

**Call for inputs in view of the special initiative marking the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance**



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## Assistance Association for Political Prisoners (AAPP)

### Submission

#### Executive summary

The Assistance Association for Political Prisoners (AAPP) would like to provide input in view of the special initiative marking the anniversary of the *Declaration on the Protection of All Persons from Enforced Disappearance* (hereafter known as the Declaration).

As an organization working on enforced disappearance issues in Myanmar, our intention is to communicate obstacles in the implementation of the Declaration to document enforced disappearances in Myanmar since the military coup on February 1, 2021 and provide ways in which the *Working Group of Enforced or Involuntary Disappearances* (WGEID) could support Myanmar in overcoming them.

Accordingly, we believe the WGEID must:

- Increase efforts to document enforced disappearances in the country, reporting to the Human Rights Council (HRC) the 11,902 civilians enforceable disappeared at the point of detention since February 1, 2021.

- Cease submissions to a military junta intent on punishing victims and families in communication with accountability mechanisms and unwilling to implement the Declaration.

Due to the unique situation in Myanmar since the military coup, compounded by the military institutions historic refusal to engage adequately with international law over the decades in power, analysis on the declarations impact on domestic legislation is problematic. This submission answers questions deemed crucial to the Myanmar case study vis-à-vis the Declaration.

Question 11. Is there any other information that you deem relevant for the purposes of the study?

Since the February 1, 2021, people in Burma have suffered an unprecedented level of violence perpetrated by the military junta, self-proclaimed State Administration Council (SAC). **At least 1,507 pro-democracy supporters have been killed, and 11,902 have been arbitrary detained since coup**, many in unknown locations. Mental and physical torture of political prisoners has been used as policy by Burma’s military for decades.<sup>1</sup> According to AAPP data, as of February 1, 2022, the first anniversary of the military coup, (96) civilians have been tortured to death in interrogation centers; (304) family members and friends of activists have been detained as hostages, (252) hostages remained under detention. (84) civilians been sentenced to death in-prison and in-absentia, (1972) have been issued arrest warrants, (664) have been sentenced to prison terms ranging from 3-months to life imprisonment, (106) children have been killed in crackdowns. These attacks, including murder, extermination, deportation, imprisonment, torture, sexual violence, persecution, and enforced disappearance, have been widespread and systematic in nature, amounting to crimes against humanity under international law.<sup>2</sup> Additionally, other crimes have also been documented such as looting, arson and destruction of property.<sup>3</sup>

As per the working group definition, the military junta has refused to acknowledge the deprivation of liberty and/or concealed the fate or whereabouts of each of the **(11,902)** civilians at the point of detention. Similarly, the *Independent Investigative Mechanism for Myanmar* also described crimes committed in the aftermath of the [attempted] coup as widespread and systematic, specifically

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<sup>1</sup> See: AAPP (2016), *Prison Conditions in Burma and the Potential for Prison Reform*, Mae Sot: Assistance Association for Political Prisoners (AAPP, Burma); AAPP (2018), *Prison Overcrowding and the Need for Urgent Reform*, Mae Sot: Assistance Association for Political Prisoners (AAPP, Burma).

<sup>2</sup> UN General Assembly (2021)a, “Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, September 2021”, *United Nations* (online), Available at: [reliefweb.int/sites/reliefweb.int/files/resources/A\\_76\\_314\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_76_314_E.pdf) [Accessed Jan 2022]; Independent Investigative Mechanism for Myanmar (2021), “Bulletin, October 2021. Message from the Head of the Mechanism”, *Independent Investigative Mechanism for Myanmar (IIMM)*, issue 5, Available at: [iimm.un.org/wp-content/uploads/2021/10/2021-10-29-IIMM-Bulletin-October-2021-English-language.pdf](https://iimm.un.org/wp-content/uploads/2021/10/2021-10-29-IIMM-Bulletin-October-2021-English-language.pdf)

<sup>3</sup> UN General Assembly (2021)a, above; Independent Investigative Mechanism for Myanmar (2021), above.

mentioning killings and arbitrary detentions as crimes against humanity.<sup>4</sup> However, on the most recent *Report of the Working Group on Enforced or Involuntary Disappearances* (May 2020 to May 2021), only (18) cases were identified as transmitted and acknowledged.<sup>5</sup>

A prominent case is the testimony of Mya Aye, leader of the 88 Student Generation, who was arrested once again, after being a political prisoner for eight years between 1989-1996, and between 2007-2012, for five more years. After his arrest on February 1, 2021, his exact location was unknown to family members, who were only able to find out two months after, on April 1, when he was charged with a two-year sentence at Insein Prison, under Section 505(c). His daughter, Wai Hnin Pwint Thon, spoke at the United States Senate Committee on Foreign Relations on 10 March 2021 stating: “We don’t know how many people have disappeared. We don’t know where they are being detained or their condition, and they don’t have any access to lawyers.”<sup>6</sup>

Many of the pro-democracy supporters arrested on 1 February 2021 hold the same fate. According to AAPP triangulated data, out of the (151) parliamentarians, government officials, and activists detained on 1 February, (97) are still in secret locations, (18) of whom have been sentenced to prison, including Myanmar’s democratically elected President Win Myint and State Counsellor, Daw Aung San Suu Kyi.

Of the 11,902 people detained since the coup, (604) have been sentenced to prison, but AAPP only knows the prison (464) are incarcerated in.

Enforced disappearances are a historical policy of Burma’s military. On 9 June 2017, the Working Group transmitted allegations of widespread enforced disappearances of Rohingya women, men, and children during so-called ‘clearance operations’ led by the military (commanded by the same senior leadership) in Rakhine State, to which military leaders failed to reply.<sup>7</sup> According to the UN *Special Rapporteur on the Situation of Human Rights in Myanmar*, throughout 2020, the military continued to engage in torture, murder, and enforced disappearances of Rohingya, in violation of the International Court of Justice’s Provisional Measures Order.<sup>8</sup>

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<sup>4</sup> Independent Investigative Mechanism for Myanmar (2021), “Bulletin, October 2021. Message from the Head of the Mechanism”, *Independent Investigative Mechanism for Myanmar*, issue 5, Available at: [iimm.un.org/wp-content/uploads/2021/10/2021-10-29-IIMM-Bulletin-October-2021-English-language.pdf](http://iimm.un.org/wp-content/uploads/2021/10/2021-10-29-IIMM-Bulletin-October-2021-English-language.pdf)

<sup>5</sup> UN General Assembly (2021)b, “Report of the Working Group on Enforced or Involuntary Disappearances, Human Rights Council, August 2021”, *United Nations* (online), Available at: [undocs.org/A/HRC/48/57](http://undocs.org/A/HRC/48/57) [Accessed Jan 2022]

<sup>6</sup> Burma Campaign UK (2021), “Wai Hnin Pwint Thon testimony to US Senate Committee”, *Burma Campaign UK* (online), Available: [burmacampaign.org.uk/wai-hnin-pwint-thon-testimony-to-us-senate-committee/](http://burmacampaign.org.uk/wai-hnin-pwint-thon-testimony-to-us-senate-committee/) [Accessed Jan 2022]

<sup>7</sup> A/HRC/WGEID/112/1, paras. 72–73

<sup>8</sup> OHCHR (2021), “Statement by Thomas H. Andrews, UN Special Rapporteur on the Situation of Human Rights in Myanmar”, *OHCHR* (online), Available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26884](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26884) [Accessed Jan 2021]

Similarly, during the non-international armed conflict (as recognized by ICRC) that began in December 2018 in Rakhine and Chin state, and intensified until the November 2020 election, consistent patterns were found of enforced disappearances of Rakhine civilians, among the crimes against humanity perpetrated by the military.<sup>9</sup> Inhumane torture was documented for the overwhelming majority of cases of arbitrary detention, particularly when detainees were held in military barracks for days or weeks, before transferred to police custody and criminal cases initiated against them.<sup>10</sup> Since 2011, these crimes have also been committed by the military in Kachin and Shan States, including enforced disappearance, torture, murder, and sexual violence.<sup>11</sup>

With the attempted coup, this is now being repeated and extended upon journalists, political figures, medical personnel, pro-democracy supporters, and by-standers forcibly disappeared by the military, who refuse to openly release accurate numbers of total detainees, conceal exact location of interrogation centers, fail to ensure legal procedures and safety while in detention, in violation of international law, and rampant attempts to interfere in right to legal protection and contact with family members.

When detainees' whereabouts is disclosed to public and/or transmitted to monitoring mechanisms, it is through the efforts of independent media, civil society organizations, legal aid groups, family members, or information provided by other released prisoners.

These acts are part of a coordinated campaign to suppress opposition, directed against civilians, widespread in frequency, systematic and well-organized, and perpetrated with knowledge of senior military leadership. Forcibly disappeared persons in Myanmar are outside the protection of the law, documentation demonstrates **further human rights violations are perpetrated by the military junta**, including torture, sexual violence, and extrajudicial killings.<sup>12</sup> AAPP triangulated data has recorded (249) civilians killed under custody of junta, including being burnt alive. Junta reports describe cause of death as from illness or other fabricated causes, although the bodies have carried severe wounds such as mutilation consistent with torture. The military junta's *modus operandi* of attempting to control the population through fear is why all detainees can be considered mentally or physically tortured at one point through their enforced disappearance.

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<sup>9</sup> UN General Assembly (2021)c, "Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, March 2021, **Advance Unedited Version**", *United Nations* (online), Annex, p. 27, paragraph 35, Available at: [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_56.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf) [Accessed January 2022]

<sup>10</sup> UN General Assembly (2021)c, cited above, Annex, p. 27, paragraph 37.

<sup>11</sup> UN Human Rights Council (2018), "Report of the independent international fact-finding mission on Myanmar, Advance Edited Version", *United Nations* (online), p. 16, paragraph 88, Available at: [www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A\\_HRC\\_39\\_64.docx](http://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.docx) [Accessed January 2022]

<sup>12</sup> See: AAPP's 2021 *Coup Daily Briefings*, at: [aappb.org/?cat=109](http://aappb.org/?cat=109)

Briefly tackling questions 1-3 from this call for inputs, the Declaration did not have a visible effect on domestic legislation in Myanmar. Before the military coup, the 2008 Constitution posed many obstacles in its implementation, and contained many procedures against its articles, such as the obligation to judge military personnel under military courts (e.g., against art. 16 of the Declaration). The National Unity Government (NUG), acting as representative for the people in Burma following the military coup has abolished the 2008 Constitution, which stipulated the military's role in politics. This leaves room for the writing of a new Constitution that protects human rights, including the conditions of the *Declaration on the Protection of All Persons from Enforced Disappearance*.

Question 7. Can you kindly indicate the main obstacles -practical and legal- encountered by you/your country/institution/organization in the implementation of the Declaration (if possible, making reference to specific provisions and concrete examples)?

Considering the current situation in Burma, the main challenge encountered for the implementation of the Declaration is the military junta, who are contesting governance and the monopoly on violence, and are the primary perpetrators of enforced disappearance in the country. Taking into account the aforementioned policies and heinous acts carried out by the terrorist-like organization in the country,<sup>13</sup> the junta cannot be tasked with the implementation of the Declaration.

As per *Working Group on Enforced or Involuntary Disappearances* (WGEID) procedures, in order to assist families in determining the fate or whereabouts of their disappeared relatives, the WGEID establishes “a channel of communication between the families and the States concerned”, asking the government to clarify and investigate. In the current situation in Myanmar, where representation is disputed, sharing information with the junta means putting families of activists, including children, at threat of enforced disappearance, systematically taken as hostages by the military.<sup>14</sup> This is an infringement of art. 13, paragraph 3 of the Declaration. While the issue of recognition is being discussed at the Credentials Committee from the General Assembly, the WGEID should not be addressing the military junta representatives, and instead should assist Kyaw Moe Tun, appointed by the Committee Representing Pyidaungsu Hluttaw (CRPH), and the current Permanent Representative of Myanmar to the United Nations.

The *International Convention for the Protection of all Persons from Enforced Disappearance* adds to the stipulations of the Declaration by convicting “a State or a political organization”, which would permit prosecuting the military leaders in Burma, as a terrorist group encroaching state apparatuses

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<sup>13</sup> Special Advisory Council for Myanmar (2021), “SAC-M Briefing Paper: The Myanmar Military is a Terrorist Organisation Under Law”, *Special Advisory Council for Myanmar (SAC)* (online), Available at: <https://specialadvisorycouncil.org/wp-content/uploads/2021/12/SAC-M-Briefing-Paper-Myanmar-Military-Terrorist-Organisation-ENGLISH.pdf> [Retrieved January 2022]

<sup>14</sup> As documented by AAPP, at least (304) family members and friends of activists have been detained as hostages. See also: UN General Assembly (2021)a, cited above.

and monopoly of violence, without legitimizing them as ‘state actors’. Subsequently, as the National Unity Government (NUG) is currently unable to sentence and prosecute these leaders via domestic courts, holding them criminally responsible under the international jurisdiction of the International Criminal Court (ICC) is imperative. Article 18, paragraph 1 of the Declaration, moreover, clearly stipulates those perpetrators of enforced disappearances cannot benefit from any special amnesty. This, however, again needs of international recognition of the NUG as the legitimate representative of the people in Myanmar, in order to refer the case to the ICC.

Although Myanmar is not party to the Rome Statute, the actions committed by the junta constitute an infringement of the Declaration, established as customary international law and peremptory law.<sup>15</sup> Moreover, on 20 August 2021, NUG lodged a statement accepting jurisdiction of the International Criminal Court, under Article 12(3) of the Rome Statute, with respect to crimes committed in Burma since July 1, 2002.<sup>16</sup> Accordingly, and due to their humanitarian mandate, the WGEID should solicit an invitation<sup>17</sup> to have access to places where enforced disappearance is suspected (e.g. interrogation centers), in keeping with art. 9, paragraph 3 of the Declaration. Likewise, and following paragraph 1 of art. 16, “suspects shall be suspended from official duties during investigation”.

Conclusively, although the recognition of the NUG as the legitimate representative of the people in Myanmar does not fall under the role of the OHCHR, Ambassador Kyaw Moe Tun is the representative holding the General Assembly seat and hence he should be addressed. As the NUG has currently no means to deliver protection from enforced disappearances in the country, and is unable to ensure fair functioning of domestic courts to sentence and prosecute military leaders, holding these perpetrators criminally responsible under the international jurisdiction is imperative. To this end, we believe further documentation by the WGEID could positively add pressure to bring human rights protection to civilians in the country.

Question 8. Can you kindly illustrate whether your country has previous experiences with regard to technical cooperation and assistance from Special Procedures and whether you think this could be an effective means to further disseminate and foster the implementation of the Declaration. What other kind of initiatives could be favored?

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<sup>15</sup> See: United Nations Human Rights Committee (1994), “*General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*” (CCPR/C/21/Rev.1/Add.6), paragraph 08; and “*General Comment No. 29: Article 4: Derogations during a State of Emergency*” (CCPR/C/21/Rev.1/Add.11), paragraph 11, in: UN Human Rights Council (2018), cited above.

<sup>16</sup> See: [twitter.com/NUGMyanmar/status/1428739347717648389](https://twitter.com/NUGMyanmar/status/1428739347717648389)

<sup>17</sup> See the *Mandate of the Working Group on Enforced or Involuntary Disappearances*, at: [www.ohchr.org/EN/Issues/Disappearances/Pages/Mandate.aspx](http://www.ohchr.org/EN/Issues/Disappearances/Pages/Mandate.aspx)

Thomas H. Andrews has been appointed as the UN *Special Rapporteur on the Situation of Human Rights in Burma*. As shown above, both Mr. Andrews<sup>18</sup> and the WGEID<sup>19</sup> have expressed concern on the severity and extent of human rights violations in the country, including civilians forcibly disappeared, since the February 1, 2021.

On 23 February 2021, Ambassador Myint Thu, a pro-military representative, was addressed in a joint communiqué by the WGEID in cooperation with other mechanisms<sup>20</sup> reporting that “in the overwhelming majority of cases” no charges had been announced against hundreds [thousands] of detainees, and “in more than half of the recorded cases” there was no information about the whereabouts of the detainees and no official acknowledgement of their detention by the military regime.<sup>21</sup> However, the information on these tremendous figures was not included in the aforementioned *Report of the Working Group on Enforced or Involuntary Disappearances* submitted to the Human Rights Council (HRC) on 4 August 2021.

Reporting further evidence (as per WGEID mandate, by means of increasing or supporting monitoring efforts on the ground)<sup>22</sup> on the reports submitted to the HRC, or any other annual reports on thematic issues, would help to reflect the heinous acts perpetrated by the junta.

In order to pass Resolution 1973 (2011), adopted by the Security Council (UNSC), recalling the Responsibility to Protect (R2P) and reiterating the failure of the Libyan authorities to protect the Libyan population, the United Nations leaned on “condemning the gross and systematic violation of human rights, including arbitrary detentions, **enforced disappearances**, torture and summary executions” to justify an intervention in the country.<sup>23</sup> Previous to the passing of such Resolution (and all throughout 2011), the WGEID provided extensive evidence to the Human Rights Council of the crimes being perpetrated by the Libyan authorities.<sup>24</sup> In like manner, the current military inflicted crisis in Myanmar requires communication and reporting by the WGEID to ensure accountability for the enforced disappearances since February 1, 2021.

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<sup>18</sup> UN General Assembly (2021)c, cited above, p. 9, paragraph 55 and 60.

<sup>19</sup> UN General Assembly (2021)b, cited above, p. 24.

<sup>20</sup> Signed by the Special Rapporteur of the rights to freedom of peaceful assembly and of association; the Vice-Chair of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment.

<sup>21</sup> AL MMR 1/2021

<sup>22</sup> See the *Mandate of the Working Group on Enforced or Involuntary Disappearances*, at: [www.ohchr.org/EN/Issues/Disappearances/Pages/Mandate.aspx](http://www.ohchr.org/EN/Issues/Disappearances/Pages/Mandate.aspx)

<sup>23</sup> S/RES/1973 (2011)

<sup>24</sup> For example, communications issued by the WGEID, jointly with other special procedure mandates contain: 23 Feb 2011 – Libya: LBY 1/2011; 14 Mar 2011 – Libya: LBY 2/2011; 18 Mar 2011 – Libya: LBY 3/2011; 31 Mar 2011 – Libya: LBY 4/2011; 21 Oct 2011 – Libya: LBY 6/2011.

Conclusively, the work of WGEID, and all other Special Procedures and mechanisms working in Burma, is **essential in reflecting the atrocities and terrorist-like actions committed by the military junta**, which amount to crimes against humanity, including widespread and systematic enforced disappearances of civilians. Strengthening its action in the country is crucial to prosecute the military, and fully implement the Declaration in Myanmar.