



International Consultation
on
The Situation in Myanmar: Regional Solutions
Bangkok, Thailand

Outcomes Document

Convened by
International Commission of Jurists
Asia Justice Coalition
Centre for Peace and Justice, Brac University

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On 3rd October 2022, the Asia Justice Coalition, the Centre for Peace and Justice of Brac University (Bangladesh), and the International Commission of Jurists organized an international consultation in Bangkok to renew focus and joint efforts relating to the situation in Myanmar.

Background

In October 2019, the Asia Justice Coalition and the Centre for Peace and Justice of Brac University (Bangladesh) convened an [International Conclave on Justice and Accountability for Rohingya](#) in The Hague. During this event, global experts provided updates on the status of justice and accountability efforts for the Rohingya, as well as offered nuanced insights into the root causes of the crisis and the multiple political and social components needed to forge a durable solution. Notably, on 4 October 2019, The Gambian Justice Minister Abubacarr Marie Tambaadou announced that he had instructed lawyers to initiate proceedings against Myanmar before the International Court of Justice for breaches of the Genocide Convention.

However, since the conclave in 2019, there have been numerous shifts in the political and legal landscape in Myanmar. In February 2021, the Myanmar army staged a coup, declared a state of emergency, and imposed martial law across the country. The nullification of the November 2020 election result sparked nationwide protests by millions of people. Since then, 2,428 people including women and children have been killed, with 16,129 arbitrarily arrested. Members of the security forces have committed widespread and systematic attacks against civilians across the country amounting to crimes against humanity, including extrajudicial killings, enforced disappearance, torture and ill-treatment, including rape and other sexual violence. The Rohingya in Rakhine State are facing more restrictions and are caught between the Arakan Army and the military. The escalation of armed conflict in ethnic minority areas of Myanmar, indiscriminate aerial bombardment amounting to war crimes, and the resurgence of the infamous ‘scorched-earth’ campaign by the military have led to heavy civilian casualties. The resumption of executions of political prisoners after a three-decade moratorium by the military junta has had a further chilling effect on the exercise of freedoms.

Aim of the Consultation

With this background, the Asia Justice Coalition, the Centre for Peace and Justice of Brac University (Bangladesh), and the International Commission of Jurists recognised there is a growing and urgent need to reimagine alternative avenues and methods for justice and accountability for all violations of international law in Myanmar.

While international legal proceedings against Myanmar at the International Court of Justice (ICJ) and the investigation by the International Criminal Court (ICC) are important measures for accountability, the international community, including in the Asia region, needs to respond in a more robust and cohesive manner to the events in Myanmar. There is a need for further action by the UN Security Council, including referral of the situation in Myanmar to the International Criminal Court for a wider investigation. There also needs to be a greater emphasis on an effective and meaningful regional solution, with firm action by the Association of Southeast Asian Nations (ASEAN) and other states in the region.

Emphasizing the value of the Global South and regional response to the crisis in Myanmar and building on the public position taken by a few ASEAN States (Malaysia, Singapore, and The Philippines), the international consultation provided an opportunity to regroup and reassess the way forward as a region.

Overview of Proceedings

The Consultation witnessed the participation (in person and online) of more than 57 people including members of the UN mandate holders, diplomatic corps, international experts, journalists, activists, lawyers, academics, regional and national representatives, and policymakers from Asia to identify steps to be taken to address the situation in the country which is a regional human rights and humanitarian crisis.

AJC members Centre for Peace and Justice, the International Commission of Jurists, Amnesty International, Human Rights Watch, Fortify Rights, Legal Action Worldwide, and Burmese Rohingya Organisation UK (BROUK) participated in the Consultation.

The Consultation was divided into the following three thematic panel discussions:

1. Situation in Myanmar
2. ASEAN and Neighboring State Response to Myanmar Coup
3. International Justice for the Rohingya

The event followed Chatham House Rules to encourage free and open discussion. The participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, is to be revealed.

The choice of Bangkok was deliberate to ensure greater participation of thought leaders in and from the region and to be able to gather a diverse set of decision-makers under one roof. At a time when international attention on Myanmar is flagging, the Consultation provided a much-needed focus on the region.

Opening session – Keynote Speakers

The Consultation's opening session recalled that August 2022 marked the grim fifth anniversary of the Myanmar military's so-called 'clearance operations' in the Rakhine State. It also recognised the slowing and limited international response to the military junta's atrocities since the February 2021 coup. Participants were urged to not only discuss the challenges posed by the situation in Myanmar but to collectively consider the opportunities for action.

Recommendations:

1. **Recognise that a complex, protracted crisis demands coordinated action.** This includes but is not limited to multilateral economic sanctions, arms bans, denial of recognition, addressing the militarisation of military aid, and not legitimising upcoming elections. Coordination, however, depends on political will.
2. **Focus on possibilities to cultivate political will.** Even within ASEAN—a bloc generally quick to emphasize the norm of non-interference — Singapore and Malaysia have publicly stated their disappointment in the lack of action stemming from ASEAN's Five-Point Consensus.
3. **Consider all willing actors and stakeholders as potential members of coordinated action.** This means not solely focusing on the West but recognizing that States such as India, China, Japan, and South Korea have influence and consider private enterprise and the Asian Development Bank.
4. **Remember that human rights abuses towards one community are often interconnected with abuses towards another.** Where international accountability discussions are had around one type of conduct or one victim group, it is important to also look for how that abuse of power may also be affecting others. This includes less-reported increased violence against other religious and ethnic minorities and an increase in unlawful arrests and detentions since the coup.

Panel Summary & Recommendations

Panel 1: Situation in Myanmar

The panel discussed the situation in Myanmar pre- and post-coup, the rising challenges to humanitarian aid, the realisation of human rights and human rights advocacy, the rights of children and youth, etc. The panel also looked at the situation in ethnic minority areas including Rakhine State and deliberated on what the future looks like in the country.

Recommendations:

Myanmar:

1. The ASEAN Five-Point Consensus has failed. Revert to the 2017 Kofi Anan Report for guidance and a future roadmap.
2. Identify steps to ensure and facilitate a safe, voluntary, and dignified return of the Rohingya. The focus should be on transitional justice (including restorative and social justice and reconciliation) alongside international and national justice by identifying and ensuring the presence of institutions, actors, and resources which will be required to push for a democratic shift in society.
3. Urgent de-militarisation of humanitarian aid to facilitate aid delivery across the country, including ethnic minorities.
4. Follow the military junta's money in the region and find avenues to stop or limit the flow of revenues.

Bangladesh Refugee Camps:

1. Ensure and guarantee the safe, voluntary, and dignified repatriation of Rohingya once conditions are favourable.
2. Relax the restrictions in the camps (access to education, livelihood, movement, and health) and address increasing concerns and cases of gender-based discrimination and sexual violence reported amongst women and girls in the camps.
3. Improve and prioritise the safety of the Rohingya and create a safe camp environment.

Panel 2: ASEAN and Neighboring State Response to Myanmar Coup

The maintenance of international peace and security has often included coordination and burden-sharing between the regional organisation and the UN Security Council. However, with the 2021 military coup, the U.N has deferred the responsibility to the Association of Southeast Asian Nations. While ASEAN promulgated its Five-Point Consensus and appointed a Special Envoy for Myanmar, there has been little progress to report. The panel

commented on the role of ASEAN and analysed the steps it has taken thus far to respond to the ongoing crisis in Myanmar.

Recommendations:

ASEAN/International Community:

1. Call on the Myanmar military to end all violations of international law against all civilians in Myanmar, including Rohingya and other ethnic minorities.
2. Urgent and sustained international coordination to reduce the Myanmar military's capacity and ability to commit mass atrocities: global arms embargo, targeted sanctions on oil and gas revenues, referral of the situation in Myanmar to the International Criminal Court, limit the transfer of technology including systems and tools for surveillance, push for responsible and human rights compliant foreign business disengagement and dis-investment.
3. Neighbouring states must recognise and uphold their 'responsibility of proximity' to not forcibly deport civilians fleeing the military junta attacks and provide asylum to the Myanmar military defectors.
4. Convene an urgent UN Security Council session on Myanmar, and make efforts to internationalize the conflict, name and shame the aider and abettors, galvanize state support around *democracy* and *human rights*, and strengthen the coordinated action on Myanmar.
5. Highlight the dangers of inaction on Myanmar: regional instability; regional impunity writ large; serious concerns about the relevance and integrity of ASEAN as a regional bloc; high cost of continuing conflict on ASEAN's day-to-day work.
6. Reconceptualise and rework the Five-Point Consensus; appoint the Special Envoy on Myanmar answerable to the ASEAN with a clear mandate and a fixed time frame.
7. Keep a tab on upcoming regional and inter-governmental meetings, including ASEAN meeting(s), and advocate for a rehaul of the Five-Point Consensus. Seek clarity on the demands of Myanmar's future, whether restoration of democracy, the return of Aung San Suu Kyi, etc.
8. Build alliances and engage with the ASEAN members on Myanmar, including Indonesia (the next Chair of the ASEAN for the year 2023) and Singapore. Similarly, find common interests and values with states like Japan, Malaysia, and India.

Panel 3: International Justice for the Rohingya

There are multiple international institutions engaged in facilitating and delivering justice to the Rohingya. The proceedings against Myanmar at the International Court of Justice and the investigation by the International Criminal Court are the two ongoing international legal processes concerning crimes committed against the Rohingya. The Independent Investigative Mechanism for Myanmar (IIMM) is also tasked with the collection, documentation, and analysis of the most serious international crimes and violations of international law committed in Myanmar. Additionally, new jurisdictions are being explored

to advance justice for Rohingya in domestic courts using the universal jurisdiction principle (Argentina, Turkey, etc). Recognising that victims and civil society play a central role in the progress of international momentum on justice and accountability, the panel focussed on the engagement of witnesses, victims and survivors at the international mechanisms and institutions.

Recommendations:

1. To bridge the gap between international institutions and victims and survivors, it is crucial to take multiple measures in good faith:
 - a. Effective outreach and translation of videos and documents in local languages; frequent interaction (field visit or visit to the headquarters) with the victim community; increased representation in Court/proceedings.
 - b. Clear and continuous communication and messaging on the institutional mandate (for example, ICJ v ICC), timeline, remedies (state responsibility v individual criminal responsibility), and its limitations to manage expectations.
 - c. Conduct rigorous and holistic security assessment, secure informed consent from witnesses before taking their testimony (including an explanation of the implications of the testimony on their lives) and provide adequate security and arrange for relocation with the assistance of states (if required). Duly consider the risks undertaken by victims/witnesses in communicating with the investigative agencies and work towards minimising the same.
2. States must increase their support for accountability processes by providing access to territory, funds to enable and facilitate witnesses' protection and security programs, information on the flow of money, etc. Look beyond the traditional avenues of justice and accountability and explore the alternative pathways including strategic litigation (universal jurisdiction, prosecuting sanction breaches), strengthening enabling framework (Rome Statute ratification, Mutual Legal Assistance treaty (MLAT), Crimes Against Humanity treaty), cultivate political will (reframing state interests such as state values).
3. Consideration should be given to a greater field presence for mandates to get closer to victims and their representatives – consider coordinating outreach better and in a more sustained way.
4. Conduct exhaustive and thorough documentation factoring in the sensitivities (for example, the 'do no harm principle'), especially with SGBV victims and survivors. In doing so, be mindful of over-documentation and its consequence on victims (re-traumatisation, managing expectations) and trial (inconsistent testimonies, admissibility challenge).
5. Creatively and strategically find avenues and sites for legal processes – such as universal jurisdiction, including in the region.
6. States need to increase their support for accountability processes, including practical assistance in reaching out to interested stakeholders, including victim and witness communities:

- a. States in the region including, in ASEAN could provide quiet support by sharing evidence and information about the flow of money and atrocity crimes, providing access to territory and witnesses protection etc.
- b. States can now press stronger on accountability since trade and maintaining diplomatic relationships are no longer the priority!
- c. Funds could be provided to accountability mandates for greater witness protection, outreach, camp services, etc.

About the Organizers

[Asia Justice Coalition](#)

The Asia Justice Coalition (AJC) was founded in 2018 to establish effective coordination and collective action regarding grave violations of international human rights and humanitarian law committed in Asia, with an initial specific focus on Myanmar. The Coalition's purpose is to improve the legal landscape in Asia to ensure justice and accountability for gross violations of international human rights law and serious violations of international humanitarian law.

The twelve Coalition members include Amnesty International, Asia Justice and Rights, Burmese Rohingya Organisation (UK), Burma Human Rights Network, Centre for Peace and Justice (BRAC University), Centre for Policy Alternatives, Fortify Rights, Global Centre for the Responsibility to Protect, Global Justice Centre, Human Rights Watch, International Commission of Jurists, and Legal Action Worldwide. The Coalition is supported by its Secretariat.

[Centre for Peace and Justice, BRAC University](#)

The Centre for Peace and Justice (CPJ) is a multi-disciplinary academic and research institute established in 2017 at Brac University. The mission of the Centre is “to promote global peace and social justice through the means of education and training, research and advocacy” and with the vision of ‘a just, peaceful and inclusive society’.

CPJ is committed to identifying and promoting sustainable and inclusive solutions to a wide range of global concerns, including fragility, conflict and violence. CPJ is playing a vibrant role for justice and accountability for Rohingya refugees in Bangladesh through organising various national and international conferences, seminars, and public lectures. CPJ is also a co-signatory of Amicus Curiae Observation to the International Criminal Court on behalf of Bangladeshi Non-Governmental Representatives.

[International Commission of Jurists](#)

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.