

REDRESS

Ending torture, seeking justice for survivors

**GLOBAL
SURVIVORS FUND**

FOR AND WITH SURVIVORS OF
CONFLICT-RELATED SEXUAL VIOLENCE

MYANMAR STUDY ON OPPORTUNITIES FOR REPARATIONS FOR SURVIVORS OF CONFLICT- RELATED SEXUAL VIOLENCE

Beyond Survival



MYANMAR



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Myanmar is an ethnically diverse country, with more than 135 ethnic groups.
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EXECUTIVE SUMMARY

Myanmar is an ethnically diverse country, with many ethnic groups which have different identities, religions, languages, histories, traditions, and political aspirations. Myanmar gained independence from British rule in 1948. When British and Burmese leaders negotiated the handover of the government, divisions emerged between various political groups in the country. Though the Constitution adopted in 1947 provided for the protection of the political autonomy and cultural identity of ethnic minorities, the newly created Union of Burma essentially became a Bamar regime. This resulted in the emergence of ethnic armed organisations (EAOs). Seeking increased autonomy, independence, or federalism, almost all of these groups resisted the Burman-controlled regime. In other words, “[t]he state’s inability to address ethnic minority grievances or provide adequate security to communities [...] created a literal arms race among minority groups”.¹

In 1962, the Myanmar Armed Forces, or the Sit-Tat,² seized power in a coup d’état, replacing the parliamentary government with a military junta. This marked the beginning of the political dominance of the army in the country, and its continued violent efforts to stamp out cultural diversity and ethnic minority rights. As part of the democratic reform process orchestrated to continue military rule, the Sit-Tat officially dissolved the military junta in 2011 and installed a nominally civilian government. A 2008 Constitution designed by the Myanmar military to retain its power came into force the same year.

In October 2015, a ceasefire agreement, called the Nationwide Ceasefire Agreement, was signed between the government of Myanmar and eight EAOs. Between 2012 and 2015, thousands of political prisoners were released, privately owned newspapers could operate again from the country, and the 25-year-old ban

on public gatherings of more than five people was abolished.³ In November 2015, Myanmar held its first general elections that were considered to be largely free and fair in nearly 50 years of military rule. The National League for Democracy (NLD) won the elections. However, armed conflicts persisted in ethnic areas such as Kachin and Shan States. In 2016 and 2017, the military launched violent “clearance operations” against Rohingya people in Rakhine State, committing gross human rights violations against members of the Rohingya community, resulting in an estimated 10,000 killings, the burning down of more than 400 villages, and the cross-border exodus of more than one million – mostly undocumented and legally stateless – members of the Rohingya community into Bangladesh. These acts were characterised as genocidal by the UN-backed Independent International Fact-Finding Mission on Myanmar (IIFMM).

In November 2020, general elections were held in Myanmar. The NLD won again. On 1 February 2021, the day the new members of Parliament were to be sworn in, the Sit-Tat attempted to seize power in another coup d’état, detaining the leaders of the NLD and other civilian officials, as well as opposition politicians, writers, and activists. Since the coup, the illegal military junta has conducted an ongoing campaign of violence and repression, committing gross human rights violations throughout the country, including attacks against protesters, aerial bombardment, and the burning of over 26,000 civilian structures. By September 2022, nearly one million people had been forcibly displaced. In response, popular armed resistance elements have conducted attacks on security forces, and over time some EAOs have restarted or scaled up hostilities with the military. Civilian resistance movements and new political entities have emerged in Myanmar in opposition to the illegal military junta.

1 Crisis Group Asia, ‘Identity Crisis: Ethnicity and Conflict in Myanmar’ (28 August 2020) <https://www.crisisgroup.org/asia/south-east-asia/myanmar/312-identity-crisis-ethnicity-and-conflict-myanmar> accessed 17 October 2022.

2 The Myanmar Armed Forces uses the name ‘Tatmadaw’, which literally translates into ‘Imperial or Royal Armed Forces’ with the suffix ‘daw’ or ‘taw’ denoting ‘royal’ or ‘sacred’. Myanmar people usually refer to it as ‘Sit-Tat’, meaning ‘Sit (Armed or Military), Tat (Forces)’. Accordingly, in this report the word ‘Sit-Tat’ will be used interchangeably with Myanmar military, army, and armed forces instead of the loaded term ‘Tatmadaw’. See Ye Myo Hein, ‘One Year On: The Momentum of Myanmar’s Armed Rebellion’ (Wilson Center, May 2022), 3 https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/ASIA_220519_1YearOn-BRIEF_V1r2.pdf accessed 16 September 2022.

3 ‘Timeline: Reforms in Myanmar’ (BBC, 8 July 2015) <https://www.bbc.com/news/world-asia-16546688> accessed 19 September 2022.

Women's rights and human rights civil society organisations (CSOs) have documented widespread and consistent acts of sexual violence in Myanmar for at least three decades, with UN bodies and non-governmental organisations (NGOs) contributing to this documentation in recent years. The forms of conflict-related sexual violence (CRSV) documented in Myanmar include rapes, gang rapes, mass rapes, genital mutilation, sexual slavery, forced nudity, sexual humiliation, and forced abortion. These acts are coupled with the threat or use of force, intimidation, and humiliation, including by targeting women's and girls' sexual organs. Many patterns have been repeated across decades and against different ethnic groups, including the Sit-Tat's use of rape as a tactic of war. CRSV is overwhelmingly perpetrated by members of the military and other elements of the security apparatus such as the police. Cases committed by members of EAOs have also been documented. In Myanmar, it is difficult to draw a clear distinction between CRSV and other forms of gender-based violence (GBV) given the widespread nature of both the armed conflict and GBV, and the pervasiveness of the military's control over administrative and social institutions.

The impacts of CRSV are complex and affect survivors, families, and communities in many different ways. Many victims of CRSV in Myanmar have been killed after suffering sexual violence. Those who survive endure multiple and grave physical injuries inflicted by the perpetrators when the sexual violence occurred, often resulting in pain, permanent physical disabilities, unwanted pregnancies, and sexual and reproductive health problems. Survivors also experience serious and often long-term psychological effects of GBV in all its forms, including trauma, Post-Traumatic Stress Disorder (PTSD), depression, low self-esteem, and other mental health problems. The mental health issues suffered by survivors are exacerbated by the rejection and feelings of shame that they experience due to the social stigma they face, which is tied to patriarchal attitudes and a pervasive culture of victim-blaming. Many survivors are rejected by their families and communities, losing their livelihoods and support networks and being forced to relocate. The socio-economic status of survivors of CRSV in Myanmar is greatly negatively impacted as a result of the violence they have suffered. The manifold and devastating impacts of CRSV on survivors must be understood in the context of the instability and insecurity from decades of conflict, the historical widespread poverty

and lack of public infrastructures, as well as from the current political reality and humanitarian catastrophe in Myanmar.

Many survivors are currently living in precarious situations (often in hiding or on the run) and struggling to survive. The most basic need of survivors is to see an end to the widespread violence in Myanmar, and for the security situation to improve in a sustainable way, which requires a removal of the military from politics. In addition to this, survivors' current needs include the need for safety and shelter, access to health services, access to psychological support/counselling, and socio-economic support. Many survivors of CRSV in Myanmar either have a limited awareness about reparations and the right to a remedy, and/or they do not believe that reparations are possible given the current political reality in Myanmar and the absence of rule of law.

In theory, prior to the February 2021 coup, a limited number of venues and resources were available to survivors for accessing reparations. However, survivors of CRSV had very little to no access to reparations in practice, which was only exacerbated by the coup. Myanmar has ratified some of the various core international human rights treaties and has joined relevant regional commitments. Both regional and international instruments require the State to guarantee victims of human rights violations the right to an effective remedy. Myanmar has ratified the Geneva Conventions, but has not ratified their additional protocols. It has not signed the Rome Statute of the International Criminal Court (ICC), although the National Unity Government (NUG) has recently attempted to accept the ICC's jurisdiction through a declaration. At the domestic level, the military-drafted 2008 Constitution, which is now void, did not prohibit discrimination on the basis of sexual orientation or gender, and generally intended to grant immunity from prosecution to the military, the police, and government officials. The Penal Code criminalises a number of acts relevant to CRSV, but these are outdated, not survivor-centred, and fail to meet international legal standards in many key respects.

Under the domestic legal framework that existed prior to the 2021 coup, acts of CRSV committed by state security actors were supposed to be addressed by specialised military and police courts. However, these courts are neither independent nor

impartial, and provide little or no access to justice for survivors, who are in any case reluctant to make complaints against the military due to a justified fear of reprisals. In various States in Myanmar, there are areas under EAO control, which are subject to parallel administrative (and thus judicial) systems. Some systems run by EAOs may also provide limited reparations for survivors of CRSV.

The main threats to reparations for CRSV survivors are the entrenched climate of impunity in Myanmar, and the ongoing violence and repression being carried out by the Sit-Tat. The illegal military regime has replaced judiciary, legal, security, and other key leadership posts with its own appointees, preventing its own ranks from being held accountable for crimes. To the extent that reparative assistance is available and accessible to survivors, its effectiveness may be threatened by the lack of gender sensitivity and confidentiality characteristic of some assistance projects in Myanmar. Key stakeholders with respect to reparations for CRSV survivors in Myanmar are the current NUG, which has limited capacity to implement reparations in the current context, and future (successive) democratically elected governments in the country. However, if such a future government is not adequately representative of the population – with substantive women's inclusion, and diverse ethnic and religious representation – and genuinely committed to inclusive and non-discriminatory policies and practices, this would constitute a serious threat to the development and implementation of full reparations by the State. The international community's relative lack of attention to the historic and current situation in Myanmar and corresponding lack of funding are additional challenges.

Following the coup there are no realistic opportunities for reparations provided by the State in the immediate future. Instead, one of the main opportunities for reparations is the provision of interim reparations or reparative assistance by CSOs (with the support of international donors and possibly in consultation with the NUG). The pre-existing expertise of many Myanmar CSOs, as well as the desire that many CSOs have indicated to frame their existing work as reparative and/or to implement interim reparations projects, present an opportunity for CRSV survivors to access interim reparations in the form of safety and protection support, medical care, psychological support, livelihood support, and legal assistance. Interim reparations must be

delivered in a survivor-centric manner and must not be understood as a substitute for full reparations provided by a future government.

The second main opportunity for reparations relates to the ongoing peace- and democracy-building efforts of activists, CSOs, and new political entities. As such actors advocate for a new federal democratic system to be established in Myanmar in the future, they have an opportunity to centre calls for gender equality and as part of this, to emphasise the legal obligation of the future government to provide full reparations for all CRSV survivors of all religions, ethnicities, genders, and sexual orientations, and to take measures to avoid the repetition of violence in the future.

This Myanmar Study includes key recommendations on reparations which focus on meeting the most urgent needs of survivors and highlight opportunities for relevant stakeholders to ensure the right of CRSV survivors to reparation. The illegal military junta should retract all claims to control the State and make way for the establishment of a new, civilian-led, democratic and democratically elected federal system in Myanmar. In the meantime, as Myanmar is a listed party per the UN Security Council mandated CRSV agenda and the 'Joint Communiqué of the Republic of the Union of Myanmar and the United Nations on Prevention and Response to Conflict-Related Sexual Violence' signed on 7 December 2018, the military should cease its commission of CRSV and immediately take the preventive measures outlined therein.

Countless protesters, activists, and members of civil society have been calling for a truly representative federal democratic system to be established in Myanmar. Such a future government will be responsible for providing full reparations to CRSV survivors, and therefore should establish the necessary mechanisms to ensure that all survivors of all ethnicities are able to voice their needs and priorities and meaningfully participate in reparation efforts. In addition, it must ensure that all human rights violations including CRSV are investigated, perpetrators prosecuted and adequately punished and that reparations are provided to victims and survivors. Bearing in mind that the administrative and judicial systems in place in EAO-controlled areas vary greatly, EAOs should consider taking measures to hold perpetrators of CRSV to account, to ensure that administrative and

judicial procedures in place for cases of CRSV centre survivors and their voices throughout the procedures, and to ensure that compensation awarded to survivors is proportionate to the harm suffered. New political entities in Myanmar, such as the Committee Representing Pyidaungsu Hluttaw (CRPH), the NUG, and the National Unity Consultative Council (NUCC), are encouraged to consistently promote feminist leadership and gender-inclusive politics, facilitate the active participation of CRSV survivors in efforts to design relevant policies including transitional justice processes, and specifically advance the development of reparations policies and frameworks.

Actors in the humanitarian and development sectors should continue mainstreaming gender equality and inclusion in their work. UN special representatives, rapporteurs, mechanisms and

agencies must all improve strategic coordination to ethically document, report, and effectively respond to widespread CRSV in Myanmar, including by improving their accessibility and relevance to CSOs and the general public in Myanmar, and by adjusting documentation standards to accord with the realities in Myanmar. Finally, the international community has an important role to play in supporting Myanmar CSOs with quality long-term flexible funding and technical support for reparations initiatives; survivor solidarity networks; ethical, safe and relevant human rights documentation and accountability efforts; and transitional justice projects. It is critical that donors adapt to the needs of Myanmar organisations, including by accounting for the needs of CSO staff members for security and ongoing psychological support as they work to ensure the rights of CRSV survivors to redress.



LIST OF ACRONYMS

AAPP	Assistance Association for Political Prisoners	IDP	Internally Displaced Person
AJAR	Asia Justice and Rights	IIMM	Independent Investigative Mechanism for Myanmar
ARSA	Arakan Rohingya Salvation Army	IIFMM	Independent International Fact-Finding Mission on Myanmar
ASEAN	Association of Southeast Asian Nations	KHRG	Karen Human Rights Group
CAT	Convention Against Torture	KWO	Karen Women's Organisation
CDM	Civil Disobedience Movement	LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women	MARA	Monitoring, Analysis and Reporting Arrangements
CERD	International Convention on the Elimination of All Forms of Racial Discrimination	ND-Burma	Network for Human Rights Documentation – Burma
CRC	Convention on the Rights of the Child	NGO	Non-Governmental Organisation
CRPH	Committee Representing Pyidaungsu Hluttaw	NHRC	National Human Rights Commission
CSO	Civil Society Organisation	NLD	National League for Democracy
CRSV	Conflict-Related Sexual Violence	NUCC	National Unity Consultative Council
EAO	Ethnic Armed Organisation	NUG	National Unity Government
EU	European Union	OPCAT	Optional Protocol of the Convention Against Torture
GBV	Gender-Based Violence	PDF	People's Defence Force
GSC	General Strike Committee	PTSD	Post-Traumatic Stress Disorder
GSCN	General Strike Committee of Nationalities	RWG	Reparations Working Group
GSF	Global Survivors Fund	SAC	State Administration Council
HRC	United Nations Human Rights Council	SGBC	Sexual and Gender-based Crimes
HRD	Human Rights Defender	SGBV	Sexual and Gender-Based Violence
ICC	International Criminal Court	SOGIESC	Sexual Orientation, Gender Identity and Expression and Sex Characteristics
ICCPR	International Covenant on Civil and Political Rights	SWPA	Senior Women's Protection Adviser
ICESCR	International Covenant on Economic, Social and Cultural Rights	UN	United Nations
ICJ	International Court of Justice	UNFPA	UN Population Fund
		WLB	Women's League of Burma



I. BACKGROUND AND METHODOLOGY

1. About the project, project partners, authors, and acknowledgments

1.1. About the project

As part of a Global Reparations Study, the REDRESS Trust, in collaboration with the Global Survivors Fund (GSF), have conducted a study to identify the reparations needs of survivors of conflict-related sexual violence in Myanmar, as well as the opportunities for delivering reparations to survivors through judicial and administrative processes. This study presents and analyses existing information on survivors' perceptions and expectations for reparations, and offers practical, concrete, and context specific recommendations to policy-makers and other relevant actors at national and global levels to inform the design and delivery of survivor-centred reparations in Myanmar.

This Myanmar Study also seeks to establish whether survivors of CRSV have already received any form of assistance and/or reparation through former government programmes or from civil society initiatives, and if so, what lessons can be learned from those experiences to inform the design and delivery of comprehensive reparations in the future, including the potential delivery of interim reparative measures by the GSF. As an objective in itself, the Myanmar Study process further aims to increase the understanding and awareness of survivors' rights to reparations and to create further momentum for the delivery of meaningful survivor-centred reparations to CRSV survivors in Myanmar.

The Myanmar Study is part of a global study on reparations (the "Global Reparations Study") launched by the GSF in 2020, which focuses on the status of and opportunities for reparations for survivors of CRSV in over 20 countries. The Global Reparations Study is a multi-actor effort led by the GSF in collaboration with over 40 local and international partners,

including survivors' networks and groups. It seeks to make recommendations for further action based on survivors' needs and aspirations and to identify potential support available among key actors and concrete action to enhance access to reparations for CRSV survivors around the world.

1.2. About project partners



Ending torture, seeking justice for survivors

REDRESS Trust is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture and provide effective reparations. As part of its Discrimination programme, REDRESS works to push for accountability and reparations for victims of conflict-related sexual violence. For more information, visit www.redress.org.



The **Global Survivors Fund** was launched in October 2019 by Dr Denis Mukwege and Ms Nadia Murad, Nobel Peace Prize laureates in 2018. Its mission is to enhance access to reparations for survivors of conflict-related sexual violence around the globe, thus seeking to fill a gap long identified by survivors. The GSF acts to provide interim reparative measures in situations where States or other parties are unable or unwilling to meet their responsibilities. The GSF advocates also for duty bearers, as well as the international community, to develop reparations programmes, and provides expertise and technical support to guide States and civil society in the design of reparations programmes. The GSF's survivor-centric approach is the cornerstone of its work. For more information, visit www.globalsurvivorsfund.org.

1.3. Acknowledgements

This report was drafted by a REDRESS team,⁴ a team from Three Crowns LLP⁵ and a GSF team. REDRESS is deeply grateful for the assistance of those who agreed to be interviewed and provided input in this study. Most interviewees' names and organisational affiliations are kept confidential to protect their safety and security. We are also indebted to Cate Buchanan, Polly Dewhirst and an anonymous reviewer for their in-depth review of the report and detailed feedback.

2. Methodology

2.1. Aim of the Myanmar Study

In the context of a military dictatorship, to identify what current avenues are available for advancing reparations for CRSV, what gaps between access and survivors' needs exist and how such gaps can be mitigated to ensure timely access to reparations for all survivors of CRSV.

2.2. Specific objectives of the Myanmar Study

1. Reflect to the extent possible the scope and extent of sexual violence committed during or related to the conflict periods (defined below).
2. Identify and assess legal and administrative remedies in place for awarding reparations to survivors of CRSV.
3. Identify and offer preliminary analysis on survivors' perspectives, needs and expectations in relation to reparation and interim reparative measures, based on existing research on this matter.
4. Identify gaps between current access to reparations and survivors' needs, and determine opportunities for, as well as possible challenges to, access to reparations.

5. Provide contextual recommendations for ensuring that reparations and interim reparative measures are provided to survivors of CRSV.

2.3. Study methods

This report is based on desk-based research carried out by the REDRESS and Three Crowns LLP teams, including a systematic review of relevant publications; background information about current and past patterns of conflict in Myanmar; systematic review of existing information on the scope, scale, and nature of CRSV and reparations; and analysis of legal, institutional and policy frameworks relevant for CRSV survivors. REDRESS also conducted stakeholder interviews with civil society actors – particularly ethnic women's organisations and human rights organisations, experts, and academics in and outside Myanmar.

For the purpose of this report, CRSV refers to "*rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict*".⁶ This definition is deliberately wide, to account for the contextual differences in which CRSV occurs.⁷

It is important to note that given the history and present reality of ongoing conflicts throughout Myanmar, many commentators have highlighted that the distinction between GBV and CRSV in Myanmar can be artificial in some respects, failing to capture the continuum of GBV. Where only CRSV is referenced in the report, this is not intended to obscure or deny the links between CRSV and the broader category of GBV, nor the patriarchal structures and attitudes that surely animate almost all forms of violence committed in Myanmar.

It was the intention of the GSF and REDRESS for this study to be conducted in partnership with a Myanmar CSO which would participate in the study with a focus

4 The names of the members of the REDRESS team, including the principal author of the report, are kept confidential due to security concerns. We reserve the right to re-publish this report with these names at a later date.

5 The team from Three Crowns LLP consisted of: Carmen Martinez Lopez, Vanessa Moracchini, Kimberly Larkin, Hady Gouda, YiKang Zhang, and Blair Shepherd.

6 UN Security Council 'Conflict-related sexual violence: Report of the Secretary-General' (3 June 2020) UN Doc S/2020/487, para 4.

7 See on this: Elisabeth Jean Wood, 'Conflict-Related Sexual Violence and the Policy Implications of Recent Research' (2014) 96 *International Review of the Red Cross* 457, 461 <https://international-review.icrc.org/sites/default/files/irrc-894-wood.pdf> accessed 11 February 2022.

on facilitating survivor participation and consultation. This was not possible as a result of the February 2021 coup and its aftermath.

In the absence of direct consultation of survivors, this study is based largely on interviews with many staff members of Myanmar CSOs who have worked closely with survivors of human rights violations, and several who have worked closely with survivors of GBV – including survivors of CRSV – for many years. A total of 29 interviews were conducted both in person and online.

In addition, this study draws significantly from the ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar (2016–2021)’ report published anonymously in June 2022. The ‘Unheard Voices’ report is based on interviews with 78 survivors of CRSV and of GBV committed in conflict-affected areas, as well as on interviews with 137 “key informants” (“service providers and other knowledgeable local actors”) conducted by trained staff members from local CSOs.⁸ The “overall goal of the research was to amplify the voices of survivors and key informants by recording their stories, thereby providing a more nuanced understanding of survivor experiences”.⁹

2.4. Study limitations

As discussed below, a core challenge is underreporting. This is linked to the lack of punishment of perpetrators, the silence of survivors due to fear of retaliation and stigma, and the prevailing culture of victim-blaming in Myanmar. Moreover, for survivors, it is understandably a traumatic experience to speak about CRSV, which most often puts them at further risk of stigmatisation and rejection by their communities, and may expose them to other forms of GBV over their lifetimes. The underreporting of CRSV perpetrated since the February 2021 coup in Myanmar is particularly serious, as the ongoing violence, repression, and surveillance by the military serve as strong deterrents for CRSV survivors to speak out about their experiences. The military’s restriction of movement and curtailing of

access to the internet and telecommunications pose additional barriers in this regard.

REDRESS reached out to a wide range of Myanmar CSOs and other stakeholders to request interviews as part of this study. The lack of response from some Myanmar CSOs and stakeholders may be attributable to the challenges of the current political and security situation in the country. Many CSOs, human rights defenders, and relevant experts are under significant psychological pressure and resource strain as they work to (often covertly) continue their activities and/or respond to the urgent needs of people in their communities. Myanmar CSOs and other relevant stakeholders are also exercising great caution in their communications due to the heightened surveillance by the military.

Many of the Myanmar CSOs and other stakeholders who did participate in interviews for this study are also facing all of the abovementioned challenges. Some interviewees also expressed the difficulty of considering ideas of justice and reparations at a time when the people they work with are struggling to meet their basic needs for survival.

In this context, the sample of interviewees was limited, and a disproportionate number of interviewees were located outside of Myanmar at the time of being interviewed. Representatives from a wide range of ethnic women’s organisations and human rights organisations were interviewed, though REDRESS did not receive a response from several ethnic CSOs it attempted to contact. Language barriers likely played a part in this, as REDRESS had limited access to resources for translation and interpretation in Burmese, and was not able to communicate in other languages spoken throughout Myanmar.

Myanmar is home to more than 135 different ethnic groups.¹⁰ Though this study has sought to reflect perspectives from a range of different ethnic organisations, countless ethnic groups are not explicitly mentioned or represented. Generalisations are made in this study that may not apply, or may apply to a lesser degree, to different individuals or groups.

8 Anonymous, ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar’ (June 2022), 8. Originally designed to collect qualitative data on CRSV in five States – Kachin, Karen (or Kayin), Mon, Shan, and Rakhine – from 2016 to 2021, the project was later expanded to capture CRSV in Yangon following the February 2021 coup.

9 Ibid.

10 REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 3.

It is important to note also that this study includes only one interview with a representative of a Myanmar CSO explicitly working with the LGBTIQ+ community. This reflects the fact that there are relatively few such CSOs from Myanmar, as the experiences and voices of members of the LGBTIQ+ community are often silenced or obscured.

As discussed above, the GSF and REDRESS intended for this study to centre survivor participation and

consultation. Given that this was not possible, this study draws on the views of the representatives of Myanmar CSOs and other stakeholders who were asked to convey what they believe to be the views and priorities of survivors; this provided much valuable insight. However, the fact that the findings in this study about the perceptions of survivors are based on second-hand information is an important limitation underscoring the need for further research to be conducted with diverse survivor voices at the centre.



In 1962, the Myanmar Armed Forces, the Tatmadaw, seized power in a coup.
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II. INTRODUCTION

Conflict-related sexual violence is a common feature of armed conflict and has devastating consequences for survivors. In Myanmar, as in many other conflict settings, sexual violence is endemic.

Sexual violence has grave physical, psychological, and socio-economic impacts for survivors, their families and communities. The contexts in which sexual violence have taken place in Myanmar are multiple, complex, and varied, with armed conflict ongoing in certain regions of the country for many years. Since the February 2021 coup, CRSV has escalated; it is widespread and primarily committed by the military.¹¹

There has been minimal progress in Myanmar towards redressing or mitigating the harms suffered by survivors of sexual violence and their communities. Entrenched cultures of victim-blaming and a climate of impunity exacerbate the suffering of survivors and create serious barriers for them to access justice or reparations.

This study seeks to better understand the needs of survivors, and how they can be met. It provides an analysis of the main legal, policy and practical obstacles that survivors face to obtaining reparations in Myanmar. Section III describes the scope and modalities of CRSV in Myanmar in recent years, as well as the profile of the victims and perpetrators. Section IV discusses survivors' needs, priorities, and expectations in relation to reparations, and the risks they face. In Section V, the report goes on to explore to what extent survivors have been able to access interim assistance or relief. Section VI analyses the international and domestic legal and policy frameworks relevant for the implementation of reparations to CRSV survivors in Myanmar. Section VII takes stock of the status of implementation of reparations so far, highlighting the main challenges. Section VIII explores the opportunities to secure reparations for CRSV. The last section offers recommendations to a diverse range of stakeholders on the implementation of reparations and interim measures.

¹¹ Note that the terms 'military' and 'Tatmadaw' (the longstanding official name of the Myanmar Armed Forces) are used interchangeably throughout this report. The term 'illegal military junta' is used to refer to the military *and* the State Administration Council (SAC) it established following the February 2021 coup.



III. CONFLICT-RELATED SEXUAL VIOLENCE

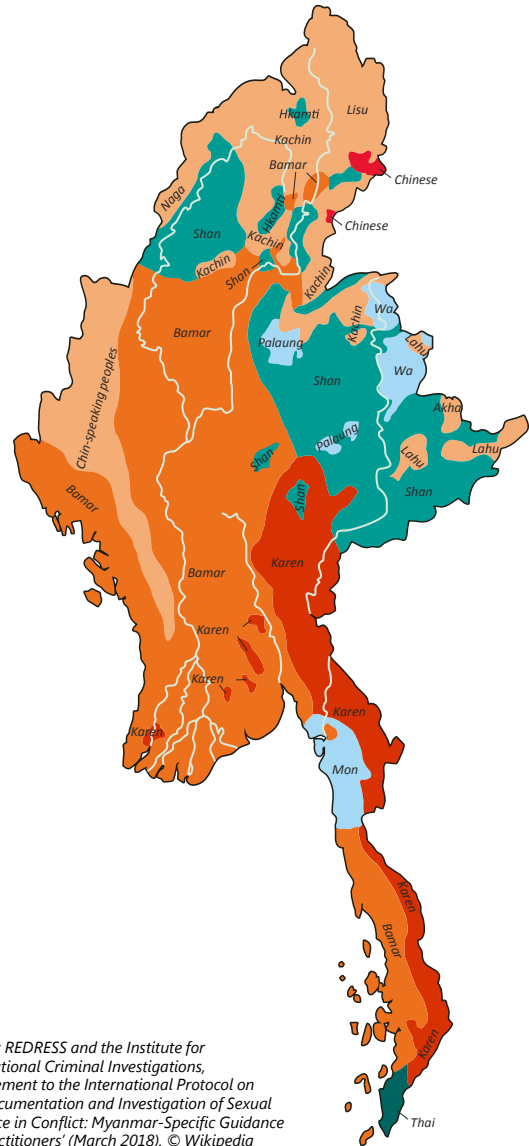
1. Context

Myanmar is an ethnically diverse country, with many different ethnic groups. The Bamar are the majority ethnic group, representing about two thirds of the population, with the other ethnic groups identified as minorities or nationalities.¹²

1.1. The independence of Myanmar

Myanmar gained independence from British rule in 1948.¹³ When British and Burmese leaders negotiated the handover of the State, divisions emerged between various political groups in the country, with ethnic minorities or nationalities determined to protect their political autonomy and cultural identity against Bamar domination.¹⁴ In 1947, Aung San, the founder of the Myanmar Armed Forces and Bamar leader, concluded the Panglong Agreement with ethnic nationality leaders, which provided for the formation of a unified State.¹⁵ The Constitution adopted later that year divided the country into seven ethnic States, and provided for the protection of the political autonomy and cultural identity of ethnic minorities.¹⁶

However, the newly created Union of Burma essentially became Bamar dominated.¹⁷ This resulted in the emergence of armed groups, known as “ethnic armed organisations” (EAOs), seeking increased autonomy, independence, or federalism.¹⁸



Source: REDRESS and the Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018). © Wikipedia

¹² REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 3.

¹³ Jessica Harriden, *The Authority of Influence: Women and Power in Burmese History* (first published 2012, NIAS Press) 143.

¹⁴ Ibid 144.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 3. See also Jessica Harriden, *The Authority of Influence: Women and Power in Burmese History* (first published 2012, NIAS Press) 144.

Very soon after independence, minority grievances in Myanmar culminated in the “*militarisation of ethnicity*”¹⁹ and patterns of conflict in which almost all minority groups resisted the Burman-controlled regime.

1.2. The military rule from 1962 to 2011

In 1962, the Myanmar Armed Forces, also known as the Tatmadaw²⁰ or the Sit-Tat, seized power in a coup d’état. The Sit-Tat replaced the parliamentary government with a military junta. The Sit-Tat “*sought to erase cultural diversity and ethnic minority rights through an unofficial policy of ‘Burmanisation’*”.²¹ In particular, the Sit-Tat forcibly relocated or razed villages suspected of colluding with EAOs.²² Many Bamar also sought to resist the military rule, demanding the restoration of democracy.²³ In the 1990s, estimates suggested that “*each year, for more than forty years, approximately 10,000 people had died as a result of the fighting*”.²⁴

In 2008, a Constitution designed by the military to retain its power came into force in Myanmar.²⁵ It granted military personnel immunity from prosecution and provided the military with the power to appoint 25% of the seats in the two legislative bodies and control over the three key ministries (the Ministry of Defence, Ministry of Border Affairs, and

Ministry of Home Affairs).²⁶ The Constitution also gave the military the power to dissolve the civilian government and rule alone in a state of emergency.²⁷ As part of the democratic reform process orchestrated to continue military rule, the Sit-Tat officially dissolved the military junta in 2011 and installed a nominally civilian government.²⁸

1.3. Opening up of the country, and the rule of the democratically elected government from 2012 to January 2021

Under increasing international pressure, the nominal civilian government began to ease some restrictions and allow for Myanmar to begin to break its isolation from the rest of the world. In November 2010, Aung San Suu Kyi was released from house arrest and subsequently, the National League for Democracy (NLD) was allowed to take part in the 2012 elections.²⁹ A peace process was launched in 2013 and in October 2015, a ceasefire agreement, called the Nationwide Ceasefire Agreement, was signed between the quasi-military-civilian government and eight EAOs.³⁰ During the period between 2012–2015, the civilian government released thousands of political prisoners, allowed privately owned newspapers to run their business in Myanmar, and abolished a 25-year-old ban on public gatherings

19 Crisis Group Asia, ‘Identity Crisis: Ethnicity and Conflict in Myanmar’ <https://www.crisisgroup.org/asia/south-east-asia/myanmar/312-identity-crisis-ethnicity-and-conflict-myanmar> accessed 17 October 2022.

20 As mentioned above, the Myanmar Armed Forces uses the name ‘Tatmadaw’, which literally translates into ‘Imperial or Royal Armed Forces’ with the suffix ‘daw’ or ‘taw’ denoting ‘royal’ or ‘sacred’. Myanmar people usually refer to it as ‘Sit-Tat’, meaning ‘Sit (Armed or Military), Tat (Forces)’. Accordingly, in this report the word ‘Sit-Tat’ will be used interchangeably with Myanmar military, army, and armed forces instead of the loaded term ‘Tatmadaw’. See Ye Myo Hein, ‘One Year On: The Momentum of Myanmar’s Armed Rebellion’ (Wilson Center, May 2022), 3 https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/ASIA_220519_1YearOn-BRIEF_V1r2.pdf accessed 16 September 2022.

21 Jessica Harriden, *The Authority of Influence: Women and Power in Burmese History* (first published 2012, NIAS Press) 200.

22 Ibid.

23 REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 3.

24 Ibid 4; Catherine Brown, ‘Burma: The Political Economy Of Violence’ (September 1999) 22(3) *Disasters* 234, 236 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-7717.00115> accessed 21 September 2022.

25 HRC ‘Report of the Independent International Fact-Finding Mission on Myanmar’ (12 September 2018) UN Doc A/HRC/39/64, para 11.

26 Ibid.

27 REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 3.

28 Global Justice Center, ‘Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya’ (September 2018), 6; REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 3.

29 Human Rights Watch, ‘Burma: Chronology of Aung San Suu Kyi’s Detention’ (13 November 2010) <https://www.hrw.org/news/2010/11/13/burma-chronology-aung-san-su-kyis-detention> accessed 19 September 2022.

30 REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 4.

of more than five people.³¹ As a result of the democratic reforms, both the United States and the European Union eased their sanctions on Myanmar and the Asian Development Bank resumed loans to Myanmar resulting in a rapid economic growth of above 7% per year.³²

In November 2015, Myanmar held its first general elections that were considered to be largely free and fair in nearly fifty years of military rule. The NLD, led by Aung San Suu Kyi, won the elections.³³ Although Aung San Suu Kyi was constitutionally barred from the presidency, she was appointed to an office that was specially created for her: State Counsellor.³⁴

However, armed conflicts persisted in the Kachin and Kayin (Karen) States. Conflict following the 2011 breakdown of a ceasefire between the military and the Kachin Independence Army (KIA) resulted in the displacement of over 100,000 persons. Tensions in Rakhine State continued to simmer, building on decades of discrimination, exploitation, and violence fuelled by the military against the Rohingya Muslim ethnic minority. The violence led to growing numbers of internally displaced persons – 550,000 in 2012 – and swelling refugee populations in China, Thailand, and Bangladesh.³⁵ Stripped of citizenship by the junta's 1982 Citizenship Law, and denied basic rights, the Rohingya experienced increased restrictions on their freedom of movement and the forced relocation of over 125,000 in internment camps following 2012 sectarian violence.³⁶

Framing them as “*clearance operations*” in response to small-scale attacks by the Arakan Rohingya Salvation Army (ARSA), the Myanmar military launched offensives against the Rohingya in Rakhine State in 2016–2017 that have been characterised as ethnic cleansing and genocide.³⁷ In 2017, the government imposed severe restrictions on Rohingya freedom of movement, installing security checkpoints across the Rakhine State and arresting and detaining individuals who failed to produce travel documents.³⁸ The Rohingya felt the disproportionate impact of these measures due to their lack of documentation: the inability to travel even between local communities has undermined Rohingya economic, social, and cultural rights including basic services for healthcare and education.³⁹

The harsh living conditions combined with widespread “*extrajudicial executions, enforced disappearance, sexual violence, torture, and other forms of cruel, inhuman, and degrading treatment against members of all ages of the Rohingya community*”⁴⁰ led, according to the UN Human Rights Council (HRC), to a strong inference of genocidal intent on the part of the Myanmar government.⁴¹ Satellite imagery revealed more than 340 primarily Rohingya villages either completely or substantially destroyed by military units or allied ethnic Rakhine militias.⁴² The forced displacement of Rohingya villages was compounded by widespread sexual violence perpetrated by security forces in Rohingya towns across the Rakhine state.

31 ‘Timeline: Reforms in Myanmar’ (BBC, 8 July 2015) <https://www.bbc.com/news/world-asia-16546688> accessed 19 September 2022.

32 World Bank, ‘The World Bank in Myanmar’ (April 2022) <https://www.worldbank.org/en/country/myanmar/overview> accessed 19 September 2022.

33 Oliver Homes, ‘Aung San Suu Kyi Wins Outright Majority in Myanmar Election’ (*The Guardian*, Yangon, 13 November 2015) <https://www.theguardian.com/world/2015/nov/13/aung-san-suu-kyi-wins-myanmar-landmark-election> accessed 22 June 2022.

34 Euan McKirdy, ‘New Government Role Created for Myanmar’s Aung San Suu Kyi’ (CNN, 7 April 2016) <https://edition.cnn.com/2016/04/06/asia/aung-san-suu-kyi-state-counsellor-role-created/index.html> accessed 22 June 2022.

35 Human Rights Watch, ‘World Report 2013: Burma’ (January 2013) <https://www.hrw.org/world-report/2013/country-chapters/burma> accessed 21 September 2022.

36 Human Rights Watch, ‘Burma: End Ethnic Cleansing of Rohingya Muslims’ (April 2013) <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims> accessed 5 October 2022.

37 HRC ‘Report of the Independent International Fact-Finding Mission on Myanmar’ (12 September 2018) UN Doc A/HRC/39/64 para 33.

38 *Ibid* para 45.

39 *Ibid*.

40 Global Justice Center, ‘Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya’ (September 2018), 7.

41 HRC ‘Compilation on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights’ (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/2, para 48; HRC ‘Report of the independent international fact-finding mission on Myanmar’ (8 August 2019) UN Doc A/HRC/42/50, paras 23, 24, 30.

42 Human Rights Watch, ‘World Report 2018: Burma’ (January 2019) <https://www.hrw.org/world-report/2018/country-chapters/burma> accessed 21 September 2022.

It remains difficult to estimate the number of rapes carried out, but humanitarian organisations in refugee camps have reported receiving hundreds of cases.⁴³ Taken together, the actions of the Myanmar authorities constituted a failure to prevent or investigate genocide, per a report produced by the UN-backed Independent International Fact-Finding Mission to Myanmar (IIFMM).⁴⁴ As a result of their persecution, as of the end of March 2022, over 926,500 Rohingya refugees were living in the Cox's Bazar area.⁴⁵ In November 2020, general elections were held in Myanmar. The NLD won again. The opposition party backed by the military claimed electoral fraud.⁴⁶ The claims were dismissed by the election commission.⁴⁷

1.4. The military coup in February 2021

On 1 February 2021, the day the new members of Parliament were to be sworn in, the Sit-Tat attempted to seize power in another coup d'état.⁴⁸ They detained the leaders of the NLD and other civilian officials, including State Counsellor Aung San Suu Kyi and President U Win Myint, cabinet ministers, chief ministers of several regions, opposition politicians,

writers, and activists.⁴⁹ On 2 February 2021, the Sit-Tat declared a state of emergency that would "remain in force for one year" with the military "taking all duties and responsibilities of the State".⁵⁰ The Sit-Tat established a so-called State Administration Council (SAC), which imposed telecommunications shutdowns, annulled the 2020 election results, and declared itself a provisional government.⁵¹ The Commander-in-Chief of the Sit-Tat since 2011, Min Aung Hlaing, was appointed Chairperson of the SAC as well as Prime Minister.⁵² A few days following the military coup, NLD and other parliamentarians established the Committee Representing the Pyidaungsu Hluttaw (CRPH).⁵³ The CRPH subsequently formed the National Unity Government (NUG) to oppose military rule.⁵⁴ The NUG is headed by Acting President Duwa Lashi Law, President U Win Myint, State Counsellor Aung San Suu Kyi, and Prime Minister Mahn Winn Khaing Thann.⁵⁵ After the formation of the NUG, the National Unity Consultative Council (NUCC) was formed.⁵⁶ The NUCC is "[a] broad-based, inclusive platform with a specific aim of bringing together different forces around the federal democracy objective", and its membership now includes the CRPH, the NUG, EAOs, ethnic political parties, CDM

43 "All of My Body Was Pain": Sexual Violence against Rohingya Women and Girls in Burma' (*Human Rights Watch*, November 2017) <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma> accessed 21 September 2022.

44 HRC 'Report of the Independent International Fact-Finding Mission on Myanmar' (12 September 2018) UN Doc A/HRC/39/64, para 1388.

45 World Food Programme Bangladesh, 'Rohingya Refugee Response: WFP Bangladesh Information Booklet' (April 2022), 4 <https://reliefweb.int/report-bangladesh/rohingya-refugee-response-wfp-bangladesh-information-booklet-april-2022> accessed 5 October 2022.

46 Rebecca Ratcliffe, 'Myanmar: Aung San Suu Kyi charged with election fraud and "lawless actions"' (*The Guardian*, 16 November 2021) <https://www.theguardian.com/world/2021/nov/16/myanmar-aung-san-suu-kyi-charged-with-election-and-lawless-actions> accessed 9 March 2023

47 'Myanmar coup: Min Aung Hlaing, the General Who Seized Power' (*BBC News*, 1 February 2021) <https://www.bbc.com/news/world-asia-55892489> accessed 22 June 2022.

48 Russell Goldman, 'Myanmar's Coup and Its Aftermath, Explained' (*The New York Times*, 1 February 2021 and updated on 27 April 2022) <https://www.nytimes.com/article/myanmar-news-protests-coup.html> accessed 22 June 2022.

49 Ibid.

50 Fortify Rights, 'Nowhere Is Safe: The Myanmar Junta's Crimes Against Humanity Following the Coup d'Etat' (March 2022), 17.

51 HRC 'Situation of human rights in Myanmar since 1 February 2021' (25 February 2022) UN Doc A/HRC/49/72, para 4.

52 Ibid. See also 'Myanmar coup: Min Aung Hlaing, the General Who Seized Power' (*BBC News*, 1 February 2021) <https://www.bbc.com/news/world-asia-55892489> accessed 22 June 2022.

53 HRC 'Situation of human rights in Myanmar' (19 October 2021) UN Doc A/HRC/48/67, para 6. See also HRC 'Situation of human rights in Myanmar since 1 February 2021' (25 February 2022) UN Doc A/HRC/49/72, paras 6-7. Note that the Pyidaungsu Hluttaw refers to the Parliament.

54 National Unity Government of the Republic of the Union of Myanmar, 'About NUG' <https://gov.nugmyanmar.org/about-nug/> accessed 22 June 2022. See also HRC 'Situation of human rights in Myanmar' (19 October 2021) UN Doc A/HRC/48/67, para 6; HRC 'Situation of human rights in Myanmar since 1 February 2021' (25 February 2022) UN Doc A/HRC/49/72, paras 6-7.

55 National Unity Government of the Republic of the Union of Myanmar, 'Heads of Government' <https://www.nugmyanmar.org/en/> accessed 22 June 2022.

56 Note that: "There are many conflicting accounts of the establishment of the NUG and the announcement of the Federal Democratic Charter (especially Part Two). The CRPH announced that the NUG was formed in consultation with members of the NUCC, however in reality the NUCC [as a comprehensive and functioning dialogue and consultative platform] was still yet to be fully formed, and many members of the civil society sector, strike committees, and EAOs felt like they were being exploited by the CRPH to help legitimize the NUG (and its agenda) in the eyes of both the Myanmar public and the international community". Nyana Yoni, 'Draft Internal Reflection Paper, Pro-democracy Opposition Movement' (June 2022).

groups, general strike councils, and CSOs.⁵⁷ Following the military coup, the Sit-Tat's crackdown reached a "new level of violence and repression";⁵⁸ with extensive use of lethal force involving mass detentions, killings, and torture.⁵⁹ In response, armed resistance elements have conducted attacks on security forces, and over time some EAOs have been engaged in hostilities with the military.⁶⁰ In particular, in May 2021 the NUG formed an armed resistance wing called the People's Defence Force (PDF). The NUG declared in September 2021 a "people's defensive war" and called for a national uprising against the Sit-Tat.⁶¹ The SAC declared the CRPH, NUG, and PDF terrorist groups.⁶²

Many different States have condemned the military coup. The European Parliament has expressed its support for the CRPH and the NUG, recognising them as "the only legitimate representatives of the democratic wishes of the people of Myanmar".⁶³ The High Representative of the Union for Foreign Affairs and Security Policy condemned the Sit-Tat administration as a "blatant violation of the will of the people", and stated that the Sit-Tat's recent extension

of the state of emergency "under the guise of a 'caretaker government' can in no way grant legitimacy to the military regime".⁶⁴ The Association of Southeast Asian Nations (ASEAN) has not recognised the NUG as the legitimate representative government of Myanmar. The NUG is struggling to earn recognition, and one factor that could be contributing to this is that the PDF has conducted attacks on civilians and the NUG has failed to condemn such attacks.⁶⁵ The NUG is operating with limited resources and limited access to different areas in Myanmar.⁶⁶

Since February 2021, people in Myanmar "remain trapped in a cycle of poverty and displacement, human rights violations and abuse", counting at least 16,472 arrested by the military for opposing the military coup, 2,553 killed by the military, more than one million internally displaced, and more than 14 million in urgent need of humanitarian assistance.⁶⁷ Recent reports also suggest that sexual violence has significantly increased since the military coup.⁶⁸ To date, the response of the international community has been limited and largely ineffective.⁶⁹

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- 57 Htet Myet Min Tun and Moe Thuzar, 'Myanmar's National Unity Consultative Council: A Vision of Myanmar's Federal Future' (*Fulcrum*, 5 January 2022) <https://fulcrum.sg/myanmars-national-unity-consultative-council-a-vision-of-myanmars-federal-future/> accessed 7 July 2022. See also Nyan Hlaing Lin, 'NUCC Outlines Goals as It Seeks to Widen Membership' (*Myanmar Now*, 21 November 2021) <https://www.myanmar-now.org/en/news/nucc-outlines-goals-as-it-seeks-to-widen-membership> accessed 7 July 2022; Aye Chan and Billy Ford, 'A New Myanmar Forum Aims to Unite Democratic Forces' (*United States Institute of Peace*, 3 November 2021) <https://www.usip.org/publications/2021/11/new-myanmar-forum-aims-unite-democratic-forces> accessed 7 July 2022.
- 58 HRC 'Situation of human rights in Myanmar' (19 October 2021) UN Doc A/HRC/48/67, para 5.
- 59 HRC 'Situation of human rights in Myanmar since 1 February 2021' (25 February 2022) UN Doc A/HRC/49/72, para 6.
- 60 Ibid.
- 61 Ibid paras 6-7. See also HRC 'Situation of human rights in Myanmar' (19 October 2021) UN Doc A/HRC/48/67, para 44.
- 62 'Myanmar's Junta Brands Rival Government a Terrorist Group' (*Reuters*, 8 May 2021) <https://www.reuters.com/world/asia-pacific/myanmars-junta-brands-rival-government-terrorist-group-2021-05-08/> accessed 22 June 2022.
- 63 European Parliament Resolution of 7 October 2021 on the human rights situation in Myanmar, including the situation of religious and ethnic groups (2021/2905(RSP)) [2021] OJ C132/14, para 5.
- 64 Council of the European Union, 'Myanmar/Burma: Declaration by the High Representative on Behalf of the European Union' (8 November 2021) <https://www.consilium.europa.eu/en/press/press-releases/2021/11/08/myanmar-burma-declaration-by-the-high-representative-on-behalf-of-the-european-union/> accessed 24 June 2022. See also Council of the European Union, 'Myanmar/Burma: Declaration by the High Representative on Behalf of the European Union' (31 January 2022) <https://www.consilium.europa.eu/en/press/press-releases/2022/01/31/myanmar-burma-declaration-by-the-high-representative-on-behalf-of-the-european-union/> accessed 24 June 2022.
- 65 See Benjamin Mok, 'The Dilemma Facing Myanmar's National Unity Government', (*The Diplomat*, 21 February 2022) <https://thediplomat.com/2022/02/the-dilemma-facing-myanmars-national-unity-government/> accessed 22 June 2022. According to the Armed Conflict Location & Event Data Project (ACLED), at least 1,098 attacks against regime-affiliated civilians were carried out between 1 February and 3 December 2021.
- 66 Interview 21, Matthew Bugher, Human Rights Fellow at the Schell Center for International Human Rights at Yale Law School (online, 26 May 2022).
- 67 Michelle Bachelet, UN High Commissioner for Human Rights, '50th Session of the Human Rights Council Oral update on Myanmar' (14 June 2022) <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar> accessed 22 June 2022. See also AAPP, 'Daily Briefing in Relation to the Military Coup' (30 November, 2022) <https://aappb.org/?p=23566> accessed 30 November 2022; 'Refugees Displaced by Conflict in Myanmar Now More Than 1 Million' (*Radio Free Asia*, 31 May 2022) <https://www.rfa.org/english/news/myanmar/idps-05312022182941.html> accessed 1 December 2022.
- 68 HRC 'Situation of human rights in Myanmar since 1 February 2021' (25 February 2022) UN Doc A/HRC/49/72, para 6.
- 69 See, e.g., ibid para 9. See also Michelle Bachelet, UN High Commissioner for Human Rights, '50th Session of the Human Rights Council Oral Update on Myanmar' (14 June 2022) <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar> accessed 22 June 2022. See also Prachi Vidwans, 'The International Community Is Failing Myanmar' (*World Politics Review*, 27 September 2021) <https://www.worldpoliticsreview.com/to-avoid-civil-war-myanmar-needs-international-support/> accessed 20 September 2022.

| 2. Nature and scope of CRSV

2.1. Scale, scope, forms, and pattern of crimes

2.1.1. COMMON FORMS OF SEXUAL VIOLENCE

The forms of CRSV documented in Myanmar include rapes, gang rapes, mass rapes,⁷⁰ genital mutilation, sexual slavery, forced nudity, sexual humiliation, and forced abortion.⁷¹ These acts are coupled with the threat or use of force, intimidation, and humiliation, including by targeting women's and girls' sexual organs.⁷²

Although some differences may exist between the forms of sexual violence inflicted in different parts of the country, many patterns have been repeated across decades and against different ethnic groups.⁷³ Rape has occurred on a wide and systematic scale over decades in conflict areas, predominantly against ethnic minority women.⁷⁴ For example, a 2002 report on sexual violence in Shan State *"details 173 incidents of rape and other forms of sexual violence, involving*

625 girls and women, committed by Burmese army troops in Shan State, mostly between 1996 and 2001".⁷⁵ Gang rape has been documented in Kayin, Kachin, and Shan States in 2010–2015, as well as against Rohingya women in 2016–2017.⁷⁶ In 2018, *"[a]ll but one of the rapes reported to Human Rights Watch [in northern Rakhine State] were gang rapes, involving two or more perpetrators"*.⁷⁷ Mass rape has also been used against Rohingya women.⁷⁸ Forced abortion has been reported in Rakhine State, while forced marriage and forced pregnancy by Burmese soldiers have been reported in Kachin, Kayin, and Rakhine States.⁷⁹

Rohingya women have also been the subject of other extremely brutal forms of sexual violence. Evidence collected by Fortify Rights in 2018 indicates that soldiers have killed Rohingya women and mutilated their bodies after raping them, including by *"cutting off breasts and cutting vaginas and stomachs with long knives"*.⁸⁰ Rohingya survivors have testified being subjected to *"beatings, suffocation, stabbing, burns, scalding with hot water, jeering, threats, and other physical mutilations, including biting the victims' breasts"*.⁸¹ Rohingya survivors have also testified that soldiers took photographs of naked women before or following rape and forced family members to watch the rapes of their relatives.⁸²

70 The term 'gang rapes' refers to incidents where a victim is raped by several perpetrators, while 'mass rapes' refers to incidents where perpetrators have gathered victims together to rape or gang rape them. See REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6, 7.

71 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6; Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 23; UN Committee on the Elimination of Discrimination against Women, 'Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure' (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 5.

72 Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 23.

73 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6. See also UN CEDAW Committee 'Consideration of reports submitted by States parties under article 18 of the Convention (*continued*) Report of Myanmar submitted under the exceptional reporting procedure' (6 March 2019) UN Doc CEDAW/C/SR.1668, para 8.

74 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6.

75 Shan Human Rights Foundation and Shan Women's Action Network, 'License to Rape: The Burmese Military Regime's Use of Sexual Violence in the Ongoing War in Shan State' (May 2002), 7.

76 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6.

77 Human Rights Watch and Fortify Rights, 'Submission to CEDAW Regarding Myanmar's Exceptional Report on the Situation of Women and Girls from Northern Rakhine State' (May 2018), 3.

78 Ibid.

79 Ibid 7.

80 Ibid.

81 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6.

82 Ibid 6, 7.

While data on sexual violence following the military coup is limited, “media outlets, human rights organisations, and the [UN] Special Rapporteur on the situation of human rights in Myanmar [...] have documented multiple incidences of torture perpetrated by Myanmar’s security forces”, including sexual assaults and threats of rape.⁸³ In May 2021, the United Nations received reports of sexual assault perpetrated against women and girls by security forces occupying Mindat town in Chin State.⁸⁴

In November 2021, the Women’s League of Burma (WLB) released a statement condemning the gang rape of a postpartum woman in Akllui Village in Chin State by two military junta soldiers.⁸⁵ In February 2022, the All Burma Federation of Student Unions published a ‘Statement on the Sexual Abuses Committed by the Junta-Troops Led by Min Aung Hlaing upon the Woman-Comrades’, reporting that women, men and boys have been subjected to sexual abuse while in detention, including a case in which “bamboo poles” were “forcibly inject[ed] [...] into [detained male political prisoners]’ anuses”.⁸⁶

The Assistance Association for Political Prisoners (AAPP) has also documented cases of GBV in detention.⁸⁷ For example, AAPP reports that on 6 September 2021,⁸⁸

*“Mi Mi Nyunt [alias] was arrested in Mandalay and tortured, severely beaten with ropes across her body, including her butt and thighs. She was mocked when military officers found a conversation on her phone with the doctor about gender-affirming surgery. After, the military undressed her to examine her body and laughed. They exposed their genitals to Mi Mi Nyunt [alias] and said: ‘you like these organs because you are transgender and looked like this’. These are crimes of indecent sexual exposure, enforced nudity, sexual harassment, sexual assault, fondling or unwanted sexual touching, and emotional and physical abuse designed to degrade and annihilate the gender identity and autonomy of the victim”.*⁸⁹

AAPP also reports that “[a]t least two survivor witnesses of the July 7, 2021, massacre in Kani Township described [...] that several of the victims found on the valley next to Yin village, visibly brutally tortured to death, were unclothed and ‘their male organs [genitals] were cut’”.⁹⁰ AAPP notes that “[t]hese constitute a crime of sexual nature during torture, as it includes enforced nudity and maiming/mutilation of those parts of the body socially ascribed to sex. The categorization of sexual violence (only) as ‘torture’, often when perpetrated against men, ‘minimizes the sexual nature of the crime’”.⁹¹

83 Fortify Rights, ‘Nowhere Is Safe: The Myanmar Junta’s Crimes Against Humanity Following the Coup d’Etat’ (March 2022), 111.

84 United Nations Myanmar, ‘Statement by the United Nations in Myanmar on the Situation in Mindat, Chin State’ (21 May 2021) <https://myanmar.un.org/en/127320-statement-united-nations-myanmar-situation-mindat-chin-state> accessed 22 June 2022. See also Fortify Rights, ‘Nowhere Is Safe: The Myanmar Junta’s Crimes Against Humanity Following the Coup d’Etat’ (March 2022), 102, 127.

85 Women’s League of Burma, ‘The Women’s League of Burma Strongly Condemns the Rape of a Postpartum Woman by the Military Junta in Akllui village of Tedim township, Chin State’ (19 November 2021) <https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/2021-11-19-WLB-statement-condemning-the-gang-rape-and-assault-of-a-woman-in-Chin-State-tu-en.pdf> accessed 15 July 2022; AAPP, ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup’ (July 2022), para 136 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

86 All Burma Federation of Student Unions, ‘Statement on the Sexual Abuses Committed by the Junta-Troops Led by Min Aung Hlaing upon the Woman-Comrades’ (19 February 2022) <https://progressivevoicemyanmar.org/2022/02/19/statement-on-the-sexual-abuses-committed-by-the-junta-troops-led-by-min-aung-hlaing-upon-the-woman-comrades/> accessed 15 July 2022; AAPP, ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup’ (July 2022), para 136 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

87 AAPP, ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup’ (July 2022), paras 141-143 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

88 Ibid para 115.

89 Ibid para 142.

90 Ibid para 144.

91 Ibid.

More recently, in September 2022, a male journalist from *Frontier* recounted the rape that he suffered in December 2021 while in detention in Yangon, after his arrest from Yangon International Airport as he was coming back from Thailand to visit a sick family member.⁹² He reported that rape was routine both against male and female detainees during interrogations. He was also beaten several times.⁹³ The military did this against him in order to extract information and as a form of punishment, and for the purpose of intimidation.⁹⁴

2.1.2. SCOPE AND MAIN SETTINGS OF SEXUAL VIOLENCE

Women's rights and human rights CSOs have documented widespread and consistent acts of sexual violence in Myanmar for at least three decades.⁹⁵ Acts of sexual violence have taken place across different locations and in a variety of situations, targeting in particular ethnic minority groups in Rakhine, Shan, and Kachin States, as well as in Kayin (or Karen) and Kayah States.⁹⁶ A seminal 2002 report provided "*clear evidence that rape is officially condoned as a 'weapon of war' against the civilian populations in Shan State*", noting that "[t]here appears to be a concerted strategy by the Burmese army troops to rape Shan women as part of their anti-insurgency activities".⁹⁷ In Kachin and Shan States, the Sit-Tat has used rapes and other

forms of sexual violence since 2011 against women and girls "*during its military ground operations, during forced labour, or as a result of heavy militarization with a particular intent to punish or dehumanise them for their gender, ethnic and religious identity*".⁹⁸ Security forces have also used sexual violence, including rape and forced nudity, against men in Kachin and Shan States suspected of being members or supporters of the EAOs.⁹⁹

In Rakhine State, sexual violence has been used against the Rohingya since the campaign of ethnic cleansing in 2016–2017.¹⁰⁰ Rapes were carried out as Rohingya women and girls fled Myanmar for Bangladesh, were detained in military detention camps or police compounds,¹⁰¹ as well as in public spaces.¹⁰² Rohingya men and boys were also subjected to sexual violence during this campaign.¹⁰³ The majority of the cases of sexual violence against Rohingya men and boys took place in government detention facilities.¹⁰⁴ The forms of sexual violence included rape, gang rape, genital mutilation, forced nudity and other forms of sexual violence, sometimes leading to death.¹⁰⁵ Sexual violence was used against men and boys in detention to obtain information or elicit confessions from the Rohingya accused of being aligned with the ARSA, as punishment, or to discriminate against the Rohingya.¹⁰⁶ Rohingya men and boys expressed the sentiment that "*the same type*

92 Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

93 Ibid.

94 Ibid.

95 See, e.g., Shan Human Rights Foundation and Shan Women's Action Network, 'License to Rape: The Burmese Military Regime's Use of Sexual Violence in the Ongoing War in Shan State' (May 2002).

96 Ibid 5. There is limited data available on sexual violence in Kayin and Kayah States. See, e.g., HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (22 August 2019) UN Doc A/HRC/42/CRP.4, para 18 ("The Mission is also aware of reports of widespread sexual and gender-based violence committed against women from other ethnic minorities in Myanmar in the past, for example in Karen State, but, because of resource and time limitations, it has been forced to limit the scope of this report to Rakhine State and northern Myanmar since 2011.")

97 Shan Human Rights Foundation and Shan Women's Action Network, 'License to Rape: The Burmese Military Regime's Use of Sexual Violence in the Ongoing War in Shan State' (May 2002), 7.

98 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (22 August 2019) UN Doc A/HRC/42/CRP.4, para 112. See more generally 'Sexual and gender-based violence in Kachin and Shan States' in paras 108-148.

99 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (22 August 2019) UN Doc A/HRC/42/CRP.4, para 172.

100 Human Rights Watch, "All of My Body Was Pain": Sexual Violence Against Rohingya Women and Girls in Burma' (17 November 2017) <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma> accessed 22 June 2022.

101 Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 21.

102 HRC 'Report of the Independent International Fact-Finding Mission on Myanmar' (12 September 2018) UN Doc A/HRC/39/64, para 38.

103 See Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 24; Women's Refugee Commission, 'It's Also Happening to Our Men as Well: Sexual Violence Against Rohingya Men and Boys' (November 2018), 22; Fortify Rights, 'Nowhere is Safe: The Myanmar Junta's Crimes Against Humanity Following the *Coup d'Etat*' (March 2022), 94.

104 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (22 August 2019) UN Doc A/HRC/42/CRP.4, para 155.

105 Ibid paras 154-171.

106 Ibid paras 160, 168.

of violence happening to women was happening to men and boys".¹⁰⁷ The use of threats of sexual violence as a form of interrogation of both men and women prisoners has taken place for years in Myanmar.¹⁰⁸ Reports about sexual violence in detention have also begun to surface since March 2021,¹⁰⁹ such as those described above.

Given the systematic and widespread nature of sexual violence and the fact that it is usually ordered and committed by military officers, it is evident that there is a deliberate policy at the highest level of government (as opposed to individual isolated acts) to use sexual violence as a tactic of war to intimidate, terrorise, humiliate, punish, or demoralise minority ethnic groups.¹¹⁰

2.1.3. FORMS OF SECONDARY CRISIS-RELATED SEXUAL VIOLENCE AS A RESULT OF CONFLICT AND DISPLACEMENT

As of 25 August 2022, almost 1.3 million people were displaced across Myanmar, with "more than 974,000 people displaced by the conflict and insecurity" since the February 2021 military coup.¹¹¹ Forced displacement puts people at risk of experiencing increased violence. In particular, Rohingya women and children in camps for internally displaced persons in Myanmar or camps

in Bangladesh have been exposed to the risk of further sexual violence, including forced marriage and forced pregnancy.¹¹² Reports also indicate that forced displacement in Myanmar has led to increased GBV such as trafficking, prostitution, family violence,¹¹³ as well as sexual exploitation and slavery.¹¹⁴ Myanmar has become a source for the trafficking of women and children (and men), where traffickers use job opportunities as a means to trap and sell vulnerable women and girls as "brides".¹¹⁵

2.1.4. IMPACT OF DOMESTIC LAW AND CULTURAL PRACTICES

Myanmar is characterised by a patriarchal social structure, with men enjoying greater freedom and a more dominant role in the society,¹¹⁶ while women generally occupy less central roles in public life. The Myanmar military has been described as "distinctly patriarchal due to its exclusively male and hierarchical leadership structure, along with its track record of conservatism and misogynist violence".¹¹⁷ Such a male dominated culture has allowed gender-based violence against women to be more tolerated and reinforced the oppression of women in general and their exposure to sexual violence in particular.¹¹⁸ This said, women have taken a range of leadership roles in recent resistance movements and NGOs.¹¹⁹

107 Women's Refuge Commission, 'It's Also Happening to Our Men AS Well: Sexual Violence Against Rohingya Men and Boys' (November 2018), 18.

108 Fortify Rights, 'Nowhere Is Safe: The Myanmar Junta's Crimes Against Humanity Following the *Coup d'Etat*' (March 2022), fn 468; Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

109 Anonymous, 'We Are Hard to Ignore Now – Women in Myanmar's Resistance Movement from February–March 2021' (June 2021), 17.

110 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6, 7; HRC 'Compilation on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/2, para 48; HRC 'Report of the Independent International Fact-Finding Mission on Myanmar' (12 September 2018) UN Doc A/HRC/39/64, para 79. See also AAPP, 'Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup' (July 2022), 10 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

111 UN Office for the Coordination of Humanitarian Affairs 'Myanmar: Humanitarian Update No. 21' (2 September 2022), 1.

112 UN Security Council 'Conflict-related sexual violence: Report of Secretary-General' (30 March 2021) UN Doc S/2021/312, para 41.

113 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 7.

114 HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 37.

115 Ibid paras 38, 40.

116 Gender Equality Network, 'Service Provision for Gender-Based Violence Survivors in Myanmar' (April 2018), 18.

117 Ibid.

118 Ibid; see also Women's League of Burma, 'Situation Update: June 2021' (June 2021), 1 <https://www.womenofburma.org/sites/default/files/2021-07/June-situation-update.pdf> accessed 14 October 2022.

119 See Anonymous, 'We Are Hard to Ignore Now – Women in Myanmar's Resistance Movement from February – March 2021' (June 2021), 14.

The 2008 Constitution does not prohibit discrimination on the basis of sexual orientation or gender,¹²⁰ and grants immunity from prosecution to the military, the police, and State officials (as discussed in more detail below). Moreover, throughout Myanmar, village administrators act as local authorities in charge of applying customary law within their respective jurisdictions. As explained below, these local systems often involve insensitive procedures and pressure on women to drop cases, marry the perpetrators or settle for inadequate compensation (which is often awarded to the victim's family rather than the victim).¹²¹

and "employed [it] as a tactic of war, terrorism, torture and repression"¹²⁴ against different ethnic minority groups.¹²⁵ It should be noted that grounds for persecution are based on the perpetrator's perception rather than whether a victim actually belongs to a certain group.¹²⁶ The threat and use of sexual violence were a main tool for the military to terrorise the Rohingya as a group and, more specifically, women who were seen to represent the "custodians" and "propagators" of ethnic identity.¹²⁷ The IFFMM found that the acts of sexual violence committed by the Sit-Tat against the Rohingya in Rakhine State "constituted crimes against humanity, war crimes and underlying acts of genocide accompanied by inferences of genocidal intent".¹²⁸

2.2. Profile and mapping of victims

2.2.1. PROFILE OF VICTIMS

Sexual violence has targeted women and girls of minority ethnic groups in Shan, Kachin, Kayin (or Karen), Rakhine, and Kayah States.¹²² While sexual violence against women is primarily based on their gender, it is also generally linked to their religion or ethnicity.¹²³ As explained above, the Myanmar military has used sexual violence to express ethnic hatred

While most of the reported sexual violence has been perpetrated against women aged between 20 and 40, younger and older women have also been targeted.¹²⁹ Relatedly, the UN has reported that the Sit-Tat and security forces have committed grave sexual violence against children.¹³⁰ Child soldiers have also been victims of acts of sexual violence and/or forced to commit such acts themselves.¹³¹ While women and girls are the primary victims of sexual violence, sexual violence has also been used against men and boys,¹³² as well as members of the LGBTIQ+ community.¹³³

120 HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 5.

121 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 13; HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 57.

122 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 5.

123 Ibid; UN CEDAW Committee 'Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure' (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 7.

124 Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 14.

125 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 6.

126 Ibid 13.

127 Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 15.

128 HRC 'Compilation on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/2, para 48; HRC 'Report of the Independent International Fact-Finding Mission on Myanmar' (8 August 2019) UN Doc A/HRC/42/50, paras 23, 24, 30.

129 See Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 22; REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 8.

130 HRC 'Report of the Special Rapporteur on the situation of human rights in Myanmar' (2 May 2019) UN Doc A/HRC/40/68, para 25.

131 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 8.

132 See Women's Refugee Commission, 'It's Also Happening to Our Men as Well: Sexual Violence Against Rohingya Men and Boys' (November 2018); Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

133 Amnesty International, 'Amnesty International Report 2021/22 – The State of the World's Human Rights' (29 March 2022), 264.

In response to anti-coup protests, the military and police have committed widespread and systematic murder, imprisonment, torture, enforced disappearance, and deportation or forcible transfer of civilians, from all ethnicities (including the Burman majority).¹³⁴ There have been reports of the groping of female protesters by police and military forces in February 2021.¹³⁵ Protesters from the LGBTIQ+ community have also been reportedly subjected to torture, including sexual violence, while in detention.¹³⁶ Journalists have also been subjected to sexual violence.¹³⁷

2.2.2. UNDERREPORTING

There is a general phenomenon of underreporting of sexual violence in Myanmar. This is due to a range of reasons, including fear of retaliation, limited access to services, lack of trust in the police and judicial system, confidentiality concerns, as well as logistical (including transportation), communication and security challenges.¹³⁸ Survivors face the danger of retaliation for reporting crimes, including detention, torture, being prosecuted under false charges, or even being killed.¹³⁹ In some cases, *“survivors of post-coup violence in detention [have] reported that they were forced to sign a non-disclosure statement as a condition of their release”*.¹⁴⁰ Survivors may also be less likely to report incidents of GBV when they are

not cases of rape,¹⁴¹ due to a lack of acceptance in society as to the seriousness of other forms of GBV and/or as to what constitutes GBV. Social stigma and the sense of shame experienced by many survivors also contribute to underreporting.¹⁴² In many communities throughout Myanmar, women who have suffered GBV are considered to bring shame and bad luck to their community. Gender norms *“instruct women not to speak out about being victims of sexual violence and instead to feel guilty and take blame for the attack”*.¹⁴³ Women are therefore unlikely to report acts of sexual violence for fear of being shamed.¹⁴⁴ According to several interviewees in this study, among women who have reported the sexual violence they have suffered, many of them have been subjected to their information being leaked and published without their consent, which has resulted in them being rejected by their families and communities because of the social stigma.¹⁴⁵

The stigma associated with reporting acts of sexual violence is even deeper when it comes to men and boys.¹⁴⁶ This presumably explains the very limited reports on male sexual violence.¹⁴⁷ The situation is worse for men belonging to the LGBTIQ+ community as homosexual sex is criminalised as an *“unnatural offence”* under the Penal Code, even if both parties consented to it.¹⁴⁸

134 See Fortify Rights, 'Nowhere Is Safe: The Myanmar Junta's Crimes Against Humanity Following the *Coup d'Etat*' (March 2022), 17 *et seq*, 43 *et seq*.

135 Anonymous, 'We Are Hard to Ignore Now – Women in Myanmar's Resistance Movement from February–March 2021' (June 2021), 17.

136 Amnesty International, 'Amnesty International Report 2021/22 – The State of the World's Human Rights' (29 March 2022), 264; Interview 13, CSO representative (online, 3 May 2022).

137 Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

138 Amnesty International, 'Amnesty International Report 2021/22 – The State of the World's Human Rights' (29 March 2022), 264; Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 61-64; see also: Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

139 Amnesty International, 'Amnesty International Report 2021/22 – The State of the World's Human Rights' (29 March 2022), 31.

140 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 64.

141 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

142 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 59-60.

143 Amnesty International, 'Amnesty International Report 2021/22 – The State of the World's Human Rights' (29 March 2022), 31.

144 *Ibid.* Two thirds of the survivors interviewed by Human Rights Watch in 2016–2018 had not reported their rape to authorities or humanitarian organisations, and most of those interviewed by Fortify Rights in the same period had not reported the violence to anyone (including their family members). Human Rights Watch and Fortify Rights, 'Submission to CEDAW Regarding Myanmar's Exceptional Report on the Situation of Women and Girls from Northern Rakhine State' (May 2018), 4.

145 Interview 15, CSO representatives (online, 9 May 2022); Interview 11, independent expert (undisclosed location, 29 April 2022).

146 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 8; see also: Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

147 *Ibid.* 31.

148 *Ibid.*

Another barrier is the fact that detainees ill-treated and subjected to sexual violence in detention are sometimes forced to sign a non-disclosure agreement to not speak about their treatment while in detention, including the sexual violence they suffered.¹⁴⁹ This is a condition of their release from detention.¹⁵⁰

Despite the widespread and systematic nature of CRSV in Myanmar, there is no recent public data on the number of CRSV survivors. It is difficult to determine the number of CRSV victims.¹⁵¹ In 2018, humanitarian organisations indicated that they had received reports of hundreds of cases of rape by security forces against Rohingya women and girls.¹⁵² The number of reported incidents of sexual violence is likely to represent only a small fraction of those that actually occurred, due to the various factors described above resulting in underreporting.¹⁵³

2.3. Profile of perpetrators

Members of the Sit-Tat, including both rank-and-file soldiers and high-ranking officers, are the primary perpetrators of sexual violence in Myanmar. This has

been the case ever since the Sit-Tat first gained power in the 1962 coup d'état,¹⁵⁴ and until the February 2021 coup and its aftermath, this sexual violence had been predominantly directed at women and girls from ethnic minorities.¹⁵⁵ Officers commit the vast majority of rapes – usually before their troops' eyes – and then frequently pass their victims on to their troops for gang rape and/or murder.¹⁵⁶ Members of the People's Police Force (including the Border Guard Police Force), EAOs – and other groups and militias – sometimes jointly commit acts of CRSV alongside – and in “*apparent coordination*” with – counterparts from the Sit-Tat.¹⁵⁷ Such instances of a broader range of perpetrators acting together were particularly common during the 2016–2017 attacks against Rohingya Muslims in Rakhine State.¹⁵⁸ EAO fighters are also reported to be perpetrators of CRSV, but details are scant.¹⁵⁹ The IIFFMM explained that a reason for the limited information regarding perpetration by EAOs lies in the misconception and misunderstanding in northern Myanmar that sexual and gender-based violence (SGBV) relates solely to rape committed by Sit-Tat soldiers.¹⁶⁰ The IIFFMM still concluded that “[SGBV] by EAO fighters has been less than that perpetrated by government security forces” and that EAO fighters have not “*committed [SGBV] with the same intent of targeting the civilian population*”.¹⁶¹

149 Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

150 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 64.

151 UN CEDAW Committee 'Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure' (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 37; Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 21.

152 Global Justice Center, 'Discrimination to Destruction: A Legal Analysis of Gender Crimes Against the Rohingya' (September 2018), 21.

153 Interview 21, Matthew Bugher, Human Rights Fellow at the Schell Center for International Human Rights at Yale Law School (online, 26 May 2022); HRC 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar' (3 September 2020) UN Doc A/HRC/45/5, para 30.

154 Jessica Harriden, *The Authority of Influence: Women and Power in Burmese History* (first published 2012, NIAS Press) 202. See also 203, 204.

155 REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 9.

156 *Ibid* (citing a survey of 173 rapes in Shan State, which reported that officers committed 83% of reported rapes).

157 *Ibid*.

158 *Ibid*.

159 *Ibid*.

160 HRC 'Detailed findings of the Independent International Fact-Finding Mission on Myanmar' (16 September 2019) UN Doc A/HRC/42/CRP.5, para 561.

161 *Ibid* para 569. Note that some EAOs have publicly committed to addressing sexual violence. The Karen National Union and Karen National Liberation Army issued in July 2013 a deed of commitment through Geneva Call, pursuant to which they undertook to adhere to “*an absolute prohibition of sexual violence against any person, whether civilian, member of State armed forces or member of an armed non-State actor*” and take “*all feasible measures towards effectively preventing and responding to acts of sexual violence committed by any person*” in areas where they exercise authority. The Chin National Front and Chin National Army also issued a deed of commitment in March 2014. The IIFFMM noted in 2019 that EAOs operating in northern Myanmar had not made similar statements. HRC 'Detailed findings of the Independent International Fact-Finding Mission on Myanmar' (16 September 2019) UN Doc A/HRC/42/CRP.5, paras 562–564; Karen National Union/Karen National Liberation Army, 'Deed of Commitment under Geneva Call for the Prohibition of Sexual Violence in Situations of Armed Conflict and Towards the Elimination of Gender Discrimination' (21 July 2013) http://theirwords.org/media/transfer/doc/knu_sexual-6bffd0548f5219cf14fa5acb9ad52479.pdf accessed 23 June 2022; Chin National Front/Chin National Army, 'Deed of Commitment under Geneva Call for the Prohibition of Sexual Violence in Situations of Armed Conflict and Towards the Elimination of Gender Discrimination' (19 March 2014) http://theirwords.org/media/transfer/doc/cnf_burma_gender-b79d49d7b0fda78afd50bec787fb6013.pdf accessed 23 June 2022.



Many survivors of the violence in Myanmar are currently struggling to survive.
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IV. SURVIVORS' PERCEPTIONS, NEEDS, PRIORITIES, AND RISKS

When asked about survivors' perceptions about reparations, one interviewee noted that *"we [CSOs] cannot be their representative, they need to say their own opinion"*.¹⁶² As discussed above, it is an important limitation of this study that survivors could not be directly consulted. In the absence of this, various stakeholders – many of whom have worked closely with CRSV survivors in Myanmar – were asked to share what they believe to be survivors' perceptions, needs, priorities, and risks with respect to reparations. The below reflects some of these stakeholders' views.

In addition, this section draws significantly from the 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar (2016-2021)' report published anonymously in June 2022.¹⁶³

1. Impact of CRSV on survivors, families, and communities

1.1. Physical impacts

There are a range of physical impacts that survivors of CRSV in Myanmar have suffered as a result of the violence they have experienced. As mentioned above, some victims of CRSV are killed after suffering sexual violence. Those who survive endure multiple and grave physical injuries inflicted by the perpetrators when the sexual violence occurred,¹⁶⁴ often resulting in permanent physical disabilities,¹⁶⁵ unwanted pregnancies, and sexually transmitted

infections including HIV.¹⁶⁶ Over half the of the survivors interviewed in the 'Unheard Voices' study (n=48 or 62%) *"reported physical impacts, including [...] amnesia, brain fog, breathing difficulties, bruises, crying, fatigue, gynecological issues, injury, inability to focus, physical pain, pregnancy, sleep disorders, tonic immobility, weakness and weight loss"*.¹⁶⁷

The physical impacts are exacerbated by the fact that survivors face multiple barriers to accessing the healthcare they need, as explained in detail in Section V below.

1.2. Psychological impacts

Almost all of the interviewees in this study emphasised the serious and often long-term psychological effects experienced by survivors of GBV, including CRSV. Survivors suffer from lasting trauma and Post-Traumatic Stress Disorder (PTSD), depression, low self-esteem, and other mental health problems.¹⁶⁸ To illustrate the trauma carried by some survivors, one interviewee mentioned survivors wanting to run away whenever they see something that is the same colour as that worn by soldiers from the military.¹⁶⁹ Another example provided was the story of four women in the Sagaing region who had been sexually assaulted several times by members of the military, and who consequently became depressed and died by suicide.¹⁷⁰ A male journalist who was raped in detention expressed after the event having trouble sleeping, becoming afraid of the dark, reacting

162 Interview 13, CSO representative (online, 3 May 2022).

163 See Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022). Originally designed to collect qualitative data on CRSV in five States – Kachin, Karen (or Kayin), Mon, Shan, and Rakhine – from 2016 to 2021, the project was later expanded to capture CRSV in Yangon following the February 2021 coup.

164 Interview 17, CSO representative (online, 11 May 2022); see also: Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

165 Interview 8, CSO representative (undisclosed location, 29 April 2022).

166 Interview 17, CSO representative (online, 11 May 2022).

167 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 96.

168 Interview 22, CSO representative (online, 27 May 2022); Interview 15, CSO representatives (online, 9 May 2022); Interview 8, CSO representative (undisclosed location, 29 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022).

169 Interview 17, CSO representative (online, 11 May 2022).

170 Interview 9, NUG Ministry of Women, Youth and Children (undisclosed location, 29 April 2022).

negatively to the sight of the military in the street or on social media, feeling unable to speak about what happened with his family, feeling alone, and having suicidal thoughts.¹⁷¹

In the 'Unheard Voices' study, "[a]ll survivors (n=78 or 100%) reported deep and long-lasting psychological impacts from the incident. The most frequently reported psychological impacts [...] were anger, anxiety, bitterness, depression, fear, helplessness, hopelessness, loss of self-confidence, resentment, sadness, shame, shock and thwarted femininity (dishonor)".¹⁷²

The mental health issues suffered by survivors are exacerbated by the rejection and feelings of shame that they experience as a result of the social stigma they face and the prevailing cultures of victim-blaming (see below). According to one interviewee, many women survivors have internalised the notion that because they have experienced sexual violence, they have lost their worth as women. This contributes to the low self-esteem and depression that many survivors suffer.¹⁷³

The instability and insecurity of the current political reality in Myanmar also exacerbates the mental health and psychosocial issues that survivors experience. Many of the interviewees in this study described the intense and constant psychological and emotional strain that most people in Myanmar are currently under, as they fear for their safety and struggle to meet their basic needs for food and shelter.¹⁷⁴ Many survivors have been forced to leave their homes (and families) behind, either because they have been rejected by their communities due to shame

and/or because targeted military attacks have forced the majority of community members to flee. Many survivors have suffered the loss of their homes, the loss of loved ones, and the fear and stress caused by the military's surveillance and restriction of movement imposed through military checkpoints established throughout the country and by the military's curtailing of internet access and telecommunications and carrying out cordon and search operations in key wards and townships. In many cases, survivors of CRSV may have also endured other gross human rights violations in the past or recently. Survivors also suffer from a lack of basic civilian protection from the threat of continued violence, including on the part of the same perpetrator(s).¹⁷⁵

The psychological harm caused by CRSV is worsened by survivors' lack of access to mental health and psychosocial support, which remains very difficult for reasons discussed in Section V below.

1.3. Impacts of victim-blaming

Survivors of CRSV are further punished by a pervasive culture of victim-blaming.¹⁷⁶ Though the narratives and impacts of victim-blaming may vary across different ethnic groups in Myanmar, it can be said that it is a phenomenon generally common to all groups. The social stigma that survivors of all forms of GBV face is tied to the sexual nature of the crimes they have suffered,¹⁷⁷ and also to the common belief that survivors themselves are often to blame for what happened to them. Community members and even State officials often ask questions and blame survivors for what they suffered, for example by suggesting that

171 Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

172 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 90.

173 Interview 11, independent expert (undisclosed location, 29 April 2022).

174 Interview 1, independent expert (online, 7 March 2022); Interview 5, CSO representative (online, 28 April 2022); Interview 9, NUG Ministry of Women, Youth and Children (undisclosed location, 29 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 13, CSO representative (online, 3 May 2022); Interview 27, independent expert (online, 29 June 2022).

175 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 71; Interview 1, independent expert (online, 7 March 2022); Interview 5, CSO representative (online, 28 April 2022); Interview 9, NUG Ministry of Women, Youth and Children (undisclosed location, 29 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 13, CSO representative (online, 3 May 2022); Interview 27, independent expert (online, 29 June 2022).

176 Interview 14, anonymous activist (online, 9 May 2022); Interview 17, CSO representative (online, 11 May 2022); Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 22, CSO representative (online, 27 May 2022); Interview 26, member of Naripokkho (online, 22 June 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

177 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

they were not wearing “good clothes” at the time (i.e., modest clothing), or that “she is not a good girl, she is not behaved well and that’s why she faced this kind of issue”.¹⁷⁸

In traditional Buddhist households, tight social circles, and communities in Myanmar, the religious notion that ‘what you suffer in this life is a consequence of what you did in a past life’ can unfortunately also serve to reinforce victim-blaming.¹⁷⁹

The social norm of victim-blaming has been passed down from generation to generation in Myanmar. Children are taught proverbs about blaming women, such as proverbs saying that a woman’s modesty is priceless, that women must keep a proper sense of decorum, or that if one does not live in the proper way, one invites crime. One interviewee said that according to such proverbs, “women are wrong; always the victims are wrong”.¹⁸⁰

More broadly, in some communities, when there is a case of GBV, the woman survivor is seen as bringing bad luck to the community if she remains there.¹⁸¹ If the perpetrator of GBV is from the community, it is not bad luck for him to remain.¹⁸² It is believed in some communities that the only way to avoid the dangers of the bad luck brought about by a case of GBV is for the survivor to leave the community.¹⁸³

Many survivors are rejected not only by their communities but also by their families, who may also engage in victim-blaming.¹⁸⁴ As a result, survivors are not only forced to leave their communities, but often

to do so completely alone and after having lost their entire network of social support.¹⁸⁵ Specific to CRSV, the ‘Unheard Voices’ study found that

“[s]urvivors felt a shift in their family relationships due to humiliation, spousal loss of trust and worry that their family, including children, will be ashamed of them. Disruptions led to permanent fractures; one survivor’s husband cut off contact with her and stopped providing support for her and her children. Fear of reprisals, shame and stigma caused some survivors and their families to relocate to another village”.¹⁸⁶

The rejection and stigma that survivors face can also be influenced by the ethnic identity of the perpetrator given longstanding ethnic tensions. For example, one interviewee stated that in Karenni communities, a survivor of rape will face greater rejection and stigma from her family and community if she was raped by a member of the military because “it is worse if it was someone who is Burmese”.¹⁸⁷

178 Interview 17, CSO representative (online, 11 May 2022); Interview 15, CSO representatives (online, 9 May 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women’s Organisation (KWO) (online, 6 July 2022).

179 This presents complexities for documentation, case management, legal assistance, and post-incident referrals for treatment and mental health and psychosocial support. Interview 1, independent expert (online, 7 March 2022); Interview 17, CSO representative (online, 11 May 2022); Interview 8, CSO representative (undisclosed location, 29 April 2022); Interview 27, independent expert (online, 29 June 2022).

180 Interview 17, CSO representative (online, 11 May 2022).

181 Interview 15, CSO representatives (online, 9 May 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022).

182 Interview 15, CSO representatives (online, 9 May 2022).

183 Interview 15, CSO representatives (online, 9 May 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022).

184 Interview 15, CSO representatives (online, 9 May 2022); Interview 11, independent expert (undisclosed location, 29 April 2022).

185 Interview 11, independent expert (undisclosed location, 29 April 2022).

186 Anonymous, ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar’ (June 2022), 93.

187 Interview 12, CSO representative (undisclosed location, 30 April 2022).

LGBTIQ+ survivors in Myanmar are also often blamed for what they have suffered. It is common for community members and State officials not only to blame LGBTIQ+ survivors but also to tell members of the LGBTIQ+ community that they should change their sexual orientation, gender identity or gender expression in order to protect themselves from GBV, as if this were their responsibility.¹⁸⁸ LGBTIQ+ survivors also often face rejection by their families and communities because of the violence they have suffered and/or because of their sexual orientation, gender identity, and/or gender expression, forcing them to leave their homes behind.¹⁸⁹

With respect to child survivors, two interviewees stated that in child rape cases, the children are also blamed for what happened to them, particularly if they are girls.¹⁹⁰ Another interviewee noted that whether children face victim-blaming depends on the nature of the case, and on who the perpetrator was.¹⁹¹ Though none of the interviewees in this study mentioned the impacts experienced by children born of rape, these children likely also face social stigma and discrimination.

In the 'Unheard Voices' study, "[a]lmost all survivors (n=70 or 90%) reported social impacts, including being too stressed to socialize, not wanting to leave home, feeling scorn from the community and receiving accusations of impurity and dishonor from community members (especially if children were born from rape). In one case, the survivor's boyfriend broke up with her and another felt that she could no longer marry after the incident. Another felt that her friends and community avoided her, leaving her feeling lonely and desperate. In one case, a survivor initially went back to work but felt that her co-workers viewed her with distaste and shame. Some survivors of gang rape reported that they now only feel comfortable socializing with other survivors".¹⁹²

Several interviewees suggested that some Bamar people in particular may have shifted their attitudes slightly (away from victim-blaming) in light of the violence they have witnessed on the part of the military since the coup, and given increased public awareness about the realities of sexual violence and sexual harassment. According to the 'Unheard Voices' report,

"[s]urvivors who experienced violence post-coup in Yangon reported that neighbors and the community, understanding the brutal tactics employed by security forces, rallied around them. The community showed sympathy and took care of survivors, understanding that the survivors were not to blame and in one case raising money for the survivor to move to another location".¹⁹³

Many of the CSOs interviewed for this study indicated that they have implemented education and awareness projects in the communities they serve in an effort to challenge prevailing attitudes about GBV in all its forms – including victim-blaming attitudes – and/or to promote women's empowerment and gender equality. However, several interviewees indicated that it is difficult to change deeply entrenched patriarchal, homophobic, and racist attitudes in Myanmar.¹⁹⁴ Moreover, since the coup in February 2021, many people may not view GBV – including CRSV – as a

188 Interview 10, CSO representative (online, 29 April 2022).

189 Interview 10, CSO representative (online, 29 April 2022).

190 Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

191 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

192 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 92-93.

193 Ibid 94.

194 Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 27, independent expert (online, 29 June 2022).

priority if they do not grasp how it is connected to the resistance movement or to political change. As one interviewee put it, *"everything that is not related to the revolution is pushed behind"*.¹⁹⁵

1.4. Socio-economic impacts

The socio-economic status of survivors of CRSV in Myanmar is greatly negatively impacted as a result of the violence they have suffered. In the 'Unheard Voices' study, *"[s]urvivors overwhelmingly reported an economic impact (n=63 or 81%), as they were unable to resume work, leading to financial difficulties and worry over their, and their families', financial future. A number of survivors were street vendors who were too fearful to continue selling goods, leading to a loss of income and a daily struggle for survival. Other survivors were too ashamed to return to work, reporting that they did not want to face anyone"*.¹⁹⁶

The socio-economic impacts of CRSV must be understood in the context of the current humanitarian catastrophe in the country: alongside the extensive violence, there is also widespread poverty and hunger,¹⁹⁷ which survivors may have experienced both before and after suffering CRSV.

As discussed above, survivors face social stigma and discrimination and are often rejected by their families and communities, forcing them to leave their homes, lose their livelihoods and social support networks.¹⁹⁸

Child survivors or children of survivors may lose access to school either by being excluded or because they have been forced to relocate. According to the Kachin Women's Association of Thailand, if a girl has been raped in Kachin State, she will no longer be accepted at school and will have to leave school.¹⁹⁹ When survivors lose their livelihoods because of the violence they have suffered, due to consequent social stigma, physical injury or disability, or relocation, their children will likely stop attending school in order to help provide for the family.²⁰⁰

When survivors are forced to leave their homes and when they lose their livelihoods, they are also at increased risk of being trafficked into China, Thailand, Malaysia, or elsewhere.²⁰¹ The economic crisis and insecurity following the February 2021 coup has heightened the risk of human trafficking, as traffickers are more easily able to attract people from Myanmar with false promises of jobs in other countries.²⁰²

The physical and psychological impacts, as well as the impacts of victim-blaming discussed above, combine to seriously negatively affect the socio-economic status and quality of life of survivors of CRSV. Moreover, the negative socio-economic impacts can leave survivors at increased risk of further victimisation. Many survivors interviewed in the 'Unheard Voices' study *"indicated that a lack of economic resources contributed to their vulnerability and that poverty made them powerless within society"*.²⁰³

195 Interview 14, anonymous activist (online, 9 May 2022).

196 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 95.

197 Interview 21, Matthew Bugher, Human Rights Fellow at the Schell Center for International Human Rights at Yale Law School (online, 26 May 2022); Michelle Bachelet, UN High Commissioner for Human Rights, '50th Session of the Human Rights Council Oral Update on Myanmar' (14 June 2022) <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar> accessed 22 June 2022.

198 Interview 8, CSO representative (undisclosed location, 29 April 2022).

199 Interview 6, CSO representative (undisclosed location, 28 April 2022).

200 Interview 8, CSO representative (undisclosed location, 29 April 2022).

201 Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 5, CSO representative (online, 28 April 2022). See Human Rights Watch, 'Myanmar: Women, Girls Trafficked as "Brides" to China' (21 March 2019) https://www.youtube.com/watch?v=dc1m6Ci7OP0&ab_channel=HumanRightsWatch accessed 14 July 2022.

202 Interview 5, CSO representative (online, 28 April 2022).

203 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 49.

2. Survivors' current needs

The needs of CRSV survivors may vary based on a wide range of factors such as survivors' locations (rural vs urban, as well as currently living in Myanmar vs abroad), gender, age, ethnicity, religion, socio-economic status, sexual orientation, disability, efforts as activists or human rights defenders, status as a current or former political prisoner, refugee or internally displaced person (IDP) status, citizenship status, among others. Those interviewed for this study, as well as the survivors they work with, have diverse experiences and identities. As such, the below assessment of survivors' current needs relies on a limited sample and on generalisations which will be of varying relevance to differently situated survivors. The most basic need of survivors is to see an end to the widespread violence, and for the security situation to improve.²⁰⁴ In addition to this, according to stakeholder interviewees, survivors' current needs include: the need for safety and shelter; access to health services; access to psychological support/counselling; and socio-economic support.

According to the 'Unheard Voices' report, when survivors were asked to identify their immediate needs after suffering CRSV, *"[i]n over half of cases where information was provided (n=71), survivors identified safety and protection support as their most pressing immediate need (n=37 or 52% of those reporting). This referred to safety not just as service provision, for example access to safe houses, but in the broader sense of bodily integrity. Survivors wanted to be safe and secure in their physical space, for example by having the military removed from their*

*area, leaving the area themselves or being otherwise protected from contact with the perpetrator".*²⁰⁵ In the present study, survivors' needs for shelter and safety were emphasised by several interviewees, including the need for more safe houses with capacity and funding to support survivors for more than just a few months a time.²⁰⁶ The needs for shelter and safety extend to the families of survivors as well.²⁰⁷ Survivors of CRSV perpetrated by the military are at increased risk of further attacks and violations by the military in efforts to prevent them from speaking out or as a reprisal for doing so.²⁰⁸ Security risks faced by survivors are exacerbated by the fact that local media sources often publicise cases of GBV without the consent of the survivors,²⁰⁹ and in any case, news of such violations is commonly spread around communities through informal channels.²¹⁰

Some interviewees noted that many survivors have a need to remain anonymous when sharing their stories²¹¹ or when seeking and receiving assistance in order to ensure their safety and mitigate the impact of the shame and social stigma they face.²¹²

It was suggested by an interviewee who works with survivors in the Kachin community that despite the fact that many organisations are reluctant to provide it, survivors need cash assistance in order to pay for transportation, for example to receive vaccines or to travel to different areas due to the instability and dangers where they live. She emphasised the necessity of providing cash assistance in emergency situations.²¹³ Similarly, an interviewee who works with survivors in the LGBTIQ+ community stressed the need for emergency cash support for survivors.²¹⁴

204 Interview 13, CSO representative (online, 3 May 2022).

205 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 68.

206 Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 18, CSO representative (online, 24 May 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 10, CSO representative (online, 29 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

207 Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022).

208 Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 18, CSO representative (online, 24 May 2022).

209 Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 15, CSO representatives (online, 9 May 2022); Interview 11, independent expert (undisclosed location, 29 April 2022).

210 Interview 23, CSO representative (online, 30 May 2022); Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

211 Interview 14, anonymous activist (online, 9 May 2022); Interview 13, CSO representative (online, 3 May 2022); Interview 11, independent expert (undisclosed location, 29 April 2022).

212 Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 23, CSO representative (online, 30 May 2022); Interview 16, CSO representative (undisclosed location, 10 May 2022).

213 Interview 18, CSO representative (online, 24 May 2022).

214 Interview 10, CSO representative (online, 29 April 2022).

Many interviewees emphasised that survivors need access to healthcare,²¹⁵ including access to abortion.²¹⁶ According to the 'Unheard Voices' study, the forms of care sometimes accessed or needed may include (but are not limited to): "medical examinations, emergency contraception and treatment and repair of their injuries (e.g. abortion, removal of damaged ovary and uterus)".²¹⁷ In this study, 23 survivors (32% of those reporting) identified medical and emergency healthcare as a pressing immediate need.²¹⁸ A male journalist who was raped in detention reported going to be checked for sexually transmitted diseases.²¹⁹ He also reported that his kidneys were damaged and had to consult a doctor to have them checked.²²⁰ He later fled to Thailand and was able through his work to access both long-term medical and psychological care.²²¹

Legal assistance was also emphasised by several interviewees as an important need.²²² However, in the 'Unheard Voices' study, only four survivors (6% of those reporting) identified formal or informal legal assistance as an immediate need.²²³ Many interviewees stressed the need for social and cultural changes to end victim-blaming and allow survivors to be accepted in their communities.²²⁴ Survivors have a pressing need for psychosocial support in the form of mental healthcare such as counselling, as well as other emotional and social support to address

the psychological effects of the violence they have suffered, the stress of the political and security situation in Myanmar, and the social stigma and exclusion they face.²²⁵ One interviewee indicated that survivors have a need for healing and for their mental health to stabilise. She noted that counselling provided by her CSO for survivors can contribute to their healing, but since it is not provided by professionals, it typically cannot help survivors to fully stabilise.²²⁶ One interviewee is an activist with experience providing counselling to survivors. She emphasised the pressing need for counselling services for survivors and also for those who work with survivors and face compassion fatigue and burnout. She noted the particular need for psychosocial support of survivors who have been political prisoners. When they are released from prison, many CSOs are reluctant or unwilling to work with them because of the serious security risk that doing so would entail. This interviewee further noted that survivors' needs for counselling and more specialised mental health services will depend on their particular experiences and situations; not everyone has a need for specialised services, and some survivors may benefit from non-specialised support services such as peer-to-peer networks or counselling provided by laypeople.²²⁷ Another interviewee who works with former political prisoners noted that once they are released, survivors who have spent time in prison need psychological support as part of their long-term rehabilitation.²²⁸

215 Interview 22, CSO representative (online, 27 May 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

216 Interview 6, CSO representative (undisclosed location, 28 April 2022).

217 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 66.

218 Ibid 68-69.

219 Ye Mon, 'I Reported on the Military's Abuses and Then I Became a Victim' (*Frontier*, 16 September 2022) <https://www.frontiermyanmar.net/en/i-reported-on-the-militarys-abuses-and-then-i-became-a-victim/> accessed 5 October 2022.

220 Ibid.

221 Ibid.

222 Interview 22, CSO representative (online, 27 May 2022); Interview 5, CSO representative (online, 28 April 2022); Interview 13, CSO representative (online, 3 May 2022).

223 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 69.

224 Interview 17, CSO representative (online, 11 May 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 13, CSO representative (online, 3 May 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 14, anonymous activist (online, 9 May 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

225 Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 14, anonymous activist (online, 9 May 2022); Interview 22, CSO representative (online, 27 May 2022); Interview 15, CSO representatives (online, 9 May 2022); Interview 17, CSO representative (online, 11 May 2022); Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 5, CSO representative (online, 28 April 2022); Interview 12, CSO representative (undisclosed location, 30 April 2022); Interview 10, CSO representative (online, 29 April 2022); Interview 9, NUG Ministry of Women, Youth and Children (undisclosed location, 29 April 2022).

226 Interview 22, CSO representative (online, 27 May 2022).

227 Interview 14, anonymous activist (online, 9 May 2022).

228 Interview 13, CSO representative (online, 3 May 2022).

One interviewee who works with survivors in the LGBTIQ+ community stated that many survivors are not interested in mental health services and that limited access to the internet is a major barrier to seeking such support.²²⁹ An interviewee who works with survivors in the Kachin community indicated that most often survivors do not want to speak about their experiences or seek psychological support.²³⁰ In the 'Unheard Voices' study, only two survivors (3% of those reporting) identified psychosocial support or counselling as an immediate need.²³¹ The discrepancy between this figure and the views of many of the stakeholder interviewees in the present study could be attributable to a number of different factors, including: that stakeholders could be incorrectly assessing survivors' needs; psychological support may fall low on the hierarchy of survivors' needs given immediate threats to their survival; that the potential value of psychological support may be overestimated by some stakeholders or underestimated by some survivors (particularly given the limited availability and quality of psychosocial services historically and at present); the deep-seated social conditioning of women not to put themselves ahead of the needs of others; stigma associated with seeking mental health support; among others.

One interviewee stressed that survivors' need for psychological support must not be overemphasised, and that the underlying causes of psychological and emotional strain – the ongoing abuses of the Sit-Tat and accompanying insecurity and humanitarian crisis – must not be obscured when survivors' needs are considered.²³²

Several interviewees emphasised survivors' need for livelihood support.²³³ Due to the social stigma and rejection that survivors face, this often means survivors

need to find sustainable jobs in new locations after leaving their homes (which may also involve leaving Myanmar).²³⁴ One interviewee who works in the Chin community suggested that the most pressing need of survivors is to become independent so they no longer have to rely on their families or communities and be exposed to social stigma which leads to their ongoing revictimisation and traumatisation (particularly when living in close quarters such as IDP camps, where information spreads very rapidly).²³⁵ In the 'Unheard Voices' study, nine survivors (13% of those reporting) identified livelihood (including financial) and social services as an immediate need.²³⁶

Needs remain fairly consistent over time. One interviewee suggested that the needs of survivors who suffered CRSV prior to the coup are similar to the needs of those who have suffered CRSV in the aftermath of the coup.²³⁷ The main difference she emphasised is that survivors who have experienced CRSV more recently have additional needs for protection and privacy because of the existence and widespread use of social media and the speed at which information spreads.²³⁸ Another interviewee noted that today survivors have additional security needs due to the high likelihood of being arrested by the military or the police given the excessive and disproportionate detention rates.²³⁹

In the 'Unheard Voices' study, 15 survivors (21% of those reporting) reported that they were unsure of their immediate needs. One survivor *"explain[ed] that her immediate state of mind was shock, and that she was too overwhelmed to consider accessing services at*

229 Interview 10, CSO representative (online, 29 April 2022).

230 Interview 18, CSO representative (online, 24 May 2022).

231 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 69.

232 Interview 27, independent expert (online, 29 June 2022).

233 Interview 22, CSO representative (online, 27 May 2022); Interview 17, CSO representative (online, 11 May 2022); Interview 18, CSO representative (online, 24 May 2022); Interview 10, CSO representative (online, 29 April 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

234 Interview 17, CSO representative (online, 11 May 2022); Interview 18, CSO representative (online, 24 May 2022); Interview 5, CSO representative (online, 28 April 2022); Interview 10, CSO representative (online, 29 April 2022).

235 Interview 23, CSO representative (online, 30 May 2022).

236 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 69.

237 Interview 7, CSO representative (undisclosed location, 28 April 2022).

238 Ibid.

239 Interview 27, independent expert (online, 29 June 2022).

that time".²⁴⁰ One interviewee who works with CRSV survivors from the Rohingya community who have fled to Bangladesh stated that

"[t]hey want to go back [to Myanmar], because they lost everything here. And they are staying in temporary shelter here, only getting food and basic services but nothing else. Their children don't have education and they don't have work".²⁴¹

3. Survivors' perceptions and agency

According to some stakeholder interviewees who have worked closely with survivors, many survivors of CRSV in Myanmar either have a limited awareness about reparations and their specific rights, and/or they do not believe that reparations are possible given the post-takeover violence and weak rule of law.²⁴²

One interviewee noted that survivors' primary concern with respect to reparations is the need for political change and guarantees of non-repetition.²⁴³

Another interviewee stated that in the communities served by his CSO, the concept of reparations is understood by some survivors as justice, or the notion that *"if something happened, they want something back"*.²⁴⁴ This CSO has emphasised to survivors that they could seek justice for their specific cases through future transitional justice processes. According to this interviewee, survivors are surprised when they learn more about the international concept of reparations and the prospect of *"getting something in return"* for what has happened to them; they believe that this will

not happen now but could be possible in the future if a federal democratic system is established.²⁴⁵

Several of the CSOs interviewed for this study indicated that they have made efforts to raise awareness about transitional justice and reparations in the communities where they work.²⁴⁶ Two of the CSOs interviewed have provided assistance to survivors in pursuing criminal justice or have focused on transitional justice in the past, but have not done so recently due to the changes in their resources and priorities following the coup.²⁴⁷

In the current context, some CSOs are framing their work, and in particular their work documenting human rights violations, as necessary for future transitional justice processes.²⁴⁸ Other CSOs that have previously carried out projects on peace-building and transitional justice have now redirected their focus entirely to providing assistance to meet the urgent needs of the people they serve for food, shelter, and security.²⁴⁹

When asked about the perceptions and agency of CRSV survivors, one interviewee emphasised that survivors are not currently in a position to be thinking about reparations or the right to a remedy, as they are living in precarious situations (often on the run) and struggling to meet their basic needs.²⁵⁰

Another interviewee suggested that survivors' agency could be strengthened through the creation of safe spaces such as peer support networks where survivors could share their stories and perspectives without fear of being judged or blamed for what happened to them.²⁵¹

240 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 68.

241 Interview 26, member of Naripokkho (online, 22 June 2022).

242 Interview 17, CSO representative (online, 11 May 2022); Interview 18, CSO representative (online, 24 May 2022); Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 10, CSO representative (online, 29 April 2022); Interview 16, CSO representative (undisclosed location, 10 May 2022).

243 Interview 13, CSO representative (online, 3 May 2022).

244 Interview 17, CSO representative (online, 11 May 2022).

245 Ibid.

246 Interview 15, CSO representatives (online, 9 May 2022); Interview 8, CSO representative (undisclosed location, 29 April 2022); Interview 17, CSO representative (online, 11 May 2022); Interview 18, CSO representative (online, 24 May 2022).

247 Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 6, CSO representative (undisclosed location, 28 April 2022).

248 Interview 8, CSO representative (undisclosed location, 29 April 2022); Interview 17, CSO representative (online, 11 May 2022); Interview 13, CSO representative (online, 3 May 2022).

249 Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 4, CSO representative (undisclosed location, 27 April 2022).

250 Interview 11, independent expert (undisclosed location, 29 April 2022).

251 Interview 14, anonymous activist (online, 9 May 2022).

4. Survivors' views and priorities on forms and modalities of reparations

Though many survivors may not be thinking about their right to a remedy, some survivors are already seeking reparations.

Some accounts indicate that survivors in ethnic minority areas may turn to the justice systems of EAOs to seek justice and reparations.²⁵² Through these systems, survivors may receive financial compensation for the harm they suffered, as well as acknowledgement of what happened.²⁵³ In some cases, the perpetrator(s) may be sent to prison.²⁵⁴ However, as discussed further below, there are many potential drawbacks to survivors seeking reparations through (some of) these justice systems, and the processes of doing so may be revictimising for survivors.

One interviewee indicated that survivors of GBV – including CRSV – often do not want to seek justice through criminal trials (through the central or Burmese State justice system or the military system) or through local justice mechanisms because they do not trust these mechanisms to be effective or consider them corrupt. According to this interviewee, *“most villagers say if you have a big problem and you go to [local justice mechanisms], it becomes a small problem. If you have a small problem, it disappears”*.²⁵⁵ That is, local justice mechanisms may be seen as ways for the community to minimise problems and brush them aside.

In the ‘Unheard Voices’ study,

“[s]urvivors reported a lack of trust and faith in the authorities and justice system, especially after the coup. Participants also emphasized that the perpetrators were often those who were supposed to represent justice, such as the police”.²⁵⁶

Two interviewees who work with survivors from the Karen community stated that some survivors have had a positive experience with bringing their cases to the Karen National Union (KNU) justice system, and these survivors have been satisfied with the outcome of the perpetrator being sent to prison.²⁵⁷ According to one of these interviewees, most survivors want *“just a peaceful life, they just want to forget about what happened. If they get justice then they can have a peaceful life. There are also certain things they will need to rebuild themselves or their family”*, such as emotional support and livelihood support, as well as support for healthcare, education, and shelter.²⁵⁸ She stated that *“survivors want punishment but not compensation”*.²⁵⁹ According to the same interviewee, *“the word ‘compensation’ in Karen doesn't have a good meaning [...] it is like you just pay for what you do, so you can do something bad and you pay and you get away, so it is not justice. So we try to use the word like to repay and build up support for the victim. We don't want that everyone in the community who has money to rape women and harass women and just pay; it should not be like that. We are trying to advocate for the perpetrators to pay more than compensation to help them to rebuild their life”*.²⁶⁰

252 Interview 15, CSO representatives (online, 9 May 2022); Interview 22, CSO representative (online, 27 May 2022); Interview 17, CSO representative (online, 11 May 2022); Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

253 Interview 17, CSO representative (online, 11 May 2022).

254 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

255 Interview 12, CSO representative (undisclosed location, 30 April 2022).

256 Anonymous, ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar’ (June 2022), 62.

257 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

258 Ibid.

259 Ibid.

260 Ibid.

*One interviewee who works with survivors from the Kachin community stated that though most often survivors do not understand the concept of reparations, they do know what they want “a chance to get education, and empowerment”.*²⁶¹

In her view, reparations should include the establishment of an independent truth commission or human rights commission specifically focused on women’s needs, as well as guarantees of non-recurrence, empowering survivors (because of the stigma they face and the discomfort they feel in speaking out about their experiences), and access to education and healthcare.²⁶²

Another interviewee asserted that reparations are necessary because of the lack of social support for survivors, and reparations should be designed to ensure the long-term psychological and physical wellbeing of survivors and their families.²⁶³ She emphasised that the implementation of reparative projects must be preceded by a culturally-sensitive community assessment to determine “*what can help the women in reality*”.²⁶⁴

In its 2022 case study on gender and reparations in Myanmar, Asia Justice and Rights (AJAR) focuses on assistance programmes for survivors of human rights violations given the absence of official reparations policies.²⁶⁵ According to the case study, the services for survivors of GBV provided by CSOs include “*educational services and resources focused on gender equality and/or preventing and eliminating violence against women that are offered at the community level, including awareness-raising activities*”, as well as support for survivors’ access to medical and psychosocial assistance, support for police reporting and investigations, legal assistance, and livelihood support.²⁶⁶ AJAR notes that while these services are sometimes provided within a transitional justice and reparations framework (particularly in the case of some women’s ethnic organisations), “*the extent to which these services can be seen as ‘reparative’ is*

unclear, given they are not necessarily provided with an explicit acknowledgement of the link with human rights violations and the attached rights”.²⁶⁷

The findings of the present study echo and complement the findings of AJAR’s case study because, while it was clear that many of the CSOs interviewed in the present study are not explicitly working within a transitional justice and reparations framework, most of them are engaged in efforts to repair the harm suffered by CRSV survivors (in the absence of the fulfilment of this obligation by the State) and show an interest in doing so using a rights-based or (interim) reparative approach.

Several realities in Myanmar complicate the question of ascertaining survivors’ views and priorities on forms and modalities of reparations: the insecurity, instability, and economic crisis brought on by the illegal military junta’s seizure of the State and ongoing commission of gross human rights violations; the fact that survivors have manifold unmet urgent needs, including basic survival needs; the struggles of local CSOs to carry out their work given security concerns and direct targeting of human rights defenders, restrictions on movement and communications, and lack of resources; the uncertainty as to whether, how, and when a new, federal democratic system could be established; and the lack of clarity on which actors ought to and can actually provide (interim) reparative measures until such a system is established.

5. Risks and security assessment

5.1. Main risks faced by CRSV survivors

Survivors of CRSV in Myanmar are at risk of further victimisation given the ongoing violence in the country, and in particular given the ongoing human

261 Interview 6, CSO representative (undisclosed location, 28 April 2022).

262 Ibid.

263 Interview 5, CSO representative (online, 28 April 2022).

264 Ibid.

265 AJAR, ‘Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar’ (November 2022), 9 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2022.

266 Ibid 10.

267 Ibid.

rights violations committed by the military. Additional risks faced by survivors can be separated into two main categories: (1) the risks that human rights advocates generally face in Myanmar and that may extend to survivors advocating for justice and reparations; and (2) personal risks that survivors may face within their community and families.

5.1.1. RISKS FACED BY THOSE CONFRONTING THE REGIME OR SEEKING JUSTICE AND REPARATIONS

Before the February 2021 coup, those advocating for justice and reparations already faced many risks in Myanmar. In their 2015 study on the situation of human rights defenders in Myanmar, the Assistance Association for Political Prisoners (AAPP) and Burma Partnership found that “[t]hose who try to defend human rights now seem to be operating in as dangerous environment [sic] as ever” despite the reforms that had been underway in the country since 2011.²⁶⁸ They reported that “even in 2015, HRDs [human rights defenders] in Burma are subjected to the traditional range of attacks and abuses, including extrajudicial killings and violence, sexual violence and all kinds of discrimination, surveillance and general harassment, legislative and judicial harassment, arbitrary arrest and detention, all of which continued unabated. Indeed, the number of cases of arbitrary arrest and detention of HRDs is still very high, and has even started increasing once again”.²⁶⁹ Their report noted also that “ethnic, religious and social minorities, as well as local grassroots communities, are especially at risk from the targeting of HRDs”.²⁷⁰

Since the February 2021 coup, the risks faced by activists and human rights advocates in Myanmar have significantly heightened, as the military is monitoring the movements and activities of citizens through military checkpoints, digital surveillance,²⁷¹ and “informers” in the community (community members who are cooperating with the military).²⁷² Staff of CSOs seeking to support survivors and/or to document cases of CRSV face serious security risks, including risks associated with obtaining and storing sensitive data.²⁷³

According to a July 2021 statement by the UN Special Rapporteurs on the situation of human rights defenders and on the situation of human rights in Myanmar, human rights defenders were being forced into hiding after arrest warrants were issued against them, their homes were raided and their family members were threatened and harassed, and many human rights defenders had been arbitrarily arrested since the coup.²⁷⁴ Mary Lawlor, the Special Rapporteur on the situation of human rights defenders, stated that “[w]omen human rights defenders are particularly at risk in remote rural areas and are often beaten and kicked before being sent to prison where they can face torture and sexual violence with no medical care provided”.²⁷⁵ Many activists and human rights advocates have fled Myanmar, often continuing their activities to the extent possible from exile. The illegal military junta has stripped many such people of their citizenship, rendering them stateless.²⁷⁶

268 AAPP and Burma Partnership, ‘How to Defend the Defenders? A Report on the Situation of Human Rights Defenders in Burma and Appropriate Protection Mechanisms’ (24 July 2015), 8 <https://progressivevoicemyanmar.org/2015/07/24/how-to-defend-the-defenders-a-report-on-the-situation-of-human-rights-defenders-in-burma-and-appropriate-protection-mechanisms/> accessed 6 June 2022.

269 Ibid 63.

270 Ibid.

271 Interview 4, CSO representative (undisclosed location, 27 April 2022).

272 Interview 22, CSO representative (online, 27 May 2022).

273 Interview 5, CSO representative (online, 28 April 2022).

274 UN High Commissioner for Human Rights, ‘Myanmar: Human Rights Defenders under Siege, say UN experts’ (19 July 2021) <https://www.ohchr.org/en/press-releases/2021/07/myanmar-human-rights-defenders-under-siege-say-un-experts> accessed 6 June 2022.

275 Ibid.

276 Interview 8, CSO representative (undisclosed location, 29 April 2022).

Moreover, 2022 has seen a rise in death penalty sentences for activists under counterterrorism laws and under Martial Law Order 3/2021.²⁷⁷ Amnesty International has emphasised that sentencing activists to the death penalty has increased at an alarming rate, with “86 people given death sentences under martial law in Myanmar” in 2021.²⁷⁸ As of November 2022, 128 dissidents had been sentenced to death, including 42 in absentia, by the secretive military courts.²⁷⁹ This figure includes four pro-democracy activists: 88 Generation leader Ko Jimmy, former parliamentarian Phyo Zeyar Thaw, and anti-coup activists Aung Thura Zaw and Hla Myo Aung; on 24 July 2022, the Sit-Tat executed all four activists, making them “the first prisoners to be executed in Myanmar in more than three decades”.²⁸⁰ The UN High Commissioner for Human Rights responded to this horrific news by saying that “[t]his cruel and regressive step is an extension of the military’s ongoing repressive campaign against its own people” and that “[t]hese executions [...] are cruel violations of the rights to life, liberty and security of a person, and fair trial guarantees”.²⁸¹ The violent repression by the military of its opponents, and especially of those confronting the regime, targets also human rights defenders working on CRSV and supporting survivors and would extend to survivors of CRSV advocating for justice and reparations.

5.1.2. PERSONAL AND COMMUNITY RISKS

One interviewee described how dangerous it is for CSOs and survivors to speak out about CRSV in Myanmar, noting that since the February 2021 coup,

most cases of CRSV committed against women in the Kuki community have been cases of rape committed by police officers and “informers”. The perpetrators enjoy complete impunity, and if survivors say anything about what happened to them, they run the risk of being killed.²⁸²

It is extremely risky for survivors to speak out about acts of CRSV committed by the military, as the security and safety of the survivor, their family, their community, and their lawyer would be in jeopardy if the survivor were to speak out or seek justice.²⁸³ This interviewee stated that her organisation can do very little for survivors in military-controlled areas because of the security risks.²⁸⁴

As discussed above, survivors also face the risk of further traumatisation and revictimisation in the process of seeking justice and reparations due to the victim-blaming culture and the social stigma attached to GBV, as well as the lack of gender sensitivity in local justice and criminal justice mechanisms²⁸⁵ or often in the provision of (reparative) assistance.²⁸⁶ Given the pervasive problems of lack of privacy and confidentiality,²⁸⁷ survivors who seek any kind of support or remedy will most likely face social stigma, discrimination, and exclusion when their communities almost inevitably become aware of what they have suffered.

In cases of CRSV perpetrated by members of EAOs, survivors may have relatively less support from CSOs or from their communities in seeking justice

277 See Global New Light of Myanmar, ‘Martial Law Order 3/2021’ (16 March 2021) <https://www.gnln.com.mm/martial-law-order-3-2021/#article-title> accessed 23 September 2022.

278 Amnesty International UK, ‘Global Use of Death Penalty up by 20% – Major New Report’ (24 March 2022) [Global use of death penalty up by 20% - major new report | Amnesty International UK](https://www.amnesty.org/en/latest/news/2022/03/global-use-of-death-penalty-up-by-20-percent-major-report/) accessed 22 June 2022.

279 AAPP, ‘Daily Briefing in Relation to the Military Coup: November 30, 2022,’ (30 November 2022) <https://aappb.org/?lang=en> accessed 30 November 2022.

280 Ibid; United Nations, ‘Myanmar Junta’s Execution of Four Democracy Activists Condemned by UN’ (25 July 2022) <https://news.un.org/en/story/2022/07/1123172> accessed 20 September 2022.

281 United Nations, ‘Myanmar Junta’s Execution of Four Democracy Activists Condemned by UN’ (25 July 2022) <https://news.un.org/en/story/2022/07/1123172> accessed 20 September 2022.

282 Interview 22, CSO representative (online, 27 May 2022).

283 Interview 6, CSO representative (undisclosed location, 28 April 2022). The risk of accused military personnel instigating criminal defamation prosecutions if survivors brought accusations forward has further dissuaded survivors from seeking available relief. HRC ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’ (3 September 2020) UN Doc A/HRC/45/5, para 30.

284 Interview 6, CSO representative (undisclosed location, 28 April 2022).

285 See, e.g., Women’s League of Burma, ‘Girls Bear the Shame – Impediments to Justice for Girl Children Who Have Experienced Sexual Violence in Burma’ (November 2017).

286 AJAR, ‘Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar’ (November 2022), 15 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2022.

287 See Gender Equality Network, ‘Service Provision for Gender-Based Violence Survivors in Myanmar’ (April 2018), 40.

or reparations because of local political dynamics.²⁸⁸ In such cases, as in cases of GBV perpetrated by members of the community, there is a risk that local justice mechanisms or the EAO justice systems will resolve the situation by forcing the survivor to marry the perpetrator, or by providing compensation to the survivor's family instead of the survivor herself. That is, the remedies offered may revictimise survivors rather than amount to proper redress. One interviewee mentioned that women who have a mental (or psychosocial) disability are at greater risk of having sexual violence committed against them, and that it is difficult to provide support to survivors with a mental (or psychosocial) disability.²⁸⁹ For this group of survivors, the risks associated with speaking out or advocating for their rights may be heightened. Survivors may also face heightened risks depending on their religion, ethnicity, sexual orientation, gender identity, and gender expression, among other factors.

5.2. Mitigating measures

Almost all of the stakeholders interviewed for this study indicated the critical importance of mitigating the abovementioned security and safety risks. The CSOs represented in this study are very cautious about maintaining a low profile in their work, and several of them are based outside of Myanmar and conduct cross-border operations, which aids them in promoting the safety of their staff and of survivors. Some CSOs help survivors mitigate security risks by providing safe houses and/or safe passage across the border into Thailand, Bangladesh, or India.

CSOs and activists make use of encrypted messaging applications such as Signal in order to mitigate the risk of surveillance of their activities. One interviewee mentioned the need for technology such as hidden video recorders to aid in the documentation of human rights violations without detection by the military.²⁹⁰ Several interviewees indicated the need for improved digital security and data storage in order to protect the identities and other sensitive data of survivors.²⁹¹

Some CSOs represented in this study have made efforts to promote gender equality and to change the attitudes of people in the communities in which they work (through relevant awareness-raising campaigns, women's empowerment programmes, and other projects). This can mitigate the risk of rejection and stigma that survivors face, although it was noted that shifts in attitude are difficult to achieve, and even more difficult to maintain over time.²⁹² Participants in gender equality and/or women's empowerment programmes sometimes face a violent backlash from their husbands if the latter disapprove of their participation.²⁹³

One interviewee suggested that efforts should also be made to recruit more men to act as advocates for women and survivors, saying "*men will listen to other men rather than women*".²⁹⁴ The same interviewee suggested that CSOs are typically not working with the perpetrators of CRSV, and that programmes should be implemented "*to teach [them] the value of women as human beings as well*" (though not by the same CSOs that are working with survivors).²⁹⁵

288 AJAR, 'Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar' (November 2022), 11-12 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2022.

289 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

290 Interview 5, CSO representative (online, 28 April 2022).

291 Ibid; Interview 1, independent expert (online, 7 March 2022); Interview 27, independent expert (online, 29 June 2022).

292 Interview 12, CSO representative (undisclosed location, 30 April 2022).

293 Ibid.

294 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

295 Ibid.



Survivors' current needs include access to health services and socioeconomic support.
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V. ACCESS TO ASSISTANCE OR INTERIM RELIEF

Interim relief for CRSV survivors is intended to acknowledge the harm done to them and to provide rehabilitation, compensation, and some form of satisfaction, allowing survivors to rebuild their lives and avoid some of the irreparable harm associated with the lack of timely reparation.²⁹⁶ However, such measures, if implemented by CSOs or other non-State actors, do not constitute reparation in the legal sense as they do not involve State recognition of responsibility.²⁹⁷ Interim relief can take different forms based on the needs of survivors, including comprehensive healthcare, mental health and psycho-social care, financial compensation, legal aid, economic assistance and livelihood support, coverage of education costs and medical bills, or any combination of such measures.²⁹⁸ The provision of interim relief recognises that the timeframe for accessing State-awarded reparations can be longer than a survivor's life expectancy.²⁹⁹

Among the survivors interviewed in the 'Unheard Voices' study, 44 (or 56%) of them had not accessed any support services.³⁰⁰ The same number of survivors "expressed a lack of knowledge regarding the existence and availability of services".³⁰¹ According to the same study, "[i]n post-coup cases, most survivors reported that they did not bother to search for services because they believed none would be available".³⁰² The challenges

faced by CRSV survivors in accessing assistance and/or remedies must be placed in the context of the state of terror, violence, and insecurity that reigns in Myanmar.³⁰³ Prior to the February 2021 coup, it was already difficult for survivors of CRSV to access survivor-centred care and other forms of interim relief.³⁰⁴ After the coup, access to assistance or interim relief has become even more difficult (and risky, as discussed above).³⁰⁵

CRSV survivors are often forced to leave their homes given the stigma and shame culturally associated with what they have suffered and/or because they are under threat.³⁰⁶ When survivors (and their families) are forced to relocate and even to live alone in remote areas, it becomes even more challenging for them to access the support services they need.³⁰⁷

The military's continued restriction of movement makes it extremely difficult for survivors to travel to crisis centres or safe houses to seek support, or to travel to meet with a lawyer or to go to the courts.³⁰⁸ In addition, cultural factors may prevent survivors from seeking help, as for example, women are culturally expected to accept what happens to them, and to focus on caring for others around them.³⁰⁹

296 Global Survivors Fund, 'Inauguration of the Global Survivors Fund, Geneva, 10 March 2022 – Frequently Asked Questions' (10 March 2022), Question 8.

297 Ibid.

298 Ibid Question 9.

299 Ibid Question 8; International Committee of the Red Cross, 'Addressing Sexual Violence' <https://www.icrc.org/en/what-we-do/sexual-violence> accessed 17 June 2022.

300 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 65.

301 Ibid 85.

302 Ibid.

303 Michelle Bachelet, UN High Commissioner for Human Rights, '50th Session of the Human Rights Council Oral Update on Myanmar' (14 June 2022) <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar> accessed 22 June 2022.

304 Phyu Phyu Oo and Sara E Davies, 'Supporting the Victims of Sexual Violence in Myanmar' (*The Interpreter*, 19 April 2022) <https://www.lowyinstitute.org/the-interpreter/supporting-victims-sexual-violence-myanmar> accessed 22 June 2022; REDRESS and Institute for International Criminal Investigations, 'Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners' (March 2018), 34. See also Educational Initiatives (EI) and Asia Justice and Rights (AJAR), 'Violence Against Women (VAW) Prevention and Response Services and Access in Myanmar' (October 2015), ix.

305 Phyu Phyu Oo and Sara E Davies, 'Supporting the Victims of Sexual Violence in Myanmar' (*The Interpreter*, 19 April 2022) <https://www.lowyinstitute.org/the-interpreter/supporting-victims-sexual-violence-myanmar> accessed 22 June 2022.

306 Interview 8, CSO representative (undisclosed location, 29 April 2022); Interview 22, CSO representative (online, 27 May 2022).

307 Interview 15, CSO representatives (online, 9 May 2022).

308 Interview 5, CSO representative (online, 28 April 2022).

309 Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 27, independent expert (online, 29 June 2022).

Despite these challenges, Myanmar CSOs and other actors have been working to provide support services or referrals to survivors. In late March 2021, an informal information channel (the ‘Safe GBV Reporting channel’) was established by a Myanmar-international team, working confidentially, to promote survivor-centred approaches to GBV response. The channel “provides information on help seeking, processing trauma and managing mental health, options for reporting, ways families, friends, and colleagues can support survivors, information on helplines and basic healthcare, and updates on referral options”, with information in Burmese, English, and additional languages.³¹⁰ Over decades, many women’s organisations have become *de facto* GBV service providers, even when this has not previously been their focus. Many of these organisations have gone into “hibernation” since the coup, meaning that their activities are limited and they are keeping a low profile. As such, limited services are available to survivors, and it is very difficult for survivors to access services if they do not have prior knowledge of who to turn to for this.³¹¹

UN agencies also continue to play a role in facilitating access to interim relief for survivors.³¹² Through its globally mandated leadership of the GBV Area of Responsibility, the United Nations Population Fund (UNFPA) – Myanmar leads a “GBV Sub-Cluster”, which is an inter-agency group active at the national and subnational levels, bringing together actors for regular discussions on GBV.³¹³ One of the functions of the GBV Sub-Cluster is to develop referral pathways for survivors which are specific to different geographic areas and updated as frequently as possible.³¹⁴ The GBV Sub-Cluster has aimed to ensure that these referral pathways respond to the immediate needs of survivors while also

facilitating longer-term support, for example through cash assistance and livelihood programmes.³¹⁵ However, identifying and developing referral pathways for survivors has become more difficult since the coup due to the shortage of relevant service providers (particularly in areas that were not previously conflict areas), concerns around the safety and security of service providers, and humanitarian access issues more generally.³¹⁶ UNFPA also funds, coordinates with and trains specific local partners providing various GBV case management services in different areas.³¹⁷

1. (Lack of) access to safety and protection support

Despite the pressing need for safety and protection support discussed above, survivors generally do not have access to this. Only 2% of the survivors interviewed in the ‘Unheard Voices’ study had accessed safety and protection support, meaning that they were able to stay at a safe house.³¹⁸

2. (Lack of) access to healthcare

Even before the coup in February 2021, the medical sector was poorly equipped to address GBV – including CRSV – cases. The Burmese State healthcare system was not responsive to the specific needs of CRSV survivors given that the perpetration of such violence was largely conducted by the military.³¹⁹ The hospitals did not have an established protocol for inquiring about the cause of injuries or for obtaining informed consent from survivors.³²⁰ They did not have an established mechanism for referral to other services, such as safe houses or

310 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021), 3.

311 Interview 27, independent expert (online, 29 June 2022).

312 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

313 Ibid.

314 Ibid.

315 Ibid.

316 Ibid.

317 Ibid.

318 Anonymous, ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar’ (June 2022), 65, 68.

319 REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 34 (referring to, e.g., UNFPA, ‘Powerful Myths Hidden Secrets’ (2017), 22-24 <https://myanmar.unfpa.org/en/publications/powerful-myths-hidden-secrets?page=5%2C0%2C7> accessed 21 February 2023, in relation to services in Kayah State).

320 Gender Equality Network, ‘Service Provision for Gender-Based Violence Survivors in Myanmar’ (April 2018), 44. However, guidelines on health response for GBV survivors, including a clinical management of rape protocol, were launched in 2018. At that time, the Department of Social Welfare was also working on Standard Operating Procedures for GBV and child protection. Interview 29, representative of UNFPA Myanmar (online, 7 July 2022). See also UNFPA Myanmar, ‘Guidelines on Healthcare Response for GBV’ (2018) (only available in Burmese) <https://myanmar.unfpa.org/en/publications/guidelines-healthcare-response-gbv> accessed 14 February 2023.

counselling.³²¹ Around 2016, the former Government provided a hotline for survivors of GBV, and launched a small number of “one-stop women’s support centres”.³²² However, these services are not fully functional or trusted by survivors following the February 2021 coup. The Gender Equality Network found in 2018 that survivors of GBV commonly did not go to health clinics or hospitals, most often due to financial reasons or feelings of shame.³²³ The IFFMM also reported in 2019 that Rohingya women expressed a high level of distrust in the medical care in Rakhine, as most hospitals are staffed by non-Rohingya.³²⁴ Survivors preferred to tolerate the pain or attempt to treat themselves at home.³²⁵

The ‘Unheard Voices’ study found that “[i]n 17 cases (22%), survivors accessed medical care, including medical examinations, emergency contraception and treatment and repair of their injuries (e.g. abortion, removal of damaged ovary and uterus). Some survivors tried to hide their injuries initially and sought medical care only when the injuries became so serious they could not be hidden. Survivors, even those with injuries, often did not seek medical assistance due to stigma, shame or fear of threats made by the perpetrators to hurt or kill them or their family if they disclosed the incident. These were not idle threats as 69% (54 out of 78) were perpetrated by armed security forces with a history of violence against civilians. Many survivors also mentioned that they did not know where they could find medical assistance due to a lack of information, and also due to inadequate health care services in their area”.³²⁶

Following the coup, access to healthcare has become more limited throughout the country in places where the Burmese State healthcare system existed. It was already under strain due to COVID-19 and has essentially collapsed due to the withdrawal of labour by health personnel.³²⁷ Indeed, the day after the coup, health workers founded the Civil Disobedience Movement (CDM), whose participants went on strike and refused to work under the military.³²⁸ Many hospitals remain closed or occupied by the Sit-Tat (in which case, many patients are too fearful to seek treatment).³²⁹ The Sit-Tat’s occupation of the Thaketa Hospital in Yangon resulted in the closure of an HIV and hepatitis C clinic within that hospital that had been run by Médecins Sans Frontières.³³⁰

Attacks on healthcare staff and facilities have also depleted survivors’ access to healthcare, with 355 such attacks reported by 23 December 2021,³³¹ and reports of the Sit-Tat shooting medical workers while they were providing aid to injured civilians.³³² In light of the illegal military junta’s targeting of medical professionals, providers and patients have been “forc[ed] [...] to go underground”.³³³

321 Ibid.

322 HRC ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’ (3 September 2020) UN Doc A/HRC/45/5, para 31.

323 Gender Equality Network, ‘Service Provision for Gender-Based Violence Survivors in Myanmar’ (April 2018), 37.

324 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 59.

325 Gender Equality Network, ‘Service Provision for Gender-Based Violence Survivors in Myanmar’ (April 2018), 44.

326 Anonymous, ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar’ (June 2022), 66.

327 See Médecins Sans Frontières (MSF), ‘MSF Hands Over Long-Running HIV Project in Yangon to Ministry of Health’ (10 September 2020) <https://www.msf.org/myanmar-msf-hands-over-hiv-project-yangon-ministry-health> accessed 22 June 2022.

328 Fortify Rights, ‘Nowhere Is Safe: The Myanmar Junta’s Crimes Against Humanity Following the Coup d’Etat’ (March 2022), 38.

329 Médecins Sans Frontières (MSF), ‘Myanmar: MSF Calls On All Parties to Ensure Safe Access to Healthcare’ (28 May 2021) <https://www.doctorswithoutborders.org/latest/myanmar-msf-calls-all-parties-ensure-safe-access-health-care> accessed 22 June 2022.

330 Médecins Sans Frontières (MSF), ‘MSF’s Yangon Office Becomes Makeshift Clinic amid Myanmar’s Collapsing Health System’ (29 May 2021) <https://msf-seasia.org/news/msf-yangon-office-becomes-makeshift-clinic-amid-myanmars-collapsing-health-system> accessed 22 June 2022.

331 Safeguarding Health in Conflict Coalition, ‘Violence Against or Obstruction of Health Care in Myanmar’ (23 December 2021), 1. See also Médecins Sans Frontières (MSF), ‘Myanmar: MSF Calls On All Parties to Ensure Safe Access to Healthcare’ (28 May 2021) <https://www.doctorswithoutborders.org/latest/myanmar-msf-calls-all-parties-ensure-safe-access-health-care> accessed 22 June 2022 (reporting 179 such attacks by that earlier stage, including 13 deaths).

332 ALTSEAN, ‘Report Card #3: Ignoring ICJ Provisional Measures, Burma/Myanmar’s Military Turns Violence Against Entire Nation’ (24 May 2021), 1.

333 Anonymous, ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar’ (June 2022), 84.

According to AAPP,

“[b]y restricting the access to medical supplies, intentionally harming civilians who are attempting to access such supplies and targeting medical staff, the military junta is weaponizing the COVID-19 pandemic for political gain and using the virus as an excuse to strip civilians of their rights. They are intentionally worsening the public health situation and are as such, responsible for many of the deaths the pandemic has caused”.³³⁴

Since the coup, CSOs currently provide *“most of the heavy lifting, by delivering food, water, shelters, health care, and sanitary packs for women”*.³³⁵ The effects of the ongoing civil war³³⁶ have put these CSOs *“under immense pressure and difficulty to support survivors of sexual violence”*, with safety issues and internet disruptions preventing service delivery.³³⁷ The violence has also resulted in *“growing numbers of people [being] displaced in remote locations with no or limited access to humanitarian services”*,³³⁸ including support for survivors of CRSV. Ethnic health organisations linked to the EAOs have continued to provide healthcare services in the ethnic minority areas, filling the gaps left (recently and/or historically) by the Bamar system.³³⁹ One interviewee indicated that in south-eastern Myanmar (in Mon State, Karen State, and the Tanintharyi region), survivors may be able to access healthcare if they reach out to EAOs, which sometimes provide injections to survivors of rape to prevent pregnancy and to protect against certain viruses, among other healthcare services.³⁴⁰ Other interviewees discussing the ethnic health organisation in the KNU-controlled areas mentioned that their health clinics are in need of technical

support, in particular with regard to gathering DNA evidence in rape cases that could be used to identify and prosecute the perpetrator.³⁴¹

| 3. (Lack of) access to livelihood support

Survivors typically have little or no access to livelihood support. Only 6% of the survivors interviewed in the ‘Unheard Voices’ study had accessed livelihood and social services (including general services and referrals).³⁴² The study found that *“[l]ivelihood and social service assistance was provided in a few cases by international and local NGOs, including faith-based groups, and other community members. Two survivors received livestock animals and sewing skills from a local NGO. The activities of these types of groups have been curtailed since the coup, as the military has targeted them for surveillance which has had a chilling effect on their ability to provide assistance and forced some to pose as friends or family so as not to arouse suspicion. For the most part, survivors received livelihood assistance from family, neighbors and the community, with neighborhoods coming together to*

334 AAPP, ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup’ (July 2022), para 10 https://aapgb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

335 Women’s League of Burma, ‘Situation Update: February–March 2022’ (April 2022), 2.

336 Michelle Bachelet, UN High Commissioner for Human Rights, was reported on 1 February 2022 as having said that the insurgency had developed into a civil war. Rebecca Henschke, Kelvin Brown and Ko Ko Aung, ‘The Deadly Battles that Tipped Myanmar into Civil War’ (BBC News, 1 February 2022) <https://www.bbc.com/news/av/world-asia-60208221> accessed 22 June 2022.

337 Phyu Phyu Oo and Sara E Davies, ‘Supporting the Victims of Sexual Violence in Myanmar’ (*The Interpreter*, 19 April 2022) <https://www.lowyinstitute.org/the-interpreter/supporting-victims-sexual-violence-myanmar> accessed 22 June 2022.

338 Ibid.

339 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021), 9. See also REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 34 (referring to, e.g., UNFPA, ‘Powerful Myths Hidden Secrets’ (2017), 22–24 https://myanmar.unfpa.org/sites/default/files/pub-pdf/PowerfulMythsHiddenSecrets_EDITED.pdf accessed 21 February 2023, in relation to services in Kayah State).

340 Interview 17, CSO representative (online, 11 May 2022).

341 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women’s Organisation (KWO) (online, 6 July 2022).

342 Anonymous, ‘Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar’ (June 2022), 65.

support survivors and their families with money or food (especially in Yangon after the coup).³⁴³

4. (Lack of) access to psychological support

In the 'Unheard Voices' study, "[n]o survivors reported accessing any professional psychosocial support to help them deal with the aftereffects of the violence. This type of moral and emotional support was provided by family, neighbors and communities".³⁴⁴ It remains very difficult for CRSV survivors to access mental healthcare services/psychological support, for various reasons. First, there was a limited supply of mental healthcare services before the February 2021 coup, and the supply problem has worsened following the coup with the collapse of the public healthcare system.³⁴⁵ Second, mental healthcare services such as psychological counselling are expensive in Myanmar, and there are relatively few professionally trained psychologists and psychiatrists. Counselling services are often provided by laypeople with little or no training, resulting in services of low or varying quality.³⁴⁶ Third, given the pervasive culture of victim-blaming, many survivors may not be willing to speak with a counsellor due to lack of trust and for fear of being revictimised.³⁴⁷ Fourth, in many cases, survivors may not be aware of the existence or availability of mental healthcare services at all.³⁴⁸ Fifth, the restrictions on movement and access to the internet and telecommunications – particularly since the February 2021 coup – make it extremely challenging or simply impossible for survivors to access counselling or other mental healthcare services, whether online or in person.³⁴⁹ Sixth, many survivors in Myanmar may face language barriers in attempting to access counselling because their native languages are not Burmese, and there will likely be even fewer mental healthcare services available in their native languages.³⁵⁰ Finally, given the ongoing political

conflict in Myanmar, it may be difficult for survivors to prioritise accessing mental healthcare services.³⁵¹ Several CSOs and other stakeholders interviewed for this study have begun to provide helpline or counselling services for survivors since the coup. In general, such services are being provided to survivors in individual sessions online or over the phone by volunteers and staff members of CSOs (who often have limited training or prior experience). Among the organisations that are providing such services, many of them indicated that the demand has been higher than the supply. One CSO interviewed has been providing online individual and group counselling sessions for members of the LGBTIQ+ community in Myanmar. This CSO emphasised the importance of peer-to-peer dialogue and empowerment in the LGBTIQ+ community, saying that people within this community can more fully understand each other's particular struggles.³⁵² AAPP has a counselling team with significant training and experience providing psychological support to former political prisoners and the general population, some of whom may be survivors of CRSV. The counselling strategies they use vary depending on the situation of the person seeking support and can include multiple one-on-one sessions (over the phone).³⁵³

5. (Lack of) access to legal services

In the 'Unheard Voices' study it is noted that, "[s]urvivors accessed some form of legal assistance or advice in 11 cases (14%). However [...] the legal system almost never provided a satisfactory justice outcome for survivors, particularly after the coup as there has been a complete breakdown of the legal system".³⁵⁴ The closure of public healthcare facilities since the coup also hinders access to legal relief, as Myanmar courts generally only admit forensic examinations conducted at public hospitals as evidence of CRSV.³⁵⁵

343 Ibid 67-68.

344 Ibid 68.

345 Interview 14, anonymous activist (online, 9 May 2022).

346 Ibid.

347 Ibid.

348 Ibid.

349 Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 14, anonymous activist (online, 9 May 2022).

350 Interview 17, CSO representative (online, 11 May 2022).

351 Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 14, anonymous activist (online, 9 May 2022).

352 Interview 10, CSO representative (online, 29 April 2022).

353 Interview 13, CSO representative (online, 3 May 2022).

354 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 67.

355 Gender Equality Network, 'Service Provision for Gender-Based Violence Survivors in Myanmar' (April 2018), 32.



International Court of Justice Hears Case Gambia v. Myanmar on Crime of Genocide
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VI. AVENUES FOR REPARATIONS

1. Relevant international legal and policy frameworks

1.1 International and regional legal frameworks applicable to CRSV

International avenues for reparations for CRSV in Myanmar are somewhat restricted because Myanmar has only ratified a limited number of binding international human rights and humanitarian treaties, and has not accepted any optional complaint mechanisms associated with those instruments. Myanmar has ratified a number of the core international human rights treaties, including:

INTERNATIONAL HUMAN RIGHTS TREATIES RATIFIED BY MYANMAR

- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- the Convention on the Prevention and Punishment of the Crime of Genocide; and
- the Convention on the Rights of the Child (CRC), along with the Optional Protocols to the CRC on the Involvement of Children in Armed Conflict and the Sale of Children, Child Prostitution, and Child Pornography.

However, Myanmar has not ratified: the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), or the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). Myanmar also has not accepted any of the optional complaint mechanisms associated with any of the instruments to which it is a party.

Myanmar is a member of ASEAN.³⁵⁶ It has accordingly joined the following relevant regional commitments: the Declaration on the Elimination of Violence Against Women in ASEAN;³⁵⁷ the ASEAN Declaration Against Trafficking in Persons particularly Women and Children;³⁵⁸ the 2013 Declaration on the Elimination of Violence Against Women and the Elimination of Violence Against Children in ASEAN;³⁵⁹ the ASEAN Regional Plans of Action on the Elimination of Violence Against Women;³⁶⁰ and the Elimination of Violence Against Children.³⁶¹

In terms of international humanitarian law, Myanmar has ratified the Geneva Conventions, but has not ratified their additional protocols.³⁶² Additionally, Myanmar has not signed the Rome Statute of the International Criminal Court (ICC).

The regional and international legal instruments to which Myanmar is a party require States to provide redress to survivors of human rights violations including CRSV, through the right of survivors to an

356 Association of Southeast Asian Nations, 'ASEAN Member States' <https://asean.org/about-asean/member-states/> accessed 23 June 2022.

357 Association of Southeast Asian Nations, 'Declaration on the Elimination of Violence Against Women in the ASEAN Region' (12 October 2012) <https://asean.org/declaration-on-the-elimination-of-violence-against-women-in-the-asean-region/> accessed 23 June 2022.

358 Association of Southeast Asian Nations, 'ASEAN Declaration Against Trafficking in Persons Particularly Women and Children' (29 November 2004) <https://asean.org/asean-declaration-against-trafficking-in-persons-particularly-women-and-children/> accessed 23 June 2022.

359 Association of Southeast Asian Nations, '2013 Declaration On The Elimination of Violence Against Women Children in ASEAN' (9 October 2013) <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2013-ASEAN-Decl-EVAWC.pdf> accessed 14 April 2022.

360 Association of Southeast Asian Nations, 'ASEAN Regional Plan of Action on the Elimination of Violence Against Women (ASEAN RPA on EVAW)' (February 2016) [Final-ASEAN-RPA-on-EVAW-IJP-11.02.2016-as-input-ASEC.pdf](https://asean.org/wp-content/uploads/2016/02/ASEAN-Regional-Plan-of-Action-on-the-Elimination-of-Violence-Against-Women-ASEAN-RPA-on-EVAW-2016-as-input-ASEC.pdf) accessed 11 April 2022.

361 Association of Southeast Asian Nations, 'ASEAN Regional Plan of Action on the Elimination of Violence Against Children (ASEAN RPA on EVAC)' (March 2016) [ASEAN Regional Plan of Action on the Elimination of Violence against Children](https://asean.org/wp-content/uploads/2016/03/ASEAN-Regional-Plan-of-Action-on-the-Elimination-of-Violence-against-Children-ASEAN-RPA-on-EVAC.pdf) accessed 12 April 2022.

362 International Committee of the Red Cross, 'Treaties, States Parties and Commentaries: Myanmar' https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=MM accessed 23 June 2022.

effective remedy.³⁶³ This obligation is also linked to other obligations such as Myanmar's obligation to fulfil the right to health under Article 12 of the ICESCR.

1.2. International avenues for reparations for CRSV

Since Myanmar's international treaty commitments with respect to CRSV are relatively limited, there are few international mechanisms that are able to address CRSV within Myanmar. Efforts to address CRSV by international judicial mechanisms and UN bodies, as well as other international coordination efforts, have resulted in the documentation of extensive CRSV by State and non-State actors, but have provided very few effective avenues for reparations to date, due to the restrictive mandates of such mechanisms and bodies, and due to the lack of cooperation from State authorities.

1.2.1. INTERNATIONAL JUDICIAL MECHANISMS

In November 2019, the ICC initiated an investigation into any crimes that (1) involve the Rohingya and (2) took place at least in part on the territory of an ICC State Party such as Bangladesh.³⁶⁴ The investigation was authorised in relation to "any crime" within the jurisdiction of the Court,³⁶⁵ including crimes of rape, sexual slavery, or "any other form of sexual violence of comparable gravity" as crimes against humanity

and war crimes.³⁶⁶ In issuing the authorisation, the Pre-Trial Chamber III "accept[ed] that there exists a reasonable basis to believe that since at least 9 October 2016 widespread and/or systematic acts of violence may have been committed against the Rohingya civilian population, including murder, imprisonment, torture, rape, sexual violence, as well as other coercive acts, resulting in their large-scale deportation".³⁶⁷ The ICC has expressed a willingness to exercise jurisdiction over prosecutions of such acts, and this could therefore provide one international avenue to ensure accountability in relation to certain acts of CRSV. However, the effectiveness of this avenue is necessarily limited geographically and thematically, and would not encompass acts of CRSV taking place exclusively within the territory of Myanmar or involving communities other than the Rohingya community.

On 17 July 2021, the NUG lodged a declaration with the Registrar of the ICC under article 12(3) of the Rome Statute, "accepting the Court's jurisdiction with respect to international crimes committed in Myanmar territory since 1 July 2002".³⁶⁸ If the ICC accepts this declaration, it could investigate and prosecute CRSV (among other crimes) committed by the illegal military junta in Myanmar.³⁶⁹ In light of the contestation over whether the NUG legitimately represents Myanmar (discussed above), it is unclear whether and when its article 12(3) declaration could be accepted by the ICC.

363 See, e.g., International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), art 2(3); Convention on the Elimination of All Forms of Discrimination Against Women (adopted and opened for signature 18 December 1979, entered into force 3 September 1981), art 2; UN CEDAW Committee 'General recommendation No. 28 on the core obligations of states parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women' (16 December 2010), 32; UN Committee on the Rights of the Child 'General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child' (27 November 2003) UN Doc CRC/GC/2003/5, 24.

364 International Criminal Court, 'ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar' (14 November 2019) <https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar> accessed 23 June 2022.

365 *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar* (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar) ICC-01/19-27 (14 November 2019), 126 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06955.PDF accessed 14 July 2022.

366 Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, arts 7(1)(g), 8(2)(b)(xxii); see also: *Prosecutor v. Bosco Ntaganda* (Judgment) ICC-01/04-02/06 (8 July 2019), 438-39, 532 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_03568.PDF accessed 24 June 2022 (finding that Mr Ntaganda was criminally responsible for rape and sexual slavery as a crime against humanity and a war crime in the context of non-international armed conflict in the Democratic Republic of the Congo).

367 *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar* (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar) ICC-01/19-27 (14 November 2019), 92 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06955.PDF accessed 14 July 2022.

368 NUG Myanmar, 'The National Unity Government of the Republic of the Union of Myanmar Accepts the Jurisdiction of the International Criminal Court' (20 August 2021) <https://twitter.com/NUGMyanmar/status/1428739347717648389> accessed 15 July 2022.

369 See Fortify Rights, 'Myanmar's Civilian Government Delegates Jurisdiction to International Criminal Court' (19 August 2021) <https://www.fortifyrights.org/our-impact/imp-mya-2021-08-19/> accessed 15 July 2022; Antonia Mulvey, 'Symposium on the Current Crisis in Myanmar: New Communication to the International Criminal Court Calls for Justice for Victims and Survivors of Crimes Committed by Myanmar's Military over Past Two Decades' (*Opinio Juris*, 29 September 2021) <http://opiniojuris.org/2021/09/29/symposium-on-the-current-crisis-in-myanmar-new-communication-to-the-international-criminal-court-calls-for-justice-for-victims-and-survivors-of-crimes-committed-by-myanmars-military-over-pas/> accessed 15 July 2022.

Also in November 2019, the Republic of the Gambia filed an application before the International Court of Justice (ICJ) against Myanmar concerning alleged violations of the Genocide Convention.³⁷⁰ The Gambia's application included a request for provisional measures, including an order that Myanmar "*immediately [...] take all measures within its power to prevent all acts that amount to or contribute to the crime of genocide, including taking all measures within its power to prevent the following acts from being committed against [any] member of the Rohingya group: [...] rape or other forms of sexual violence*".³⁷¹ In January 2020, the ICJ granted The Gambia's request.³⁷² In doing so, the ICJ specifically noted CRSV targeting the Rohingya population, referencing findings from the IIFFMM³⁷³ that, "*since October 2016, the Rohingya in Myanmar have been subjected to acts which are capable of affecting their right of existence as a protected group under the Genocide Convention, such as [...] widespread rape and other forms of sexual violence*".³⁷⁴ However, the ICJ's decision does not provide specific redress or reparations for survivors of CRSV and is necessarily limited to CRSV against the Rohingya community. Myanmar has also largely ignored and/or defied the implementation of the provisional measures to date.³⁷⁵

1.2.2 UN FACT-FINDING AND INVESTIGATIVE MISSIONS

In March 2017, the UN Human Rights Council (HRC) established the Independent International Fact-Finding Mission on Myanmar (IIFMM). The IIFMM's mandate was to establish the facts and circumstances of the alleged human rights violations by military and security forces, and abuses, in Myanmar.³⁷⁶ Despite continuing lack of cooperation from the Myanmar authorities, in September 2018, the IIFMM released a report that noted a number of CRSV violations by military forces,

including that "*[r]ape and sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011*".³⁷⁷ The IIFMM released another report in September 2019 focused specifically on gender-based violence by armed actors since 2011 in northern Myanmar and Rakhine, which found that CRSV was being perpetrated by military forces as a tactic of war, and by EAOs to a significantly lesser extent.³⁷⁸ While the IIFMM does not itself provide reparations, it has repeatedly issued a "*call to action to the Government of Myanmar, to all parties to the conflicts, and to the international community to hold perpetrators of rape and other forms of sexual violence to account*".³⁷⁹

The IIFMM handed over its evidence to the Independent Investigative Mechanism for Myanmar (IIMM), also mandated by the HRC and operational since 30 August 2019. The IIMM's mandate is to "*collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law*".³⁸⁰ The IIMM has indicated that its preliminary analysis of information collected concerning events since the military coup on 1 February 2021 indicates that crimes against humanity, including sexual violence, have likely been committed.³⁸¹

370 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Request for the Indication of Provisional Measures: Order) 2020 ICJ Reports [1] <https://www.icj-cij.org/public/files/case-related/178/178-20200123-ORD-01-00-EN.pdf> accessed 23 June 2022.

371 *Ibid* [5].

372 *Ibid* [79].

373 *Ibid* [54].

374 *Ibid* [71].

375 See, e.g., ALTSEAN, 'Report Card #3: Ignoring ICJ Provisional Measures, Burma/Myanmar's Military Turns Violence Against Entire Nation' (24 May 2021).

376 HRC 'Situation of human rights in Myanmar' (3 April 2017) UN Doc A/HRC/RES/34/22, para 11.

377 HRC 'Report of the Independent International Fact-Finding Mission on Myanmar' (12 September 2018) UN Doc A/HRC/39/64, para 79.

378 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, 5-9.

379 *Ibid* 12.

380 HRC 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar' (3 October 2018) UN Doc A/HRC/RES/39/2, para 22; UN General Assembly, 'Letter dated 16 January 2019 from the Secretary-General addressed to the President of the General Assembly' (21 January 2019) UN Doc A/73/716, para 4.

381 HRC 'Report of the Independent Investigative Mechanism for Myanmar' (5 July 2021) UN Doc A/HRC/48/18, 30.

Like the IFFMM, the IIMM does not presently create any avenues for reparations, but its work may support future avenues for reparations, including for example the prosecution of perpetrators of CRSV from Myanmar if other States exercise universal jurisdiction over these crimes.³⁸² The UN Special Rapporteur for Myanmar has referenced the IIMM's work when calling on the international community in 2021 to establish an international tribunal to prosecute alleged perpetrators of international crimes committed in Myanmar and/or to refer the situation in Myanmar to the ICC.³⁸³

1.2.3. SANCTIONS

Another potential path to reparations for survivors of CRSV comes in the form of modern targeted sanctions. These sanctions allow governments to ban travel and freeze the assets of individuals or entities involved in human rights abuses. Governments can design country-specific programmes in instances of particular concern, which allow for greater sanctions on individuals in charge. Currently, the United Kingdom (UK), United States (US), and European Union (EU) all have in place specific Myanmar sanctions regimes, as well as general human rights sanctions, often referred to by the name Global Magnitsky Sanctions. The US currently has 145 entries under its Myanmar sanctions programme,³⁸⁴ the UK has 51,³⁸⁵ and the EU has 96.³⁸⁶

Modern targeted sanctions attempt to move away from previous sanctions regimes which targeted a country as a whole, and often exacerbated issues of poverty and inequality through nationwide trade embargos. New targeted sanctions programmes allow for direct naming and shaming of human rights abusers and targeting of

their financial interests, as both an incentive to change their actions and prevent further harm. However, these are often temporary, currently do not have a path set up to provide financial aid to victims and survivors, and do not offer any specific court processes which provide opportunities for survivors or victims to be heard publicly. Instead, they offer global recognition of a wrong, and can act as a backstop, freezing abusers in their tracks until other forms of justice are achievable. While the freezing and confiscation of assets belonging to high-level perpetrators could be a potential avenue for reparations for CRSV survivors, at the time of writing no such cases have been initiated in jurisdictions where those assets could be located.

1.2.4. OTHER INTERNATIONAL AVENUES FOR REPARATIONS

In December 2018, the UN and the former Government signed a 'Joint Communiqué on the Prevention and Response to CRSV' (Joint Communiqué), in which the State committed to legal reforms to support its overall response to sexual violence, as well as the provision of core services to survivors.³⁸⁷ A national committee comprised of different ministries including the Ministry of Defence was set up in March 2019 by the former Government to develop an action plan. The draft action plan, not endorsed by the UN, lacks essential protections for survivors, and fails to include essential action such as relevant legal reform or a survivor-centred approach.³⁸⁸

International agencies and organisations have also attempted to coordinate evidence-gathering efforts regarding CRSV for various purposes including promoting accountability and reparations. The UN

382 Universal Jurisdiction is a principle of international law that allows States to have jurisdiction over cases that did not occur in their territory or impact them if the violation is so heinous that the perpetrators could be viewed as *hostis humani generis* – 'Enemies of all mankind'. Kanishka Kewlani, 'Three Avenues to Justice for the Rohingya' (*Columbia Journal of Transnational Law: The Bulletin*, 17 February 2022) [Three Avenues to Justice for the Rohingya — Columbia Journal of Transnational Law](#) accessed 24 June 2022; see generally, David Luban, 'The Enemy of All Humanity' (2018) 2 *Netherlands Journal of Legal Philosophy* 112 [The Enemy of All Humanity · Netherlands Journal of Legal Philosophy · Eleven Journals](#) accessed 24 June 2022.

383 HRC 'Compilation on Myanmar: Report of the Office of the United Nations High Commissioner for Human Rights (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/2, 19.

384 United States Department of the Treasury, 'Office of Foreign Assets Control' <https://sanctionssearch.ofac.treas.gov/> accessed 30 November 2022; see also United States Department of the Treasury, 'Counter-Terrorism Designations: Burma-Related Designations' (25 March 2022) <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220325> accessed 20 September 2022.

385 See United Kingdom Government, 'Guidance: Financial Sanctions, Myanmar' <https://www.gov.uk/government/publications/financial-sanctions-burma> accessed 30 November 2022.

386 See European Commission, 'EU Sanctions Map: Myanmar (Burma)' https://www.sanctionsmap.eu/#/main/details/8/?search=%7B%22_value%22:%22%22%22searchType%22:%7B%7D%7D accessed 30 November 2022.

387 United Nations, 'Joint Communiqué of the Republic of the Union of Myanmar and the United Nations on Prevention and Response to Conflict-Related Sexual Violence' (7 December 2018), paras 1 and 3 [Joint Communiqué of Myanmar UN Prevention Response to CRSV 2018.pdf](#) accessed 23 June 2022.

388 HRC 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar' (3 September 2020) UN Doc A/HRC/45/5, para 32.

Secretary-General is required to establish Monitoring, Analysis and Reporting Arrangements (MARA) on CRSV in situations of armed conflict, post-conflict, and other situations of concern according to Security Council Resolution 1960.³⁸⁹ The coordination of the MARA is typically led by a Senior Women's Protection Adviser (SWPA). However, in Myanmar this role has not been filled since 2018, in part because the former Government of Myanmar at that time formally declined to receive someone in this role in the country.³⁹⁰ In the absence of an SWPA, the UNFPA has been leading the coordination of the MARA working group in Myanmar, which was set up in 2019 in response to the Joint Communiqué and includes focal point members from 15 different UN agencies.³⁹¹ Though its work has been more limited since the coup, the MARA working group still has quarterly meetings in which members can exchange information about CRSV trends and response.³⁹²

2. Relevant domestic legal and policy frameworks

Addressing the legislative gaps in the legal system could pave the path to changing people's perceptions and courses of action surrounding GBV, including CRSV. In the past decade, there were incremental efforts to secure legal reform; however, these are all being set back since the military takeover. Survivor-centred legal reform to prevent CRSV recurrence is an important future step to be undertaken by a legitimate government and constitutes in itself a form of reparation (guarantees of non-repetition).

2.1. Domestic legal and policy frameworks relevant to reparations for CRSV

2.1.1. THE CURRENT DOMESTIC LEGAL FRAMEWORK

Myanmar's domestic legal framework related to CRSV is complicated by the constitutional crisis that has gripped the country since the 2021 military coup. Two competing governments promulgate different sets of laws. On the one hand, the military's State Administration Council seeks to apply the 2008 Constitution along with laws enacted under decades of military rule.³⁹³ The Committee Representing the Pyidaungsu Hluttaw (CRPH), on the other hand, has repealed the 2008 Constitution, passed a Federal Democracy Charter in March 2021, and formed an interim National Unity Government.³⁹⁴ The latter is comprised of Parliament members elected in 2020 and ousted by the coup. The capacity of both governments to enforce their respective laws is limited in practice. While the military government maintains control of government buildings and administration centres, the CRPH, in conjunction with its armed wing and with armed ethnic groups, controls some territory. The legal framework described below refers to the laws that existed prior to the 2021 coup, even though some of these laws are no longer applicable.

The Penal Code tied to the 2008 Constitution criminalises a number of acts relevant to CRSV but fails to meet international legal standards in a number of respects.

389 United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 'Monitoring, Analysis and Reporting Arrangements (MARA)' <https://www.un.org/sexualviolenceinconflict/tools-for-action/mara/> accessed 9 July 2022.

390 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022); Interview 27, independent expert (online, 29 June 2022).

391 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022). See also HRC 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar' (3 September 2020) UN Doc A/HRC/45/5, para 58.

392 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

393 AJAR, 'Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar' (November 2022), 2 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2022.

394 Ibid.

While the outdated Penal Code does not contain a specific regime for CRSV, it criminalises a number of forms of sexual violence, including rape,³⁹⁵ assault with intent to “outrage her modesty” (i.e., sexual assault),³⁹⁶ kidnapping, abducting or inducing a woman to compel her to marry,³⁹⁷ and any word, gesture or act intended to insult the modesty of a woman.³⁹⁸ The Penal Code also defines crimes specifically relating to sexual violence against children, including statutory rape and sexual assault (where the age of consent is 12 years old),³⁹⁹ prohibition against buying and selling of minors for prostitution,⁴⁰⁰ procurement of minors,⁴⁰¹ and prohibitions against child prostitution or pornography.⁴⁰²

Crimes relating to offences against the person may also provide some protection against sexual violence, including murder and unlawful killing,⁴⁰³ assault,⁴⁰⁴ unlawful detention,⁴⁰⁵ kidnapping, abduction, slavery and forced labour,⁴⁰⁶ forced abortion or miscarriage,⁴⁰⁷ and criminal intimidation.⁴⁰⁸

The definitions of many crimes in the Penal Code differ significantly from the standards under international law. The crime of rape is defined in the Penal Code

as where a “man [...] has sexual intercourse with a woman” against her will, without her consent; where her consent is given “by putting her in fear of death or hurt”; or where the woman is under 16 years of age.⁴⁰⁹ The law therefore provides protection only for women and girls against rape, but not for men, and the law does not contemplate female perpetrators. This is also the case for the crime of sexual assault.⁴¹⁰ This is contrary to internationally accepted definitions, which provide that the definition of rape should be gender-neutral.⁴¹¹ Further, as the HRC has noted, the definition of the crime of rape under the Myanmar Penal Code further falls short of internationally accepted definitions⁴¹² as it (1) requires that there be penile penetration (rather than penetration with another body part or object);⁴¹³ and (2) contains an exception for marital rape if the woman is 15 years of age or older (i.e., that “sexual intercourse by a man with his own wife [...] is not rape”).⁴¹⁴

The Penal Code also criminalises abortion and only provides for an exception in cases where it would save the life of the woman.⁴¹⁵ There is currently no exception for abortion where the pregnancy resulted

395 Myanmar Penal Code, 1861 (as amended in 2016), s 375. The crime of rape is generally punishable by imprisonment for a term of up to 20 years and liability to pay fines, save that: (1) committing the crime of rape against a woman under the age of 12 is punishable by life imprisonment or imprisonment for a term of 20 years; and (2) committing the crime of rape against a woman who is the wife of the perpetrator and who is at least 12 years of age (but younger than 15 years of age) is punishable by imprisonment of up to two years and/or liability to pay fines. See Myanmar Penal Code Amendment Law No.10/2019, s 376.

396 Myanmar Penal Code 1861 (as amended in 2016), s 354.

397 Myanmar Penal Code 1861 (as amended in 2016), s 366.

398 Myanmar Penal Code 1861 (as amended in 2016), s 509.

399 Myanmar Penal Code 1861 (as amended in 2016), ss 375, 354.

400 Myanmar Penal Code 1861 (as amended in 2016), s 372-373.

401 Myanmar Penal Code 1861 (as amended in 2016), s 366A.

402 Child Law No. 9/1993, ss 65-66 <https://www.myanmar-law-library.org/topics/myanmar-property-law/the-child-law-1993.html> (accessed 27 June 2022).

403 Myanmar Penal Code 1861 (as amended in 2016), ss 299-301, 304A, 314.

404 Myanmar Penal Code 1861 (as amended in 2016), ss 319-321, 324, 327-330, 332, 334, 336-337, 352-353, 355-358.

405 Myanmar Penal Code 1861 (as amended in 2016), ss 341-342, 345-348.

406 Myanmar Penal Code 1861 (as amended in 2016), ss 361-362, 364-368, 370, 374.

407 Myanmar Penal Code 1861 (as amended in 2016), ss 313, 315-316.

408 Myanmar Penal Code 1861 (as amended in 2016), s 506.

409 Myanmar Penal Code 1861 (as amended in 2016), s 375.

410 Myanmar Penal Code 1861 (as amended in 2016), s 354 (“Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”).

411 See, e.g., International Criminal Court (ICC), ‘Elements of Crimes’ (2011) ISBN No. 92-9227-232-2, art 7(1)(g)-1 <https://www.refworld.org/docid/4ff5dd7d2.html> accessed 23 June 2022.

412 See, e.g., International Criminal Court (ICC), ‘Elements of Crimes’ (2011) ISBN No. 92-9227-232-2, art 7(1)(g)-1 <https://www.refworld.org/docid/4ff5dd7d2.html> accessed 23 June 2022; UN CEDAW Committee ‘Concluding observations on the combined fourth and fifth periodic reports of Myanmar’ (25 July 2016) UN Doc CEDAW/C/MMR/CO/4-5, para 27.

413 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 231.

414 Myanmar Penal Code 1861 (as amended in 2016), s 375; HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 32.

415 Myanmar Penal Code 1861 (as amended in 2016), s 312.

from rape. The CEDAW Committee has called on Member States, including Myanmar specifically,⁴¹⁶ to repeal legislation that criminalises abortion.⁴¹⁷ Finally, the 2008 Constitution only extends human rights protections to “citizens”. This therefore limits protections available to many CRSV survivors who the State has refused to acknowledge as citizens, including for example the Rohingya people.⁴¹⁸ This could also affect human rights defenders who have been stripped of their citizenship by the illegal military junta since the coup.

2.1.2. EFFORTS TO REFORM DOMESTIC LEGAL FRAMEWORKS

Efforts to secure a new law for the prevention of violence against women began in early 2011.⁴¹⁹ Successive drafts have been proposed and diluted. Since 2014, various drafts moved between different government ministries, becoming weaker over time.⁴²⁰ The extensive efforts of women’s rights actors and GBV specialists were increasingly whittled away. A lack of transparency has also affected the process.⁴²¹ A core sticking point has been the definition of rape and linkage to the Penal Code, which does not use gender-inclusive language and excludes marital rape.⁴²² In 2017, the UN Special

Rapporteur on Myanmar expressed concern that the “*most recent draft of the law had removed key provisions, including those relating to the definition of rape*” and called for those provisions to be reinstated and the law passed immediately.⁴²³ Two years later, in 2019, the UN Special Rapporteur reiterated that “*the definitions of sexual violence and rape may not comply with [CEDAW]*” and “*urge[d] the Government to redraft the bill, such that it complies in full with the Convention, and adopt it as law without delay*”.⁴²⁴

The draft law also does not ensure full and effective access to abortion in accordance with international standards. It does not explicitly include abortion as part of the reproductive health services that healthcare providers can deliver to survivors of violence.⁴²⁵ It only allows access to abortion where the pregnancy resulted from rape when approved by a medical board,⁴²⁶ in violation of recommendations by the UN Committee on Economic, Social and Cultural Rights⁴²⁷ and the CEDAW Committee.⁴²⁸ The imposition of such barriers to abortion is contrary to international standards as set out above.⁴²⁹

416 UN CEDAW Committee ‘Concluding observations on the combined fourth and fifth periodic reports of Myanmar’ (25 July 2016) UN Doc CEDAW/C/MMR/CO/4-5, para 39(b).

417 UN CEDAW Committee ‘General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (14 July 2017) UN Doc CEDAW/C/GC/35, para 31(a). See also UN Committee on Economic, Social and Cultural Rights ‘General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) UN Doc E/C.12/GC/22, para 57.

418 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 234.

419 Gender Equality Network, ‘Developing Anti-Violence Against Women Laws – Discussion Paper Part 1: Background Information’ (January 2013), 1.

420 UN CEDAW Committee ‘Report submitted by Myanmar under the exceptional reporting procedure’ (7 February 2019) UN Doc CEDAW/C/MMR/EP/1, para 17-18; HRC ‘Report of the Special Rapporteur on the situation of human rights in Myanmar’ (14 March 2017) UN Doc A/HRC/34/67, para 7. See also: HRC ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’ (3 September 2020) UN Doc A/HRC/45/5, para 33.

421 Interview 27, independent expert (online, 29 June 2022).

422 See Global Justice Center, ‘Myanmar’s Proposed Prevention of Violence Against Women Law – A Failure to Meet International Human Rights Standards’ (July 2020), 4.

423 HRC ‘Report of the Special Rapporteur on the situation of human rights in Myanmar’ (14 March 2017) UN Doc A/HRC/34/67, para 7.

424 UN General Assembly ‘Situation of human rights in Myanmar’ (30 August 2019) UN Doc A/74/342, para 31.

425 Global Justice Center, ‘Myanmar’s Proposed Prevention of Violence Against Women Law – A Failure to Meet International Human Rights Standards’ (July 2020), 7.

426 Ibid.

427 UN Committee on Economic, Social and Cultural Rights ‘General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) UN Doc E/C.12/GC/22, para 41 (calling on Member States, including Myanmar, to “repeal, and refrain from enacting, laws and policies that create barriers in access to sexual and reproductive health services. This includes third-party authorization requirements”).

428 UN CEDAW Committee ‘General recommendation No. 34 (2016) on the rights of rural women’ (7 March 2016) UN Doc CEDAW/C/GC/34, para 39(c) (recommending that Member States protect rural women and girls’ right to healthcare, including by repealing “laws that criminalize or require waiting periods or third-party consent for abortion”).

429 Global Justice Center, ‘Myanmar’s Proposed Prevention Of Violence Against Women Law – A Failure to Meet International Human Rights Standards’ (July 2020), 8.

The draft law also appears to fail to address the formidable barriers to accountability by military actors for CRSV,⁴³⁰ as discussed further below. Thus the CEDAW Committee in 2019 expressed concern about delays in the adoption of the draft law, as well as whether Myanmar security forces could be held accountable for CRSV under the new draft law.⁴³¹

2.2. Domestic avenues for reparations for CRSV

2.2.1. DOMESTIC CIVILIAN COURTS

Domestic civilian courts in Myanmar are ineffective at providing relief for survivors of CRSV for a number of reasons.

First, domestic civilian courts have limited jurisdiction. Under the 2008 Constitution, domestic civilian courts have concurrent jurisdiction with some devolved regional bodies. In practice, given the current military and political situation, the domestic civilian courts cannot effectively exercise jurisdiction over several regions within Myanmar, which are instead under the jurisdiction of judicial systems run by EAOs that cooperate to varying degrees with the national judiciary.

In addition, domestic civilian courts do not have jurisdiction over acts of CRSV committed by the military, the police, and government officials.⁴³² The constitutional and legal framework of Myanmar immunises the Sit-Tat, and other security forces, from prosecution in civilian courts, effectively blocking military accountability.⁴³³ In particular, the 2008 Constitution grants amnesty from prosecution to, *inter alia*, members of former military regiments

and members of the Government, for all crimes committed in the course of their duties prior to 31 January 2011.⁴³⁴

Second, lack of procedural protections in domestic criminal prosecutions in Myanmar limit recourse for CRSV survivors.

With respect to pre-trial investigations, the “[r]elevant authorities routinely violate national laws that prescribe procedures for the conduct of criminal investigations and prosecutions as it pertains to victims”.⁴³⁵ For example, even though corroboration is not required for sexual violence crimes under the Penal Code, the police generally in practice require corroboration (including, for example, evidence of semen, genital injuries, or the clothes and underwear the survivor was wearing at the time of the alleged crime) before they will pursue complaints concerning sexual violence.⁴³⁶

With respect to court proceedings, there are also very limited procedural protections for survivors of sexual violence. Trials are almost always held in open court.⁴³⁷ A survivor of sexual violence is required by law to attend the trial of the accused and may be cross-examined by the accused.⁴³⁸ Failure to attend will result in acquittal of the accused.⁴³⁹ No specific evidential rules exist to protect survivors from questioning about their prior or subsequent sexual conduct, and in practice such questioning is usually included in cross-examination of the survivor.⁴⁴⁰ The lack of diversity in the composition of the courts – which are dominated by Bamar men – and the lack of gender sensitivity contribute to creating a damaging experience for survivors who move through justice processes.⁴⁴¹ There is also an absence of survivor and witness protection schemes, leading the CEDAW

430 Ibid 11.

431 UN CEDAW Committee ‘Report submitted by Myanmar under the exceptional reporting procedure’ (7 February 2019) UN Doc CEDAW/C/MMR/EP/1, para 17.

432 Constitution of the Republic of the Union of Myanmar 2008, art 445; UN CEDAW Committee ‘Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure’ (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 13.

433 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 231.

434 Constitution of the Republic of the Union of Myanmar 2008, art 445.

435 International Commission of Jurists, ‘Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study’ (January 2018), 24.

436 Women’s League of Burma, ‘Girls Bear the Shame – Impediments to Justice for Girl Children Who Have Experienced Sexual Violence in Burma’ (November 2017), 5; Chan Wing Cheong *et al.*, *Criminal Law in Myanmar* (first published 2016, LexisNexis: Singapore), 24.10.

437 Women’s League of Burma, ‘Girls Bear the Shame – Impediments to Justice for Girl Children Who Have Experienced Sexual Violence in Burma’ (November 2017), 5.

438 Myanmar Code of Criminal Procedure 1898 (as amended in 2016), ss 208, 247.

439 Women’s League of Burma, ‘Girls Bear the Shame – Impediments to Justice for Girl Children Who Have Experienced Sexual Violence in Burma’ (November 2017), 11.

440 Gender Equality Network, ‘Myanmar Laws and CEDAW – The Case for Anti-Violence Against Women Laws’ (January 2013), 9.

441 Interview 27, independent expert (online, 29 June 2022).

Committee to call for Myanmar to “ensure that victims and witnesses, in and outside the country, who participate in judicial procedures are given physical protection and protection from reprisals”.⁴⁴² The media does not follow any specific guidelines on reporting of sexual violence trials and usually does not respect the confidentiality of survivors testifying.⁴⁴³

Additionally, courts also fall short when applying the substantive law. For example, while the notion of consent in the criminal law is flexible enough to recognise coercive circumstances, such that consent can only be given if it is “free, voluntary and informed”, in practice judges and lawyers are likely to infer consent unless there is clear material evidence of struggle.⁴⁴⁴

Third, even if perpetrators of sexual violence are punishable under the Myanmar Penal Code, that Code does not provide for compensation for survivors. Survivors will therefore have to apply separately to the civil courts with a claim in tort in order to claim compensation.⁴⁴⁵ This is impeded by the fact that many CRSV survivors do not have the financial means to pursue justice, as financial support or legal aid does not appear to be readily available to survivors.⁴⁴⁶

Fourth, even before the February 2021 coup, domestic courts in Myanmar were plagued by corruption and widely perceived to be under military control. The UN Special Rapporteur on Myanmar observed in 2016 that the independence of the judiciary was “undermined by the control currently exercised by the

executive over the judiciary”.⁴⁴⁷ Since before the coup, the judiciary was seen as “inactive and subordinate to the military”, with “allegations of judicial corruption, inefficiency, and susceptibility to executive influence [that are] so widespread that they cannot be sensibly discounted”.⁴⁴⁸ State actors, including the executive and the military, have been known to apply improper pressure on the judiciary and prosecutors in cases related to gross violations of human rights, as well as political and civil cases.⁴⁴⁹

These problems have only worsened since the February 2021 coup. According to AAPP, “[t]he trials held since the (attempted) military coup show a complete absence of due process and as such, the inability for victims to obtain reparations, or even a proper investigation of the crimes committed against them”.⁴⁵⁰

2.2.2. DOMESTIC MILITARY AND POLICE COURTS

Under domestic law, acts of CRSV committed by the military and police are heard by specialised military and police courts. These are not effective avenues for reparations for the reasons delineated below.

First, police and military courts are neither independent nor impartial. Under the 2008 Constitution, any crimes committed by active military personnel – including CRSV – are to be heard by courts martial, which operate entirely outside of the civilian judicial system⁴⁵¹ and are characterised by a

442 UN CEDAW Committee ‘Report submitted by Myanmar under the exceptional reporting procedure’ (7 February 2019) UN Doc CEDAW/C/MMR/EP/1, para 28.

443 Women’s League of Burma, ‘Girls Bear the Shame – Impediments to Justice for Girl Children Who Have Experienced Sexual Violence in Burma’ (November 2017), 11.

444 REDRESS and Institute for International Criminal Investigations, ‘Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar-Specific Guidance for Practitioners’ (March 2018), 29.

445 UN CEDAW Committee ‘Consideration of reports submitted by States Parties under article 18 of the Convention (continued) Report of Myanmar submitted under the exceptional reporting procedure’ (6 March 2019) UN Doc CEDAW/C/SR.1668, para 64.

446 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, 248. See also: Women’s League of Burma, ‘If They Had Hope, They Would Speak’ (November 2014), 9; Women’s League of Burma, ‘Long Way to Go – Continuing Violations of Human Rights and Discrimination Against Ethnic Women in Burma’ (July 2016), 21-22; HRC ‘Compilation on Myanmar: Report of the Office of the United Nations High Commissioner for Human Rights (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/2, 18.

447 HRC ‘Report of the Special Rapporteur on the situation of human rights in Myanmar’ (18 March 2016) UN Doc A/HRC/31/71, 15.

448 Global Justice Center, ‘Structural Barriers to Accountability for Human Rights Abuses in Burma’ (October 2018), 3; UN CEDAW Committee ‘Concluding observations on the combined fourth and fifth periodic reports of Myanmar’ (25 July 2016) UN Doc CEDAW/C/MMR/CO/4-5, 5; International Commission of Jurists, ‘Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study’ (January 2018), 33-34; UN Human Rights Council ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’ (29 June 2016) UN Doc A/HRC/32/18, para 12; HRC ‘Compilation on Myanmar: Report of the Office of the United Nations High Commissioner for Human Rights (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/2, 18.

449 Global Justice Center, ‘Structural Barriers to Accountability for Human Rights Abuses in Burma’ (October 2018), 3.

450 AAPP, ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup’ (July 2022), para 198 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

451 Constitution of the Republic of the Union of Myanmar 2008, art 319. See also UN CEDAW Committee ‘Report submitted by Myanmar under the exceptional reporting procedure’ (7 February 2019) UN Doc CEDAW/C/MMR/EP/1, para 13.

lack of transparency.⁴⁵² In addition, the Ministry of Defence is not subject to civilian control.⁴⁵³ This means that any allegations of CRSV committed by military officials will be tried with very little civilian oversight or accountability. The IFFMM has found that this lack of oversight and accountability has encouraged repeated grave CRSV-related human rights violations in Myanmar by the Sit-Tat and other security actors.⁴⁵⁴

Alleged CRSV violations by police officials are usually dealt with as offences under the Maintenance of Discipline Law rather than crimes under the general criminal law.⁴⁵⁵ The penalties applied under that law are often “*significantly lighter*” than those provided for under the Penal Code.⁴⁵⁶ Police officers are tried by police courts, which are made up of “*gazetted officers*” of the Myanmar Police Force, and are “*neither independent nor impartial and thus may enable perpetrators to evade accountability*”.⁴⁵⁷

Second, police and military courts provide little or no access to justice for survivors. With respect to military courts, a lawyer who brought several cases in courts martial in Myanmar explained that lawyers (and their clients) are only sometimes allowed to attend the military hearings, never get a written copy of the outcome, and are never informed regarding the implementation of the decision.⁴⁵⁸ In one case of rape by a military officer, the military paid the hospital fees and medicine of a rape survivor, but she was not given an opportunity to provide a statement and was never informed of disciplinary proceedings against

her rapist, which were pursued in a court martial, not a civilian criminal court, and focused only on slashing and robbery, not rape.⁴⁵⁹ Likewise, there is no provision in the Maintenance of Discipline Law for survivor participation in Police Court proceedings.⁴⁶⁰

Third, and relatedly, most survivors are deterred from making complaints against the military due to a justified fear of reprisals.⁴⁶¹ For example, on 2 July 2014 in Kachin State, two Sit-Tat soldiers attempted to rape a Rawang woman on the side of the road. When she reported the incident to the soldiers’ commander the next day, she was threatened with arrest for reporting the case and had to flee the country fearing reprisals.⁴⁶² Likewise, a Ta’ang woman who reported to the village administrator a sexual assault and attempted rape incident by Sit-Tat forces later learned that Sit-Tat soldiers had beaten the village administrator to prevent an official report being filed.⁴⁶³ Lawyers who have taken up cases of sexual violence against the military have also faced reprisals that have left them afraid to take up such cases.⁴⁶⁴ Survivors’ justified fear of reprisals has been heightened since the coup given the military’s ongoing violent repression, surveillance, and systematic targeting of those who speak out about its abuses.⁴⁶⁵

Since the February 2021 coup, the military has declared martial law in various regions across the country in an attempt to quell dissent. In the weeks following the coup, the illegal military junta imposed martial law in townships across Yangon and in Mindat township in Chin State.⁴⁶⁶ Some areas remain under

452 UN General Assembly ‘Situation of human rights in Myanmar’ (6 October 2015) UN Doc A/70/412, para 50.

453 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 232.

454 Ibid para 230.

455 International Commission of Jurists, ‘Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study’ (January 2018), 11.

456 Ibid 11-12.

457 Ibid 11.

458 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 233.

459 Ibid para 125.

460 See generally, The Myanmar Police Force Maintenance of Discipline Law, The State Law and Order Restoration Council Law No. 4/95 [The Myanmar Police Force Maintenance of Discipline Law, The State Law and Order Restoration Council Law No. 4/95](#) accessed 23 June 2022.

461 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, paras 226, 244.

462 Ibid para 244.

463 Ibid para 245.

464 Ibid para 246.

465 Interview 13, CSO representative (online, 3 May 2022). See generally, AAPP, ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup’ (July 2022) https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

466 Human Rights Watch, ‘World Report 2022: Myanmar: Events of 2021’ (January 2022) <https://www.hrw.org/world-report/2022/country-chapters/myanmar-burma> accessed 10 October 2022; Associated Press, ‘Myanmar Military Imposes Martial Law in Yangon as Crackdown Deepens’ (NBC News, 15 March 2021) <https://www.nbcnews.com/news/world/myanmar-military-imposes-martial-law-yangon-crackdown-deepens-n1261068> accessed 10 October 2022.

martial law, including Hlaing Tharyar, a township just outside Yangon.⁴⁶⁷ The military junta decreed Martial Law Order 3/2021 in the aftermath of the coup,⁴⁶⁸ which provides for the application of the death penalty for 23 vague offences, including treason or criticism of the military.⁴⁶⁹ As mentioned above, as of August 2022 the Sit-Tat had sentenced 119 dissidents to death, and carried out the horrific act of executing four pro-democracy activists on 24 July 2022.⁴⁷⁰

2.2.3. QUASI-JUDICIAL NATIONAL BODIES

Myanmar's national-level, quasi-judicial bodies also have limited ability to provide effective avenues for reparations due to lack of independence and limited mandates.

The National Human Rights Commission (NHRC) was established in 2011 and enshrined in national law in 2014.⁴⁷¹ However, it has been largely ineffective. The NHRC has no experience of investigating major human rights violations and has not demonstrated the necessary capacity to warrant confidence in its effectiveness at addressing widespread CRSV in Myanmar.⁴⁷² There are also grave concerns about its independence⁴⁷³ and willingness to investigate or comment on allegations against Myanmar's military.⁴⁷⁴

For example, a father of a female student who was allegedly shot and injured by soldiers in Kachin State filed a complaint to the NHRC. The NHRC never launched an investigation into the alleged crime,⁴⁷⁵ and instead the military filed a counter-complaint against the father, who was then tried and convicted for filing a false charge. These concerns have worsened since February 2021, as the NHRC is now functioning under the control of the military.⁴⁷⁶

The former President's Office set up an Independent Commission of Enquiry (ICOE) in July 2018 to investigate the attacks on police stations and military headquarters in northern Rakhine State in August 2017 and the subsequent "clearance operations" carried out by the military and the police, including any alleged human rights violations committed during these armed clashes.⁴⁷⁷ However, the ICOE Chairperson has emphasised that it is not an accountability mechanism for human rights violations and abuses and violations of international humanitarian law.⁴⁷⁸ The ICOE implausibly failed to find any evidence of systematic CRSV, concluding in particular that "[t]here were no credible statements on allegations of gang rape committed by Myanmar's security forces".⁴⁷⁹ The UN Special Rapporteur on Myanmar has described these findings as "incredible" and has noted that the ICOE

467 In March 2021, soldiers with assault rifles massacred protesting factory workers in Hlaing Tharyar. At least 65 people died in the protest on 14 March 2021 and Hlaing Tharyar remained under martial law at least a year longer. Manny Maung, 'A Year on, No Justice for Myanmar Massacre' (*Human Rights Watch*, 14 March 2022) <https://www.hrw.org/news/2022/03/14/year-no-justice-myanmar-massacre> accessed 21 September 2022.

468 Linda Lakhdhir, 'Martial Law in Myanmar a Death Knell for Fair Trials' (*Human Rights Watch*, 16 March 2021) <https://www.hrw.org/news/2021/03/16/martial-law-myanmar-death-knell-fair-trials> accessed 23 September 2022.

469 See Global New Light of Myanmar, 'Martial Law Order 3/2021', 16 March 2021) <https://www.gnlm.com.mm/martial-law-order-3-2021/#article-title> accessed 23 September 2022.

470 Tin Htet Paing and Nway Nway Eain, 'As Junta Squeezes Courts, Myanmar's Lawyers Are Forced to Face Their Worst Fears' (*Myanmar Now*, 19 August 2022) <https://myanmar-now.org/en/news/as-junta-squeezes-courts-myanmars-lawyers-are-forced-to-face-their-worst-fears> accessed 21 September 2022; United Nations, 'Myanmar Junta's Execution of Four Democracy Activists Condemned by UN' (25 July 2022) <https://news.un.org/en/story/2022/07/1123172> accessed 20 September 2022.

471 Myanmar National Human Rights Commission Law No. 21/2014.

472 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, para 240.

473 See: International Commission of Jurists, 'Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study' (January 2018), 26-27; UN CEDAW Committee 'Concluding observations on the combined fourth and fifth periodic reports of Myanmar' (25 July 2016) UN Doc CEDAW/C/MMR/CO/4-5, para 16; HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 6.

474 International Commission of Jurists, 'Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study' (January 2018), 27; HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 6.

475 HRC 'Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee' (23 March 2015) UN Doc A/HRC/28/72, para 58.

476 Naka Thakuria, 'One Year After Military Coup, Myanmar Heads Nowhere' (*Jurist*, 16 February 2022) <https://www.jurist.org/commentary/2022/02/naka-thakuria-military-coup-myanmar/> accessed 23 June 2022.

477 UN Office for the Coordination of Humanitarian Affairs 'Executive Summary of Independent Commission of Enquiry – ICOE' (21 January 2020) [Executive Summary of Independent Commission of Enquiry-ICOE - Myanmar | ReliefWeb](https://www.unocha.org/uk/sites/default/files/2020-01/Executive%20Summary%20of%20Independent%20Commission%20of%20Enquiry%20-%20ICOE%20-%20Myanmar%20ReliefWeb.pdf) accessed 23 June 2022.

478 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, para 238.

479 UN Office for the Coordination of Humanitarian Affairs 'Executive Summary of Independent Commission of Enquiry – ICOE' (21 January 2020) [Executive Summary of Independent Commission of Enquiry-ICOE - Myanmar | ReliefWeb](https://www.unocha.org/uk/sites/default/files/2020-01/Executive%20Summary%20of%20Independent%20Commission%20of%20Enquiry%20-%20ICOE%20-%20Myanmar%20ReliefWeb.pdf) accessed 23 June 2022.

report “cites facts and figures it says were given to it by the Government, apparently unquestioningly”.⁴⁸⁰ These findings call into question both the willingness of the authorities to ensure genuine accountability and the ICOE’s independence.⁴⁸¹

Prior to February 2021, military-, police- and government-established inquiries were sometimes also formed to investigate particular human rights violations. However, these inquiries were formed under internal rules or government ordinances rather than any specific piece of legislation, and were often heavily criticised as “lack[ing] independence, impartiality and credibility”⁴⁸² and as being committed to maintaining government denials of violations.⁴⁸³ In addition, there is no evidence that such inquiries have been set up since the military coup in February 2021.

2.2.4. JUSTICE SYSTEMS AND SYSTEMS CONTROLLED BY EAOs

The 2008 Constitution established States and Regions, and a number of self-administered zones which have certain legislative and judicial powers.⁴⁸⁴ Parts of Myanmar are also under EAO control with distinct administrative and judicial systems.⁴⁸⁵ Judicial systems administered by EAOs and other local authorities vary in their level of formality; the extent to which they are governed by written laws or procedures; and

whether and to what extent they punish CRSV. Some such systems are governed by relatively formalised written procedures and laws, while others resolve disputes according to traditional customs. Certain systems – particularly those in border regions – take a hybrid approach, applying Myanmar’s laws or, on an exceptional basis, international laws, in addition to traditional customs.⁴⁸⁶

These justice systems often take a more community-oriented and compensation-focused approach to punishments for CRSV, requiring the payment of “*bunglat hka*” or “*blood money*” to compensate the female survivor for the harm committed and to restore peace in the community,⁴⁸⁷ but not imposing any further non-monetary punishment on the perpetrator.⁴⁸⁸ For example, in a case involving the rape of a Ta’ang teacher by several Ta’ang National Liberation Army (TNLA) members, the TNLA negotiated for the perpetrators to pay compensation to the survivor, and brought two armed men to kneel and apologise to her.⁴⁸⁹ Often, cases of sexual violence in south-eastern Myanmar are dealt with by offering compensation or marriage.⁴⁹⁰ In one case in a village in Mon State where a four year old girl was raped by a Grade 9 student, the sole penalty was an order by the village head for the boy’s family to give 500,000 kyat (approx. USD 270) to the girl.⁴⁹¹ Such situations reportedly happened frequently in this community.⁴⁹²

480 HRC ‘Report of the Special Rapporteur on the situation of human rights in Myanmar’ (29 April 2020) UN Doc A/HRC/43/59, para 62 (“The findings that there was no evidence of rape or gang rape, or that searches by male defence personnel could constitute sexual violence, are incredible.”).

481 UN Security Council ‘Conflict-related sexual violence: Report of Secretary-General’ (30 March 2021) UN Doc S/2021/312, para 42; HRC ‘Report of the Special Rapporteur on the situation of human rights in Myanmar’ (29 April 2020) UN Doc A/HRC/43/59, para 62.

482 The Arakan Project, ‘Investigation Commissions to Whitewash Atrocities? The Need for an Independent International Investigation Mechanism’ (15 March 2017) https://www.burmailibrary.org/docs23/The_need_for_an_independent_international_investigation_mechanism.pdf accessed 23 June 2022.

483 Human Rights Watch, ‘Burma: National Commission Denies Atrocities’ (7 August 2017) <https://www.hrw.org/news/2017/08/07/burma-national-commission-denies-atrocities> accessed 23 June 2022; International Commission of Jurists, ‘Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study’ (January 2018), 19–22.

484 Constitution of the Republic of the Union of Myanmar 2008, arts 51, 54, 56(c), 277–279, 283.

485 Brian McCartan, Kim Jolliffe, ‘Ethnic Armed Conflict and Territorial Administration in Myanmar’ (Asia Foundation, June 2015), 40 <https://asiafoundation.org/resources/pdfs/ConflictTerritorialAdministrationfullreportENG.pdf> accessed 23 June 2022.

486 HRC ‘Detailed findings of the Independent International Fact-Finding Mission on Myanmar’ (16 September 2019) UN Doc A/HRC/42/CRP.5, para 563; Brian McCartan, Kim Jolliffe, ‘Ethnic Armed Actors and Justice Provision in Myanmar’ (Asian Foundation, October 2016), 35 https://asiafoundation.org/wp-content/uploads/2016/10/Ethnic-Armed-Actors-and-Justice-Provision-in-Myanmar_EN.pdf accessed 23 September 2022.

487 Ibid.

488 Ibid.

489 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 204.

490 HRC ‘Summary of Stakeholders’ submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights’ (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 57.

491 UN Women and Justice Base, ‘Voices from the Intersection: Women’s Access to Justice in the Plural Legal System of Myanmar’ (2016), 61 https://www.burmailibrary.org/docs22/Justice_Base-2016-04-22-Women_in%20Myanmar-Plural_legal_systems.pdf accessed 23 June 2022.

492 Ibid.

Like the national court systems, local systems face serious concerns about corruption, discrimination against women, and cultural biases against other minorities, including minority ethnic groups and LGBTIQ+ populations.⁴⁹³ However, the extent to which these concerns are applicable varies, and some systems may be more gender-sensitive and more effective than others at providing reparations for CRSV.

For instance, the Karen National Union (KNU) and the Karen Women's Organisation (KWO) ensure women's participation at every level of governance.⁴⁹⁴ The Karen Legal Assistance Center (KLAC) is a community-based organisation (with gender parity among staff) that can provide support to survivors who choose to take their cases to the KNU justice system. KLAC works closely with the KNU justice department, providing training to those involved in receiving and processing cases, as well as offering feedback as necessary. KLAC has volunteers at the district and township level, and it also works closely with organisations that work on and process GBV cases.⁴⁹⁵

Bringing a case to the KNU justice system costs far less than doing so through the national court system, including because bribes are not accepted by officials, unlike in the national system.⁴⁹⁶ Proceedings are carried out in the Karen language whereas proceedings in the national court system are in Burmese only, and without interpretation provided for survivors whose first language is not Burmese.⁴⁹⁷ The KNU justice system is more accessible to survivors in the KNU-controlled areas than the national court system, and cases are concluded in a more organised way.⁴⁹⁸ The KNU justice system has faced challenges due to the COVID-19 pandemic and ongoing conflict situation, but it has continued to operate.⁴⁹⁹ If a

CRSV survivor brings their case to the KNU (criminal) justice system, the main potential outcome is that the perpetrator is sent to prison if found guilty.⁵⁰⁰ If survivors want to seek compensation for the harm they have suffered, they must go through the KNU civil law system.⁵⁰¹ The KNU justice system is an example of a local justice system which is more promising than the national court system with respect to CRSV survivors' access to reparations. However, data could not be found as to the number of CRSV cases that have gone through the KNU justice system to date, or as to the outcomes of such cases.

The judicial system administered by the Arakan Army is also perceived to be less corrupt, less bureaucratic, and more effective at providing relief for abuses such as CRSV than the national court system.⁵⁰² In some cases, participation in these local systems may allow survivors to remain in the community rather than be forced to leave, and it may also prevent their families from rejecting them.⁵⁰³

2.2.5. AVENUES FOR REPARATIONS FOR LGBTIQ+ PERSONS AND SURVIVORS OF SAME-SEX CRSV

LGBTIQ+ persons and survivors of same-sex CRSV have even fewer avenues for reparations within Myanmar.

Myanmar domestic law expressly discriminates against LGBTIQ+ persons and criminalises consensual same-sex intercourse.⁵⁰⁴ These provisions are reportedly often used to persecute people from the LGBTIQ+ community, according to activists.⁵⁰⁵ Further, as mentioned above, the Penal Code does not criminalise male rape, further limiting recourse for CRSV experienced by men and boys, including LGBTIQ+ men and boys.⁵⁰⁶

493 Ibid 78.

494 Interview 24, independent expert (online, 2 June 2022).

495 Interview 28, representatives from the Karen Human Rights Group (KHRG) and Karen Women's Organisation (KWO) (online, 6 July 2022).

496 Ibid.

497 Ibid.

498 Ibid.

499 Ibid.

500 Ibid.

501 Ibid.

502 Interview 24, independent expert (online, 2 June 2022).

503 Interview 27, independent expert (online, 29 June 2022).

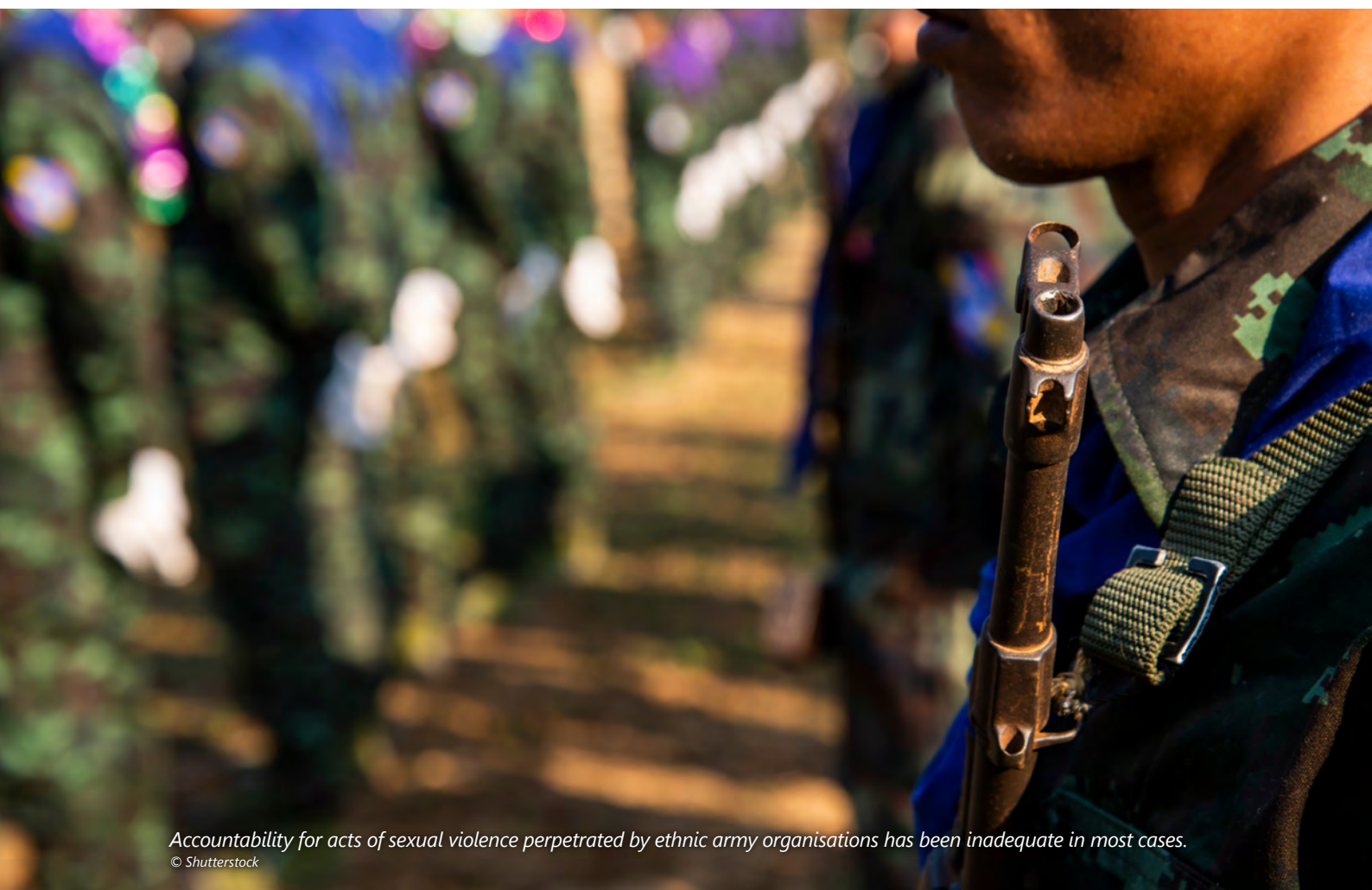
504 Myanmar Penal Code, s 377. HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 5.

505 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, para 152.

506 Myanmar Penal Code, s 375.

The 2008 Constitution also does not include sexual orientation and gender identity as prohibited grounds for discrimination, and there are no other laws which prohibit discrimination against LGBTIQ+ persons.⁵⁰⁷ It has accordingly been reported that LGBTIQ+ persons face discrimination in obtaining healthcare services,⁵⁰⁸ and are subject to unrestrained policing and arbitrary arrests

and detention,⁵⁰⁹ often involving physical and sexual assault while in police custody.⁵¹⁰ This discrimination against LGBTIQ+ persons has naturally led to an underreporting by survivors of same-sex CRSV. Social stigma and taboos around LGBTIQ+ identities also lead to underreporting and the lack of effective remedies for acts of CRSV against LGBTIQ+ individuals.⁵¹¹



Accountability for acts of sexual violence perpetrated by ethnic army organisations has been inadequate in most cases.

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507 HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 5.

508 Ibid para 10.

509 Interview 10, CSO representative (online, 29 April 2022); HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 18.

510 HRC 'Summary of stakeholders' submissions on Myanmar – Report of the Office of the United Nations High Commissioner for Human Rights' (12 November 2020) UN Doc A/HRC/WG.6/37/MMR/3, para 18.

511 Interview 10, CSO representative (online, 29 April 2022); HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, para 177; Human Rights Watch, 'All of My Body Was Pain': Sexual Violence Against Rohingya Women and Girls in Burma' (17 November 2017) <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma> accessed 22 June 2022.



VII. STATUS OF IMPLEMENTATION OF REPARATIONS

1. State and other duty-bearers position

1.1. The State of Myanmar

Myanmar authorities have repeatedly denied the occurrence of human rights violations, including CRSV. Despite evidence of widespread CRSV collected by women's rights organisations, NGOs, and later UN human rights bodies, the various national commissions established between 2012 and 2018 to investigate the situation in northern Rakhine found that no human rights violations had taken place.⁵¹² The former Government under Aung San Suu Kyi plainly rejected allegations of rape against Rohingya women, describing them as "fake rape".⁵¹³

In its 2019 report to CEDAW, the former Government affirmed that there was no evidence to support "repeated accusations that Myanmar Security Forces committed a campaign of rape and violence against Muslim women and girls residing in Rakhine State",⁵¹⁴ and that "the Tatmadaw [has a] 'Zero Tolerance' policy regarding [...] sexual violence, regardless of its extent".⁵¹⁵ In response, CEDAW noted that "similar patterns of abuses ha[d] been reported for at least three decades" and highlighted the denial and lack of efforts by the State to hold perpetrators of sexual violence accountable.⁵¹⁶

The military's standard approach has been to dismiss allegations of, and deny responsibility for, sexual violence while publicly lauding the discipline of its troops as "in full accordance with the law".⁵¹⁷

Min Aung Hlaing, Commander-in-Chief of the military since 2011 and self-appointed Chairperson of the so-called State Administration Council, has denied the multiple accounts⁵¹⁸ of murder and rape by his troops. In April 2018, during a meeting with UN Security Council members, Min Aung Hlaing stated, in response to concerns from the delegation about sexual violence by the armed forces, that "the representatives need to consider the fact that it is a nature to exaggerate the rape case".⁵¹⁹ Similarly, in an interview in February 2019, when asked about refugees claiming that they had been raped in Myanmar, Min Aung Hlaing stated that "[w]e all are under discipline. So, it is very impossible to commit rape case. However, [...] beating or rape may happen. However, show us the evidence to us. We will take action against them".⁵²⁰

It is clear that Myanmar authorities have long been unwilling to hold perpetrators of sexual violence accountable, and ignored the need to provide reparations to survivors. As noted by the IIFFMM in September 2019, "[t]he Government has [...] yet to show the necessary political will and courage to effectively address the systemic nature of [SGBV] committed by

512 UN CEDAW Committee 'Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure' (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, paras 7, 9.

513 Human Rights Watch, 'Burma: Security Forces Raped Rohingya Women, Girls' (6 February 2017) [Burma: Security Forces Raped Rohingya Women, Girls | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2017/02/06/burma-security-forces-raped-rohingya-women-girls) accessed 23 June 2022. See also Jonah Fisher, 'Hounded and Ridiculed for Complaining of Rape' (*BBC News*, 11 March 2017) <https://www.bbc.co.uk/news/magazine-39204086> accessed 24 June 2022.

514 UN CEDAW Committee 'Report submitted by Myanmar under the exceptional reporting procedure' (7 February 2019) UN Doc CEDAW/C/MMR/EP/1, para 11.

515 Ibid para 25.

516 UN CEDAW Committee 'Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure' (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 5.

517 HRC 'Report of the Independent International Fact-Finding Mission on Myanmar' (12 September 2018) UN Doc A/HRC/39/64, para 82.

518 AAPP, 'Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup' (July 2022), 6-8 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

519 Human Rights Watch and Fortify Rights, 'Submission to CEDAW Regarding Myanmar's Exceptional Report on the Situation of Women and Girls from Northern Rakhine State' (May 2018), 5.

520 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, para 243. See also Office of the Commander-in-Chief of Defence Services, 'Senior General Min Aung Hlaing Receives Ashai Simbun of Japan, Answers the Questions' (17 February 2019) [Senior General Min Aung Hlaing receives Asahi Shimbun of Japan, answers the questions | CINCDs Myanmar](https://www.cincds.gov.mm/en/news/2019/02/17/senior-general-min-aung-hlaing-receives-ashai-simbun-of-japan-answers-the-questions) accessed 23 June 2022.

its security forces".⁵²¹ The HRC also underlined that the former Government's persistent denials of such violence were a major obstacle to accountability and justice,⁵²² and that the policy of the then Government even appeared to be the "destruction of evidence of the crimes committed", making future accountability more difficult.⁵²³

1.2. Ethnic armed organisations

As explained above, accountability for acts of sexual violence perpetrated by EAOs is "inadequate in most cases, as EAOs rely on their traditional justice systems, ill-suited to provide justice to survivors of [SGBV]".⁵²⁴ Though some EAOs may have systems in place to hold perpetrators accountable and provide limited reparations to survivors, this varies greatly across different EAOs and local contexts, and there is limited information publicly available as to the position of each EAO on accountability and reparations.

2. Access to reparations

2.1. Domestic mechanisms

As explained above, there are no specific domestic mechanisms in Myanmar providing survivors of CRSV access to interim or full reparations, and there are considerable legal and practical obstacles which have rendered it virtually impossible for survivors of CRSV to seek reparations through the domestic criminal system. While official information on prosecutions against members of the Sit-Tat is not disclosed, it is apparent that investigations and prosecutions of military personnel for CRSV are rare. Despite its extensive investigations, the IFFMM was only aware of "a small number of cases" in which low-level military personnel were prosecuted for sexual violence, usually when

public attention persists.⁵²⁵ For example, the IFFMM identified a case where a soldier was sentenced to 10 years in prison with hard labour for the rape of a child in Kachin State.⁵²⁶ In another case, although the Sit-Tat had initially denied the rape of a woman in June 2020 by soldiers who had entered her village in Rakhine State, the military later announced that three soldiers had been prosecuted by a military tribunal and sentenced to 20 years of imprisonment.⁵²⁷

Even in these cases where soldiers have been prosecuted, no appropriate reparations were afforded to the survivor. Instead, the usual response by the military to complaints has been denial and dismissal, often accompanied by a threat of reprisals. For example, the IFFMM verified the rape and killings of two volunteer teachers, Maran Lu Ra and Tangbau Hkawn Nan Tsin, in Shan State on 19 January 2015. Following complaints made by the families of the victims, "the police detained and tortured or ill-treated two villagers accused of the [crimes], while ignoring evidence against troops [...] who were stationed in the village at the time of the incident".⁵²⁸ The military also threatened legal action against the families of the victims who initiated the investigation.⁵²⁹

There have been no cases that involve senior officers and commanders or that take into account the widespread and systematic nature of CRSV. In September 2019, the HRC noted that, "[d]espite the gravity and brutality of the sexual violence [against the Rohingya], no high-ranking Tatmadaw commander has been held accountable" while the issue had been raised and reported multiple times.⁵³⁰

As discussed above, the effectiveness of local (ethnic) justice systems in providing reparations to CRSV survivors varies, and may be low in many cases. It is therefore likely that only a very low number of CRSV survivors may have already accessed adequate reparations through such systems.

521 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, para 10.

522 Ibid para 243.

523 Ibid para 257.

524 Ibid para 8.

525 Ibid para 249.

526 Ibid.

527 UN Security Council 'Conflict-related sexual violence: Report of Secretary-General' (30 March 2021) UN Doc S/2021/312, para 42.

528 HRC 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts' (12 September 2019) UN Doc A/HRC/42/CRP.4, para 252.

529 Ibid.

530 Ibid para 15.

2.2. International mechanisms

While in November 2019 the ICC initiated an investigation into cross-border offences as explained above,⁵³¹ no prosecution has yet been initiated. As mentioned above, it remains unclear whether the ICC will accept the NUG's 17 July 2021 declaration that it accepts the Court's jurisdiction over international crimes committed in Myanmar since 1 July 2002.⁵³²

International sanctions imposed by the US, UK, and EU relate to 97 individuals and entities under

Myanmar-specific sanctions programmes. Sanctioned individuals include key figures like General Min Aung Hlaing and his deputy Soe Win Hlaing.⁵³³ However, while these programmes offer recognition of harm and international condemnation, and create financial hardship for the perpetrators, no financial reparations have yet been provided to victims.

Finally, while the work of the IIMM may form the basis of future cases that could provide access to reparations for survivors of CRSV,⁵³⁴ no such cases have yet arisen.

531 International Criminal Court, 'ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar' (14 November 2019) <https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar> accessed 23 June 2022. See also above, para 12.

532 NUG Myanmar, 'The National Unity Government of the Republic of the Union of Myanmar Accepts the Jurisdiction of the International Criminal Court' (20 August 2021) <https://twitter.com/NUGMyanmar/status/1428739347717648389> accessed 15 July 2022.

533 Office of Foreign Assets Control, 'Persons and Entities' <https://sanctionssearch.ofac.treas.gov/> accessed 24 June 2022. See United Kingdom Government, 'Guidance: Financial Sanctions, Myanmar' <https://www.gov.uk/government/publications/financial-sanctions-burma> accessed 20 September 2022; European Commission, 'EU Sanctions Map: Myanmar (Burma)' <https://www.sanctionsmap.eu/#/main/details/8/?search=%7B%22value%22:%22%22.%22searchType%22:%7B%7D%7D> accessed 20 September 2022; Scott Neuman, 'U.S. "Stands with the People", Imposes Sanctions on Myanmar's Coup Leaders' (NPR, 11 February 2021) [Myanmar's Coup Leaders Sanctioned By Biden Administration : NPR](https://www.npr.com/2021/02/11/9781441444444) accessed 23 June 2022.

534 UN General Assembly 'Letter dated 16 January 2019 from the Secretary-General addressed to the President of the General Assembly' (21 January 2019) UN Doc A/73/716, para 1 ("The Council mandated the mechanism, henceforth referred to as the Independent Investigative Mechanism for Myanmar, to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011 and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over those crimes, in accordance with international law.").



Myanmar's large diaspora community has also advocated for human rights reparations.
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VIII. ANALYSIS OF OPPORTUNITIES AND THREATS FOR REPARATIONS

1. Mapping of key stakeholders

1.1. Key stakeholders

Given its obligation to provide reparations, a future democratically elected government in Myanmar is a key stakeholder.

Alongside the efforts of thousands of protesters and activists, as well as ethnic organisations and CSOs, the CRPH, NUG and NUCC are working on efforts to pave the way for the establishment of a new federal democratic system in Myanmar. The NUG is considered by many people in Myanmar to be the legitimate government, despite its limited human resources and its operation primarily from outside of Myanmar. The NUCC drafted and ratified the Federal Democracy Charter in 2021.⁵³⁵ The NUG and NUCC's Joint Coordination Committee is developing a Gender Policy.⁵³⁶

The NUG has established a Ministry of Human Rights (MoHR) and a Ministry of Women, Youth and Children (MoWYC). Both Ministries have been engaged in the documentation of human rights violations by the military, including sexual violence, and they have been sharing information and evidence with the IIMM.⁵³⁷ Though neither ministry has yet clearly defined a strategy concerning reparations, documentation of human rights violations has been identified as important for future justice and accountability. The MoHR is working in consultation with many CSOs

to create a new human rights commission aiming to overcome the limitations and respond to the flaws of the NHRC established in 2011.⁵³⁸

The CSOs interviewed for this study and discussed in this report are also key stakeholders, as well as many CSOs that were not represented in this study. These CSOs – primarily ethnic women's organisations and/or human rights or peace-building organisations – have been working with survivors, advocating for gender equality and women's empowerment and security, promoting access to justice and advocating for accountability, and/or providing (reparative) assistance to communities affected by CRSV for many years. In recent years, some new organised groups of women survivors of human rights violations have been created.⁵³⁹

States to which survivors of CRSV have fled, including Bangladesh, Thailand, India, China, and many other countries, could also be important stakeholders if they were willing and able to provide reparative assistance to survivors from Myanmar.⁵⁴⁰

Actors within the international community more broadly are key stakeholders and should direct their attention, funds, advocacy efforts, and diplomatic leverage towards promoting a transition to a civilian-led, democratic federal system in Myanmar and ensuring the delivery of reparations to CRSV survivors.

535 Over 400 representatives ratified the Federal Democracy Charter at the NUCC's "People's Assembly" last year. For more, see Su Mon Thazin Aung, '2022/28 "Myanmar's Quest for a Federal and Democratic Future: Considerations, Constraints and Compromises"' (ISEAS Yusof Ishak Institute, 18 March 2022) <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2022-28-myanmar-quest-for-a-federal-and-democratic-future-considerations-constraints-and-compromises-by-su-mon-thazin-aung/> accessed 17 February 2023.

536 Interview 1, independent expert (online, 7 March 2022).

537 Interview 3, NUG Ministry of Human Rights (online, 26 April 2022); Interview 9, NUG Ministry of Women, Youth and Children (undisclosed location, 29 April 2022).

538 Interview 3, NUG Ministry of Human Rights (online, 26 April 2022).

539 AJAR, 'Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar' (November 2022), 13 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2022.

540 Interview 20, independent expert (online, 26 May 2022).

1.2. Main CRSV documentation efforts

Women's rights CSOs have led efforts to document sexual violence in Myanmar for at least three decades and they continue to do so.⁵⁴¹

As mentioned above, since the February 2021 coup, many CSOs in Myanmar have shifted their efforts to focus on the documentation of human rights violations, often including cases of CRSV. However, some CSOs have explicitly chosen not to document cases of CRSV (or at least not to focus on such cases in their documentation efforts) due to concerns about lacking the necessary expertise and/or resources to do so appropriately and without causing harm to survivors.⁵⁴² Other CSOs have not documented many reports of CRSV, which is likely a consequence of underreporting.

One notable CRSV documentation effort is the 'Unheard Voices' study discussed above, which was based on an extended research process including interviews with survivors who suffered CRSV in various contexts and locations in Myanmar.⁵⁴³ The report provides extensive information and analysis about CRSV in Myanmar, and in particular about survivor experiences based on first-hand accounts.⁵⁴⁴

The IIMM is collecting, consolidating, preserving, and analysing evidence of the most serious international crimes and violations of international law, including sexual and gender-based crimes (SGBC), committed in Myanmar since 2011. The IIMM does not publish reports, but rather collects evidence to facilitate eventual accountability. According to the IIMM, it

adopts a survivor-centred approach and gender lens throughout all aspects of its work, including the investigation of SGBC.⁵⁴⁵

The OHCHR has been documenting CRSV both before and after the February 2021 coup. The OHCHR monitors and follows up on reports of human rights violations, including cases of CRSV as part of its mandate on Myanmar. Due to its lack of presence in the country and because of inter-related challenges of protection, security, and the potential for retraumatisation of victims, it has often been difficult for The OHCHR to investigate cases extensively.⁵⁴⁶

The ICC's investigation into international crimes committed against the Rohingya was impacted by the COVID-19 pandemic, but during a visit to Bangladesh in February 2022, Prosecutor Karim Khan "*confirmed [...] that he had allocated additional resources to the investigative team and was seeking to accelerate the collection and analysis of evidence*".⁵⁴⁷ He also met with local religious leaders and "*addressed ways that Rohingya leaders can support victims of [SGBV] to come forward with their accounts*".⁵⁴⁸

As discussed above, the UNFPA has been designated interim focal point by the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (OSRSG-SVC) in Myanmar to lead the coordination of the MARA working group in Myanmar (in the absence of an SWPA), which was set up in 2019 in response to the Joint Communiqué.⁵⁴⁹ One critical issue with respect to preventing and responding to CRSV at the country level is the lack of reports of CRSV coming in via various UN

541 See, e.g., Shan Human Rights Foundation and Shan Women's Action Network, 'License to Rape: The Burmese Military Regime's Use of sexual Violence in the Ongoing War in Shan State' (May 2002); see also Women's League of Burma, 'If They Had Hope, They Would Speak' (November 2014); Women's League of Burma, 'Long Way to Go – Continuing Violations of Human Rights and Discrimination Against Ethnic Women in Burma' (July 2016); Women's League of Burma, 'Girls Bear the Shame – Impediments to Justice for Girl Children Who Have Experienced Sexual Violence in Burma' (November 2017); Women's League of Burma, 'Situation Update: February–March 2022' (April 2022).

542 Interview 8, CSO representative (undisclosed location, 29 April 2022).

543 Anonymous, 'Unheard Voices – Qualitative Research on Conflict-Related Sexual Violence in Myanmar' (June 2022), 8.

544 Note however that the report does not indicate whether/how the collected data on survivors will be used or shared in the future. Ideally, and with the express consent and active participation of the survivors interviewed, the information could be used towards pursuing accountability and reparations for these survivors.

545 Interview 25, representatives of the Independent Investigative Mechanism for Myanmar (online, 8 June 2022).

546 Interview 19, representative of the Myanmar Team of the Office of the High Commissioner for Human Rights (online, 25 May 2022).

547 International Criminal Court, 'ICC Prosecutor, Karim A. A. Khan QC, Concludes First Visit to Bangladesh, Underlines Commitment to Advance Investigations into Alleged Atrocity Crimes Against the Rohingya' (1 March 2022) <https://www.icc-cpi.int/news/icc-prosecutor-karim-khan-qc-concludes-first-visit-bangladesh-underlines-commitment-advance> accessed 23 June 2022.

548 Ibid.

549 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

mechanisms and agencies.⁵⁵⁰ This may be attributable to confusion among survivors and civil society actors as to how and where to report incidents,⁵⁵¹ as well as to the various reasons for underreporting of CRSV discussed above. It is also difficult for cases of CRSV to be verified by UN bodies, many of which have been forced to work remotely and have limited or no access to the country, especially since the coup.⁵⁵² If UN bodies had more verified data about the current scope of CRSV in Myanmar, this would help enable them to have a more unified and effective response, and the issue of CRSV in Myanmar would likely become a higher priority at the UN level.⁵⁵³

One interviewee suggested that UN mechanisms and agencies have not sufficiently coordinated their efforts or consolidated their strategies concerning CRSV in Myanmar, and nor are they communicating adequately with relevant stakeholders (especially CSOs and the general public in Myanmar).⁵⁵⁴

While there is some coordination of CRSV documentation efforts, for example with CSOs passing information on to network organisations such as the WLB and ND-Burma, to the IIMM, the OHCHR, and/or the NUG's MoHR and MoWYC, such coordination is not systematic, and there are likely both duplication of efforts and many gaps in the documentation of CRSV in Myanmar.⁵⁵⁵ Moreover, existing CRSV documentation efforts vary greatly in their ethical approaches, gender and survivor sensitivity, and compliance with international standards.⁵⁵⁶ Some Myanmar CSOs, including member organisations of the WLB and ND-Burma, collect primary data through trained field staff, strictly adhering to 'do no harm'

principles, respecting survivors' confidentiality, and providing emergency support services and/or referral pathways in line with these networks' commitments to uphold survivors' rights.⁵⁵⁷ UNFPA Myanmar has also provided technical support to some CSOs to ensure that they are upholding ethical and safe practices and a survivor-centred approach in their data collection, reporting, and documentation for case management purposes (and not necessarily for accountability purposes).⁵⁵⁸ The Center for Justice and Accountability has similarly worked with some CSOs on capacity-building for ethical, safe, and survivor-centred CRSV documentation for accountability purposes.

At the same time, some relevant actors – particularly local and national media,⁵⁵⁹ and some CSOs – rely primarily on second-hand information obtained for example from social media,⁵⁶⁰ which may not be reliable and in any case is often published without the consent of survivors (as discussed above).⁵⁶¹ Concerns have also been raised that international NGOs, researchers and journalists interested in documenting CRSV in Myanmar have recently engaged in "extractive behaviour" (one-off, ill-coordinated efforts with no feedback loop often conducted without appropriate skills and experience and a lack of survivor sensitivity), which is harmful to survivors and contrary to international standards.⁵⁶²

As mentioned above, the Safe GBV Reporting channel was established in March 2021 by a Myanmar-international team, working confidentially, to support survivor-centred approaches to GBV response, including ethical reporting and documentation.⁵⁶³ In response to confusion among Myanmar organisations

550 Ibid.

551 Ibid; Interview 27, independent expert (online, 29 June 2022).

552 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

553 Ibid.

554 Interview 27, independent expert (online, 29 June 2022).

555 Interview 4, CSO representative (undisclosed location, 27 April 2022); Interview 21, Matthew Bugher, Human Rights Fellow at the Schell Center for International Human Rights at Yale Law School (online, 26 May 2022).

556 Interview 2, independent expert (online, 19 April 2022).

557 Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 5, CSO representative (online, 28 April 2022); Interview 8, CSO representative (undisclosed location, 29 April 2022).

558 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

559 Interview 7, CSO representative (undisclosed location, 28 April 2022).

560 Interview 21, Matthew Bugher, Human Rights Fellow at the Schell Center for International Human Rights at Yale Law School (online, 26 May 2022).

561 Interview 6, CSO representative (undisclosed location, 28 April 2022); Interview 7, CSO representative (undisclosed location, 28 April 2022); Interview 15, CSO representatives (online, 9 May 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 2, independent expert (online, 19 April 2022).

562 Interview 2, independent expert (online, 19 April 2022); Interview 27, independent expert (online, 29 June 2022).

563 Anonymous, 'Recommendations for Effective International Support to Gender Equality and Women's Rights in Myanmar' (June 2021),³

and survivors as to how and where they should report cases of CRSV, this team developed an overview of relevant UN mechanisms, their mandates, reporting procedures, whether they provide referrals, and how to contact them.⁵⁶⁴

2. Reparations advocacy initiatives

In its 2022 case study on gender and reparations in Myanmar, AJAR notes that “[a] number of Myanmar civil society organizations have developed significant expertise relating to transitional justice, including documentation of violations, commemoration, and trauma healing and emergency assistance for victims”, with some initiatives including survivors of CRSV.⁵⁶⁵ According to the case study,

“Between 2015 and 2021, civil society groups tested the waters with a range of truth-telling initiatives and commemorative events. Key events included commemorating the war in Kachin State and remembering the rape and murder of two Kachin teachers, the 88 Generation Peace and Open Society’s Uprising Museum, AAPP’s Museum on Political Prisoners, truth-telling symposiums with former political prisoners in Yangon, Mandalay and central Burma, an event honoring fallen political prisoners, and 88 memorials in Taunggyi and Bago. These events were usually confined to cities and larger towns where there is less security surveillance.”⁵⁶⁶

AJAR further notes that, together with several women’s organisations, it has carried out small-scale projects with women survivors of human rights violations that can be seen as reparative, as they “seek to address victims’ needs in a holistic way with the

goal to support them in organizing themselves”. Such projects have included trauma healing, advocacy, and acknowledgement components, among others.⁵⁶⁷

A group of CSOs, including AAPP and AJAR, are currently engaged in efforts to raise awareness about and advocate for transitional justice. In this regard, they have been lobbying to the NUG to push for certain legal reforms and programmes as part of a future transitional justice process, including within the NUCC’s working committees.⁵⁶⁸

AAPP has also conducted trainings on transitional justice for CSOs – including ethnic organisations and women’s organisations – and members of pro-democracy political parties.⁵⁶⁹ Other organisations such as the Human Rights Education Institute of Burma (HREIB), a local Burmese organisation, conducted trainings focusing on a more nuanced approach to transitional justice among community-based organisations.⁵⁷⁰ The trainings used case studies and activities to provide a broad and in-depth understanding of the various concepts such as “truth”, “impunity”, and “reconciliation”.⁵⁷¹

In July 2022, AAPP published a detailed report entitled ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma since the 2021 Coup’.⁵⁷² AAPP argues in this report that the ICC has jurisdiction to prosecute perpetrators of serious international crimes committed in Myanmar from 2002 onwards by virtue of the NUG’s declaration accepting the Court’s jurisdiction.⁵⁷³ This report presents evidence of the military’s commission of the crimes of murder, forcible transfers, arbitrary detention, torture, and enforced disappearance as “part of a widespread and systematic attack targeting the civilian population”.⁵⁷⁴ Though the report presents limited evidence of sexual violence committed by the military

564 Interview 27, independent expert (online, 29 June 2022).

565 AJAR, ‘Urgent Steps to Ensure Right to Remedy for Victims of Sexual and Gender-Based Violence in ASEAN’ (October 2022), 16 <https://asia-ajar.org/resources/books-research/urgent-steps-to-ensure-right-to-remedy-for-victims-of-sexual-and-gender-based-violence-in-asean/> accessed 9 January 2023.

566 Ibid.

567 Ibid.

568 Interview 13, CSO representative (online, 3 May 2022); Interview 16, CSO representative (undisclosed location, 10 May 2022).

569 Interview 13, CSO representative (online, 3 May 2022).

570 Patrick Falvey, ‘Local Transitional Justice Practice in Pre-Transition Burma’ in Lars Waldorf et al., *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (first published 2010, Stanford University Press), pp. 267-68.

571 Ibid.

572 AAPP, ‘Accountability for the Junta Criminals: Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma since the 2021 Coup’ (July 2022) https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf accessed 14 July 2022.

573 Ibid 6.

574 Ibid 6-7.

Outside legal action, the Myanmar diaspora community is “*mainly engaged in activities such as fundraising, advocacy, education, settlement assistance and documentation of human rights abuses*”, all of which lay the groundwork for reparations in cases of CRSV.⁵⁸⁶

In Bangladesh, the women’s rights organisation Naripokkho has built the Bangladesh Civil Society Platform for Justice and Accountability for the Rohingyas, which supports the coordination of efforts to advocate to the Bangladeshi government on behalf of people from the Rohingya community who have fled to Bangladesh, and to collect evidence of international crimes committed against the Rohingya in Myanmar to share with the ICC.⁵⁸⁷

| 3. Opportunities for reparations

In light of the current political and security context in Myanmar arising from the illegal military junta’s takeover of the central government in the February 2021 coup, there are no realistic opportunities for reparations provided by the State in the near future. Instead, the main opportunities for reparations include: (1) the provision of interim reparations or reparative assistance by CSOs (with the support of international donors), and (2) the promotion of a transitional justice framework which would enable survivors to access reparations in the future if/when a new federal democratic system is established in Myanmar.

3.1. Opportunities for interim reparations

As noted in AJAR’s 2022 case study, there are a number of Myanmar CSOs that have expertise on transitional justice, and among these some that have carried out projects including with survivors of CRSV.⁵⁸⁸ Many of the CSOs interviewed in the present study indicated their enthusiasm and willingness to

frame their work – their provision of assistance to survivors and/or their efforts to document human rights violations – within a rights-based or transitional justice approach, and some are already doing so. Several CSOs indicated that they would like to receive trainings on the topic of reparations and to find ways to raise awareness among the communities they serve about the right to a remedy and the concept of reparations. In this sense, the pre-existing expertise of many Myanmar CSOs, as well as the desire that many CSOs have indicated to frame their existing work as reparative and/or to implement interim reparations projects, present an opportunity for access to interim reparations for CRSV survivors.

Border-based civil society actors that maintain an active presence within Myanmar but are currently located in India, Bangladesh, or Thailand may be well positioned to provide interim reparations to survivors in the communities they serve, both within and outside of Myanmar. Such actors include CSOs as well as diverse and highly localised inter-connected volunteer networks and alliances, and also ethnic religious organisations.⁵⁸⁹ Such organisations, and their network and/or alliance members (often spanning cross-border demarcations), may be able to work relatively more securely, although they still face serious risks in carrying out their work due to the targeted persecution and surveillance/intelligence gathering by the military, which has proven to extend across the Myanmar border.⁵⁹⁰ Many border-based CSOs have lost funding in recent years as donors preferred to support organisations within Myanmar, and they may also face risks to their operations due to recent changes in domestic politics in the countries where they are located.⁵⁹¹

CSOs and ethnic religious organisations based or working in areas that are currently controlled by EAOs may also be relatively well positioned to provide interim reparations to survivors because the threats posed by the Sit-Tat may be fewer in such areas.

586 DEMAC, ‘Diaspora Organizations and Their Humanitarian Response in Myanmar’ (21 February 2022) <https://reliefweb.int/report/myanmar/diaspora-organizations-and-their-humanitarian-response-myanmar> accessed 24 June 2022.

587 Interview 26, member of Naripokkho (online, 22 June 2022).

588 AJAR, ‘Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar’ (November 2022), 11 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2023.

589 Interview 1, independent expert (online, 7 March 2022).

590 Ibid; Interview 2, independent expert (online, 19 April 2022); Interview 11, independent expert (undisclosed location, 29 April 2022); Interview 27, independent expert (online, 29 June 2022).

591 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021), 9.

3.2. Peace building and transitional justice

One interviewee noted that the most important first step that must come before further conversations on reparations is that the ongoing commission of human rights violations and crimes in Myanmar must stop, and impunity for these violations and crimes must end.⁵⁹²

The second main opportunity for reparations for CRSV survivors in Myanmar relates to the ongoing peace- and democracy-building efforts of activists, CSOs, and political actors such as the CRPH, the NUG, and the NUCC. As such actors advocate for a new federal democratic system to be established in Myanmar in the future, they have an opportunity to centre calls for gender equality and as part of this, to emphasise the legal obligation of the future Government to provide full reparations for all CRSV survivors of all religions, ethnicities, genders, sexual orientations, gender identities, and gender expressions, and to take measures to avoid the repetition of violence in the future. At a time when there is growing awareness and acknowledgement by the general public of past abuses of the State and the Sit-Tat, and present ongoing human rights violations committed by the Sit-Tat, activists, CSOs, and political actors have an opportunity to ensure that CRSV becomes a core part of the conversation, and that redress for such violations becomes a central demand.

As noted above, in 2021 the NUCC drafted and ratified the Federal Democracy Charter, which outlines crucial gender equality and human rights principles, creating a potential path for reparations.⁵⁹³ These include the listing of “gender equality and basic

human rights” as a “union value”⁵⁹⁴ in Part I, as well as creating an independent commission on anti-GBV in Part III. More importantly, the Charter emphasises “[w]e shall ensure the fundamental rights, gender equality and the rights of ethnic minorities”⁵⁹⁵ and that “[d]irect, indirect or any forms of discriminations based on sex and gender shall be absolutely prohibited and there shall be promotion, protection, respect and compliance”.⁵⁹⁶ How compliance is enforced has yet to be established.

As discussed above, the ICC’s willingness to exercise jurisdiction in cases of widespread and/or systematic violence – including sexual violence – committed against the Rohingya civilian population since 9 October 2016 could present a limited opportunity for reparations for some CRSV survivors from the Rohingya community who suffered CRSV at least in part on the territory of an ICC State Party such as Bangladesh.⁵⁹⁷ It is important to note, however, that as of December 2021, the activities of the ICC’s Victims Participation and Reparations Section in relation to the Situation in the People’s Republic of Bangladesh/ Republic of the Union of Myanmar remained minimal, “not least since the confines of any potential future case are presently unknown”.⁵⁹⁸ The Trust Fund for Victims does not currently have an assistance programme in relation to the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar.⁵⁹⁹

As discussed above, if the ICC accepts the NUG’s article 12(3) declaration “accepting the Court’s jurisdiction with respect to international crimes committed in Myanmar territory since 1 July 2002”,⁶⁰⁰ it could investigate and prosecute CRSV (among

592 Interview 25, representatives of the Independent Investigative Mechanism for Myanmar (online, 8 June 2022).

593 Federal Democracy Charter Part – I: Declaration of Federal Democracy Union 2021 <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf> accessed 24 June 2022.

594 Federal Democracy Charter Part – I: Declaration of Federal Democracy Union 2021, Chapter IV Part I, ‘Union Vision and Union Values’ <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf> accessed 24 June 2022.

595 Federal Democracy Charter Part – I: Declaration of Federal Democracy Union 2021, Chapter V Para 3 <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf> accessed 24 June 2022.

596 Federal Democracy Charter Part – I: Declaration of Federal Democracy Union 2021, Chapter IV Part III, ‘Fundamental Policies for Building Federal Democracy Union’ <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf> accessed 24 June 2022.

597 International Criminal Court, ‘ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar’ (14 November 2019), para 92 <https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar> accessed 23 June 2022.

598 *Situation in the People’s Republic of Bangladesh/Republic of the Union Of Myanmar* (Public redacted version of ‘Fourth Registry Report on Information and Outreach Activities’) ICC-01/19-46-Red (17 December 2021), [13] https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_11696.PDF accessed 24 June 2022.

599 The Trust Fund for Victims, ‘Assistance Programmes’ <https://www.trustfundforvictims.org/en/what-we-do/assistance-programmes> accessed 15 July 2022.

600 NUG Myanmar, ‘The National Unity Government of the Republic of the Union of Myanmar Accepts the Jurisdiction of the International Criminal Court’ (20 August 2021) <https://twitter.com/NUGMyanmar/status/1428739347717648389> accessed 15 July 2022.

other crimes) committed by the illegal military junta in Myanmar.⁶⁰¹ This could present an opportunity for reparations for CRSV survivors, though it will likely take time for the ICC to come to a decision on the declaration, and even longer for any investigations or prosecutions to be initiated thereafter.

Though the ICJ did not order Myanmar to provide specific redress or reparations for survivors of CRSV in its granting of The Gambia's request for provisional measures against Myanmar in January 2020, the ICJ acknowledged CRSV committed against the Rohingya population.⁶⁰² Such findings by international courts (alongside similar findings by international human rights bodies) could serve as the basis for acknowledgment and apology by a future democratically elected government in Myanmar.

Ongoing CRSV documentation efforts, and particularly the IIMM's collection and verification of evidence of SGBC, will help to expedite and facilitate prosecutions of perpetrators of CRSV in the future.⁶⁰³ Such judicial proceedings may eventually present opportunities for reparations for some CRSV survivors in the form of compensation, satisfaction, rehabilitation, restitution, and guarantees of non-repetition. CRSV documentation efforts will also contribute to record-keeping, memorialisation, and the fulfilment of the right to truth.

One potential avenue for the prosecution of perpetrators of CRSV from Myanmar is if other States exercise universal jurisdiction over these crimes.⁶⁰⁴ In

November 2021, Argentina's Federal Criminal Chamber 1 opened such a case against the Government of Myanmar for their treatment of the Rohingya minority.⁶⁰⁵ This trial could offer a potential avenue for reparations for CRSV survivors, including the chance to tell their stories. For some, this has already occurred; on 18 August 2021, six Rohingya women were able to testify about the sexual violence they experienced by soldiers, marking the first of such testimony anywhere in the world.⁶⁰⁶ On 1 June 2022, the Turkish authorities opened a preliminary investigation into atrocity crimes committed by members of the illegal military junta in Myanmar since the February 2021 coup.⁶⁰⁷ Depending on their scope, the universal jurisdiction trial in Argentina and the recently opened investigation in Turkey could eventually represent opportunities for CRSV survivors, but this is uncertain and in any case could take many years.

4. Threats to effective reparations for CRSV

The main threats to reparations for CRSV survivors are the entrenched climate of impunity in Myanmar, and the ongoing violence and repression being carried out by the Sit-Tat.

Security forces of the illegal military regime appear to be destroying evidence of their crimes, having reportedly "*snatched bodies from funerals, cremated the dead, and fired upon civilians who try to collect the dead bodies of protesters*";⁶⁰⁸ and used corpses to strike fear in the civilian

601 See Fortify Rights, 'Myanmar's Civilian Government Delegates Jurisdiction to International Criminal Court' (19 August 2021) <https://www.fortifyrights.org/our-impact/imp-mya-2021-08-19/> accessed 15 July 2022; Antonia Mulvey, 'Symposium on the Current Crisis in Myanmar: New Communication to the International Criminal Court Calls for Justice for Victims and Survivors of Crimes Committed by Myanmar's Military over Past Two Decades' (*Opinio Juris*, 29 September 2021) <http://opiniojuris.org/2021/09/29/symposium-on-the-current-crisis-in-myanmar-new-communication-to-the-international-criminal-court-calls-for-justice-for-victims-and-survivors-of-crimes-committed-by-myanmars-military-over-pas/> accessed 15 July 2022.

602 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Request for the Indication of Provisional Measures: Order) 2020 ICJ Reports *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* accessed 23 June 2022.

603 Interview 25, representatives of the Independent Investigative Mechanism for Myanmar (online, 8 June 2022).

604 Universal Jurisdiction is a principle of international law that allows States to have jurisdiction over cases that did not occur in their territory or impact them if the violation is so heinous that the perpetrators could be viewed as *hostis humani generis* – 'Enemies of all humanity'. Kanishka Kewlani, 'Three Avenues to Justice for the Rohingya' (*Columbia Journal of Transnational Law: The Bulletin*, 17 February 2017) *Three Avenues to Justice for the Rohingya* — *Columbia Journal of Transnational Law* accessed 24 June 2022; See generally, David Luban, 'The Enemy of All Humanity' (2018) 2 *Netherlands Journal of Legal Philosophy* 112 *The Enemy of All Humanity: Netherlands Journal of Legal Philosophy: Eleven Journals* accessed 24 June 2022.

605 Trial International, 'Aung San Suu Kyi' *Aung San Suu Kyi - TRIAL International* accessed 24 June 2022.

606 *Opinio Juris*, 'Symposium on the Current Crisis in Myanmar: Inching Closer to a Historic Universal Jurisdiction Case in Argentina on the Rohingya Genocide' (30 September 2021) *Symposium on the Current Crisis in Myanmar: Inching Closer to a Historic Universal Jurisdiction Case in Argentina on the Rohingya Genocide - Opinio Juris* accessed 24 June 2022.

607 Myanmar Accountability Project, 'Turkish Authorities Open Unprecedented Investigation into Myanmar Junta' (2 June 2022) <https://the-world-is-watching.org/2022/06/02/turkish-authorities-open-unprecedented-investigation-into-myanmar-junta/> accessed 20 June 2022.

608 ALTSEAN, 'Report Card #3: Ignoring ICJ Provisional Measures, Burma/Myanmar's Military Turns Violence Against Entire Nation' (24 May 2021), 2.

population.⁶⁰⁹ The military regime has also replaced judiciary, legal, security, and other key leadership posts with its own appointees, preventing its own ranks from being held accountable for crimes.⁶¹⁰ In this context, reparations for CRSV can seem impossible to realise.

The opportunity for CSOs to provide interim reparations to survivors is limited and threatened because the Sit-Tat continues to restrict movement around the country, to target CSOs and human rights defenders, and to surveil and curtail the internet and telecommunications.⁶¹¹ As discussed above, in this context, many CRSV survivors remain in hiding or on the run, struggling to meet their basic needs for survival, and as such may not be in a position to think about reparations, let alone to access reparative assistance. Moreover, CSOs or CRSV survivors who advocate for or seek justice and reparations are at risk of retaliation by the perpetrator, which most often means retaliation by the Sit-Tat.

To the extent that reparative assistance is available and accessible to survivors, its effectiveness may be threatened by the lack of gender sensitivity and confidentiality characteristic of some assistance projects in Myanmar. If actors providing reparative assistance to survivors do not take adequate measures to ensure survivors' protection and avoid further traumatisation or revictimisation of survivors, their efforts may be ineffective and harmful. Similarly, one-off or short-term reparative assistance may be ineffective and inadequate in that it will fail to meet the complex and manifold needs of survivors such as needs for healing and reintegration into their communities. If survivors have negative or unsatisfactory experiences with interim reparations, it may deter them from seeking further reparations in the future, particularly in a climate that is already hostile to claims for justice and redress. The prevailing culture of victim-blaming in Myanmar also poses an ongoing threat to effective reparations, as survivors who seek a remedy for the harm they have suffered often face social

stigma, discrimination, and exclusion which compounds the already serious long-term impacts of CRSV.

As mentioned above, a key stakeholder with respect to reparations for CRSV survivors in Myanmar is a future democratically elected government in the country. If such a future government is not adequately representative of the diverse ethnic and religious groups in Myanmar and genuinely committed to inclusive and non-discriminatory policies and practices, this would constitute a serious threat to the implementation of full reparations by the State. Following its landslide victory in the historic general elections in 2015, the NLD disappointed many with its exclusionary ethno-nationalist politics.⁶¹² Some commentators have suggested that the CRPH, NUG, and NUCC – which are made up of many former NLD members – are not sufficiently inclusive or representative of Myanmar's ethnic and religious groups (while others commend the relative inclusivity of these political entities). In a future transition to a new democratic federal system in Myanmar, the full inclusion and participation of ethnic and religious minorities – and that of women and members of the LGBTIQ+ community – will be critical.

An additional threat to effective reparations for CRSV survivors in Myanmar is the relative lack of attention to the historic and current situation in the country and corresponding lack of funding from the international community. It appears that engaging with Myanmar is not a diplomatic priority for many countries. This lack of political will and lack of engagement from the international community may hinder efforts to secure funding for reparative assistance, efforts to pursue prosecutions of CRSV perpetrators through universal jurisdiction, or sanctions or asset recovery strategies, among others.

In any case, future reparation projects will need to include a risk assessment, a plan to ensure their sustainability, and a proper process to ensure the participation and centrality of survivors.

609 See, e.g., Robin McDowell and Margie Mason, 'AP Investigation: Myanmar's Junta Using Bodies to Terrorize' (*AP News*, 26 May 2021) <https://apnews.com/article/myanmar-business-b2187c696e428139437778aeab0c43d4> accessed 23 June 2022.

610 In particular, the Junta has appointed a new Chief of Myanmar Police Force, Union Attorney-General and Deputy Attorney-General, State Attorney-General for each State, Region Attorney-General for each Region, Chief Justices or Judges from State or Region High Courts, Union Chief Justice and Supreme Court Justices, as well as Chairman, Vice-Chairman, and members of the Myanmar National Human Rights Commission. ALTSEAN, 'Report Card #3: Ignoring ICJ Provisional Measures, Burma/Myanmar's Military Turns Violence Against Entire Nation' (24 May 2021), 1, 4-5.

611 It is important to note also that CSOs and NGOs within Myanmar have to register as such, which entails providing the State Administration Council (SAC) with registration details, including access to centralised banking information, including bank account details and account holders' names. This exposes persons and funding trails, and makes it easy for the SAC to trace activities and locations of CSOs and NGOs. Interview 1, independent expert (online, 7 March 2022).

612 See, e.g., Amy Dwyer, 'What Does the NLD's Re-Election Mean for Myanmar's Stalled Peace Process and the Country's Deeply Rooted Ethnic Conflict?' (*Women In International Security*, 2 December 2020) <https://wiisglobal.org/what-does-the-nlds-re-election-mean-for-myanmars-stalled-peace-process-and-the-countrys-deeply-rooted-ethnic-conflict/> accessed 24 June 2022.



Stakeholders must adapt to the realities of Myanmar's current context to meet survivors' pressing needs.

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IX. RECOMMENDATIONS

The following recommendations are based on the findings of this report and are targeted to the relevant stakeholders identified through our research.

1. Recommendations to a future civilian-led, democratic federal government in Myanmar

Bearing in mind the call of countless protesters, activists, and members of civil society for a truly representative federal democratic system to be established in Myanmar, a future government will be responsible for providing full reparations to CRSV survivors. A future government in Myanmar should:

- Establish the necessary mechanisms to ensure that all survivors, of all ethnicities, and of all conflicts, past and ongoing, are able to voice their needs and priorities and meaningfully participate in reparation efforts.
- Ensure that all human rights violations including CRSV are investigated, perpetrators prosecuted and adequately punished, and that reparations are provided to victims and survivors.

In order to deliver a **direct administrative reparative assistance programme to CRSV survivors**, establish independent and sustainable inter-ministerial bodies⁶¹³ which consider the following actions, among others, to respond to survivors' rights and needs:

- Respond to the urgent needs of CRSV survivors and set up an administrative reparations programme, through individual lump-sum payments or pensions.
- Establish a programme qualifying CRSV survivors for free and adequate medical and psychosocial care and other forms of reparations.

- Establish and facilitate a gender-sensitive repatriation process for the voluntary return in safety and dignity of CRSV survivors who have been displaced.⁶¹⁴
- Establish a system to identify the children of CRSV survivors to provide them with citizenship documents and access to scholarships and vocational training.
- These processes should meet international standards (including accessibility, effectiveness, non-discrimination, gender equality, and inclusion). They should be preceded by and implemented with the consultation and participation of CRSV survivors.

For **memorialisation and acknowledgment**, consider leading and supporting efforts to document, memorialise, and publicly recognise the harms suffered by CRSV survivors and how these have been linked to entrenched patriarchal attitudes and cultures of victim-blaming. Such initiatives should be conducted in consultation and collaboration with survivors and civil society actors.

In terms of **guarantees of non-repetition**:

- Ratify the UN Convention against Torture, the Convention on the Elimination of All Forms of Racial Discrimination and the International Convention for the Protection of all Persons from Enforced Disappearance and sign the optional protocols to these instruments and to the international human rights instruments to which Myanmar is already a party.
- Train the judiciary, police and prosecuting authorities, judges and medico-legal experts and other legal professionals on the legal standards relating to the prevention, documentation, and legal response to GBV, including CRSV.
- Pass and implement legal reform as set out below.

613 Such as a Gender Equality Commission and/or Human Rights Commission.

614 See UN CEDAW Committee 'Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure' (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 50.

On **ending gender-based violence:**

- Pass a revised, CEDAW-compliant Prevention of Violence Against Women Law.⁶¹⁵
- Conduct a legal reform of the provisions of the Penal Code on rape and other forms of sexual assault to bring them into compliance with internationally accepted definitions and standards.⁶¹⁶ In particular, ensure that marital rape is criminalised⁶¹⁷ and that the definition of rape is gender-neutral.⁶¹⁸
- Repeal legislation that criminalises abortion, as called for by the CEDAW Committee.⁶¹⁹
- Enact comprehensive legislation that protects women, including women of all ethnicities, from forced displacement.⁶²⁰
- Conduct a legal reform of the provisions of the Penal Code to criminalise serious international crimes, including CRSV, and establish civilian jurisdiction over such crimes.⁶²¹
- Take appropriate measures to ensure that all victims of SGBV have access to redress, including symbolic recognition and compensation for material and moral harm suffered, access to rehabilitation and support services, and access to justice.
- Promote gender equality and non-discrimination in public messaging and in school curricula.

- Strengthen the gender responsiveness and gender sensitivity of healthcare professionals, including by providing systematic training to them on gender issues and GBV, as well ensuring access to quality medical and psychosocial services for survivors.

On **non-discrimination:**

- Extend constitutional human rights protections to all persons, not only to “citizens”.⁶²²
- Ensure the restoration of citizenship to all those who have been refused citizenship or stripped of their citizenship on a discriminatory and/or political basis. Repeal the Citizenship Law to eliminate discriminatory provisions based on ethnicity and use objective criteria to determine citizenship, such as descent.⁶²³
- Ensure that domestic legislation includes a definition of discrimination against women, covering direct and indirect discrimination in the public and private spheres, including intersecting forms of discrimination, in line with article 1 of the CEDAW Convention.
- Guarantee the inclusion and participation of diverse categories of survivors –female and male CRSV survivors, LGBTIQ+ persons, and persons from ethnic or religious minorities – in any activity or project undertaken as part of reparation initiatives.

615 Ibid para 18.

616 Ibid para 16.

617 See HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 32.

618 See, e.g., International Criminal Court (ICC), ‘Elements of Crimes’ (2011) ISBN No. 92-9227-232-2, art 7(1)(g)-1 ‘Crimes Against Rape’ <https://www.refworld.org/docid/4ff5dd7d2.html> accessed 23 June 2022.

619 UN CEDAW Committee ‘Concluding observations on the combined fourth and fifth periodic reports of Myanmar’ (25 July 2016) UN Doc CEDAW/C/MMR/CO/4-5, para 39(b); UN CEDAW Committee ‘General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (14 July 2017) UN Doc CEDAW/C/GC/35, para 31(a). See also UN Committee on Economic, Social and Cultural Rights ‘General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) UN Doc E/C.12/GC/22, para 57.

620 UN CEDAW Committee ‘Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure’ (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 20.

621 Ibid para 22.

622 See HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 234.

623 UN CEDAW Committee ‘Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure’ (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 24.

On justice seeking:

- Repeal any laws granting government officials, including military and security officers, immunity for human rights abuses and establish civilian jurisdiction over human rights violations and violations of international humanitarian law.⁶²⁴
- Disseminate survivor-centric and trauma-informed information on the mechanisms and procedures for seeking remedies for violations of the rights of CRSV survivors, particularly in rural areas.
- Strengthen the gender responsiveness and gender sensitivity of the justice system, including by increasing the number of women in the judiciary and providing systematic training to judges, prosecutors, police officers, and other law enforcement officials on gender issues.
- Enable access to legal aid to CRSV victims and survivors.
- Access to the Rome Statute of the ICC⁶²⁵ and fully cooperate with investigations carried out by the ICC, the IIMM, with national jurisdictions exercising universal jurisdiction, and with international human rights mechanisms.
- Fully involve women and girls at all stages of the post-conflict reconstruction process, including in decision-making.⁶²⁶

On the protection of LGBTIQ+ persons:

- Introduce an anti-discrimination law, to explicitly prohibit discrimination of all kinds, including on the basis of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) in all areas of public and private life.
- Legalise same-sex relationships and marriage.

- Introduce the specific offence of “*hate crimes*” into the Penal Code, including appropriate punishments for the perpetrators of hate crimes against LGBTIQ+ individuals and other minorities.
- Introduce a Gender Recognition Law, to guarantee every person the right to have their self-defined gender identity recognised on all official documents issued by the State through a simple administrative procedure based on self-determination.

2. Recommendations to ethnic armed organisations

Bearing in mind that the administrative and judicial systems in place in EAO-controlled areas vary greatly, EAOs should consider the implementation of measures to prevent the commission of CRSV and to provide reparations for CRSV survivors. EAOs should consider taking measures to:

- Not commit acts of sexual violence; publicly commit to addressing acts of sexual violence if they have not done so already.⁶²⁷
- Hold perpetrators of CRSV to account, as urged by women’s rights organisations and the IIFFMM.⁶²⁸
- Review administrative and judicial procedures in place for cases of GBV – including CRSV – and ensure their compliance with international standards, including accessibility, effectiveness, non-discrimination, gender equality and inclusion.
- Ensure that administrative and judicial procedures in place for cases of CRSV centre survivors, ensuring that their voices are heard and listened to throughout the procedures.

624 Ibid para 14.

625 Ibid para 34.

626 Ibid para 63.

627 HRC ‘Detailed findings of the Independent International Fact-Finding Mission on Myanmar’ (16 September 2019) UN Doc A/HRC/42/CRP.5, paras 562-564.

628 HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 12.

- Ensure that administrative and judicial procedures do not further traumatise or revictimise survivors, by for example ensuring confidentiality, ethical and safe evidence collection and storage, witness protection, gender sensitivity, and survivor consultation.
- Ensure that compensation awarded to survivors is proportionate to the harm suffered, is provided after consulting survivors themselves and responds to their needs for redress.
- Prohibit amnesties for perpetrators of CRSV in fighting forces.⁶³¹
- Ensure that efforts towards peace-building and transitional justice are survivor-centric and GBV-sensitive. In particular, ensure that any efforts to design transitional justice processes are undertaken with the active participation of survivors and with feminist leadership.⁶³²

3. Recommendations to new and emerging political entities in Myanmar

As discussed above and noted in the Briefing Paper on ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ published anonymously in June 2021, several new political entities have emerged in Myanmar since the February 2021 coup, including the CRPH, NUG, NUCC, CDM, GSC, and the GSCN.⁶²⁹ Such entities, alongside EAOs and ethnic political parties, should make commitments to:

- Advance the development of reparations policies and frameworks, including through the NUG and NUCC’s coordination committees, in line with the “Recommendations to a future civilian-led, democratic federal government in Myanmar” made above.
- Ensure that the NUG and NUCC’s Joint Coordination Committee – Gender Policy, as well as the Transitional Justice Joint Coordination Committee, are fully supported to focus on prevention and a survivor-centred response to CRSV and the provision of reparations, facilitating the meaningful participation of CRSV survivors in strategy design and delivery.⁶³⁰

- Collaborate with civil society actors to promote efforts to memorialise and acknowledge recent and historic cases of CRSV in Myanmar.
- Ensure “a minimum of [at least] 30 per cent women’s representation in all levels and layers, in addition to dedicated women’s rights representatives”.⁶³³
- Follow the example of the NUG with respect to its recent appointments of women with explicitly feminist track records.⁶³⁴
- Establish “dedicated roles or seats for women’s rights representatives in governance mechanisms, and/or a commission or committee that systematically reviews all NUG and CRPH policies and commitments to ensure they are gender inclusive”.⁶³⁵

4. Recommendations to actors in the humanitarian and development sectors

Given the ongoing humanitarian and economic crises in Myanmar, actors in the humanitarian and development sectors will continue to play an important role in providing emergency and longer-term assistance and support to many people in Myanmar, including survivors of CRSV. Such actors should consider taking measures to:

629 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021), 13.

630 Interview 27, independent expert (online, 29 June 2022).

631 Ibid 16.

632 Interview 16, CSO representative (undisclosed location, 10 May 2022).

633 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021), 16.

634 Ibid.

635 Ibid 15.

- Prioritise CRSV survivors and mainstream their needs in their work; ensure that CRSV survivors are identified as priority recipients of assistance and priority participants in livelihood programmes, etc., while being cautious to avoid singling out CRSV survivors in a way that could cause additional stigma.
- Consult CRSV survivors and centre survivors' particular needs and priorities in designing programmes.
- Map and consult local actors in order to understand, utilise, and strengthen local response ecosystems and to coordinate humanitarian protection and referrals to support services for survivors.⁶³⁶
- Engage with inter-agency coordination mechanisms through the UN GBV Sub-Cluster where operational, and at a minimum ensure familiarity with available referral pathways; contribute to the strengthening of referral pathways through the provision of relevant services.⁶³⁷
- Ensure knowledge of and adherence to international standards and best practices for GBV programming – and for working with CRSV survivors in particular – when providing services or funding service provision to survivors.⁶³⁸
- Continue gender mainstreaming and ensuring that assistance is gender-sensitive; exchange relevant knowledge and best practices with CSOs delivering reparative assistance to help ensure the gender sensitivity of related activities.⁶³⁹
- Ensure the security of sensitive data such as case files and survivors' identities;⁶⁴⁰ ensure adherence to international standards and best practices for the ethical and safe collection and sharing of data.⁶⁴¹

5. Recommendations to UN mechanisms and agencies

UN mechanisms and agencies must improve their coordination and joint strategy to effectively respond to widespread CRSV in Myanmar. To this end, the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict should clearly set out its strategy for preventing and responding to sexual violence in Myanmar. In addition, UN mechanisms and agencies should consider taking measures to:

- Ensure that CRSV documentation and reporting efforts are coherent, streamlined, and clear and accessible to CSOs, other relevant actors, and the general public in Myanmar, with referral pathways in place to facilitate survivors' access to support services, while also ensuring confidentiality and a 'do no harm' approach regarding survivors' protection, security, and possible retraumatisation.⁶⁴²
- Ensure substantive and regular engagement with women's rights organisations to inform trends analysis and CRSV prevention and response.⁶⁴³
- Improve accessibility of all UN reporting channels and support services by using popular communication channels such as Facebook and Signal, and by ensuring that all platforms are safe, as well as multilingual, representing as many of Myanmar's languages as possible.⁶⁴⁴
- Ensure clear communication to the general public, to survivors, and to civil society actors about how and where to report cases of CRSV, how such reports will be used, and what could (and could not) be the realistic outcome of such reporting.⁶⁴⁵

636 Ibid.

637 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

638 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

639 See AJAR, 'Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar' (November 2022), 23 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2022.

640 Interview 27, independent expert (online, 29 June 2022).

641 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

642 Ibid; Interview 19, representative of the Myanmar Team of the Office of the High Commissioner for Human Rights (online, 25 May 2022).

643 Interview 27, independent expert (online, 29 June 2022).

644 Interview 27, independent expert (online, 29 June 2022).

645 Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

- Ensure that teams involved in projects in Myanmar – and particularly those teams working to document and report on CRSV – include dedicated specialist staff.⁶⁴⁶
- Clarify and adjust monitoring and verification standards in place for certain kinds of CRSV documentation and reporting, in order to make them more flexible for certain narrow purposes. For example, find ways to rely on and make reference to data that may not be UN-verified (according to human rights standards) but that is verified to appropriate standards for the purpose of publicly recognising the scope of CRSV in Myanmar.⁶⁴⁷
- Work with new and emerging pro-democratic political entities to safeguard the rights of CRSV survivors, including the right to a remedy, and refrain from providing any political recognition to the military junta.
- Ensure that funding directed to CSOs and NGOs is quality, long-term flexible funding.

6. Recommendations to the international community and donors

The international community should support Myanmar CSOs with funding and technical support, particularly in relation to the implementation of reparation measures to survivors, including CRSV survivors. During possible interim phases leading towards a democratic transition, and in the future if there is a democratic federal system in place in Myanmar, the international community should use their diplomatic and financial leverage to push for an administrative reparation programme, and the recognition of State responsibility and national accountability efforts.

The international community, including members of the Myanmar diaspora, should support CSO reparations initiatives, survivor solidarity networks, human rights documentation and accountability efforts, and transitional justice projects. They should also support legislative review and reform aimed at promoting gender equality, preventing and adequately redressing

CRSV, and guaranteeing non-repetition of the crimes committed by the Sit-Tat and other actors.

Given the challenging political and security context in Myanmar, it is critical that donors adapt to the capacity of organisations working in Myanmar by offering flexible funding procedures and reporting mechanisms, as well as resources and technical support to ensure digital security and physical safety. When funding projects to be implemented in Myanmar (or in bordering countries), donors should account for the needs of local CSO staff members for security and for ongoing psychological support, and refrain from providing any political recognition to the military junta.

Specifically, international donors could support, among others, the following kinds of initiatives, which would fill some of the gaps left by duty bearers:

- The establishment and maintenance of safe houses and channels for referrals to support services for all survivors of GBV.
- Projects that respond to the urgent needs of survivors for healthcare services, cash assistance, and livelihood support, among others.
- Projects to provide psychological counselling and other psychosocial support to CRSV survivors and their families in accordance with international standards and best practices. Such projects must involve creative solutions to the challenges of lack of privacy, internet and telecommunications access, confidentiality issues, and language barriers, among others. Counselling could take place in one-on-one or in group sessions, with varying levels of specialisation depending on each survivor's particular needs.
- Programmes focused on improving community solidarity and family relations, and providing access to social workers, may address the violence survivors face in their families, such as domestic violence or marital rape. They may also help address the social stigma and exclusion that survivors often face.
- Initiatives to create and strengthen survivors' solidarity networks through which survivors could support each other.

⁶⁴⁶ Interview 27, independent expert (online, 29 June 2022).

⁶⁴⁷ Ibid; Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

- Programmes focused on women’s empowerment, promoting gender equality, and challenging patriarchal attitudes and cultures of victim-blaming.
- Further documentation efforts on CRSV, carried out in a gender-sensitive, trauma-informed and survivor-centric manner and led by GBV specialists.
- Further research and documentation efforts concerning the impact of GBV – including CRSV – on men and boys and members of the LGBTIQ+ community to identify and address their specific needs.
- Address detention risks, including sexual violence, through funding legal aid providers and entities specialising in support to victims of torture.⁶⁵⁴
- Support the establishment of an independent commission to address GBV as one of the five independent commissions in the proposed governance structure outlined in the CRPH Federal Democracy Charter.⁶⁵⁵
- Carefully distribute the ‘Safe GBV Reporting’ materials designed to support survivor-centred approaches to GBV response.⁶⁵⁶

In addition, the international community should consider the detailed recommendations provided in the Briefing Paper on ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ published anonymously in June 2021.⁶⁴⁸ These include recommendations that the international community:

- Consistently identify and include GBV in human rights reporting and documentation.⁶⁴⁹
- Set new standards for research on and documentation of GBV to ensure survivor-centred approaches.⁶⁵⁰
- Support safe journalistic coverage of CRSV, including through providing ‘light-touch’ training on ethical reporting.⁶⁵¹
- Support a systems approach to addressing GBV, in part by providing *“long-term, flexible, and core funding for women’s organisations that work on GBV prevention, coordination, and tackling the root causes of violence against women, including behavioural change to dismantle harmful social norms.”*⁶⁵²
- Invest in safe houses (including long-term funding) and strengthen safe house procedures.⁶⁵³
- With respect to programme, project, and funds management, the Briefing Paper recommends that international actors: conduct collaborative project or programme reviews; exercise additional flexibility in the use of funds and lighter documentation requirements; re-consider how audits are conducted; find creative solutions to payment difficulties; provide no-cost extensions; allow verbal reporting; seek new means of transferring funds; support organisations with diverse registration statuses; accept and expect shifts in programme content and language; streamline project design processes; and favour international organisations with established programming or prior experience.⁶⁵⁷
- With respect to funding priorities, flows, and mechanisms: prioritise core, flexible funding for women’s rights organisations and initiatives; establish a gender funding target; strategically support secondary funding mechanisms; support private foundations and urgent action funds; avoid ‘steppingstone’ projects by organisations that have not historically worked on gender equality issues; and support both border-based organisations and those inside Myanmar.⁶⁵⁸

648 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021).

649 Ibid 3.

650 Ibid.

651 Ibid 10.

652 Ibid 3.

653 Ibid.

654 Ibid 3-4.

655 Ibid 16.

656 Ibid 3.

657 Ibid 4-5.

658 Ibid 6-7.

7. Recommendations to States exercising universal jurisdiction

As discussed above, the investigation and prosecution of CRSV committed in Myanmar by States exercising universal jurisdiction is one possible avenue for CRSV survivors to seek redress. Such States should:

- Actively collaborate with the IIMM.
- Respect and promote survivors' rights in all investigations and judicial proceedings.
- Ensure that specialised units within criminal justice systems have adequate staff, resources, training and expertise to pursue investigations and prosecutions of sexual and gender-based crimes in a survivor-centric and gender-sensitive manner.
- *"Adopt an inclusive definition of victim for the purposes of criminal proceedings and properly recognise all victims as such".*⁶⁵⁹
- Ensure that specialised units provide all victims identified during the course of investigations, regardless of whether they have made a formal complaint and regardless of where they reside, with information concerning victims' rights.⁶⁶⁰
- Strengthen the capacity of general victim support services to enable them to provide information to survivors of CRSV about their rights, refer survivors to specialist support services and, where permitted, assist survivors in accessing legal representation.⁶⁶¹

- Improve survivors' access to gender-sensitive specialist support services, provided free of charge, including medical rehabilitation and trauma counselling.⁶⁶²
- Ensure that specialised units *"undertake an in-depth individual assessment of every victim to assess their specific protection needs and determine which special protection measures may be able to address those needs during the investigation and any eventual criminal proceedings"*.⁶⁶³
- *"[R]emove any obstacles to victims of international crimes accessing services that support enforcement of compensation awards against offenders" or "identify ways to assist victims in enforcing compensation awards against offenders" where such services do not exist.*⁶⁶⁴

8. Recommendations to ASEAN

In light of the failure of ASEAN's Five Point Consensus on Myanmar to date, ASEAN should urgently develop a new strategy to stop the ongoing gross human rights violations committed by the illegal military junta, to hold the perpetrators to account, and to promote the transition to a civilian-led, democratic federal government in Myanmar.⁶⁶⁵ ASEAN should consider taking the following steps proposed by the ASEAN Parliamentarians for Human Rights in an open letter to ASEAN and dialogue partners in April 2022:

- *"Thoroughly re-consider the role and appointment mechanism of the Special Envoy to Myanmar, in view of the poor record of the previous and current holder of this admittedly difficult position".*⁶⁶⁶

659 FIDH, ECCHR and REDRESS, 'Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes' (September 2020), 111 https://redress.org/wp-content/uploads/2020/10/Breaking-Down-Barriers_EN_WEB.pdf accessed 22 September 2022.

660 Ibid.

661 Ibid 120.

662 Ibid.

663 Ibid 125.

664 Ibid 127.

665 ASEAN Parliamentarians for Human Rights, 'Open Letter on the Anniversary of the Five Point Consensus on Myanmar to ASEAN and Dialogue Partners' (24 April 2022) <https://aseanmp.org/2022/04/24/open-letter-on-the-anniversary-of-the-five-point-consensus-on-myanmar-to-asean-and-dialogue-partners/> accessed 13 July 2022.

666 Ibid.

- Impose consequences on the illegal military junta for their criminal actions, including: *“the suspension of Myanmar’s membership in ASEAN; travel bans for Min Aung Hlaing and the members of his State Administration Council (SAC) in the region; targeted sanctions against the leaders of the coup, those responsible for committing crimes against humanity and their economic interests”*.⁶⁶⁷
- *“Immediately and publicly meet with the NUG”* and include representatives of EAOs in further dialogue *“to ensure that all voices are heard”*.⁶⁶⁸
- *“Immediately begin to work with Myanmar’s local community-based and civil society organisations, as well as relevant international agencies, to effectively provide aid directly to the people in need”*,⁶⁶⁹ including to provide gender-sensitive and survivor-centred support to CRSV survivors.

667 Ibid.

668 Ibid.

669 Ibid.



X. CONCLUSION AND CONCRETE STEPS FOR THE WAY FORWARD

This report has provided an overview of the complex contexts in which conflict-related sexual violence has been committed in Myanmar in recent decades and at the time of writing. The report has sought to shed light on the patriarchal attitudes that underpin the continuum of sexual violence in Myanmar, as well as on the entrenched culture of impunity fostered in particular by the Sit-Tat, which has been overwhelmingly responsible for acts of CRSV in the country. The Sit-Tat's acts of CRSV continue to be part of its broader efforts to extinguish cultural diversity and ethnic minority rights.

Widespread and consistent acts of sexual violence have been documented in Myanmar for at least three decades. The forms of CRSV documented in Myanmar include rapes, gang rapes, mass rapes, genital mutilation, sexual slavery, forced nudity, sexual humiliation, and forced abortion. Many patterns have been repeated across decades and against different ethnic groups, including the Sit-Tat's use of rape as a tactic of war. Since the Sit-Tat seized power in a coup d'état on 1 February 2021, the situation has only worsened, as the illegal military junta has been conducting an ongoing campaign of violence and repression, committing gross human rights violations throughout the country, including CRSV.

CRSV continues to have devastating impacts on victims, survivors, and their families and communities, including impacts on their safety, socio-economic status, and physical and mental health. The serious and often long-term psychological effects of CRSV that survivors experience are exacerbated by the rejection and feelings of shame they face due to social stigma and a pervasive culture of victim-blaming.

In the context of the instability and insecurity of the current political reality and humanitarian catastrophe in Myanmar, many survivors are currently living in precarious situations and struggling to survive. Survivors urgently need the widespread violence to end, and the security situation to improve. Survivors' current needs also include the need for safety and shelter, access to health services, access to psychological support/counselling, and

socio-economic support. Many survivors of CRSV in Myanmar either have a limited awareness about reparations and the right to a remedy, and/or they do not believe that reparations are possible given the current political reality in Myanmar and the absence of the rule of law.

CRSV survivors in Myanmar have very little to no access to reparations, particularly since the February 2021 coup. This report has analysed the relevant local, national, and international legal frameworks, highlighting the many gaps in terms of survivors' access to justice, and identifying possible avenues for interim and full reparations at present and in the future.

This report has discussed many threats to reparations for CRSV survivors, including the ongoing violence and repression of the military and the entrenched climate of impunity in Myanmar. While there are no realistic opportunities for reparations provided by the State in the near future, interim reparations or reparative assistance can be provided by CSOs, with international support. Many Myanmar CSOs have significant pre-existing expertise and a willingness to implement interim reparations projects. Such projects would present an opportunity for CRSV survivors to access interim reparations in the form of safety and protection support, medical care, psychological support, livelihood support, and legal assistance.

The ongoing peace- and democracy-building efforts of activists, CSOs, and new and emerging political entities also present an opportunity with respect to reparations. Such actors can work to centre calls for gender equality, non-discrimination, and the right to full reparations for CRSV survivors as they advocate for a new federal democratic system to be established in Myanmar in the future.

The illegal military junta should retract all claims to control the State and make way for the establishment of a new, civilian-led, democratic and democratically-elected federal system in Myanmar. In the meantime, as a listed party per the UN Security Council mandated CRSV agenda and the 'Joint Communiqué of the Republic of the Union of Myanmar and the United Nations on

Prevention and Response to Conflict-Related Sexual Violence' signed on 7 December 2018, the military should cease its commission of CRSV and immediately take the preventive measures outlined therein.

This Myanmar Study includes key recommendations to relevant actors on reparations which focus on meeting the most urgent needs of survivors and highlight the existing opportunities for relevant stakeholders to ensure CRSV survivors' right to reparation. Several key recommendations relate to improving strategies for ensuring accountability for

CRSV, for example by improving the coordination of documentation efforts. The international community is urged to support the critical work of Myanmar CSOs for CRSV survivors, adapting to the realities of Myanmar's current context. This context is particularly challenging, and the threats to CRSV survivors are serious and manifold. It is therefore all the more urgent and important that relevant stakeholders take immediate action to collaborate with each other and offer their support for interim reparations initiatives to meet survivors' pressing needs and support survivors in exercising their agency.



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 **GLOBAL
SURVIVORS FUND**
FOR AND WITH SURVIVORS OF
CONFLICT-RELATED SEXUAL VIOLENCE