

Lawyers' Rights Watch Canada

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

Lawyers detained, charged, and threatened after military coup in Myanmar

All States are responsible to ensure accountability for atrocity crimes

Statement

For immediate release

24 March 2021

Lawyers' Rights Watch Canada (LRWC) is alarmed by the grave, systematic, and widespread human rights violations taking place in Myanmar.¹ Since the military coup on 1 February 2021 at least 2,812 persons, including members of the legal profession, have been arbitrarily detained or charged. Hundreds of people have been subjected to extrajudicial killing, and thousands have been injured by police or military beatings or shootings.² Among those extrajudicially killed are children,³ including a seven-year-old girl shot to death in her home.⁴ The UN Special Rapporteur on human rights in Myanmar stated on 12 March 2021 that the systematic nature of these grave violations likely amount to crimes against humanity.⁵

An unknown number of detainees, including hundreds of children,⁶ are being held in unknown locations without access to lawyers or family members.⁷ Incommunicado detention subjects detainees to unfair proceedings and exposes them to heightened risks of torture, ill-treatment, and extrajudicial killing. Since the beginning of the coup, there have been several deaths resulting from suspected torture in custody.⁸

LRWC is disturbed by the widespread arbitrary detention and judicial harassment of lawyers and the systematic prevention of lawyers from providing legal assistance to arbitrarily detained persons. When lawyers face a pattern of obstruction, threats, charges, arrests, or other forms of intimidation or harassment, the legal profession is unable to perform its lawful role of representing clients, protecting human rights and upholding the rule of law.⁹

Widespread and systematic pattern of arbitrary detention: Crimes against humanity

The UN Working Group on Arbitrary Detention has held that a widespread and systematic practice of arbitrary detentions may amount to crimes against humanity.¹⁰ Incommunicado detention amounts to the international crime of enforced disappearance as long as the whereabouts and fate of detainees remains undisclosed.¹¹

LRWC notes that the pattern of arbitrary detention of lawyers since the 1 February 2021 coup is similar to 2018 findings of the UN Independent International Fact Finding Mission on Myanmar (IIFMM) reporting systematic denial of access to lawyers and threats against lawyers as part of systematic human rights violations by the military in Shan, Kachin, and Rakhine states, including alleged war crimes, crimes against humanity and genocide against Rohingya people.¹² The IIFMM found that the situation in Kayah (Karenni) State, Kayin (Karen) State and other areas also "warrants specific investigation."¹³

Lawyers arbitrarily arrested, detained, charged or under threat since 1 February 2021

A number of lawyers, including men and women, are among those reported arbitrarily detained or subjected to illegitimate charges or threats in different locations in Myanmar since the beginning of the coup. Included are the following:

- **1 February 2021:** U Nyan Win, lawyer for Daw Aung San Suu Kyi, was arbitrarily detained. His whereabouts remains unknown.
- **10 February 2021:** U Kyaw Hoe, a member of the Legal Aid Committee for Yangon Region, was arbitrarily detained.
- **11 February 2021:** U Myi Aung, a lawyer from Myawaddy, Karen State, was arbitrarily detained.
- **15 February 2021:** More than 40 lawyers¹⁴ who staged an anti-coup protest in Mandalay have been reportedly charged with inciting public disorder under Section 505 (b) of the Myanmar's colonial era Penal Code.¹⁵ Many of these lawyers are reportedly in hiding.
- **2 March 2021:** Ma Shwe Yi Win, a lawyer, was arbitrarily detained.¹⁶
- **2 March 2021:** Ma Thiri Win Lat, a lawyer, was arbitrarily detained.¹⁷
- **6 March 2021:** U Tun Kyi, a Mandalay lawyer, was reportedly subjected to a warrant issued after he publicly stated that the military coup is illegal.¹⁸
- **7 March 2021:** Mr. Robert Sann Aung, a human rights lawyer, reportedly went into hiding after speaking out against the unlawful coup. He has reportedly been charged with treason.¹⁹ On 9 March his home was raided by police, and his daughter and brother-in-law were taken into custody. Their whereabouts are unknown.²⁰ Robert Sann Aung has been subjected to judicial harassment and threats for many years, particularly since the assassination of Constitutional law lawyer, U Ko Ni, in 2017.²¹
- **11 March 2021:** U Lwin Aung, a lawyer, was arbitrarily detained for protesting against the military coup.²²
- **21 March 2021:** U Naing Linn Zaw, a lawyer, was arrested at his home in Yangon and arbitrarily detained.²³
- U Khin Maung Zaw, a lawyer representing Daw Aung San Suu Kyi, reportedly must stay in a different place each night to avoid arbitrary arrest. He has not been given proper access to his client. The junta is denying Daw Aung San Suu Kyi her lawyer of choice; the junta is permitting only two junior lawyers to represent her.²⁴
- At least 15 law students have also been arbitrarily detained.²⁵

Myanmar is bound by international law to uphold human rights

LRWC emphasises that Myanmar, as a member of the United Nations, is bound at international law to uphold the *Charter of the United Nations*²⁶ which requires all UN member States to cooperate for the promotion of universal human rights. The *Universal Declaration on Human Rights*²⁷ guarantees that all persons charged with criminal offences have the right to “a fair and public hearing by an independent and impartial tribunal,” and “the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” The right to a lawyer of choice is essential to ensure independent legal advocacy to uphold the rights of all accused persons.

The UN *Basic Principles on the Role of Lawyers*, which were welcomed by consensus of all States of the UN General Assembly, elaborate these fundamental principles of international law and emphasize that lawyers must be enabled “... to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and must not be “threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.” The Basic Principles also affirm that lawyers, “like other citizens are entitled to freedom of expression, belief, association and assembly” and “have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights....”²⁸

Crimes against humanity: The international law duty of all States to take action

LRWC welcomes the efforts of diplomats²⁹ and States that have advocated for human rights in Myanmar³⁰ and seeks further cooperation by all States to take urgent measures towards ensuring:

- Immediate and unconditional release of all arbitrarily detained persons, including U Nyan Win, U Kyaw Hoe, U Myi Aung, U Tun Kyi, U Lwin Aung, and the family members of lawyer Robert Sann Aung;
- Pending their release,
 - Immediate disclosure of the whereabouts of all those detained in unknown locations;
 - Immediate access to legal representatives of their own choosing, their family members, and any medical treatment they may require;
 - Immediate and full compliance with the UN Standard Minimum Rules for the Treatment of Prisoners;³¹
 - Full respect for the presumption of innocence and all other fair trial guarantees in accordance with international human rights law and standards including the right to a lawyer of their own choosing;
- Immediate withdrawal of all politically motivated charges against lawyers and human rights defenders in Myanmar;
- Assurances that all lawyers and human rights defenders in Myanmar are able to carry out their lawful duties without harassment, interference or intimidation of them or their family members.

Evidence of crimes against humanity requires all States to exercise *erga omnes* responsibility to ensure accountability of perpetrators. The *Charter of the United Nations* and the *Universal Declaration of Human Rights* requires all States to uphold and promote international human rights. Therefore, LRWC also urges that all members of the United Nations take immediate steps to ensure the establishment of the rule of law in Myanmar in accordance with international human rights law and standards.

In particular, LRWC calls upon all States to take immediate measures to exert all available internationally lawful measures to ensure an immediate end to the illegal coup against Myanmar’s lawfully elected authorities Myanmar, including the following:

- Halt and impose sanctions against all arms transfers to the Myanmar military;

- Impose effective targeted sanctions against all Tatmadaw business interests, including the Myanmar Oil and Gas Enterprise (MOGE);
- Join the case against Myanmar pursuant to the *Convention on the Prevention and Punishment of the Crime of Genocide*³² at the International Court of Justice;³³
- Seek a Security Council global arms embargo and referral of the situation to the International Criminal Court, and
- Exercise universal jurisdiction to hold accountable the perpetrators of crimes against humanity, war crimes or genocide.

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, 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).

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¹ See LRWC, "Myanmar: Mounting evidence of crimes against humanity during military coup crackdown, Oral video statement at the 46th Session of the UN Human Rights Council, 12 March 2020, available at: <https://www.lrwc.org/myanmar-mounting-evidence-of-crimes-against-humanity/>. Also see LRWC, Myanmar: Restore elected authorities, release detainees, and protect freedoms of information, expression, and assembly, State, 8 February 2021, available at: <https://www.lrwc.org/myanmar-restore-elected-authorities-to-power-release-detainees-and-protect-freedoms-statement/>.

² For updates of confirmed detentions, arrests, charges, and fatalities in relation to the military coup, see the Assistance Association of Political Prisoners (AAPP), available at: <https://aappb.org/>.

³ *Ibid.*

⁴ "Myanmar coup: Seven-year-old shot 'as she ran into father's arms,'" BBC, 24 March 2021, available at: <https://www.bbc.com/news/world-asia-56501871>.

⁵ Myanmar crackdown has led to likely crimes against humanity, Human Rights Council told, UN News, 10 March 2021, available at: <https://news.un.org/en/story/2021/03/1087062>.

⁶ UN International Children's Emergency Fund, "UNICEF condemns killings and arbitrary detentions of children by security forces during ongoing crisis in Myanmar," 4 March 2021, online: UNICEF, <https://www.unicef.org/press-releases/unicef-condemns-killings-and-arbitrary-detentions-children-security-forces-during>.

⁷ E.g. See Video: Lawyer of arrested AP journalist in Myanmar cannot enter Court, Daily Mail, 12 March 2021, available at: <https://www.dailymail.co.uk/video/news/video-2374234/Video-Lawyer-arrested-AP-journalist-Myanmar-enter-Court.html>.

⁸ AAPP, *supra* note 2.

⁹ LRWC adopts the UN definition of the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.” United Nations, “What is the Rule of Law?” n.d., available at: <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> [accessed 19 March 2021].

¹⁰ E.g., UN Working Group on Arbitrary Detention (WGAD), Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020, Opinion No. 51/2020, A/HRC/WGAD/2020/5, 18 September 2020, available at: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_51_Advance_Edited_Version.pdf; Opinions adopted by the WGAD at its seventy-eighth session, 19-28 April 2017, A/HRC/27/26, 8 June 2017, available at: https://www.lrwc.org/wp-content/uploads/2017/06/A_HRC_WGAD_2017_26.pdf.

¹¹ Working Group on Enforced or Involuntary Disappearances (WGEID), General Comment on Enforced Disappearance as a Continuous Crime, Report of the Working Group on Enforced or Involuntary Disappearances, 2010, A/HRC/16/48, at p 23, para. 56, available at: http://www.ohchr.org/Documents/Issues/Disappearances/GeneralCommentsDisappearances_en.pdf.

¹² UN Human Rights Council, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, 17 September 2018, para 234, 398, 404, 1108, 1294, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf.

¹³ *Ibid.*, para. 113.

¹⁴ International Association of People's Lawyers (AAPP), Monitoring Committee on Attacks on Lawyers, "Over 40 Mandalay lawyers face prosecutions for joining Myanmar protests," 16 February 2021, available at: <https://defendlawyers.wordpress.com/2021/02/16/burma-over-40-mandalay-lawyers-face-prosecutions-for-joining-myanmar-protests/>.

¹⁵ *Myanmar Penal Code*, 1861, as amended 2016 and 2019, available ILO: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=61342&p_country=MMR&p_count=110.

¹⁶ AAPP, "Arrests," 23 March 2021, available at: <https://aappb.org/wp-content/uploads/2021/03/Total-Detention-Charge-and-Fatality-Lists-Last-Updated-on-23-March-20211to-up.pdf>.

¹⁷ *Ibid.*

¹⁸ Myanmar arrest warrant issued for Mandalay lawyer who condemned military coup as illegal, *Jurist*, 5 March 2021, available at: <https://www.jurist.org/news/2021/03/myanmar-arrest-warrant-issued-for-mandalay-lawyer-who-condemned-military-coup-as-illegal/>.

¹⁹ IAPL Monitoring Committee on Attacks on Lawyers, “Rights lawyer Robert Sann Aung charged with treason, in hiding,” 8 March 2021, available at: <https://defendlawyers.wordpress.com/2021/03/09/burma-rights-lawyer-robert-sann-aung-charged-with-treason-in-hiding/>.

²⁰ Martin Ennals Foundation, Tweet dated 9 March 2021, available at: <https://twitter.com/martinennals/status/1369263727191658497>.

²¹ LRWC and Lawyer for Lawyers, Myanmar must ensure the independence of the legal profession, Oral Statement at the 44th Session of the Human Rights Council, 13 July 2020, available at: <https://www.lrwc.org/myanmar-must-ensure-the-independence-of-the-legal-profession-oral-statement-at-the-44th-session-of-the-human-rights-council/>.

²² AAPP, "Arrests," 15 March 2021, available at: <https://aappb.org/wp-content/uploads/2021/03/Recent-Arrest-List-Last-Updated-on-15-March-2021ttt.pdf>

²³ AAPP, *supra* note 14.

²⁵ Jurist staff, "Myanmar: 15 law students still detained by military junta; another recalls flight from police and soldiers after Mandalay protest," Jurist, 9 March 2021, available at: <https://www.jurist.org/news/2021/03/myanmar-15-law-students-still-detained-by-military-junta-another-recalls-flight-from-police-and-soldiers-after-mandalay-protest/>.

²⁶ UN, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Articles 55, 56, available at: <https://www.un.org/en/sections/un-charter/un-charter-full-text/>.

²⁷ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 10, 11, available at: <https://www.un.org/en/universal-declaration-human-rights/>,

²⁸ United Nations, Basic Principles on the Role of Lawyers, 7 September 1990, articles available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

²⁹ E.g. Diplomatic missions in Myanmar released a statement by ambassadors, 16 February 2021, available at: <https://scandasia.com/diplomatic-missions-in-myanmar-released-a-statement-by-ambassadors/>.

³⁰ Human Rights Council on 23 March 2021, “Human rights situations that require the Council’s attention: Situation of human rights in Myanmar, A/HRC/46/L.21/Rev.1, adopted by consensus on 24 March 2021, available at:

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³² UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at:

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³³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), International Court of Justice, available at: <https://www.icj-cij.org/en/case/178>.