



Geneva International Centre *for* Justice
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Human Rights Situation in Myanmar

The 46th Regular Session of the Human Rights Council

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Human rights situation in Myanmar

Report of the Interactive Dialogue with the Special Rapporteur on the human rights situation in Myanmar, Thomas Andrews

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The 46th Regular Session of the Human Rights Council

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Report on
Interactive Dialogue with Special Rapporteur on Myanmar
11-12 March 2021
AT THE 46TH SESSION OF THE HUMAN RIGHTS COUNCIL



People holding candles during a peaceful protest (Credit: Reuters, March 2021)

Introduction

This report will firstly summarize the Special Rapporteur (SR)'s written report of the human rights situation in Myanmar. Mr. Thomas Andrews divided his report in two distinct parts, with one concerning the human rights situation in Myanmar after the coup that occurred on February 1st, and the second one concerning the situation of human rights in Myanmar in 2020 leading up to the coup.

The report will then focus on the unfolding and outcome of the interactive dialogue with the Special Rapporteur, which took place on the 11 and 12 March 2021 in Geneva.

Summary of the SR's report

1. Human rights situation in Myanmar after the coup

After describing how the coup unfolded, Mr. Andrews highlighted the ways in which Myanmar people demonstrated resistance to the military junta. The nationwide Civil Disobedience Movement (CDM) was embraced by millions throughout the country. They initiated regional strikes committees, nationwide protests, and released 5 key demands: (1) release all those detained; (2) abolish the military dictatorship; (3) achieve democracy; (4) establish a federal democratic union; and (5) abolish the 2008 constitution. On February 5th, 15 MPs created the Committee Representing Pyidaungsu Hluttaw (CRPH) to support the anti-coup movement, designing the State Administrative Council (SAC, the military authorities) as a terrorist organization.

Mr. Andrews provided a list of the SAC's violations of rights as of 1 March 2021. It includes murders (close to 100), beatings, mass arbitrary detention (over 1,000), intimidation, and systematic repression of civil and political rights. He noted that since February 1st, the military made a disproportionate use of force that only increased as protests grew. Firing into crowds, shooting fleeing protesters and systematic murders have been reported. The authorities are also arbitrarily detaining National League for Democracy (NLD) members, parliament members, Union Election Commission (UEC) officials, activists, journalists, lawyers, teachers, medics, students and celebrities. Families are left with no information on their wellbeing and location after their arrest. Night raids are also being carried out on the NLD's offices and headquarters, with confiscations of entire computer systems.

Legal restrictions on civil and political rights: Freedom of expression was strongly impacted by the junta's actions. The SAC imposed new laws that criminalizes protesters and normalizes surveillance. A daily internet blackout from 1am to 9am has also been imposed in addition to the series of internet shutdowns that happened as early as February 1st. Reporters also face significant restrictions on their ability to inform and collect information as they face intimidation, harassment, and are banned to use certain expressions such as "coup government" or "military council" by the SAC. Amendments were added to the law protecting the privacy and security of citizens, removing protections from unreasonable searches, seizures, surveillance and arbitrary detention. Marches, protests and gatherings are now prohibited. Trade unions, the most important force in the mobilization of worker participation in CDM strikes, have been banned.

Impact on armed conflict, protection of civilians, humanitarian access and displacement since the coup: The military authorities targeted different ethnicities in the Kayin, Shan and Kachin

states. Internally Displaced Persons (IDPs) were instructed not to participate to protests. The delivery of humanitarian aid was hindered by the coup in most ethnic states. The slowing down of telecommunications services and difficulty of withdrawing cash are causing serious delays to humanitarian structures' functioning.

In his report, Andrews commented on the international response to the coup. He notes that the Myanmar military's economic interests remain largely unchallenged by member states.

Recommendations: The SR recommended the military junta stop the use of excessive force against civilians; respect their right to peaceful assembly and association; release all those arbitrarily detained; grant access to all zones in need to providers of humanitarian assistance; allow unfettered access to human rights monitors; and end the persecution of journalists and human rights defenders.

He recommended the UN to convene the UNSC to assess the situation and invoke Chapter VII authority under the UN Charter, specifically to impose an arms embargo, target economic sanctions, refer the situation in Myanmar to the International Criminal Court, and deny recognition of the military junta as the legitimate government.

He recommended member states establish coordinated sanctions on junta leaders and their associates, block all overseas accounts of all entities of the State of Myanmar, join the 41 countries that already imposed arms embargoes and ensure the embargo is coordinated, and deny recognition of the military junta as the legitimate government representing the people of Myanmar.

2. Situation of Human Rights in Myanmar in 2020 and up to the coup d'état

Democratic space: In Myanmar, ethnic groups, especially Rohingyas, are under-represented in elections.

Freedom of expression, peaceful assembly and association: Andrews reported the frequent arrest of students critical of the military prior to the November 2020 elections. Arbitrary detentions increased in 2019 and 2020, with journalists being specifically targeted. Andrews also noted that, before the coup, plans were in place to increase the capacity for government mass surveillance.

Protection of civilians: Throughout 2020, armed conflicts intensified across Rakhine state, Chin state, Shan state, Kachin state and Karen state. The report notes that the Myanmar military is responsible for significant right violations.

Violation of the ICJ order: On 23 January 2020, an Order by the International Court of Justice (ICJ) instructed Myanmar to take all necessary measures to protect members of the Rohingya community from acts proscribed by the Genocide convention. From 23 January 2020 to 22 January 2021, at least 33 Rohingya civilians were killed as a result of the conflict.



Aung San Suu Kyi addresses the judge at the International Court of Justice (Credit: AP Photo, December 2019)

Freedom of movement: Rohingyas are unable to return to their homes, requiring authorization to leave Rakhine state and travel. There are approximately 600,000 stateless Rohingyas in Rakhine state, with 130,000 of them living in IDP camps since 2012.

Humanitarian access: Andrews notes that security challenges and government restrictions have heavily impacted humanitarian structures' capacity to provide aid to the most affected states, especially in Kachin state, Chin state, Shan state, and Rakhine state.

Statelessness: In 2020, no progress was made to improve Rohingyas' access to citizenship.

Internal displacement: Both displaced and non-displaced populations suffer from protracted and recurrent displacement, poor living conditions, dependency on humanitarian assistance, and the impact of Covid-19 on access to services and livelihoods. Andrews underscores the extreme severity of this need and the urgency of the humanitarian situation.

Right of return: The SR describes the movement of IDPs to their villages in 2020 as "modest at best". In Rakhine state especially, bulldozing and clearing of homes and land, confiscation of house plots and land are reported, in addition to Rohingya villages being removed from maps.



Rohingya refugees fleeing an army crackdown in Western Myanmar (Credits: Reuters, Jorge Silva, October 2018)

Ending business and arms trade with the military: In August 2020, the Fact-Finding Mission on Myanmar (FFM) concluded that considering the security forces of Myanmar's constant grave violations of human rights, no business should enter into an economic or financial relationship with them. Nonetheless, many international companies are still conducting business with military-owned enterprises. The FFM notably identified numerous state-owned and private enterprises that sell conventional arms to the Myanmar military.

Ending land and labour exploitation: Forced labour and the recruitment of children has continuously been reported. Forced evictions and land grabbing to expand development projects in Myanmar have regularly been reported in 2020.

Recommendations, after the restoration of a legitimate government, include: consider changes to the constitution in order to hold the military fully accountable; ensure rights to freedom of opinion and expression, peaceful assembly and association; protect the right to information; address the situation of armed conflict in various parts of Myanmar; address the unresolved issues involving ethnic minority states and communities; ensure full cooperation with the proceedings at the ICJ; lift all restrictions arbitrarily imposed and enforced on Rohingya; invite the OHCHR to open an office in Myanmar; welcome the UN SR on the situation of human rights into the country; fully implement the Law on the Rights of Persons with Disabilities; ensure that the use of information technology is established by law and in accordance with international standards; restore full Internet and mobile connectivity in Rakhine and Chin states; adopt adequate legislation on the Prevention of Violence Against Women; ensure that freedom of religion and belief can be exercised; permanently end the persecution of journalists and human rights defenders; end arbitrary detention; and improve and strengthen the justice system.

The SR recommended the Government of Myanmar and Ethnic Armed Organizations cease deployment of military forces and observe a nation-wide ceasefire; end violations against civilians; guarantee full access to humanitarian actors providing lifesaving support to people in need; and immediately stop laying landmines.

Interactive dialogue with the Special Rapporteur

11-12 March 2021

1. Opening Statements

Special rapporteur on Myanmar, Thomas Andrews: The Special Rapporteur started his statement by describing how violence was used by the military authorities against peaceful protesters since protests had erupted. The military junta has arbitrarily arrested thousands of protesters, used lethal weapons against them, and has stripped the country's civilians of their



Thomas Andrews, SR to Myanmar

legal protections and their freedom of expression, assembly and association. Andrews labeled the military forces running the country as a “murderous, illegal regime”.

The SR also recalled member states that Myanmar's current leadership was the focus of a charge of genocide before the ICJ. He stated that the atrocities committed against the Rohingyas were ongoing, with over 600,000 Rohingyas remaining stateless and over 100,000 of them

currently living in Internally Displaced Persons (IDP) camps, unable to return to their homes. 33 Rohingyas have been killed in the year following the International Court of Justice order.

Lastly, Andrews warned Council members of the price of international inaction. He underscored that sanctions can only be effective if they are unified and coordinated, and expressed his concern regarding the reluctance of a few nations to act. He urged member states to consider these 5 steps:

1. To stop the flow of revenue into the illegal junta's coffers. Allowing these revenues to be maintained means supporting the junta's attacks of protesters and their crimes.
2. Coalition member states should outlaw the export of arms to the Myanmar military. Despite 41 members having already imposed some form of arms embargo, more states should join in order for the sanction to be effective.
3. Member states that have universal jurisdiction laws should initiate investigations of these ongoing crimes and file charges against Myanmar's senior security officials.
4. Stop the flow of humanitarian and development aid that is operated by the government and controlled by the military government. Working directly with civil society and local associations will allow aid to be distributed directly to vulnerable populations.
5. Member states should deny recognition of the military junta as the legitimate government representing the people of Myanmar.

2. Country concerned (Myanmar)

Permanent Secretary of the Ministry of Foreign Affairs, Mr. Chan Aye: Mr. Chan Aye responded to Andrews' recommendations by mentioning that Myanmar does not support multilateral initiatives that do not follow the principles of universality, impartiality, objectivity and non-politicization. Raising the debate on the controversial elections of November 2020, he maintained the USDP's allegations of massive fraud and announced that voters' lists will be verified again. Regarding the ongoing protests, Mr. Chan Aye claimed that special sessions of the Parliament will take place in order to solve this internal issue. He also stated that authorities have been exercising "utmost restraint" to maintain law and order in the country since the beginning of the protests.



*Mr Chan Aye,
Permanent Secretary of
the Ministry of Foreign
Affairs*

3. Participating countries

United Kingdom: The UK representative expressed his concern about the consequences the coup will have, especially for minority groups and the state's more vulnerable populations. He stated that democracy must be restored in Myanmar, and urged the authorities to release all those arbitrarily detained and to lift the state of emergency. He called on the international community to express their collective concerns.

*Mr. Nigel Adams, UK
representative*



European Union: The EU representative condemned the use of force by the military authorities and the grave violations of international law committed against the Rohingyas. He called on Myanmar to stop the use of force against protesters and to implement the provisional measures following the ICJ order. He reiterated his support of collective measures such as sanctions targeting the military junta.

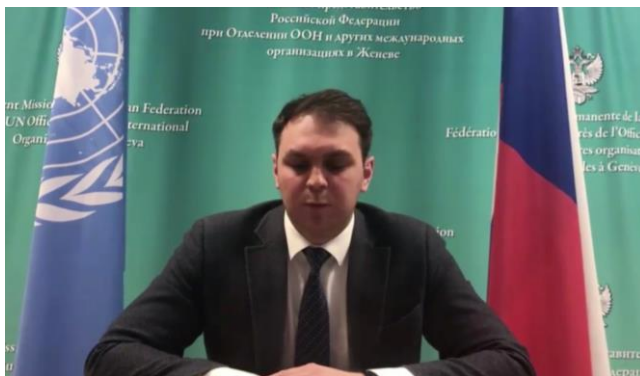
Lithuania (on behalf of the Nordic Baltic countries): The representative of Lithuania condemned the coup and the deadly violence, beatings, arbitrary detention, intimidation and systematic repression perpetrated by the authorities. He stated that human rights, democratic governance, and rule of law must be restored. He called on the authorities to release political activists and all those arbitrarily detained. He reiterated his will to cooperate with UN mechanisms and mandates, and stated that Myanmar must grant access to the country, particularly to IDP camps.



*Mr. Andrius Krivas,
Lithuania representative*

Pakistan, on behalf of the Organisation of Islamic Cooperation (OIC): The OIC expressed their concern regarding the grave human rights situation in Myanmar, and condemned the violence that led to the death of 33 Rohingya Muslims in the year following the ICJ order. He also highlighted how the Covid-19 crisis exacerbated the Rohingya crisis. He urged the state to follow the ICJ interim order, to grant citizenship to all stateless Rohingyas in the country, and to allow the repatriation of the forcibly displaced Rohingyas. He encouraged the authorities to engage in direct communication with the Rohingyas.

Russia: The representative expressed his concern about the use of violence and weapons by the authorities. He stated that mutual reconciliation must be encouraged. The international community must facilitate this dialogue, and nonetheless they should respect the principles of neutrality and non-interference. He described the SR's approach as politicized and therefore not helpful.



*Mr. Artur Chernyakov,
Russia representative*

Philippines: The representative supports Myanmar people's efforts to persevere in the implementation of democratic reforms. He highlighted Aung San Suu Kyi's significant role in the democratic transition. He also expressed his hope that the international community's rationality and objectivity will preserve Myanmar's sovereignty.

Venezuela: The representative claimed that the SR's report was biased and imbalanced, and contained unverified information. He called on the council to stop these hostile mandates against the global south, claiming that they are unnecessary and ineffective, as they undermine the right to self-determination of the people and universal principles of respect for sovereignty and non-interference in the internal affairs of states.



*Mr Héctor Constant Rosales,
Venezuela representative*

China: The representative underscored that the international community should respect Myanmar's sovereignty, political independence, territorial integrity and national unity. He stated that the SR should act objectively and impartially. The international community should only help relevant parties to engage in dialogue.

*Mr. Chen Xu,
China representative*



NGOs: A total of ten NGOs were able to submit oral statements during this session. They essentially condemned the crimes committed by Myanmar's current leadership against protesters and ethnic minorities. They also expressed their support of the SR's work and called on the member states to act collectively.

4. Final remarks of the SR

Andrews started his statement by commending NGOs' courage and tenacity. He criticized the Myanmar representative's use of the term "utmost restraint" regarding the authorities' repression of protesters, and called on states not to believe this.

He reiterated the urgency of the situation: the military junta does not represent the people of Myanmar, and it is continuously responding to peaceful protests with violence. The military authorities must pay for their crimes, and only coordinated, tough, and unrelenting sanctions will allow the international community to effectively pressure the military leadership.

He also reaffirmed his role of SR, and stated he would continuously provide the Council with information, analysis, recommendations, and support any coalition effort that might be generated by the Council. He commended the effort that was already made by some nations in supporting a strong international response.

Finally, Andrews cited the resolution of the OHCHR's special session on February 12, 2021. He requested that resources necessary for his mandate be made immediately available.

GICJ Position

Geneva International Centre for Justice are deeply concerned for the security of Myanmar's civilians and for its political future. We firstly urge military authorities to cease the systematic recourse to violence against civilians and to immediately release all of those who are being arbitrarily detained.

Secondly, considering the growing urgency of the humanitarian situation in some regions, we call on authorities to cooperate with international organizations and grant appropriate access to the state in order to allow humanitarian structures to respond adequately to vulnerable populations' needs.

Lastly, we would like to remind international actors of their responsibility to defend the worldwide legitimacy of human rights and democracy; we call on states and organizations to sustain dialogue with Myanmar and act positively in order to safeguard more vulnerable civilians' rights.



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