

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

## **Myanmar: Restore elected authorities, release detainees, and protect freedoms of information, expression, and assembly**

### **LRWC calls for concrete action by the UN Human Rights Council**

#### **STATEMENT**

**8 February 2021**

Lawyers' Rights Watch Canada (LRWC) welcomes the UN Human Rights Council decision to hold a Special Session on 12 February 2021<sup>1</sup> to address the human rights crisis in Myanmar after a military coup on 1 February 2021. The Council must take immediate and decisive action for increased monitoring of human rights violations and firm measures towards prevention of further violations.

LRWC is gravely concerned that since the coup, at least 160 people have been arbitrarily arrested and detained.<sup>2</sup> Some are reported to be in incommunicado detention without access to lawyers.<sup>3</sup>

The unlawful seizure of power by the Myanmar military (Tatmadaw) was accompanied by a declaration of "state of emergency" that was based on the Tatmadaw's unsubstantiated claim that the landslide victory of the ruling National League for Democracy (NLD) party in the 8 November 2020 election was obtained by "fraud."<sup>4</sup> The Tatmadaw's declaration of a "state of emergency" is in violation of international standards that are reflected in Myanmar's Constitution.<sup>5</sup> There was no "state of emergency" until the Tatmadaw itself created the current

---

<sup>1</sup> Office of the High Commissioner for Human Rights. "Human Rights Council to Hold Special Session on 'the Human Rights Implications of the Crisis in Myanmar' on 12 February," Press release, 8 February 2021, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26731&LangID=E>.

<sup>2</sup> Tom Andrews, "A message from Tom Andrews, UN Special Rapporteur on the situation of human rights in Myanmar," 6 February 2021, available at <https://twitter.com/RapporteurUn/status/1358230984945197063>.

<sup>3</sup> Reuters Staff, Aung San Suu Kyi lawyer says unable to meet her, seeks unconditional release, Reuters, 5 February 2020, available at <https://www.reuters.com/article/myanmar-politics-lawyer-int/aung-san-suu-kyi-lawyer-says-unable-to-meet-her-seeks-unconditional-release-idUSKBN2A527I>; Reuters, "Tens of thousands protest Myanmar coup despite internet ban." Thomson Reuters Foundation, 6 February 2021, available at <https://news.trust.org/item/20210206134327-cr3s9/>.

<sup>4</sup> Senior General Min Aung Hlaing, statement read on Myawaddy Television on 1 February 2021, as quoted in Reuters Staff, "Statement from Myanmar military on state of emergency," Reuters, 1 February 2021, available at <https://www.reuters.com/article/us-myanmar-politics-military-text-idUSKBN2A11A2>.

<sup>5</sup> For an explanation of international standards, see Dominic McGoldrick, "The interface between public emergency powers and international law," *International Journal of Constitutional Law* 2(21)(2004): 380–42; For an explanation of Myanmar's constitutional provisions, see Andrew Harding, "The Tatmadaw's 1 February Actions are not an Emergency but a Coup," *International Journal of Constitutional Law Blog*, 1 February 2021, available at <http://www.iconnectblog.com/2021/02/the-tatmadaws-1-february-actions-are-not-an-emergency-but-a-coup/>.

crisis by means of a coup that has been deemed “outrageous and unlawful” by the Special Rapporteur on the situation of Myanmar (Special Rapporteur).<sup>6</sup>

Ahead of the general election, the Tatmadaw itself was implicated in “persecuting opposition supporters, including journalists and student protestors...” and suppressing the votes of ethnic nationalities in Rakhine, Chin, Shan and Kachin States.<sup>7</sup> Over a number of years, numerous investigations by UN experts and bodies<sup>8</sup> have produced consistent and growing evidence of human rights violations by the Tatmadaw, including crimes against humanity<sup>9</sup> against ethnic minorities in those states and genocide against the Rohingya.<sup>10</sup>

After the 1 February 2021 coup, the Tatmadaw ordered that access to social media platforms be shut down. All internet access was shut down on 6-7 February 2021. Stable access to the internet remains precarious, as Telenor Myanmar, a Norwegian telecommunications corporation, has been complying with the Tatmadaw’s requests despite Telenor’s expressed concerns that the shutdowns are not in accordance with international human rights.<sup>11</sup>

The Special Rapporteur stated on 6 February 2021 that the shutdown of internet access is “not only a violation of human rights but also extremely dangerous in the midst of a pandemic.”<sup>12</sup> Independent reports indicate that internet access has been “partially restored” as of 7 February 2021.<sup>13</sup> Access to social media platforms remains shut down.

On 8 February 2021, amid widespread peaceful protests around the country, the Tatmadaw arrested peaceful protestors in several locations and used a water cannon against protestors in the capital city, Naypyidaw. The same day, the Tatmadaw declared curfews in several cities, along with bans against motorized processions and gatherings of more than five persons.<sup>14</sup> Given the Tatmadaw’s history of deadly violence against peaceful protestors in 1988,<sup>15</sup> 2007,<sup>16</sup> 2012<sup>17</sup> and

---

<sup>6</sup> OHCHR, Myanmar coup: UN expert calls for strong international response including sanctions and arms embargo, 1 February 2021, available at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26706&LangID=E>.

<sup>7</sup> General Assembly, Report of the Special Rapporteur on the situation of human rights in Myanmar, A/75/335, 1 September 2020, available at <http://undocs.org/A/75/335>.

<sup>8</sup> See, e.g., reports of the UN Human Rights Council, Independent International Fact-Finding Mission on Myanmar, 2017-2019, available at <https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx>.

<sup>9</sup> Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, International Criminal Court, ICC-01/19, available at <https://www.icc-cpi.int/bangladesh-myanmar/>.

<sup>10</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), 2018 to present, International Court of Justice, available at <https://www.icj-cij.org/en/case/178>.

<sup>11</sup> See Telenor Myanmar’s statement of 5 February 2021 at <https://www.telenor.com/directive-to-block-social-media-services-twitter-and-instagram-in-myanmar/>, 3 February 2021 at <https://www.telenor.com/directive-to-block-social-media-service/> and 2 February 2021 at <https://www.telenor.com/media/announcement/statement-on-the-situation-in-myanmar>.

<sup>12</sup> *Supra* note 2.

<sup>13</sup> Netblocks, “Internet disrupted in Myanmar amid apparent military uprising,” 31 January 2021, updated 7 February 2021, available at <https://netblocks.org/reports/internet-disrupted-in-myanmar-amid-apparent-military-uprising-JBZrmlB6>.

<sup>14</sup> Associated Press, “Myanmar junta imposes curfew, meeting bans as protests swell, AP, 8 February 2021 available at <https://apnews.com/article/myanmar-anti-coup-protest-fd4252fbd800caa5d457de9dd65293b7>.

<sup>15</sup> Human Rights Watch, “Burma: Justice for 1988 Massacres: On 25th Anniversary of Crackdown, Accountability, Rule of Law Remain Elusive,” 6 August 2013 <https://www.hrw.org/news/2013/08/06/burma-justice-1988-massacres>.

2017,<sup>18</sup> there is widespread public fear that the Tatmadaw will use force, including live fire, against peaceful protestors.

### **The Tatmadaw's coup violates Myanmar's international law obligations**

The Tatmadaw's unlawful coup is in violation of the international law obligations of Myanmar to uphold the *Charter of the United Nations*,<sup>19</sup> which emphasises the purpose of the UN to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

The Tatmadaw's unlawful coup, its arbitrary shutdowns of social media and the internet, and bans on peaceful protest are in violation of fundamental rights and freedoms guaranteed by the *Universal Declaration of Human Rights* (UDHR)<sup>20</sup> and other international human rights standards. In its attempt to use a coup to thwart the results of the November 2020 election, the Tatmadaw has violated:

- the right of citizens to take part in the government of their country through representatives freely chosen in genuine elections (UDHR Article 21);
- the right to freedom of opinion, expression and information (UDHR Article 19);
- the right to not be subjected to arbitrary arrest or detention (UDHR Article 9);
- the right to freedom of peaceful assembly and association (UDHR Article 20); and
- the right of persons charged with offences to a fair hearing by an independent and impartial tribunal (UDHR Article 10), including guarantees necessary for defence (UDHR Article 11). Preconditions to a fair trial includes the right of access to freely chosen legal representative.

### **Urgent action to protect of human rights in Myanmar**

The 8 February 2021 decision of the UN Human Rights Council to hold an urgent special session to address the deepening human rights crisis in Myanmar is a necessary step and an opportunity for decisive action to protect human rights of all people in Myanmar. LRWC welcomes this response to the call of numerous non-governmental organizations (NGOs),<sup>21</sup> the Special Rapporteur,<sup>22</sup> and a number of States.<sup>23</sup>

---

<sup>16</sup> Human Rights Watch, Crackdown: Repression of the 2007 Popular Protests in Burma, 6 December 2007, available at <https://www.hrw.org/report/2007/12/06/crackdown/repression-2007-popular-protests-burma>.

<sup>17</sup> Human Rights Watch, "Burma: End 'Ethnic Cleansing' of Rohingya Muslims: Unpunished Crimes Against Humanity, Humanitarian Crisis in Arakan State," 22 April 2013, available at <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>.

<sup>18</sup> *Supra* note 8.

<sup>19</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html>.

<sup>20</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

<sup>21</sup> Amnesty International et al, "Joint call for Human Rights Council special session," FIDH, 5 February 2021, available at <https://www.fidh.org/en/region/asia/burma/joint-call-for-human-rights-council-special-session>.

<sup>22</sup> *Supra* note 2.

<sup>23</sup> Office of the High Commissioner for Human Rights. "Human Rights Council to Hold Special Session on 'the Human Rights Implications of the Crisis in Myanmar' on 12 February," Press release, 8 February 2021, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26731&LangID=E>.

LRWC calls on the Human Rights Council for enhanced measures to monitor and report on human rights violations and to prevent further human rights violations in Myanmar. LRWC urges the Tatmadaw to immediately issue visas and provide unfettered access to the Special Rapporteur and his team to monitor the situation of human rights in Myanmar in accordance with his mandate from the UN Human Rights Council.<sup>24</sup>

LRWC welcomes the consensus statement of UN Security Council (UNSC) on 4 February 2021,<sup>25</sup> which called for the immediate release of all those detained and emphasized the need to “uphold democratic institutions and processes, refrain from violence and fully respect human rights, fundamental freedoms and the rule of law.” LRWC joins the UNSC’s call for immediate restoration of internet access and social media services, and for “safe and unimpeded humanitarian access to all people in need.”

LRWC joins the Special Rapporteur in urging the immediate restoration of all elected authorities, immediate release of all those detained during the coup, and full respect and protection of the right to freedoms of expression and assembly.<sup>26</sup> In addition, LRWC calls for immediate protection of all human rights defenders and immediate access by all detained persons to lawyers of their choice.

LRWC appreciates the Special Rapporteur’s call to all States for “strong and unequivocal condemnation and action” by the international community to denounce the military’s actions, ensure accountability of those responsible for Myanmar’s past human rights violations, and imposition of strong targeted sanctions and an arms embargo “until such time as democracy is restored.”

*Lawyers’ Rights Watch Canada (LRWC) is a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders (defenders), the integrity of legal systems, and the rule of law through advocacy, education and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations (UN).*

**Further information:**

Catherine Morris, LRWC Executive Director  
See [www.lrwc.org](http://www.lrwc.org). Write [lrwc\[at\]lrwc.org](mailto:lrwc@lrwc.org)

---

<sup>24</sup> *Supra* note 2.

<sup>25</sup> United Nations, "Security Council Press Statement on Situation in Myanmar", SC/14430, 4 February 2021, available at <https://www.un.org/press/en/2021/sc14430.doc.htm>.

<sup>26</sup> OHCHR, Myanmar coup: UN expert calls for strong international response including sanctions and arms embargo, 1 February 2021, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26706&LangID=E>.