaw) to immediately cease and desist from committing gross human rights violations and war crimes committed in the territory of Myanmar;
- 3) Urgently call on the Myanmar Junta and its Military (Tatmadaw) to, under applicable rules of international law, provide adequate reparations and satisfaction to the victims of gross human rights violations and war crimes committed in the territory of Myanmar;
- 4) Establish a fact-finding mission to Myanmar to investigate the gross human rights violations and war crimes committed in the territory of Myanmar;
- 5) Establish a regional tribunal for the prosecution of war crimes and other international crimes committed in the territory of Myanmar from 1 February 2021;
- 6) Implement an effective and functioning individual complaints mechanism in the ASEAN system that is consistent with international human rights law and standards, in order to effectively protect human rights and fundamental freedoms and to prevent future gross human rights violations and war crimes from occurring.

Applicant's signature:

MR. SALAI ZA UK LING
11 August 2023

⁶⁰ Page 15, 28 June 2023 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General collectively entitled "Situation of human rights in Myanmar since 1 February 2021," (Advance unedited version), A/HRC/53/52.

By the Counsel for the Applicant:

Philippine Counsel:

MR. ROMEL REGALADO BAGARES *and* MR. GILBERT TERUEL ANDRES

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MR. FERI AMSARI *and* MR. SHALEH AL GHIFARI

At whose stated address below, the Applicant may be served with notices and processes of the ASEAN and/or AICHR for purposes of this Application:

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