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To the International Parliamentary Inquiry, ASEAN Parliamentarians for Human Rights

Introduction

Criminal accountability is at the leading-edge of human rights protection. Holding perpetrators to account in national jurisdictions is becoming increasingly common for abuses that have taken place in parts of Africa and the Middle East. Myanmar lags far behind in the search for justice. But with the support of international parliamentarians, including those in ASEAN, this can and will change.

MAP is unique in the global response to Myanmar's crisis by being the only organisation that works exclusively to promote accountability through universal jurisdiction for crimes committed in Myanmar since the coup on 1 February 2021 and combining this with advocacy to promote the need for accountability.

We are pursuing cases in England, at the ICC in the Hague, Turkey and Jakarta. We are investigating the possibility of bring cases in France and Malaysia. Please refer to [MAP website](#) for more details.

MAP is looking to bring cases in other jurisdictions, particularly in Asia and we are looking to parliamentarians and legal practices in ASEAN and beyond to work with us to bring perpetrators to justice. The submission below lays out concrete ideas about how we can achieve this.

1. How can international actors improve their response to the crisis in Myanmar?

- The lack of realistic accountability mechanisms for international crimes is a significant gap in the international response to the crisis in Myanmar. Victims of atrocity crimes cannot rely on domestic legal remedies while international justice options are lacking with the International Criminal Court (ICC) having not accepted the declaration of the National Unity Government (NUG) and limited headway having been made with the Gambia vs Myanmar at the International Court of Justice (ICJ)
- Universal jurisdiction cases offer a potential other means of accountability and need to be supported. MAP is asking parliamentarians in ASEAN and beyond to work with us to bring criminal prosecutions in their jurisdictions.
- We request parliamentarians and other international actors to identify the most progressive human rights groups and international criminal law practice in their country and ask them to write a brief legal opinion about whether a universal jurisdiction case relating to Myanmar is possible, and if not, to outline how the law needs to be changed in order to bring a Myanmar case.
- MAP will support parliamentarians and other international actors in this work and we request that you keep us up to date as this work progresses.
- MAP will work with partners engaging in this work to carry out high profile public advocacy around it.

2. How can, and should, governments engage and support the democratic opposition, civil society, and ethnic organizations?

- The international community should recognise the National Unity Government (NUG) which is the democratically legitimate government of the people of Myanmar. There are few governments that are engaging with the military junta, while the NUG is achieving increased state recognition by a variety of different governments. While both parties need to achieve a lasting political solution the recognition of the NUG as an equal partner is a critical step towards this.
- A key part of this state recognition issue is Myanmar's representation at the United Nations which is currently a complete mess and needs resolving. The General Assembly has voted to leave the National Unity Government's (NUG) Ambassador in Myanmar's seat, yet the junta has been representing Myanmar in the International Court of Justice, the highest judicial organ in the UN. Moreover, Myanmar's seat at the Human Rights Council has been left empty. MAP has published a landmark [legal opinion](#) setting how this issue can be resolved and recently organised a [webinar](#) on the same topic.
- We ask member states at the UN to make clear at both the Credentials Committee of the General Assembly and through a General Assembly resolution that the democratic opposition must represent the state of Myanmar in all UN bodies. This would send an important message of the need for democratic values and human rights standards to be upheld.
- Governments in ASEAN countries and further afield must meet NUG officials and engage with them officially as a first step towards recognition of the NUG as the legitimate representative of the people of Myanmar. Parliamentarians can similarly engage with them and support them in their effort to constructively engage with the international community.
- Governments must ensure that aid is delivered in coordination and in cooperation with civil society groups and ethnic organisations, and no means provided to the illegitimate junta.

3. What has the UN contributed to resolve the crisis so far? What else can be done given the impasse in the Security Council?

- Very little. As the facts would suggest, the UN has failed to prevent Myanmar from descending into its gravest protection crisis in a decade as demonstrated in a MAP authored [policy report](#) last June 2021. Conservative estimates say two thousand people have been killed and over a million displaced.
- The UN has been plagued by a lack of a coordinated strategy and leadership repeating the same mistakes identified in the previous 2019 [Rosenthal Report](#). This must be rectified through the following action including a visit from the UN Secretary-General to position the organisation to play a role in helping resolve the crisis which is currently lacking and the establishment of an international contact group of concerned states and UN entities.
- The Security Council has similarly failed in its responsibilities to take actions such as an arms embargo, sanctions, and a referral to the ICC that could help to resolve the crisis. It has failed to adopt a single resolution on the crisis in Myanmar and is deadlocked on the issue. As the UN Special Rapporteur, Tom Andrews and others have requested, there should be a vote on Myanmar in the Security Council which would expose the positions of China and Russia and put the international spotlight on Myanmar.

- As suggested above, the UN General Assembly must build on the resolution it adopted last June, which condemned the coup and demanded respect for democracy, human rights and the rule of law. It must ensure that the NUG Ambassador, Kyaw Moe Tun, is left in his seat with all the rights and privileges as other ambassadors whose credentials have been accepted and it must make sure that the NUG is represented in all UN organisations.

4. What has ASEAN contributed so far in resolving the crisis? What else can be done?

- Lack of implementation of ASEAN's five-point consensus adopted in April 2021 has been used by the junta to sustain itself in power and has prolonged Myanmar's humanitarian and political crisis. ASEAN must abandon this approach and completely rethink its position. This includes consistently engaging the NUG and treating it as an equal partner in a political settlement. Only through measure that isolate the junta and make them realise that there is a cost to the action will they be forced to engage in negotiations. ASEAN needs to set out a local vision for how it can solve the crisis and show that it has added value. Using humanitarian aid through the AHA Centre cannot be an alternative for political action.
- ASEAN has been an incumbrance to the international response. The UN's approach to crises such as Myanmar is to let the regional grouping take the lead and this has led. The UN has a framework agreement with ASEAN which is supported by the Security Council but this is not being used to affect.

5. What alternative mechanisms or actions could be considered to influence the situation in Myanmar?

- As outlined above, progressive forces within ASEAN should be encouraged to bring universal jurisdiction cases against perpetrators of international crimes in Myanmar.

6. How can the international community/governments support justice for victims and provide redress for the junta's crimes?

- There must be a coordinated campaign of strategic litigation opening as many cases as possible under the principle of universal jurisdiction. INGOs and legal support groups must work with civil society organisations and human rights defenders to give victims their day in court.
- MAP has been calling for the [ICC](#) Prosecutor to accept the declaration of the NUG that would extend the jurisdiction of the court to crimes committed since the coup. This would provide a realistic change of prosecuting the military generals for the international crimes that they have been committed. This issue should be addressed at the upcoming Conference of State Parties of the ICC in October 2022.

7. To what extent is humanitarian aid reaching the people in need in Myanmar? What can be don't to ensure effective delivery of aid?

- There are vast areas of the country (e.g. Sagaing Region) where millions of people are in desperate need of protection and humanitarian aid. The military junta is denying access to these populations for aid agencies. The recent AHA Centre assessment is only worsening the situations as it has only engaged with the SAC and gone to SAC controlled areas while cutting off aid to other areas in need.

- ASEAN should revise its approach to humanitarian assistance and not allow it to become politicised. The UN's humanitarian appeal is also grossly underfunded and urgently needs more support, while agencies need to be supported to scale up their operations and should be encouraged to work through local actors that have far better access to affected populations.

8. What protection is being given and what is lacking for Myanmar refugees?

- The international community is failing in its responsibility to protect the people of Myanmar who are being subjected to a brutal regime of repression and atrocity crimes. Myanmar's refugees are not being allowed flight to neighbouring countries and have been forced return on occasions in contravention of international refugee law. Countries in the region need to respect their obligations to provide safe passage and refuge for those people wanting to flee the violence and make sure that they are provided adequate protection and assistance while displaced.