Aung San Suu Kyi (Philosophy, Politics and Economics, 1964)

Profile written by Veronica Lowe (Modern History, 1969)

Introduction



Photo: Claude Truong-Ngoc
https://creativecommons.org/licenses/by-sa/3.0/

At the time of writing, Aung San Suu Kyi is under house arrest which commenced on 1 February 2021 with the military coup in Myanmar (formerly Burma) against the civilian-majority government of which she has been leader since 2015. She had occupied the role of State Counsellor, in effect Prime Minister, being declared ineligible under the 2008 Myanmar Constitution to be President as her 2 sons have British citizenship as had her late husband. She is no stranger to house arrest, having endured it for 15 of the 21 years from 1989 to 2010.

In the coup on 1 February 2021 a council of generals known as the National Defence and Security Council deposed the government by declaring fraudulent the landslide victory for Aung San Suu Kyi's party, the National League for Democracy ("NLD"), in parliamentary elections in November 2020. Until the first open elections in 2015, the country had been a military dictatorship for almost 50 years. The Army (the Tatmadaw) had reserved to itself one quarter of parliamentary seats and key Cabinet posts but its sponsored political party the Union Solidarity and Development Party ("USDP") fared badly in the 2020 elections.

The coup was led by the Army Commander-In-Chief General Hlaing, who is reported to be the perpetrator of the ethnically-based policy against the Muslim Rohingya, categorised as illegal immigrants. As far back as 2017 at the height of the expulsion of hundreds of thousands of Rohingya into Bangladesh, the international press and the Roman Catholic church in Myanmar claimed that the Commander-in-Chief had hinted at presidential ambitions in the 2020 elections and was using the Rohingya crisis to discredit the State Counsellor by showing that she was unable to govern effectively.

Aung San Suu Kyi has been charged successively with illegally importing walkie-talkies and using them without a licence; 2 charges of breaching coronavirus regulations; inciting public unrest; and breaching the Burma Official Secrets Act 1923. The latter charge is the most serious and if convicted, carries a prison sentence of 14 years. This colonial-era legislation had already been used by the Myanmar government against journalists during Aung San Suu Kyi's tenure as State Counsellor. Her trial began on 16 February 2021 without the benefit of defence counsel then present. She has also been accused of accepting bribes and is currently under investigation for creating a network of foreign support for destabilising the governance of Myanmar.

A further trial hearing was cancelled on 15 March 2021 because Internet access was cut off in Myanmar from the previous day.

The country's civilian President U Win Myint is also under arrest and facing trial, as is the Mayor of the capital Naypyitaw, and numerous other key NLD ministers and supporters with charges including high treason. Hundreds of citizens are reported to have been killed and between 2,000 and 4,000 detained or facing charges in the military response to nationwide mass protests in support of the NLD, and particularly of Aung San Suu Kyi personally.

Early Years

Aung San Suu Kyi was born on 19 June 1945 in Rangoon (now Yangon), daughter of Khin Kyi who became Ambassador to India and Nepal, and Major-General Aung San, who was Prime Minister of the British Crown Colony of Burma and considered to be Myanmar's Father of the Nation. He was assassinated when his daughter was aged 2, shortly before his goal of independence from British colonial rule was achieved.

In 2017 when meeting Pope Francis on his visit to Myanmar, Aung San Suu Kyi smilingly reminded him that she had attended a convent primary school in Rangoon. After high school in Burma, she moved with her ambassador mother to India in 1960 and enrolled in the Convent of Jesus and Mary school in New Delhi. In order to study Political Science she then entered the Lady Shri Ram College for Women, part of the University of Delhi, and whose mission includes fostering in its female students *"an ability to assume positions of leadership with ease and shatter inhibitory glass ceilings".*

Adulthood: 1964 - 1988

In October 1964 at the age of 19 Aung San Suu Kyi matriculated in PPE at St Hugh's, and was apparently known simply as Suu, and to her later Park Town neighbours as Sue.

When she was finally able on 20 June 2012 to accept her 1993 award by Oxford University of an honorary DCL, she gave by special invitation an emotional and captivating speech at Encaenia. She revealed how happy and tranquil memories of Oxford and St Hugh's had sustained her in the long years of house arrest. There was punting with friends; reading sitting on St Hugh's lawn; gazing out at the garden from the Library; bus-rides down Banbury Road; wearing jeans; being carefree amongst students of many ethnic and religious backgrounds; feeling equal in a broad-minded and non-discriminatory atmosphere. She praised how the University had stood up for her while she was under house arrest.

The day before Encaenia St Hugh's gave Aung San Suu Kyi a party for her 67th birthday. She was then also able to enjoy the Honorary Fellowship to which she was elected on 13 June 1990.

After graduating with a Third in 1967, Aung San Suu Kyi moved to New York. Having been recruited by a family friend at the United Nations Secretariat, she worked there for 3 years while the distinguished Burmese diplomat U Thant was Secretary-General. She had already met her British future husband Michael V. Aris in Oxford, and they were married in a Buddhist ceremony on 1 January 1972. Dr Aris was the West's foremost authority on Bhutan where he had been tutor to the children of the Royal Family, and was also an eminent scholar of Tibetan and Himalayan history and culture. Before their marriage, Aung San Suu

Kyi wrote many letters to her future husband in Bhutan confirming that despite their great love for each other, she would return to serve the people of Burma if called upon to do so.

After their wedding, the couple spent 1 year in Bhutan, then later set up home in Park Town, Oxford, a period of domestic happiness to which she also referred in her Encaenia speech. In 1973, she gave birth to the couple's first son Alexander, and then to Kim in 1977. Dr Aris was successively a research fellow at St John's, Wolfson and St Antony's, and the couple were both associated as research fellows with the Indian Institute of Advanced Study at Shimla. She was also a visiting scholar at the Centre for South East Asian Studies at Kyoto University.

Aung San Suu Kyi resumed her academic studies in Burmese literature at the School of Oriental and African Studies, University of London, but returned to Burma in March 1988 as her mother had suffered a severe stroke. It was a fateful decision as she was then unable to leave Burma until 2012, 13 years after her husband had died of cancer in the UK.

<u>Non-Violent Protest and House Arrest: 1988 - 1995</u>

In July 1988 General Ne Win, Burma's dictator since the military coup of 1962, resigned and university students in Rangoon, who had a history of demonstrating against the one-party socialist state, started the "Four Eights" pro-democracy movement. This spread throughout Burma, and hundreds of thousands of protesters from all walks of life staged non-violent protests. Motivated by her Buddhist beliefs and the principles of Mahatma Gandhi, Aung San Suu Kyi gave a speech on 26 August 1988 calling for democratic government but peaceful protest to an audience estimated at half a million people at the Shwedagon Pagoda in Rangoon. One of the most sacred places in Burma, it was also an historic centre of protest, and where her father General Aung San had called for independence from British rule in 1946. Dr Aris and their 2 young sons were present for the speech.

In a further military coup on 18 September 1988, martial law was declared and the protest movement was crushed. Thousands of peaceful protesters throughout Burma were said to have been shot by the army as threatened by General Ne Win on his resignation. Aung San Suu Kyi called the world's attention to the shooting of unarmed civilians. Surviving student leaders of the uprising disappeared into detention, only to emerge up to 20 years later. Six days after the coup the NLD was founded with Aung San Suu Kyi as General Secretary. The funeral of her mother, as a nationally-respected figure, was turned into a mass peaceful protest in December 1988.

On 20 July 1989 Aung San Suu Kyi entered her first period of house arrest after months of public campaigning against the government and facing physical threats. She was offered the alternative of exile but refused, and went on hunger strike. While she was in detention, the NLD won 392 out of 492 seats in the general election of May 1990 but the ruling military junta refused to accept the result. During 1990 and 1991 the international community started to recognise Aung San Suu Kyi's fight for human rights in Burma, culminating in the European Parliament's Sakharov Prize for Freedom of Thought and then in October 1991 the Nobel Prize for Peace "*for her non-violent struggle for democracy and human rights"* as *"one of the most extraordinary examples of civil courage in Asia in recent decades".* Both prizes

were awarded in absentia and 18-year-old Alexander and 14-year-old Kim accepted the Nobel Prize on her behalf. The prize money of $1.3 million was used by Aung San Suu Kyi to set up a health and educational trust for the Burmese people. The junta's reaction to the international support for her was to change the law to extend her house arrest without charge or trial.

In December 1991 she arranged the publication in London of "Freedom from Fear", a collection of essays, speeches and letters edited by Dr Aris, on her hopes and fears for the Burmese people and the need for international co-operation to support freedom in Burma. She memorably explained that it was not power which corrupts but fear of losing it.

Members of the ruling junta finally met Aung San Suu Kyi in 1994 after her first 5 years of house arrest, and her first release took place on 10 July 1995 but subject to travel restrictions. She was re-elected General Secretary of the NLD in defiance of the junta. Dr Aris was able to visit her for Christmas 1995 but unbeknown to the family, this would be the last time the couple could meet.

Political Opposition and House Arrest: 1996 – 2002

For the next 4 years Aung San Suu Kyi tried repeatedly to meet supporters outside Yangon but was turned back, often with threatened violence against her and physical attacks on NLD members. In 1996 her motorcade was attacked by 200 men armed with chains and metal bars smashing in windows and doors of the cars. The men were suspected of being hired hands from the regime's militia. The official NLD complaint to the police did not lead to any arrests. On one occasion she was trapped in her car for 13 days before returning home for health reasons. At first she was able to address crowds of well-wishers outside her home in Yangon but this was curtailed by the junta. In August 1995 she was able with some outside help to record by video the opening keynote address to the Fourth UN Conference on Women in Beijing, stating that all her waking thoughts were occupied by peace, security, human rights, democracy and the need for tolerance. Some telephone interviews were possible but direct media contact was frustrated. An Italian journalist who managed to visit her had all his interview records and photos confiscated in 1998. One of the very few visits permitted was from a member of the Nobel Committee, to whom she promised that Norway would the first country she would visit if allowed to leave Myanmar freely – a promise which was kept in 2012.

Also during this time Dr Aris was diagnosed as having terminal prostate cancer, and requested a visa to visit his wife in Myanmar, a request supported by the UN Secretary-General and the Pope. The junta refused it, trying instead to persuade Aung San Suu Kyi to return to the UK in order to care for him. She refused knowing that it was highly unlikely she would ever be allowed to return to Myanmar. Dr Aris died in Oxford on his 53rd birthday on 27 March 1999, having only met his wife 5 times since 1989, and not since 1995. She recorded a farewell video message to him but it was not delivered in time.

Following further attempts to leave Yangon to meet supporters, her motorcade was surrounded by riot police on 24 August 2000 and as the 15 occupants would not move, they were forced to stay in their cars for 9 days. The government accused Aung San Suu Kyi of

trying to provoke her arrest to garner international support. The senior NLD leadership in Yangon was arrested, and Aung San Suu Kyi once more placed under house arrest on 23 September 2000. In December 2000 President Bill Clinton awarded her the Presidential Medal of Freedom, the highest civilian award in the US, again received on her behalf by her son Alexander. Behind the scenes, the UN facilitated private negotiations between Aung San Suu Kyi and the junta, and on 6 May 2002 she was again released from house arrest, this time without travel restrictions.

An Assassination Attempt and House Arrest: 2003 - 2010

While exercising those rights, Aung San Suu Kyi was touring north Myanmar when on 30 May 2003 she and her supporters were attacked allegedly by the regime's militia at Depayin. Estimates of the number of attackers vary from 1000 upwards but they were apparently trained and equipped locally in the days before the attack to block the convoy from the front and the rear, and to corral the victims who were then savagely beaten. Burmese dissidents claim that 70 people were beaten to death and many more seriously injured while police officers stood by. Aung San Suu Kyi is said to have ordered her supporters not to fight back. Her driver managed to get her away but they were stopped and arrested nearby. In 2012 the Prime Minister of Myanmar at the time, an army general in turn purged from office in 2004, claimed that in 2003 he had sent his own men to arrest her and take her to an army post to save her life. Aung San Suu Kyi spent 3 months in Insein Prison in Yangon, and in poor health, was returned to house arrest.

The next 4 years were marked by continued but fruitless negotiations by the UN to obtain her release, and effectively a media blackout about her within Myanmar. Her telephone line was disconnected, and relatives and lawyers were not allowed to visit her. In 2007 the Burmese government replied to the UN Working Group on Arbitrary Detention that she had not been arrested but was being held in protective custody for her own safety, ironically because of the "violent acts" of her supporters on 30 May 2003 at Depayin. The government stated that it had facilitated her work as General Secretary of the NLD by giving her the status of distinguished person, and enabled her to have medical treatment and meet the UN envoy. However, her supporters were threatening the process of national reconciliation so she could be prosecuted under domestic legislation. The government had decided magnanimously that she would not be prosecuted, simply detained in her own interests. That detention was extended by one further year despite a direct appeal from the UN Secretary-General. The benign stated reason for her detention was apparently rejected by the general in charge of the Myanmar police force as he accused her of tax evasion for spending the Nobel prize money outside Myanmar. Her trust for the benefit of Burmese citizens had been set up in London.

In September 2007 Aung San Suu Kyi appeared at the gate of her house to pray with 2000 Buddhist monks who were protesting about immediate 500% fuel cost rises, unaffordable to the civilian population. It was the first time that she had been seen in public since May 2003. The "Saffron Revolution" caused hundreds of thousands of peaceful protesters to return to the streets once more. It was then crushed by the government, deploying 20,000 troops in Yangon alone. Because of the government's news blackout on Myanmar internal

politics, including cutting off the country's Internet, campaigners staged protests in 12 cities around the world to mark Aung San Suu Kyi's twelfth year under house arrest in order to keep the struggle for democracy in the public eye.

On 12 May 2008 Aung San Suu Kyi's house arrest was extended by one further year, which was apparently illegal even under Burmese security law. In May 2008 Myanmar was hit by Cyclone Nargis which caused the worst natural disaster in the country's history swamping the Irrawaddy delta and leading to at least 140,000 deaths and many thousands missing. Foreign aid workers estimated that 2 to 3 million people had been made homeless. Many buildings were damaged outside the delta area including Aung San Suu Kyi's already dilapidated home as Yangon was one of the 5 regions declared to be disaster areas. The military government was accused of stopping recording the number of deaths and missing persons to save face, and of initially hampering international relief efforts through political suspicion by refusing to grant visas to aid workers.

Once more facilitated by the UN, negotiations on democratic reforms between Aung San Suu Kyi, the NLD and the government slowly continued but on 14 May 2009, she was arrested for breaking the terms of her house arrest because a mentally-troubled and uninvited US citizen swam across the lake to her house and refused to leave for 2 days. Her staff blocked any communication with her, and she called her doctor who alerted the authorities who apparently did not respond. The intruder then left by the same way. He had been able to access and leave her house despite the 24-hour presence of government security guards and police patrol boats. Claiming to have a message from God, he had also tried to meet her before in 2008 which she had reported to the authorities. The intruder was angrily denounced by her supporters for jeopardising her security.

Aung San Suu Kyi's trial began 4 days later in Insein Prison where she was held, and in August 2009 she was found guilty and sentenced to a further 18 months under house arrest. The sentence was originally 3 years' hard labour but was apparently commuted to house arrest by General Thein Sein serving as Prime Minister (later to be civilian President from 2011 to 2016, whose negotiations with Aung San Suu Kyi gave him the reputation as a moderate reformist). On 3 July 2009 the UN Secretary-General Ban Ki-moon visited Myanmar but was not allowed to see her.

The criminal conviction ensured that Aung San Suu Kyi was ineligible to stand in the 2010 general elections although gradually during late 2009, she was able to meet UK, Australian and US diplomats, and NLD leaders. Negotiations also continued with the major general at Cabinet minister-level appointed by General Thein Sein as liaison with her. The NLD boycotted the 2010 elections as its most prominent members were barred from standing as amended electoral law made ineligible those who were or had been in prison. The USDP won an overwhelming if controversial victory on 7 November 2010. It was headed by Thein Sein, now a civilian on retirement from the military. Six days later, Aung San Suu Kyi was finally released from house arrest which had totalled 15 years.

Release from House Arrest and Preparing for Government: 2011 - 2016

During 2011, negotiations with the government on working on matters of common interest continued, including a meeting with President Thein Sein elected in February. A number of Aung San Suu Kyi's demands were partially met including an amnesty for 15,000 prisoners; the release of 200 elderly and infirm political prisoners of the 2000 held, a figure which still included leaders of the 1988 "Four Eights" pro-democracy movement; and the legalisation of trade unions outlawed since the 1962 military coup.

However, one month after the now civilian Thein Sein became President, the current Army Commander-in-Chief General Hlaing, leader of the February 2021 coup, assumed what was in reality the most powerful post in Myanmar. Under the 2008 Constitution the "Supreme Commander of all armed forces" ("the Defence Services") is effectively answerable to no other authority as the Defence Services have the fundamental right to participate in the political leadership of Myanmar, and are assigned to safeguard the Constitution and the non-disintegration of the nation state. The Commander-in-Chief is the final arbiter in all military matters; controller of the 3 crucial Ministries of Defence and respectively Home and Border Affairs; with power to enforce all legislation, including through local administration and the civil service until the start of reforms in late 2019; responsible for appointing the members of the military holding 25% of parliamentary seats under a constitution which requires a majority of more than 75% for change; and has the right to take over and exercise State sovereign power under a state of emergency. Clause 40(c) of the 2008 Constitution provides that:

"*If there arises a state of emergency that could cause disintegration of the Union, disintegration of national solidarity and loss of sovereign power or attempts therefore by wrongful forcible means such as insurgency or violence, the Commander-in-Chief of the Defence Services has the right to take over and exercise State sovereign power in accord with the provisions of this Constitution."*

The Defence Services also own the Union of Myanmar Economic Holdings and Myanmar Economic Corporation, 2 of the country's largest commercial enterprises. It is said to be a vast economic empire operating in telecommunications, IT, transport, energy, banking, financial services, tourism and mining. All land in Myanmar was constitutionally said to belong to the State and that was defined as the person or body holding the State's executive or legislative authority. The Ministry of Home Affairs, controlled by the Commander-in-Chief, was also responsible for land-usage and ownership issues.

In November 2011 the NLD decided to re-register as a political party in order to participate in forthcoming by-elections. Shortly afterwards US Secretary of State Hillary Clinton visited Myanmar and held meetings with the President and Aung San Suu Kyi. One year later the Secretary of State returned with President Obama who also met Aung San Suu Kyi and gave a pro-democracy speech at the University of Yangon, the epicentre of the 1988 "Four Eights" movement.

In the April 2012 by-elections the NLD won 95% of the contested seats, with Aung San Suu Kyi winning a constituency seat in the lower chamber, the House of Representatives. In her campaign she had called for reform of the 2008 Constitution and of restrictive laws, and for an independent judiciary. A speech referring to legally-enabled repression by the Defence Services was apparently censored before publication. After the elections work began on ending press censorship, freeing more political prisoners, establishing a human rights commission, combatting corruption and boosting the economy by attracting inwards investment.

The international reaction was cautiously optimistic, and ASEAN (the Association of South East Asian Nations) confirmed Myanmar's chairmanship in 2014, having previously passed it over because of its human rights record. There was however some scepticism, including from Aung San Suu Kyi herself before the 2012 elections, that reforms might not prove acceptable to the military backers behind President Thein Sein's government. Human rights organisations pointed out that the judiciary lacked independence, and that the Army was guilty of abuses in fighting insurgents and independence movements particularly in border areas such as Kachin and Shan. Ironically, the removal of controls on free speech were said to encourage ethnic hatred due to the extreme form of Burmese nationalism fostered by the military from 1962 to 2011.

On 29 May 2012 Aung San Suu Kyi left Myanmar for the first time since 1988, visiting Thailand, Norway, the UK, France and Switzerland until 29 June 2012.

Conflict in Rakhine State and Leadership of the Opposition: 2012 - 2016

While Aung San Suu Kyi was away in Europe the simmering tension in Rakhine/Arakan province between Rakhine Buddhists in the south and Rohingya Muslims in the north, bordering on Bangladesh, boiled over into rioting and atrocities on both sides after reprisals for the alleged rape and murder of a Rakhine woman by 3 Rohingya youths. The government's response to try to restore order and protect victims was initially met with praise but due to the continued intercommunal violence, a state of emergency and martial law was declared under the 2008 Constitution. The Burmese military, as the Defence Services referred to in the 2008 Constitution, moved in. Aung San Suu Kyi called for the restoration of the rule of law.

In July 2012 President Thein Sein proposed to the UN High Commissioner for Refugees that Myanmar would co-operate in "resettling" 1 million Rohingya, an ethnic group present in the country for generations, in any third country willing to take them. He stated that Myanmar would take responsibility for its ethnic minorities but not the Rohingyas who were illegal immigrants and not recognised as an ethnic group within the country. Under the 1982 Citizenship Law, full citizenship was reserved for those members of "national races" who entered the country before the commencement of British rule in 1824. Naturalisation was possible but only for those who had documentary proof that they had entered the country before independence from British rule. This left stateless successive generations and thousands of Rohingya including children, with restricted access to civil rights reinforced by the 2008 Constitution. The UNHCR roundly rejected the proposal on the basis that the

Rohingya were displaced persons in their own country not refugees. In turn the government rejected as interference in national sovereignty claims that the 1982 Citizenship Law did not correspond with internationally-accepted human rights obligations. Aung San Suu Kyi's first parliamentary speech on 25 July 2012 was to call for laws to protect Myanmar's ethnic minorities.

In October 2012 intercommunal violence broke out again in Rakhine, and the UN and US State Department called upon the government to stop vigilante attacks and extremist rhetoric including against non-Rohingya Muslims. President Thein Sein confirmed that villages had been burned. Aid workers estimated that up to 100,000 people had fled their homes since the first outbreak in June 2012, some trying to cross the dangerous waters of the Bay of Bengal in small boats. In the areas worst affected by violence, the military moved people into makeshift refugee camps near the border with Bangladesh. Buddhist citizens of Rakhine, apparently fearing becoming a minority in the state, called for the internment of Rohingya who could not prove 3 generations of legal residence there, impossible for the majority of Rohingya.

In a BBC interview in October 2013 Aung San Suu Kyi insisted that although international perception was that Myanmar was taking democratic steps, it could not be a full democracy under the 2008 Constitution. In effect she urged people to read the Constitution to understand the barriers to democracy until it was repealed. When asked about the "ethnic cleansing" of Rohingya in Rakhine, she rejected the description stating that it was due to a climate of fear in both communities, and a perception that Muslims had immense global power. Buddhists as well as Muslims had fled their homes and taken refuge in neighbouring Thailand and beyond. The 2012 outbreak of violence was new but it played on old fears, with both communities suffering. She continued that many years of dictatorship had generated a climate of mistrust, and that it was essential for the rule of law to be restored by the government which was not making anyone accountable for what was happening. People were not going to trust each other or agree to address their differences until they felt safe. She condemned hate speech by anyone when asked about the activities of a firebrand ex-prisoner Buddhist monk. She also asked that the international community and organisations such as the BBC press the government as to what exactly its policy was and what it intended to do, rather than simply question the opposition NLD.

Aung San Suu Kyi declared that she would have wished to run for President in the November 2015 elections. However, she was barred under the 2008 Constitution as the widow and mother of "foreigners", and in any event would hold the real power in an NLD-led government. The NLD won a sweeping victory: 255 seats in the House of Representatives and 135 seats in the House of Nationalities, and Aung San Suu Kyi was re-elected to her constituency. She became Minister for the President's Office and for Foreign Affairs, and held 2 other ministries. As Minister for Foreign Affairs, Aung San Suu Kyi launched an immediate dialogue in 2015 - 2016 with India, China, Canada, Italy, Japan, the Philippines and Thailand. One of her first acts was to prioritise the release of political prisoners including student protesters, and to intervene to get trumped-up charges dropped by State prosecutors.

Under the 2008 Constitution, the NLD had to win at least a two-thirds majority in both houses to ensure that its candidate would become President, and an NLD loyalist Htin Kyaw was duly elected by electoral college in March 2016.

The Unique Role of State Counsellor

The President then appointed Aung San Suu Kyi to the specially-created role of State Counsellor, approved by both parliamentary chambers in April 2016. There is no reference to that role in the 2008 Constitution. It appears to be related to the President's general powers to designate ministries and appoint ministers subject to formal parliamentary approval. On 6 April 2016 the State Counsellor Law was promulgated assigning Aung San Suu Kyi as chairperson of the NLD, as the party winning the elections with the highest number of valid votes, to accomplish the objectives of making the multi-party democratic system flourish; properly implementing a market economy; establishing a federal State; and ensuring its peace and development.

She had the right to give advice in conformity with the provisions of the 2008 Constitution on the interests of the State and its citizens, and to contact any body or person to accomplish the stated objectives. She was responsible to parliament for that advice and for her performance, and her 5 year term of office was the same as that of the President. The State Counsellor Law was not expressed as an amendment to the 2008 Constitution, and conferred no substantive rights or powers other than to give constitutionally-legitimate advice and the ability to contact any organisation or person within or outside government to help her fulfil her wide-ranging responsibilities.

The office was abolished on 24 February 2021.

National and International Reaction to Continued Violence in Rakhine State: 2016

The situation in Rakhine State, particularly in the north, continued to provide a troubled backdrop to Aung San Suu Kyi's assumption of power. The number of displaced persons in squalid makeshift refugee camps within the province, stemming from the 2012 intercommunal violence, was said to be 120,000. Many thousands more had fled to Bangladesh. When the US Ambassador to Myanmar and Yanghee Lee, the UN Special Rapporteur on human rights, used the term "Rohingya" in mid-2016, Aung San Suu Kyi as both Minister for Foreign Affairs and State Counsellor asked them not to use it as it was a controversial and divisive term within Myanmar which hindered the process of national reconciliation. It was emphasised that the Rohingya were not a recognised ethnic group within Myanmar. The UN High Commissioner for Human Rights had for the first time stated that the consequences of the Rohingya's deprivation of citizenship rights could amount to a crime against humanity. It was acknowledged that the new government of Aung San Suu Kyi had inherited the system of laws and policies causing the deprivation of rights but that it had to be a priority to reverse them, and to end the ongoing violations.

The sustained international focus on the plight of the Rohingya was coupled with mounting criticism of Aung San Suu Kyi for saying little about them in government or in opposition, and offering no solutions. Although references were made to the short time the NLD had

been in government and to the immense power wielded by the military, it was contended that Aung San Suu Kyi was unwilling to upset or lose the support of Buddhist voters for whom the Rohingya were non-Burmese and who exaggerated their difficulties. For the time being, the major democratic powers were prepared to invest in her and give her the opportunity to bring reconciliation and democratic reforms to Myanmar.

In September 2016 as State Counsellor Aung San Suu Kyi established an Advisory Commission on Rakhine State led by former UN Secretary-General Kofi Annan "a*s a neutral and impartial body which aimed to propose concrete measures for improving the welfare of all people in Rakhine state."* There was a distinguished panel of 6 Burmese representatives including from the Human Rights Commission, the Islamic Centre of Myanmar and Rakhine-based organisations, and 2 additional international Commissioners of senior governmental standing. The brief was to provide recommendations to the Myanmar government on how to secure peace and prosperity in Rakhine through development; the strengthening of institutions; humanitarian assistance; reconciliation; and conflict prevention. It also included citizenship and freedom of movement.

Just as the Commission was starting work, on 9 October 2016 a heavily-armed and apparently well-funded group called Harakah al-Yaqin launched pre-dawn attacks on 3 border police posts, setting off IEDS and raiding the armoury. Nine policemen were killed, then 4 soldiers. According to the International Crisis Group, Harakah al-Yaqin was established by Rohingya refugees in Saudi Arabia, and claimed to be acting in accordance with Islamic law and fatwas issued by senior clerics in Saudi Arabia, the UAE and Pakistan. Although the Rohingya in Rakhine were not known to produce more than small protest groups, it was reported internationally that Harakah al-Yaqin had been inspired by the 2012 violence and had spent 2 years training local recruits in guerrilla warfare. For the October raid, Rohingya refugees with experience of modern guerrilla warfare had travelled to Rakhine. The military sealed off the area to recover the looted weapons, and said to be unable to distinguish civilians from guerrilla fighters, launched "clearance operations" burning villages and displacing thousands of people. After a lull, in November 2016 groups of armed insurgents launched what appeared to be co-ordinated ambushes killing 2 soldiers, and were only quelled by helicopter gunships. Access to the area was severely restricted, and reports continued to appear of civilians of all ages being subject to human rights abuses.

It was claimed that Aung San Suu Kyi did not visit the area or make appropriate public comment, and was blamed for the State-controlled media issuing blanket denials of abuse. That was regardless of the military's power to prevent visits by civilian politicians allegedly for their own personal safety, and its control of most media outlets and the telecommunications network in Myanmar. More insidiously, views were starting to be expressed in the international press that Aung San Suu Kyi was no more than a nominal leader with doubts as to whether she had the ability or will to control the military.

National and International Reaction to Continued Violence in Rakhine State: 2017

The UN High Commissioner for Human Rights reported in early 2017 on the basis of survivors' testimony that 92,00 people had been displaced, and *"unbearable cruelty"* used including the murder of children, elderly and disabled people, gang-rape and the destruction of crops and livestock to ensure starvation. The Commissioner stated that investigators had repeatedly been denied access to the worst-affected areas by the Myanmar government so had been forced to interview refugees on the Bangladesh border. *"The Government of Myanmar must immediately halt these grave human rights violations against its own people, instead of continuing to deny they have occurred, and accepts the responsibility to ensure that victims have access to justice, reparations and safety."* The international community was called upon to put pressure on Myanmar.

Military activity in the area continued until January 2017. Yanghee Lee, the UN Special Rapporteur on human rights in Myanmar, reported at the end of her visit there in January that not only was the situation in Rakhine very worrying but that conditions in Kachin and north Shan state were deteriorating with civilians caught in conflict zones, either internally displaced or seeking refuge in China. However, the government took the view that the attacks on the Rakhine border posts in October 2016 were a concerted attempt to undermine the sovereignty of Myanmar so were not inter-communal violence, and the military response was therefore appropriate. The Special Rapporteur found it incredible that Rohingya villagers were being accused of burning down their own homes so that international aid agencies would build them better ones. As they had been subject to decades of systematic institutionalised discrimination, she said that there was no reason why they would suppose that the government would allow international agencies to come in to rebuild.

The UN Special Rapporteur continued that in the face of documentary evidence of human rights violations during the security operations, the government's continued denials were becoming less and less credible. Muslim trust in the new government was seriously weakened which was demonstrated by the suspicion about the resumption of the citizenship verification exercise and issue of ID cards, announced by Aung San Suu Kyi during the crackdown. No progress had been made on how to resolve the problems in conducting citizenship verification under the 1982 Citizenship Act, and citizens who had received verification were still not able to access full rights.

Many of those interviewed within national and local administration had expressed anxiety about how frank they could be to the Special Rapporteur. It was crucial for the government to *"combat the apparent climate of impunity that seem to have emboldened certain extreme elements by taking the law into their own hands and meting out their own justice."* The hope engendered by the new government was draining away. The Special Rapporteur noted those she had been able to meet including the State Counsellor and numerous Ministers, but the Commander-in-Chief had declined to meet her.

The Special Rapporteur issued a further statement on 30 January 2017 as the respected Muslim constitutional lawyer and legal adviser to the NLD was shot dead at Yangon airport

on his return from a government-delegation inter-faith visit to Indonesia. He was holding his grandson when he was shot. The State Counsellor and the NLD-led government were urged to get to the bottom of the crime. Aung San Suu Kyi apparently did not contact his family or make any public comment until after his memorial service one month later.

On 6 April 2017 Aung San Suu Kyi gave a rare interview to the BBC in which she stated that although there was certainly hostility in Rakhine, ethnic cleansing was too strong a term. The veteran interviewer and war reporter Fergal Keane had contended that what he had seen in Rakhine looked very much like ethnic cleansing. She stated that she had steadfastly refused to blame either community just because people wanted her to do so as that would only fan the flames of the conflict. She was intent on closing the communal divide and would welcome refugees to return. She did not know why the October 2016 attacks (by Harakah al-Yaqin/ARSA) had happened but surmised that it was an attempt to derail the progress being made in negotiating peace between the government and the various ethnic minority insurgent groups in the border areas. The military did not have free rein to do as it wished or indeed commit abuses as its constitutional role was to fight in defence of the country. However, she acknowledged that the Defence Services were constitutionally able to act independently of the government, a situation which she would wish to address. She also wanted it noted that in the one year since coming into power the government had made progress on job-creation, inward investment, infrastructure, healthcare and holding more free elections. Peace was a priority as the country had been caught up in continuing civil war.

On 6 August 2017 the Myanmar Government's own report on the atrocities in Rakhine from October 2016 to January 2017 concluded that there was no evidence of ethnic cleansing, genocide or crimes against humanity. Foreign reports of this had been fabricated; the UN High Commissioner for Human Rights report of early 2017 report had been exaggerated; no-one had taken the opportunity of legal action against the security forces for its alleged excesses; and insufficient attention had been paid to violent crimes committed by insurgents. The 13-person commission had been led by Vice President U Myint Swe, a former head of military security affairs who had been instrumental in crushing the Saffron Revolution in 2007. He had been appointed as Vice President by the Army-sponsored parliamentary representatives in March 2016. He was appointed Acting President on the sudden resignation of the NLD President Htin Kyaw in March 2018, and is currently again Acting President and Vice President appointed by the Tatmadaw in the coup of 1 February 2021. He transferred his presidential powers to General Hlaing, Commander-in-Chief Defence Services.

Recommendations of Kofi Annan's Advisory Commission on Rakhine State: 2017

The Commission reported on 24 August 2017. The Commander-in-Chief of Defence Services, General Hlaing, criticised the report for inaccuracies and questioned its impartiality. The Army-sponsored USDP and the Arakan National Party had tried to abolish the Commission in September 2016 but had not succeeded.

Kofi Annan stated baldly that without urgent concerted government action, there was a risk of returning to the cycle of violence and radicalisation which deepened the chronic poverty in Rakhine, and jeopardised reconciliation and development throughout Myanmar. He was however confident that if the recommendations were accepted, Rakhine would experience lasting peace, economic development and respect for the rule of law. One, although not the only, danger was the unresolved status of large number of currently stateless Muslims which exacerbated socio-economic challenges. The deficiencies in national legislation on citizen rights had to be tackled by aligning the law to international standards, re-examining the link between citizenship and ethnicity; allowing the stateless to naturalise; and regulating the residence rights of non-citizens. In the interim, the verification process under the 1982 Citizenship Law had to be accelerated, publicised and applied without discrimination in accordance with a defined timeline. Those already verified should immediately be able to exercise full citizenship rights.

There were a number of expected socio-economic recommendations in such a poor province vulnerable to climate change; emphasis on the rights of women; communal representation and participation by under-represented groups which affected Muslims disproportionately; freedom of movement for all and the removal of unofficial roadblocks demanding payment; and an improved police structure and training in human rights and community policing.

The government was praised for its bilateral co-operation with Bangladesh and for promptly closing IDP camps which had been an interim recommendation. However, the Commission pointed out that there had to be a clear strategy for voluntary return or relocation in accordance with international standards and human dignity, and that existing camps should have improved shelter, water, sanitation, education and the opportunity to earn a living.

To ensure implementation of all this the Annan Advisory Commission proposed a Ministry supported by a well-staffed secretariat with the sole function of co-ordinating policy on Rakhine and the effective delivery of the recommendations.

Rohingya Militants' Attacks in Rakhine State and the Response: 2017

However, in the early hours of the next day 25 August 2017, the Arakan Rohingya Salvation Army ("ARSA"), formerly Harakah al-Yaqin responsible for the attacks on border posts in October 2016, attacked 30 police posts and killed 12 members of the security forces. Inevitably there was a further security crackdown, official news blackout and heavily-restricted access. The military were said to be assisted by Buddhist mobs in burning Rohingya villages. Around 400,000 Muslims, including 250,000 children, were estimated to have fled to Bangladesh in the ensuing month although the refugee camps there were already full and with poor sanitary conditions. The government referred to the insurgents as foreign-trained terrorists, and that the operation was simply one of counter-terrorism. In response ARSA claimed that they were not jihadists but simply a movement of young Rohingya politicised by the lack of recognition of their ethnicity, their suffering particularly since the intercommunal violence of 2012, and the government's failure to protect them from the excesses of the military.

To counter the government's refusal to allow journalists more than very restricted access, Rohingya militants published from their Smartphones photos and videos of atrocities although clearly not all could be verified. Some of gruesome deaths tweeted by a government Minister in a Muslim country were found to be fake. Aung San Suu Kyi responded that this was "*simply the tip of a huge iceberg of misinformation calculated to create a lot of problems between different communities and with the aim of promoting the interest of the terrorists.*" Equally, a group of journalists, including from the BBC, were presented on their government-organised trip with staged photos of "Muslims burning down their own houses". The BBC report on 11 September 2017 stated that the journalists had personally seen villages being torched and looted by Buddhist militia with police standing idly by. The UN for its report on the October 2016 violence refused to use any photographic evidence which its investigators had not taken.

Yanghee Lee, the UN Special Rapporteur on human rights in Myanmar, reported that the violence, abuses and displacements were even more grave than in October 2016 – January 2017. She called on Aung San Suu Kyi as de facto leader to step in and protect all citizens within her jurisdiction as was her responsibility. The Special Rapporteur accepted that the State Counsellor was effectively between a rock and a hard place but said that she had to come out of it. The UN voted to send an independent fact-finding mission to ensure full accountability for the perpetrators and justice for the victims. This was opposed by the Myanmar government as it was conducting its own enquiry.

The concerns about Aung San Suu Kyi's leadership expressed in 2016 to mid-2017 started to harden into trenchant international criticism, and the benefit of the doubt given by major democratic powers started radically to diminish.

Other than the nuanced comments on the reality of military power in Myanmar of the US Ambassador Derek J. Mitchell, in post from 2012 to 2016, there was little examination of the obstacles facing Aung San Suu Kyi's government. It was relatively newly in power after decades of military dictatorship, and the constitutional position of the Army was impregnable legally and politically under the 2008 Constitution, as well as economically through the business-military complex. The State Counsellor had no commensurate power in a role which did not feature in the 2008 Constitution and was solely created for her by an Act of Parliament. She had huge statutory responsibilities within that role but no power other than electoral popularity in a Buddhist majority country where the electorate perceived ethnic minorities to be at the very least troublesome. She and her government were inexperienced; inherited a complex of undemocratic but carefully-crafted laws; had very circumscribed opportunities to change them; had constantly to negotiate with the Commander-in-Chief; operated out of the isolated military-created capital of Naypyitaw built as recently as 2002 and replacing Yangon as centre of government in 2005; had no control of the media; and faced one of the worst and most intractable humanitarian crises of recent years. It was of no help that she was personally criticised by some of those who had experienced her style of government for being a micro-manager and poor delegator; uncommunicative with subordinates, let alone being unable to charm the media once in government; and surrounded by yes-men.

Growing International Condemnation of the State Counsellor

Five years after her triumphal tour of Europe, Aung San Suu Kyi faced a torrent of calls for her to be stripped of her human rights awards which had been based on her dignified non-violent struggle for democracy as the most famous political prisoner in the world for 21 years.

The UN High Commissioner for Human Rights stated on 11 September 2017 that Myanmar's treatment of the Rohingya seemed to be *"textbook ethnic cleansing"* although the situation could not be fully assessed as Myanmar refused to allow UN investigators to enter. The High Commissioner described the military response as cruel, clearly disproportionate and without regard for basic principles of international law. The complete denial of reality in the claims that the Rohingya were burning down their own villages greatly damaged the reputation of the Myanmar government which had until recently benefited from *"immense good will".* Immediate access should be allowed to UN investigators and the severe and widespread discrimination against the Rohingya reversed.

Two days later five female Nobel Peace laureates wrote an open letter following one signed by 23 laureates in December 2016, criticising Aung San Suu Kyi for not doing enough to stop the ethnic cleansing and crimes against humanity in Rakhine; for the lack of access to humanitarian aid; and the failure to ensure full citizenship rights for the Rohingya. It quoted Archbishop Desmond Tutu's admonition that if the political price of her ascension to the highest office in Myanmar was her silence, the price was surely too steep. Equally wounding was their implication that her conscience was failing her, and the observation that her silence was not in line with the vision of democracy for Myanmar which she had outlined to them, and for which they had supported her over the years. She was urged to stand up for the rights of the Rohingya with the same vigour and conviction as so many people had stood up for hers.

Aung San Suu Kyi declined to attend a meeting of the UN General Assembly on 13 September 2017 citing the Rakhine terrorist attacks, and indicated that she would address the issue in a televised speech on 19 September 2017. She was aware of the world's attention on Rakhine State but as she had stated to the UN General Assembly in 2016, Myanmar as a responsible member of the international community did not fear scrutiny. It was important not to apportion blame nor to abnegate responsibility. The government, which had only been in power for 18 months, condemned all human rights violations and unlawful violence, and was committed to restoring peace, stability, and the rule of law throughout Rakhine.

However, she felt that it was very little known that the majority of Muslims in Rakhine had not fled and that more than 50% of Muslim villages were intact and as they were before the surprise attacks on 25 August 2017. She invited members of the diplomatic community to join the effort to understand why this was the case, and to learn more from the Muslims who had integrated into Rakhine State. She understood that friends of Myanmar internationally were concerned to hear of villages being burned and hordes of people fleeing, and the government was similarly concerned to find out what the real problems were behind the exodus. It was important to remember that other minority groups had

been forced to flee following the August 2017 attacks but this had not received world attention. Both allegations and counter-allegations had to be listened to, and before action could be taken, it had to be made sure that the allegations were based on solid evidence. Action would be taken against all, regardless of religion, race or political position found to have violated Myanmar law and international human rights standards. Myanmar was re-starting humanitarian aid to the area, and verified Rohingya refugees were welcome to return.

Aung San Suu Kyi was adamant that no armed clashes or clearance operations had taken place since 5 September 2017, a claim which was immediately disputed by the international press on the basis of village-burning being witnessed from Bangladesh; the sounds of gunfire being heard; and the State Counsellor's own Information Committee stating on its Facebook page that clearance operations had continued.

The Facebook pages for the 14 days between 5 September 2017 when Aung San Suu Kyi claimed that hostilities had in effect ended, and her speech on 19 September, are still visible despite the coup d'etat of 1 September 2021. They do not wholly square with Aung San Suu Kyi's statement. However, they do not bear out the claim that she was concealing evidence that northern Rakhine was still experiencing the type of widespread armed clashes and clearance operations which took place immediately after the ARSA attacks of 25 August 2017.

The only reference to clearance operations (which could have been seized upon to claim that the State Counsellor was telling untruths or was wrong) was one entry that *"As many as 234 houses in Thapyaytaw Village were being burnt down and the villagers fled while security personnel from Region-10 Cedipyin, Buthidaung Township were on the way to the village for clearance operations at 2:30 pm on 9 September.*

Bearing in mind that this was a translation of the Facebook entry, it implies that the village was burning and then the security forces moved in to search for the arsonists, not that security operations commenced and the villagers then fled.

On 12 September 2017 the Information Committee reported that there had been less engagement with the ARSA militants since 6 September, although the daily reports indicate that the initial period from 25 August 2017 had been very turbulent especially in Maung Taw. Over 90 armed conflicts were reported in the first week with 59 villages comprising 6842 houses burned and 8 bridges destroyed. Almost 30,000 people had been displaced but the Red Cross and the state government was providing humanitarian aid, and some villagers did return. One incident on 10 September 2017 did appear to involve 400 villagers stoning the police who had difficulty quelling the violence.

The Facebook entries in the 14 days of the Information Committee's posts between 5 September 2017 and Aung San Suu Kyi's speech attracted a not unexpected number of abusive comments from individuals, such as claiming that the photos showing the Red Cross distributing humanitarian aid were fake. Videos and transcripts of interviews by the delegation of journalists which visited the area from 6 to 8 September 2017 were criticised

by some on the basis that the local Muslim interviewees would have felt obliged to say that they were content to stay and did not feel threatened as they had no links with extremists.

Facebook entries, and similar usage of social media, of course say and depict what the author wishes. There is no independent verification of the substantial amount of statistical information given by the Information Committee, and it is perhaps not surprising that the entries continue to refer to "Bengalis" whereas other ethnic and religious groups were named.

However, the issue in claiming that the State Counsellor was telling lies about continued violence in Rakhine on the basis of the Facebook entries is that the critics selectively quoted them. No notice was taken in the media reaction to the Facebook entries of the repeated reports of humanitarian aid distribution by the national and State governments, the military and women's aid organisations, to displaced people within Rakhine and those who had not fled but had limited access to food and medical care. Similarly, the call by the Union of Islamic Religious Bodies to Muslims not to use violence nor to support ARSA received little attention. The widespread use of social media to propagate fake news did receive more international attention but not the use of Facebook and text messaging threatening falsely that on the anniversary of 9/11 there would be terrorist attacks throughout Myanmar.

Caveats were always used in international media reports that as journalists and human rights investigators were not allowed into the area, nothing could be verified. Understandably, more focus was placed on the accounts of immense suffering by the refugees who had managed to flee to Bangladesh after the ARSA attacks on 25 August 2017 and the reportedly ferocious response of the Myanmar security forces in northern Rakhine.

National and International Reaction to Continued Violence in Rakhine State: Late 2017

On 12 September 2017 NLD President Htin Kyaw announced the appointment of a large ministerial Performance Committee in Rakhine State to implement the recommendations of the Kofi Annan-led Advisory Commission, and the reconvening of the Maung Taw Investigation Commission first established in October 2016. Its first meeting was 2 days later with 2 weeks to report on its first 2 priorities: security and law enforcement, and to develop the economy by improving infrastructure and job opportunities. Deploying local experts as well, the first public report was due 4 months later. On the same day as the President's announcement there was a ministerial delegation to restore the infrastructure specifically in Maung Taw. The Performance Committee's objectives included a Strategic Plan to address the security, economic and social issues; the improvement of education and healthcare without discrimination based on religion, race, nationality or gender; speeding up the National Verification Process for those who should be recognised as citizens under the 1982 Citizenship Law; distributing humanitarian aid fairly; preventing increasing drug-trafficking; the long-terms closure of IDP camps; and policies to prevent migration to other areas by providing improved opportunities and conditions in Rakhine State.

The international response could have been that the President's announcement created an overly-bureaucratic apparatus or was shutting the stable door after the horse had bolted. It could have been alleged that the worthy proposals only related to the internal situation of

Rakhine after the refugees had fled and had little relevance to the huge numbers suffering in Bangladesh. However, it could not be argued that there was no action either in relation to the Annan Advisory Commission's recommendations, or to address the severe problems within Rakhine just over 2 weeks after the ARSA attacks.

Perhaps because the Presidential announcement was captioned with the date of its publication in the Burmese calendar rather than its subject-matter, it received little international attention despite previous urgent calls for the Annan Advisory Commission's recommendations to be implemented forthwith. Claims that Aung San Suu Kyi was indulging in provable falsehoods or half-truths were highlighted more.

The UN Special Rapporteur on human rights, Yanghee Lee, was denied entry to Myanmar from December 2017 onwards and informed that she could not return during her mandate which began in 2014. The mandate was to visit Myanmar twice per annum to report on human rights issues to the UN Human Rights Council and the General Assembly. Having previously received governmental co-operation, excluding access to some areas due to stated security concerns, the Special Rapporteur was told that her previous report in July 2017 was biased and unfair. The government was also continuing to refuse co-operation with the UN Human Rights Council Independent International Fact-Finding Mission established in March 2017.

As the government had recently emphasised its relationship with the Special Rapporteur and repeatedly stated that it had nothing to hide, Ms Lee responded that the current lack of co-operation indicated that something terrible was indeed happening in Myanmar especially in Rakhine State.

Also in December 2017 2 Reuters' journalists were arrested while investigating the Inn Din massacre on 2 September 2017 of 10 Rohingya villagers and fishermen, including 2 teenagers, by members of the Defence Services. The journalists were apparently the subject of an entrapment exercise by Myanmar police according to a police witness at their trial in April 2018 who claimed that it had been intended to intimidate journalists in general. The police involved had handed over classified documents to the 2 journalists who were then charged with breaching the colonial-era Burma Official Secrets Act 1923 and faced 14-year prison sentences. It states:

"3. (1) If any person for any purpose prejudicial to the safety or interests of the State— (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

or (c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defense, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or

aircraft or otherwise in relation to the naval, military or air force affairs of the State or in relation to any secret official code, to fourteen years and in other cases to three years.

This is the charge which in 2021 is being levelled against Aung San Suu Kyi herself.

In response to the charges against its 2 journalists in 2017, Reuters had released the journalists' findings on the mass grave and witness testimony.

National and International Reaction to Continued Violence in Rakhine State: 2018

The Defence Services conducted its own investigation into Inn Din and in January 2018 a Facebook post by Commander-in-Chief General Hlaing stated that the men had indeed been executed by members of the military but the victims were Bengali terrorists. The office of the President announced in February 2018 that 16 suspects had been detained including 7 military personnel and 3 policemen. In April 2018 just before the trial of the journalists, General Hlaing announced again on Facebook that the 7 soldiers had been convicted of murder, and sentenced to 10 years' imprisonment with hard labour. It was later reported that they were subsequently released from prison.

The 2 journalists were defended by Amal Clooney who, on hearing the testimony of the police witness on entrapment, requested the prosecution to drop the case or the court to dismiss it. In September 2018 the journalists were sentenced to 7 years in prison. There was strong condemnation from the US and UK ambassadors; the UN Secretary-General; the EU's High Representative for Foreign Affairs; the UN Commissioner for Human Rights; the US ambassador to the UN; the US Senate and House of Representatives' Foreign Affairs Committees; and the governments of Bangladesh and Canada.

Before the verdict, Aung San Suu Kyi had declared that the journalists were guilty of breaching the Official Secrets Act and after it, that it was related to that issue and not freedom of expression. She referred to the journalists' right of appeal which was duly exercised but was unsuccessful. Aung San Suu Kyi rejected a request for the journalists' pardon by the US Vice President Mike Pence in a face-to-face meeting in November 2018. They were pardoned by President Win Myint on 7 May 2019.

International criticism of Aung San Suu Kyi's government did not abate. The journalists' case prompted a Human Rights Watch investigation, involving evidence from Myanmar-based journalists, that freedom of expression had actually deteriorated since the NLD had come to power, despite its commitment to defend it. In addition to journalists being routinely detained, intimidated and in some cases beaten up, including for investigating the business-military complex, the government was accused of using s. 66(d) of the Telecommunications Law 2013 on defamation. Introduced by President Thein Sein to regulate private telecoms operators, it states:

"anyone found guilty of extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person by using any telecommunications network shall be punished with a maximum three years (now 2 years*) in prison, a fine or both."*

It was amended in 2017 to ensure that only those claiming to be directly affected by the alleged defamation could press charges and the suspect could be released on bail, but the extensive reach of the section remained. Both the Defence Services and the government were found to have used the Act against critics including satirists. The UN Special Rapporteur in April 2017 had highlighted criminal defamation charges being used to target journalists, politicians, students and social media users for peaceful expressions of opinion – offline as well as online.

On 22 May 2018 the House of Commons International Development Committee issued a damning indictment that the process of democratising Myanmar was illusory, and was in fact going backwards. Referring to the *"deliberate, state-sanctioned, long-term ethnic cleansing of the Rohingya people"*, it was arguably genocide. The Committee urged the British government through its membership of the UN Security Council to refer Myanmar to the International Criminal Court which although the UNSC might not achieve consensus, would make the generals pause from continuing to act with complete impunity. It did not accept that Aung San Suu Kyi could not be held accountable as she had no control over the Army as she had chosen to defend it, to deny its abuses and to ban human rights investigators from entering the country so she was complicit. She had to be accepted as part of the problem. Bangladesh was praised for its humanitarian approach to the Rohingya refugees including the thousands of women and girls who had been raped by the military and militias and were now pregnant.

Against the backdrop of unrelenting international criticism of the Myanmar government, in August 2018 the "Advisory Board to the Committee for Implementation of the Recommendations on Rakhine State" submitted its final report on progress on implementing the recommendations of the Annan Advisory Commission on Rakhine. Although much had occurred since Kofi Annan made his report, it is perhaps fair if surprising to note that only one year had elapsed.

It was reported that the advice of the Advisory Commission had been taken very seriously, and it was reported that over half of the Annan recommendations had been implemented. There had been an increase in access by the media to Rakhine; the Minister for Social Welfare, Relief and Resettlement (NLD and currently under house arrest after the coup of 1 February 2021) had visited Cox's Bazaar, the largest Rohingya refugee camp in Bangladesh; relationships with the UN including with the High Commissioner for Refugees had improved with the appointment of the Special Envoy, Ambassador Christine Burgener; the importance of intercommunal dialogue as a lasting solution; and various pilot projects with international help on mixed community developments.

<u>The State Counsellor and the International Court of Justice</u>

On 11 November 2019 The Gambia, on behalf of the 57 countries in the Organisation for Islamic Co-operation supported by the Netherlands and Canada, filed a 500-page case with 5,000 pages of supporting documents, in the International Court of Justice ("ICJ"). It alleged that Myanmar had committed crimes against the Rohingya in Rakhine State which violated the Convention on the Prevention and Punishment of the Crime of Genocide 1948.

Myanmar had ratified the Convention in 1956, and Article 9 enables disputes between parties relating to the responsibility of a State for genocide to be submitted to the ICJ for adjudication. The Gambia requested provisional injunctive measures to protect the Rohingya against further irreparable harm to their rights under the Convention, pending the final ICJ adjudication. The estimated 600,000 Rohingya remaining in Rakhine State, of whom 120,000 were held in 20 displaced persons' camps, were said to be at risk of continued human rights violations, and genocide had already gone unpunished. An estimated 700,000 Rohingya had also fled to Bangladesh since August 2017.

Although the final adjudication could take many months, even years, a decision on provisional measures was expected to be taken swiftly. It therefore had immediate political and reputational impact.

On 10 – 12 December 2019 the ICJ held its opening hearing. Myanmar was represented by State Counsellor Aung San Suu Kyi as Foreign Minister of the country. In addition to a legal team, parties were required to nominate an agent to represent the State and make commitments on its behalf. The Gambia was represented by its Minister of Justice. This was considered to be the most usual representational role with politicians rarely acting as the State's agent. As the 2 official ICJ languages are English and French, it was speculated that Aung San Suu Kyi felt best able to represent Myanmar as a fluent English speaker as well as its most internationally-known figure. Her appointment as agent was greeted with huge popular enthusiasm in Myanmar. It was also supported by military spokesmen, which may in terms of the coup of 1 February 2021 have indicated approval for Aung San Suu Kyi being the public target if the case did not go well.

There were diametrically held views on the treatment of the Rohingya in Rakhine. The Myanmar government's public utterances had been that there was no genocide in Rakhine, and that the outside world had fundamentally misunderstood which group had created the violent situation there, and either that the effects on the Rohingya had been exaggerated in the media and NGO response, or that the government's efforts to calm the situation there and improve living standards had been ignored. In effect, there had been a communication problem with the government being unable to put across sufficiently clearly what the real problem was in Rakhine. Myanmar was not without international support due to the close bilateral relations with other Asian countries.

However, it was also clear that the Western international community, motivated by the plight and reportage of the Rohingya refugees in Bangladesh, believed that human rights violations on occasions reaching the level of genocide had taken place. In other words, that it was not a communications issue but a situation which engaged the Genocide Convention. The hope was that Aung San Suu Kyi would go further than her public speeches on the subject and honestly address the allegations detailed in evidence, with contrition and concrete proposals for restraint and reconciliation. If the charge of genocide or other serious human rights abuses was to be fended off by Aung San Suu Kyi, she would be defending Myanmar's military. If there were admissions, she would be confirming abuses by Myanmar's military.

The full transcript of Aung San Suu Kyi's 30-minute speech to the ICJ is available online. It is clearly expressed but is of a complexity which should not be superficially summarised. It should be read in its entirety.

On 23 January 2020 the ICJ directed Myanmar to *"take all measures within its power"* to prevent the commission of acts defined in the Genocide Convention, including by ensuring that its military and any irregular armed units refrain from committing these acts. The Court also ordered Myanmar to *"take effective measures to prevent the destruction and ensure the preservation of evidence"* related to the ICJ proceedings. Finally, it directed Myanmar to submit regular reports concerning the measures it takes to comply with the order.

On 20 January 2021, the Myanmar government filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application by The Gambia. On 28 January 2021 the Court directed The Gambia to submit a written response to these objections, and Myanmar has until 23 July 2021 to respond.

Now that Aung San Suu Kyi has been deposed and arrested, it is likely that any response by the Myanmar government to the ICJ will be robust.

When Aung San Suu Kyi made a celebrated return visit to Lady Shri Ram College in Delhi on 16 November 2012, she advised students that if they could not keep their principles in politics, they should leave politics. It was however difficult to be principled in politics as this could be misinterpreted as intransigence and attracted much criticism and opposition.

© Veronica Lowe

oooOOOooo