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Human rights situations that require the Council's attention

Written statement* submitted by Centre pour les Droits Civils et Politiques - Centre CCPR, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language of submission only.



Myanmar: Make Human Rights a Reality

Accountability

It has been more than five years since the Myanmar military, the Tatmadaw, carried out “clearance operations” in Rakhine State brutally killing tens of thousands of Rohingyas, destroying their villages and displacing one million. It has been three years since the Independent Investigative Mechanism for Myanmar (IIMM) started its operation. One and half years have passed since the illegal coup staged by the Tatmadaw. Despite the vast amount of information and evidences collected by the Mechanism, and also reported by other sources, unfortunately “progress on ending impunity and ensuring accountability for serious international crimes committed in Myanmar remains limited”, as the Mechanism itself states in its report to the current session of the Human Rights Council (A/HRC/51/4). As a result, displaced Rohingyas are still waiting for safe, voluntary and dignified return to their homes and people in Myanmar are enduring daily violence and military oppression which has been escalating since the 2021 coup.

Considering significant challenges it is facing, such as the lack of cooperation from the Tatmadaw junta, the COVID-19 pandemic and intensifying violence on the ground, the Mechanism has been carrying out invaluable work in collecting evidences, including those of crimes against humanity and war crimes, developing its evidence and information repository and making it ready for sharing with relevant bodies. However, this vast amount of information and evidence must be acted upon, especially by bodies that are able to hold persons to account for the crimes committed. Given that the national courts, or rather entire justice sector in Myanmar, are turned into a tool of Tatmadaw to persecute opponents, a crucial role must be swiftly played by the international bodies, including or in particular the International Court of Justice and the International Criminal Court.

Justice sector

As the Centre as well as other sources have been repeatedly pointing out, the Tatmadaw has turned the entire justice system in the country into its extended arm to persecute opponents. Several domestic laws are arbitrarily enacted, amended and applied to target people who oppose the coup and military rule. Since the coup, more than ten thousand people have been arrested and imprisoned for exercising their fundamental human rights protected by international law, and more than a hundred of them sentenced to death. Civilians are tried in military courts and convicted in closed sham trials without any due process. Defendants are denied of their basic rights to fair trials and access to lawyer as protected by the international human rights law, in particular the International Covenant on Civil and Political Rights (ICCPR), while lawyers are also under threat of reprisals.

The situation is worsening in 2022 as the Tatmadaw is increasingly using the entire justice system in Myanmar to persecute and suppress people resisting the illegal military rule including political figures and undermining the independence and original function of the judiciary. Laws with severer charges but using vaguely defined terms, such as Penal Code and the Anti-Terrorism Law, are arbitrarily applied by the “authority” to detain and convict anyone they regard as problem, while cases of abuse and torture are rampant in detention. In almost all cases brought against civilians by the State Administration Council (SAC), which we could monitor, judges, voluntarily or forcedly, have been consistently favouring the plaintiff (SAC) and convicting defendants through proforma processes in complete disregard or lack of actual evidence. In contrast, no information could be found on any investigations or prosecutions of the Tatmadaw personnel, despite the fact that cases of atrocity committed by the military soldiers are reported on a daily basis, which also shows the prevalence of impunity enjoyed by the Tatmadaw for decades and how far the domestic justice system is collapsed in Myanmar. There is simply no bodies or courts currently in Myanmar who can hold the Tatmadaw accountable for crimes committed.

Furthermore, despite international calls including the letter of concern sent by the Chair of the Association of Southeast Asian Nations (ASEAN), Cambodia’s Prime Minister, as well

as condemnations expressed during the 50th session of the Human Rights Council, the junta has carried out the execution of four individuals, former National League for Democracy (NLD) legislator Phyo Zeya Thaw, prominent democracy activist Ko Jimmy, Hla Myo Aung and Aung Thura Zaw, who were tried and sentenced to death by the military court for committing “terror acts”. It was yet another blatant violation of international human rights law, showcasing its complete disregard of the lives of the people in Myanmar and “made a mockery”, according to the UN Special Rapporteur on Myanmar, of all the efforts made by international community, the UN and ASEAN.

Another mockery must not be allowed

While the IIMM has made certain progress in investigation and collecting evidence, it has not had much impact to deter the Tatmadaw from committing further atrocity. Unfortunately, as stressed by many including UN High Commissioner for Human Rights, efforts of the international and regional bodies have fall on deaf ears of the Tatmadaw. Since the coup in February 2021, a number of statements and calls were addressed to the Tatmadaw. Concerns and condemnations expressed over the situation in Myanmar. However, apparently and sadly, even hundreds and thousands of words would not have much effect on those who are not listening. Sanctions, even if they are well targeted, would not achieve envisaged impact as long as there are others who still continue to engage with the junta, supplying resources and trading arms. International human rights law would be largely and merely an existence on the paper for the people of Myanmar, if the impunity that the Tatmadaw has been enjoying for decades is not ended.

As the spiral of violence continues, decisive actions are urgently needed on multiple fronts. The Council should not and cannot regard the establishment of the IIMM as the only solution it can offer to the people of Myanmar. Approaches that solely rely on the “good will” of the Tatmadaw would not fruit much success but rather carries the high risk of resulting in another mockery. Continuing atrocity of the Tatmadaw may be met with stronger resistance of the people, which would inevitably lead to further escalation of violence on the ground and devastate the situation of civilians in Myanmar who are already in dire need of urgent humanitarian assistance.

Make human rights a reality

The Human Rights Council cannot fail the people of Myanmar any more but has to leverage its mandate, mechanisms and resources to enable stronger and coordinated actions from all UN Member States. It should also find a way to effectively engage with the National Unity Government in order to hold perpetrators of international crimes accountable, end the impunity of the Tatmadaw, initiate the process for conflict resolution including safe and voluntary return of Rohingya refugees, and to save the lives of millions of people in Myanmar. The new UN High Commissioner on Human Rights must keep Myanmar on the top of the agenda, lead the work of her/his Office, assist and strengthen ongoing initiatives.

As pointed out in the Centre’s previous written statement, UN Treaty Bodies can play a greater role and should effectively be involved in the process to make human rights and the rule of law a reality for the people of Myanmar. The practice of the Committee on the Rights of Persons with Disability (CRPD), which held a meeting on the situation of persons with disabilities in Ukraine and countries where they fled following the Russian aggression, can be replicated for the situation in Myanmar by the CRPD and followed by other Treaty Bodies to address the situation in Myanmar. Myanmar is already a Party to four UN Human Rights Treaties, including the Convention on the Rights of the Child (CRC) and its two Optional Protocols, one of which specifically addressing the involvement of children in armed conflict. Since the discussion on the representation of Myanmar before the UN is still ongoing at the Credential Committee of the General Assembly, the Committees monitoring these Treaties can seek possibilities to conduct a review without a State report or based on alternative sources of information including the National Unity Government.

Moreover, concerning current human rights challenges faced by Myanmar and their root causes, a particular focus of international and regional assistance towards Myanmar should also be put on the ratification of remaining UN Human Rights Treaties, especially the ICCPR, but also the Convention against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment (CAT), the Convention for the Protection of All Persons from Enforced Disappearance (CED), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
