

Outcomes from Strategizing a New Response to the Crisis in Myanmar

A roundtable discussion co-hosted by the Global Centre for the Responsibility to Protect and the Global Justice Center, with the support of the Asia Justice Coalition

Background

On October 27, 2022, the Global Centre for the Responsibility to Protect and the Global Justice Center convened a private roundtable discussion with international and Myanmar civil society representatives. Participants sought to strategize a new, multidimensional response to the crisis in Myanmar to inform advocacy and legal strategies. While the conversation touched upon a range of issues, discussion focused on the topics of: (1) elections; (2) creating an inclusive Myanmar; (3) justice and accountability; and (4) sanctions and arms. This discussion also incorporated aspects of an AJC-sponsored [regional meeting on October 3](#) that explored similar issues. The following is a reflection of key themes, points, and recommendations from the roundtable, which took place under Chatham House rule.

Elections

Participants discussed the military junta's pursuit of elections, which are scheduled to be held in the summer of 2023 in accordance with the 2008 Constitution. With the election date fast approaching, civil society will need to act quickly to counter the junta.

A key discussion concerned the necessary messaging from civil society to explain to the international community the risks associated with legitimizing any elections run by the military. Undoubtedly, any elections held by the junta in the present circumstances will be neither free nor fair, and participants reflected that the military is using elections as an “off-ramp” to gain international legitimacy after its less-than-successful coup. Holding sham elections to legitimize its power and priorities is not a new strategy for the junta, as seen in previous instances including the 2008 constitutional referendum in the wake of Cyclone Nargis, as well as the 2010 general election. Notably, the junta does not have effective control over the entire territory of Myanmar, with the People's Defense Forces (PDF) and ethnic armed organizations (EAOs) controlling about half the country, especially in rural areas, inhibiting the junta's ability to hold elections in many parts of the country. One area of difficulty for some actors in the international community is the fact that as the National Unity Government (NUG) and National Unity Consultative Council (NUCC) continue their work to solidify their footing, for some states, they do not present a clear alternative to the junta; as such, the elections, even if flawed, are seen as progress in a seemingly intractable situation. Overall, participants agreed that junta-run elections are not a solution to the current crisis; in fact, they will likely lead to increased tension and violence, and an increased risk of atrocity crimes in the country.

The 2008 Constitution presented a major point of debate among the group. Some participants supported the messaging that the results of the 2020 general elections (which were relatively free and fair) are still valid, and even after the coup, courts in Myanmar have acknowledged that the result is valid through 2025. However, others argued that civil society should emphasize that since the Committee Representing Pyidaungsu Hluttaw (CRPH) abolished the Constitution in April 2021, the junta has no legal mandate to hold elections. They cautioned against legitimizing the 2008 Constitution, especially since people in Myanmar generally want to move beyond that framework.

Participants agreed that the ideal scenario would be one in which the international community provides no material or rhetorical support to the junta's sham elections, nor does it legitimize any election results.

Recommendations

To civil society

- Focus messaging to democratic states on the importance of upholding democratic values. Emphasize that the way in which these countries approach the elections will be a referendum on their own commitments to democracy;
- Raise awareness that elections will increase the risk of atrocities and provoke further violence within the country;
- Approach countries that will have indicated that they may provide technical or other sorts of assistance — like Norway, Switzerland, and India — as soon as possible. Present a clear alternative while urging them to not support the elections;
- Work with the NUG, NUCC, EAOs, and local civil society to support their ongoing efforts to counter the elections;
- Gender issues may offer a unique entry point into the conversation, and women’s groups should engage with country missions and capitals to approach the election issue from a women, peace and security (WPS) perspective. Women’s groups should also work within WPS spaces to emphasize that legitimizing the military and elections will further entrench violent patriarchal rule.

To the UN and member states

- Provide no material or rhetorical support to the junta’s election efforts, and engage bilaterally and multilaterally with other states — particularly ASEAN states — to do the same;
- Instead of supporting election efforts, development agencies should repurpose resources to provide humanitarian aid in border regions.

To the NUG

- Establish a clear strategy and talking points around the role of the 2008 Constitution.

Creating an Inclusive Myanmar

The February 2021 coup followed nearly 70 years of conflict, particularly in ethnic states, and military rule. In addition, the coup has forced people in Myanmar to take up arms to defend themselves, leading to new and renewed conflicts and creating an inherent threat to the safety of women and girls across the country. Myanmar is at a critical juncture, and as multilateral responses stagnate, without action it will spiral further into a protracted crisis. Taking these factors into account, participants considered what conditions and steps are necessary to build sustainable peace and create an inclusive, federal democratic country.

Participants agreed that successful peace efforts are impossible if the military takes the lead in organizing and setting the terms of negotiations. Since the Tatmadaw is inherently a bad-faith actor that has no interest in sharing power, the resistance movement is unwilling to entertain any negotiations with them. Some participants pointed to the current NUCC process to develop a community-led peace process strategy. However, questions still remain about inclusivity in the NUCC’s work. Some international non-governmental organization (INGO) representatives noted the difficulty in achieving a balance wherein international actors are not perceived as directing the NUCC’s work, while still advocating for a process that is truly inclusive of all affected communities and identities.

Any potential peace processes must be gender-equal and representative of the full diversity of Myanmar, including all ethnic groups, and sustainable solutions to the current crisis will not be possible unless anti-minority sentiment within the resistance movement itself is addressed. For instance, some participants expressed the view that mainstream actors like the NUG and NUCC only pay lip service to Rohingya issues in front of the international community, but have not demonstrated a genuine commitment to addressing their concerns.

There is a need for further dialogue between members of the Bamar majority and ethnic minority groups, and the international community and INGOs can work together with domestic groups to prioritize meaningful inclusion.

Fundamentally, the end goal of peace negotiations is a federal, democratic Myanmar where pluralism and diversity is respected, and the Tatmadaw has no role in politics. Such dialogue must lead to the establishment of a federal democratic union, not a repeat of the 2008 Constitution.

Recommendations

To civil society

- Conversations about and efforts at widening inclusivity need to be home-grown. INGOs can support and amplify this work, but they need to take a secondary role to the work of local groups;
- Encourage dialogue between international decision makers and affected communities, and help give community leaders these much-needed platforms;
- Prioritize meaningful inclusion of all affected communities in negotiations.

To the UN and member states

- States and international institutions must improve their willingness to conduct outreach and hear perspectives directly from community leaders within Myanmar;
- Demand that as a precondition to any negotiations, the junta must stop all atrocities and release all political prisoners;
- Ensure that the military does not dictate the terms of any negotiation process.

To the NUG

- Ensure that all affected communities are included in any peace negotiations;
- Undertake sustained efforts to counter anti-minority sentiment and facilitate dialogue between the Bamar majority and ethnic minorities.

Justice and Accountability

Justice and accountability, and an end to military impunity, have long been a priority of Myanmar civil society actors, particularly for ethnic minority groups. Participants were asked to discuss justice and accountability efforts, including how to leverage ongoing processes and identify new opportunities to expand the landscape for justice and accountability.

Participants reflected on ongoing processes, including the International Court of Justice (ICJ) Rohingya genocide case; the limited investigation at the International Criminal Court (ICC); and multiple universal jurisdiction cases, including in Argentina. There was agreement that these cases, while focused on the Rohingya, were important for the entirety of the country, but that more work needed to be done to deepen that understanding. Furthermore, it highlighted the justice gap for decades of crimes in the country, particularly against other ethnic groups, as well as post-coup violence. With domestic justice an impossibility at present, participants discussed the importance of achieving an ICC referral, including how to leverage the United States' recently announced support for such a referral. Although an ICC referral is unlikely given the dynamics of the Security Council, some participants discussed how to leverage momentum at the UN following Russia's invasion of Ukraine into positive traction for Myanmar. In this context the United Kingdom's Security Council resolution was also considered. Finally, some participants posed the question of establishing an ad hoc tribunal.

Participants also discussed the question of the need to build a larger culture of accountability in the country. In this context, there was a discussion of the NUG's requests to be recognized by the ICJ as the agent of Myanmar

(as well as its Article 12(3) declaration with the ICC), with some participants expressing concern that the NUG's bid to to represent Myanmar at the ICJ was in furtherance of their campaign to to achieve international recognition, and not motivated by a genuine desire to deliver justice for the Rohingya. In this context, the issue was raised that the NUG has not made it clear what their position on the case would be if they were recognized.

Recommendations

To civil society

- Work to advance understanding that though current proceedings are focused on the Rohingya genocide, they can set an important precedent for achieving justice for all affected groups in Myanmar;
- Support the development of a larger transitional justice strategy that goes beyond criminal accountability.

To the UN and member states

- Explore options for economic accountability for the military;
- Refer the situation in Myanmar to the ICC or create an ad hoc tribunal;
- Prioritize a holistic, victim-centered approach in any justice and accountability proceedings;
- States should formally recognize the Rohingya genocide if they have not already done so.

To the NUG

- Provide genuine support to the Rohingya, including through prioritizing justice and accepting responsibility for the civilian government's role in the Rohingya genocide;
- Work with the Independent Investigative Mechanism for Myanmar (IIMM) to compile evidence for future justice and accountability proceedings;
- Develop a legal position on the ICJ case if the NUG is recognized by the Court;
- Consider options for supporting current and future universal jurisdiction cases around the world.

Sanctions and Arms

Participants reflected on the current state of affairs regarding arms transfers to the junta, as well as its continued sources of income. The possibility of sanctioning the provision of aviation fuel to the junta was also discussed.

Reports have shown that while the military has robust domestic small-arms manufacturing capabilities, for heavy arms it relies upon countries including China, Russia, India, and Serbia. In addition, the military continues to make hundreds of millions of dollars a month in income from oil and gas pipelines; while the European Union sanctioned the junta's oil and gas operations in October 2022, the United States has yet to take the same action.

Participants were asked to reflect on advocacy efforts to push the UN Security Council to impose targeted sanctions and an arms embargo; they noted that not only Russia, China, and India, but also Brazil and the United Arab Emirates posed obstacles to the Security Council establishing an arms embargo. Presenters lamented the weakening of the UK's draft Security Council Resolution, which no longer included a clause on an arms embargo, nor calls for individual Member States to review their economic agreements with Myanmar-based companies.¹ Participants also discussed the potential for helping states develop an informal, international coalition to take action on Myanmar, similar to the ad hoc coalition responding to the war in Ukraine.

¹ The Security Council passed its [first-ever resolution on Myanmar](#) on December 21, 2022. The resolution expressed "deep concern" at the effects of the ongoing state of emergency, stressed the need for humanitarian access, and called for the release of political prisoners; however, the final resolution was significantly weaker than its initial drafts and missed opportunities for more robust action, such as establishing a reporting mechanism on Myanmar. Overall, advocates should consider this resolution just a first step towards further international action, and continue to exert pressure on member states.

Recommendations

To civil society

- Continue to advocate for states to impose bilateral sanctions on Myanmar's oil and gas industry, and to suspend the transfer of aviation fuel to halt airstrikes;
- Coordinate advocacy targets with the office of the Special Rapporteur on the situation of human rights in Myanmar.

To the UN and member states

- Impose bilateral sanctions on the military's oil and gas holdings;
- Sanction the military's financial holdings both in Myanmar and abroad;
- Immediately suspend all arms transfers to Myanmar;
- Immediately suspend the transfer of aviation fuel to Myanmar;
- Build on previous Security Council action to pass a Security Council resolution establishing an arms embargo.

General Takeaways

ASEAN: The Five-Point Consensus has been a demonstrated failure, and civil society should advocate for ASEAN to take further action to hold the junta accountable. Indonesia, the ASEAN chair for 2023, can be a focal point for advocacy. Especially since the UN and member states prefer to let ASEAN lead the response to the coup, it is crucial for ASEAN and its members to take more concerted action, including as it relates to proposed elections.

Convening and facilitation power: INGOs have a significant amount of power in convening meetings with policymakers. INGOs have a responsibility to cede space to Myanmar civil society, make sure Myanmar voices are at the table, and utilize their power and access to support direct connection between Myanmar civil society and policymakers. Myanmar voices need to be centered in advocacy efforts.

Short term vs. long term: It is necessary to focus on short term priorities, like the upcoming 2023 elections and the Human Rights Council session in March. Following the coup, most groups have been focused on short-term harm reduction and crisis response; however, civil society groups should also seek to work proactively, and work to develop long-term advocacy goals and strategies.

Internal vs. external: Strategies should be developed keeping in mind the need to both address what needs to happen within the Myanmar community to set the stage for a federal, inclusive democracy, and what the international community should do to support that work.

Public vs. private: Civil society should better tailor advocacy keeping in mind that some organizations or issues are better suited to behind-the-scenes work, while others take a more public approach.

Mitigation vs. transformation: Especially since the coup, civil society, individual states, and the UN have necessarily focused on mitigating harm and dealing with immediate needs, but there are also larger questions of transformation that need consideration. One example is whether it is worth validating the 2020 election results under the 2008 Constitution, or whether doing so would effectively support the 2008 constitution, which many groups are focused on abolishing. Civil society should be mindful of balancing mitigation and transformation going forward.