

Geneva International Centre *for* Justice

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HRC51

Scrutiny of Myanmar at the UN:  
Waiting for a Joined-Up Approach



GICJ REPORT

October 2022

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# HRC51

## Scrutiny of Myanmar at the UN: waiting for a joined-up approach

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51<sup>st</sup> Session of the Human Rights Council

Combined Reports and Discussions on Myanmar

12<sup>th</sup> September – 7<sup>th</sup> October 2022

Palais des Nations, Room XX, Room of the Human Rights, Geneva,  
Switzerland

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October 2022

# Table of Content

1	Executive Summary.....	7
2	Myanmar Facts and Figures.....	11
2.1	Map of Myanmar.....	11
2.2	Ethnicities and Religions.....	12
2.1	History of Myanmar since Independence .....	13
3	Background to International Investigations.....	19
4	Independent Investigation into Myanmar Calls for Unimpeded Access to Investigate Crimes .....	23
4.1	4 <sup>th</sup> Annual Update Report of the IIMM - 8 <sup>th</sup> August 2022 .....	23
4.2	Interactive Dialogue - 12 <sup>th</sup> September 2022 .....	26
5	Tom Andrews warns that the human rights situation in Myanmar is going “from bad, to worse, to horrific” .....	31
5.1	Oral Update by the Special Rapporteur - 21 <sup>st</sup> -22 <sup>nd</sup> September 2022 .....	31
5.2	Interactive Dialogue - 21 <sup>st</sup> -22 <sup>nd</sup> September 2022 .....	34
6	OHCHR alarmed at the international community’s inaction in Myanmar .....	39
6.1	OHCHR Report on Progress Made and remaining Challenges with regard to the Recommendations of the independent International Fact-Finding Mission on Myanmar - 7 <sup>th</sup> September 2022 .....	39
6.2	Interactive Dialogue - 2 <sup>nd</sup> September 2022.....	45
7	High Commissioner Oral Update, 26 <sup>th</sup> September 2022 .....	51
8	Conclusion and GICJ position.....	55

# Table of Figures

Figure 1: Map of Myanmar.....	11
Figure 2: Ethnicities in Myanmar.....	12
Figure 3: Religions in Myanmar.....	12
Figure 4: Aung San Suu Kyi.....	14
Figure 5: Chronology of Myanmar.....	17
Figure 6: Nicholas Koumijan, the Head of the IIMM.....	23
Figure 7: The Special Rapporteur on Myanmar, Tom Andrews.....	31
Figure 8: Acting High Commissioner for Human Rights, Nada Al-Nashif.....	39
Figure 9: Acting High Commissioner for Human Rights, Nada Al-Nashif.....	51





# 1 Executive Summary

Since 2015, the Myanmar military has been accused of committing crimes against humanity, violating human rights, and breaking international law by using force against the Rohingya and other minorities in Myanmar.

In addition, the military led a coup to install the junta on the 1st of February 2021. Since that time, the army and the leaders that were installed have been accused of committing severe crimes against the population to suppress pro-democracy protests and prevent public dissent.

Between the 12th of September and the 7th of October 2022, the 51st session of the Human Rights Council featured three different Interactive Dialogues with various UN mechanisms scrutinising the human rights situation in Myanmar. In addition, an oral update was provided by the Acting High Commissioner for Human Rights covering similar matters. This report presents these discussions and analysis including covering:

- An Interactive Dialogue with the Head of the Independent Investigation Mechanism for Myanmar (**IIMM**), Mr Nicholas Koojiman, presented the 4th annual report, on efforts to collect, consolidate, preserve and analyse evidence of crimes committed in Myanmar since 2011.
- An Interactive Dialogue with **the Special Rapporteur for Myanmar**, Mr Tom Andrews who presented a further oral update on his work reviewing the human rights situation across the whole country.
- An Interactive Dialogue based on the **OHCHR's report** on the progress made and remaining challenges with regard to the recommendations of the formerly constituted Independent International Fact-Finding Mission on Myanmar (FFM).
- Finally, an **oral update** was provided by the Acting High Commissioner for Human Rights, Ms. Nada Al-Nashif on the most recent urgent human rights concerns.



All the reports point to a degrading human rights situation in Myanmar. This is occurring alongside the growing capacity of the **IIMM** to collect and analyse information on crimes committed in the country. It is also in spite of previous efforts to use accountability mechanisms to deter human rights abuses and is testimony to the failure to implement the **FFM's** recommendation of various targeted measures to weaken the stranglehold of the Myanmar military. Making this point forcefully, the **OHCHR report** notes alarm at the untrammelled power of the junta that is unchecked by the international community's activity. It appears that too few economic sanctions have been imposed to date. As a consequence, there is still a free flow of arms and other sensitive equipment being sold to the junta, ensuring its leaders are able to exercise control over different parts of the country. The sale of arms and supplies to Myanmar clearly facilitates the commission of crimes against its people. Violations of human rights and humanitarian law continue to be perpetrated by the junta and people continue to suffer under its cruel rule. There appears to be no sign of international efforts to date having a deterrent effect on this course of criminal conduct.

The effectiveness of international mechanisms to deter rights violations, enhance diplomatic efforts and increase accountability for abuses must be analysed to identify what prevents a more beneficial outcome. The context of Myanmar undermines claims by the international community that it takes all forms of human rights abuses seriously. Reviewing the work of UN human rights mechanisms often reveals frustrations about countries not providing basic support for refugees, investigators, and an underlying aim to optimise their benefit from regional political power struggles.

In order to finally take action against the junta and improve the human rights situation of the people of Myanmar, **Geneva International Centre for Justice (GICJ)** strongly supports the mandate of the **IIMM**, as the body most capable of delivering truth-seeking and documenting abuses to the highest standards to facilitate future prosecution of serious international crimes. GICJ calls on states to take responsibility and implement targeted, coordinated, and effective sanctions to deprive the military of its financial resources. We





also call for the extension of humanitarian assistance to the people of Myanmar and to refugees who have fled to neighbouring countries. Finally, GICJ reiterates that no state should recognise the junta as the legitimate government of the country, and urges the return of peace, respect for human rights, democratic institutions, and freedom in order to ensure accountability and justice for the people of Myanmar.





## 2 Myanmar Facts and Figures

### 2.1 Map of Myanmar



Figure 1: Map of Myanmar.



## 2.2 Ethnicities and Religions

Myanmar is located in Southeast Asia, neighbouring Bangladesh, India, China, Laos, and Thailand. Covering 676,578 square km, it is home to more than 57 million people divided in several ethnicities and religious patchworks. Burman ethnicity represents the majority of the country, counting approximately 68% of the population, while minorities are Shan (9%), Karen (7%), Rakhine (4%), Chinese (3%), Indian (2%), Mon (2%) and others (5%). A large majority of Myanmar are Buddhists (approximately 88%), while Christians represent 6% of the population, Muslims 4%, Animists 1%, and Hindu 0,7% and others 0,3%.

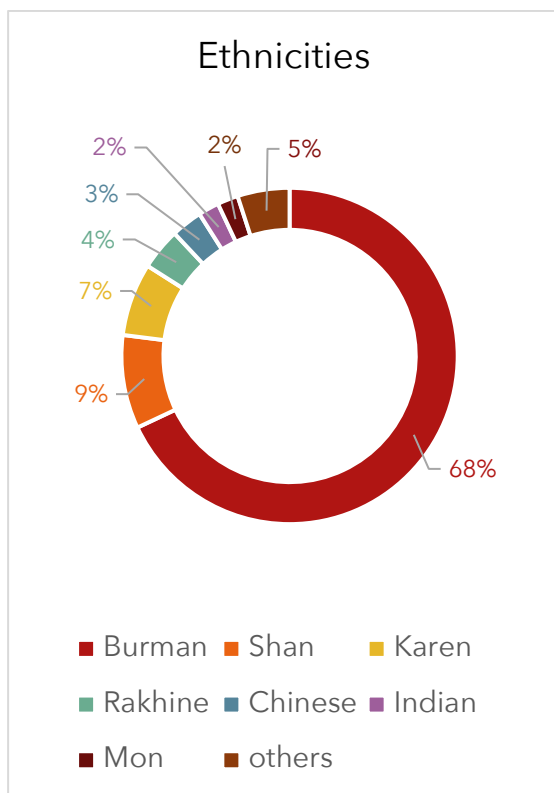


Figure 2: Ethnicities in Myanmar

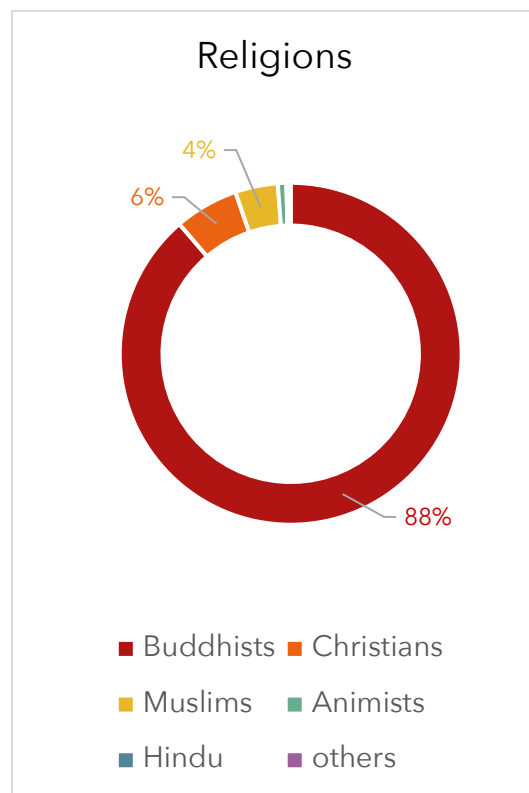


Figure 3: Religions in Myanmar.



## 2.1 History of Myanmar since Independence

Myanmar gained independence from British colonial rule in 1948 as the Union of Burma with a parliamentary democracy. In 1962, however, the national army, also known as the Tatmadaw, took control of the country with the military coup of General Ne Win, whose junta remained in power until 1974. In that year, a new constitution based on isolationist and socialist economic programs was implemented in Myanmar, whose economy rapidly deteriorated.

As a result of massive corruption and economic instability, protests broke out in 1988. The military brutally suppressed any protests, resulting in the deaths of at least 3,000 people. A year later, the Union of Burma was renamed the Union of Myanmar, which was seen as more inclusive as Burma referred to the country's ethnic majority. However, the system remained largely unchanged.

In 2007, the so-called Saffron Revolution, led by Buddhist monks, broke out in protest against the authoritarian regime. Supported by the international community, the movement eventually succeeded in reducing military control of the country and implementing a new constitution in 2008. In the following years, the country underwent several reforms increasing the democratic power of the people and reducing the influence of the military, though not removing it from the political sphere. In 2015, the country's fairest and most genuine multiparty national elections were held. They resulted in the election of Aung San Suu Kyi as president, a leading figure in the pro-democracy movement since the 1988 protests and the 1991 Nobel laureate. Her election raised hopes for a better future in the country with respect for human rights, the rule of law and of all minorities in Myanmar.



*Figure 4: Aung San Suu Kyi.*



Nevertheless, throughout these processes, Myanmar has consistently witnessed clashes between ethnic and religious groups. Systemic discrimination and lack of economic opportunities were rooted in the diverse composition of the population, while government institutions lacked effective systems to represent and protect its minorities. They have regularly been neglected and sometimes targeted by government institutions such as the military. This led to the development of several non-state militias to protect and govern specific areas and their inhabitants. Clashes between the various militias and the "official" army have thus been constant and ordinary for decades. Some minorities have had their citizenship revoked, which has only exacerbated their protections and rights. Considering wide and constant tensions in Myanmar, early as 1992, the UN established a special rapporteur to report and advise on its human rights situation.

One such militia, called the Arakan Rohingya Salvation Army, aims to protect the Rohingya, a Muslim minority located in Rakhine State. In August 2017, the Tatmadaw announced that twelve of its security personnel had been killed by this militia and announced a special military operation in the region to combat "terrorism." Soon, human rights advocates became alarmed that these actions were not targeted and denounced that all Rohingya were being subjected to murder, torture, rape and other forms of crimes against humanity. The Tatmadaw have wantonly attacked entire villages and towns, causing more than one million Rohingya to flee, including approximately 773,000 to neighbouring Bangladesh. By the end of summer 2017, the UN was lamenting more than 6,000 innocent civilians killed by the Myanmar military. The systematic pattern of brutal attacks on the Rohingya because of their different ethnicity and faith makes it clear ethnic cleansing. In March 2018, Special Rapporteur Yanghee Lee first described these events as possible crimes of genocide. In 2019, the Gambia took the case to the International Court of Justice, suing Myanmar for violating the Convention on the Prevention and Punishment of the Crime of Genocide. As of 2022, the case is still under consideration by the ICJ.

However, the human rights violations suffered by several minorities in Myanmar and the Rohingya in particular have not diminished in recent years. The situation has even worsened



since February 1, 2021, when Myanmar's military, already accused of crimes against humanity, took control of the country through a military coup. The country returned to a junta system, with the Tatmadaw controlling all critical governmental positions. Political opponents, such as President Aung San Suu Kyi, are imprisoned, leaving no room to challenge their regime.

Despite the widespread accusation of the coup by most of the international community, there are no effective systems in place to change the country's political pattern, and the Tatmadaw continues to trade, including military equipment, with some states, including Russia and the People's Republic of China. More than five years after the attacks on the Rohingya began and more than a year and a half after the military coup, human rights violations are consistently reported by civilian parties. However, the UN mechanisms fail to unite countries to take concrete action against the Tatmadaw. This report details the review of Myanmar at the 51st session of the UN Commission on Human Rights.



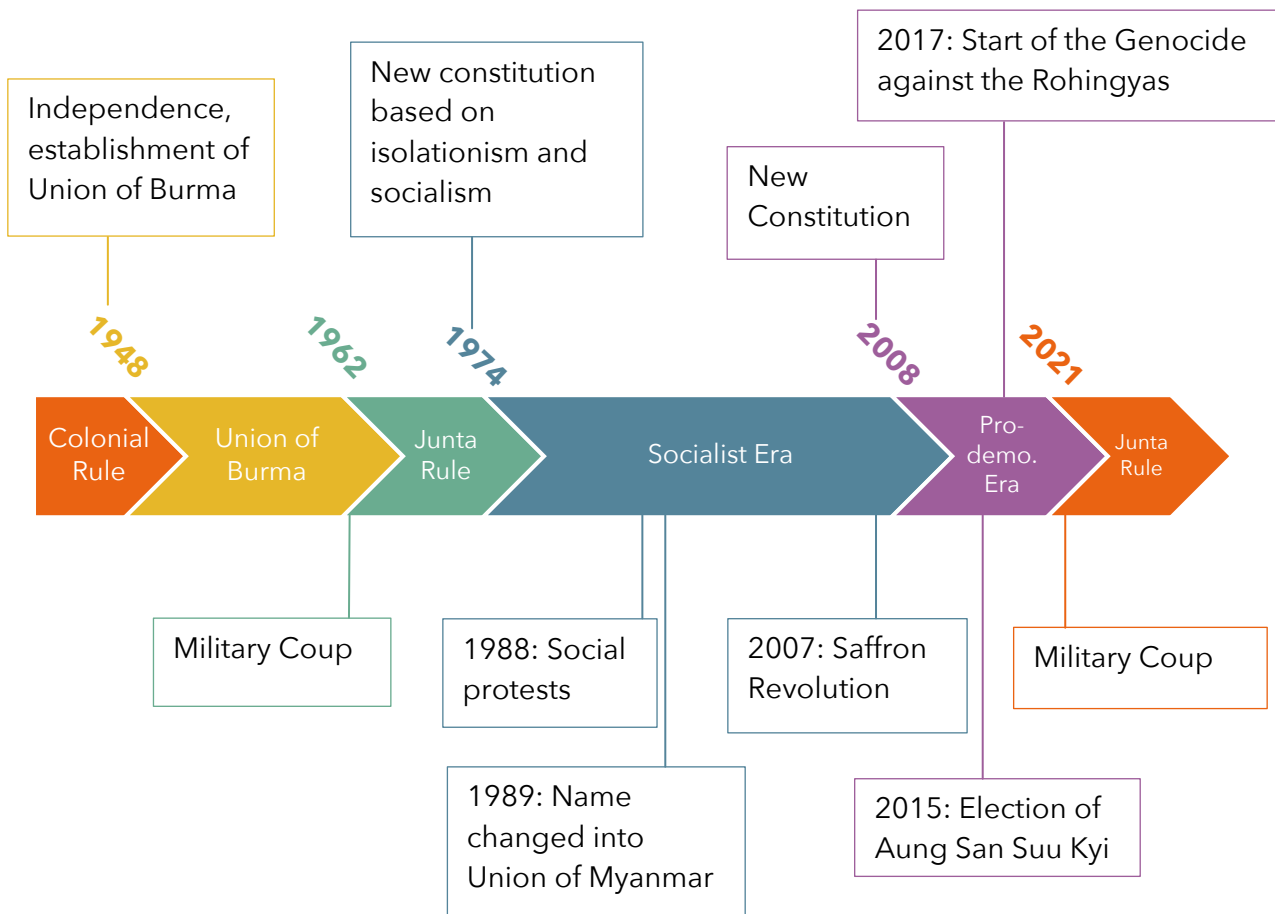


Figure 5: Chronology of Myanmar.





### 3 Background to International Investigations

Following a period of 'liberalisation' on the basis of a new constitution (2008) and supported by international bodies to introduce stronger democratic measures (from 2011) there were hopes that Myanmar could become a more free and transparent country. However, this process was not straightforward, and its effects were not seen equally across the nation.

The military's campaign of repression against the Muslim Rohingya began in October 2016. By November 2016 it was already evident to the head of the UN refugee agency's office in Cox's Bazar, Bangladesh that the military was attempting to ethnically cleanse the country of its Muslim minority. A second wave began in August 2017 leading to at least 700,000 people fleeing Rakhine State and sheltering in Bangladesh. Atrocities continued to be perpetrated including planting landmines across the border region to kill and maim those trying to escape violence. The government of Myanmar denied the events and refused requests from international bodies to conduct investigations.

In November 2020, the National League for Democracy gained another landslide election victory in the legislature. The military claimed irregularities and on the 1st of February 2021, they began to detain political leaders. The new parliament then declared a state of emergency and restricted internet access in a coup that purported to hand full power over to the military. Protests grew, particularly in Yangon and persisted and became known as the Spring Revolution. By June 2022 at least 2,000 protestors had been killed with many more arrested and displaced from their homes.

By 1992, pursuant to Commission on Human Rights resolution 58, a Special Rapporteur on the situation of human rights in Myanmar was established. Resolution 25/26 of 2014 and resolution 31/24 of 2016 expanded the mandate of the Special Rapporteur to include progress and priority areas for technical assistance and capacity building. As of May 2020, the Special Rapporteur is Mr. Tom Andrews, Senior Human Rights Fellow at Yale University Law School.



Following the alleged crimes committed by Myanmar's army against minority populations, including the Rohingya in Rakhine State, the United Nations Human Rights Council established, in March 2017, an Independent International Fact-Finding Mission on Myanmar (IIFMM, FFM). This mission was tasked with detailing the events that have occurred in Myanmar regarding alleged human rights and humanitarian law violations committed by the military and other security forces of the country. The FFM gathered evidence of "the most serious international crimes and violations of international law", and recommended actions that could be implemented in order to improve the situation in Myanmar. In September 2019, the FFM mandate expired. The evidence was handed over to the Independent Investigative Mechanism for Myanmar (IIMM), starting on the 30th of August 2019.

The Independent Investigative Mechanism for Myanmar was established by the Human Rights Council in Resolution 39/2 (September 2018) with a mandate to collect, consolidate, preserve, and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011.

Building towards future legal processes, the IIMM is mandated to prepare files for the expedition of independent and fair criminal proceedings in any court (at any level - local, regional, national or international) that may have jurisdiction over the said crimes. The purpose of the IIMM, therefore, includes producing evidence for any specific tribunal that may be established in the future, any domestic court exercising universal jurisdiction as well as international courts such as the ICC and ICJ. Following the ICJ's judgment on preliminary objections in *The Gambia v Myanmar* dated 22nd July 2022, that court has accepted jurisdiction over claims that Myanmar breached the Genocide Convention 1948. The Prosecutor of the ICC is currently conducting an investigation into crimes committed at least in part on the territory of Bangladesh on or after 1st June 2010. Both courts will be able to utilise information obtained and analysed by the IIMM so long as measures are taken to ensure the preservation of anonymity for witnesses and victims.



The 4th annual report of the IIMM presented at the 51st session of the Human Rights Council covers all its activities from 15th June 2021 to 30th July 2022. Having expanded capacity and staffing, the IIMM has collected 3 million items of information, engaged with 200 information sources, and is handling 120 formal requests for information and assistance. In addition, following resolution A7HRC/RES/46/21, the Human Rights Council requested the Office of the High Commissioner for Human Rights (OHCHR) to submit a report assessing the progress made and identifying the remaining challenges in Myanmar. The report was submitted on 7th September 2022 and was presented to the 51st session of the Human Rights Council, on 22nd September 2022.



## 4 Independent Investigation into Myanmar Calls for Unimpeded Access to Investigate Crimes



*Figure 6: Nicholas Koumijan, the Head of the IIMM.*

### 4.1 4<sup>th</sup> Annual Update Report of the IIMM – 8<sup>th</sup> August 2022

On Monday 12th September the Independent Investigative Mechanism on Myanmar delivered an update report to the Human Rights Council outlining improvements in its capacity to investigate crimes and its prioritisation of crimes committed by the military forces against the civilian population following the coup in February 2021.

The report set out in detail the activities of the IIMM since September 2021 to increase its capacity to collect and analyse information received from States, organisations, and



witnesses. The report in particular highlighted the improvements new technology has made to the IIMM's processes, the increase and greater diversity of staff members, and the recruitment of staff who speak Myanmar languages. Capacity and resources have also increased to resume in-person evidence gathering taking a victim-centred approach that protects their mental health and physical security.

In respect of the Preliminary Findings related to post-coup events, the Mechanism has identified very grave and widespread crimes which have recently been prioritised internally due to the seriousness and availability of contemporaneous information. The IIMM continues to build case files that will help establish individual criminal responsibility for the commission of serious international crimes, focusing on those most responsible. States are called on to provide support to a relatively under-resourced Mechanism undertaking enormous tasks such as responding to 120 formal requests for information and assistance, engaging with nearly 200 information sources and analysing a repository containing 3 million items of information.

The IIMM has identified ample available evidence of crimes against humanity and war crimes in Yangon and around Nay Pyi Taw, Bago, Mandalay, Magway and Sanging. They have received credible reports of crimes continuing to be committed in Chin, Kayin and Kayah States. Finally, their investigations reveal that there is substantial evidence in respect of the widespread targeted or indiscriminate killing of civilians among the several distinct armed conflicts that remain ongoing. For sexual and gender-based crimes and crimes affecting children, they have collected information about how the conflicts impact and exacerbate their vulnerable situation that warrant targeted outreach by those with expertise.

Applying well-established principles of criminal liability to identify persons responsible, the Mechanism continues to seek direct contact with victims and witnesses to these crimes to implement best-practice investigative techniques in building comprehensive case files.

The 4th annual report relays the technological and staffing improvements that have been made to give it greater capacity to carry out these tasks, but it also highlighted how it has





faced persistent challenges affecting its ability to gather information, interview witnesses and operate according to best-practice in order to carry out its mandate. The IIMM's report repeatedly refers to difficulties it has faced with limited resources and limited support from states and ends with a call for all Member States, particularly States in the Asia-Pacific region, to provide meaningful cooperation in the form of access to witnesses and relevant documents to support the mandate's aim to advance accountability and bring justice for the people of Myanmar.

GICJ strongly condemns the military junta's continuing indiscriminate attacks on citizens; the authorities must uphold their previous commitment to the rule of law. GICJ calls on states to provide full support to provide access to witnesses and documents in Myanmar and other places to allow the Mechanism to continue its work documenting the gravest crimes and to help achieve justice for victims that is lacking in their domestic system. The Mechanism should be provided with the funding and resources it requires to complete its vital work in accordance with the mandate determined by states to be necessary to achieve justice in previous resolutions of the Human Rights Council.

## 4.2 Interactive Dialogue - 12<sup>th</sup> September 2022

**Nicholas Koumijan, the Head of the IIMM**, set out a summary of the 4th report and added that many brave individuals had come forward to give interviews and information about abuses. This has allowed the IIMM to double the amount of



evidence it has at its disposal even since the report was submitted in the summer of 2022. Facebook has shared information about accounts that were controlled by the Myanmar military that spread misinformation making it appear as though the Rohingya were arming en masse prior to the clearance operations began. Mr. Koumijan called on all states to unite to break the cycle of impunity and ensure those responsible for crimes will face justice.

The **representative of the European Union** was alarmed at the scale of widespread and systematic attacks that are taking place, condemning, in particular, the political executions of opposition leaders.



The **representative of Pakistan on behalf of the Organisation for Islamic Cooperation** urged all states and all platforms to cooperate with the Mechanism, which should be provided with sufficient support to help it collect

and preserve evidence of violations since 2011 in an objective manner to share with other accountability mechanisms. He noted that states, including Myanmar, should facilitate visits by the mechanism like Bangladesh to be able to engage with those who have the most relevant evidence for its work.

The **representative of Switzerland** noted concern about ongoing breaches of human rights law and international humanitarian law, firmly condemned summary executions and called on states to re-engage to try and find a credible path to a political solution.

The **representative of Egypt** noted the serious international crimes that have taken place since 2011 and reaffirmed its full condemnation of conduct against the Rohingya minority. The representative committed to supporting all efforts to ensure accountability and called on others to provide the necessary support.



The **representative of the Netherlands** noted that the report clearly evidence abuses and reinforces that crimes against humanity and war crimes continue to be committed in Myanmar. She also noted that the Mechanism will play a

crucial role in pursuing international accountability at the ICC and ICJ. Further, she applauded the victim-centred approach being implemented by the team but is abhorred by the lack of access to investigate allegations of sexual offences against women and children.

#### **The representative of Ireland**

commended the ongoing work to collect evidence of appalling crimes against humanity including enforced disappearances, murder, and torture which have been committed against the Rohingya,



in particular crimes against women and children. She noted that the report's findings are substantial despite Myanmar's attempts to hinder the Mechanism's work. The representative called on UN-mandated investigators to be given full and unfettered access to the country.

In relation to the four democratic campaigners who were summarily executed, she enquired whether states can assist in the progress of that particular investigation.

The **Armenian representative** noted there is no statute of limitations for genocide, war crimes, and crimes against humanity. The use of cutting-edge technologies and innovative methodologies was praised,



especially obtaining the cooperation of Facebook. The representative identified that the Mechanism had commissioned thematic expert reports, and invited the IIMM to share those reports with the Council to share points of learning.

A number of **Non-Governmental Organisations** raised concerns about the total impunity still being enjoyed by the military leaders in Myanmar and urged a focus on using all possible pathways to pursue legal accountability in international, regional and domestic bodies. While many focused on the plight of the Rohingya population, the discrimination and humanitarian position of other minorities in Myanmar such as Christians in Chin State were also raised. States were urged to give access to investigators and to take measures to protect witnesses from interference.

GICJ's Martin Browne gave an oral statement on this matter noting that the vital work of recording evidence and progressing investigations must be supported by states in order to achieve justice for the people of Myanmar. Full support for investigations of international crimes is part of states' obligations and prosecution of those who have committed genocide, arbitrary and ethnic cleansing must occur to the highest international standards.



## Concluding remarks

In concluding remarks **Mr. Koumijan** answered questions raised by states about how the Mechanism prioritises the reported killings and other alleged crimes. He outlined how denying a fair trial in one-sided legal proceedings can itself be an international crime based on precedent from the Nuremberg Trials, but the de facto authorities have not been able to provide basic information about the fairness of trials of political opponents. He also urged states to give support in reaching those who have the evidence, victims, witnesses, and potential insiders who saw orders being passed up the chain of command. States were also asked to support the security and safety of vulnerable witnesses. Finally, he noted the importance of the case at the ICJ.



## 5 Tom Andrews warns that the human rights situation in Myanmar is going “from bad, to worse, to horrific”



*Figure 7: The Special Rapporteur on Myanmar, Tom Andrews.*

### 5.1 Oral Update by the Special Rapporteur – 21<sup>st</sup>-22<sup>nd</sup> September 2022

The Special Rapporteur on Myanmar, Mr. Tom Andrews, presented an oral update on the human rights situation in Myanmar on September 21<sup>st</sup> 2022. Describing the situation as having gone “from bad, to worse, to horrific,” his oral update could not have been more alarming in urging the international community to finally act.



Mr. Andrews explained that the total number of displaced people stands at 1.3 million. He expressed alarm that the military junta continues to attack civilians and has been responsible for the destruction of at least 28,000 homes, hospitals, schools and other civilian infrastructure. 12,000 people remained arbitrarily detained, including 295 children, and 55 were reportedly held hostage to force their parents to surrender. In July 2022, five political opponents were executed without due process, and 84 others faced the same sentence.

More than five years after the brutal attacks on the Rohingya population and other minorities and more than a year after the junta took control of the country, the people of Myanmar remain deeply disappointed by the international community's inaction. The popularity of the military junta is, nevertheless, declining throughout the country, and many soldiers are deserting their posts. This is leading to even more violent oppression to ensure military control over the country. The UN and its member states must act to change this situation. With the UN Security Council failing to organise a common response, Andrews called on all representatives of the Human Rights Council to "urge [their] colleagues in [their] national capitals to form a coalition of nations capable of developing a coordinated strategy where all the actions of individual nations or groups of nations result in a coherent and powerful whole."

The Special Rapporteur felt it was important to mention the positive and inspiring aspects of this situation as well. Although he could not find any from the international community, he explained that he had spoken with more than 100 human rights activists, independent pro-democracy organisations and women's rights supporters, and admitted to being inspired by their courage and efforts to resist the criminal junta. Their resistance shows the junta, and other violent organisations around the world, that there is more power than the deadliest military weapons: the will of the people to fight for their lives, their freedom, their country, and their future.





Mr. Andrews ended by quoting a woman human rights defender he spoke with in August 2022: "In this situation, we can't find hope. So, we create our own hope. As long as we keep moving forward, we generate hope. We see more and more people standing up and becoming human rights defenders. We haven't experienced anything like this in the last ten or twenty years. It makes us feel we are on the good track. That's how I keep going". He reiterates his hope that the Human Rights Council understands the gravity of the situation and urges all UN members to rethink their actions and coordinate sanctions against the junta to finally improve the human rights situation in Myanmar.

## 5.2 Interactive Dialogue – 21<sup>st</sup>-22<sup>nd</sup> September 2022



**The representative of Luxembourg,** speaking **on behalf of the BENELUX** countries, expressed concern specifically about the Rohingya and other Muslim minorities. He described the violence they are enduring as the most serious crime under international

law and reiterated their commitment to seek justice and accountability. He therefore urged all States to work with the Special Rapporteur, the Independent Investigation Mechanism for Myanmar, and all contributors. He also urged the junta to stop restricting humanitarian access, which will become even more crucial as food insecurity increases in parts of Myanmar.

**The European Union** condemned the recent attack on a village in Rakhine State, where at least eleven children were reportedly killed by a helicopter raid on their primary school. The EU calls for justice and accountability for all human rights violations. Furthermore, he condemned the large-scale use of arbitrary detention of political opponents and called for their immediate release. Finally, the representative asked the Special Rapporteur how the geopolitical climate affects the human rights situation in Myanmar.

**Pakistan** expressed great concern for all Muslims in Myanmar and explained the origin of the discrimination they face for having their citizenship taken away. He thanked the Special Rapporteur for his oral update and



agreed with him in describing the inaction of the international community as a failure to find a lasting solution. He also commended and congratulated the State of the Gambia for its legal action against Myanmar before the International Court of Justice. Finally, he recalled that the troubles in Myanmar jeopardised the stability of the entire region.

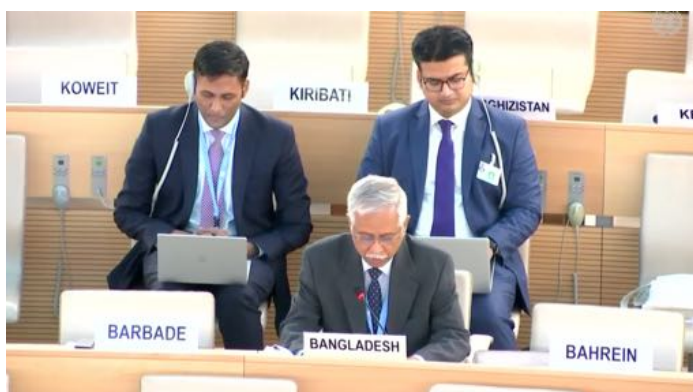


**The representative of Venezuela**

condemned all unilateral measures taken against the Myanmar military. He explained that the exclusion of Myanmar, the country most concerned from the discussion, contradicts the UN principle of

dialogue and cooperation. This also limits the Human Rights Council's understanding of the efforts made by Myanmar to improve the human rights situation. He also criticised the oral update for asserting false and unverified figures and sources. The Venezuelan diplomat expressed alarm that southern countries are systematically attacked by the Council. He continued by highlighting that the proposed sanctions violate the universal principle of self-determination of the people, the sovereignty of Myanmar and the principle of non-interference. Venezuela announced that it would support any initiative that would contribute to the promotion of peace in Myanmar.

**The diplomat of Bangladesh**, the neighbouring country most affected by the Rohingya refugee crisis, expressed his concern. Five years have passed since his country took in refugees. However, he explained that they intend to return home





safely. Bangladesh, therefore, called on the international community to act to enable this return by putting pressure on the junta to create a safe and prosperous environment in Myanmar and especially in the Rakhine State. For the Bengali representative, safeguarding human rights in Myanmar must be a central concern of the Human Rights Council.

**NGO representatives** were united in their support for the Special Rapporteur's oral update. They warned of the deteriorating human rights situation in Myanmar and recalled that since the junta took control of the country more than a year ago, there have been no visible signs of improvement. The issue of the arms embargo was highlighted. Too many countries are still trading lethal weapons with the military, who use them to commit further human rights violations and oppress their own people.

### **Concluding Remarks**

In his concluding remarks, the Special Rapporteur began by making himself available to any delegate or diplomat wishing to discuss the subject. Mr. Andrews then responded to the question posed by the European Union regarding the impact of the geopolitical climate on the international community's assistance to the people of Myanmar. He explained that the comparison of the international community's interest in the crisis in Myanmar with the crisis in Ukraine is striking. The Ukrainian crisis has shown that the international community could act quickly and effectively when Member States showed a willingness to act. He therefore complained that no multinational task force had been set up to identify and track down the military assets of leaders abroad, as had been done with Russian oligarchs. This differential treatment by the international community speaks volumes about the priorities of the states, of which the people of Myanmar are not a part.



Mr. Andrews then explained what could and should be done immediately to improve the human rights situation in Myanmar. Firstly, the UN Security Council should adopt a resolution to create a comprehensive arms embargo, implement targeted economic sanctions, and refer the crisis to the International Criminal Court. However, the Special Rapporteur has expressed his concerns that such a resolution will not take place. Therefore, and secondly, states must create a coordinated strategy that works together and effectively as a whole. Thirdly, all states must refrain from transferring arms and other technological materials that could be useful to the junta, and the embargoes already implemented must be strengthened. Fourthly, regretting the junta's announcement of elections in 2023, Mr. Andrews urged states not to grant legitimacy to the junta. He predicts that these elections will be fraudulent, as it is impossible to hold fair and genuine elections when political opponents are arbitrarily detained, tortured, and sentenced to death. Fifthly, States must increase their humanitarian assistance to the people of Myanmar and work closely with independent civil societies. Finally, he called for increased assistance to refugees who have had to leave their homes and flee to neighbouring countries.

The Special Rapporteur regretted that the international community's efforts lacked leadership. He warned that if no further action is taken by the international community to weaken the junta and help the people of Myanmar, his next report, due in six months' time, will again present a degrading situation in Myanmar with further human rights violations.



## 6 OHCHR alarmed at the international community's inaction in Myanmar



Figure 8: Acting High Commissioner for Human Rights, Nada Al-Nashif.

### 6.1 OHCHR Report on Progress Made and remaining Challenges with regard to the Recommendations of the independent International Fact-Finding Mission on Myanmar - 7<sup>th</sup> September 2022

In 2019, the Fact-Finding Mission (FFM) on Myanmar presented the economic interests of the Myanmar military and recommended the use of targeted economic actions against the so-called Tatmadaw, its leaders and companies under their control. In resolution A7HRC/RES/46/21, the Human Rights Council requested the Office of the High



Commissioner for Human Rights (OHCHR) to submit a report assessing the progress made and identifying the remaining challenges in Myanmar. The report was submitted on Wednesday 7 September 2022 and presented to the 51st session of the Human Rights Council.

On 1 February 2021, the Myanmar military, also known as the Tatmadaw, launched a coup to take control of the country. Since then, the military has ruled the country after establishing a "State Administration Council" (SAC). The United Nations has denounced the imposition of an undemocratic government and has alleged numerous crimes committed by the Tatmadaw. In addition, the SAC has been recognised as failing to provide an adequate institution for its people. The budget for the armed forces has increased by 10-12%, while allocations for education, health and social welfare have simultaneously decreased (from 8.4-7%, 4.1-2.8% and 0.5-0.3% respectively). The FFM has identified several state-owned enterprises that hold monopoly rights in 12 sectors, particularly in the extractive sectors, such as the Myanmar Oil and Gas Enterprise (MOGE) and the Myanmar Timber Enterprise (MTE). By identifying the sectors and companies controlled by the military or from which they derive their income, the FFM has called for economic sanctions against the Tatmadaw to deprive them of their financial resources.

The first action proposed by the FFM was to ask the Security Council (UNSC) and all states to impose sanctions against Myanmar's military and trading partners. The UNSC has not yet imposed such sanctions. However, since the coup in early 2021, the report states that the European Union (EU), the United Kingdom (UK), Canada and the United States of America (USA) have imposed a series of actions. However, these appear to be ineffective. For example, despite being fined for non-compliance with EU regulations already in 2018, it is estimated that €19 million Myanmar teak has entered the EU. Furthermore, it is regretted that the minimal impact of effective sanctions is diluted by the power grab of neighbouring states in the Association of Southeast Asian Nations (ASEAN), such as Singapore, Australia,





Japan and the Republic of Korea, which have not taken any sanctions against the Tatmadaw, despite denouncing the military coup.

International companies have also been asked to divest or not to do business with military-owned or controlled companies. While the FFM is pleased that some industries have acted, such as Infosys, Adani Ports, Posco Steel CO. and SEZ Ltd, much more needs to be done. In total, the FFM recognises 38 companies that should, but have not, implemented changes to divest from red-listed Myanmar companies.

The FFM has also proposed arms embargoes to all states and the UNSC, as the Tatmadaw is accused of misusing arms against its own population, including in the suppression of peaceful pro-democracy demonstrations. The UNSC has not imposed such embargoes. With regard to states, the MMF welcomes the arms embargoes already in place prior to the report by forty-two countries, and the latest adherents: Bangladesh, Brazil, Honduras, Israel, Japan, the Republic of Korea and Uzbekistan. Nevertheless, the report points out that several states continue to supply arms to the Myanmar army, such as the Russian Federation, which has exported fighter aircraft and armoured vehicles, while Serbia has sold rockets, an Indian SOE remote-controlled weapon/air defence station, and Chinese SOE fighters and military transport aircrafts. Finally, military cooperation continued with the Tatmadaw, as did the ASEAN defence programme.

The FFM has emphasised the need for human rights due diligence on companies owned or controlled by members of the Tatmadaw family that operate in conflict zones or purchase natural resources in Myanmar. Unfortunately, such due diligence has not been carried out or has played only a minor role within companies: "Transparency on due diligence in Myanmar is often reduced to a paragraph in the sustainability report".



Finally, states were asked to withdraw their humanitarian and development assistance programmes linked to the de facto government in Myanmar. The report explains that "several governments" have suspended these programmes in Myanmar.

The OHCHR report also highlighted areas of increasing concern. One of these is the Tatmadaw's exploitation of rare earths, minerals essential for the production of green technology. Mining of these elements has been reported in Chipwi Township, which is controlled by the so-called New Democratic Kachin Army (NDA-K), which collaborates with the Tatmadaw. The report notes that since shortly before the coup in early 2021, rare earth mining has increased by 50%. It is also regretted that Chinese companies appear to be investing in these mines.

The telecommunications sector has been identified as a critical area. Since the coup, the military has severely restricted the right to freedom of expression. Some social media sites have been blocked, online activity has been criminalised and entire regions have had their internet access closed. The cost of mobile data doubled between the end of 2021 and the beginning of 2022, further restricting access to information and freedom of expression for the people of Myanmar.

The Norwegian communications company Telenor and the latest biggest supplier in the country announced its decision to withdraw from Myanmar. However, Telenor has decided not to voluntarily activate interception equipment, which threatens data security in the country. A complaint has been filed with the Norwegian National Contact Point, accusing Telenor of not doing due diligence on the sale of its business, which could lead to serious human rights issues for its customers. The Norwegian company responded that the sale was the least damaging option, given its access to communications services for 18 million customers in Myanmar and the employment of thousands of its workers.



With regard to the oil and gas sector, the report states that two of the four major projects underway in Myanmar, which involve offshore gas extraction and transportation, have been divested. Petronas' subsidiary PC Myanmar (Hong Kong) Limited announced in April 2022 that it was withdrawing from the *Yetagun project*, while TotalEnergies and Chevron also declared in January 2022 that they were withdrawing from the *Yadanar project*. Nevertheless, it is expected that the Tatmadaw will continue to benefit from significant revenues from the oil and gas industry in the future.

The report identifies the garment sector as having limited links to the SAC and Myanmar's military leadership. The European Chamber of Commerce in Myanmar (EuroCham) assessed the garment sector and concluded that its production provided limited financial resources to the SAC and could operate independently of the Tatmadaw. Engaging in this sector could therefore allow independent businesses to develop and ensure labour and freedom of association for their employees.



## 6.2 Interactive Dialogue – 2nd September 2022

The **European Union** thanked the OHCHR for the update and acknowledged the progress made but admitted that more needed to be done to improve the human rights situation in Myanmar. The EU representative recalled the range



of sanctions that have been successfully implemented against the military, its leaders and the companies they control, including the freezing of assets which no longer funds the junta. He announced that they were currently working on further targeted measures and asked which measures would have the greatest impact in supporting the people of Myanmar.



The representative of **Pakistan** spoke on behalf of the **Organisation of Islamic Cooperation**. He expressed deep concern about the human rights situation of the Rohingya Muslim minority. Due to the misdeeds of the

Myanmar military, their fundamental freedoms had been undermined, and he deplored international crimes against humanity, including elements of genocide. It reiterates that the UN must live up to its commitment to protect minorities and implement more radical measures to ensure the protection of the Rohingya.

The **Maldives** aligned itself with the statement presented by Pakistan. The representative considered the work of the OHCHR to be essential to improving human rights in Myanmar

and welcomed the visit of the former High Commissioner to the Cox Bazar refugee camp in Bangladesh. He called on the Myanmar military to stop using violence against its people and to guarantee freedom of assembly and expression. In addition, the diplomat expressed his country's willingness to intervene in the ICJ case between the Gambia and Myanmar and asked what more could be done to improve the situation of minorities, including the Rohingya.



The representative of the **Russian Federation** explained that the people of Myanmar must be led by Myanmar, not by outsider institutions. He denounced the attempt by some States to use the HRC as a political tool to impose

their will on the country. In the reports, facts are often interpreted in an arbitrary way and Russia is against the proposed economic measures. The diplomat explained that these initiatives lead to more confrontation which encourages militias to take up arms in Myanmar, affecting the population and especially minorities. He, therefore, explained that the human rights analyses made in this council are making the situation worse.

A point of order was raised by the Russian diplomat later in the interactive dialogue, pointing out that the translations into other UN languages were not done properly, which prevented the Council from understanding the point raised by the Russian Federation. He refused to read his speech again but was advised to share it on paper with the translation he deemed appropriate.

The **People's Republic of China**

expressed regret over the human rights situation in Myanmar and concern that the most affected country, Myanmar itself, had not been allowed to participate in the interactive dialogue. The Chinese diplomat



explained that her country has always respected the right of expression and therefore cannot accept such an exclusion. She explained that a political solution must be found to ensure stability and the democratic process in Myanmar. However, she stated that the OHCHR report was unfounded. China has been responsible with regard to the arms trade and guarantees that no international or national standards have been violated in the sale of arms to Myanmar. She therefore insisted that China's cooperation with Myanmar cannot be blamed for anything and, as a result of this, opposed the report.

The **United Kingdom** supported the findings of the OHCHR report and called on all states to contribute to the recommended sanctions. The UK diplomat called for an end to the funding of the military and the arms trade that contribute to the violence and human rights abuses against the people of Myanmar. She also stressed the importance of the private sector in the fight against the junta and the contribution of civilians. She also asked what the international community can do to put pressure on all states to limit the sale of arms to Myanmar.



The representative of **Bangladesh** welcomed the OHCHR report, recalling that five years have already passed since the persecution, mass killings and ethnic cleansing of the Rohingya by the security forces began. He regretted that the



perpetrators were taking advantage of the increase in international trade with companies from third countries. The diplomat also expressed concern that the sanctions recommended by the FFP have not been implemented by many countries, which continue to supply arms, thus contributing to the strengthening of the Myanmar army and distracting it from respecting human rights. He called for calibrated actions, which will push the Tatmadaw to change their behaviour and respect minorities in Myanmar.

**Thailand** stressed its frank and constructive contribution to understanding the issue. As an immediate neighbour, sharing the longest border with Myanmar, Thailand has an interest in a peaceful and stable Myanmar. Therefore, it



supports all efforts to help create a peaceful resolution to the situation. Thailand called on all States to provide humanitarian assistance to those in need and expressed its determination to do more to help the people of Myanmar.





**The Gambia** welcomed the report for its efforts to improve the human rights situation in Myanmar. However, it remains concerned about the situation, particularly with regard to minorities, including the Rohingya. The diplomat condemned the violence as unacceptable and disproportionate. He also called on all states to implement the recommended sanctions and investigate all alleged violations. The Gambia will continue to seek justice in its filled ICJ case law.

The position of **civil society representatives** was homogeneous and glaring. The majority welcomed the OHCHR report and expressed concern about the lack of involvement of many countries. It was particularly noted that such inactivity is intolerable as the report gives clear indications of how every state can contribute. The economic weakening of the Myanmar military was presented as a duty for all to ensure respect for human rights and to promote the return of democratic institutions in Myanmar.



## 7 High Commissioner Oral Update, 26<sup>th</sup> September 2022



*Figure 9: Acting High Commissioner for Human Rights, Nada Al-Nashif.*

On 26 September 2022, the Acting High Commissioner for Human Rights, Nada Al-Nashif, provided an oral update on the situation in Myanmar. She regretted that since the last UN update in June 2022, the people of Myanmar have been caught in a rapid negative spiral. She called for urgent action to ensure peace, democracy, and sustainable development by punishing Myanmar's military leadership.

She estimated that a total of 30,000 homes, schools and other civilian infrastructure have been burned to the ground by the military. She gave the example of two villages in the Sagaing region, which were attacked by the military. The village of Yin Paung Taing was attacked by jets, helicopters, and military troops on 11 August 2022. A similar attack took



place in Let Yet Kone village on 16 September 2022, where a school and a nearby monastery were targeted. In both cases, dozens of people were killed, including villagers, pupils and monks, and many people are still missing.

Since the February 2021 military coup, the OHCHR counts at least 2,316 people killed, including at least 188 children. An estimated one million people have fled their homes for safety and are now in a precarious situation without access to food, medical assistance, and other basic services. A total of 50,607 people has been arrested, while 12,464 remain imprisoned in precarious situations and are being abused. At least 273 people have died in prisons, detention or interrogation centres controlled by the military. Raids and arrests in villages led to the deaths of at least 266 people, of whom 40 were reportedly shot in the head.

Unfortunately, Nada Al-Nashif does not expect the human rights situation to improve in Myanmar. On the contrary, famine is expected to be the country's next big challenge, as the military denies access to humanitarian aid, especially in northern and central Raikan State.

In addition, civilian space has been drastically reduced in Myanmar, and political opposition is not tolerated. Two days before the Acting High Commissioner's statement, it was reported that using an emoji to like or comment on an inappropriate social media post might result in a ten-year prison sentence. Political opponents were sentenced to prison, while four, including a former member of parliament, were sentenced to death in July this year.

Nevertheless, the Acting High Commissioner regrets the lack of results from the international community. In particular, she calls on ASEAN states to redouble their efforts to help resolve the crisis and provide humanitarian assistance to the people of Myanmar. The international community must continue to put pressure on the junta by refusing to collaborate and by helping neighbouring countries that are hosting refugees. Finally, Nada



Al-Nashif called for an end to the cycle of violence and urged Myanmar's military forces to cease violence against the civilian population, release and tolerate political opponents, ensure access to humanitarian assistance, and help Myanmar return to democracy, with respect for human rights and the rule of law.





## 8 Conclusion and GICJ position

**Geneva International Centre for Justice (GICJ)** denounces the actions of the Myanmar military, which is alleged to have committed international crimes and crimes against humanity against its population, including the Rohingya minority. We continue to condemn the illegal coup of 1 February 2021 and call on all states not to recognise the military as the legitimate government of Myanmar. GICJ also joins the Special Rapporteur's condemnation that the so-called elections, which the military is preparing for 2023, will not be fair, genuine, or democratic. We urge the military to stop executing political opponents and to release those arbitrarily imprisoned.

GICJ strongly condemns the military junta's continuing indiscriminate attacks on citizens as documented in the 4th annual report of the Independent Investigative Mechanisms on Myanmar; the authorities must uphold their previous commitment to the rule of law. We call on states to provide full support to provide access to witnesses and documents in Myanmar. The IMM must be able to continue its work documenting the gravest crimes and to help achieve justice for victims that is lacking in the Myanmar domestic system. The Mechanism should be provided with the funding and resources it requires to complete its vital work in accordance with the mandate determined by states to be necessary to achieve justice in previous resolutions of the Human Rights Council.

While sanctions have been imposed unilaterally and bilaterally, we regret that too many reports of those sanctions are being undermined by those seeking to exploit the conflict for financial or political benefit. More sanctions need to be implemented against not only the Myanmar military but also those who provide support to the military leaders. The world saw swift action against off-shored Russian interests and collective action to constrain Russia's role in world trade, there is therefore scope for increasing the strength of sanctions against Myanmar.



GICJ recalls the need for much stronger international leadership from regional and world powers. Security Council resolutions have had a limited impact, but they have also been blunted, with P5 members ensuring the sharpest criticisms and the strongest calls to action are not present. GICJ is disappointed by this lack of action by the international community to tackle the junta and its crimes. The urgency of the situation and the serious crimes committed by the military are abundantly clear and must include a joint international response. We urge all states to contribute at their own level, coordinating targeted and effective sanctions among themselves, including the freezing of all assets held internationally by the Tatmadaw leadership, as recommended by the Special Rapporteur and the OHCHR.

Most importantly, the biggest single difference to helping the lives of the people of Myanmar that can be taken now, legally, by third-party states is to enforce the arms embargo. GICJ urges all states, including China, to impose an immediate and effective embargo on all military weapons and other sensitive material that could be used by the junta to perpetrate further crimes against its population. Finally, we appeal to all states to increase their humanitarian assistance, to the people affected by the violence within Myanmar and to the refugees who have fled to neighbouring countries.





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# Geneva International Centre *for* Justice

*Independent, non-profit, non-governmental organisation*

GICJ is an independent, non-profit, non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

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GICJ REPORT

October 2022

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