

3 March 2021

## LAWASIA STATEMENT OF CONCERN ON HUMAN RIGHTS VIOLATIONS & RULE OF LAW IN MYANMAR

1. LAWASIA expresses concern over news of the military coup in Myanmar on 1 February 2021, during which the Myanmar army, the Tatmadaw, ousted Myanmar's democratically elected government. LAWASIA is also deeply concerned over the reports of escalating violence in Myanmar, including most recently, the reported killing of at least 18 protesters demonstrating against Myanmar's military coup on Sunday 28 February 2021.<sup>1</sup> LAWASIA echoes calls for an immediate end to the use of force and the restoration of democracy in Myanmar.<sup>2</sup>
2. LAWASIA understands that the Tatmadaw has arrested various government officials, including the country's leader, State Counsellor Aung San Suu Kyi, and appointed the military commander-in-chief, Min Aung Hlaing as the country's leader.<sup>3</sup> We note with concern that the Tatmadaw has suspended democracy for a year under an enabling provision in its 2008 Constitution,<sup>4</sup> effectively handing power back to the military after ten years of democratic rule.
3. LAWASIA, the law association for Asia and the Pacific, has as its objectives, the promotion of the rule of law, access to justice and the protection of human rights in Asia and the Pacific region. The current situation in Myanmar indicates a serious violation of international human rights law and standards, which LAWASIA calls on Myanmar's military leaders to remedy by taking immediate action to restore democracy.

### I. Declaration of emergency does not meet established standards of human rights law

4. LAWASIA joins other international bodies and human rights groups to express concerns over the lack of proportionality in the Tatmadaw's declaration of emergency, and the human rights abuses which are allegedly being committed as a result of the coup.
5. LAWASIA is concerned that the declaration of emergency does not meet established standards of human rights law. Under basic principles of international human rights law, the adoption of emergency measures is a restricted power, and is subject to the triple conditions of necessity,

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<sup>1</sup> Myanmar: UN condemns escalating violence in deadliest day of protests so far, UN News, 28 February 2021, <https://news.un.org/en/story/2021/02/1085972>.

<sup>2</sup> Ibid.

<sup>3</sup> Myanmar army takes power in coup as Aung San Suu Kyi detained, The Guardian, 1 February 2021, <https://www.theguardian.com/world/2021/feb/01/aung-san-suu-kyi-and-other-figures-detained-in-myanmar-raids-says-ruling-party>

<sup>4</sup> Article 418 of the 2008 Constitution, which was brought in by the Military Junta, enables transfer of legislative, judicial and executive powers to the Commander in Chief.

proportionality and temporariness.<sup>5</sup> The only legitimate aim and ground for adoption of emergency measures is to help the State overcome an exceptional situation, a “public emergency which threatens the life of the nation,” which must be described in sufficient detail.<sup>6</sup> The principle of proportionality must govern the extent to which the derogations are permissible. Thus, there is a specific regime of safeguards<sup>7</sup> which must be adhered to in a state of emergency, and certain rights are non-derogable, including the right to life,<sup>8</sup> the right of non-refoulement, the right against arbitrary cruel or unusual treatment or punishment,<sup>9</sup> and the right to freedom of thought, conscience, religion or belief.<sup>10</sup>

6. LAWASIA notes that the rule of law requires that legal process, institutions and substantive norms be consistent with human rights. One of the core principles of the rule of law is accountability of the military to the civil government, which appears to have been violated by the Tatmadaw. The coup does not appear to meet the standards enshrined within Myanmar’s Constitution, such as the requirement in Articles 417 and 418 for the President to declare a state of emergency “when there is a risk to the sovereignty of the Country”. In this case, the President was taken into custody, and the state of emergency was declared by the Vice President.<sup>11</sup>

## II. Reaction to peaceful protests does not meet human rights standards

7. LAWASIA understands that political dissent is being curtailed by the military junta, and that access to communication has been curtailed, including to phones, the internet and certain social media sites.<sup>12</sup>
8. LAWASIA is deeply concerned to hear of accounts of violent reprisals against persons exercising their right to protest, including reports of numerous people being wounded and killed.<sup>13</sup> Human

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<sup>5</sup> Myanmar has ratified, among others, the ICESCR, CRC and CEDAW. A complete list can be accessed here [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN). Article 4 of the ICESCR states, “The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Article 4 of ICCPR (although Myanmar is not a party) permits derogations in a time of public emergency “which threatens the life of the nation,” but only if the existence of this is officially proclaimed, and if the derogations are only to the extent strictly required by the exigencies of the situation, and not inconsistent with other obligations under international law.

<sup>6</sup> United Nations Human Rights Committee, *Consuelo Salgar de Montejo v. Colombia*, Communication No. 64/1979, CCPR/C/OP/1, para. 10.3. The Human Rights Committee has stated that the states are bound to give a detailed account of the relevant facts, not a general declaration.

<sup>7</sup> Human Rights Committee, *General Comment No. 29 States of Emergency (Article 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para 4.

<sup>8</sup> Article 6, ICCPR.

<sup>9</sup> Article 7, ICCPR.

<sup>10</sup> Article 18, ICCPR.

<sup>11</sup> *Myanmar: Military Coup d'état violates principles of rule of law, international law and Myanmar's Constitution.*, International Commission of Jurists, February 8, 2021, <https://www.icj.org/myanmar-military-coup-detat-violates-principles-of-rule-of-law-international-law-and-myanmars-constitution/>

<sup>12</sup> *Myanmar's Military Didn't Just Overthrow Aung San Suu Kyi's Government. It's Cracking Down on All Forms of Dissent*, TIME, 2 February 2021, <https://time.com/5935193/myanmar-coup-crackdown-democracy/>; *Myanmar coup: army blocks Facebook access as civil disobedience grows*, The Guardian, 4 February 2021, <https://www.theguardian.com/global-development/2021/feb/04/myanmar-coup-army-blocks-facebook-access-as-civil-disobedience-grows>.

<sup>13</sup> *Myanmar coup: Deadliest day of protests as police open fire, Myanmar coup: fresh demonstrations follow death of protester*, The Guardian, 20 February 2021 <https://www.theguardian.com/world/2021/feb/20/us-calls-for-myanmar-junta-to-stop-violence-in-wake-of-protesters-death; 'Myanmar is like a battlefield': UN says at least 18>

rights reports have indicated that there is credible evidence that police have deployed lethal weapons and sub-machine guns against protestors.<sup>14</sup>

9. LAWASIA is also concerned to learn that access to the internet has been cut off. Access to the internet has emerged as a vital pre-condition for human rights protections, as it enables the right to association, speech, and freedom of expression. Any curtailment of this right must be in conformity with the human rights standards of necessity and proportionality. As other human rights organisations have noted, blanket internet shutdowns are a form of collective punishment as they hinder access to information and communications needed for daily life and are particularly crucial during times of crisis.<sup>15</sup> Such restrictions can also provide cover for human rights abuses, and hinder efforts to document violations, thus preventing access to justice.<sup>16</sup>

### III. Grave danger to ethnic and religious minorities, including the Rohingya

10. LAWASIA is also deeply concerned that the military coup places ethnic minorities, particularly the Rohingya at grave risk, many of whom currently live in unsafe and tenuous circumstances in the Rakhine and Chin states. In 2017, hundreds of thousands of Rohingya fled the country following military-backed ethnic cleansing and genocide. In September 2019, the United Nations-backed International Independent Fact-Finding Mission on Myanmar found that the 600,000 Rohingya remaining in Myanmar “may face a greater threat of genocide than ever.”<sup>17</sup> Independent UN human rights experts have warned that many military leaders, including Senior General Min Aung Hlaing who has assumed power, stand accused of committing systematic violence against minority groups, including specific charges of the crime of genocide, crimes against humanity and war crimes.
11. LAWASIA joins other human rights groups to call on the military to immediately release all those who have been detained on political grounds, permit Parliament to be restored and to reach a peaceful resolution with all relevant parties, immediately restore the internet and all forms of communications, and ensure that Rohingya and other ethnic minorities are accorded the highest level of protection.<sup>18</sup>

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*dead as security forces fire on protestors*, The Guardian, 28 February 2021

[https://www.theguardian.com/world/2021/feb/28/myanmar-protesters-clash-police-grenades-democracy-junta-fires-outspoken-un-envoy?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/world/2021/feb/28/myanmar-protesters-clash-police-grenades-democracy-junta-fires-outspoken-un-envoy?CMP=Share_iOSApp_Other).

<sup>14</sup> *Myanmar: Evidence police deployed sub-machine guns against peaceful protestors*, despite denials, Amnesty International, 12 February 2021,

<https://www.amnesty.org/en/latest/news/2021/02/myanmar-evidence-police-machine-guns-protesters/>

<sup>15</sup> *Myanmar Military Blocks Internet During Coup*, Human Rights Watch, 2 February 2021, <https://www.hrw.org/news/2021/02/02/myanmar-military-blocks-internet-during-coup>

<sup>16</sup> *Access Now condemns Myanmar's internet shutdown during military coup*, Access Now, 4 February 2021, <https://www.accessnow.org/myanmar-internet-shutdown-military-coup/>

<sup>17</sup> UN News, *Genocide threat for Myanmar's Rohingya greater than ever, investigators warn Human Rights Council*, 16 September 2019, <https://news.un.org/en/story/2019/09/1046442>

<sup>18</sup> *Myanmar coup: UN expert calls for strong international response including sanctions and arms embargo*, 1 February 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26706&LangID=E>