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Human rights situations that require the Council's attention

Situation of human rights in Myanmar since 1 February 2021

Report of the United Nations High Commissioner for Human Rights*

Summary

Prepared pursuant to Human Rights Council resolution 46/21, the present report sets out the trends and patterns of violations and significant regressions in human rights that have occurred in Myanmar since 1 February 2021. Myanmar is caught in a downward spiral of violence characterized by the increasingly brutal repression of individuals actually or seemingly opposed to military rule, by violent resistance to the coup and by several active non-international armed conflicts. Action must be taken to stem the pace at which individuals are being targeted by the military authorities and stripped of their rights, their lives and their livelihoods. The High Commissioner addresses recommendations to all parties in Myanmar, including the military authorities, the international community and the United Nations system.

* The present report was submitted after the deadline to include the most recent information.

I. Introduction and methodology

1. In its resolution 46/21, the Human Rights Council requested the United Nations High Commissioner for Human Rights to provide to the Council at its forty-ninth session a comprehensive report on the overall human rights situation in Myanmar, with a particular focus on accountability regarding alleged violations of international human rights and humanitarian law, on rule of law and security sector reform since 1 February 2021 and on the implementation of recommendations contained in the reports of the High Commissioner on the human rights of Rohingya Muslims and other minorities in Myanmar.
2. The present report covers human rights concerns documented by the Office of the United Nations High Commissioner for Human Rights (OHCHR) since 1 February 2021. It contains analyses of the most egregious violations committed by the military of Myanmar (Tatmadaw), highlights of trends and patterns during a year of martial rule and preliminary conclusions in respect of violations of international human rights, humanitarian and criminal law.
3. Primary and secondary source materials collected and subjected to credibility assessments were used in the preparation of the report. Without having access to Myanmar, OHCHR applied a consistent methodology of information-gathering, including by holding remote interviews and meetings with over 155 victims, victims' advocates and witnesses of human rights violations. First-hand information was corroborated with satellite imagery, verified multimedia files and credible open source information.¹ Factual determinations of cases, incidents and patterns were made where there were reasonable grounds to believe that incidents had occurred as described. Given the serious security risks that individuals in Myanmar have been exposed to since 1 February 2021, OHCHR has prioritized the safety of victims, witnesses and other interlocutors above all other considerations.

II. Context

4. Alleging fraud in the November 2020 elections, the Tatmadaw launched a coup on 1 February 2021. It established a so-called State Administration Council that moved quickly to manipulate the legal framework to facilitate military rule² by imposing telecommunications shutdowns,³ annulling the 2020 election results and, eventually, declaring itself a "provisional government" with the Commander-in-Chief as Prime Minister.⁴ Shortly thereafter, National League for Democracy parliamentarians who had won seats in the 2020 elections established the Committee Representing Pyidaungsu Hluttaw, which then formed the National Unity Government opposing the military.⁵
5. Nationwide opposition to the military coup manifested itself through peaceful mass protests and a civil disobedience movement that brought government and other services to a standstill. Education was adversely affected when thousands of striking teachers were suspended from their jobs and children stayed away from school. Already underresourced health-care structures were further weakened by attacks and successive waves of the coronavirus disease (COVID-19) pandemic. The economy contracted by an estimated 18 per cent during the fiscal year,⁶ leaving up to half of the population in poverty.⁷ An estimated 1.6 million jobs were lost in 2021, with women disproportionately affected.⁸

¹ Including the "daily briefings on the military coup" of the Assistance Association for Political Prisoner and information provided through the Armed Conflict Location and Event Data Project.

² A/HRC/48/67, paras. 7–12.

³ Ibid., paras. 13–18.

⁴ Ibid., para. 7.

⁵ Ibid., paras. 70–74.

⁶ World Bank, *Myanmar Economic Monitor: Contending with Constraints* (January 2022), p. 9.

⁷ United Nations Development Programme, "Impact of the twin crises on human welfare in Myanmar", November 2021, p. 5.

⁸ International Labour Organization, "Employment in Myanmar in 2021: a rapid assessment", January 2022, p. 3.

6. Myanmar is facing violence on a massive scale. Arbitrary detentions, unnecessary and disproportionate use of force against peaceful protesters, extrajudicial killings and ill-treatment and torture in custody have accompanied the Tatmadaw's seizure of power.⁹ In response to such mounting repression, some individuals formed community-based groups for neighbourhood watches while others launched attacks against the security forces. Simultaneously, armed conflicts in border areas continued and resurged, particularly in Kachin, Kayin and Shan States. In May 2021, the National Unity Government announced the formation of a People's Defence Force as a forerunner to the "Federal Democratic Armed Forces", a move that resulted in the proliferation of groups nationwide calling themselves "people's defence forces", some of which have publicly aligned themselves with either the National Unity Government or ethnic armed organizations. These armed elements have conducted attacks in all states, regions and union territory. There were also reports of hundreds of targeted killings of individuals perceived as being pro-military, for most of which no party claimed responsibility.

7. Post-coup armed elements have formed formal and informal alliances among themselves and with the National Unity Government and/or ethnic armed organizations, while others act alone in a single township. In September 2021, the National Unity Government declared a "people's defensive war" against the military and called for a national uprising. Armed resistance against violent military rule has increased and intensified, with armed clashes and attacks in each state, region and union territory, and in around 220 out of 330 townships. There are also pro-military armed elements called Pyu Saw Htee, some of which are reportedly trained by the Tatmadaw or made up of retired Tatmadaw soldiers. In some situations, Pyu Saw Htee groups operate jointly with the Tatmadaw or carry out their own attacks and raids on villages reportedly using weapons supplied by the Tatmadaw.

8. Unlike in the rest of the country, the situation in Rakhine State has stabilized somewhat owing to an informal ceasefire between the Tatmadaw and the Arakan Army that started in November 2020. Tensions between the two parties have remained high, however, raising serious concerns that hostilities could resume at any moment, particularly following sporadic armed clashes in northern Rakhine State in the final weeks of 2021.

9. Actions taken by the international community in response to the situation in Myanmar have remained limited in scope and impact on the ground. Despite having reached a five-point consensus at a meeting in April 2021, leaders of States members the Association of Southeast Asian Nations (ASEAN) have not achieved tangible results. Following its twenty-ninth special session in February 2021, the Human Rights Council heard oral updates from the High Commissioner and the Special Rapporteur on the situation of human rights in Myanmar at successive Council sessions and adopted resolutions in March and September. The General Assembly adopted resolutions in June and November. Both the State Administration Council and the National Unity Government are seeking international recognition as the government of Myanmar.

III. Legal framework

A. International human rights law

10. Myanmar is party to several human rights treaties¹⁰ and is bound by principles of customary international human rights law prohibiting arbitrary deprivation of life; torture and

⁹ A/HRC/48/67, paras. 21–41. See also the conference room paper containing supplementary information to the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Myanmar since 1 February 2021, available from https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_CRP_2_EN.pdf, paras. 4–38.

¹⁰ The Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Convention on the Rights of Persons with Disabilities.

cruel, inhuman or degrading treatment; and arbitrary deprivation of liberty; and by aspects of the right to a fair trial.¹¹ Under this framework, authorities in Myanmar must respect, protect, promote and fulfil the human rights of all persons within the State's territory or under its jurisdiction or control. Several human rights standards are further relevant to the effective protection of the right to life, notably the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹²

11. While armed groups and other non-State actors cannot become parties to international human rights instruments, it is accepted that, when they exercise government-like functions and control over a territory, they must respect human rights standards when their conduct affects the human rights of individuals under their control.¹³

B. International humanitarian law

12. Compliance with both international human rights law and international humanitarian law is considered when reviewing incidents that have occurred within the context of non-international armed conflicts in the country. Both sets of norms apply, in a complementary and mutually reinforcing manner.

13. For a situation of violence to be characterized as a non-international armed conflict, there must be protracted armed violence between government forces and one or more non-State armed groups or between two or more non-State armed groups, in the territory of the State. The armed violence must meet two cumulative requirements: (a) it must reach a minimum level of intensity that cannot be addressed through routine peacetime policing, as measured by the weapons used, its duration and other factors; and (b) the parties involved must demonstrate that they have a minimum level of organization to be capable of engaging in sustained armed violence and of abiding by the basic obligations of international humanitarian law.¹⁴

14. Analysing whether international humanitarian law applies to a particular circumstance is challenging owing to the complexity and fragmented nature of Myanmar because of its geography, the multiplicity of armed actors, differences in territorial control, the pre-existence of armed conflicts and rapid developments. Accessing relevant and reliable information remains difficult and further analysis is required for a comprehensive determination.

15. OHCHR has nonetheless concluded that there are a number of pre-existing non-international armed conflicts, including between the Tatmadaw and ethnic armed organizations in Chin, Kachin, Kayah, Kayin, Rakhine and Shan States. As outlined in international jurisprudence, temporary ceasefire agreements do not equate to the general achievement of peace, and the armed conflict continues to exist.¹⁵

16. Regarding confrontations between the Tatmadaw and various post-coup armed elements, there are reasonable grounds to believe that the intensity threshold of violence has been met, as demonstrated by the prevalence of attacks, the geographic and temporal spread of clashes, the numbers of civilians displaced by the violence and the types of weapons used.¹⁶ This was noted in certain areas of the country, namely Magway and Sagaing Regions and Chin and Kayah States.

¹¹ A/HRC/43/35, para. 4.

¹² A/HRC/48/67, para. 29.

¹³ A/HRC/19/69, para. 106.

¹⁴ International Committee of the Red Cross (ICRC), commentary of 2016 to article 3 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, paras. 423–429. See <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

¹⁵ International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Tadić*, decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, para. 70.

¹⁶ International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Boškoski and Tarčulovski*, case No. IT-04-82-T, judgment, 10 July 2008, para. 177.

17. Anti-coup armed elements have varying levels of organization, command structures, training and weaponry, and many are not regularly active. Some groups have based themselves in camps outside populated areas or in villages left empty after their inhabitants fled, while others live among the general population, their presence endangering residents. The new armed elements generally lack a supply of weaponry and many use homemade hunting rifles and remotely detonated improvised explosive devices to ambush Tatmadaw convoys. Although in October 2021 the National Unity Government formed a central command and coordination committee in collaboration with some ethnic armed organizations to establish a chain of command and to coordinate military operations across the country, the effectiveness of its command and control over the many groups is unclear. For most new armed elements, the required elements of organization have yet to be met.

18. Post-coup armed elements in states where numerous ethnic groups live, particularly Chin, Kachin, Kayah and Kayin States, appear to be under the command of or allied with ethnic armed organizations. This is the case for the Chinland Defence Force, the Karenni Nationalities Defence Force and people's defence forces in Kachin and Kayin States. It therefore appears that those groups have joined the ethnic armed organizations that are parties to the pre-existing non-international armed conflicts with the Tatmadaw. All parties are bound by article 3 common to the Geneva Conventions of 12 August 1949 and by the relevant rules of customary international humanitarian law,¹⁷ including those regulating the conduct of hostilities.

IV. Human rights violations and abuses stemming from anti-coup repression

A. Right to life

19. Credible sources have shown that, between 1 February 2021 and 31 January 2022, at least 1,500 persons died at the hands of security forces and their affiliates; that total is above and beyond the number of civilian deaths resulting from pre-existing armed conflicts. Figures indicate that the overwhelming majority of victims were men (over 1,300 deaths, equal to 87 per cent). Over 100 children (7 per cent), including at least 90 boys and 15 girls, were killed. Of those, at least 19 children appear to have been below the age of 13 years; over a quarter of all victims killed were reportedly aged between 18 and 29 years.

20. The available data indicate that Sagaing Region had the highest number of reported fatalities, at least 420 deaths, and that Yangon and Mandalay Regions followed closely, with about 275 and 265. Over four fifths of recorded fatalities occurred in the seven predominantly Burman regions and over one third of all deaths occurred in February and March 2021 alone. Over 60 per cent of all deaths resulted from the alleged use of small arms, with about 200 persons reportedly shot in the head.

21. An analysis of the available data indicates that deaths resulting from the actions of security forces and their affiliates, whether by commission or omission, occurred mostly in the following circumstances: (a) during protests; (b) while in the custody of security forces and their affiliates; and (c) in the context of "clearance operations". Chronological and tactical analyses indicate a systematic approach underlying the military's strategy endorsed by command structures at a policy level.

22. Security forces first employed lethal force at peaceful assemblies. In many instances, police and military personnel used live ammunition, sometimes directing it at individuals, to disperse demonstrations. Interviewees described snipers being stationed near protest sites. The relative of one source was reportedly shot in the back by a marksman at a protest held in March in Shan State. Another witness recalled seeing snipers stationed in a tree inside a monastery compound that was taken over by security forces near a protest site in Bago. When security forces violently cracked down on that protest site on 9 April 2021, even injured demonstrators were not spared. Soldiers specifically targeted protesters who were trying to

¹⁷ ICRC, Customary International Humanitarian Law Database. Available at <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/home>.

ferry injured persons away on motorcycles to obtain medical assistance, killing at least one already injured person.

23. Following the violent dispersal of anti-military demonstrations, security forces also chased down suspected protesters, killing bystanders along the way. During the 9 April Bago crackdown, security forces shot and killed a resident in the latter's own house compound as they chased after protesters in that neighbourhood. The unnecessary or disproportionate use of force by the security forces against peaceful protesters violates numerous rights, including the rights to security of person and to freedom of expression and assembly. Where such use of force resulted in the death of protesters, it amounts to arbitrary deprivation of life.

24. In tracking down individuals wanted for anti-military activism, the Tatmadaw carried out violent raids on private accommodations and other infrastructures, including entire neighbourhoods and places of worship. Individuals were killed during search-and-arrest operations.

25. Over 20 per cent of fatalities (about 325 people, including 16 children) occurred in custody, with a significant increase in the number of cases starting in July 2021. While there was a reported average of 12 cases a month between February and June, figures steadily increased thereafter, with an average of 38 cases a month and a spike of 70 deaths in December. That would seem to coincide with the Tatmadaw's operations aimed at identifying and rooting out support for anti-coup armed elements. Deaths in detention resulted either from a lack of adequate medical attention to victims' injuries resulting from crackdowns and raids, or as result of torture or other cruel, inhuman or degrading treatment or punishment, especially during interrogations. Approximately half of those who died in custody reportedly did so within the first 48 hours of detention.

26. Many interviewees indicated that they remained unaware of the whereabouts of numerous detainees, that corpses were disposed of without informing or receiving the consent of families and that requested information about relatives was simply withheld. In one case, a 17-year-old child who had been detained on suspicion of involvement in training by people's defence forces died in custody; the body was cremated and the remains were buried without the consent of the family. In the few instances when the remains were returned, the bodies exhibited signs of abuse. One interviewee reported being arrested along with a relative, being taken to a police station and being interrogated multiple times. Upon release, the interviewee learned that the relative had died of a heart attack, despite having previously been in good health. Upon collecting the relative's body, the source reported seeing multiple facial fractures, bloody head wounds and bruises and burn marks on other parts of the body.

27. Individuals have also been killed by the security forces during "clearance operations". Beginning in July 2021, a series of mass killings during military operations have been reported. In July, in Sagaing Region, military forces launched a series of operations in seven villages near Kani Township that resulted in the Tatmadaw's alleged killing of up to 40 villagers, including a 14-year-old child and two elderly persons. In one village, Tatmadaw forces arrested and killed nine people, whose remains were later found abandoned in the forest by villagers after the soldiers had left. The corpses had been bound, the hands and – in some cases – the feet tied behind their backs and they bore visible wounds consistent with the use of knives and sticks. Similarly, early in December, in another township in Sagaing Region, Tatmadaw soldiers in Done Taw village allegedly killed and burned alive 11 individuals, including five children, with the youngest being 14 years old, inside the hut where they had been detained. Villagers confirmed that the victims were farmers who had remained in the village. All the other residents had fled previous Tatmadaw attacks.

28. On 24 December, the Tatmadaw burned the bodies of up to 40 women, men and children inside trucks in Mo So village, Hpruso Township, Kayah State. Those who found the remains saw that some of the victims' hands had been tied and that some bodies were in positions that indicated that they were trying to escape and had been burned alive. Among the dead were two humanitarian workers and several young children.

B. Right to liberty and security of person, and prohibition against torture and other ill-treatment

29. Since 1 February 2021, the State Administration Council illegally amended laws to confer to the security forces unchecked powers of arrest and detention, which have been used to target and intimidate individuals opposing military rule. Initially, the military detained hundreds of individuals from the executive and legislative branches of government. Subsequently, it targeted doctors, nurses, celebrities, students, educators and others for criticizing the coup, for participating in peaceful demonstrations or the civil disobedience movement or for supporting the Committee Representing Pyidaungsu Hluttaw and the National Unity Government. The military targeted those with influence and capable of galvanizing civic opposition.

30. Credible sources indicate that, between 1 February 2021 and 31 January 2022, the State Administration Council and its affiliated armed elements detained 9,307 males and 2,349 females, 240 of whom were children. Additionally, another 1,971 individuals were wanted by the State Administration Council, forcing them to go into hiding.

31. Of the 11,742 detainees, 51 per cent were concentrated in Yangon, Mandalay and Sagaing Regions, with 29 per cent being in Yangon Region alone. Overall, almost 80 per cent of those detained by the State Administration Council were from Yangon, Mandalay, Sagaing, Bago, Shan, Tanintharyi and Magway.

32. Suggesting the use of consistent tactics and the endorsement of such actions, at a policy level, by the command structures of the security forces, arrests and detentions occurred mostly in the following circumstances:

(a) During protests. In response to peaceful anti-coup protests, the military and the police deployed large numbers of troops to “surround and trap” or chase down protesters in residential areas. Security forces regularly used ill-treatment against those in custody and lethal force against fleeing demonstrators.¹⁸ During crackdowns, security forces reportedly arrested bystanders, including street vendors and workers;

(b) In private residences. Typically, dozens of soldiers, including from military intelligence, accompanied by smaller numbers of police officers and local administrators, entered residences in search of wanted individuals. Frequently, such raids involved significant aggression, including verbal abuse, property damage and physical assault. When the persons being sought were absent, the security forces sometimes detained family members to force the wanted individuals to surrender;

(c) On the streets. Credible sources reported that the security forces arrested individuals known locally to oppose the coup. In areas with heightened activity by armed elements, small groups of individuals who were found on the road with basic supplies were detained on grounds of associating with these actors;

(d) During “clearance operations”. Credible sources stated that, in rural areas, individuals found with hunting rifles or other weaponry reportedly used for livelihood purposes were arrested for possessing weapons.

33. Journalists were consistently at risk of arrest for reporting on the unfolding developments in the country. A minimum of 137 media workers were detained during the reporting period, and at least 60 remain in custody.

34. Separately, the Tatmadaw also targeted members of the National League for Democracy, government officials and parliamentarians for arbitrary arrest and detention, including President Win Myint and State Counsellor Aung San Suu Kyi. In November 2021, the Central Working Committee of the National League for Democracy indicated that over 570 members had been arrested, of whom 12 had died shortly after being detained and another died weeks after being released following eight months of detention.¹⁹

¹⁸ See

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_CRP2_EN.pdf, paras. 10–35.

¹⁹ Irrawaddy, “Myanmar’s ousted NLD says over 570 members arrested by junta so far”, 1 December 2021.

Approximately 463 National League for Democracy-affiliated individuals reportedly remain in detention, indicating that the State Administration Council was targeting individuals based on their party affiliation, persecuting them on political grounds.

35. Multiple sources explained that detention procedures evolved after the coup. During the first weeks, individuals were generally detained in police stations or prisons immediately following arrest. Subsequently, military authorities started sending detainees to military interrogation centres before transferring them to police stations and then to prisons, or directly to prisons. Individuals spent varying periods of time at military facilities and an increasing number faced torture and other forms of ill-treatment during interrogations.

36. In Yangon Region, interviewees described detainees being held for an average of two weeks at military facilities, undergoing questioning by groups of five or more interrogators and being ill-treated until they provided some information. In Mandalay Region, one interviewee noted that, after September 2021, individuals were almost always sent to military interrogation centres for one to three weeks, during which time they were subjected to abusive treatment possibly amounting to torture. Another interviewee reported that, starting in July 2021, in Ayeyarwaddy Region, the military generally kept detainees in its custody and subjected them to treatment that may have amounted to torture. Specifically, the detainees were beaten and verbally abused, were suspended from the ceiling without food or water, were forced to stand in solitary confinement for extended periods of time, had water dripped onto the shaved frontal region of the scalp, were electrocuted, sometimes while also being injected with unidentified drugs, were forced to appear naked in front of others, were subjected to sexual violence, including rape, and were forced to ingest lard if they were Muslims. While interrogations initially focused on identifying leaders and supporters of protests, they later focused on inquiries about detainees' ties with the National Unity Government, the Committee Representing Pyidaungsu Hluttaw and people's defence forces.

37. In Magway Region, a credible source stated that detainees were left alone for the first couple of days, during which time military intelligence officers would look for information about them on social media. The results would then be used during interrogations led by an officer of the rank of Major. While not all detainees were initially subjected to ill-treatment, those who appeared to be of South Asian descent were reportedly guaranteed to be beaten. Over time, however, all were subjected to violence, regardless of ethnicity, sex or age. In Tanintharyi Region, interviewees separately identified a lieutenant colonel who had led their interrogations and who had directed the infliction of torture and other ill-treatment at military facilities.

38. Sources in several locations indicated that, towards the end of military custody, the police received instructions to move detainees from military facilities and to file specific charges. When the official remand period started, the police brought detainees to local police stations to build cases based on the instructions received. During that period, the authorities did not systematically inform family members or lawyers about detainees' whereabouts and suspended family visitations at prisons beginning 1 February, alleging COVID-19-related risks. Interviewees explained that the only way to find out whether an individual was in prison was to send a food packet: if a packet was not returned to the sender, it meant that the individual was being held in detention. Upon expiration of official remand periods, individuals reported being transferred to prisons. From the foregoing, there are reasonable grounds to conclude that the security forces have been responsible for arbitrary arrest and detention, enforced disappearance and ill-treatment, often amounting to torture.

39. Such violations were enabled by the State Administration Council's instrumentalization of the law – notably, through its amendment and use of the Penal Code and the Criminal Procedure Code – to provide a veneer of legality for otherwise illegitimate and unlawful actions.²⁰ This includes subversion of the judicial process through the establishment of special courts within prison compounds; the introduction of military tribunals in townships under martial law; and amendments to the legal aid law narrowing the scope of State-funded legal aid to only the trial stage of proceedings and removing guarantees of independence for legal aid providers operating under a State-funded scheme. Numerous interviewees described a complete lack of judicial independence. Upon sentencing, one

²⁰ A/HRC/48/67, paras. 8–10.

interviewee reported being told by the court: “You are innocent, but I have to listen to someone else. Please forgive me.”

40. Other infringements on fair trial rights included cumbersome procedures preventing detainees from securing powers of attorney or meeting and consulting their lawyers before trial and authorities’ harassment of and threats against defence counsel. One interviewee recalled being intimidated by prosecution witnesses after objecting to a picture of a signed confession being introduced as evidence.

41. Between 1 February 2021 and 31 January 2022, at least 740 individuals were sentenced, including 84 persons, two of whom were children, to death, following trials that did not meet fair trial standards.

42. Although the State Administration Council has on several occasions released prisoners en masse, most of these individuals were charged or convicted of criminal offences prior to 1 February. Following the October 2021 pardon,²¹ some individuals who were to be released received new charges before stepping out of the prison gates. Others were rearrested within days of their release.

43. Persons released from detention described harsh prison conditions, including significant overcrowding. Physical distancing was impossible and there was no treatment for those who contracted COVID-19. Interviewees held in four different prisons across Myanmar said that some convicts were given effective delegated authority by the prison authorities to discipline political detainees, which led to widespread extortion and abuse.

V. Impact on human rights of insecurity, armed conflicts and other forms of violence

44. Myanmar is wrought with devastation. The increasing prosperity that many around the country have in recent years begun to enjoy has come to a halt. Concurrently, ethnic minorities who have been persecuted for decades face even more violence and insecurity. In attempting to crush the armed opposition, the Tatmadaw has continued its “Four Cuts” policy and conducted offensives using air strikes, helicopter gunships, artillery and mortars. Indiscriminate attacks, often in populated areas and showing flagrant disregard for human life and property, were reported during the period covered by the present report. Also during that period, Tatmadaw forces committed many violations in the course of “clearance operations” consisting of combing areas in search of members of armed groups and arresting, torturing and summarily executing individuals, as well as looting and destroying property. During such operations, individuals were demonstrably at high risk of harm from small arms fire, which killed over 400 individuals; air strikes and the use of mortars and artillery shelling and other explosions killed approximately 150 persons. In September 2021, for example, Tatmadaw forces occupying a school launched an artillery attack in Kone Thar village in Kayah State, ostensibly targeting positions of the Karenni Nationalities Defence Force. Shell explosions caused residents to flee. Thereafter, Tatmadaw units searched the village, shot and killed three civilians before burning their bodies and shot and killed an elderly man who had remained behind. During their occupation of the village, Tatmadaw units destroyed 26 buildings and damaged 13 others.

45. Many armed actors persistently used landmines and hidden improvised explosive devices, killing and injuring individuals around the country. Landmines or explosive remnants of war accounted for over 88 deaths,²² with at least 600 reported incidents of landmine usage. Tatmadaw units allegedly planted landmines in empty villages to prevent displaced persons from returning. Several instances of detonations reportedly resulted in deaths and injuries in different locations around the country.

46. In at least 85 reported incidents, the Tatmadaw forced individuals to perform labour and act as human shields as their troops advanced. In September 2021 in Mon State, the Tatmadaw forced 400 villagers from Bilin Township to transport goods through the jungle.

²¹ Global New Light of Myanmar, “1,316 detainees, 4,320 defendants pardoned on Thadingyut occasion”, 19 October 2021.

²² Office for the Coordination of Humanitarian Affairs, “Myanmar humanitarian update No. 15”, 15 February 2022.

Elsewhere in Kale Township, Sagaing Region, the Tatmadaw attacked a people's defence force camp, detained 12 people, including 10 force members and two volunteer nurses, and summarily executed three of them, including one nurse. Light infantry units forced the remaining nine individuals, all of whom were women, to walk ahead as human shields. All reportedly remain in detention.

A. Internet shutdowns, displacement and restrictions on humanitarian aid

47. Internet shutdowns continued to be used by the Tatmadaw to stifle people's ability to gain access to information and communicate. Since August 2021, 25 townships in conflict- and violence-affected areas have been in a vacuum, without any form of Internet or, in some cases, fixed or mobile telephone lines. Obstructing communication in situations of violence endangers civilians, violates their rights to freedom of expression and access to information and further hampers humanitarian actors' ability to provide effective assistance.

48. The Tatmadaw has used "clearance operations", air strikes and heavy weapons in populated areas purposely to instil fear in villagers, forcibly displacing local populations. This has resulted in some 441,500 people remaining displaced from their homes since February 2021, including at least 240,000 people in Kayah and Kayin States and other parts of south-east Myanmar, 191,500 people in Chin State and Sagaing and Magway Regions and 10,000 people in Shan and Kachin States.²³ More than 15,000 people have crossed the border to India or Thailand.²⁴ Many more people have been temporarily displaced and there is a pre-existing protracted-displaced population of 370,400 people in Rakhine, Kachin and northern Shan States.²⁵

49. The military authorities largely blocked humanitarian access to new and pre-existing areas of need by delaying or denying travel authorizations, tightening bureaucratic requirements and establishing new roadblocks and checkpoints. Disruptions in supply chains and the failure of the banking sector, because of the coup, also affected humanitarian access and response. The military authorities also specifically stopped humanitarian agencies from distributing aid to populations they perceived to be affiliated with the opposition. Since October, in Kayah State, the military required organizations to seek permission to transport more than 10 bags of rice, significantly affecting the delivery of food assistance. In Chin State, the military deliberately blocked travel routes, which restricted essential deliveries and further exacerbated the situation. In several instances, the Tatmadaw targeted people assisting internally displaced persons and burned food and other items. The security forces arrested volunteers assisting displaced persons in Kayah and Chin States, and at least 30 displaced persons reportedly died from preventable health problems in Mindat township, Chin State, because they had no access to health care. In areas affected by armed conflict, the restrictions imposed could amount to violations of the obligation of parties to the conflict to allow and facilitate unimpeded passage of humanitarian relief for civilians in need. As a result of arbitrary access restrictions, communities had no access to food, health care, shelter, safe drinking water and sanitation facilities and were at increased risk of disease, including COVID-19. Displaced persons struggle to realize their basic rights, including to food, health, education and work. Moreover, their displacement is affecting future food security as they are unable to plant and harvest crops.

B. Property destruction and attacks on health and education

50. Over 400 Tatmadaw attacks on populated areas resulted in the destruction of thousands of houses and other buildings, including churches and food stores. It has been well-documented that arson is a hallmark of Tatmadaw operations, mostly perpetrated after villagers have been displaced. Most egregiously, in Thantlang town, Chin State, Tatmadaw light infantry brigade 222 burned down over 900 buildings in at least 23 successive attacks from September, including the offices of two non-governmental organizations, eight churches and 12 other religious buildings, continuing a trend of Tatmadaw forces targeting

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

Chin ethnic and religious minorities. Over 250 mass burnings occurred in Magway and Sagaing Regions after mid-2021. Satellite imagery obtained by OHCHR of the largest burnings reveals that 171 buildings were destroyed and 36 damaged in June 2021 when the Tatmadaw attacked Kin Ma village in Magway Region.

51. Attacks on the rights to education and health persisted, with 450 reported attacks on schools and school personnel and cases of schools being used for military purposes, the majority of which in Mandalay, Magway, Sagaing and Yangon Regions. Furthermore, 286 health-care facilities, vehicles and personnel, as well as patients, were attacked.

C. Abuses and violations by anti-Tatmadaw actors

52. Several iterations of a National Unity Government-issued code of conduct for people's defence forces contain provisions based on key international standards, including the Geneva Conventions. Similarly, its guidelines on the detention of prisoners of war and military prisoners by people's defence organizations also refer to the Geneva Conventions and call for the humane treatment of detainees. Serious long-standing issues, however, including forced recruitment, child recruitment and landmine use by anti-Tatmadaw actors, continue to be reported.

53. Since May, 543 individuals have reportedly been killed owing to their perceived support of the military. Victims include at least 166 local administrators appointed by, or otherwise linked to, the State Administration Council, or their family members; 47 members of the pro-military Union Solidarity and Development Party; and 214 alleged military informants. While the vast majority were men, 48 were women, and at least eight were children, including an 8-month-old baby. It is not possible to attribute most of those deaths to particular actors, but anti-coup armed elements claimed responsibility for 95 incidents.

54. While attacks by anti-coup armed elements have primarily targeted the Tatmadaw, some have also been directed against property and buildings that have an apparent or perceived military affiliation, including ward and village tract offices, Government buildings, and — increasingly from June — towers believed to be used by the partly military-owned MyTel telecommunications network, with around 150 towers attacked by anti-military groups. Credible reports indicated several individuals have died during those attacks. Telecommunications towers have a predominantly civilian use, and their destruction further impacts individuals' rights to freedom of expression and access to information.

VI. Human rights situation of the Rohingya community

55. Although the security situation in Rakhine State remained relatively stable, the overall human rights situation of the Rohingya community saw no improvement. Previously identified patterns of discrimination, such as deprivation of citizenship rights and civil documentation, restrictions on freedom of movement and restrictions on access to health and education services, as well as to livelihood opportunities, remained. Refugees and displaced persons did not have the right to return. The right to seek justice and obtain redress for past violations remained completely unaddressed and continued to negatively affect every aspect of daily life. Interviewees and interlocutors unanimously stated that, so long as the Tatmadaw enjoyed impunity and exerted influence on civil and political life in Myanmar, a further deterioration in the situation of human rights of the Rohingya could be expected.

56. The military authorities further restricted freedom of movement for Rohingya. According to interviewees and other sources, in October the military-run national registration and citizenship department reintroduced the requirement for Rohingya without a national verification card to receive temporary travel authorization for movements between Buthidaung and Maungdaw townships in Rakhine State. On 25 November 2021, the Buthidaung Township military-run general administration department imposed on all "Bengalis" (a derogatory and exclusionary term) the requirement of obtaining a travel permit known as "form 4", further disenfranchising Rohingya. Rohingya reported that all those processes involved extortion. One person reported that informal fees for each permit may amount to over 25,000 kyats (approximately \$15) and that other arbitrary payments may be demanded at security checkpoints. Sources also reported that Rohingya received travel

authorizations for very short time frames, sometimes for as little as three days despite making requests for one month. Those and other restrictions severely compromised access to services and the sustainability of livelihoods, prolonging dependence on humanitarian assistance, exacerbating vulnerabilities and protection risks, prompting negative coping mechanisms, including accepting significantly underpaid jobs to secure some form of earnings, and entrenching segregation and discrimination.

57. Conditions in Rakhine State remained uncondusive for the safe, voluntary, dignified and sustainable return of refugees and internally displaced persons. Owing primarily to security concerns in the camps in Cox's Bazar, Bangladesh, however, some families decided to return to Myanmar. Consistent with Tatmadaw policies aimed at excluding Rohingya from life in Myanmar, those individuals were arrested, charged and prosecuted for illegal entry. Similarly, Rohingya rescued at sea while undertaking perilous journeys either from Bangladesh or Myanmar to third countries, or moving inside Myanmar, faced arrest and prosecution.

58. Humanitarian access continued to be time limited, location specific, restricted in scope and subject to several layers of approvals, particularly for villages and sites in remote locations where humanitarian needs were greatest. Although a COVID-19 vaccination campaign was being rolled out in Rakhine State, costs related to travel and relevant authorizations, as well as access and availability, were reported as hindering effective coverage for Rohingya.

59. The military authorities reportedly intended to move forward with implementing the national strategy for closing camps for internally displaced persons developed by the previous civilian government, although they had not yet addressed fundamental issues of citizenship, freedom of movement and housing, land and property rights. Engagements with affected communities were described as cursory.

60. In Bangladesh, interviewees from Cox's Bazar and Bashan Char expressed serious security and economic concerns. All interviewees from Cox's Bazar indicated that the security situation had worsened dramatically, with criminal groups such as the Arakan Rohingya Salvation Army and the Munnah group fighting daily to gain control in the camps and threatening, beating, kidnapping and killing unaffiliated camp residents. For example, on 29 September 2021, Mohib Ullah, a prominent Rohingya human rights defender who had received numerous threats and who was the first Rohingya to directly address the Human Rights Council, in March 2019, was killed. In addition to representing a dramatic loss for the Rohingya and human rights communities, his execution sent a chilling signal to the Rohingya community.

VII. Accountability

A. International criminal law

61. War crimes may be committed in a non-international armed conflict when serious violations occur of article 3 common to the Geneva Conventions or of customary international humanitarian law. Crimes against humanity under customary international law may be perpetrated when certain acts are committed as part of a widespread or systematic attack directed against a civilian population.

62. Credible allegations of crimes documented in the present and previous reports represent only a fraction of the violations and abuses that the people of Myanmar have had to endure since 1 February 2021. Patterns of arbitrary arrest and detention, of torture and other cruel, inhuman or degrading treatment or punishment and of killings, particularly in Yangon, Mandalay, Sagaing, Bago, Magway and Tanintharyi Regions, seem to indicate that individuals have been targeted for their political or professional affiliation or for exercising their political rights. As a result of the changes made to the legal and judicial systems, those deprived of liberty were systematically taken into military custody and subjected to torture and other forms of ill-treatment, sometimes resulting in death. In the context of peaceful anti-coup protests and military "clearance operations", the tactics adopted by the Tatmadaw, including the targeted shooting of victims in the head and immolations, suggest that such conduct is not misconduct or the misbehaviour of a few, but rather the result of instructions handed down through the command structure. Taking into consideration the extent, type and

level of atrocities committed by the Tatmadaw, it is highly improbable that soldiers acted independently, outside the chain of command.

63. Consistent with the preliminary analysis submitted by the Independent Investigative Mechanism for Myanmar to the Human Rights Council,²⁶ the present report concludes that there are reasonable grounds to believe that acts by the Tatmadaw were carried out in the context of a widespread and systematic attack directed against civilian populations and in apparent pursuance of an organizational policy. Since 1 February 2021, acts that may amount to crimes against humanity may have been committed, in particular: murder, forcible transfer, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, persecution of an identifiable group or collective on political grounds, enforced disappearance and other inhumane acts of a similar character intentionally causing great suffering, and serious injury to mental or physical health. When linked to an armed conflict, some of these acts may also amount to war crimes. Additionally, in the conduct of hostilities, deliberate attacks against civilians and civilian objects, the use of human shields and forced displacement, which have occurred in Myanmar, constitute serious violations of international humanitarian law possibly amounting to war crimes.

64. Since the coup, there has been no information on any investigations or prosecutions of soldiers within Myanmar for the violations committed. This further entrenches the total impunity enjoyed by Tatmadaw forces over past decades.

B. Ongoing accountability efforts

65. Various international human rights mechanisms have consistently stressed that accountability, the rule of law and security sector reform are fundamental for achieving lasting peace and transformative change in Myanmar. Since 1992, successive Special Rapporteurs have pointed to the centrality of accountability in remedying the situation.²⁷ Likewise, the independent international fact-finding mission on Myanmar has made extensive recommendations.²⁸ These have included taking steps towards accountability at the national level, security sector reform, including through civilian oversight of the security forces, and law reform. Even bodies established by the Government of Myanmar to probe into human rights issues, despite their lack of independence, have made some pertinent recommendations, which have, however, been reportedly accepted but never implemented.

66. Significantly, in August 2021 the National Unity Government filed a declaration under article 12 (3) of the Rome Statute of the International Criminal Court purporting to accept the Court's jurisdiction with respect to international crimes committed in Myanmar since 1 July 2002. The Court has yet to express a public position on this issue.

67. Other steps have been taken at the international level. Proceedings initiated by the Gambia on the application of the Convention on the Prevention and Punishment of the Crime of Genocide before the International Court of Justice continue. In recent developments, the Court has considered preliminary objections by Myanmar. After the Court issued an order on provisional measures, both the State Administration Council and the National Unity Government reportedly transmitted biannual reports on the implementation of the measures to the Court. Those submissions not having been made public, however, it is not possible externally to assess the veracity or accuracy of their contents. Simultaneously, the International Criminal Court is continuing its investigation into the situation in Bangladesh and Myanmar in respect of certain crimes subject to its territorial jurisdiction. For its part, the Independent Investigative Mechanism for Myanmar continues to carry out its mandate to facilitate the work of courts of competent jurisdiction. A preliminary analysis of information collected by the Mechanism concerning the events since 1 February 2021 indicate that crimes

²⁶ A/HRC/48/18.

²⁷ See, for example, A/HRC/28/72, paras. 57–59; and A/76/314, para. 103.

²⁸ See, for example, A/HRC/39/64, paras. 100–117. See also the compilation of recommendations contained in the conference room paper presented to the Human Rights Council at its forty-second session, in 2019, available from <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportHRC42thSession.aspx>, paras. 19–22.

against humanity, including murder, persecution, imprisonment, sexual violence, enforced disappearance and torture, have likely been committed.²⁹

68. At the national level, on 26 November 2021, the Second Chamber of the Federal Criminal Court of Argentina overruled an earlier decision by a lower court on procedural issues, affirming the competence of Argentinian courts to investigate violations against Rohingya under universal jurisdiction.

69. While these steps are all significant, the breadth and scale of violations of international law suffered by the people of Myanmar demonstrate the urgent need for justice and accountability measures that address more comprehensively the full range of violations that have been and continue to be committed across the country. Sustained serious violations of international law demand a firm, unified and resolute international response to effectively protect the human rights of the people of Myanmar.

VIII. Conclusions and recommendations

70. Since February 2021, Myanmar has experienced a significant regression in terms of its people's ability to enjoy the full gamut of civil, political, economic, social and cultural rights. Over 1,500 individuals have died in for exercising their fundamental rights and freedoms or while in the custody of those under an obligation to protect them. Over 10,000 persons have languished in prison, arbitrarily detained, with hundreds if not thousands having been subjected to torture.

71. Myanmar is caught in a downward spiral of violence characterized by the increasingly brutal repression of individuals actually or seemingly opposed to military rule, by violent resistance to the coup and by several active non-international armed conflicts. Tatmadaw forces target civilians and continue to use explosive weapons with wide-ranging effects in populated areas. They are also increasingly reliant on air power, including helicopter gunships and air strikes. Over 440,000 persons have been displaced by armed clashes since 1 February and as many as 14.4 million people are now urgently in need of humanitarian assistance.

72. Action must be taken to stem the pace at which individuals are being stripped of their rights, their lives and their livelihoods. The military has created an environment in which meaningful negotiations and dialogues cannot occur and in which the people of Myanmar have no voice. Thus far, international efforts to de-escalate the violence, the rhetoric and provocations have fallen on deaf ears. Announcements of nationwide ceasefires have not reduced military operations or counter-strikes by armed opponents. Residences are raided and activists, political opponents and others suspected of dissent are detained with unrelenting regularity. Humanitarian operations remain stalled while access is not facilitated. These dynamics must change dramatically to create the basis for political discussions or a negotiated solution.

73. Throughout the tumult and violence of the past year, the will of the people has not been broken. They remain committed to seeing a return to democracy and to institutions reflecting their will and aspirations. The democratic movement has begun to articulate a more inclusive vision for the future of the country that must be nurtured and supported. This vision includes the establishment of a peaceful, federal, democratic union that guarantees freedom, justice and equality and that upholds the key values of democracy, gender equality and basic human rights. It also includes growing recognition of the crimes and injustices of the past, including those committed against Rohingya and other minorities, and calls for those responsible for to be held accountable and for the construction of judicial institutions capable of functioning independently of external political pressures or edicts.³⁰ The international community must do everything within its power to support the people of Myanmar and turn this human rights catastrophe into an opportunity.

²⁹ A/HRC/48/18, paras. 30–35. See also <https://iimm.un.org/wp-content/uploads/2021/10/2021-10-29-IIMM-Bulletin-October-2021-English-language.pdf>.

³⁰ See also A/HRC/48/67, paras. 70–74.

74. In the light of the above findings and the current situation, the High Commissioner reiterates her previous recommendations to the military authorities:

(a) To cease all violence and attacks immediately against the people of Myanmar across the country, in line with the five-point consensus agreed by the leaders of States members of ASEAN at their meeting held in April 2021;

(b) To release immediately all those detained, prosecuted and/or sentenced in relation to acts of political expression, free association, free assembly and protest. Discontinue politically motivated prosecutions, including those targeting members of the democratically elected Government, members of political parties, civil society representatives, human rights defenders and all other persons expressing opposition to the coup.

75. She recommends that all parties in Myanmar:

(a) Cooperate fully with the Special Envoys of the Secretary-General and of ASEAN on Myanmar to develop the basis for a broad-based dialogue with all parties and stakeholders, including women, young people and minority community representatives;

(b) Facilitate unrestricted access to humanitarian assistance providers immediately, including both international and local service providers, for delivery through non-State modalities;

(c) Fully respect human rights norms and comply with international humanitarian law where applicable;

(d) Fully cooperate with international accountability mechanisms, including those examining the actions of the Myanmar authorities, including its military forces, concerning the Rohingya crisis and the events since 1 February 2021.

76. She recommends that the international community:

(a) Extend protection for all individuals crossing international borders, including members of the Rohingya population, provide immediate humanitarian assistance and ensure that all returns are conducted in a manner that is dignified, voluntary and fully consistent with the requirements of international law;

(b) Support the referral of the situation in Myanmar to the International Criminal Court, whether by the Security Council or by duly recognized national authorities;

(c) Ensure that any political solution to the crisis includes transitional justice measures and eschews amnesties for serious human rights violations and international crimes;

(d) Take immediate action to prevent the supply of arms to the military of Myanmar or other armed parties in the country, in accordance with the call made by the General Assembly, and apply other targeted sanctions on military economic interests, as appropriate;

(e) Encourage businesses that operate in Myanmar to cease working with entities owned by or affiliated with the military, in line with the recommendations of the Special Rapporteur on the situation of human rights in Myanmar and the independent international fact-finding mission on Myanmar, and ensure that such businesses are not involved in joint ventures or other revenue-sharing arrangements with the military of Myanmar or businesses under their influence.

77. She recommends that the United Nations system renew its efforts to fully implement the recommendations contained in the report by Gert Rosenthal entitled "A brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018" and in other independent reviews of United Nations action, in order to strengthen the Organization's ability to prevent and respond to human rights-related crises and undertake all efforts necessary to ensure a coherent, strategic response in Myanmar, aimed at strengthening human rights-centred protection in a mutually reinforcing manner.