

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

ATROCITY CRIMES RISK ASSESSMENT SERIES

MYANMAR

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MAP MYANMAR



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LIST OF ACRONYMS

AA	Arakan Army
ACLED	Armed Conflict Location and Event Data Project
ARSA	Arakan Rohingya Salvation Army
ASEAN	Association of Southeast Asian Nations
CDM	Civil Disobedience Movement
CRPH	Committee Representing Pyidaungsu Hluttaw
CSO	Civil Society Organisation
EAO	Ethnic Armed Organisation
FFM	Fact-Finding Mission on Myanmar
HRC	Human Rights Council (UN)
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICJ	International Court of Justice
ICOE	Independent Commission of Enquiry
IIMM	Independent and Impartial Monitoring Mechanism
KIA	Kachin Independence Army
KNLA	Karen National Liberation Army
KNU	Karen National Union
MNHRC	Myanmar National Human Rights Commission
MPF	Myanmar Police Force
NCA	Nationwide Ceasefire Agreement
NGO	Non-Governmental Organisation
NLD	National League of Democracy
NUG	National Unity Government
PDF	People's Defense Force
R2P	Responsibility to Protect
SAC	State Administrative Council
UN	United Nations
USDP	Union Solidarity and Development Party

INTRODUCTION

In 2005, the United Nations member states unanimously made a commitment to protect populations from the most serious crimes, namely genocide, war crimes, ethnic cleansing, and crimes against humanity.¹ Known as the ‘Responsibility to Protect’ principle, or R2P, this commitment emphasises the primary responsibility by states to protect their own populations from these crimes, and the responsibility of the international community to support one another in their prevention.² Recognising that atrocities are not random events but develop in a dynamic process and require the existence of an environment conducive to their occurrence, the United Nations Special Advisers on the Prevention of Genocide and the Responsibility to Protect developed a methodological framework in 2014 that enables the identification of warning signs indicating the existence of such circumstances. The Framework of Analysis for Atrocity Crimes (hereinafter ‘the framework’) sets out a series of Risk Factors and corresponding Indicators that enable stakeholders to identify high-risk developments in situations of serious human rights violations, domestic instability and crisis, pinpoint gaps in existing prevention capacities and promote necessary responses. The framework serves as a working tool for the monitoring and assessment of atrocity risks and as an early warning mechanism to support the prevention of their commission.³

The following atrocity crimes risk assessment applies the framework to the Republic of the Union of Myanmar (hereinafter ‘Myanmar’). It identifies the most pressing risk factors and provides recommendation on future steps that can be taken by relevant stakeholders to address risks of atrocities being committed.

Since the last atrocity risk assessment of the situation in Myanmar conducted in 2019, there have been significant domestic developments that have reshaped the climate for the commission of atrocity crimes in Myanmar. **The risk of atrocity crimes, specifically crimes against humanity and war crimes, is very high and the risk of genocide remains high.** The military coup d’état on 1 February 2021 has resulted in a large movement of civil disobedience, the establishment of a shadow government under the leadership of former NLD politicians and its formation of an armed resistance force. The brutal crackdown by the military in response to nationwide anti-junta protests has led many civilians to take up arms and join armed resistance forces. Renewed conflict between long-standing ethnic armed groups and the military, the emergence of new local armed militias, as well as violent clashes between the military and resistance forces have dragged the country into another civil war. The means and methods deployed by the Tatmadaw against political dissidents, civilians and members of the armed resistance already meet the threshold of crimes against humanity and war crimes but indicate the risk of further escalations of the situation.

Over two years since the 2021 coup, the junta government continues to commit atrocities across the country and remained defiant amidst calls by ASEAN, the UN, and the rest of the international community to halt the violence and restore the democratic order. Specifically, the military chief Min Aung Hlaing has not complied with the Five-Point Consensus (FPC) that he agreed to in April 2021 with the ASEAN leaders during the special summit convened in Jakarta by Indonesia and the ASEAN Chair at the time, Brunei Darussalam. It also refused requests by ASEAN and the UN to allow the Special Envoys to Myanmar to meet with ousted NLD leader Aung San Suu Kyi and other detained political leaders. As of 15 March 2023, there are now over 3,000 people confirmed killed by the junta with over 20,300 arrested and more than 16,500 detained, which include children. The number of people killed could be much higher as many have disappeared without a trace and even as the junta continues to use air strikes in central Myanmar since 2021 against the combined civilian armed resistance and ethnic armed organisations’ forces fighting the security forces across the country. Thus far, over 700 air strikes were conducted by the junta that killed over 460 people in central Myanmar. Apart from air campaigns, security forces also committed arson attacks against civilians, bringing close to 50,000 houses destroyed in Sagaing, Magwe, and Chin states.⁴

These developments occur amidst a multi-dimensional economic and humanitarian crisis that has reached new records in unemployment rates and in the number of internally displaced people in dire need of humanitarian assistance. The global COVID-19 pandemic had severe impacts not only on an already buckling health sector, but has seen many people forced out of employment and into a state of severe food insecurity. The political unrest following the military coup, which resulted in an international response of targeted sanctions, withdrawal of foreign aid and foreign investment and an increase of unemployment across the entire country’s labour force, has caused a stagnation of Myanmar’s economy and pushed the country to the brink of an economic collapse. The large-scale disobedience movements in response to the coup, disruptions in supply chains as well as the junta’s regular shutdowns of telecommunication

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services, internet and power outages have paralysed essential sectors and much of the country's infrastructure. In addition, atrocities committed against the Rohingya community during the military's 'clearance operations' in Rakhine State in 2017 and 2018 remain unaddressed and have further nourished a climate of prevailing impunity and injustice. Hundreds of thousands of displaced Rohingya remain in detainment camps with restricted access of humanitarian aid delivery, while being denied freedoms of movement, access to basic goods, such as food and health care, and the right to a safe, dignified and voluntary return.

While the international community has stepped up its efforts to provide humanitarian aid to Myanmar, the UN and its member States remain divided over the political disputes over power. While the majority of States condemned the military coup and refuse to recognise the military junta as the legitimate government, international response to the military use of force has been limited to targeted sanctions against senior military leaders and the exclusion of its representatives from regional summits. A stronger engagement by key regional actors, such as ASEAN member States and their newly appointed Special Envoy, and a concerted response by international actors including the UN Security Council is required to put a halt to the excessive use of force by the military against the population, to delegitimise the military junta's claim to power and assist the country in returning to its path towards a peaceful democratic transition that is capable of addressing past injustices and building a resilient and independent national State apparatus in conformity with international human rights standards.

FRAMEWORK OF ANALYSIS

The Framework of Analysis for Atrocity Crimes comprises 14 Risk Factors (see Table 1) which are categorised in two different groups: The eight Common Risk Factors constitute conditions that increase the risk of occurrence of any of the four atrocity crimes. They identify the probability but not necessarily the type of crime. The six Specific Risk Factors concern elements that are characteristic to a particular crime and enable the identification of the type of risk. They pertain to the specific conditions of genocide, war crimes and crimes against humanity (ethnic cleansing is incorporated into the other crimes). Combined, these Risk Factors and associated Indicators guide the collection and analysis of data to determine the degree and nature of atrocity crime risk present in a given country.

Each Risk Factor is accompanied by a suite of 6 to 18 specific Indicators that are used to determine the degree to which the Risk Factor is present as well as the relative importance of that Risk Factor in a particular context. The higher the number of Indicators present in a single Risk Factor, the more important that Risk Factor is in the overall assessment. Likewise, the more Risk Factors are present, the more acute is the risk of atrocities. However, it must be noted that the Risk Factors and Indicators are not ranked, and some have greater weight than others as they need to be situated within the context of the country of analysis. In some cases, the Risk Factors and Indicators assessed in this report relate to events and conditions that occurred years or decades ago. Nevertheless, how such events are being dealt with today can still contribute to the likelihood of other types of atrocity crimes arising in the future.

In order to ascertain the risk of atrocity crimes in Myanmar, data has been systematically gathered for each Indicator. This allows for an assessment of the existence of each Risk Factor in Myanmar at present. Only the Risk Factors and Indicators pertinent to the current climate in Myanmar are included in this assessment which allows a focus on which conditions are of maximum concern in Myanmar at the time of writing.

Table 1. Framework of Analysis for Atrocity Crimes, Risk Factors

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian law
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
Genocide		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
Crimes Against Humanity		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
War Crimes		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations
<p>Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be accessed at the UN website at www.un.org.</p>		

COMMON RISK FACTORS

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Risk Factor 1 identifies “situations that place a State under such level of stress that it becomes more prone to serious human rights violations and, eventually, to atrocity crimes”.⁵ Such an environment is usually generated in situations of armed conflict with a high level of violence but can also evolve in times of peace through political, economic or social instability.

Myanmar has been beset by a high level of political instability following the irregular transfer of power from a democratically elected civilian government to the military (the Tatmadaw) during the coup launched in February 2021. The coup led to the formation of a shadow government and resistance force by the opposition and to ongoing mass protests across the country which have been met by a violent military response. This emergence of new armed actors occurs in an environment of deep-seated and unaddressed social instability, ethnic tensions and conflict among previously existing armed organisations and has dragged the country into a new civil war. The economic turmoil and collapse of the health care system caused by both the coup and the COVID-19 pandemic further contribute to a protracted humanitarian crisis in the country.

Protracted internal armed conflicts and a failed peace process

Indicators 1.1 ('Non-international armed conflict') and 1.2 ('Security crisis caused by [...] defection from peace agreements')

Since its independence from British colonial rule in 1948, Myanmar's history is marked by decades of military coups, violent crackdowns and internal armed conflict between the central government, about two dozen of Ethnic Armed Organisations (EAOs) and dozens of smaller militia groups.⁶ In an effort to ease the country's many conflicts, the Nationwide Ceasefire Agreement (NCA) launched in 2011 by then-President Thein Sein was signed by the government and eight EAOs and entered into force in 2015;⁷ two other military groups joined the agreement three years later.⁸ The NCA allowed the signatories to participate in political talks with the military government, while many other EAOs and militias individually negotiated with the government on bilateral ceasefires.⁹ Despite its acclaim and ability to confine clashes mainly to the border regions of Kachin, Kayin, Shan and Rakhine State, the agreement did not succeed in including some major EAOs and in fulfilling its aim to establish a Union Peace Accord.¹⁰ Human rights organisations and UN human rights bodies have reported civilian suffrage from extrajudicial killings, enforced disappearances and forced displacement in ongoing escalations between the Tatmadaw and the Arakan Army (AA) in Rakhine and Chin States, the Kachin Independence Army in Kachin State and other ethnic armed groups.¹¹ The military's 'clearance operations' in Northern Rakhine in response to coordinated attacks on a military base and several police posts by the Arakan Rohingya Salvation Army (ARSA) in August 2017 led to the commission of mass atrocities, including rape, murder, arson and other severe human rights violations, by the military against the Rohingya community, to the mass exodus of hundreds of thousands of Rohingyas from Rakhine State (see Indicator 2.1), and to further clashes between the Tatmadaw and the AA.¹² While the termed 'Rohingya crisis' has received significant attention by the international community, it has to date not resulted in any adequate response capable of preventing further human rights violations or holding perpetrators accountable for the crimes committed (see Indicators 2.6 and 2.7). Amidst these violent conflicts, the National League for Democracy party (NLD) under State Counsellor Aung San Suu Kyi continued to hold periodic peace conferences in an attempt to uphold the NCA and include more EAOs in the agreement.¹³ At her New Year's address to the nation only a month prior to the military coup, she promised efforts to adopt a new approach of a "New Peace Architecture" which foresaw a broader and more active participation of more ethnic armed groups and other political groups, civil society and the public.¹⁴

Finally, the coup d'état on 1 February 2021 by the Tatmadaw, which overthrew the civilian government under Aung San Suu Kyi and declared its seizure of power (see Indicators 1.5 and 1.6), sparked a new wave of insurgency by long-existing military groups, as well as the emergence of new local armed militias and civilian resistance forces opposing the military junta, and decreased any likelihood of success of the peace process.¹⁵

The violent crackdown by the military on peaceful protestors following the military coup led many civilians to take up arms and form local resistance forces (see Indicator 1.5).¹⁶ Militias have formed in many parts of the country, mainly in areas where there are already ethnic armed groups present, as well as in previously peaceful areas where the Tatmadaw has limited military capabilities.¹⁷ Some militias, armed with hunting rifles and other makeshift weapons, have inflicted serious casualties on Myanmar's military, bomb and arson attacks have struck educational

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institutions, local administration offices, homes of regime-appointed officials, police and military personnel and installations and banks.¹⁸ Several ethnic armed groups have responded to the coup with a threat of violence. The Karen National Union (KNU) and the Kachin Independence Army (KIA) sent fighters to protect strikers and protesters under siege by the Tatmadaw and troops are attacking Myanmar army positions and cutting off supply routes.¹⁹ In response, the Tatmadaw has launched airstrikes, causing thousands of civilians to be displaced internally and across the border to Thailand.²⁰

While many militias and ethnic armed groups have generally expressed support for the shadow government, they were initially not – or continue not to be – under its command and control. The People's Defence Force (PDF) formed under the shadow government has – in part successfully – aimed to unify established ethnic armed groups opposing the junta, as well as newly emerged local militia groups and civil resistance fighters under a single command structure (see Indicator 1.5).

The first reported incident of a sustained shootout between security forces and the PDF occurred on 22 June 2021, when fighting broke out between the Tatmadaw and the PDF in a township in Mandalay.²¹ Since then, forces of the military and the PDF have repeatedly clashed in the northwest of the country, including Magway and Sagaing regions.²² At the time of writing, the Tatmadaw has concentrated its current scorched earth campaign to areas with strong opposition, most notably in Sagaing region where clashes have been occurring on a daily basis over recent weeks and the military has responded with an escalation in air strikes, destruction of civilian infrastructure, use of civilians as human shields and killings across the region's townships and villages. According to local media reports on 7 March 2022, the military may have plans to launch a "kill all, torch all" campaign in Sagaing Region in order to allegedly eradicate any form of resistance in the region before the annual Armed Forces Day on 27 March.²³ At the same time, anti-junta forces and ethnic groups have announced plans to increase military operations and guerrilla warfare in cities, obtaining some weapons and ammunition from Thailand.²⁴

A multidimensional humanitarian crisis

Indicator 1.3 ('Humanitarian crisis or emergency, including those caused by [...] epidemics')

The political unrest since the military coup as well as the ongoing global COVID-19 pandemic have only further deteriorated an existing humanitarian crisis in Myanmar caused by the devastating atrocities committed against the Rohingya population (see Risk Factor 2) and decades of internal armed conflict.

According to the UN Office for the Coordination of Humanitarian Affairs, almost 890,000 internally displaced people across Myanmar are of current concern; this number includes almost 520,000 people newly displaced since the military coup and over 370,000 displaced from previous conflicts and crises who largely remain in camps or camp-like situations.²⁵ The UN High Commissioner for Refugees reports that 148,000 out of the 600,000 stateless Rohingya in Rakhine State remain displaced since the 2017 'clearance operations' conducted by the military.²⁶ While about 900,000 Rohingya are currently seeking refuge in overcrowded camps in Bangladesh, the humanitarian situation of the Rohingya population within Rakhine state remains dire: the ability to pursue livelihood opportunities and access basic goods, such as food and health care, is still heavily constrained for those living in camps and in villages without freedom of movement (see Indicator 1.11 and Risk Factor 2).²⁷ The military has increased restrictions on humanitarian access following the coup, leading to higher numbers of deaths and illnesses among Rohingya, including a notable number of children, in camps and villages.²⁸

Two years after the coup, more than 1.2 million people have been internally displaced in Myanmar as of 23 January 2023, according to the UN Office for the Coordination of Humanitarian Assistance in Myanmar (UNOCHA Myanmar). This brings the total of internally displaced people across the country to 1.5 million, of which 330,000 have been displaced in Rakhine, Kachin, Chin, and Shan even before the coup.²⁹ Almost a third of the the population of Myanmar (or 17.6 million) is estimated to be in humanitarian need in 2023. OCHA Myanmar reported that severe access constraints and drastic underfunding are continuing challenges faced by humanitarian workers in the country but noted that they were able to deliver life-saving assistance to more than 3.9 million people in 2022.³⁰ More restrictions are being imposed by the junta such as new registration requirements for humanitarian non-government organisations in the country.³¹

From the very beginning of the COVID-19 outbreak, Myanmar's healthcare system has been shattered by the devastating impacts of the pandemic. Hospitals were severely understaffed and underequipped to be able to respond to the high number of cases and quickly overcrowded.³² Medecins Sans Frontieres reported on vast numbers

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of people scrambling around cities and towns across the country in search of own oxygen supplies and emptying pharmacy and supermarket shelves in panic of supply shortages.³³ In response to the military coup, many healthcare professionals joined the Civil Disobedience Movement (see Indicator 1.5) and walked away from their jobs to join general strikes, many of whom have not returned since.³⁴ Medical staff face threats and attacks, many are being arrested and about 90 remain in detention, at least 28 professionals have been killed since the coup, putting an additional strain on the healthcare system (see Indicator 1.8).³⁵

Intensified clashes between the military, anti-junta resistance forces under the PDFs and individual EAOs following the resistance to the military coup have caused an increase in civilian casualties, the destruction of housing and properties and resulted in internal and cross-border displacement.³⁶ Since the beginning of 2021 and the military coup in February, UNHCR has recorded 440,000 newly displaced persons³⁷, while more than 22,000 have fled into neighbouring states. The regime is blocking relief from reaching locations of internally displaced people fleeing from conflict in border regions in Chin, Kachin, Karen, Kayah and Shan States who, adding to existing severe restrictions on access of humanitarian services in Chin and Rakhine State.³⁸

In addition to these new triggering factors, Myanmar is highly prone to natural disasters. It is ranked the second most sensitive country to the effects of climate change and is one of fifteen countries most exposed to severe flooding. Monsoon season displaces thousands each year, where the problem is exacerbated by inadequate and poorly managed drainage systems in cities, and dam or river erosion in rural areas.³⁹ In July 2021, southern Myanmar was inundated by severe flooding, affecting or displacing over 48,000 inhabitants in multiple States.⁴⁰

The ILO has warned of a 'multidimensional humanitarian crisis' Myanmar faces.⁴¹ On 30 January this year, the UN announced the Humanitarian Response Plan for Myanmar and called on the international community to provide assistance of USD 826 million over the next year.⁴²

The military coup and disputes over power

Indicator 1.4 ('Political instability caused by abrupt or irregular regime change or transfer of power') and 1.5 ('Political instability caused by disputes over power or growing nationalist, armed or radical opposition movements')

On 1 February 2021, the Tatmadaw seized power from Aung San Suu Kyi's civilian government in a military coup d'état'. The NLD had won the November general elections in a landslide, winning 80 per cent of contested seats compared to less than 7 per cent for the main opposition party, the military-backed Union Solidarity and Development Party (USDP).⁴³ The USDP and the Tatmadaw repeatedly claimed widespread voter fraud in the elections, a claim dismissed by the election commission.⁴⁴ The NLD had first come into power in November 2015, following the first national election since the introduction of a nominally civilian government in 2011, which ended 48 years of military rule in Myanmar. The 2008 Constitution had been written by the military and guaranteed it 25 per cent of seats and three ministries in any civilian-led government.⁴⁵

The coup was carried out on the day the new parliament was due to sit for the first time since the election.⁴⁶ Following the takeover, during which State Counsellor Aung San Suu Kyi, President Win Myint and other senior figures, members of civil society and journalists were detained and documents seized from NLD offices, Commander-in-Chief Min Aung Hlaing declared his State Administrative Council (SAC) as the legitimate government and imposed a year-long state of emergency, as well as curfews and limits to gatherings.⁴⁷ In an expression of protest, civil servants united under the Civil Disobedience Movement (CDM) and organised general strikes. Mass anti-coup protests took place in major cities across the country, including Yangon and Mandalay, but also in the largely civil servant capital Naypyidaw and in remote regions. In one of the largest protests on 22 February 2021, over one million protestors took to the streets.⁴⁸ The non-profit organisation Armed Conflict Location and Event Data Project (ACLED) recorded over 6,000 anti-coup demonstration events throughout 2021.⁴⁹

The military and police initially responded using water cannons, rubber bullets and fire guns to shoot in the air, but have since began using firearms and military assault rifles as well as 'kettling' techniques to deliberately target trapped protestors, bystanders and people attempting to assist wounded protestors.⁵⁰ Repeated incidents of live rounds being fired at protestors' heads, civilians being burned to death, mass arrests, torture and sexual violence have been reported.⁵¹ At the time of writing, over 1,700 people have reportedly been killed since the crackdown, while over 12,000 people have been arrested and at least 9,000 remain detained.⁵² According to ACLED, Myanmar was the deadliest country in the world for demonstrators in 2021.⁵³

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The military crackdown on protestors has triggered violent resistance by protestors who have armed themselves with traditional hunting arms and homemade explosives,⁵⁴ hundreds of local defense forces have independently formed across the country with varying degrees of resources and intensity.⁵⁵ Many protestors, united under the CDM, have indicated a willingness to use force against the SAC and some moving to the border regions to be trained by ethnic armed groups.⁵⁶ Shortly after the coup, fifteen elected NLD parliamentarians formed the Committee Representing Pyidaungsu Hluttaw (CRPH), the national parliament, announcing an alternative government to the military junta over social media.⁵⁷ On 31 March 2021, the CRPH declared the 2008 Constitution void and presented an interim constitution, the Federal Democracy Charter.⁵⁸ The Charter establishes a National Unity Government (NUG) with the aim to join forces among junta opponents and provide an alternative agenda for a pro-democratic post-junta rule. It also provides for the establishment of a 'federal army' to be made up of local resistance groups and ethnic armed groups. On 5 May 2021, the NUG together with various activists formed the People's Defense Force (PDF) as the armed wing under the NUG. In response, the Tatmadaw publicly declared the NUG and the PDF terrorist organisations and charged their members with high treason.⁵⁹ In September 2021, the NUG declared a 'defensive war' on the Tatmadaw.⁶⁰ While many of the local defense groups were initially not associated with the opposition's shadow government, in October 2021 the NUG began to form a central command structure to consolidate the activities of many local groups and allied EAOs, many of whom have a long history of armed resistance against the Tatmadaw, under the PDF.⁶¹ Among them are the Karen National Liberation Army (KNLA) and the KIA who had agreed to join forces with other EAOs under a united command. The strong and well-organised AA also indicated that unless violence abated, it would "cooperate with the protesters and fight back".⁶² While many armed groups remain independent and have not joined the NUG under a single command, they have provided military training to hundreds of young political dissidents.⁶³

Civilian resistance efforts have been aiming towards making the country ungovernable by the military junta: many civil servants have continued the CDM and refuse to work under the Tatmadaw.⁶⁴ Local councils have been established as part of a CRPH-led public administration program in what is estimated to be over 60% of Myanmar's townships.⁶⁵ Reportedly, these local councils run by former civil servants provide public services in regions including Sagaing, Magway and Mandalay and thus fills a gap caused and left by the junta.⁶⁶

At the time of writing, disputes over state authority remain. On 1 August 2021, Aung Hlaing announced its plan to lift the state of emergency and hold a multiparty general election in August 2023, "depending on state stability and peace".⁶⁷ This announcement confirmed the extension of military control from a one-year timeline initially announced after the coup to nearly two and a half years.⁶⁸ The arbitrary extension as well as the expression of conditions necessary to realise elections makes any high level of reliability of new elections unlikely.

Overall, the junta has lost effective control of more than 50 percent of the country's territory as it continues to face strong resistance from the combined forces of the PDF and EAOs. Over the past two years since the February 2021 coup, the military regime faced growing and intensified armed resistance to the coup across the country and extended its emergency rule for another six months beyond the two-year limit provided for by the constitution.⁶⁹ The junta also extended martial law in 37 townships where it is facing strong armed resistance and postponed its planned general elections in August 2023 indefinitely.⁷⁰ In his conference room paper for the upcoming 52nd session of the UN Human Rights Council, the Special Rapporteur on the Situation of Human Rights in Myanmar asserted that the junta's State Administrative Council (SAC) controls less than half of the country's territory since the coup, with very limited access in Chin and Rakhine States, as well as receding ability to exercise control over Kayin and Kayah States.⁷¹ Accordingly, PDFs have also substantially challenged SAC's control in Sagaing, Magway, and parts of the Mandalay Regions even as the junta expects the civilian armed resistance forces to strengthen its capabilities and operational strength this year.⁷² It is significant to note that it is in these territories where the Myanmar air force conducted over 700 air strikes since the coup.

Political tension caused by severe political repression

Indicator 1.6 ('Political tension caused by autocratic regimes or severe political repression')

On 13 February 2021, the junta suspended laws which would constrain security forces from detaining suspects and searching property.⁷³ Newly imposed laws have received widespread criticism on their vague wording and abuse to justify the detention of civilians and been considered a threat to freedom of expression, freedom of assembly and access to information (see Indicator 3.1).⁷⁴ The protest movement following the coup has been driven by the fear of a return to severe political repression under an authoritarian military rule. As part of the military coup, the Tatmadaw ordered the shutdown of the internet resulting in the inaccessibility of social media platforms such as Twitter and Instagram

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and prohibited public gatherings of more than four persons.⁷⁵ At the time of writing, the government has expanded “indefinite” internet blackouts across almost the entire Sagaing Region.⁷⁶

On the country’s Union Day on 12 February 2022, the military held a parade with hundreds of troops in the capital and announced an amnesty for over 800 prisoners, a similar number to the one of the previous year shortly after the take-over by the Tatmadaw. When the military released approximately 23,000 prisoners in April 2021, many rights groups expressed concern of it being a tactical move to make space for opponents to the regime.⁷⁷ Aung San Suu Kyi who has been detained since the coup and already been sentenced to six years in prison for incitement against the military among other verdicts, is currently awaiting trial for further charges, including election fraud in 2020, for which she faces a prison sentence of more than 150 years.⁷⁸

New contributing factors to economic instability

Indicators 1.7 (‘Economic instability caused by scarcity over resources or disputes over their use’), 1.8 (‘Economic instability caused by severe crisis in the national economy’) and 1.9 (‘Economic instability caused by acute poverty, mass unemployment or deep horizontal inequalities’)

The security situation since the military coup, which resulted in international sanctions, withdrawal of foreign aid and foreign investment and an increase of unemployment across the entire country’s labour force, has caused a stagnation of Myanmar’s economy and pushed the country to the brink of an economic collapse.⁷⁹ The large-scale disobedience movements in response to the coup have paralysed the banking sector and the already struggling health sector, as well as ports and transport, shutting down much of the country’s infrastructure. In addition to the SAC’s regular shutting down of telecommunications services, millions of people have been experiencing frequent power outages which has affected many factories and businesses in continuing their production work.⁸⁰ Disruptions in supply chains led to significant price rises for basic commodities such as food and fuel across the country.

Further, multiple rounds of lockdowns in response to the COVID-19 pandemic have forced factories to shut and many of the poorest people lost their livelihoods, resulting in an increased level of previously existing food insecurity.⁸¹ Even before the pandemic, 60 per cent of households across Myanmar were unable to afford a nutritious diet. By mid-2020, four out of five households reported they had lost close to 50% of their income during the pandemic. According to the International Labour Organisation (ILO), by the end of 2021 an estimated 25 million people, which constitutes almost half of Myanmar’s population, were living in poverty, with 14.4 million people in need of humanitarian assistance.⁸² The World Bank estimated in its January 2022 report that both the pandemic and the military coup have likely resulted in the decrease of the country’s economy by 30%.⁸³

The emergence of these destabilising factors takes place in an environment of pre-existing deep horizontal inequalities and violent disputes over resources. The country is marked by chronic poverty rates and regional disparity in livelihood conditions. Despite a remarkable decrease in the national poverty rate by 50% (between 2005 and 2017) and a double in GDP per capita growth within a decade (from 2008 to 2019) following reforms opening up trade and foreign investment⁸⁴, these disparities are most notable between Yangon State (with a poverty rate of 13 per cent) and Chin and Rakhine States (with high rates of 58 and 41.6 per cent). Moreover, access to and control over the country’s natural resources has been a key driver of regional economic inequality, rural poverty and ongoing armed conflicts in Myanmar’s border regions. Resources, including gas, high-value minerals and forest resources, have historically been controlled by the military.⁸⁵ While the Constitution permits state and regional governments access to tax resource extraction, those privileges have been limited to less valuable resources and deprived from many states as they lack the operational capacity to generate revenue from the country’s large informal economic sector.⁸⁶ Further, many resources are located in territories partially or de facto controlled by armed ethnic groups which has spurred an eagerness to consolidate control over them. Calls for increased autonomy and regional management have fuelled conflict between ethnic armed groups and the military who continue to maintain control over resources.

Social instability caused by identity-based exclusion and tensions

Indicator 1.11 (‘Social instability caused by exclusion or tensions based on identity issues, their perception or extremist forms’)

Since its independence in 1948, Myanmar has struggled to unify its many different ethnic and religious identities and eliminate deep tensions along ethnic lines. The government’s move in 1989 to change the country’s name from Bur-

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

ma (in Burmese: Bama) to the Republic of the Union of Myanmar followed the intention to promote the inclusion of minority ethnic groups who make up 32 per cent of the country's population in contrast to the Bamar majority which comprises 68 per cent, and who inhabit nearly 60 per cent of the country's rural regions. The move received criticism by opposition parties and human rights groups as being hypocritical and disrespectful towards minority groups, and while Myanmar has become the official name of the country as is as such referred to in international for a such as the UN, many locals continue to refer to the country as Burma.⁸⁷

The dominance and elite status of the Bamar majority is reflected in decades of systematic discriminatory practices and policies of repression and exclusion against other ethnic groups, most visibly against the Muslim Rohingya minority (see Risk Factor 2). A prime example of such policies is the 1982 Citizenship Law which openly denies the Rohingya citizenship and access to basic human rights, such as education, employment, marriage, reproduction and freedom of movement. According to Human Rights Watch, the Rohingya people are one of the largest stateless populations in the world.⁸⁸ Some interpretations of Buddhist teachings have been used to push for nationalist identity politics that discriminate against Muslim minority groups.⁸⁹ Strong links between the Bamar people and religious Buddhism, which comprises 85 per cent of Myanmar's religious denomination, has formed the basis of new waves of Buddhist nationalism which advocates for the protection of the state and its religion.⁹⁰ Since the so-called 'clearance operations' by the military in Rakhine State in 2017 which amounted to the commission of atrocity crimes and led to the mass exodus of almost a million Rohingya, the estimated 600,000 Rohingya who remain in Rakhine State have been subject to ongoing persecution and violence and, being confined to camps or villages without freedom of movement, been reportedly denied access to adequate food, health care, education and livelihoods (see Indicator 2.1 and 2.2).

RISK FACTOR 2:

RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN

Risk Factor 2 identifies “past or current serious violations of international human rights and humanitarian law, [...] including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations.”⁹¹ With the atrocities against the Rohingya and violent clashes between the military and armed militias and civilian groups in response to the military coup, events in recent years have heavily contributed to Myanmar’s long record of human rights violations and a persevering climate of impunity, inaction and denial. In the following section, all eight Indicators have been identified and reveal existing patterns and practices of impunity of past violations, a reluctance to prevent ongoing violations and instead, support and tolerance of their continuation.

Past and present human rights violations and mass atrocities

Indicators 2.1 (‘Past or present serious restrictions to or violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct and if targeting protected groups, populations or individuals’) and 2.2 (‘Past acts of genocide, crimes against humanity, war crimes or their incitement’)

In its 70 years of independence, Myanmar has experienced several waves of serious violations of human rights and humanitarian law, some of which have amounted to atrocity crimes and to date have not been adequately addressed. Numerous accounts of human rights abuses have been documented; reports point to periodic incidences of sexual violence, torture, land confiscation, extrajudicial killings, forced labour, child soldiering, as well as the accumulated displacement of well over a million people.⁹²

The end of British colonial rule left behind a country deeply divided along ethnic, religious, linguistic and cultural lines, which lacked the institutional capacity, adequate resources and necessary knowledge to form a central authority capable of overcoming its state of fragmentation and unifying over a hundred ethnic groups.⁹³ The power vacuum led to the formation of dozens of ethnic armed organisations and smaller militia groups and plunged the country into what has been labelled ‘the world’s longest continuing civil war’.⁹⁴ Emerging as an armed group, the Tatmadaw claimed authority over the country’s territory and in a coup d’état gained power in 1962, which it maintained by applying scorched-earth tactics against other ethnic armed organisations to eliminate resistance and by systematically restricting rights of ethnic minorities, mainly targeting regions inhabited by “non-Burman” ethnic communities, such as Shan, Kachin, Sagan, Chin, Karen and Rakhine States.⁹⁵ The 1982 Citizenship Law spelt out a discriminatory and exclusionary set of criteria of obtaining full citizenship, which rendered unrecognised groups, such as the Muslim ethnic minority of the Rohingya people and others, stateless and thus denied access to basic human rights.⁹⁶ Since then, the government has maintained a policy of excluding Rohingya from access to citizenship and has merely permitted their status as foreigners by obtaining national verification cards while refusing to recognise the name ‘Rohingya’ as the group’s identification.⁹⁷ By effectively institutionalising discriminatory measures against the Rohingya, the government has posed restrictions on the group’s freedom of movement, marriage and family planning, employment, access to education and healthcare and thereby nourished deep tensions between the ethnic group and the military.

The systematic exclusion and repression over several decades culminated in August 2017, when the military carried out ‘clearance operations’ in response to coordinated attacks by the ethnic armed group ARSA on a military base and several police posts.⁹⁸ The military’s brutal campaign led to the destruction of hundreds of Rohingya villages, sexual and gender-based violence against and mass killings of thousands of Rohingya, and the forced displacement of almost one million Rohingya into other regions or neighbouring States like Bangladesh. In 2018, the Fact-Finding Mission on Myanmar (FFM) mandated by the UN Human Rights Council concluded that human rights violations committed by the military in Rakhine, Kachin and Shan States since 2011 and acts committed during the clearance operations “undoubtedly amount to the gravest crimes under international law” and called for the prosecution of senior members of the military, including General Min Aung Hlaing, for the commission of crimes against humanity, war crimes and genocide.⁹⁹ In 2019, the FFM noted that Myanmar has violated its obligations to prevent and address the crime of genocide under the Genocide Convention.¹⁰⁰ In a recent statement on 21 March 2021, the United States Secretary of State for the first time formally determined that violence committed against the Rohingya by the military amounts to genocide and crimes against humanity.¹⁰¹

The military crackdown on anti-coup protesters in February 2021 quickly reached a scale of severity of human rights violations that was met with international concern about the commission of new atrocities. In the first weeks of protests, the junta publicly threatened that young people incited by protesters to enter “a confrontation path where they will suffer the loss of life”.¹⁰² On 11 March 2021, the UN Special Rapporteur on Myanmar first suggested

RISK FACTOR 2:

RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN

that the military's violence against peaceful protestors may amount to crimes against humanity as they appear to be committed as part of a coordinated campaign directed against a civilian population, in a widespread and systematic manner.¹⁰³ In his annual report to the UN General Assembly on 2 September 2021, the Special Rapporteur asserted that the indiscriminate attacks against civilians, the shelling of towns and villages and the murder, torture and detention of political opponents and civil society members by the military meet the threshold of crimes against humanity and war crimes under international law.¹⁰⁴ On 5 November 2021, the UN's Independent Investigative Mechanism for Myanmar (IIMM) which had previously been established by the Human Rights Council in September 2018 in response to the human rights situation in Rakhine State, concluded that, according to preliminary evidence collected since the coup, the "security forces have carried out a widespread and systematic attack on the civilian population" and "the reports of murders, sexual assaults, arbitrary detentions, enforced disappearances, torture and persecution collected by the Mechanism, if substantiated, would amount to crimes against humanity."¹⁰⁵

The mass deployment of troops and heavy weaponry to the north and northwestern regions of Myanmar since October 2021 has been observed with great concern, with international observers drawing parallels to the military tactics used before atrocious attacks against the Rohingya in 2017.¹⁰⁶ Recent reports by local media outlets on potential plans by the Tatmadaw to escalate their scorched-earth campaign against resistance groups in Sagaing region with a "kill all, torch all" campaign¹⁰⁷ has been keeping human rights bodies and organisations on high alert and will most likely see a continuation and potential intensification of atrocities and rights violations.

Practices of impunity and inaction

Indicator 2.3 ('Policy or practice of impunity for or tolerance of serious violations of international human rights and humanitarian law, of atrocity crimes, or of their incitement')

On 30 July 2018, the government of Myanmar established an Independent Commission of Enquiry (ICOE) to investigate allegations of human rights violations in Rakhine State during armed clashes between the Tatmadaw and ARSA in the period between 2016 and 2017.¹⁰⁸ The commission is the latest following a series of eight ad-hoc commissions which have been established since 2012 to investigate and address the situation in Rakhine State. Like the previous commissions, the ICOE received international criticism by the FFM on Myanmar and rights organisations of lacking independence, impartiality and credibility to conduct effective and thorough investigations of the human rights situation and of failing to identify and holding accountable those responsible of crimes.¹⁰⁹ From the very beginning, spokespersons and heads of the 2018 ICOE asserted from the very beginning that the purpose of the commission was to object to "false allegations" by international actors and emphasised that there will be "no finger pointing".⁷⁹ The commission's final report submitted on 20 January 2020 has to date only been published in part and reveals a stark contrast of the narrative and findings laid out in the report with the findings by UN bodies and human rights organisations.¹¹⁰ Notwithstanding, the conclusion that 'war crimes and human rights violations may have been perpetrated by low-level military officials' constitutes progress from all previous commissions, while these findings nevertheless did not result in any credible action to hold perpetrators accountable and continues to remain unlikely.

In November 2019, The Gambia on behalf of a large collective of States and regional organisations brought allegations of genocide against Myanmar before the International Court of Justice (ICJ) for violating its state responsibility under the Genocide Convention.¹¹¹ In the same month, the Pre-Trial Chamber of the International Criminal Court (ICC) authorised the Prosecutor to proceed with an investigation for the alleged crimes within its jurisdiction, after having received requests on behalf of hundreds of thousands of victims.¹¹² As Myanmar is not a party to the Rome Statute, the Court's jurisdiction is limited to investigating the situation in neighbouring Bangladesh as the main destination of thousands of displaced Rohingyas, yet another site and continuation of persecution and violations. The ICC Prosecutor has recently concluded their first visit to Dhaka and Cox's Bazar in Bangladesh and emphasised the Court's priority to investigate the crimes allegedly committed in Myanmar and efforts to accelerate the collection of information and evidence, after investigations had been impacted by the pandemic.¹¹³ In Argentina, a Burmese Rohingya rights organisation simultaneously pushed for criminal proceedings in the country's domestic courts under the principle of universal jurisdiction to hold senior members of the government, including State Counsellor Aung San Suu Kyi and key military officials, accountable for the alleged crimes.¹¹⁴ To date no proceedings have held any individuals accountable for the crimes committed.

In 2019, the UN FFM expressed concern that the large-scale violence against the Rohingya was based on policies and laws enacted by individuals and institutions that have remained in place, and that Myanmar "continues to harbour

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RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN

genocidal intent” towards the Rohingya.¹¹⁵ In January 2020, the ICJ ordered Myanmar to “take all measures within its power to protect Rohingya Muslims from genocide”, citing that the remaining 600,000 Rohingya still living in Rakhine State remain “extremely vulnerable” to military violence.¹¹⁶ Given its history, the military regime is unlikely to address the denial of citizenship for the Rohingya or accountability for past atrocities. The coup also complicates the prospects for the safe, dignified and voluntary repatriation of over 900,000 Rohingya refugees from Bangladesh.

In response to recent incidents of excessive violence by the military since the 2021 coup, cases against several senior military officials, including Min Aung Hlaing, are being prepared by the NUG in collaboration with law firms in Australia to be brought before the Australian Attorney-General. Accordingly, if approved, military officials may in the near future be tried in Australian domestic courts under the principle of universal jurisdiction for charges of war crimes and potentially other atrocity crimes committed during mass killings in Kayah State and Sagaing Region as well as clearance operations in western Chin State.¹¹⁷ The principle of universal jurisdiction enables domestic courts of other States to address impunity in situations where the State in which crimes are committed is itself unable or - in the case of Myanmar - unwilling to hold perpetrators accountable.

Perpetrators in power and continued violence

Indicators 2.4 ('Inaction, reluctance or refusal to use all possible means to stop planned, predictable or ongoing serious violations of international human rights and humanitarian law or likely atrocity crimes, or their incitement') and 2.5 ('Continuation of support to groups accused of involvement in serious violations of international human rights and humanitarian law, including atrocity crimes, or failure to condemn their actions')

Impunity for past atrocities has enabled the Tatmadaw as the main perpetrators to maintain their power position and capacity to incite and initiate new human rights violations in the current conflict.¹¹⁸ The violent response to peaceful protesters across the country since the takeover of the Tatmadaw and the increasing deployment and excessive use of heavy weaponry against armed resistance force in the military's brutal scorched-earth campaign sees nothing but a continuation and further incitement of ongoing human rights violations. Calling the military junta a “criminal enterprise” which pursues an unabated “campaign of terror now widespread across the country”, the UN Special Rapporteur for Myanmar recently stated that he continues to receive reports on mass killings, torture, abductions and attacks on humanitarian and civilian targets such as hospitals and villages.¹¹⁹ In a recent report on the situation to the UN Security Council, he drew attention to the supply of heavy weaponry, including fighter jets, rockets, artillery and armoured vehicles, flowing in from China, Russia and Serbia since the coup to support the Tatmadaw which have evidently been used in civilian killings. He urged the Security Council to convene an emergency session and put an immediate end to the arms trade.¹²⁰ Aerial bombings pose a new addition to the military's traditional ground warfare, and their excessive use on seemingly random targeting of mainly civilian sites immensely increases the severity of destruction and casualties.¹²¹

The IIMM established by the UN Human Rights Council in 2018 with the purpose to investigate the human rights situation in Myanmar has stated the extension of its activities to monitor developments since the military coup and collect evidence of human rights violations.¹²²

Justification and denial of rights violations

Indicators 2.6 ('Justification, biased accounts or denial of serious violations of international human rights and humanitarian law or atrocity crimes') and 2.7 ('Politicization or absence of reconciliation or transitional justice processes following conflict')

In her oral submission as part of the formal procedures of the ICJ, State Counsellor Aung San Suu Kyi on behalf of Myanmar claimed that allegations of a genocide were misleading and factually incomplete¹²³; placing primary responsibility for the violence on what she referred to as a ‘terrorist uprising’, accordingly, the attacks by ARSA necessitated the military's counter-insurgency operations to deescalate social unrest in Rakhine State.¹²⁴ Emphasising the nature of the internal conflict, she ensured that any human rights violations, including violations of international humanitarian law, would be handled in Myanmar's domestic courts and conceded the country's shortcomings in promoting more unity among its people.¹²⁵ Notably, no member of the delegation made use of the term ‘Rohingya’ during the submissions.¹²⁶ In January 2020, the Court's judges unanimously endorsed the binding decision on Myanmar to prevent further human rights abuses against the Rohingya and report to the ICJ on a regular basis about its progress and to preserve all

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evidence of past violence.¹²⁷ At the time of writing, the ICJ has concluded public hearings on the preliminary objections raised by Myanmar in response to the allegations, in which Myanmar's representative has requested a declaration that the Court lacks jurisdiction over the case and that The Gambia's application is inadmissible. The Court has begun its deliberations on the response and will announce further proceedings.¹²⁸

Notably, the NUG which includes elected legislators from the previous government, announced on 3 February – shortly after the coup and only less than 3 weeks before the next round of UJC hearings – its acceptance of the jurisdiction of the ICJ to investigate claims in relation to the commission of genocide and thus withdrew all preliminary objections in the case.¹²⁹ In July 2021, the NUG lodged a declaration with the ICC accepting the court's jurisdiction over crimes committed in Myanmar since 2002.¹³⁰ In contrast, to date the Tatmadaw denies all allegations against them of any atrocities committed against the Rohingya since 2017. Their reinstallation of power and the resulting escalation of violent clashes have only newly ignited ethnic tensions between ethnic armed groups and the Tatmadaw. The military coup was justified by Gen Hlaing as a necessary step to form a "true and disciplined democracy" with the military on the people's side¹³¹, an aim on which path ongoing violence is perceived as counterinsurgency to armed political opposition threatening to achieve this aim.

Mistrust in State institutions

Indicator 2.8 ('Widespread mistrust in State institutions or among different groups as a result of impunity')

The chronic lack of ethnic unity and any forms of reconciliation and transitional justice measures, the persistent state of violent clashes and armed conflict and the increased fragility of the country's economic, security and government sectors fully disable the establishment of a strong foundation for effective governance in the country.¹³² When the NLD government first came to power in 2015, its aim had been the continuation of peace efforts and the promotion of national reconciliation through dialogue. Yet, years of civilian rule did not result in accountability for past human rights violations committed during decades of military rule and ongoing violation and policies of oppression and discrimination. None of the multiple commissions of enquiry was followed by effective transitional justice and reconciliation policies or any compensation measures for affected people and communities. With the takeover of power by the Tatmadaw, any moves towards national reconciliation have receded into a dim distance.

The large-scale Civil Disobedience Movement led thousands of public servants to walk away from their employment to signal their resistance to collaborating with the military junta, effectively disabling the operations of state services sustainably (see Indicator 1.8). The violent crackdown by the military has merely caused a radicalisation of the movement and a low return rate of civil servants to their workplaces. The new legislation passed since the coup has been abused by security forces who loot private residences, shops and businesses and openly abduct civilians in public (see Risk Factor 3), leaving civilians powerless and unable to turn to the police or complain mechanisms¹³³: the high level of corruption and lack of independence and adequate training and funding debilitates the judiciary, the law enforcement and national human rights institutions to receive and address claims of human rights violations from civilians and provide any form of redress or accountability (see Risk Factor 3).

When the military first attempted to reopen public schools and education facilities in June 2021 since the beginning of the pandemic, millions of families joined anti-junta rallies and pledged to boycott the return of their children under a "no need for a military slave education" banner.¹³⁴ However, many families and students have been struggling with the choice between returning to their education or continuing the boycott of the public education system; the final reopening of schools in November saw many students return to their education.¹³⁵ While especially the younger generation has grown up in an increasingly prosperous economic environment and with a significantly higher sense of freedom of expression and access to information through the internet and social media, the inability of the military junta to provide and intentionally deprive its people of adequate public services and infrastructure in the past year has fuelled resentment and further pushed people towards disapproval of the junta.¹³⁶

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

Risk Factor 3 identifies “circumstances that negatively affect the capacity of a State to prevent or halt atrocity crimes”.¹³⁷ Through the institutionalisation of mechanisms which ensure the rule of law and good governance, a State bolsters its capacity to protect its population from severe human rights violations. The lack or inadequacy of such structures significantly reduces a state’s ability to prevent or respond to atrocity crimes.

The analysis identifies severe deficiencies in Myanmar’s national legal human rights framework, its security apparatus and judiciary and law enforcement which lack the independence and adequate representation to effectively provide for the population’s security from human rights violations. High levels of corruption and the full control of the military permeating all strands and levels of the public sector debilitates the state to uphold human rights standards and stop violations or hold perpetrators accountable.

Lack of a protective legal framework

Indicator 3.1 (‘National legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties’)

During its time in government, the NLD made significant efforts to repeal or amend legislation which was incompatible with fundamental human rights law. Shortly after the new government took over office, the Attorney General’s Office published the country’s first Judiciary Strategic Plan with the aim to advance the rule of law in Myanmar, with key areas focusing on the protection of human rights and the endorsement of prosecutorial ethics.¹³⁸ However, the national legal framework remained largely inconsistent with international human rights standards and discriminatory laws have remained in place.¹³⁹ Among them are the 1982 Citizenship Law which effectively establishes the legal foundation for the exclusion of ethnic groups such as the Rohingya by denying access to citizenship rights and fundamental human rights freedoms; as well as a range of Race and Religion Protection Laws which are aimed at ‘preserving race and religion’ by regulating religious conversions, sexual orientation, marriage and family planning and population control. These laws which primarily target women and religious minorities, such as Muslims, institutionalises and legalises the systemic discrimination of vulnerable groups and, thus, violates international human rights law.

With the coercive seizure of power by the Tatmadaw, any previous steps towards advancing the legal system are being rolled back and the rule of law has been completely overturned. Statements by representatives of the SAC repeatedly emphasise that any action taken by the new government will be “in accordance with the law” which adheres to the military-drafted Constitution and that police and security forces are carrying out their mandates within legal frameworks.¹⁴⁰ At a recent military tribunal, 19 protesters were sentenced to death for the alleged killing of a soldier, an act for which no evidence or witnesses were presented.¹⁴¹ In February 2021, the SAC passed a range of new laws to criminalise any dissent against the military and heavily control private spaces: new restrictions on existing telecommunications law made the military interception of all communications, including social media accounts, ‘lawful’; an amendment to the code of Criminal Procedure enabled the arrest and imprisonment of anyone expressing dissent or criticism in regard to the coup or the military which has led to the arrest of hundreds of activists; search warrants and seizure of private property enabled police and security forces to enter any household and conduct arbitrary arrests and detentions without charges.¹⁴² These changes in legislation have been embedded in a prevailing narrative that any response to civil disobedience by security forces is an act of enforcing the law, thereby taking place within the boundaries of legality, and upholding order and stability. Myanmar has not ratified a number of relevant international human rights treaties, including the International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination.¹⁴³ Further, Myanmar is not a party to the Rome Statute which prevents the ICC from exercising jurisdiction over crimes committed on its territory and effectively investigating and prosecuting committed atrocity crimes.

Inadequacy of national institutions to uphold or enforce human rights protection

Indicators 3.2 (‘National institutions, particularly judicial, law enforcement and human rights institutions that lack sufficient resources, adequate representation or training’) and 3.3 (‘Lack of an independent and impartial judiciary’) and (‘3.6 Absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims’)

Being subject to decades of corruption, political influence and dependency and a neglect in sufficient funding and adequate training and resources, Myanmar’s national institutions show severe deficiencies in their ability to provide effective protection from serious human rights violations to the population.

Judiciary

Decades of military rule have neglected any efforts in the development of independent and resilient judicial institutions and a functioning rule of law. Although the civil government had initially announced its commitment to the rule of law, no efforts were undertaken to implement comprehensive reforms of the justice sector. While the judiciary is officially provided with independence by the 2008 Constitution, almost all lawyers, judges and court staff have been trained under the military or have a direct military background.¹⁴⁴ The justice system lacks any form of independent body entrusted with the discipline of judges or formal mechanisms to ensure their integrity and accountability, leaving judges to be subject to impeachment by the executive and legislative based on an unclear set of criteria and threatening judicial independence due to political pressure and control.¹⁴⁵ Further, insufficient funding often leaves courts overwhelmed with a high number of court cases and criminal proceedings mainly brought forward by the military itself.¹⁴⁶ The majority of court activities takes place in favour of the military and has seen special treatment for soldiers who have reportedly committed serious human rights violations but merely received low prison sentences, while many civil society actors, first and foremost journalists and human rights defenders are left with much higher sentences.¹⁴⁷ At the same time, access by individuals and the outcome of legal proceedings often become a matter of influence and offering monetary incentives.¹⁴⁸ Arbitrary practices such as random changes of trial dates or transfers or prisoners, as well as the interference of the military in outlining the outcome of cases prior to case hearings has given the judiciary a reputation of being inaccessible, ineffective and higher politicised.¹⁴⁹

The latest example and currently most high-profile case is the range of separate indictments Aung San Suu Kyi faces, effectively looking at imprisonment for life. Rights organisations and media have raised concern about the low likelihood of a fair trial, as her access to her legal representation team as well as public and media access has been severely restricted.¹⁵⁰

Law enforcement

The democratisation process in Myanmar since 2011 has paid little attention to the administrative reform plan for the Myanmar Police Force (MPF). The stagnation in the reform process has received much criticism for its failure mainly to reduce the military's influence over the law enforcement.¹⁵¹ The MPF has largely been considered a strategic reserve to and mere extension of the armed forces. Many senior posts within the police force continue to be held by former military officials, minority groups including women and certain ethnic groups remain largely underrepresented. A report by the UN Office on Drugs and Crimes in 2016 highlighted existent deficiencies within the police force and urged for major reform and improvements in the provision of training and resources, a call which to date has remained unanswered.¹⁵² In response to the civil unrest following the coup, the military has been using police forces to suppress protests, including through the use of guns. Many police officers who have come under severe pressure to choose between obedience or siding with civilian protestors have since then defected from the police forces and joined resistance movements.¹⁵³

National human rights institutions

The Myanmar National Human Rights Commission (MNHRC) was first established in 2011 and, in response to critique against its ineffectiveness and lack of ethnic and gender diversity, reconstituted by the National Human Rights Commission Law in 2014.¹⁵⁴ Accordingly, its purpose is to promote and protect human rights of the people of Myanmar through facilitation of human rights talks and education and training programs for officials of the law enforcement, the judiciary, police and military, and the conduct of inquiries in regard to complaints and allegations of human rights violations.¹⁵⁵ In its self-assessment in 2018, the MNHRC recognised its need for law reform and submitted its own reform proposals to the government, though no serious reforms have followed. The MNHRC has persistently failed to respond to reports of human rights violations and to provide any form of redress to victims of crimes.¹⁵⁶ It has been subject to widespread criticism on its lack of transparency and inability to provide witness or victim protection. The core underlying cause for its inaction is the institution's strong ties to and influence by the military, which it has often shielded from accountability in past contexts of armed conflict and instances of serious rights violations against ethnic and religious minorities. Many commissioners are former officials of the military and lack a background or adequate training in the human rights field, which has been reflected in the unwillingness to further pursue allegations of human rights violations against military officials despite the presence of credible evidence.¹⁵⁷

The Commission's failure to criticise military actions and address human rights violations committed by military officials has once again become obvious in the light of recent developments: the MNHRC has remained silent on

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

the military coup and the escalation of political unrest and failed to initiate any credible attempts to investigate the human rights situation across the country. Many rights institutions have called on the MNHRC to uphold its responsibility under the Paris Principles and carry out its mandate to protect peoples' rights at all times and prevent further rights violations by urgently investigating all allegations of human rights violations since the coup.¹⁵⁸

Lack of civilian control of security forces

Indicator 3.4 ('Lack of effective civilian control of security forces')

The Tatmadaw, the country's most powerful institution counting nearly half a million active soldiers, is not under civilian control. Since the Tatmadaw first came to power in 1962, the security forces have had direct and powerful ties with the executive and been shielded by the judiciary from accountability.¹⁵⁹ Considering themselves the guardian of national unity, the military has a long history of violence against ethnic communities in the border regions and violent crackdowns of civil unrest, including the 2007 'Saffron Revolution'. Commander-in-Chief General Min Aung Hlaing, who has spent his entire career in the military, has personally been implicated in the commission of atrocities in Rakhine and Shan States and ultimately headed the military coup putting him in charge of the self-claimed SAC government.

The 2008 Constitution was drafted by the Tatmadaw and entails quota of reserved seats in all parliamentary bodies, which despite the attempted transition to a democratically elected civil government continued to secure the military control of key executive departments.¹⁶⁰ Further, the Constitution provides for the military to seize power in a state of 'severe crisis', an assessment of what constitutes such a crisis left to be made by the military itself.¹⁶¹ Claiming that the 2020 elections had been 'fraudulent', the military thus justified the military takeover in February based on legal grounds (see Indicator 1.5). The new legislation passed since February 2011 has given security forces the freedom to conduct arbitrary searches of homes and businesses; rights organisations have reported on a high number of incidents of theft of personal possessions including money, valuables, but also food and technical devices, from civilians' homes by security forces while threatening residents with guns. Further reports included incidents of looting closed shops or kidnapping civilians in public, leaving victims with no institution to report to due to the lack of legal consequences and accountability.

High levels of corruption and poor governance

Indicator ('3.5 High levels of corruption or poor governance')

As already seen in the examples of patterns of corruptive behaviour described above (see Indicators 3.2, 3.3 and 3.6), corruption in Myanmar has been an endemic issue, both caused by and causing the lack of good governance. International Indices reveal the low scoring of the country: Transparency International's 2021 Corruption Perception Index ranks Myanmar's perceived levels of public sector corruption 140 out of 180 countries, as opposed to rank 137 from the previous year's index and increasingly losing ranks by the year since 2016.¹⁶² Further, the World Bank's Worldwide Governance Indicators reveal Myanmar's consistent presence in the lowest quartile of the world in all its categories - Government Effectiveness, Rule of Law and Voice and Accountability – for the past ten years.¹⁶³ The years of civilian rule have not been utilised to actively address these persistent systemic issues and prevent the military from taking an already paved path of favourable conditions to resume power.

Lack of awareness and capacity to adhere to human rights and humanitarian standards

Indicators 3.7 ('Lack of awareness of and training on international human rights and humanitarian law to military forces, irregular forces and non-State armed groups, or other relevant actors.') and 3.8 ('Lack of capacity to ensure that means and methods of warfare comply with international humanitarian law standards')

The widespread and repeated commission of human rights violations and atrocity crimes by the military but also – though to a lesser extent – by armed non-state groups, points to a lack of awareness of the application of standards under international human rights and humanitarian law. The denial of access of humanitarian aid to people in need and vulnerable communities, the systemic discrimination and violence against ethnic minorities like the Rohingya, as well as the deliberate targeting of civilians and civilian sites during the recent political unrest are examples of the military's blatant ignorance towards international legal protection standards. Incidents of violence against civilians used by individual personnel of the security forces and law enforcement suggests that there is either a lack of awareness of rights violation and therefore a shortcoming in the adequate training of national security staff, or their deliberate commission. The findings – or lack of findings – by the governments' past commissions of enquiry and public statements made in regard to international allegations of past human rights violations and atrocity crimes (see Indicators

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

2.3 and 2.6) demonstrate the fundamental discrepancies in the perceptions of what does and does not constitute a human rights violation in the context of armed conflict or political unrest.

In response to the increase of bombings and arson attacks against civilian sites, especially schools and administration offices, on 26 May 2021, the NUG issued a set of ethical rules for resistance forces, which among other provisions explicitly prohibited attacks on schools, medical facilities and other civilian targets. Reportedly, the issuing has at least resulted in a decline of attacks on schools.¹⁶⁴ Notwithstanding, the ongoing fighting across the country does not provide adequate caution in the use of force in adherence with international humanitarian and human rights standards and much needed awareness in the protection of civilians.

RISK FACTOR 4: MOTIVES OR INCENTIVES

Risk Factor 4 identifies “reasons, aims or drivers that justify the use of violence against protected groups, populations or individuals, including by actors outside of State borders”.¹⁶⁵ From an early warning perspective, it becomes necessary to understand the motives and incentives that may push certain actors to commit human rights violations in order to predict them and ideally, develop appropriate prevention strategies. Such drivers to resort to violence and justify the commission of crimes are wide-ranging and diverse and find their underlying causes in political, economic or social interests or ideologies.

The many instances of the use of violence and violations of human rights in Myanmar have found their cause and justification in various motives, ranging from the strive to consolidate political and economic power to perceived threats by political dissidents, to a sense of supremacy and claim to privilege along ethnic and religious identity lines. Discrimination and systemic oppression of individual ethnic and religious groups has been fuelled by the construction of an ‘us’ versus ‘them’ narrative by dominant groups such as the Bamar-Buddhist majority, the use of violence against them has often times been justified by a perceived threat posed by minorities to undermine the self-claimed privilege of the Bamar. In turn, the failure to address and instead rather promote these injustices has over decades maintained and further fuelled the armed resistance of ethnic groups against the military. Since the coup in 2021, the ‘othering’ narrative has been expanded by the military against political dissidents, while the violent response to civil protests has increased the armed level of resistance and the justification on both sides to resort to violence.

Political motives to consolidate power

Indicator 4.1 (‘Political motives, particularly those aimed at the attainment or consolidation of power’)

Since Myanmar’s independence, interests over political autonomy and the consolidation of power have been a key driver of protracted conflict between the Tatmadaw, ethnic armed groups and other non-state armed rival groups. The use of violence has persistently been justified by all sides to achieve these interests. As described under Indicator 1.5 above, the military coup has reignited a brutal dispute over legitimate political power across the country. The excessive use of force against political dissidents and armed resistance against the coup was justified by the military as a necessary means – within legal boundaries – to lead the country to a “true and disciplined democracy” and to counter any insurrections that would threaten this aim (see Indicator 2.6) The scorched-earth campaign accompanied by a severe expansion in the deployment of military troops and weaponry by the Tatmadaw indicates their motive to suppress any threat to and resistance of their claim of legitimate power. On the other side, while the level of force and incidents of violations of humanitarian law remains comparatively low, the choice of many former public servants and civilians to join the armed resistance, of EAOs and other armed militia to support the anti-junta movement and the move by the NUG to unite various armed actors under the PDF has been caused and justified as a necessary response to the violent crackdown and excessive warfare used by the military.

Motives to maintain economic power and well-being of elites

Indicators 4.2 (‘Economic interests, including those based on the safeguard and well-being of elites or identity groups, or control over the distribution of resources’) and 4.3 (‘Strategic or military interests, including those based on protection or seizure of territory and resources’)

RISK FACTOR 4: MOTIVES OR INCENTIVES

The interest to maintain or seek control over resource extraction has and may continue to motivate and justify the use of violence by the military as well as ethnic armed groups. As laid out in Indicator 1.7, disputes over the country's natural resources and over resource-rich territories have been a major source of conflict among various groups for decades. The persistent presence of armed factions of ethnic armed groups in the border regions has to some extent been contributed to their attempt to consolidate autonomy over extraction and trade of resources located in these areas as well as the prevention of attempts by the Tatmadaw to gain a monopoly in these regions. The military has deployed policies consistent with counterinsurgency campaigns, which it has used in other contexts, such as against the Rohingya community in 2017, with the aim to cut off the finance flows, livelihood, and intelligence of other armed groups. Past reports by the Special Rapporteur to Myanmar to the UN HRC have pointed to human rights violations committed by members of the Tatmadaw near extraction sites, such as gold and coal mines, as well as against individual workers at those mines.¹⁶⁶ The February 2021 has reignited conflict between the Tatmadaw and KIA related to previous disputes over control over the jade mines in Kachin State. While control over natural resources pays out to be highly lucrative in collecting tax revenue on their extraction, Myanmar's resources also make up about 35 per cent of the country's total exports¹⁶⁷, thus bolstering both the internal and external power position of whoever claims authority over them.

Motives to maintain a status quo of identity-based privilege and homogeneity

Indicator 4.4 ('Other interests, including those aimed at rendering an area homogeneous in its identity') and 4.7 ('Ideologies based on the supremacy of a certain identity or on extremist versions of identity')

Religious and ethnic tensions between the Bamar Buddhist majority and other ethnic and religious minority groups, such as the Muslim minority, have propelled instances of hate speech, rioting and incitement to use violence and have become a driving force in Myanmar's persistent climate of internal conflict.¹⁶⁸ The dominance of the Bamar Buddhist identity and nationalist ideology over the country's politics since its independence is reflected in the institutionalised discrimination against and oppression of other ethnic and religious minority groups to the impediment of these groups' ability to participate in society and access basic human rights (see Indicator 1.11).¹⁶⁹ This actively enforced and unquestioned narrative of a 'true' Burma, or 'Myanmarisation', demonstrates the perception by an elite ethnic group of its sense of privilege and superiority over other groups who are neither Buddhist nor speak 'proper' Burmese. Discriminatory laws such as the Citizenship Law and the Protection of Race and Religion Laws which continue to be upheld even under civilian rule reflect the motives of maintaining a status quo of controlling the hierarchy and cultural homogeneity along ethnic and religious lines.

The construction of an Othering narrative in which the 'us' is perceived to be in a position of privilege and supremacy over 'them' has led to the widespread acceptance of an environment of systematic oppression¹⁷⁰ and has been used as a tool by authorities, first and foremost the military, to justify acts of severe human rights violations and atrocities, such as those committed in the 'clearance operations' against the Rohingya in Rakhine State in 2017. The ethnic cleansing campaign in northern Rakhine has been perceived and self-claimed by the military as a "nationalist victory for a force that casts itself as the champion of the country's ethnic Bamar Buddhist majority".¹⁷¹ The failure by the civil government to address such use of violence and, eventually, the seizure of power by the Tatmadaw contribute to the persistence of this hierarchical climate and the narrative of the supremacy of one ethnic group over others.

Perceived threats and opposition

Indicators 4.5 ('Real or perceived threats posed by protected groups, populations or individuals, against interests or objectives of perpetrators, including perceptions of disloyalty to a cause') and 4.6 ('Real or perceived membership of or support for armed opposition groups, by protected groups, populations or individuals')

The heightened conflict in Rakhine State in 2017 was preceded by a persistently tense environment of hate speech and propaganda in which Rohingya Muslims were framed as 'immoral guests' in the country; propaganda about the imminent threat of a 'Rohingya invasion' and the presence of Rohingya agents further contributed to a narrative of an existential threat to the national unity and the foundations of the Bamar Buddhist identity.¹⁷² The UN FFM Report which investigated human rights violations committed by the military in Rakhine, Kachin and Shan States found that the military's actions had been conducted with a genocidal intent to destroy minority groups that were perceived as a threat. Accordingly, shortly after the beginning of the clearance operations, Senior General Min Aung Hlaing justified the use of force from a security standpoint by using "a false narrative that treated all Rohingya as murderous invaders".¹⁷³

RISK FACTOR 4: MOTIVES OR INCENTIVES

The political opposition to the 2021 coup, reflected in the large-scale disobedience movement and mass protests, has been perceived by the Tatmadaw as an act of disloyalty and a threat to the self-claimed cause of interfering with a ‘fraudulent election process’ and implementing a “true and disciplined democracy”. As described in Indicator 4.1, the violent response to political dissidents and eventually, to armed resistance forces, has been justified to defend that cause. In response to the formation of the NUG’s People’s Defense Force and months later, its announcement to unite all collaborating armed forces and supporters under a single command structure, the Tatmadaw declared the PDF a terrorist organisation (see Indicator 1.5). The Tatmadaw’s escalation of its scorched-earth campaign into a current “kill all, torch all” mission against armed resistance forces, which has been implemented by security forces raiding villages and torturing and massacring members of armed resistance forces as well as civilians¹⁷⁴, reflects the military’s attempt to eliminate all forms of resistance to its political authority. The perceived threat of civil disobedience and armed opposition to the Tatmadaw ability to gain legitimacy has been addressed with excessive and indiscriminate use of force in combat, as well as against civilians and civilian and humanitarian infrastructure and constitutes a severe violation of human rights and humanitarian law.

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

The commission of atrocity crimes requires the capacity to do so. Risk Factor 5 focuses on the “conditions that indicate the ability of relevant actors to commit atrocity crimes”¹⁷⁵, namely the substantial resources at their disposal as well as any internal or external support. It must be noted that the mere possession of capacities to commit atrocity crimes does not necessarily imply the intention to commit them. The assessment of this risk factor therefore depends on its relationship to other factors.

Past violations of atrocity crimes by the Tatmadaw and ongoing armed conflict with a large number of EAOs and resistance forces, their ethnic bias and support of discriminatory measures oppressing certain groups, their interest and currently unique position in exerting authority over policymaking processes and economic and military resources, as well as the lack of civilian control over the security forces all act as strong indicators of the military’s capacity to commit atrocity crimes on a widespread and systematic scale.

Availability of military resources and transportation

Indicators 5.1 (‘Availability of personnel and of arms and ammunition, or of the financial resources, public or private, for their procurement’) and 5.2 (‘Capacity to transport and deploy personnel and to transport and distribute arms and ammunition’)

Having been described as a ‘state within a state’, the Tatmadaw is a large security apparatus which, according to estimates from January 2022, comprises of about 300,000 soldiers¹⁷⁶, with an estimated number of 100,000 to 120,000 combat soldiers ready to be deployed.¹⁷⁷ In addition, one cannot forget the circa 80,000 members of the national police force, including its 30 paramilitary security battalions, many of whom are former members of the military. This number stands in stark contrast to the estimated – though estimates vary greatly – 25,000 active members of the PDF and its collaborating anti-junta EAOs with another approximately 30,000 – 35,000 members. Taking into account the decade-old and much more advanced organisational structure, intelligence capabilities, training and weapon equipment of the military, the Tatmadaw are considered to remain the stronger force, noting that a direct comparison remains difficult.¹⁷⁸

The Tatmadaw is financed through a conglomerate of a large amount of Myanmar’s total budget as well as major domestic private sector companies (see Indicator 5.7) and direct foreign investment mainly from China and Russia (see Indicator 5.8). In 2020, the World Bank recorded Myanmar’s military expenditure at 2.9 % of its GDP¹⁷⁹ with an increase from USD 2,225 million in 2019 to USD 3,141 million in 2020.¹⁸⁰ The military coup itself and the immediate crackdown on protestors within cities, as well as their rapid build-up of troops and equipment in regions with a high presence of armed resistance, mainly and most recently in the north and northwest of Myanmar, demonstrate the military’s capacity to deploy personnel and distribute arms and weaponry at a high pace.

In addition to the military, many EAOs have access to personnel, arms and ammunition. According to estimates by the Norwegian Institute of International Affairs, numbers of armed groups vary greatly and range from 100 members in the Arakan Liberation Army up to 30,000 members of the United Wa State Army.¹⁸¹ Further, armed groups who control resource-rich regions profit from resource extraction, others receive financial support from local communities. It must be noted however that data measuring the exact numbers and capacity of such groups remains rather limited.

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

Strong culture of obedience and conformity

Indicator 5.4 ('Strong culture of obedience to authority and group conformity')

With its large number of recruitment and employment of many members over years or sometimes decades, there is a strong culture of loyalty and obedience within the military. Bound by “shared beliefs, a strict disciplinary code and an elaborate system of rewards and punishments”,¹⁸² propaganda and inciting rhetoric are persistently used tools to fuel resentment towards certain ethnic groups and political dissidents.

Support by non-State armed groups

Indicator 5.5 ('Presence of or links with other armed forces or with non-State armed groups')

In addition to EAOs present in Myanmar, there is a large number of militia groups operating across the country, many of whom stand in alliance with the military or are directly incorporated into the command structure of the Tatmadaw.¹⁸³ In turn, militia groups compensate in areas where the military lacks capacity, such as providing information on EAOs, maintaining security in border regions and providing guidance in unfamiliar terrain.¹⁸⁴ As a result, high presence of militia activity has been observed in regions where the Tatmadaw is conducting military operations. In contrast to the EAOs, militia groups are explicitly authorised to carry arms. Militia groups not affiliated with the military often collaborate with EAOs to help protect their communities from the military or provide reserve fighters if needed.

External support and influence

Indicators 5.7 ('Financial, political or other support of influential or wealthy national actors') and 5.8 ('Armed, financial, logistic, training or other support of external actors, including States, international or regional organizations, private companies, or others')

The Tatmadaw have been involved with domestic private businesses since its seizure of power in 1962 and have since built a lucrative collaborative network spanning across the two sectors and profiting from the support of wealthy private entities. In the privatisation process of state industries in the 1990s, two military-run conglomerates were established: the Myanmar Economic Cooperation and the Myanmar Economic Holdings Limited, which today hold stakes in a variety of industries, including banking, mining and tourism.¹⁸⁵ The UN FFC expressed concern in a 2019 report that the large number of business revenues has enhanced the military's capacity to commit human rights violations without notable sanctions and accountability.¹⁸⁶

Furthermore, Myanmar has long benefited from support from the Russian and Chinese government who both have strong ties to the Tatmadaw. Together, China and Russia constitute the two largest suppliers of weapons to the country.¹⁸⁷ China remains Myanmar's largest trading partner, its foreign direct investment in Myanmar totalled USD 19 billion in 2019 compared to the EU's foreign direct investment of USD 700 million.¹⁸⁸ China has in the past been a key player in Myanmar's peace process. In 2013, China appointed a special envoy to serve as a formal observer to Myanmar's peace negotiations.¹⁸⁹ According to the United States Institute of Peace, China has exerted its influence to pressure EAOs that have not signed the peace agreement into attending national dialogues. Following the 'clearance operations' in Rakhine State in 2017, China publicly defended the government from international criticism and imposed sanctions by justifying the military use of force as efforts maintain domestic stability and offered support to the government in handling the 'terrorist attacks'.¹⁹⁰ The Russian Deputy Defense Minister who attended the Armed Forces Day on 27 March 2021, emphasised Russia's efforts to seek closer social and economic ties with Myanmar. Since the coup, there have been a number of visits between senior military officers from both Russia and Myanmar, including a visit by Aung Hlaing to Russia.¹⁹¹

The strong support of the Tatmadaw by Russia and China occurs in contrast to the majority of the largely united international community which has condemned the military coup and imposed a wide range of sanctions. Yet notably, in 2018 Japan called on the international community to abstain from criticising the Burmese government and has abstained from all UN resolutions on Myanmar as well as from using the term 'Rohingya'.¹⁹² Further, in response to the increased humanitarian crisis in Myanmar and the announcement of the UN Humanitarian Response Plan for Myanmar, Japan has announced to provide a further USD 18.5 million in humanitarian aid to Myanmar, adding to USD 20 million in humanitarian assistance it has already provided to Myanmar since the coup.¹⁹³

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Risk Factor 6 identifies the “absence of elements that, if present, could contribute to preventing or to lessening the impact of serious acts of violence against protected groups, populations or individuals”.¹⁹⁴ Such elements include a strong engagement and empowerment of national and international civil society and media and an openness by political actors to receive their support and advice, diplomatic relations to other states and close cooperation with international and regional arrangements.

Under civilian rule Myanmar significantly opened up to the world both politically and economically. At the time of writing, it is too early to predict the behaviour of the SAC in international fora. While the SAC has already replaced some former Myanmar delegates to the UN as well as in foreign embassies to represent the new government abroad, it has refused to cooperate with international human rights mechanisms, and windows to participate in ASEAN summits remain shut. Since the military coup, the space for independent media and civil society has severely shrunk and any public expression of dissent and disobedience towards the military or the coup is punished under new legislation.

Shrinking space for free and independent media and civil society

Indicators 6.2 ('Lack of a strong, organized and representative national civil society and of a free, diverse and independent national media') and 6.3 ('Lack of interest and focus of international civil society actors or of access to international media')

Even before the 2021 coup, there were challenges to a free, diverse and independent media. While new media laws were ushered through to ensure the press could play a key role in the Myanmar's move toward democracy, self-censorship was widespread. Amidst the escalating human rights crisis since 2017, the space for a free and independent media was shrinking ever more. Following the coup, on 8 March 2021 the military stripped media licenses from five local media outlets, including Democratic Voice of Burma and Myanmar Now; two months later, two other outlets followed.¹⁹⁵ In the weeks after the coup, satellite television was eventually banned entirely, and the military imposed nationwide internet shutdowns at certain daytimes, which were later lifted but continued to block many websites. In townships with a high presence of anti-junta opposition, mobile data and networks were blocked. By October, 98 journalists had been arrested, according to the Assistance Association for Political Prisoners, more than half of them remained in detention. Six journalists have been convicted, mainly for violating new legal provisions criminalising the circulation of 'comments that cause fear or spread false news'. A warning issued by the Ministry of Information on 30 June warned journalists of criminal prosecution when describing the SAC as a 'junta'. Among the convicted is US journalist Danny Fenster, the managing editor of Frontier Myanmar, who was sentenced in court on 12 November to 11 years of hard labour but permitted to leave the country.¹⁹⁶

In February 2022, twenty domestic Civil Society Organisations (CSO) met with the UN Special Envoy on Myanmar to reiterate concerns expressed in a joint statement 247 CSOs had issued to the Special Envoy prior. The CSOs underlined the necessary step to find justice and accountability for the grave crimes committed by the military and reiterated that a peaceful vision for the country would not include the military in Myanmar politics.¹⁹⁷ In March 2022, 116 CSOs further issued a joint open letter to the UN HRC calling on the council to find ways to seek accountability in Myanmar and for the UN to establish jurisdiction over atrocity crimes committed.¹⁹⁸ While these efforts illustrate the ability by civil society to continue to organise themselves and collaborate with international human rights bodies to some extent, CSOs and Community-based Organisations are restrained by the same new legislation limiting their ability to publish freely and disseminate information and opinion on the political developments. Many CSO programmes are on hold or operate at reduced capacity as they refuse financial support from the government.¹⁹⁹ Many are less receptive to outside support due to fear and mistrust of their operations being politicised, by either being suspected of supporting civil disobedience or unintentionally affiliating with pro-SAC supporters.²⁰⁰ These developments are further shrinking an already narrow space for human rights organisations who – other than purely humanitarian CSOs – have in the past been hampered by a lack of freedom of expression and lacked support by both the government and the military.

Limited access of and cooperation with international and regional actors

6.4 Lack of or limited presence of the United Nations, INGOs or other international or regional actors in the country and with access to populations.

6.7 Limited cooperation of the State with international and regional human rights mechanisms.

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Severe restrictions on humanitarian access to Rohingya communities who remain in detention camps and villages by humanitarian agencies have only been further increased by the military since the 2021 coup.²⁰¹ On 3 June 2021, the president of the International Committee of the Red Cross (ICRC) visited Myanmar and met with General Min Aung Hlaing to discuss the humanitarian situation and service delivery. The president expressed concerns about the current humanitarian situation caused by armed conflict, the health pandemic and political unrest and pushed for a broader humanitarian access including to Chin, Kachin, Kayah, Kayin, Shan and Rakhine States, emphasising the need of the people on Myanmar of urgent assistance.²⁰² In his very recent report at the forty-ninth session of the HRC, the Special Rapporteur to Myanmar expressed serious concern over the limited access by the UN and other humanitarian organisations to internally displaced people in need of humanitarian relief in Myanmar, including people in displacement camps as well as in forest areas or hiding places, lacking access to food, drinking water and medical supplies. Further, he voiced concern over the denial of access to thousands of detainees, asserting that he relies on the engagement with former detainees, letters and media reports as well as reports by lawyers in order to ascertain the full scope of current rights violations.²⁰³

Recommendations made to the government through the FFC and the UN Special Rapporteur since 2017 to take remedial action to improve the human rights situation in Myanmar have been largely ignored. Despite previous commitments made by the civil government in the Universal Periodic Review (UPR) reports of the UN HRC to promote freedoms and rights of human rights defenders, protestors, media representatives and civil society actors, none of them resulted in serious efforts of implementation and further remain highly unlikely under the rule of the SAC.

Limited collaboration and relations with other States and organisations

6.5 Lack of membership and effective participation of the State in international or regional organizations that establish mandatory membership obligations.

On 26 February 2021, UN ambassador, Kyaw Moe Tun who has been delegated by the NLD government, calls for the “strongest possible action” against the military regime and ends his UN speech with the three-fingered salute adopted by the protesters. A few days later, the coup leaders announce he has been fired for “betraying” the country.²⁰⁴ Kyaw Moe Tun continues to head the Permanent Mission, the UN has kept his credentials.²⁰⁵ At the United Nations, the Permanent Mission in New York continues to be represented by Kyaw Moe Tun, while the representative at the Human Rights Council in Geneva has been deployed by the SAC.²⁰⁶ States have shown various reactions with the majority of UN member states condemning the military coup and continuing to recognise Aung San Suu Kyi’s NLD as the legitimate government, while States such as China, Russia and Cambodia have publicly recognised the SAC as the legitimate government and ASEAN has sent its Special Envoy on a visit to Myanmar to engage with senior military leaders, including Min Aung Hlaing. Although Myanmar continues to be a member of ASEAN, it has been excluded from all key meetings and the annual summit meeting since the military coup (see Indicator 6.9). While Myanmar remains to be represented at UN level and maintains its bilateral diplomatic relations with other States, uncertainties remain over the legitimate representation of the State and individual States’ recognition of the SAC.

Failure by the international community to support Myanmar

Indicator 6.9 (‘Lack of interest, reluctance or failure of United Nations Member States or international or regional organizations to support a State to exercise its responsibility to protect populations from atrocity crimes, or to take action when the State manifestly fails that responsibility’)

Myanmar has been a member of the UN since 1948 and a member of Association of Southeast Asian Nations (ASEAN) since 1997. Since the end of Myanmar’s military rule, major reforms opened up the country, resulting in an increasing presence of international organisations. Notwithstanding, the atrocities committed by the military in Rakhine State in 2017 highlighted the lack of meaningful presence and the ability by international and regional actors to adequately and effectively respond to the human rights and humanitarian situation. In a 2019 independent review assessing its own conduct in Myanmar, the UN concluded that systemic failures in the UN system had led to the prevention of implementing an effective response strategy. Further, human rights organisations expressed criticism towards ASEAN for failing to even acknowledge the situation in Myanmar and urge the government to respond to the commission of human rights violations.

The international response to the coup has been divided. UN Special Envoy on Myanmar has called on the UN Security Council to “consider all available tools” to avoid a “bloodbath”. The United States, the European Union and the United Kingdom have imposed targeted sanctions. In contrast, China and Russia explicitly referred to the situation as an “inter-

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

nal affair” and rejected calls for robust UN Security Council action. On 10 March 2021, the UN Security Council issued a Presidential Statement, strongly condemning the violence against peaceful protestors, calling on the military to exercise utmost restraint and to allow humanitarian access, further reiterating its strong support for regional organisations, in particular ASEAN. On 18 June 2021, the UN General Assembly issued a Resolution calling on the military to respect the November 2020 elections, release political prisoners, implement the ASEAN five-point plan, stop all violence, and allow humanitarian access. While 119 states supported the Resolution, 36 States, including China and Russia, abstained.²⁰⁷ In his most recent report, the UN Special Rapporteur asserted that the severe human rights violations being committed in Myanmar are amounting to crimes against humanity and war crimes and called on the Security Council to refer the situation to the ICC. As mentioned under Indicator 2.3, cases against several senior military officials, including Min Aung Hlaing, are currently being prepared by the NUG in collaboration with law firms in Australia to be brought before the Australian Attorney-General. Accordingly, if approved, military officials may in the near future be tried in Australian domestic courts under the principle of universal jurisdiction for charges of war crimes and potentially other atrocity crimes committed during mass killings in Kayah State and Sagaing Region as well as clearance operations in western Chin State.²⁰⁸

The member states of ASEAN have similarly been divided. While Malaysia and Indonesia have criticized the military takeover and violent crackdown of protestors, Thailand, Vietnam, Cambodia and the Philippines have called the situation an “internal affair”. At a meeting in Jakarta on 24 April 2021, ASEAN members negotiated a five-point consensus plan with the Tatmadaw and appointed an ASEAN special envoy.²⁰⁹ The five points agreed upon in the plan aimed for an immediate halt to all violence, an engagement by all conflicting parties in constructive dialogue to seek a peaceful solution under the mediation and assistance of ASEAN, as well as the provision of humanitarian assistance from ASEAN.²¹⁰ The military’s failure to implement the plan led ASEAN to exclude Myanmar from a series of key meetings of the organisation and excluded Min Aung Hlaing from the ASEAN summit which took place in October 2021.²¹¹ At the recent ASEAN Foreign Ministers’ Retreat in Cambodia on 17 February 2022, ASEAN members reiterated their commitment to the consensus plan and urged the military to ensure its implementation.²¹² The ASEAN Special Envoy has made his first official visit to Myanmar from 20 – 23 March to engage with representatives of the military government, including Min Aung Hlaing, to discuss the political situation in the country and to promote the implementation of the five-point plan.²¹³

Lack of early warning mechanisms

6.11 Lack of an early warning mechanism relevant to the prevention of atrocity crimes.

To date, Myanmar has not appointed an R2P Focal Point and thereby joined the Global Network of R2P Focal Points, an initiative that aims to institutionalise an early warning mechanism within the national political apparatus by appointing a senior government officer to facilitate dialogue across ministerial levels and promote the prevention of and national response to atrocity crimes.²¹⁴ The appointment of a national focal point would enable increased efforts to strengthen atrocity prevention through cooperation with academia and civil society groups, training and education of law enforcement and government officials on a cross-ministerial level, and the engagement with other national focal points through the global network.

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

Risk Factor 7 identifies “events or measures, whether gradual or sudden, which provide an environment conducive to the commission of atrocity crimes, or which suggest a trajectory towards their perpetration”.²¹⁵ Atrocity crimes do not occur spontaneously or in isolation. Such changes can point to the likelihood that steps are taken or resources gathered to commit severe rights violations and potentially atrocities. Yet even where such planning is non-existent, certain changes can create an environment that makes atrocities more likely. The identification of such changes and the probability that they lead to atrocities is therefore crucial for appropriate prevention measures.

The military has periodically mobilised against ethnic populations and engage in armed conflict with non-state armed groups. Representing both an enabling circumstance and a preparatory action, the escalation of conflict between anti-junta resistance forces and the military since 2021 has incentivised the military to boost its scorched-earth campaign under a ‘kill all, torch all’ strategy and increase the deployment of thousands of additional troops and heavy weaponry in the northern regions. The state of emergency, the deprivation of fundamental freedoms of expression and political opinion, the use of inflammatory rhetoric and arbitrary arrests against political dissidents and the implementation of internet and phone service shutdowns are highly concerning.

Imposition of emergency laws or extraordinary security measures

Indicator 7.1 (‘Imposition of emergency laws or extraordinary security measures that erode fundamental rights’)

As described under Indicator 1.4, the 2021 followed the declaration of a one-year long state of emergency by Min Aung Hlaing, which was extended by another year in February 2022. Following the coup, the junta prohibited public gatherings of more than four persons and ordered a shutdown of the internet. It suspended laws including sections of the Law Protecting the Privacy and Security of Citizens which would constrain security forces from detaining suspects and searching property and amendments to the Electronic Transactions Law to prevent the free flow of information. At the same time, imposed new laws allowing the arbitrary detainment of civilians who expressed any form of political dissent towards the coup or the junta rule (see Indicator 1.6). The new legislation has led to the arbitrary arrest of thousands of protestors and political opponents, as well as civil society members, journalists and media representatives. The junta extended the state of emergency for another six months in 37 townships across the country in February 2023 as it continues to face strong armed resistance from the combined forces of the PDF and EAOs. General elections are now scheduled in August 2023 but this may not push through absent restored peace and order in the country. At best, the junta’s planned elections will only get support from areas where security forces have effective control but may also face disruptions from resistance attacks by the PDF and EAOs resisting the junta.

Strengthening of the security apparatus and arms mobilisation

Indicators 7.3 (‘Strengthening of the security apparatus, its reorganization or mobilization against protected groups, populations or individuals’) and 7.4 (‘Acquisition of large quantities of arms and ammunition or of other objects that could be used to inflict harm’)

Myanmar’s security apparatus has periodically mobilised against the population of Myanmar, including protected groups. In response to the formation of the shadow government’s PDF and armed resistance forces, the Tatmadaw has concentrated its current scorched earth campaign to areas with strong opposition, most notably in Sagaing Region where clashes have been occurring on a daily basis over recent weeks and the military has responded with an escalation in air strikes, destruction of civilian infrastructure, use of civilians as human shields and killings across the region’s townships and villages (see Indicators 1.1 and 1.2). The military has been reported to pursue a “kill all, torch all” campaign in Sagaing Region in order to allegedly eradicate any form of resistance. In addition, increased supply flows of heavy weaponry from China, Russia and Serbia has been observed with great concern. Since the escalation of violence following the formation of armed anti-junta resistance, the military has stepped up its traditional ground warfare with aerial bombings, which have been excessively used to target civilian and humanitarian sites (see Indicator 2.5).

Restrictions on access to communication channels

Indicator 7.6 (‘Imposition of strict control on the use of communication channels, or banning access to them’)

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

Prior to the coup, the government of Myanmar has routinely restricted internet access in Rakhine and Chan states and shut down mobile network connections. Since the coup, the Tatmadaw has severely restricted access to telecommunications services by implementing a nationwide mobile phone shutdown and periodically shutting off internet access (see Indicator 1.6).

Increased violations against protestors, including women and children

Indicators 7.8 ('Increased violations of the right to life, physical integrity, liberty or security of members of protected groups, populations or individuals, or recent adoption of measures or legislation that affect or deliberately discriminate against them') and 7.9 ('Increased serious acts of violence against women and children, or creation of conditions that facilitate acts of sexual violence against those groups, including as a tool of terror')

The increasing number of arbitrary arrests, detention, torture and killings of civilians and political opponents constitutes violations of the right to life, liberty and security of the Myanmar population. Notably, children have increasingly become a target or victim of collateral damage in the military's tactics to suppress the protestors. In a recent statement, the NUG Minister of Women, Youths and Children Affairs said that close to 300 minors had been detained since the coup and been held in police station detention centres and prisons.²¹⁶ Many have been held ransom by security forces in instances where they are seeking to arrest their family relatives accused of supporting the opposition movement; the whereabouts of many children taken by the military remains unknown.²¹⁷

UN Women has expressed concern over the "targeted and disproportionate violence against women" in the crack-down against anti-junta protests, including reports that women in detention are experiencing sexual harassment and violence. Reports have also indicated the targeted use of force against women by security forces with batons and slingshots.

Increased inflammatory rhetoric

Indicator ('7.14 Increased inflammatory rhetoric, propaganda campaigns or hate speech targeting protected groups, populations or individuals')

Hate speech and dehumanising language has been pervasively used by the military and by ethnic majority groups in Myanmar to fuel tensions against Muslims and ethnic minorities. Hateful rhetoric includes the refusal to acknowledge the existence of Rohingya in Myanmar, the denial of their identity and suffering and the insistence of their status as 'illegal immigrants'.

Following the coup, members of the Tatmadaw have made use of social media channels to intimidate protestors, including death threats to anyone participating in protests, as well as the spread misinformation, such as claims of voter fraud and foreign interference in the election process and anti-NLD resentments. Platforms such as Facebook have been used to glorify military violence and share abusive content on pro-junta pages, including 'Wanted' photos of individual protestors who have been accused of destroying public property.²¹⁸

RISK FACTOR 8: TRIGGERING FACTORS

Risk Factor 8 identifies "events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or may spark their onset".²¹⁹ From an early warning perspective, it is therefore essential to identify such circumstances and assess their potential impact. The February 2021 coup by the Tatmadaw and the ensuing large-scale protests and renewed attacks by ethnic armed groups and the military in Myanmar's border regions suggest a high risk of a further escalation of violence with the possibility of those amounting to atrocity crimes. There is also a risk that the situation further evolves into an overt civil war, which would put the whole population of Myanmar at risk of atrocity crimes.

Sudden deployment of security forces

Indicator 8.1 ('Sudden deployment of security forces or commencement of armed hostilities')

The resistance to the military coup has led to a breakout of old and new armed hostilities between the Tatmadaw, EAOs, armed militia and anti-junta resistance forces (see Indicator 1.1). The increase of deployment of security forces

RISK FACTOR 8: TRIGGERING FACTORS

and heavy weaponry in the northern regions of Myanmar, where a high number of armed resistance forces is present and clashes between the military and resistance forces have occurred on a daily basis, and plans to implement a 'kill all, torch all' campaign has been observed with great concern and must continue to be monitored.

Abrupt and irregular regime change

Indicator 8.4 ('Abrupt or irregular regime changes, transfers of power, or changes in political power of groups')

As described under Indicator 1.5, the military coup was justified by the Tatmadaw to be a necessary measure to defend the 2008 Constitution due to voter fraud, which the electoral commission has rejected. The military claimed it has acted within its legal responsibilities to stabilise the country and announced its responsibility to claim power until new elections will be held in August 2023. Since the coup, Myanmar has found itself in an ongoing state of emergency.

Attacks against leaders and members of the opposition

Indicator 8.5 ('Attacks against the life, physical integrity, liberty or security of leaders, prominent individuals or members of opposing groups. Other serious acts of violence, such as terrorist attacks')

In the early hours of the coup, prominent senior members of the NLD, including State Counsellor Aung San Suu Kyi and President Win Myint were arrested and have remained in detention facing a series of serious charges and potential life imprisonment (see Indicator 1.6). In addition, 153 members of the government and parliament, 148 members of the Union Election Commission and 84 members of the NLD were arrested on 1 March 2021. According to the latest report by the UN Special Rapporteur to Myanmar, as of March 2022, more than 12,500 persons have been arrested in relation to their pro-democracy activities or their opposition to the junta since the coup, over 9,500 of them remain in detention.²²⁰ Among them are many journalists, civil society activists and human rights defenders who have publicly expressed political dissident against the junta.

Sudden changes effecting the economy and workforce

Indicator 8.9 ('Sudden changes that affect the economy or the workforce, including as a result of financial crises, natural disasters or epidemics')

As described under Indicator 1.8, a conglomerate of the economic impacts of the COVID-19 pandemic and the escalating security situation has pushed the country to the brink of an economic collapse: the military coup and violent crackdown on protesters by security forces has led international actors to impose a strict sanction regime and withdraw foreign aid and foreign investment. In addition, the large-scale disobedience movement has paralysed various sectors and industries across the country and put further constraints on a health sector that is already buckling under the health pandemic. Shutdowns of telecommunication services and frequent power outages have disrupted production work at factories; multiple rounds of lockdowns in response to COVID-19 have forced many businesses to shut down completely and caused severe disruptions in the supply of food, fuel and medical supplies, leading to a heightened level of food insecurity. According to estimates by the World Bank, the multi-dimensional crisis Myanmar finds itself since the breakout of the pandemic and political unrest in has resulted in the decrease of the country's economy by 30%.²²¹

SPECIFIC RISK FACTORS

The Framework of Analysis notes that Common Risk Factors help to identify the probability of atrocity crimes occurring, without necessarily identifying the type of crime. Specific Risk Factors refer to the fact that each crime has elements and precursors that are not common to all three atrocity crimes: Genocide, crimes against humanity, and war crimes. The indicators of the Specific Risk Factors identify concrete elements that are characteristic to a specific atrocity crime, and thus the risk of their occurrence.

GENOCIDE RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

Risk Factor 9 pertains to “past or present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes”.²²² Identity-based tensions and conflicts are rooted in real or perceived differences between religious, racial, ethnic and national groups. Risk Factor 9 focuses not on the existence of such differences, but rather on their instrumentalization to form the bases of discrimination that ultimately serves as the cause and justification for the commission of group violence. Myanmar’s long history of discriminatory and segregational practices and policies that resulted in the exclusion and lack of recognition of the Rohingya as an ethnic Muslim minority group, as well as past incidents of severe human rights violations amounting to the commission of atrocity crimes especially during the military operations in Rakhine State in 2017 continue to remain unaddressed by the civil government as well as the military junta. For this reason, many Indicators in this Risk Factor continue to play a vital role in the assessment of the current climate and will be mentioned here.

Indicator 9.1 (‘Past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups’) and 9.2 (‘Denial of the existence of protected groups or of recognition of elements of their identity’)

Several of Myanmar’s minority groups have been subjected to discriminatory, exclusionary and segregational practices, policies or legislations. These groups include the Shan, Kachin, Chin and Karen populations, who have been subject to severe repression and human rights violations. As described under Indicators 2.11, 2.1 and 2.2, Rohingya Muslims constitute the protected group most affected by recent discriminatory policies and exclusionary practices. Through processes of identity manipulation and the creating of an Othering narrative, political elites have effectively framed the Rohingya as ‘illegal immigrants’ and a threat to Bamar supremacy. By denying access to citizenship and publicly prohibiting and suppressing the use of the term ‘Rohingya’, the Rohingya population has been stripped from any right to identity and a sense of belonging to the diversity of Myanmar’s heterogeneous ethnic landscape and been denied access to basic human rights.

Indicator 9.3 (‘History of atrocity crimes committed with impunity against protected groups’)

Myanmar has a long history of atrocity crimes committed against protected groups left unaddressed (see Indicator 2.4). Consistent patterns of serious human rights violations in Kachin, Rakhine and Shan States have existed since 2011, many of which have amounted to the commission of atrocity crimes. These crimes have been committed principally by the military, where ongoing impunity for gross violations have facilitated an environment conducive to the recurrence of atrocity crimes, with the escalation of excessive violence against the Rohingya in 2017 as its primary example. The military has consistently failed to adhere to international human rights law and has repeatedly targeted civilians, including identity-based targeting.

Indicator 9.4 (‘Past or present serious tensions or conflicts between protected groups or with the State, with regards to access to rights and resources, socioeconomic disparities, participation in decision making processes, security, expressions of group identity or to perceptions about the targeted group’)

Myanmar has a long-standing history of ethnicity-based tensions and conflict. Since its independence, the country has struggled to forge a national identity. Many of the 135 state-recognised ethnic groups are engaged in violent and non-violent struggles among themselves and with the state²²³; persistent and recurring armed conflict between the military and armed ethnic groups as well as smaller militia are fuelled by disputes over political autonomy, recognition of identity and participation in natural resource extraction. The perceived supremacy and dominance of ethnic groups such as the Bamar Buddhist majority over smaller ethnic groups finds is reflected in access to economic resources, political decision-making processes and the access to freedoms and basic rights and continues to cause tensions along these ethnic lines (see Indicator .

Indicator 9.6 (‘Lack of national mechanisms or initiatives to deal with identity-based tensions or conflict’)

Myanmar’s internal mechanisms of oversight and accountability are either non-existent or tightly controlled by the military. Its national institutions lack the political independence, material resources, funding and training to adequately provide a platform for dealing with identity-based tensions and conflict (see Risk Factor 3).

GENOCIDE RISK FACTOR 10:

SIGNS OF AN INTENT TO DESTROY IN WHOLE OR IN PART A PROTECTED GROUP

Risk Factor 10 identifies “facts or circumstances that suggest an intent, by action or omission, to destroy all or part of a protected group based on its national, ethnical, racial or religious identity, or the perception of this identity”.²²⁴ The intent to destroy a protected group constitutes the fundamental element of the crime of genocide and at the same time, its existence is the most difficult to prove. In order to react and to signs of genocide or prevent its (re-)commission at an early stage, warning indicators must detect behaviour or conduct that could reasonably support the intent to destroy a protected group.

This Risk Factor will primarily look at recent developments occurred after the height of the atrocities committed in Rakhine State which have been comprehensively analysed in the previous 2019 Risk Assessment Report or mention previously identified Indicators who remain relevant today. On 23 January 2021, the International Court of Justice ruled that there was *prima facie* evidence that Myanmar had breached the Genocide Convention. The Court also ordered Myanmar to implement emergency measures to protect the Rohingya population. While the direct killings have abated since their peak in 2017 and 2018 and the situation no longer dominates international headlines, human rights organisations continue to criticise the government for its failure to address the root causes of discrimination and impunity which constitute and contribute to the ongoing risk of genocide against the Rohingya.²²⁵

Indicators 10.3 ('Widespread or systematic discriminatory or targeted practices or violence against the lives, freedom or physical and moral integrity of a protected group, even if not yet reaching the level of elimination'), 10.4 ('Development of policies or measures that seriously affect the reproductive rights of women, or that contemplate the separation or forcible transfer of children belonging to protected groups') and 10.5 ('Resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group, or that reveal an intention to change its identity')

As described under Indicator 3.1, discriminatory laws systematically excluding and suppressing the Rohingya from accessing to basic rights and freedoms have remained in place today. The 1982 Citizenship Law and the range of Race and Religion Protection Laws which are aimed at ‘preserving race and religion’ by regulating religious conversions, sexual orientation, marriage and family planning and population control are primary examples. Myanmar’s Race and Religion Protection Laws represent a commitment by the authorities to specially stigmatise and limit Muslim cultural reproductive rights. The Population Control and Healthcare Bill, one of its four laws, is of particular concern here. While officially aimed at ‘improving living standards while alleviating poverty in the country; ensuring sufficient quality healthcare; and developing maternal and child health’, it allows local authorities to lodge a request to the president for birth-spacing measures.²²⁶ The law’s targeting of Rohingya is reflected in their perceived status as ‘illegal migrants’ and that their high birth rates are a strategy to ‘Islamize’ Myanmar.²²⁷ As such, the law represents a policy that directly and seriously affects the reproductive rights of Muslim, especially Rohingya, women. At the same time, it is a blatant attempt to control Rohingya births.

The continued refusal by the Myanmar authorities to address such institutionalised methods of suppression and discrimination reveals an insistence on the continued pursuance of such highly discriminatory and targeted practices and a lack of intention to change the societal belonging of the Rohingya and their ability to access basic human rights. The refusal and lack of efforts to allow displaced Rohingyas a safe, dignified and voluntary return to Rakhine State and to their homes as well as the denial of humanitarian access and freedom of movement of displaced Rohingya in detainment camps further confirms this intention.

Indicator 10.8 ('Attacks against or destruction of homes, farms, businesses or other livelihoods of a protected group and/or of their cultural or religious symbols and property')

The ‘clearance operations’ conducted by the military in Rakhine State in 2017 and 2018 saw a partly complete destruction of Rohingya villages and farmland on a large and systematic scale. Satellite images showed the devastating impacts of security forces burning and bulldozing down entire villages.²²⁸ In his latest report to the HRC, the Special Rapporteur on Myanmar asserted that no progress has been made towards the safe, dignified and voluntary return of Rohingya since they have been displaced. Further, many former private properties in Rohingya villages from which they had been evicted during attacks since 2012, “have been razed and are now the site of new commercial projects, government buildings or military installations.”²²⁹ Given these conditions and the lack of efforts by authorities to return land and private infrastructure to their previous owners or to appropriately compensate for past damages, the Special Rapporteur expressed that the situation in Rakhine State remains unconducive for Rohingya refugees to return safely from Bangladesh.

CRIMES AGAINST HUMANITY RISK FACTOR 11:

SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

Risk Factor 11 identifies “signs of violent conduct including, but not limited to, attacks involving the use of force, against any civilian population and that suggest massive, large-scale and frequent violence (widespread), or violence with patterns of periodicity, similitude and organization (systematic)”.²³⁰ Crimes against humanity involve both quantitative and qualitative elements. Because the use of force must fulfil these two criteria of being widespread and systematic to reach the threshold of the crime against humanity, any isolated acts of violence must be excluded from the assessment. The military has engaged in widespread and systematic attacks against civilian protestors across Myanmar since the military coup. Prior to the coup, military action in Rakhine, Kachin and Shan states in recent years has seen civilian targeting is a key component of the Tatmadaw’s tactics. The presence of almost all Indicators under this Risk Factor can be identified and confirms conclusions by UN human rights bodies and international organisations that current rights violations against the population of Myanmar amount to crimes against humanity.

Indicators 11.1 (‘Signs of patterns of violence against civilian populations, or against members of an identifiable group, their property, livelihoods and cultural or religious symbols’), 11.2 (‘Increase in the number of civilian populations or the geographical area targeted, or in the number, types, scale or gravity of violent acts committed against civilian populations’) and 11.5 (‘Signs of a plan or policy to conduct attacks against civilian populations’)

The violent clampdown of protestors following the February coup has seen the widespread use of arbitrary arrests, enforced disappearances, torture, killings and systematic persecution of political opponents. To respond to violence by militias and the PDF, the Tatmadaw is using its long-established ‘four cuts’ counter-insurgency strategy, an approach that deliberately targets civilians in an effort to deprive insurgents of food, funds, recruits and intelligence. The strategy includes deliberate attacks on populated areas, as well as looting of food stores and denial of relief supplies. Recently, the military has resorted to highly disproportionate ‘scorched-earth’ tactics and has razed entire villages to eliminate any threats of resistance.²³¹ At the time of writing, reports of military plans of implementing a ‘kill all, torch all’ campaign in Sagaing Region are being closely monitored with great concern.²³² These military campaigns indicate a deliberate strategy by the SAC to approve and authorise tactics to eliminate any political opposition and resistance to its power. According to ACLED, the degree of violence against civilians by security forces since the coup has seen a 620% increase of violence in 2021 compared to the previous year.²³³

On 11 March 2021, the UN Special Rapporteur on Myanmar first suggested that the military’s violence against peaceful protestors may amount to crimes against humanity as they appear to be committed as part of a coordinated campaign directed against a civilian population, in a widespread and systematic manner²³⁴, an assessment he confirmed in his annual report to the General Assembly on 2 September 2021, by asserting that the indiscriminate attacks against civilians, the shelling of towns and villages and the murder, torture and detention of political opponents and civil society members by the military meet the threshold of crimes against humanity and war crimes under international law.²³⁵ In his latest report to the HRC, the Special Rapporteur reaffirmed this assessment of the situation.

Attacks against civilians and civilian objects have long been a hallmark of military operations during military operations in recent years in Rakhine, Kachin and Shan states. Operations without any marked military objective are regularly conducted in civilian residential areas; these are done in the absence of due regard to civilian life. As a result, such attacks often result in injuries or deaths. Cases of unlawful killings, torture, ill-treatment, deprivation of liberty, forced labour, rape and gang rape have been recorded. Civilian targeting has been based on their belonging to an ethnic group whose ethnic armed group is engaged in fighting with the Tatmadaw.

Indicator 11.3 (‘Increase in the level of organization or coordination of violent acts and weapons used against a civilian population’)

The Tatmadaw have used increasingly violent means and methods to disperse protestors since the coup. Initially deploying tear gas, water cannons and rubber bullets indiscriminately, soldiers have since used indiscriminate spraying of live ammunition in urban areas and are deploying a variety of military firearms, including light machine guns, sniper rifles, semi-automatic rifles, and Uzi-replica submachine guns against civilian protestors. The military and police are working alongside each other and there appears to be a high level of coordination amongst troops, many of whom have previously been implicated in atrocity crimes in Rakhine, Kachin and Shan states.

Indicator 11.4 (‘Use of the media or other means to provoke or incite to violent acts’)

CRIMES AGAINST HUMANITY RISK FACTOR 11:

SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

As described under Indicator 7.14, members of the Tatmadaw have made use of social media channels to spread misinformation, such as claims of voter fraud and foreign interference in the election process and anti-NLD resentments, and to glorify military violence and share abusive content on pro-junta pages.²³⁶ Facebook had put an early end to the abuse of its platform by banning the military and junta-affiliated businesses from using its services in response to the military crackdown on protestors.

Indicator 11.7 ('Access to or increasing use of significant public or private resources for military or belligerent action, including the acquisition of large quantities of weaponry or other instruments that can cause death or serious harm')

As outlined under Indicators 2.5 and 7.4, the UN Special Rapporteur has expressed concern on increased supply flows of heavy weaponry from China, Russia and Serbia, including fighter jets, rockets, artillery and armoured vehicles. Since the escalation of violence following the formation of armed anti-junta resistance, the military has stepped up its traditional ground warfare with aerial bombings, which have been excessively used to target civilian and humanitarian sites (see Indicator 2.5).

Indicator 11.8 ('Signs of development or increased use of means or methods of violence that are incapable of distinguishing between civilian and military targets or that are capable of mass destruction, persecution or weakening of communities')

The military has been reportedly using weapons, such as mortar shells, that are incapable of distinguishing between military and civilian targets, against civilians fleeing or seeking shelter from conflict. In the past, the frequent use of mortar and artillery shells during conflicts with ethnic groups has often led to attacks on civilian areas and high numbers of injuries and deaths among civilians. In its effort to respond to armed resistance forces, the junta has further extended its traditional warfare by aerial bombings with an excessively high rate of targeting civilian sites.

CRIMES AGAINST HUMANITY RISK FACTOR 12:

SIGNS OF A PLAN OR POLICY TO ATTACK ANY CIVILIAN POPULATION

Risk Factor 12 identifies “facts or evidence suggestive of a State or organizational policy, even if not explicitly stipulated or formally adopted, to commit serious acts of violence directed against any civilian population”.²³⁷ As well as being widespread and systemic, the commission of crimes against humanity requires a State or organizational policy to commit an attack. Such a plan does not necessarily have to be explicitly stated but can be deduced within the overall environment of conducive circumstances. Inferred from ‘the totality of circumstances.’ The early detection of such circumstances and thus identification of a plan contributes to the ability to respond early and appropriately. Of grave concern in Myanmar are signs of state-facilitated violence against civilian populations, most notably against political dissidents and anti-junta resistance. Widespread patterns of violence across the country – though mainly concentrated in the north – coincide with civilian targeting as a key component of military operations in Myanmar.

Indicators 12.5 ('Preparation and use of significant public or private resources, whether military or other kinds') and 12.7 ('Preparation or mobilization of armed forces en masse against civilian populations')

Security forces under the authority of the Tatmadaw have been deployed in large numbers to crack down on protests that have sprung up across Myanmar since the 2021 coup, including in the country's largest cities Yangon and Mandalay. According to Amnesty International, the military forces deployed in cities and towns “are increasingly armed with weapons that are only appropriate for the battlefield”.²³⁸ As described under Indicators 7.3 and 7.4, the Tatmadaw has concentrated its current scorched earth campaign to areas with strong opposition but also high presence of civilians and civilian sites, most notably in Sagaing Region. Increased supply flows of heavy weaponry from China, Russia and Serbia has been taking place alongside reports of a military campaign to ‘kill all, torch all’, a tactic which does not discriminate between military targets and civilians and has in the past led to the destruction of entire villages including humanitarian sites.

Indicators 12.8 ('Facilitating or inciting violence against the civilian population or protected groups, or tolerance or deliberate failure to take action, with the aim of encouraging violent acts') and 12.9 ('Widespread or systematic violence against civilian populations or protected groups, including only parts of them, as well as on their livelihoods, property or cultural manifestations')

CRIMES AGAINST HUMANITY Risk Factor 12:

SIGNS OF A PLAN OR POLICY TO ATTACK ANY CIVILLIAN POPULATION

In response to the coup, armed soldiers and police have been deployed a shoot to kill strategy, which the military administration has failed to condemn or taken any measures to stop, indicating that these tactics being authorised by the SAC. As described under Indicator, the passing of new legislation has authorised security forces to loot and destroy civilian properties without consequences of accountability.

Indicator 12.10 ('Involvement of State institutions or high-level political or military authorities in violent acts')

The violent crackdown of protestors and the excessive use of force against political opponents and resistance forces has been carried out by the Tatmadaw, who since the military coup have claimed power and announced itself to be the legitimate government of Myanmar until the conduct of new election in August 2023. As early as 3 February, just two days after the coup, police officers were instructed to fire at protestors, many of them have fought alongside security forces to suppress anti-junta resistance forces. National human rights institutions or the judiciary has not addressed the situation or sought to investigate severe human rights violations (see Risk Factor 3).

WAR CRIMES Risk Factor 13

SERIOUS THREATS TO THOSE PROTECTED UNDER INTERNATIONAL HUMANITARIAN LAW

Risk Factor 13 identifies “conflict-related conduct that seriously threatens the life and physical integrity of those protected under international humanitarian law”.²³⁹ By definition, the commission of war crimes can only occur within the context of an armed conflict. While a majority of internal ethnic conflict between the military and EAOs had severely decreased under the efforts of the peace process, the military coup and the violent response against protestors has reignited long-standing conflict between ethnic armed groups and the military and caused new violent conflict with armed anti-junta resistance forces. At the time of writing, six indicators are pertinent. Of grave concern is the nature and means of violence employed by the Myanmar military during its encounters with ethnic armed groups and armed resistance forces. These measures are disproportionate, indiscriminate and undermine the rights of those protected under humanitarian law during incidences of armed conflict. Highly problematic too is the continued blocking of humanitarian assistance to those affected by conflict, including civilians and civilian villages which have been targeted as part of the military’s scorched earth campaign.

Indicator ('13.1 Fragmentation of parties to the conflict or disintegration or absence of chains of command within them')

Myanmar’s landscape of armed groups has since its independence been characterised by a high level of fragmentation among ethnic armed groups and armed militias which either sided with the Tatmadaw or fought against it and against one another. In addition, as described under Indicator 1.1, the formation of anti-junta resistance forces in response to the military coup initially lacked any form of central command structure: many civilians under the CDM or former peaceful protestors took up arms and formed local defense groups in response to the violent attacks by security forces or joined pre-existing armed militias opposing the military. Although initially feared, many EAOs who in the past had sided with the Tatmadaw did not begin to re-engage with the military after the coup. In contrast, many ethnic armed groups responded to the coup with attacks on military positions and supply routes and sent support to protect peaceful protestors. When the PDF eventually began to unite forces under a single command structure, it succeeded in consolidating the activities of many local defense groups and allied EAOs, such as the KNLA and the KIA. Since the coup, there have been reports of individual members of the security forces and law enforcement, who have been involved in the violent repression of protests, lay down their arms and walk away to join the opposition.

Indicator 13.6 ('Adoption of measures that severely curtail the rights of those protected under international humanitarian law, including those aligned or perceived as aligned with opposing parties but not taking active part in hostilities')

The excessive and indiscriminate warfare tactics used by the Tatmadaw to respond to armed resistance forces, including the PDF, as well as EAOs and armed militia opposing the military, has since the coup consistently been applied to attack non-military targets, such as peaceful protestors, political dissidents, civilians in villages and townships under attack as well as humanitarian staff and infrastructure in their pursuit to eradicate any form of political opposition or forces challenging the rule of the Tatmadaw. As mentioned under Indicator 2.1, the Special Rapporteur for Myanmar first asserted in his annual report to the UN General Assembly on 2 September 2021 that the indiscriminate attacks against civilians, the shelling of towns and villages and the murder, torture and detention of political opponents and civil society members by the military meet the threshold of [...] war crimes [...].²⁴⁰

WAR CRIMES RISK FACTOR 13

SERIOUS THREATS TO THOSE PROTECTED UNDER INTERNATIONAL HUMANITARIAN LAW

Although to a much lower degree, there have also been reports of bombings and arson attacks against civilian sites by non-state armed groups. As laid out in Indicator 3.7, the NUG in response to these attacks issued a set of ethical rules for resistance forces who lack training and awareness on international humanitarian legal principles, which among other provisions explicitly prohibited attacks on schools, medical facilities and other civilian targets, which resulted in a decline of attacks on schools.

Indicators 13.7 ('Evidence of plans or discourse which reveals a threat of or incitement to violence against those protected under international humanitarian law, including as a means to spread terror, intimidate, demoralize, show military strength, provoke displacement, or as preliminary to further violence'), 13.9 ('Evidence of preparation of personnel and logistics enabling the transportation, movement or confinement of large numbers of people, or the conducting of medical experiments') and 13.17 ('Threats or orders of warfare without concessions or where there would be no survivors')

The recent developments in Sagaing Region which have seen a tremendous increase of military presence and excessive deployment of security personnel and heavy weaponry confirm reports about plans by the military to intensify its scorched earth campaign to respond to the high number of armed resistance forces in the region (see Indicator 1.1). This demonstration of military strength in combination with a violent military rhetoric threatening a 'kill all, torch all' tactic of all political opposition highly predicts further escalations of violence. Evidently, the military's campaign has – inherently to fulfilling its purpose – not spared the deliberate targeting of civilians in villages and townships as well as humanitarian infrastructure, both protected under international humanitarian law.

13.8 ('Evidence of conduct interfering with or impeding delivery or access to supplies, facilities, equipment, objects or medical or humanitarian support indispensable to the survival of those protected under international humanitarian law') and 13.12 ('Refusal to acknowledge detentions or places of detention or to allow visits by delegates of the International Committee of the Red Cross')

In his most recent report to the UN HRC on the situation in Myanmar, the Special Rapporteur pointed to credible evidence that the Tatmadaw have been intentionally obstructing the delivery of humanitarian aid. Accordingly, junta representatives have ordered village leaders to refuse aid from international NGOs without authorisation, while humanitarian delivery has been slowed down by checkpoints along transportation routes and 'invasive searches' of delivery staff, the confiscation and destruction of delivery goods including medicine and food, as well as arrests and detainment of NGO staff. Studies have recorded 128 attacks on health infrastructure and 286 arrests of local health workers as well as the killing of 30 health workers since the coup. Notably, humanitarian workers providing medical aid to opposition groups have faced the most acute threats and been subject to arrests, detention, torture and sexual violence. The imposition of bureaucratic hurdles and travel restrictions as well as long delays in the authorisation of travel of international humanitarian staff posed further difficulties on the ability of humanitarian organisations to provide urgent and much needed aid.²⁴¹

Indicator 13.16 ('Threats or appropriation, seizure, pillaging or intentional destruction or damage of civilian objects or property that belong, represent or are part of the cultural, social or religious identity of those protected under international humanitarian law, unless used for military purposes')

New laws passed after the military coup have provided the legal space for police and security forces to conduct arbitrary search warrants and seizure of private property of any civilian households and businesses without being held accountable (see Indicator 3.1). Incidents of security forces looting private residences, shops and businesses and the theft of personal possessions, including money, valuables, food as well as technical devices have been reported (see Indicators 2.8 and 11.1). As part of the military operations, many civilian sites, including schools, administration offices, medical facilities, private houses and shops have been destroyed.

Risk Factor 14 refers to "conflict-related conduct that threatens the protection provided by international humanitarian law to humanitarian assistance or peacekeeping personnel not taking direct part in hostilities".²⁴² As such, Risk Factor 14 analyses the extent to which those afforded specific protection under international humanitarian law – persons working humanitarian assistance or peacekeeping missions – are excluded from hostilities. A set of indicators present an opportunity to assess the likelihood of attacks against this groups which, if commissioned, may constitute war crimes. The presence of three Indicators relate to ongoing attacks by warring parties against civilian and humanitarian individuals and objects as well as severe restrictions in the access and delivery of humanitarian services, both constituting severe violations of human rights and humanitarian law committed in the current conflict.

RISK FACTOR 14 WAR CRIMES

SERIOUS THREATS TO SERIOUS THREATS TO HUMANITARIAN OR PEACEKEEPING OPERATIONS

Indicator 14.5 ('Interference, limitation or prohibition of access or movement of humanitarian or peacekeeping operations or their personnel')

As described under Indicators 13.8 and 13.12, the movement and delivery of humanitarian aid by local and international humanitarian organisations and health agencies has been severely restricted or obstructed by the military. Following the denial of access to thousands of political opponents arrested and detained since the military coup, in June 2021 the President of the ICRC personally met with Min Aung Hlaing to urge the military to allow the organisation access to prisons to provide medical treatment and other humanitarian aid (see Indicator 6.4).²⁴³ These severe restrictions follow a similar pattern of behaviour by the military since the clearance operations committed in Rakhine State, which has until today led to refusal or limited and control grant of access by international humanitarian organisations to detainment villages and isolated communities of displaced Rohingya in Rakhine State. Since the coup, these restrictions have been further increased and put displaced Rohingya into a dire humanitarian situation without access to food, clean drinking water and health care (see Indicator 1.3).

Indicator 14.8 ('Attacks against locations in close proximity to humanitarian or peacekeeping operations and personnel, or on the routes taken by them during their activities') and 14.10 ('Disrespect, threats or increase in attacks to objects, property or persons using the distinctive emblems of the Geneva Conventions or of other humanitarian or peacekeeping operations')

On 24 December 2021, attacks by the military outside Moso village in Kayah State against a group of civilians and humanitarian workers led to the killing of women, children and two staff members of the international humanitarian organisation Save the Children. According to state media, the military had considered the group to be "terrorists with weapons". The attack constitutes one of many the military has conducted as part of its scorched earth campaign in order to eliminate resistance forces, especially in areas such as Kayah State where high numbers of pro-democracy rebels and armed forces are present.²⁴⁴ In response, humanitarian organisations and the UN have urged for investigations into the attacks.

As described under Indicators 13.8 and 13.12, humanitarian workers have been subject to 'invasive searches' at checkpoints set up by the military along humanitarian transportation routes, confiscation and destruction of delivery goods including medicine and food, as well as arrests and detainment. Reports provided to the UN Special Rapporteur have provided credible evidence of attacks on humanitarian targets such as hospitals,²⁴⁵ and attacks against local health and humanitarian workers, including arrests, torture and sexual violence.²⁴⁶

CONCLUSION AND RECOMMENDATIONS

The preceding analysis has evaluated the situation in Myanmar through the application of the UN Framework of Analysis for Atrocity Crimes. The Framework states that the more risk factors and Indicators present, the more likely are the risk of atrocities. Assessing these factors must, however, take place within a broader understanding of the political, historical and cultural context of a state.

Decades of systemic and systematic human rights violations and past incidents of mass atrocities remain unaddressed in a State that lacks strong and independent accountability mechanisms and human rights frameworks and ultimately, the willingness to address impunity and injustice. Institutionalised discrimination and oppression of ethnic minority groups, failed peace talks among fragmented parts of the population, and military influence and corruption permeating all systemic levels have produced and maintained a climate conducive to further rights violations and atrocities. In this climate, the outrage over the military coup by a largely young civil society - frustrated by a slow and eventually interrupted democratic peace process, a relapse of the economy into a crippled state, and years of suppression of their fundamental freedoms - almost seems inevitable. Just as inevitable seems the brutal and excessive response of a military whose historical record has been defined by the commission of severe human rights violations and atrocities and whose resistance to a democratic transition of the country indicates its ambition to hold onto power, no matter the sacrifice.

The analysis found that Indicators pertaining to all fourteen Risk Factors are currently present in Myanmar. It reveals that the Risk Factors of most pertinent concern and urgency are the General Risk Factors 1, 3, 4, 5 and 7 and the Specific Risk Factors pertaining to Crimes Against Humanity and War Crimes. These Risk Factors are mainly linked to the disputes over legitimate State power following the military coup in 2021 and the formation of an armed opposition and civilian resistance movement, resulting in the escalation of violence between the Tatmadaw, ethnic armed groups and anti-junta resistance forces and the excessive use of force by the military in its efforts to suppress all forms of political dissent challenging its power. These Risk Factors, among others, should continue to be monitored in a current environment of fast-paced and partly unpredictable political developments.

As such, recent as well as ongoing violations of international human rights and humanitarian law committed in Myanmar already evidently amount to the commission of crimes against humanity and war crimes. While the Framework primarily serves as an early warning mechanism to identify the risk of atrocity crimes before they occur, it also serves as an insightful mechanism to provide the methodological understanding as to how and why current rights violations and atrocities developed, where they originated from, and which forces and circumstances further fuel and promote their continuation. In this regard, the above analysis as well as the subsequent list of customised policy recommendations offer a pathway to understand which measures may be appropriate to respond to current violations and to prevent their continuation and further escalation.

RECOMMENDATIONS FOR THE GOVERNMENT OF MYANMAR	
1	Give immediate and unequivocal orders to all security forces to halt attacks on the people of Myanmar, including violent responses to protestors, refrain from human rights violations and violations of humanitarian law.
2	Immediately and unconditionally release all political detainees, including senior members of the civil government.
3	Suspend interruptions in communication services and ensure the provision of basic public services and infrastructure, such as electricity.
5	Allow unimpeded access of humanitarian aid to people in need, including to members of the armed resistance forces and internally displaced people, and facilitate the delivery of humanitarian assistance by national and international aid organisations.
6	Take immediate steps to implement ASEAN's Five-Point Consensus, including engaging in a dialogue with democratic forces, and engage with regional actors to find a peaceful solution to the political situation.
7	Cooperate fully with the UN and international accountability mechanisms, including the Special Rapporteur, the Special Envoy on Myanmar, the IIMM and the ICC.
8	Revoke new legislation passed since the coup which infringes on the populations' basic rights and freedoms, and put an end on arbitrary arrests, detention and seizure of private possessions. Respect the exercise of the rights to freedom of expression, assembly and association.

9	Ensure the safe, dignified and voluntary return of internally displaced people and people who have fled to neighbouring States, including members of the Rohingya population and provide necessary humanitarian aid throughout the repatriation process.
10	Ensure a comprehensive, independent and credible investigation into allegations of human rights violations, including those amounting to mass atrocities, and take decisive and necessary legal steps to hold identified perpetrators accountable.
11	Initiate legal steps to revoke or amend existing oppressive and discriminatory legislation, including the Citizenship Law and the Race and Religion Protection Laws.
12	Undertake constitutional reforms to enshrine civil and political rights in adherence with international human rights law.
13	Identify and implement long-term measures to address the underlying causes of inter-ethnic tensions and conflict and identity-based discrimination, such as <ul style="list-style-type: none"> • Establishment of new laws prohibiting hate speech, incitement of violence • Support local conflict prevention and reconciliation processes, such as programs promoting inter-ethnic and inter-religious dialogue • Provision of adequate reparations and compensation to victims of past identity-based discrimination and conflict • Provision of development aid for reconstruction and rehabilitation processes in affected communities and regions.
14	Ratify relevant international human rights treaties.
15	Appoint an R2P Focal Point to promote and coordinate atrocity prevention efforts.

RECOMMENDATIONS FOR ASEAN

1	Utilise diplomatic strategies to encourage the military junta to immediately halt violence and ensure the protection of civilians; continue to coordinate efforts in shaping a concerted regional response to the situation in Myanmar and exert more pressure on the military to comply with the Five-Point Consensus, which it has not implemented over the last two years since the Summit of Leaders in Jakarta in April 2021.
2	Provide mediation to the opposing political parties. Under the current chairmanship of Indonesia, the ASEAN Special Envoy should engage in talks with both the junta, the NUG, EAOs, and the Rohingya community in pursuit of a political settlement of the Myanmar crisis.
3	Continue to exclude and suspend the participation of the junta's State Administration Council from ASEAN summits and other regional fora in the absence of concrete actions by the military to stop the violence and fully implement in the Five-Point Consensus.
4	Support efforts by the International Criminal Court and the International Court of Justice to hold the Myanmar military accountable for past atrocities before the February 2021 coup as well as prosecute the junta officials and their supporters by filing additional criminal charges against them in the aftermath of the coup.
5	Assist the government in taking steps to ensure the coordinated safe and voluntary return of displaced people, including refugees in Bangladesh and other neighbouring States.
6	ASEAN should not recognise the results of any elections organised by the junta that excludes the participation of the NLD and other democratic forces opposed to the coup.

RECOMMENDATIONS FOR CIVIL SOCIETY ACTORS

1	Continue to raise international awareness on the human rights situation in the country through publicly accessible fora and communication channels, including social media.
2	Urge the military junta to uphold its responsibility for the protection of civilians and access to humanitarian aid and advocate for mechanisms to prevent the commission of severe human rights violations and hold perpetrators accountable.
3	Engage with local and national authorities where possible, make use of informal ties to and deep understanding of local ethnic communities and offer provision of information, advice and expertise on the formation of legal and policy measures and programs for conflict prevention, inter-ethnic dialogue, inclusion and reconciliation.
4	Support inter-community initiatives and programs to promote dialogue and local ownership in reconciliation processes.

5	Advocate for the amendment or revocation of discriminatory laws and offer expertise and support in the drafting and implementation of international human rights standards into national legal frameworks.
RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY	
1	All UN member states should continue to utilise peaceful diplomatic means to urge the military to uphold its responsibility to protect civilians and vulnerable groups and to stop the severe violations of human rights and humanitarian law and to cooperate with the UN.
2	The UN Special Envoy on Myanmar, Noeleen Heyzer, should continue to collaborate with the ASEAN Special Envoy and engage in talks with both the junta and the NUG.
3	All UN member states and regional organisations should impose further political and economic sanctions, especially on gas and oil revenues.
4	All UN member states should not diplomatically recognise the military junta as the legitimate government of Myanmar and instead, support and recognise the NUG as a trusted source and partner and as the sovereign representative of the people of Myanmar.
5	China, Russia, Pakistan, Serbia, and India must immediately stop the transfer of weapons to Myanmar's military; all member states should prevent the flow of arms into Myanmar.
6	The UN Security Council should <ul style="list-style-type: none"> (1) impose an immediate and comprehensive arms embargo to prevent the flow of arms into Myanmar (2) impose targeted economic sanctions on the Myanmar military and its leaders (3) refer the situation to the ICC to enable the Court to exercise jurisdiction over crimes committed in Myanmar.
7	All UN member states and regional organisations to support ASEAN as a mediator with the military junta and encourage ASEAN to adopt more hard measures if the junta continues to defy international calls for ending the violence and fails to implement the Five-Point Consensus.
8	Foreign companies with business operations linked to Myanmar's military should immediately terminate collaboration.
9	Provide humanitarian assistance to people in conflict-affected areas and to internally displaced people in Myanmar as well as to refugees in Bangladesh and Thailand. Demand the unimpeded access of humanitarian aid to affected areas.
10	Support national efforts to investigate human rights violations and take appropriate steps towards accountability through an independent, transparent and credible commission of enquiry.
11	Support international efforts to collect evidence and investigate violations of international human rights and humanitarian law, including the work of the IIMM, the FFM, the ICC and the ICJ.
12	Support and advocate for the voluntary, safe and dignified return of displaced people.

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8 November 2020. General elections are held in Myanmar. The NLD under Aung San Suu Kyi wins elections in a landslide, winning 80 per cent of contested seats compared to less than 7 per cent for the main opposition party, the military-backed USDP.

26 January 2021. The Tatmadaw repeats demands for an investigation into alleged voter fraud during the election and warned to 'take action' if investigations were not taken seriously. The military did not decline ruling out fears of a planned coup.

28 January 2021. Myanmar's election commission officially rejects allegations of vote fraud in the election and claims that no errors sufficiently impacted the credibility of the vote.

1 February 2021. Hours before the newly elected parliament was due to convene for the first time, members of the military detain State Counsellor Aung San Suu Kyi, President Win Myint and other senior political figures. NLD offices are raided, and documents and computers seized. Commander-in-Chief Min Aung Hlaing declares his State Administrative Council as the legitimate government and imposes a year-long state of emergency.

2 February 2021. First signs of protests emerge. People bang pots and pans and honk car horns to express outrage about the coup.²⁴⁷

3 February 2021. Mass civil disobedience is declared and hundreds of public servants, including government staff, teachers and doctors, abandon their workplaces.²⁴⁸

5 February 2021. 300 politicians from the NLD announce the creation of the Committee Representing Pyidaungsu Hluttaw to carry out parliamentary functions. They urged domestic businesses to cut ties with the Tatmadaw and asked the international community in a letter to the UN to impose targeted sanctions against the military.²⁴⁹

6 February 2021. The military blocks social media outlets such as Twitter and Instagram. Shortly after, it imposes a completely shutdown of the internet.

9 February 2021. First accusations against security forces of using excessive and lethal force against protesters in Naypyidaw are reported. The military bans gatherings across 10 regions.

11 February 2021. The United States imposes a first round of sanctions targeting military officials who are considered responsible for staging the military coup.²⁵⁰

12 February 2021. Tens of thousands of people in Yangon and elsewhere in Myanmar join the anti-coup protests.

13 February 2021. The junta suspends laws which would constrain security forces from detaining suspects and searching property.

22 February 2021. Over one million protestors take to the streets in one of the largest protests in the country.

26 February 2021. UN ambassador, Kyaw Moe Tun who has been delegated by the NLD government, calls for the "strongest possible action" against the military regime and ends his UN speech with the three-fingered salute adopted by the protesters. A few days later, the coup leaders announce he has been fired for "betraying" the country. Kyaw Moe Tun continues to head the Permanent Mission, the UN has kept his credentials.

10 March 2021. The UN Security Council issues a Presidential Statement, strongly condemning the violence against peaceful protestors and calling on the military to reverse the coup, to exercise utmost restraint and to allow humanitarian access.

11 March 2021. The UN Special Rapporteur on Myanmar first suggests that the military's violence against peaceful protestors may amount to crimes against humanity as they appear to be committed as part of a coordinated campaign directed against a civilian population, in a widespread and systematic manner.

22 March 2021. The European Union announces targeted sanctions, including travel bans and asset freeze, against individual military officials considered responsible for staging the military coup.²⁵¹

27 March 2021. The Russian Deputy Defense Minister attends the Armed Forces Day and emphasises Russia's efforts to seek closer social and economic ties with Myanmar. At least 160 protestors get killed.²⁵²

31 March 2021. The CRPH declares the 2008 Constitution void and presents an interim constitution, the Fed-

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eral Democracy Charter. The Charter establishes a National Unity Government (NUG) with the aim to join forces among junta opponents and provide an alternative agenda for a pro-democratic post-junta rule.

16 April 2021. The CRPH announces the formation of the National Unity Government and appoints its cabinet.

24 April 2021. ASEAN members negotiate a five-point consensus plan with the Tatmadaw, which includes an immediate halt to all violence, an engagement by all conflicting parties in constructive dialogue to seek a peaceful solution under the mediation and assistance of an ASEAN Special Envoy, as well as the provision of humanitarian assistance from ASEAN.

5 May 2021. The NUG forms the People's Defense Force as the armed wing under the NUG. In response, the Tatmadaw publicly declared the NUG and the PDF terrorist organisations and charged their members with high treason.

3 June 2021. The president of the ICRC visits Myanmar and met with General Min Aung Hlaing to discuss the humanitarian situation and service delivery. He expresses concerns about the current humanitarian situation and pushes for a broader humanitarian access to Chin, Kachin, Kayah, Kayin, Shan and Rakhine States.

18 June 2021. The UN General Assembly issues a Resolution calling on the military to respect the November 2020 elections, release political prisoners, implement the ASEAN five-point plan, stop all violence, and allow humanitarian access.

22 June 2021. First incident of a sustained shootout between soldiers and the PDF is reported.

1 August 2021. Aung Hlaing appoints himself Prime Minister of the SAC and announces plan to lift the state of emergency and hold a multiparty general election in August 2023, given the condition that the country is found in a state of 'stability and peace'.

18 August 2021. The non-profit Assistance Association for Political Prisoners reports a death toll of 1,000 persons since the military coup.

2 September 2021. In his annual report to the UN General Assembly, the Special Rapporteur asserts that the indiscriminate attacks against civilians, the shelling of towns and villages and the murder, torture and detention of political opponents and civil society members by the military meet the threshold of crimes against humanity and war crimes under international law.

7 September 2021. The NUG declares a 'defensive war' on the Tatmadaw and urges the people to revolt against the military junta all across the country.

28 October 2021. ASEAN excludes Myanmar from its annual ASEAN summit in response to the military's failure to implement the five-point consensus plan.

29 October 2021. The NUG forms a central command structure to consolidate the activities of many local groups and allied EAOs.

5 November 2021. The UN's Independent Investigative Mechanism for Myanmar concludes that "security forces have carried out a widespread and systematic attack on the civilian population" and "the reports of murders, sexual assaults, arbitrary detentions, enforced disappearances, torture and persecution collected by the Mechanism, if substantiated, would amount to crimes against humanity."²⁵³

6 November 2021. Aung San Suu Kyi and 15 other senior politicians are charged with "electoral fraud and lawless actions" over the November 2020 elections.

7 January 2022. Cambodia's Prime Minister Hun Sen visits Myanmar as the first foreign leader since the military coup.²⁵⁴

12 February 2022. The military holds a parade on National Union Day with hundreds of troops in the capital and announces an amnesty for over 800 prisoners.

17 February 2022. ASEAN members reiterate their joint commitment to the five-point consensus plan and urge the military to ensure its implementation.

7 March 2022. Local media report on potential plans by the military to launch a "kill all, torch all" campaign in Sagaing Region in order to allegedly eradicate any form of resistance in the region before the annual Armed Forces Day on 27 March.

16 March 2022. In his latest report to the HRC, UN Special Rapporteur confirms the death of at least 1,600

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civilians and the displacement of half a million people caused by the military since the coup. He stresses that severe human rights violations committed since the coup constitute crimes against humanity and/or war crimes and calls for accountability and justice.

20-23 March 2022. The ASEAN Special Envoy makes his first official visit to Myanmar to engage with representatives of the military government, including Min Aung Hlaing, and discuss the political situation in Myanmar.

1 January 2023. Indonesia takes over as Chair of the ASEAN and convenes as special meeting of foreign ministers to discuss the Myanmar crisis. The ASEAN foreign ministers agreed to uphold the Five Point Consensus as agreed to by Min Aung Hlaing in April 2021 and called for the junta leader to comply with the agreement.

31 January 2023. In his conference paper for the UN Human Rights Council's next session in Geneva in February and March 2023, the UN Special Rapporteur on Human Rights in Myanmar asserted that the junta's State Administrative Council (SAC) controls less than half of the country's territory since the coup, with very limited access in Chin and Rakhine States, as well as receding ability to exercise control over Kayin and Kayah States

4 February 2023. The junta extends emergency rule for another six months and martial remains in effect in 37 townships mostly in central Myanmar where the military faces strong armed resistance from the combined forces of the PDF and EAOs.

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