The Right to Live under Threat? (Part 1)

ON THE ARMED FORCES (THE TATMATDW) TAKING POWER IN MYANMAR

Just hours before the newly elected government was due to sit in for their first parliamentary session on Monday 1st Feb, 2021, Daw Aung San Suu Kyi and other National League for Democracy (NLD) leaders were arrested and detained in a Tatmadaw-led coup. The military claimed voter fraud, as the justification for the overthrow of the government, even though the election commission stated “there was no evidence to support those claims”. The Tatmadaw sought to justify their actions by declaring a state of emergency in accordance with Article 417 of Myanmar’s 2008 Constitution, claiming the Union Election Commission’s (UEC) refusal to set aside the results for fraudulent amounts to a fact or attempted fact, and held a special assembly which under Art. 417 provides (only) the President with the mandate to declare a state of emergency, it is debatable whether the alleged electoral fraud—if it can be proven—poses a threat to Myanmar’s national integrity and sovereignty. Additionally, since President Thein Sein was arrested, the military cannot simply assume his mandate, making the entirety of its actions unconstitutional.

Weeks have passed since the initial coup, but the situation continues unabated. Civil unrest has escalated throughout Myanmar with protesters rallying across the country. According to reports from Myanmar police, Tatmadaw has ordered police officers to shoot protesters. Many refused to carry out these orders, and have been fired from their jobs and homes. Most urgently, is the inability of Myanmar’s people to exercise basic human rights due to the Tatmadaw’s creation of the State Administration Council (SAC) in the wake of the coup, outside of the regular parliamentary process. The SAC has “dictated key revisions to the country’s legal system that criminalize even peaceful protests, and enable violations of the right to privacy and arbitrary arrest and detention.”

In this Bofaxe, we argue that the Tatmadaw’s actions have potentially irreparable ramifications for the people of Myanmar, and, particularly ethno-nationally, including the Rohingya. More specifically, we suggest that the military, even the Tatmadaw remains in power, the people’s right to life and, given its intricate link with other rights, including the right to health, the right to an adequate standard of living, and the right to just and favorable working conditions, among others are threatened. This stems from two core issues and underling issues. First, the Tatmadaw’s actions: the violation of democracy and the negative impact is on human rights. However, one must not ignore the particularities of Myanmar’s contemporary political-economic history, marred by numerous right to life violations.

Myanmar’s progress towards democratisation, beginning in 2011, has been a slow and fraught process marked by minimal gains and many challenges. Even prior to current events, the Tatmadaw wielded significant political power through its guaranteed 25% share in all State and Union legislative bodies. This essentially assured the military veto power on any proposed amendments to the 2008 constitution and largely tied the hands of the country’s civilian political leadership. Since early 2016, when the military junta transferred power to Suu Kyi’s NLD following the party’s electoral landslide in 2016, none of the NLD’s promised constitutional reforms have come to fruition. However, the Tatmadaw’s parliament would have seen Myanmar ratify the International Covenant on Civil and Political Rights (ICCPR). Members of the lower house of parliament, representing the military, cited the ICCPR as a potential threat to Myanmar’s security and state sovereignty. The Tatmadaw is not only a significant force politically but also an economic power due to the “shadow economy” they control that “extends its tentacles into virtually every economic and social activities,” which makes it “a formidable special interest group that requires accommodating in the political process.” Aware of this, rather than seeking to curb the power of the military, the NLD has engaged in a relationship of accommodation with the Tatmadaw as well as a narrow democratisation agenda focused on sanction removal, foreign direct investment, economic growth, and local and social freedoms. Macro indicators of economic growth suggest this has resulted in gains in terms of both the country’s gross domestic product (GDP) and poverty rate, which fell sharply between 2006 and 2017. There is also some indication that the people of Myanmar have become a frequent target of political repression. The frequent targeting of the country’s ethnic minority population by the Tatmadaw after the October 2017 coup created an environment in which the people’s rights to economic, social, and cultural rights have been systematically violated. This is evidenced by the population’s violations by the Tatmadaw’s actions: the violation of democracy and the negative impact is on human rights. However, one must not ignore the particularities of Myanmar’s contemporary political-economic history, marred by numerous right to life violations.

Myanmar’s October 2017 ratification of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is unlikely to alleviate either ethnic discrimination or entrenched structural (and direct) violence. In its fact sheet no. 33, the Office of the United Nations High Commissioner (OHCHR) expressed that “gross violations of economic, social, and cultural rights have been among the root causes of conflicts and failure to address systemic discrimination and inequalities in the enjoyment of these rights can undermine the recovery from conflict” (see p. 4). As such, a more inclusive and profound structural change is necessary to guarantee the fundamental rights of Myanmar’s people as a whole, something the Tatmadaw is actively hindering. The rights to vote and political participation are key building blocks of democracy under Chapters IX and X of Myanmar’s 2008 Constitution. The military have violated international human rights law, by interfering with the peoples’ rights to freely choose their representatives (Art. 21 of Universal Declaration of Human Rights, Art. 25 ICESCR). Furthermore, the military’s arbitrary amendment of fundamental laws like the Penal Code and the Law Protecting the Privacy and Security of Citizens (2017) are an unnecessary interference with human rights and democracy.

The ramifications of Myanmar’s political crisis are far-reaching; from civil unrest leading to violent protests and death, to arbitrary arrests and detentions by the Tatmadaw, and to the devastating rise in food and fuel prices. The upward trend in prices observed in Yangon alone illustrates how much more threatening the situation will be for the poorest and especially for the most vulnerable people who were already in the UK’s “breadline meal-to-meal.” And yet, a swift and decisive response to the coup came in the form of sanctions. Sanctions need to be viewed through a critical lens given the possibility of unintended effects. As observed by the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, such measures could have negative effects on the human rights of civilian populations in targeted countries. Moreover, the negative effects of sanctions are not limited to broad sanctions (those targeted generally at states), but also emerge when sanctions are targeted at individuals (targeted sanctions). Generally, there is a lack of empirical scholarship on the effectiveness of human rights and democracy sanction regimes targeted at individuals. Despite this, literature on the legal and practical research on EU human rights sanctions highlights two key concerns: (i) the potential for unintended negative effects, and (ii) the potential failure to induce changes of behavior. In the case of Myanmar, targeted sanctions (or “smart sanctions”) against high-ranking members of the Tatmadaw arguably would serve only as a symbol of these actions. The army is in Myanmar’s “shadow economy,” targeted sanctions not only require precision, but also enough creativity and flexibility to target the diverse sources of the military’s economic power and avoid unintended effects for Myanmar’s people.

As a transitional state, Myanmar relies on international partners and foreign direct investment to ensure growth. However, reforms toward a more open and democratic is now under threat. The links between growing poverty and development, and respect for human rights are integral and intertwined—Myanmar still greatly suffers from under-development: what little hard-won reform gains are further tainted by “crony” business, and human rights violations. Therefore, particular attention needs to be paid before the international community considers the further imposition of sanctions against Myanmar (a position previously emphasized latae viae-a-vis the Rohingya crisis. See also General Comment 8 by the UN Committee on Economic, Social and Cultural Rights on the relationship between sanctions and respect for economic, social, and cultural rights).
The Right to Live under Threat? (Part 2)

ON THE ARMED FORCES (THE TAMADAW) TAKING POWER IN MYANMAR

The actions of the military have implications on Myanmar’s commitments under international human rights law, specifically the right to life. The military seized power on 1 February 2021, overthrowing the civilian government led by Aung San Suu Kyi. This marks a significant shift in the country’s political landscape and raises serious concerns about the protection of human rights, particularly the right to life.

The right to life is interpreted as creating both negative and positive obligations on the state. The government of Myanmar, therefore, is not only not obliged to respect and protect this right, but also act affirmatively to fulfill it (see Human Rights Committee (HRC) General Comment No. 14, Article 6 (Right to Life)). The violations that have occurred, such as the deprivation of lives e.g. killing of protestors. The latter, positive obligations, require the state to implement measures to protect the people from foreseeable threats from armed groups. Such protection is vital in Myanmar, due to the history of armed conflicts and state repression.

On ICECR Articles 6 and 7, 11, and 12. The right to work guaranteed under Article 6 of the ICECR has been violated by the Tatmadaw, through the arbitrary imposition of a state of emergency alone. Similarly, the elements of just and favorable conditions of work (Art. 7) are dependent on the existence of free movement of labour and absence of threats to their lives. Closely linked to this right, Myanmar’s membership of the International Labour Organization (ILO) requires the respect for other related rights like freedom of assembly. Immediately following the coup, the state of emergency, which have further exacerbated Covid-19’s effects, have already pointed to violation of both—more than 60,000 workers have become jobless due to the pandemic; and this number is only trending upward with civil servants and other workers protesting and demanding democracy to be restored.

Under Tatmadaw rule, Myanmar remained isolated and one of the poorest countries in the world. A generally accepted measure of living standards is through GDP per capita—Myanmar has seen marked improvement since its liberalization in 2011. The right to a adequate standard of living is enshrined under Article 11 of the ICECR and includes aspects of health, family, food, clothing, housing and security (see para. 1, CESCR General Comment No. 12). As asserted by the CESCR General Comment No. 12, Social and Cultural Rights (CESCR), “the right to adequate food is indivisibly linked to the inherent dignity of the human person” (see para. 4). Already, the supply chain impacts stemming from the Tatmadaw coup have resulted in escalating food and fuel prices. Whether the Tatmadaw applies this rule correctly or incorrectly, the effects are felt all the same, occurring as a result of this state actor not fulfilling its obligations—violations of human rights lead to lower investment, which will in turn lead to lower rates of economic growth and thus to lower per capita income.” In essence, loss of jobs and job opportunities and rising food prices adversely impact living standards.

As discussed, the right to an adequate standard of living necessitates the enjoyment of the right to the health (see CESCR General Comment No. 14, paras. 2–3). Additionally, “health” is not defined narrowly (paras. 8–11): “[i]t takes into account both the individual’s biological and socio-economic preconditions and a State’s available resources...and...socially-related concerns as violence and armed conflict.” In light of the COVID-19 situation, Article 12(c) of the ICECR provides an important guideline which links the enjoyment of the highest attainable standard of health with “the prevention, treatment, and control of epidemic, endemic, occupational and other diseases.” It is important to note that the general rule is for provisions of health care; however, if the Tatmadaw misuses its power by delivering such care through the military, it may violate the right to health.

In sum, the Tatmadaw’s actions amount to a violation of political, as well as economic, social and cultural rights of the people. The rights discussed above, when interpreted through the lens of on-the-ground impacts, are corollary to the right to life. Just like the ongoing peace process, the democratisation process in Myanmar has been further imbedded with serious challenges, including one that threatens the people of Myanmar’s right to life. Bearing the hallmarks of Thailand’s 2014 coup, the Tatmadaw could claim to power because of the ongoing state of emergency, which will likely result in devastating consequences for the people of Myanmar.

VERANTWORTUNG: Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäre Säule der Völkerrechtler der Ruhr-Universität Bochum herausgegeben: IFHV, Massenbergrasse 9b, 44787 Bochum, Tel.: +49 (0)234/32-27866, Fax: +49 (0)234/32-14208, Web: http://www.ruhr-uni-bochum.de/ifhv/. Bei Interesse am Bezug der BOFAXE wenden Sie sich bitte an: ifhv-publications@rub.de. FÜR DEN INHALT IST DER JEWELLE VERFASSER ALLEIN VERANTWORTLICH. All content on this website provided by Völkerrechtsblog, and all posts by our authors, are subject to the license Creative Commons BY-SA 4.0.