

ANATOMY OF IMPUNITY

UN must finally establish
a jurisdiction for grave crimes in Myanmar





About Us

‘Progressive Voice,’ or in Burmese, ရှေးပြေးအသံအဖွဲ့ ‘Shay Pyay Athan,’ was born out of Burma Partnership, a network of organizations throughout the Asia-Pacific region, advocating for and mobilizing a movement for democracy and human rights in Myanmar that was established in 2006.

Progressive Voice is a participatory rights-based policy research and advocacy organization rooted in civil society, that maintains strong networks and relationships with grassroots organizations and community-based organizations throughout Myanmar. It acts as a bridge to the international community and international policymakers by amplifying voices from the ground, and advocating for a rights-based policy narrative.

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Introduction

The United Nations (UN) Human Rights Council has passed over 20 resolutions on Myanmar over 15 years since the establishment of the Human Rights Council.

These resolutions have mandated 15 years' worth of reporting by the Office of the High Commissioner for Human Rights (OHCHR), successive Special Rapporteurs on the situation of human rights in Myanmar, and the Independent International Fact-Finding Mission on Myanmar (IIFMM).

For 15 years those reports have made known to the Human Rights Council the human rights violations, abuses and atrocity crimes committed by the Myanmar military and security forces against the people of Myanmar, in particular Myanmar's ethnic and religious minorities. The reports document extensively the excesses of the Myanmar military fueled by the crisis of impunity in the country, and repeatedly warn that the military atrocities will escalate if impunity is allowed to persist.

In 2016 and 2017 the Myanmar military's violence escalated to the point of genocide against the Rohingya. The IIFMM subsequently called on all competent organs and agencies of the UN to act with urgency to ensure that the leaders of the Myanmar military were held to account and investigated and prosecuted for war crimes, crimes against humanity and genocide.

The Human Rights Council established the Independent Investigative Mechanism for Myanmar (IIMM) in 2019 to collect evidence of the most serious international crimes and violations of international law in Myanmar and to prepare files for criminal prosecution. But the IIMM is not a court or a prosecution service. Unless a full jurisdiction for Myanmar is established, the IIMM will be collecting evidence indefinitely.

In the time since the IIMM began its work, the human rights situation in Myanmar has deteriorated drastically. The tactics used by the Myanmar military during the genocidal atrocities against the Rohingya – including massacres, arson attacks and aerial assaults – are now directed by the military against civilians across the entire country in a widespread and systematic pattern.

If the Human Rights Council fails to respond appropriately, it will embolden the military to commit further grave and large scale violations of international law. This would feed the military's long held and deeply entrenched belief that the international community is a paper tiger, simply documenting and condemning its behavior in endless reports.

The Human Rights Council must therefore explore all possible ways for the UN system to establish a jurisdiction to prosecute serious international crimes in Myanmar, putting the work of the IIMM to full use in bringing alleged perpetrators of atrocity crimes to justice and ending the devastating cycle of impunity once and for all. The people of Myanmar cannot wait any longer.

Context

Since the failed coup d'état on 1 February, 2021, the human rights situation in Myanmar has deteriorated to a breaking point. Extrajudicial killings, airstrikes, massacres, sexual and gender-based violence, mass arbitrary arrest, torture and inhumane treatment are routinely inflicted on the people of Myanmar by the Myanmar military junta.¹

The Myanmar military's wanton, indiscriminate airstrikes and its massacres of civilians, particularly in Karen, Karenni, Kachin, Shan and Chin States and Sagaing and Magwe Regions,² are the focus of this briefing paper. The grievous nature and increasing frequency of these incidents warrant urgent action by the international community.

The discovery of mass graves, burned human remains, dead bodies showing signs of physical torture, razed villages and mass disappearances of civilians are increasing in severity and frequency across Myanmar. These acts are reminiscent of the large-scale massacres and "clearance operations" conducted by the Myanmar military against ethnic Rohingya in northern Rakhine State in 2016 and 2017. As part of the military's playbook, they are atrocities that other ethnic minorities have also endured for decades.

The ferocious use of fighter jets and helicopters by the military to launch airstrikes against densely populated civilian areas with devastating effect – killing, maiming, destroying property and means of livelihood, and displacing hundreds of thousands from their homes – is also increasing.

Since the failed coup, there has been a widespread, systematic and escalating pattern of atrocity crimes committed by the terrorist Myanmar military junta against the people of Myanmar. Swift justice and accountability delivered through a competent international judicial body such as the International Criminal Court (ICC) or an ad hoc tribunal is critical and urgent. Domestic courts and mechanisms in Myanmar are unwilling and unable to deliver justice and accountability for grave violations of human rights.

Massacres

In the months following the failed coup, mass peaceful protests and a civil disobedience movement took to the streets of Myanmar in an overwhelming demonstration of unity in opposition to the military junta. In response, the junta has slaughtered hundreds of civilians, including children. Over 160 protesters were killed across the country in a single day while the military celebrated the 76th Armed Forces Day. On 9 April, 2021 in Bago, a premeditated raid resulted in the massacre of 80 people.³

Included below are emblematic examples of recent atrocities. They reveal military junta tactics that include the massacring of civilians, the burning of bodies, and the razing and torching villages. They also comprise acts of terror – a hallmark of military operations over the decades.

Hlaing Tharyar Massacre, Yangon, 14 March 2021, at least 65 killed

On 14 March 2021, at least 65 people⁴ were killed in cold blood by the military junta when they opened fire on group of peaceful protesters in Yangon's Hlaing Tharyar Township. After

the massacre, the military junta brutally enforced Martial Law in six townships in Yangon and five townships in Mandalay.⁵ Mobile internet was disabled across the country to prevent information about the massacre being shared online.⁶ A man collecting rubbish after the protest had dispersed was shot execution style on 15 March 2021 by police patrolling Hlaing Tharyar.⁷ According to local news, police walked up to the 50 year old man, pressed a gun to his head and pulled the trigger.⁸ Across Myanmar, 14 March was one of the darkest days in the Spring Revolution as a further 30 peaceful protesters were killed in other townships in Yangon, as well as in Bago, Mandalay and Hpakant, Kachin State.⁹ In total at least 116 people were killed by the Myanmar military on that single day.¹⁰

Armed Forces Day Massacre, 27 March 2021, at least 163 killed

The Armed Forces Day was the bloodiest day in 2021 with at least 163 people massacred by the military.¹¹ The UN Special Rapporteur on the situation of human rights in Myanmar called it “a day [of] infamy with the massacre of men, women and very young children throughout the country.” The Myanmar military directed machine-gun fire into residential areas, killing at least 16 children between the ages of nine and seventeen years. According to UNICEF, “a one-year-old baby girl [was] gravely injured after being struck in the eye with a rubber bullet.”¹² Soldiers also opened fire into a crowd attending the funeral of a 20 year-old student who was shot dead by troops just days earlier.¹³ While civilians were being massacred in their homes and on public streets, the military held a lavish banquet with swarms of drones to depict features of Min Aung Hlaing in the skies, congratulating themselves in a twisted display of vanity and opulence.¹⁴ By day’s end, protestors had been killed in over 40 townships across the country, including in Yangon Region, Bago Region, Magway Region, Sagaing Region, Tanintharyi Region, Ayeyarwady Region, Mon State, Kachin State, and Shan State.¹⁵

Bago Massacre, Bago City, 9 April 2021, at least 82 killed

On 9 April 2021, in one of deadliest single-day crackdowns since the failed coup, at least 82 peaceful protesters were massacred when 250 junta soldiers launched four coordinated attacks in four residential wards of Bago City using heavy weaponry, including rocket propelled grenades and assault rifles.¹⁶ While monitoring organizations and news outlets reported 82 people killed, the exact number killed is difficult to ascertain, as the military dragged dead bodies to a nearby temple for incineration to dispose of the evidence of the massacre.¹⁷ One protester described the military as “shooting at every shadow,” showering crowds of peaceful protesters with bullets in all-out warfare.¹⁸ An investigation carried out by the Washington Post revealed that the military used “counterinsurgency tactics, specialized military units and military-grade weaponry against civilian protesters.”¹⁹ According to the Bago University Students’ Union, the military junta charged the family members of the victims 120,000 kyat (\$85 USD) for the release of their loved one’s bodies.²⁰

Kani Massacre, Sagaing Region, July 2021, at least 43 killed, 10,000 displaced

Over the month of July in Kani Township of Sagaing Region, the murdered bodies of at least 43 people were recovered, including a child and a person with a disability. Some bodies had been burnt.

- Four murders took place on 1 July in Shitkoetat Forest;
- 16 bodies were recovered near Yin Village between 11 and 12 July;
- 12 bodies were found near Zin Pin Dwin Village on 27 July; and
- 11 bodies were discovered near Htoo Village on 31 July.²¹

These incidents caused 10,000 residents from four villages to flee their homes.²² Graphic images were circulated in the news and social media, showing mutilated, bound, torture-marked and charred bodies – many left to rot in the sun or in shallow graves.²³ Sagaing Region, and Kani in particular, continues to be a stronghold for the resistance movement and thus a target of atrocities by the brutal military junta.

Done Taw Massacre, Sagaing Region, 8 December 2021, approximately 11 killed

On 8 December 2021, 100 junta soldiers raided Done Taw Village in Salingyi Township, Sagaing Region, around 60 kilometres from Kani and near the Region's capital, Monywa. During the raid, junta soldiers captured 11 people including five children, bound and murdered them, burning their bodies.²⁴ Reporting has suggested that they were beaten and were still alive when set on fire.²⁵

Christmas Eve Massacre – Moso Village, Karenni State, 24 December 2021, approximately 42 killed

On 23 December, 200 junta troops from Light Infantry Brigade 108 (under Infantry Division 66) headed towards Hpruso Township, Karenni State. On Christmas Eve (24 December), near Moso Village, junta troops stopped a convoy of villagers, tied their hands behind their backs, savagely tortured and killed them, and then doused their bodies in petrol. The charred remains of at least 42 people including four children and two Save the Children staff members, were recovered.²⁶ The timing of the Christmas Eve Massacre is no coincidence. Karenni State is a predominantly Christian area. The military junta has in the past chosen to terrorize predominantly Christian areas during the Christmas period, including in Kachin State in 2017 and Karen State in 2020.²⁷

Airstrikes

The Myanmar military is failing to gain control of the country after its bloody coup attempt, and is launching airstrikes, using fighter jets and helicopters to terrorize civilians. Non-military targets, such as schools, hospitals, places of worship and internal displacement camps, have been targeted with airstrikes and artillery shelling.²⁸ The junta has conducted airstrikes in Kachin, Chin, Shan, Karen and Karenni States, and Sagaing and Magwe Regions, where the People's Defence Forces (PDFs) and Ethnic Armed Organizations (EAOs) remain strong.²⁹ Below are some of the many instances of airstrikes since the failed coup. The airstrikes are ongoing and have been terrorizing people nearly every day, particularly in ethnic Karen and Karenni areas.

Mu Traw and Kler Lwee Htoo, Karen State, March – April 2021, at least 16 killed, approximately 15,000 displaced

Starting on Armed Forces Day on 27 March through to 1 April, the junta killed at least 16 people and injured 25 others, including children, in airstrikes.³⁰ In addition to villagers' homes, airstrikes targeted a school and the Karen Education and Culture Department building.³¹ These airstrikes were premeditated and, in most cases, preceded by reconnaissance flyovers by drones or helicopters.³² The airstrikes also forced the displacement of at least 15,000 villagers.³³ From 27 April to 7 May, a second round of airstrikes was carried out by the military junta, accompanied by continued surveillance with drones and helicopters.³⁴

Thantlang, Chin State, September – December 2021, approximately 10,000 displaced

In Thantlang, Chin State, the Myanmar military launched an all-out siege of the town in September, employing small arms fire and artillery shelling, conducting flyovers with fighter jets, and launching airstrikes nearby in Lungler Village.³⁵ A pastor at a local church was savagely killed and had his finger severed by junta troops to steal his wedding ring. He and other villagers attempting to extinguish the raging fires spreading through homes were shot at and in the range of artillery shelling.³⁶ During the three month prolonged siege, military junta soldiers burned 548 of the 2,000 houses in the town as well as four churches and a high school, displacing at least 10,000 people.³⁷ The offices of Save the Children and the Chin Human Rights Organization were burned during the siege.³⁸ Following the September siege, junta soldiers returned multiple times to burn and loot empty buildings, burning at least 38 more houses in early December.

Lay Kay Kaw, Karen State, December 2021 – January 2022, approximately 20,000 displaced

On 14 December 2021, 200 junta troops raided the Karen National Union (KNU) controlled town of Lay Kay Kaw close to the border with Thailand.³⁹ The junta launched more than 100 artillery shells into Lay Kay Kaw, damaging buildings and forcing 10,000 villagers to flee, with approximately 4,200 people crossing the Moei River into Thailand.⁴⁰ On 23 December and 24 December, airstrikes were launched to deliberately target the civilians displaced from Lay Kay Kaw, with the military junta using drones and spy planes to locate the civilians in hiding.⁴¹ On 14

January 2022, displaced villagers from Lay Kay Kaw living in makeshift camps along the Moei River were forced to flee yet again after further airstrikes and heavy artillery targeted them.⁴² A total of 20,000 people have been displaced from Lay Kay Kaw since 15 December 2021.⁴³

Kale, Sagaing Region, 23 December 2021, approximately 20 killed

On 23 December 2021, indiscriminate airstrikes from two military helicopter gunships killed 20 civilians and forced thousands to flee for safety in Nat Chaung, Kale, Sagaing Region.⁴⁴ The junta also laid remote detonation mines in populated civilian areas after the villagers fled, used artillery fire and torched houses. This demonstrates an established pattern of attack. The Myanmar military has used helicopter gunships to clear out villages, including in Ye-U Township, Sagaing Region and Gangaw Township, Magwe Region, indiscriminately killing civilians and PDF fighters and causing thousands to be displaced.⁴⁵

Matupi, Chin State, 6 – 7 January 2022, 11 killed, 4,500 displaced

Between 6 and 7 January 2022, 10 civilians, including a 13-year-old boy and the editor-in-chief of Khonumthung Media Group, were arbitrarily detained, beaten and killed by junta troops in Matupi Township, Chin State.⁴⁶ The 13-year-old boy was found with his throat slit, and the man with injuries consistent with being hit with rifle butts as well as slashes, cuts and bullet wounds. Junta ground troops, supported by 90 military trucks and armored vehicles and air reinforcements, were reportedly sent to Matupi, triggering 4,500 villagers to flee for safety.⁴⁷

Gahe, Sagaing Region, 4 January 2022, approximately 800 displaced

On 4 January 2022, two Mi-35 attack helicopters launched six rockets at residents of Gahe, Sagaing Region. One rocket directly hit a house, killing three children and two adults.⁴⁸ Around 800 villagers from Gahe are now displaced, with the total number displaced in Sagaing Region exceeding 75,000 people.⁴⁹ Locals told the media, “our village was a peaceful place and they attacked us for no reason... We used to go out and watch the planes when they passed by, but now we wouldn’t dare do anything like that. One of the helicopters shot explosive rockets at us and the other used a machine gun.”⁵⁰

Loikaw and Hpruso, Karenni State, 6 January 2022, approximately 60,000 displaced

On 6 January 2022, 60,000 people from Karenni State capital of Loikaw fled after the Myanmar military fired heavy artillery weapons into the area and deployed tanks and helicopters.⁵¹ On 17 January 2022, two girls and a man were killed after the Myanmar military launched airstrikes from fighter jets targeting 200 internally displaced persons (IDPs) at Rakheebu IDP Camp, Hpruso, Karenni State.⁵² This followed an earlier airstrike on 16 January 2022 in Nang Nae Khon, forcing

20,000 civilians to flee to nearby mountains from fear of more attacks.⁵³ A representative of a local human rights organization described the incident: “this was not an accidental shooting. It is a crime against humanity to intentionally kill people and cause fear and panic. This was aimed at stopping people from living in this area.”⁵⁴ Some of the IDPs that had escaped Moso, where the Christmas Eve Massacre occurred, again found themselves under attack.⁵⁵ As of 16 January there were over 177,000 IDPs from Karenni State and Karenni-populated southern Shan State – amounting to more than half of the State’s population. This reveals the scale of displacement caused by the Myanmar military’s aggressive assault on the Karenni people.⁵⁶

Chin Pone, Sagaing Region, 26 February 2022, approximately 13 killed

On 26 February, 2022, military junta forces targeted Chin Pone Village with indiscriminate air-strikes from five Mi-25 combat helicopters, followed by a ground attack where approximately 100 children and nine teachers were held hostage after fleeing to a nearby monastery.⁵⁷ At least 13 bodies, some with signs of torture, were found after troops had raided and set fire to the village.⁵⁸ Around 5,000 villagers from Chin Pone and surrounding villages fled for their safety.⁵⁹

UN impotence in face of grave crimes

The UN Security Council has issued four Press Statements on Myanmar since the failed coup – on 4 February 2021,⁶⁰ 10 November 2021,⁶¹ 29 December 2021⁶² and 2 February 2022.⁶³ The Council also issued a Presidential Statement on 10 March 2021.⁶⁴ It has expressed deep concern at developments in Myanmar, calling for the immediate release of those detained, including State Counsellor Daw Aung San Suu Kyi and President U Win Myint. Following the Christmas Eve Massacre in Karenni State, the UN Security Council issued a statement acknowledging the “need to ensure accountability for this act.”

However, the Council has failed to even vote on, let alone pass a resolution on Myanmar, or to hold an open briefing. Significantly, and despite its own call for accountability, the Security Council has failed to refer the situation in Myanmar to the ICC. Over 400 Myanmar CSOs have condemned Russia, India, Vietnam, and China’s stances at the Security Council and have repeatedly registered their disappointment with the lack of UN action, in particular by the Security Council.⁶⁵

Where the Security Council has proved impotent, the General Assembly in June 2021 adopted a resolution calling on “all Member States to prevent the flow of arms into Myanmar” which was adopted with only one dissenting vote.⁶⁶ The EU Ambassador to the UN, Olof Skoog, at the time of the adoption of the resolution stated that it sent a powerful message: “[i]t delegitimizes the military junta, condemns its abuse and violence against its own people and demonstrates its isolation in the eyes of the world.”⁶⁷ However, as the resolution is not legally binding, and without a Security Council resolution, countries such as China and Russia have continued to provide arms to the Myanmar military.⁶⁸

The UN Human Rights Council also adopted a resolution on Myanmar at its 29th Special Session in February 2021 following the failed coup.⁶⁹ The resolution, while expressing deep concern at

the declaration of emergency imposed by the Myanmar military, and deploring “the arbitrary detention of democratically elected members of the Government,” it did nothing to stop the military’s brutal attempt to take power or stop the atrocities unfolding in Myanmar.

The resolution on Myanmar adopted during the 46th Regular Session of the Human Rights Council in March 2021 called on the “Myanmar armed forces to respect the will of the people expressed by the results of the general elections” and to “restore the elected civilian Government.”⁷⁰ However the substance of the resolution was, once again, inadequate in addressing the massive scale of violence and grave violations being perpetrated against the people by the military. By the time Member States adopted the resolution on Myanmar on 24 March 2021, over 310 people had been murdered by the military. In fact, the Hlaing Tharyar massacre, in which the military killed at least 65 people, took place as the Member States deliberated on the Myanmar text. On 27 March 2021, three days after the adoption of the resolution, the military killed over 160 people in a single day, and began its fierce airstrikes in Mu Traw and Kler Lwee Htoo, Karen State, killing 16 people including children, destroying schools and educational facilities, and displacing 15,000 people. The Human Right Council has yet to advance the international response on Myanmar. Far from it, the UN’s feeble and inadequate response to the military’s atrocities have further emboldened the junta to act with total impunity.

The High Commissioner, who was mandated by the Human Rights Council to monitor and assess the situation in Myanmar with “particular focus on accountability” pertaining to the human rights violations since 1 February 2021, has repeatedly confirmed that the human rights catastrophe in Myanmar shows “no signs of abating.” The High Commissioner has outlined serious violations of international law that may amount to war crimes and crimes against humanity.⁷¹ The Special Rapporteur on the situation of human rights in Myanmar has also stated that “there is a compelling case that the military junta in Myanmar is committing crimes against humanity.”⁷²

Yet, as reports of grave crimes committed by the military junta are being reported at the Human Rights Council, some UN Agencies, Funds, Programmes and other Entities have been engaging with the military junta, signing memorandums of understanding (MoU). This risks legitimizing the illegal military junta, which is long practiced manipulating aid for political and military gain.⁷³ A statement by 256 CSOs expressed concern at reported signing of MoUs by UN Agencies, Funds, Programmes and called on the UN to deliver on its promise to “Do No Harm” by taking meaningful actions to address the horrific violence on the ground and to protect civilians.⁷⁴

Many of these failings are endemic in the UN’s engagement in Myanmar. The Rosenthal report found that systemic and structural failures had prevented the UN from stopping, mitigating or carrying out a unified strategy as the military committed atrocities against the Rohingya. In the face of such a damning and recent report, the UN has yet to fully address these failures.⁷⁵ Over a year has passed since the military launched its failed coup, and the UN’s response to the combined political, humanitarian, human rights and economic crises has lacked a strong and cohesive strategy grounded in human rights. These systemic failures, which remain unaddressed, have festered within the UN’s engagement in Myanmar – further exacerbating the situation since the Rosenthal report was published.

ASEAN's failing response to the crises in Myanmar

Much of the international community's responsibility to help solve the Myanmar crisis has been firmly pushed onto ASEAN. The Security Council has reiterated its full support for ASEAN, and resolutions adopted by the General Assembly and the Human Rights Council have affirmed the importance and central role of ASEAN in resolving the multiple crises in Myanmar. However, ASEAN is ill-equipped to address this multi-dimensional crisis. It has invoked its problematic principle of non-interference, and has yielded no discernable progress in implementing its Five-Point Consensus, adopted on 24 April 2021 in the presence of the junta leader Min Aung Hlaing.⁷⁶ Min Aung Hlaing is already well known to the Human Rights Council. In September 2018, the IFFMM called for him to be investigated and prosecuted for genocide, crimes against humanity and war crimes committed in Myanmar.⁷⁷ Predictably, Min Aung Hlaing has thus far shown no indication that he will comply with any of ASEAN's Five-Point Consensus, most notably the cessation of violence.

Given these failings, the wider international community led by the UN must intervene where ASEAN has repeatedly failed, as a matter of urgency. ASEAN, in turn, must coordinate and work with the UN and the National Unity Government to tackle the dire crises in Myanmar.

Need for a jurisdiction for grave crimes in Myanmar

Crimes being perpetrated by the Myanmar military, including massacres and airstrikes, are not being committed in a vacuum but form part of a coordinated scorched earth campaign ordered by the junta's leadership. In October 2021, Special Rapporteur Tom Andrews addressed the General Assembly, stating "[w]e should all be prepared... for even more mass atrocity crimes," describing the junta's tactics as reminiscent of the military's genocidal attacks against Rohingya in Rakhine State in 2016 and 2017.⁷⁸ Myanmar civil society organizations have raised similar warnings. This morbid prediction has come to pass, and reflects the situation the people of Myanmar now face.

Myanmar civil society organizations, including Progressive Voice, and particularly ethnic peoples' and ethnic women's organizations that have experienced decades of human rights violations committed by the Myanmar military, have repeatedly called for justice and accountability for international crimes committed against the people of Myanmar.⁷⁹ The calls since the failed coup have been clear and precise, yet the international community has failed to act upon them.

On 3 March 2021, prior to the massacres discussed in this briefing paper, 452 Myanmar CSOs called on the Members of the Human Rights Council to send an intervention and monitoring mission to Myanmar to end violence and prevent further bloodshed and loss of life.⁸⁰ Shortly thereafter, the massacres in Hlaing Thayar and on Armed Forces Day combined resulted in at least 230 deaths. Many more people have lost their lives since, with over 1,600 killed since 1 February 2021, including at least 114 children and 178 women.⁸¹

Following the attacks in Chin State, over 521 Myanmar, regional and international civil society organizations called on the Security Council in November 2021 to urgently convene a meeting and take concrete action to adopt a resolution that "consolidates international action to resolve the deepening crisis...and refer the situation in Myanmar to the International Criminal Court."⁸² Similar

calls were initially made by Chin CSOs,⁸³ while Rohingya CSOs⁸⁴ called on the UN to “not repeat the mistakes in failing to act” as it had in the lead up to the Rohingya genocide. While the Security Council did issue a statement on 10 November 2021 on Myanmar, it failed to address the situation in northwestern Myanmar, and has yet to take further action beyond issuing subsequent statements despite of the acute and increasing attacks on civilians.⁸⁵ This evasion of accountability by the junta has encouraged its escalation of atrocities with ever greater ferocity.

More recently, the Karen Peace Support Network, comprised of more than 20 Karen CSOs, in response to airstrikes in Lay Kay Kaw, has reiterated calls for referral of the situation in Myanmar to the ICC;⁸⁶ 67 Karenni CSOs also issued a statement following the Christmas Eve Massacre.⁸⁷ Save the Children also issued a statement calling on the Security Council to convene and to “set out the steps they will take to hold those perpetrators responsible to account.”⁸⁸

UN bodies have repeatedly called for accountability in Myanmar. This includes the aforementioned statement by the Security Council in December 2021 in response to the Christmas Eve Massacre.⁸⁹ The UN Special Envoy on Myanmar Christine Schraner Burgener in June 2021 also recognized “the risk of a large-scale civil war is real,”⁹⁰ and in a report by the UN Secretary-General to the General Assembly in September 2021, it called for actions to prevent “a multi-dimensional catastrophe”⁹¹ and for accountability and an end to impunity.

The Human Rights Council at successive sessions has also repeatedly called for an end to violence and impunity and pushed for justice and accountability through consensus resolutions and repeated statements by States at successive sessions of the Council in 2021 following the attempted coup.⁹² Yet, these calls have been flatly ignored, including by the military junta, and very little has been accomplished to stem the tide of atrocities.⁹³

The human rights situation in Myanmar and the UN’s response to the crises has reached its nadir. The people of Myanmar cannot wait for further catastrophes and deterioration before UN bodies are willing to take action. It is evident from the findings of the IIFFMM that the Myanmar military is capable of committing the most heinous and grave crimes under international law, including genocide, and getting away with it.

The Human Rights Council must now seek to find all possible ways for the UN system to finally establish a jurisdiction to prosecute grave crimes in Myanmar committed by the Myanmar military. For decades, CSOs in Myanmar, particularly ethnic CSOs, as well as regional and international organizations have called for accountability for the grave crimes committed by the Myanmar military. For over 15 years, the Human Rights Council and other UN bodies have passed over 20 resolutions, mandating monitoring, documentation and reporting on human rights violations by the Office of the High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in Myanmar. Meanwhile, the IIMM has yielded a wealth of evidence to prosecute the Myanmar junta. In their last report in September 2021, the head of the IIMM advised that it had “collected 219,000 information items related to post-coup events.”⁹⁴ It is well overdue that the work of the IIMM be put to full use. This urgently requires finding ways to move past the impotence of the UN system and explore all possible avenues to seek accountability through the establishment of a jurisdiction for atrocity crimes mandated by the UN.

Conclusion

The UN has utterly failed in its response to the Myanmar crisis. Alarming, atrocities are mounting and becoming more ferocious, yet the pressure from the international community – particularly the UN – is waning, barring a few exceptions. Additionally, ASEAN has proved time and again that it is ill-equipped to address the man-made multi-dimensional crisis in Myanmar – which presents a threat to the region and to the security of its own peoples – and has proven completely unable to make any progress towards the implementation of its Five-Point Consensus. As such, alternative avenues must be explored to stem the tide of atrocities in Myanmar and to fulfill the will of the people. The Human Rights Council must use all tools at its disposal to achieve this end, to advance the establishment of a jurisdiction for atrocity crimes in Myanmar, and to begin the process of dismantling the Myanmar military's anatomy of impunity.

Recommendations to the Human Rights Council

- Explore all possible routes to seek accountability for Myanmar through the establishment of a jurisdiction for atrocity crimes mandated by the UN.
- Recommend the UN Security Council adopt a resolution referring the situation in Myanmar to the ICC.
- Call on the ICC to accept the declaration lodged by the Myanmar government, the NUG, 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 2002.⁹⁵
- Support Ambassador Kyaw Moe Tun, appointed by the NUG whose credential has been retained by the UNGA, to represent Myanmar at the HRC.
- Urge ASEAN to seek assistance from, and cooperate with, the international community, the UN Security Council and the UN Secretary-General.
- Coordinate and call on the international community to impose a global arms embargo on the military junta, and an embargo on aviation fuel to end airstrikes.
- Call on businesses and UN Member States to cut ties with the Myanmar military leadership, military affiliated businesses, its partners and network of arms dealers.
- Call on bordering countries, especially Thailand, India, and Bangladesh, to open their borders to allow and facilitate the unhindered delivery of humanitarian aid into Myanmar.
- Call on the international humanitarian community to consult and coordinate with the NUG and ethnic revolutionary organizations (EROs)/ethnic armed organizations (EOs) and to support the provision of humanitarian aid through local humanitarian aid organizations, civil society organizations and ethnic health and service provision organizations including through cross-border channels.

ENDNOTES

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