



Assistance Association for Political Prisoners (AAPP)

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“Accountability for the Junta Criminals”

Evidence of Crimes Against Humanity Perpetrated by the Armed Wing of the Junta in Burma Since the 2021 Coup

Assistance Association for Political Prisoners (AAPP)

July 2022

Acknowledgements

In honor the people who have sacrificed their lives and liberty for the Spring Revolution.

Credit to original photo owner on cover page.

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Australian National University

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I. Foreword

Myanmar's past and present is defined by impunity. I undertook many visits to Myanmar during the first three years of my mandate as UN Special Rapporteur on human rights in Myanmar, in which I documented systematic human rights violations being committed against the Myanmar peoples by the Myanmar military. My subsequent reports to the UN Human Rights Council and General Assembly detailed accounts of enforced disappearances, arbitrary detention, torture, sexual and gender-based violence, murder, summary executions, and forced displacement of civilians across the country.

Many of the crimes I heard testimony of are glaringly similar to those outlined in this landmark new report by the Assistance Association for Political Prisoners (AAPP). That is no coincidence. They all bear the hallmarks of the widespread and systematic violations that have been committed against the Myanmar people by the military with total impunity for more than 60 years.

My last visit to Myanmar was in early 2017. I was denied access after that, for having reported on atrocities committed against Rohingya in Rakhine State in October 2016, and for raising the alarm about what I feared may come if no one was held to account.

Despite my proximity to those events, nothing could have prepared me for the scale of the atrocities that would befall the Rohingya in Rakhine State in 2017. Likewise, few, if any, including myself, foresaw that less than five years later the architects of those atrocity operations would launch an all-out war against the entire population of Myanmar.

The United States Government determined this year that the Myanmar military committed crimes against humanity and genocide against the Rohingya in Rakhine State in 2017, but still no one has been held criminally accountable. Now the Myanmar military is carrying out a sustained, widespread and systematic attack on the Myanmar people that began after the attempted coup in February 2021, and is committing acts that too, as this report so thoroughly sets out, amount to crimes against humanity.

AAPP has been at the forefront of reporting on human rights violations and abuses in Myanmar for more than 20 years. AAPP's tireless work documenting the imprisonment of dissidents, activists and journalists in Myanmar and ongoing advocacy has brought crucial international attention to the plight of Myanmar's political prisoners. Since the attempted coup, AAPP has entrenched its reputation, becoming the most widely trusted and respected source for the grim daily tally of people murdered and detained by this illegal coup junta. The resource has proven invaluable for journalists, foreign ministers, diplomats, and civil society, as well as the organization I co-founded in the wake of the attempted coup, the Special Advisory Council for Myanmar (SAC-M). AAPP's

updates are a daily reminder of the scale of the devastation caused by the junta's campaign of terror against the civilian population.

AAPP cross-checks news reports with those of its on-the-ground sources to produce the most accurate, up-to-date numbers possible. But as this report shows, each number that represents a life lost or locked away does not exist in isolation. AAPP has used a mere fraction of its tally, supplemented with in-depth interviews with survivors and relatives of victims, to build a cache of evidence that, in the coming months and years, will enable the prosecution of Myanmar military leaders and subordinates for their crimes against humanity against the Myanmar people.

Critically, the recommendations listed in this report lay out a clear path towards accountability and justice for the victims and survivors of the junta's atrocities. Ending the military's impunity is essential to ending the devastating cycle of violence that has destroyed so many lives and denied generations the freedom, peace, justice, and rights that the revolution is now sacrificing so much in order to achieve. So, I call on all those in the international community reading this report to take urgent steps and action the recommendations outlined within. Myanmar's future is being shaped as we speak, and we must do all we can to ensure that impunity plays no further part in it.

Yanghee Lee

Former UN Special Rapporteur on the situation of human rights in Myanmar and founding member of the Special Advisory Council for Myanmar



II. Executive Summary

This report aims to tackle the impunity of junta military leaders for crimes violating international norms of *jus cogens*. As the National Unity Government (NUG), the legitimate representative of the state, is currently ‘unable’ to ensure fair functioning of domestic courts, and as it has lodged a declaration with the ICC accepting the court’s jurisdiction under article 12 (3) of the Rome statute on August 20, 2021, the court has jurisdiction to prosecute perpetrators of atrocity crimes committed from 2002 on. AAPP argues that military leaders should be held accountable for the crimes committed by their subordinates as per the Rome Statute in all cases where their active (art. 25) or passive (art. 28) responsibility can be incurred.

Since the **murder** of Mya Thwet Thwet Khaing on February 9, AAPP has recorded and verified **1,875** cases of murder as of May 31, 2022. Interviews reveal that the Light Infantry Division (LID) 77 and Light Infantry Division (LID) 44 have either been present during or have personally been committing these crimes. Families of victims reported instances of mass shooting in civilian areas; on March 15, 2021 “soldiers shot over 400 bullets across the village” according to the uncle of a victim. They also report victims being shot multiple times, to ensure their death. For instance, many were shot two or three times within their respective homes. According to the data collected by AAPP, a minimum of **337** people have been killed in **13** different instances of brutal attacks amounting to **extermination** since the attempted *coup*. The combination of open-source data and data collected by AAPP allows the verification of the use of artillery shells and other heavy artillery, such as machine guns, which shows an intent to collectively target pro-democracy protesters and other civilians perceived as such. It also identifies LID 66 as a perpetrator of extermination of civilians during the ‘Christmas Eve massacre’ and LID 44 during the four-step extermination in Kani Township. Those crimes, amongst others committed by the military, are the cause of massive **forcible transfers** of the civilian population. As of May 2022, there are at least 1,000,000 Internally Displaced People (IDP) in Burma, **700,000** of which have been displaced by the conflict and general climate of insecurity since February 1, 2021. Not only do the violence and destruction of homes force civilians to flee, but landmines placed around villages also prevents them from safely returning. The imposition of laws in some township is also a strong push factor, as the fear of **arbitrary detention** is increased. AAPP has verified the arrest of **13,902** political prisoners since the *coup*, 10,847 of whom remain under detention as of May 31, 2022. The often-violent arrests are unlawful by nature as the legal basis used to justify them is contrary to International Law; for one example, the new 505-A provision to the amended Penal Code by the military violates international standards for freedom of expression. AAPP has documented at least **338** children detained - for more than 24 hours – with **61** of them taken as hostages of wanted relatives. Moreover, released prisoners have shared with AAPP the inhumane conditions they endured, with systematic violations to the right to adequate healthcare and visitation. They also reported the outright lack of due process during their trial, which renders any imprisonment unlawful. Convictions are handed out systematically to political prisoners, many times on the basis of coerced confessions obtained through **torture**. Indeed, the junta is conducting beatings at the place of arrest and in prisons as a punishment and intimidation method; and, in interrogation centers to obtain information or confessions. The brutality reaches its peak in interrogation, a

seventeen-year-old released detainee for instance reported being punched a minimum of seven times for each question asked, before being taken to a forest and forced into a pit: “they were threatening to kill me by cutting me with an axe. They put soil into the pit, so my whole body was completely buried with soil – only my head was outside”. The broken bones, skull fractures, or gunshot wounds are poorly nursed or even left fully untreated. Torture comes in many forms and AAPP data revealed not only physical torture, but also psychological torture, through for instance prolonged isolation, the threat of re-arrest upon release, and other denigrating treatment. Rape and other forms of sexual violence are also used as a method of torture. Such cases have been reported in coercive environments such as prisons and interrogation centers, mostly targeting women but affecting all genders. Men have also been victims, for instances of “forcibly injecting bamboo poles into the victim’s anuses” according to the All Burma Federation of Student Unions. Male genitals were also cut off during the massacre in Kani Township; while a female detainee reported enduring genital beatings that caused severe vaginal bleeding, as well as *being touched by a police officer in a sexual way*.

The analysis of the crimes of the junta and the identity of their victims shows that civilians are targeted for their real or perceived political opposition to the military junta. Pro-democracy supporters are **persecuted**, specifically through crimes of murder, extermination, arbitrary detention, and torture. Moreover, the **13,902** civilians according to AAPP’s documentation as of May 31, 2022 that have been targeted for their political affiliations and unlawfully detained have all been **enforced disappeared** at the point of detention. Indeed, the military junta has refused to acknowledge the deprivation of liberty and/or concealed the fate or whereabouts of each of them, cutting detainees off from the outside world completely, for days, weeks or even sometimes, months. The aunt of a victim of enforced disappearance who had previously been shot by the junta described to AAPP the vain efforts she had put into finding her detained nephew, at Insein Prison and in Shwepyithar interrogation center. At the time of the interview, his location was still unknown.

When the attempted *coup* took place, the public health situation was already dire. However, since then, the situation has reached critical heights as the military junta has been weaponizing the COVID-19 pandemic; by restricting access to medical supplies, intentionally harming civilians trying to access such supplies and targeting medical staff.

The commission of these crimes is part of a **widespread** and **systematic** attack targeting the **civilian population**. The murders of 1,875 civilians have been committed throughout the country, as have the 13 massacres confirmed by AAPP, from Bago City to Hpruso Township. The 700,000 people displaced since the *coup* are also distributed from Tanintharyi in the South to Sagaing in the North, with clusters of displacement throughout. The 13,902 civilian victims of arbitrary detention and enforced disappearance are also spread through the country (*c.f* [AAPP database](#)), with the majority victims of psychological and/or physical torture. Victims of persecution are particularly numerous, as they include all victims of murder, extermination, arbitrary detention and torture that were targeted for their perceived political affiliation. Furthermore, as of May 31, 2022, arrest warrants have been issued against 598 medical workers, and 149 have already been arrested throughout

Myanmar; there has also been 299 attacks of medical personnel, 11 of which resulted in their death. Hence, **all those crimes are widespread based on the significant number of victims and on the geographical scope of the attack.**

The widespread nature of the commission of such crimes is rooted in a culture of impunity that has been surrounding the military junta for decades. The violations committed since the coup are clear repetitions of previously used *modi operandi* that historically never triggered legal repercussions. The systemic recourse to crimes against humanity is a political strategy used to repress opposition. In many cases, the cognizance and planning of the crime is clear, specifically in the case of divisions appointed to target protestors, including the LID 77. They were supplied with weapons and maps of the targets before being transported to these locations throughout Burma, attacking civilians, protestors and youths. The presence of buses and military vehicles waiting to transport protestors to prison, the establishment of roadblocks, the identification of houses owned by protest leaders, and the frequent fabrication of evidence are signs of premeditation in the commission of crimes against humanity. The commission of each crime is part of a larger pattern. For instance, when the military junta fails to find a political opponent, specifically a high profile one, the arrest of family members as hostages and/or the seizure of their property is *quasi*-automatic. If they do find them, they will resort to physical or psychological torture to obtain information and coerce a confession. During detention and interrogation, their families will not be made aware of their location. Hence, the commission of each crime individually is systematic.

Since the crimes take place throughout a large geographical scope, are part of a larger *modus operandi*, and have attracted the attention of national and international media, as well as members of governments across the globe and international organizations, the perpetrators' knowledge that the crimes committed are part of a widespread and systematic attack is established, as developed by the ICC in the Bemba case. Other clues can also be considered, such as statements from the junta themselves. For instance, after the 'Christmas Eve massacre', Major General Zaw Min Tun assured that the soldiers [from LID 66] followed the rules while carrying out the military operation, showing previous knowledge and planning to conduct such military operation. However, the sheer intensity and frequency of the crimes committed appears to be enough to establish the knowledge element, as the context of commission and larger pattern of grave human rights violation is inconceivable to ignore.

III. Introduction to the situation in Burma

1. Since **February 1, 2021**, military coup, the Assistance Association for Political Prisoners (AAPP) has been documenting detentions and fatalities in the military's crackdown on the pro-democracy movement. AAPP's documentation figures are cited as the credible source by the United Nations and other international reporting. To chronicle the events of the past year, AAPP has interviewed a range of sources and investigated open-source media and civil society reports to establish how the military junta has committed Crimes Against Humanity.
2. **Murder:** AAPP has recorded and confirmed the killing of 1,875 people as of May 31, 2022 by the junta in its crackdown on the pro-democracy movement across the country since the failed military coup. The actual number of fatalities is likely much higher. The systematic nature of the killings is intentional, some of them are even likely to be premeditated. Many deaths occurred when junta soldiers shot live ammunition into groups of people or in residential areas, have been shot point-blank in the head, or tortured to death in interrogation.
3. **Extermination:** The junta has committed attacks against civilian populations that constitute death on a large scale in a widespread and systematic manner. In Bago City, 82 people were confirmed killed. In Kani township, 42 people were killed in a four-stepped murder operation. On December 24, Hpruso Township, witnessed the ominous "Christmas massacre", when at least 35 people were killed in brutal attacks amounting to extermination. Since February 1, 2021, according to AAPP documentation 337 people have been killed in 13 massacres with over nine individuals killed, in Hpruso, Kani, Bago, Matupi, Nat Chaung Village, Let Pan Taw Village, Khin-U Township, Donetaw Village in Salingyi Township, Myinthar Village in Gangaw Township, Kale Strike, Thingangyun Strike, Hlaingtharya Strike, and the Dagon Myothit (South) Crackdown.
4. **Deportation:** The number of internally displaced people has nearly tripled since February 1, 2021, culminating at 1,000,000 by late May 2022.¹ Forced displacement is used as a strategic tool by the military, as part of the 'four cuts' strategy, a violent *modus operandi* that the junta has been using for decades. Moreover, the implementation of martial law in some cities necessarily created a wave of displacement to other areas where civilians could less under threat. Similarly, indiscriminate attacks in areas where political dissent is strongest, including through bombing of entire villages, constitute coercive acts that legitimize the qualification of the transfer of population as 'forced'.
5. **Imprisonment:** AAPP has recorded and verified 13,902 arrests of political prisoners as of May 31, 2022, which are by definition, unlawful. Following those abusive arrests, all are subjected to violent

¹ OCHA (2022) Myanmar Humanitarian Update No.18. United Nations Office for the Coordination of Humanitarian Affairs (*Online*) Accessed at: <https://reliefweb.int/attachments/dbdb592d-9f1f-4cef-ab8c-402e03e3df1c/OCHA%20Myanmar%20-%20Humanitarian%20Update%20No.18.pdf>

detention conditions, physically, mentally, and socially. They are also denied basic due process rights during their trials and sentenced *quasi* automatically.

6. **Torture:** From their arrest to their release, political prisoners are physically and mentally abused. Related instances of extreme violence upon arrest resulted, for some, in broken bones, gunshot wounds or disfigurement. Most instances of torture take place in interrogation centers where detainees are beaten to coerce them into confessing or relinquishing information. In prison, violence is often used to quash protests or simply to strip prisoners of their dignity. Prolonged isolation and re-arrest are also common forms of psychological torture that they have to endure. According to AAPP data, 63 people have been tortured to death in interrogation.
7. **Sexual Violence:** Sexual assault and cases of rape are extremely under-reported, but AAPP believes that through further investigations, such violations could be proven widespread and systematic. Sexual violence is used by the military to intimidate and punish the civilian population. In prison, guards and soldiers are frequently taking advantage of the coercive environment to commit sexual assault on detainees and prisoners.
8. **Persecution:** In Burma since the military coup, civilians are persecuted based on their real or perceived political opposition to the military and support of the pro-democracy movement. Acts of persecution include but are not limited to murder, extermination, arbitrary detention, and torture.
9. **Enforced disappearance:** The military junta has refused to acknowledge the deprivation of liberty and/or concealed the fate or whereabouts of each of the 13,902 civilians at the point of detention, as of May 31, 2022. Detainees are cut off from the outside world and their location often remains undisclosed to their families and to their lawyers for weeks, or even months.
10. **Weaponization of COVID-19 pandemic:** By 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.
11. **Conclusively,** the crimes committed by the junta are multi-faceted and of extreme violence, and when in prison, the vulnerability of civilians is increased. Pro-democracy political activists and their families are put through hell, and their journey can be perilous in different ways. For example, **Wai Lu** [alias] was a victim of various junta's crimes. He was targeted and arrested for his own past-political activism, as well as a hostage for his son who the junta had failed to locate. The soldiers, who came without an arrest warrant, looted the house and took 500,000 Kyat in cash, phones, a computer, valuable jewelry, and his youngest daughter's passport. During his arrest, he was severely beaten and his entire family,

including his two-year-old and seven-month-old grandchildren, was held at gunpoint. During his interview with AAPP, he recalled:

“I was beaten by the police and soldiers in the kitchen. They told me to lie on the ground and they handcuffed me. I was kicked with their military boots. ... I was beaten brutally again when we were not too far from my home and some of my teeth fell out. As they were beating me, I was turned over, and they stepped over my back with their military boots. Then I was dragged into a car and taken away. When I got in the car, my face was covered with a black cloth. In the car, one of the soldiers' boots hit my head and they threatened me, “if you dare to move an inch, I will shoot you in the head.”

The next day, his wife went to the police station, an interrogation center, and Insein Prison, trying to find information about where he was being held, unsuccessfully. Despite her best efforts, she only received information on **Wai Lu** [alias]’s location sixteen days later, from a prison staff that mentioned he saw him getting into the prison, his face covered in wounds. His lawyer told the family to send a package in, and if it was not sent back, they could assume he was indeed in the prison. A common practice. In Prison, he was completely cut out from the outside world, and had to be treated by Civil Disobedience Movement (CDM) doctors in prison.

“If it had only been the prison doctor, we would be dead by now”.

Wai Lu [alias] is a victim of unlawful imprisonment, torture, enforced disappearance and persecution. This report will analyze crimes against humanity individually, but there are many cases, like this one, where the violence of the junta is at the intersection of different crimes.

IV. Scope and Methodology

12. The present report provides and analyses evidence on heinous acts committed by the junta upon the people of/in Burma, as documented by AAPP staff from 40 interviews held with survivors, witnesses, and families of victims (see [Table 1, Annex](#)), as well as court documents, death certificates, videos, and photos on file, between February 1, 2021 and January 31, 2022. The report includes evidence documented by AAPP as well as other credible sources to investigate if crimes against humanity are occurring in the country. For human rights abuses for which AAPP evidence is partial, secondary sources are presented. Numbers of arrests, killings, and other human rights statistics are presented up until May 31, 2022.
13. Although Burma (or the Republic of the Union of Myanmar) is not a signatory to the Rome Statute of the International Criminal Court (ICC), all nations and individuals are still legally bound to its stipulations, established as customary international law and peremptory law (*jus cogens*).² Therefore, this report provides proof to tackle impunity of junta military leaders, who must be prosecuted through International Criminal Law for crimes against humanity offences. The report's focus on suggesting accountability mechanisms is underpinned by a belief that holding perpetrators accountable can, *inter alia*, contribute to stopping them from committing the violence that constitutes crimes against humanity.
14. Moreover, by disclosing the atrocities committed in Burma, this report initiates procedures of restorative justice. AAPP's documentation actions not only seek to bring accountability and end military's impunity, but likewise to extol and commemorate victims and fallen heroes of the attempted coup. As one of AAPP interviewees, **Kyaw Wunna's** [alias] wife, expressed, "I can't let this murder case to be in vain. I will follow up this case when the country has become stable. What should I do to keep this case alive?". Her husband was tortured to death at an interrogation center. And hence this documentation report will not let the death of her husband, and many others bearing the same fate, be forgotten.

² See: United Nations Human Rights Committee (1994), "General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant" (CCPR/C/21/Rev.1/Add.6), paragraph 08; and "General Comment No. 29: Article 4: Derogations during a State of Emergency" (CCPR/C/21/Rev.1/Add.11), paragraph 11, in: UN Human Rights Council (2018), cited above.

V. Elements of Crimes Against Humanity

15. Crimes against humanity are defined under article 7 (1) of the Rome Statute as:

- a. Murder;
 - b. Extermination;
 - c. Enslavement;
 - d. Deportation or forcible transfer of population;
 - e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f. Torture;
 - g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i. Enforced disappearance of persons;
 - j. The crime of apartheid;
 - k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- i. ‘when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.

‘Widespread or Systematic Attack’

16. ‘Widespread’ encompasses ‘an attack carried out over a large geographical area or an attack in a small geographical area but directed against a large number of civilians’.³ Widespread acts are committed against a ‘multiplicity of victims within the context of a broader campaign’.⁴
17. There are substantial grounds to believe that the attack perpetrated by the military junta in post-coup Burma is widespread. According to AAPP documentation, the armed wing of the junta has killed at least 1,876 people and arrested more than 13,902 in a variety of instances of violence carried out in multiple locations since the coup began in February 2021. The situation in Burma is therefore similar to the *Situation in the Republic of Kenya* case, where the Pre-Trial Chamber found that the attack in post-election Kenya ‘was massive, frequent, carried out collectively with considerable seriousness and

³ International Criminal Court (2014), Prosecutor vs Katanga (Judgment), Trial Chamber II, Case No ICC-01/04-01/07.

⁴ International Criminal Court (2012), Prosecutor vs Ntaganda (Decision on the Prosecutor’s Application under Article 58), Pre-Trial Chamber II, Case No ICC-01/04-02/06, p. 19

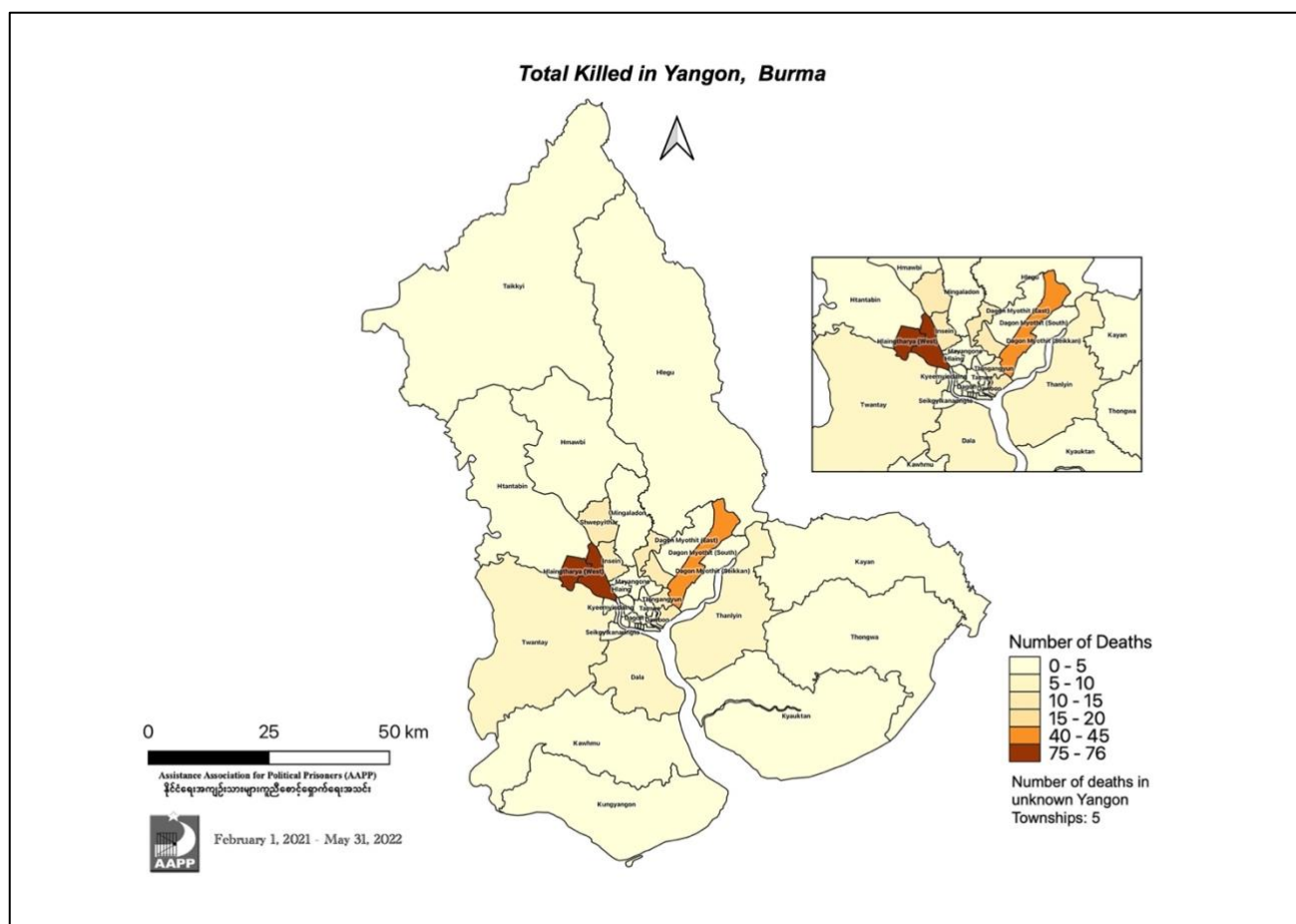
directed against a large number of civilian victims’.⁵ The widespread element was demonstrated by ‘the geographical scope of the attack, which covered four different locations in two districts (Uasin Gishu and Nandi) of the Rift Valley Province’.⁶

18. In a similar way, evidence gathered from AAPP’s interviews have demonstrated that a significant amount of people have been the victims of the junta’s frequent attacks in geographical areas all over Burma including: shootings and raids on February 28, 2021, in 35th, 74th, 76th and 77th Street and No. 3 School in Mandalay City; oppression by the junta throughout February and March in Sanchaung Township; arrests and shootings of protestors on March 1 and 3, 2021, in North Okkalapa, Hlaing Township, Tamwe Township, and Bahan Township in Yangon Region; arrests and beatings of protestors on March 13, 2021, in Myataung and Sein Pan Ward in Mandalay Region; mass shootings;⁷ beatings and destructive raids of property on April 9, 2021, in Dagon Myothit (East) Township, and Mhaw Kan 21st Street, Socialist 9 Street and Ma Ga Dit Road in Bago City; the massacres in Kani Township; and beatings and arrests of innocent civilians beginning on July 1 in the areas of Shikhoethtet, Htoo Village, Kyoe Pin Sa and Yin Village in Kani Township.

⁵ International Criminal Court (2010), Prosecutor vs William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang (Judgment), Pre-Trial Chamber II, Case No ICC-01/09, [94], n. 58

⁶ *Ibid.*

⁷ AAPP (2021), “Daily Briefing in Relation to the Military Coup”, Assistance Association for Political Prisoners (online), Available at: aappb.org/?p=14215



19. All interviewees mentioned that they either witnessed or knew of multiple other killings, shootings, beatings and arrests taking place by the junta. There were also multiple inhumane acts linked to the same units, in particular, the LID 77. It is therefore likely satisfied that the acts occurred within a broader campaign by the junta to target and persecute a large number of civilians. Thus, the criterion is met, and the attacks committed by the junta can be qualified as widespread.
20. ‘Systematic’ refers to the ‘organized nature of the acts of violence and improbability of their random occurrence’.⁸ Furthermore, ‘any attack that has clearly been planned in advance and coordinated with acts of violence that reveal a clear pattern may be found to be systematic’.⁹ The acts of the junta must be planned, directed or thoroughly organized and follow ‘a regular pattern in furtherance of a common policy involving public or private resources’, even if this policy ‘is not explicitly defined’ by the junta.¹⁰ Overall, AAPP interviews demonstrate the systematic and organized nature of the widespread acts of violence committed by the junta between February 2021 and January 2022.

⁸ International Criminal Court (2007), *Prosecutor vs Ahmad Muhammad Harun* (Decision on the Prosecution Application under Article 58(7) of the Statute, Pre-Trial Chamber I, Case No ICC-02/05-01/07, 27, [62]

⁹ International Criminal Court (2014), *Prosecutor vs Gbagbo* (Decision on the Confirmation of Charges against Laurent Gbagbo), Pre-Trial Chamber II, Case No ICC-02/11-01/11, p. 225

¹⁰ International Criminal Court (2014), *Prosecutor vs Katanga*, cited above.

21. The response to the civilian protests had a level of cognizance and planning, such that it can be considered ‘systematic’. On 21 February, 2021 the military junta stated that ‘protesters are now inciting the people, especially emotional teenagers and youth, to a confrontation path where they will suffer the loss of life’.¹¹ Only a few days later, on 28 February, 2021 **Mon Khan** [alias]’s sister describes the planned and coordinated nature in which armed members of the military junta went through 35th A Street in Mandalay City, shooting and killing many protestors as well as raiding schools such as the No. 3 School. This demonstrates that certain divisions had been appointed by the junta in February to target protestors of the coup. These divisions were supplied with weapons and maps of target locations before being transported to these locations throughout Burma with orders to attack civilians, protestors, and young people (hence the attack on the No.3 School). This operation of ‘regularly identifying, tracing, locating, arresting, and mistreating perceived opponents’ of the junta can be seen as a ‘systematic’ operation as per the pre-trial chamber in the case of Prosecutor vs Al-Tuhamy Mohamed Khaled.¹²
22. On March 3, 2021, **Mya Htwe** [alias], **Thuzar Lwin** [alias], **Tun Win** [alias], **Nyein Nyein Htun** [alias] and **Tint Tint Kyu** [alias] witnessed the organized attack against peaceful protestors by the LID 77 who could be identified by their uniforms and badges. This is relevant, because it was noted by the Muthaura, Kenyatta and Ali Pre-Trial Chamber that ‘the provision of uniforms and weapons to the attackers’ was a subsidiary fact that could support the argument that a particular attack ‘was not a spontaneous occurrence of violence, but was organized and systematic’.¹³ The presence of the LID 77 and other security forces at the site of organized protests also points to the fact that these divisions form part of a larger military group appointed by the junta to suppress the CDM through violence. Furthermore, a clear hierarchical structure could be observed, as the military present that day took their orders from the LID 77. All of these factors were considered by the *Situation in the Republic of Kenya* Pre-Trial Chamber to demonstrate that attacks against civilian populations are ‘systematic’ in nature.¹⁴
23. On March 3, 2021, the LID 77 and other security forces following their orders, cornered protestors from behind, blocking them in and firing tear gas. The LID 77 ‘raided the neighborhood to arrest and beat up people until there were no more people on the street’, according to **Mya Htwe** [alias]. She also said that if the LID 77 could not catch protestors, they ordered other security forces present at the scene to target mobile medical teams who had been treating injured protestors. These protestors and medical staff were beaten by the LID 77 and other junta forces before being arrested. They waited in cramped buses and military vehicles all day before being transported to Insein prison where they were held for up to 22

¹¹ State Administrative Council (2021), “Public Announcement of 21st of February 2021”, *The Global New Light of Myanmar* [military junta outlet] (online), Available at: www.gnlnm.com.mm/public-announcement-21-2-2021/

¹² International Criminal Court (2013), *Prosecutor vs Al-Tuhamy Mohamed Khaled* (Warrant of Arrest for Al-Tuhamy Mohamed Khaled with under seal and ex parte Annex), Pre-Trial Chamber I, Case No ICC-01/11-01/13, [5].

¹³ International Criminal Court (2012), *Prosecutor vs Muthaura* (Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, Case No ICC-01/09-02/11, 71

¹⁴ International Criminal Court (2010), *Prosecutor vs William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* (Judgment), Pre-Trial Chamber II, Case No ICC-01/09, [94], n. 58

days. All of these stages of the attack evince a pre-planned nature, particularly the presence of buses and military vehicles waiting to transport detainees to Insein prison. Clearly, the military units had orders to arrest as many protestors and supporters of the protestors as possible.

24. On March 26, 2021, the state news channel announced that protestors ‘should learn from the tragedy of earlier ugly deaths that you can be in danger of getting shot to the head and back’ and warned that ‘parents should also talk their children out of it [joining protests], let’s not waste lives for nothing’.¹⁵ These comments can be interpreted as the planning from the military junta to respond with violence and brutality to any type of demonstrations. Hence, showing intent and organization, and therefore making it systematic in nature.
25. A few days later, on April 9, 2021, there were more mass shootings of protestors by the junta in Bago and other areas. **Moe Shwe** [alias] witnessed the shootings on April 9, 2021, by the military, the armed wing of the junta, who were systematically searching houses and shooting people. These actions match the testimony given by a military defector who explained that every night junta soldiers are deployed ‘with two rounds of ammunition, assault rifles, detailed maps of neighborhoods and names of protest leaders from their informants’.¹⁶ The defector stated that ‘they [the junta] order us to shoot when the person we want to arrest is escaping from the house’.¹⁷ He also explained that anyone looking out of their windows, walking at night or talking back to the military would be beaten.¹⁸ All of these accounts demonstrate the planned and premeditated nature of each of the attacks as well as the patterns of behavior that are demonstrated by the junta on multiple occasions of targeting civilians, searching for protest leaders, raiding civilian locations with the aid of supplied maps and weapons as well as using excessive violence against every civilian they encounter. According to the Situation in the Republic of Kenya Pre-Trial Chamber, ‘the production of maps marking out the area’s most densely inhabited by communities’ who are perceived to be political dissents and the ‘identification of houses’ owned by protest leaders, as well as the ‘transportation of perpetrators to... the target locations’ are all factors relevant to proving the systematic nature of the attacks.¹⁹ The precise identification of the targets prior to the attacks was found by the Muthaura Pre-Trial Chamber to be significant in proving that the attack was organized and systematic.²⁰
26. Another example of the systematic nature of the junta’s actions is their tendency to claim the bodies of the dead and to keep them from their families, most probably to eliminate evidence of their torture and

¹⁵ Statement on military-controlled state media Myanmar Radio and Television (MRTV) on May 27, 2021.

¹⁶ Regan, H. et al. (2021), “Myanmar protesters describe torture they suffered in detention at the hands of the military”, *CNN* (online), Available at: edition.cnn.com/2021/04/27/asia/myanmar-coup-detainees-torture-intl-hnk/index.html

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ International Criminal Court (2010), *Prosecutor vs William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* (Judgment), Pre-Trial Chamber II, Case No ICC-01/09, p. 60

²⁰ International Criminal Court (2012), *Prosecutor vs Muthaura* (Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, Case No ICC-01/09-02/11, p. 71

murder of the victims. When relatives did see the bodies of their loved ones, many saw they had been beaten and shot in the head or the back. At least seven of the interviewees who gave testimonies to AAPP mentioned the junta's systematic attacks on hospitals to take the bodies of those killed by the military. The mother of killed **Aye San** [alias] stated that, on the night of 3 March, 2021 the junta raided the hospital where **Aye San**'s [alias] body had been kept, looking for dead bodies. The sister of deceased **Mon Khan** [alias] explains that the dead could not be buried without the junta's signature of approval. She believed they claimed the bodies of the deceased so that relatives would not be able to bring cases before courts. As **Chit** [alias] explained, even videos and photos that had been taken of the deceased by witnesses and posted on social media were soon taken down and blocked by the junta.

27. Many of the interviewees also highlighted the systematic way in which the junta fabricates evidence in order to accuse, imprison, torture and kill people. **Arkar Latt** [alias] was accused of being a terrorist and was killed. **Kyaw Wunna** [alias] was also accused of being a terrorist involved with explosives. Others had evidence fabricated against them in order to arrest them under Section 505 A of Burma's Penal Code. The journalist **Yago Linn** [alias] was also accused of spreading fake news.

28. For all of these reasons, this report argues that the junta's attacks in Burma are widespread and systematic in nature.

'Directed Against any Civilian Population'

29. According to article 2 (a) of the Rome Statute, 'an attack directed against any civilian population means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack'.²¹ A population is considered to be a "civilian population" as long as it is predominantly composed of civilians, and a civilian is anyone who is not, or is no longer a member of armed forces.²² In Burma, victims are being targeted because of their perceived political affiliation against the junta, as a result of their involvement in protests. All of the victims in the AAPP interviews were unarmed at the time of the attacks against them by the military, police and security forces. Most were civilians who attended the protests held between February and May 2021. As **Chit** [alias] explained to AAPP, 'civilians did not have any weapons'. As such, this element of crimes can be satisfied.

'With Knowledge of the Attack'

30. The mental element for crimes against humanity is that 'the perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack directed against a civilian

²¹ Rome Statute, art 2(a).

²² CC Trial Chamber III (March 21, 2016), *Situation in the Central African Republic, in the case of the prosecutor v. Jean-Pierre Bemba Gombo* [ICC-01/05-01/08], Available at: <https://www.iccpi.int/sites/>

population’.²³ ‘Knowledge’ is defined in article 30 (1) of the *Rome Statute* as ‘awareness that a circumstance exists or a consequence will occur in the ordinary course of events’.²⁴ According to the *Gbagbo* case, each act requires ‘establishing the perpetrator’s knowledge that (1) there is an attack on civilian populations and (2) the perpetrator’s act is part of that attack’.²⁵ The *Omar al-Bashir* decision held that ‘such knowledge should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization’.²⁶ To establish each individual crime against humanity, this standard of knowledge will have to be founded.

31. This is achievable through the study of the evidence gathered by AAPP, including the interviews. In the *Katanga* case, circumstantial evidence including the position of the perpetrator in the military hierarchy and their presence at the scene of the crimes was found to be relevant to proving the knowledge element.²⁷ AAPP interviews reveal soldiers of the LID 77 were present at the scenes of the various attacks, including on the buses that transferred arrested protestors to Insein Prison. Similarly, extensive footage was posted online showing their presence in the acts.²⁸ Based on the *Katanga* precedent, it could therefore be inferred from the junta’s presence at the scene of the attacks that they had knowledge there was an attack on civilian populations, as they participated in, as well as oversaw many of the acts which formed part of these attacks.
32. Evidence gathered outside of AAPP interviews also makes out this knowledge element. For example, circumstantial evidence gathered from soldiers who have defected from the junta and security forces can point towards their knowledge that the acts they committed formed part of larger attacks on the population. As one former soldier explained, ‘they [the junta] will kill anyone they want to kill, that’s what I know of them’.²⁹ It is clear from these statements that soldiers know the junta are engaging in acts that form part of wider and systematic attacks against civilian and unarmed populations.
33. Furthermore, many international bodies such as *Human Rights Watch*, the *Special Rapporteur on Human Rights in Myanmar*, or the *United Nations High Commissioner for Human Rights* have collected evidence of the widespread and systematic nature of these attacks.³⁰ This evidence has been published

²³ Rome Statute, cited above

²⁴ Rome Statute, cited above, art 30(1).

²⁵ International Criminal Court (2014), *Prosecutor vs Gbagbo* (Decision on the Confirmation of Charges against Laurent Gbagbo), Pre-Trial Chamber II, Case No ICC-02/11-01/11, p. 114.

²⁶ International Criminal Court (2009), *Prosecutor vs Omar Hassan Ahmad Al Bashir* (Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir), Pre-Trial Chamber I, Case No ICC-02/05-01/09, p. 88

²⁷ International Criminal Court (2014), *Prosecutor vs Katanga*, cited above, p. 402

²⁸ Videos and photographs on file with author, num. #1 – 7. See also: www.youtube.com/watch?v=P5Y8AuIeAZw ; www.youtube.com/watch?v=LygNkC7T0tQ

²⁹ Regan, H. et al. (2021), “Myanmar protesters describe torture they suffered in detention at the hands of the military”, *CNN* (online), Available at: edition.cnn.com/2021/04/27/asia/myanmar-coup-detainees-torture-intl-hnk/index.html

³⁰ OHCHR (2022), “Situation of human rights in Myanmar since 1 February 2021 – 15 March”, *United Nations* (online); Andrews, T. H. (2021), “Report of the Special Rapporteur on the situation of human rights in Myanmar – 2 September”, *United Nations* (online); Human Rights Watch (2021), “Myanmar: Coup Leads to Crimes Against Humanity”, *Human Rights Watch* (online), Available at: www.ecoi.net/en/document/2056889.html

in reports and articles that are distributed worldwide and may be accessible to members of the military junta who are engaging in these attacks. For these reasons, there are evidence to make out the knowledge element for each of the crimes. In the *Al Bashir* case, it was stated that numerous United Nations reports, several Security Council resolutions, and the *Report of the United Nations Commission of Inquiry*, which referred to the existence of a widespread and systematic attack by Government of Sudan (GoS) forces on the above-mentioned part of the civilian population in Darfur, were released during the relevant time period and were widely publicized.³¹

34. Finally, the aforementioned statements from the military junta ‘threatening’ civilians with an imminent death if engaged in protests (e.g., on 21 February, ‘they will suffer the loss of life’)³², show a clear knowledge of the heinous acts committed to try to stop demonstrations.
35. The ICC in the Bemba case³³ established those elements to be enough to determine the knowledge of the attack. Indeed, in §691 the court declared that if the crimes take place throughout a large geographical scope, are part of a larger *modus operandi* and have attracted the attention of national and international media, ‘the Chamber finds beyond reasonable doubt that the perpetrators had knowledge of the attack, and knew that their conduct was, or intended their conduct to be, part of the widespread attack directed against the civilian population’. This report will continue to demonstrate the fulfillment of this criteria throughout, but the sheer intensity and frequency of the crimes committed appears to be enough to establish the knowledge element, as the context of commission and larger pattern of grave human rights violation is impossible to ignore.
36. This report argues that there is undeniable **evidence of nine out of the eleven crimes constituting crimes against humanity** under article 7 (1) are present on the facts in Burma, delivered by the military junta; namely murder, extermination, deportation, imprisonment, torture, rape and sexual violence, enforced disappearance, persecution, and other inhumane acts of a similar character. Followingly, each of these crimes are described and evidence is provided for the argument.

Crimes Constituting Crimes Against Humanity

Article 7(1)(a) Murder

37. According to the Elements of Crimes, the elements of murder are:
- a. the perpetrator killed, or caused the death of, the victim;³⁴

³¹ International Criminal Court (2009), *Prosecutor vs Omar Hassan Ahmad Al Bashir* (Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir), Pre-Trial Chamber I, Case No ICC-02/05-01/09, pp. 88-89

³² State Administrative Council (2021), “Public Announcement of 21st of February 2021”, *The Global New Light of Myanmar* [military junta outlet](online), Available at: www.gnlnm.com.mm/public-announcement-21-2-2021/

³³ ICC Trial Chamber III (March 21, 2016), *Situation in the Central African Republic, in the case of the prosecutor v. Jean-Pierre Bemba Gombo* [ICC-01/05-01/08], Available at: <https://www.icccpi.int/sites/>

³⁴ International Criminal Court (2011), *Elements of Crimes*, The Hague: International Criminal Court, p. 05

b. with intention and knowledge.³⁵

38. Moreover, this act must be part of a widespread and systematic attack; directed against a civilian population; and with the perpetrator knowing the conduct was part of such a widespread or systematic attack.
39. Firstly, ‘the accused killed or caused the death of the victims’, a causal link needs to be established between the death and the act of the perpetrator. In each murder case retrieved as evidence from AAPP interviews, family members testified that the junta troops attacked the area in which the victims were present and that they saw the dead bodies and identified the location of the wounds. **Aye San** [alias] was killed when the junta troops dropped tear gas from a plane, in North Okkalapa, on March 3, 2021. As his relative explains: “the entire ward could not stay in their houses anymore and went out, on to the road.” **Aye San**’s friends saw him get shot while he was trying to save other wounded people, close to the bus stop. His family was told that her son got shot and then later saw **Aye San**’s [alias] body at the hospital. He was hit in the chest and the bullet was still in his heart. At the General Hospital, there were three other dead bodies with bullets in the chest. An unknown number of victims shot in the head were taken to General Hospital, as one doctor explained to military soldiers who were trying to take the bodies of victims.
40. The family of **Min Than** [alias] describe how the victim was shot by junta forces at the Bago City demonstration on April 9, 2021. LID 77 was there. “When he got shot, he was wearing a helmet. The bullet didn’t go through his head, there was a hole in his neck.”, his relative explained. She maintains that the military knew they shot somebody, and they were looking for **Min Than**’s [alias] body. In like manner, on February 28, 2021, **Mon Khan** [alias] was shot while on the street in Mandalay. “She was always taking a lead role [in the protests]. We think that’s why she got shot”, his relative expressed. **Aung Pyae** [alias] was also shot in the arms by the military at the frontline of protests in Mandalay on March 13, 2021 and died shortly after. Equally, junta soldiers went to **Htike**’s [alias] house, looking for him, but he was not there. The next day his family heard rumors that a young boy had been captured and handcuffed by the police in the ward (Monywa Township) and at around 2pm they were contacted to identify a dead body. “One half of his head was extremely soft. We found burns from cigarette butts on his skin and there was bleeding on his ears. We saw a dark brown mark on his temple. We also found scars from a rope that had been tied around his hands” the witness expressed. Authorities claimed that the cause of death was COVID-19.
41. Pro-democracy supporters and activists are not only targeted on the streets, during protests. **Win Zaw** [alias] was shot three times in his own backyard, in Bago, on April 9, 2021. He was hit once, when the junta raided his street indiscriminately shooting at houses with machine guns. Then, “he shouted that

³⁵ Rome Statute, art 30(1).

his thigh had been shot. The military forcefully kicked our closed fence door down and shot my younger brother again. He passed away from the second and third shots”, the witness described. Similarly, 17-year-old **Su Su** [alias] was shot while at home in the village (Thabeikkyin Township, Mandalay Region), when soldiers fired from the mountains, allegedly to stop some villagers approaching them, as explained by her relative. Around eight children, who were hiding in the house were also hit, on that day of March 15, 2021. “The soldiers shot over 400 bullets across the village”, he claims, “They also came and fired at the hospital, when we took the children there.” Three people died. **Su Su**’s [alias] family was contacted by the commander of the battalion, who offered compensation for **Su Su**’s death, but her family refused. In both cases, military soldiers hit the victims not only once, but twice, to make sure of their disease.

42. Witnesses of one of the four massacres in Kani Township, Sagaing Region, committed by the junta on July 1, 2021, also presented information that prove this causal link. On that day, four civilians who were working at the forest, **San Min Naing** (21 years old), **Win Shwe** (aka U Thet Shay) (56 years old), **Zeyar Tun** (23 years old) and **Tun Shwe** (34 years old) were arrested by the junta and found dead three days later³⁶. The interviewed witnesses testified that “all the dead bodies had head injuries and skull fractures” indicating that the junta had shot them in the head.³⁷
43. With this aforementioned evidence, the first element of murder can be satisfied. Secondly, the accused must have had ‘the intention to kill the victims’. The perpetrator is taken to have intention to commit murder if they ‘mean to engage in the conduct’ and ‘mean to cause that consequence [i.e. the death of the victims] or are aware that it will occur in the ordinary course of events’.³⁸ In the case of **Aye San**’s [alias], **Min Than**’s [alias], **Aung Pyae**’s [alias], and **Mon Khan**’s [alias] deaths, the junta’s conduct was shooting at a group of protesters. Thereby, it is not difficult to prove that the military intended to kill the victims, as there would be no other outcome that would occur in the ordinary course of events by shooting into a large group of people in a small geographic area. Decease would also be the only outcome in the ordinary course of events when shooting with machine guns at houses in residential areas, as in the case of **Win Zaw** [alias]. Moreover, soldiers entered his backyard afterwards, and shot him twice again. In the case of **Su Su**’s [alias] death, the posterior raiding of the hospital where victims were taken also proves this intention of murder. Likewise, during the massacre perpetrated in Kani Township from July 1, 2021, the victims died from gunshots to the skull. Hence, by shooting the victims in their head, the military junta meant to kill them, and were aware that the consequence would occur in the ordinary course of the event. An ordinary person must know that shooting at the head of a person will kill that person. Therefore, perpetrators have the requisite of intent.

³⁶ AAPP (August 18, 2021), “Massacres in Kani Township, Yinmabin District, Sagaing Region”, Available at <https://aappb.org/?p=17120>

³⁷ *Ibid.*

³⁸ Rome Statute, art 30(2).

44. Thirdly, murder must have been directed against a civilian population as ‘part of a widespread or systematic attack’. As discussed before, a civilian population is a population predominantly constituted of civilians. The deceased persons in AAPP interviews were all unarmed when they were attacked by the junta. Most of the fallen were political dissidents of the junta following the military coup: **Aye San** [alias], **Min Than** [alias], **Aung Pyae** [alias], and **Mon Khan** [alias] were participating in protests against the attempted coup when they were killed. Although **Win Zaw** [alias] and **Htike** [alias] were not participating in the protest at the time of death, they were both allegedly targeted because affiliation to this anti-coup cause was presumed by the junta: according to his relative, **Win Zaw** [alias] was killed because he was perceived as a connection to the protesters; and **Htike**’s [alias] relative explains that his son had been making large donations of food and basic supplies to unknown locations. This indicates that murders are being directed against (unarmed) political dissidents, such that it fulfils the element of ‘directed against a civilian population’.
45. Killings of civilians committed by the junta in Burma are also widespread as more than 1,875 people have been killed since February 2021. Considering AAPP interviews, it can be seen victims are killed in many different geographical areas across the country: Kani Township (Sagaing Region), Bago City (Bago Region), Hlaing Township (Yangon Region), Taikkyi Township (Yangon Region), Mandalay City (Mandalay Region), Nay Pyi Taw, Monywa Township (Sagaing Region), Hpruso Township (Karenni State), Thabeikkyin Township (Mandalay Region), Mawlamyine (Mon State), and Myeik Township (Tanintharyi Region). Considering AAPP databases, it is clear victims have been killed across the country: in Sagaing Region (33.21%), Bago Region (7.89%), Magway Region (9.12%), Mandalay Region (15.03%), Kachin State (1.87%), Shan State (3.52%), Karenni State (4.37%), Karen State (0.75%), Mon State (1.49%), Tanintharyi Region (3.36%), Yangon Region (15.09%), Ayeyarwady Region (1.44%), Rakhine State (0.05%), Chin State (2.35%), and Nay Pyi Taw (0.48%). Following the case in *Situation on the Republic of Kenya*, the widespread element is, not only evinced by the outraging number of victims since the February 1, attempted coup, but also satisfied by ‘the geographical scope of the attack, which covered different locations’.³⁹
46. Finally, the junta ‘must know’ that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack directed against a civilian population.⁴⁰ Article 30 (1) of the Rome Statute provides that the perpetrator has knowledge of the conduct if they are aware ‘that a circumstance exists or a consequence will occur in the ordinary course of events’.⁴¹ There is no need to prove that the junta leader knew all characteristics of the conducts that constitute murder.⁴² Similar to Darfur in *Omar*

³⁹ International Criminal Court (2010), *Prosecutor vs William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* (Judgment), Pre-Trial Chamber II, Case No ICC-01/09, p. 94

⁴⁰ International Criminal Court (2011), *Elements of Crimes*, The Hague: International Criminal Court, p. 05

⁴¹ Rome Statute, art 30(1).

⁴² International Criminal Court (2014), *Prosecutor vs Gbagbo* (Decision on the Confirmation of Charges against Laurent Gbagbo), Pre-Trial Chamber II, p. 214

Al-Bashir case, the attack in Burma is against a large population across the country and reports have been published worldwide providing evidence that the attacks are widespread and systematic.⁴³ Furthermore, the interviews reveal that the LID 77 and LID 44 have been present either during, or have personally been committing these crimes, as in the instance of **Aye San**'s [alias] murder, in North Okkalapa, Yangon, and the massacres in Kani Township committed from July 1, 2021. This presence and contribution to such acts would undoubtedly give the junta the requisite knowledge that their acts were part of a widespread or systematic attack. In the case of **Su Su** [alias]'s death, the commander of the battalion contacted the family afterwards. Therefore, the knowledge element can also be proved in this case.

47. In conclusion, the murders committed by the military junta in Burma clearly constitute a crime against humanity under the Rome Statute. The AAPP interviews held with relatives of **Aye San** [alias], **Min Than** [alias], **Win Zaw** [alias], **Mon Khan** [alias], **Aung Pyae** [alias], **Htike** [alias], **Su Su** [alias], and of Kani massacre victims indicate the occurrence of murder.

Article 7(1)(b) Extermination

48. For the purpose of paragraph 1 (article 7) of the Rome Statute, "Extermination" includes '*the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.*' The elements of extermination are:⁴⁴
- a. the perpetrator killed one or more people, which may include through the infliction of 'conditions of life calculated to bring about the death of part of the population';
 - b. where 'the conduct constituted, or took place as part of, a mass killing';
 - c. and the perpetrator intended to kill on a mass scale, or intended to kill as part of a mass killing.
 - i. Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.
49. The ICC has so far not charged or prosecuted crimes of extermination under the Rome Statute, which means ICC jurisprudence is unavailable to help guide the application of the Rome Statute to these facts. However, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) jurisprudence provide some insight into the interpretation of extermination under the Rome Statute, as no inconsistencies have arisen from the interpretation of ICTY and ICTR constitutive treaties and the Rome Statute so far.
50. There have been multiple occurrences of murders being committed in a central location, in a similar way, on the same day and within the same circumstances in Burma since the coup. Some of these

⁴³ Andrews, T. H. (2021), Report of the Special Rapporteur, cited above; International Criminal Court (2009), *Prosecutor vs Omar Hassan Ahmad Al Bashir* (Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir), Pre-Trial Chamber I, Case No ICC-02/05-01/09

⁴⁴ International Criminal Court (2011), *Elements of Crimes*, The Hague: International Criminal Court, p. 06.

instances have been corroborated with the interviews and data conducted by AAPP, include: the killing of 3 people on February 28, 2021, in Mandalay, corroborated by the interview of **Mon Khan**'s [alias] family; the killing of 4 people on March 3, 2021, in North Okkalapa, Yangon, corroborated by the interview of **Aye San**'s [alias] family; the killing of at least 82 people on April 9, 2021, in Bago City, corroborated by the interviews of the families of **Min Than** [alias] and **Win Zaw** [alias]; and the killing of (42) civilians in separate incidents between 1 July and 31 July in Kani Township. This report will illustrate the occurrence of the massacre on 9 April, 2021, in Bago City; the massacres perpetrated by the military in Kani Township (July 1, 2021, at Shitkhoethtet forest; July 7, 2021, nearby Yin village; and July 26-27, 2021, on the Taung Pauk village tract); and the massacre committed in Karenni State on Christmas Eve.

April 9, 2021 – Bago City Massacre

51. First, there is clear evidence to satisfy victims died because of the action of the perpetrator. According to the interviews, **Min Than** [alias] was shot in the back of the neck by junta forces while running away from the shooting. **Win Zaw** [alias] was shot three times in his backyard, where he died from the second and third bullets. Media also reported that the military had used artillery shells and other heavy artillery, such as machine guns. AAPP networks were in contact with a trusted local source on the day of the event. They were present on Ma Ga Dit Road following the massacre of pro-democracy protestors by the military. From a safe location, counted dead bodies on the street and being piled up and taken by the military to a local monastery. The data provided was combined with other verified dead bodies in houses and other side streets to confirm a figure of at least 82 killed civilians in this Bago City crackdown on April 9, 2021.
52. Secondly, the deaths must have been connected in some way to be considered death on a mass scale.⁴⁵ The International Criminal Tribunal for the Former Yugoslavia (ICTY) and The International Criminal Tribunal for Rwanda (ICTR) have confirmed that **'there is no numerical threshold that must be met to satisfy death on a large scale, but rather the nature and gravity of the act will be determined from the circumstances of the conduct'**.⁴⁶ The conduct must also be 'collective in nature rather than directed towards singled out individuals', and may be 'established through an aggregation of separate incidents' if the separate instances constitute the same 'murder operation'.⁴⁷ Factors that may be relevant to determining if 'multiple killings occurred on a mass scale include: the time and place of the killings, the selection of the victims, and the manner in which they were targeted, and whether the

⁴⁵ International Criminal Court (2011), *Elements of Crimes*, The Hague: International Criminal Court, p. 08, p. 06.

⁴⁶ International Criminal Tribunal for Rwanda (2004), *Prosecutor vs Ntakirutimana* (Appeal Judgment), Appeals Chamber, Case No ICTR-96-10-A, [516].

⁴⁷ International Criminal Tribunal for the Former Yugoslavia (2003), *Prosecutor vs Stakić* (Judgment), Trial Chamber II, Case No IT-97-24-T, [639], quoting *Prosecutor vs Vasiljevic* (Trial Judgment), Trial Chamber II, Case No IT-98-32-K, 29, p. 227; International Criminal Tribunal for the Former Yugoslavia (2015), *Prosecutor vs Tolimir* (Appeal Judgment, Appeals Chamber, Case No IT-05-88/2-A, p. 135

killings were aimed at the collective group rather than victims in their individual capacity’.⁴⁸ By using these factors, it is likely that the deaths of at least 82 people were, in fact, death on a mass scale.⁴⁹ The deaths occurred within the one day, the violence was directed at groups of political protesters who contested the rule of the junta in Burma, was committed in the same way by the military using heavy artillery, and, on the face of it, such deaths occurred indiscriminately in the sense that victims were not targeted in their individual capacity, but because of their connection to the collective protesting group as a whole.

53. Although it may seem difficult to connect the death of **Win Zaw** [alias] as part of an extermination, the interview given by his sister suggests that he was likely targeted for wearing a white shirt, which may have implied that he was a student likely to protest the junta rule. Likewise, his death occurred only 12 streets away from the death of **Min Than** [alias], who died as part of the political protests happening on the day. The interviewee also mentions that the armed junta troops left ‘other dead bodies’ throughout the residential area where **Win Zaw** [alias] died. It may therefore be possible to connect the deaths of **Win Zaw** [alias] and **Min Than** [alias] as part of the same murder operation by Burma military soldiers.
54. Thirdly, the perpetrator must have intended to commit the murder on a mass scale, intended to murder as part of a mass killing, or knew that the consequence of a mass killing would occur in the ordinary course of events.⁵⁰ **Win Zaw** [alias] was shot because armed military troops were shooting at houses within his residential area with machine guns. The use of heavy artillery towards the houses of civilians demonstrates an intention to cause mass murder, as death of many civilians who would be in their houses would be the only thing to occur in the ordinary course of events. The use of military grade weaponry, like assault rifles, grenades, or rocket-propelled grenades, toward the group of protesters evinces the intention to cause mass harm or death on a mass scale.⁵¹ Furthermore, two weeks before the killings occurred on April 9, 2021, a military-run television channel advertised protesters would be ‘shot in the back and the back of the head’ if they continued to protest the military rule of Burma.⁵² As there is no other likely result from being shot in the back or head than death, this notice demonstrates a premeditated intent to murder on a mass scale, as it was directed towards all protesters who would attend such protests and clearly demonstrates an intent to commit such actions.

⁴⁸ International Criminal Tribunal for the Former Yugoslavia (2017), *Prosecutor vs Mladić* (Judgment), Trial Chamber I, Case No IT-09-92-T, p. 3067

⁴⁹ *Ibid.*

⁵⁰ Rome Statute, art 30(a), (b).

⁵¹ Photographs of evidence on file with author, num. #8 – 11. See also: Radio Free Asia (2021), “သောတေ့ သွေးမြေကျတဲ့နေ့ [The day of the bloodshed]”, *RFA* (online), Available at: www.facebook.com/watch/?v=2970443163274949

⁵² Statement on military-run MRTV, on March 26, 2021. See also: Myanmar Alinn Daily (2021), “မြန်မာ့အလင်း - Saturday 27 March 2021”, *Myanmar Alinn Daily* (online), p. 12, Available at: www.burmalibrary.org/sites/burmalibrary.org/files/obl/mal_27.3.21.pdf

55. Fourthly, the crime must be directed against a civilian population. The Bago City protesters were shot because they were involved in protests and anti-military rule, which means that the victims satisfy the element of ‘directed against a civilian population’.⁵³ Civilians tried to protect themselves from the attacks of the military by forming protective barriers and barricades made of tires, and by using shields and propelling homemade firecracker weapons and other improvised weapons.⁵⁴ They are, however, still civilians under customary humanitarian law, as they were not part of the armed forces nor of any organized armed groups.⁵⁵
56. Finally, it is likely that the perpetrators committed the act ‘as part of the widespread or systematic attack against a civilian population and had knowledge of this’. The Bago City massacre was aimed towards political protesters in connection to the attempted military coup and followed a series of other mass murders in the previous months, making the mass killings widespread in the sense that they occurred on many occasions in many different areas of the country. The LID 77 had participated in many of the killings and was at least present for the massacres on March 3, 2021, in North Okkalapa and April 9, 2021, in Bago City, as per the interviews from the family of **Aye San** [alias] and **Min Than** [alias] respectively. It is thus concluded that the killing of civilian protesters and shooting in residential areas within Bago City on April 9, 2021, amount to extermination.

July 1 to 31, 2021 – Kani Township Massacre

57. There were four separate instances of multiple deaths on different days in Kani Township in July: four fatalities on July 1, 2021, near Mone O Village; at least 15 fatalities on July 8, 2021, close to Yin Village; 12 fatalities on July 27, 2021, near Zee Pin Dwin Village; and 11 fatalities on July 26 and 27, 2021, near Htoo Village.⁵⁶ While each may be considered separate acts of extermination, it is possible to aggregate the four instances as one act,⁵⁷ as evidence demonstrates that the crimes were performed as part of the same murder operation. Fighting between junta troops and PDF forces intensified in Kani Township from late April 2021, with thousands of villagers displaced throughout May.⁵⁸ In June, ten junta soldiers were killed by resistance forces and, consequentially, during June and July 2021, junta

⁵³ International Criminal Court (2012), *Prosecutor vs Muthaura* (Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, p. 18

⁵⁴ Evidence on file with author, num. #12 – 14. See also: Ministry of Home Affairs [military junta](2021), “ပဲခူးမြို့ပေါ်ရပ်ကွက်များအတွင်း ဆူပူအကြမ်းဖက်သူများ ပြုလုပ်ထားရှိသည့် အတားအဆီးများအား လုံခြုံရေးတပ်ဖွဲ့ဝင်များမှ ရှင်းလင်းဖယ်ရှားစဉ် အကြမ်းဖက်ရန်ပြုမူမှုများအား ခြောက်လှန့်ပစ်ခတ် လူစုခွဲစဉ် လုံခြုံရေးတပ်ဖွဲ့ဝင် ၂ ဦး ဒဏ်ရာရ၊ အကြမ်းဖက်သူ အမျိုးသား ၁ ဦး သေဆုံး [Two members of the security forces were injured when they opened fire on a mob and cleared barricades erected by rioters in Bago]”, *The Republic of the Union of Myanmar* [military junta] (online), Available at: myanmarmoha.org/index.php?option=com_content&view=article&id=9365:2021-04-12-09-13-32&catid=79&Itemid=555&lang=en

⁵⁵ International Committee of the Red Cross (2005), IHL database, customary IHL, Rule 5: definition of civilian, *Cambridge University Press*, Available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule5#refFn_4C716F6B_00005

⁵⁶ AAPP (2021), “Massacres in Kani Township, Yinbin District, Sagaing Region”, *Assistance Association for Political Prisoners* (online), Available at: aappb.org/?p=17120

⁵⁷ Following the procedures from: International Criminal Tribunal for the Former Yugoslavia (2015), *Prosecutor vs Tolimir* (Appeal Judgment), Appeals Chamber, p. 135

⁵⁸ Myanmar Now (2021), “Over 15,000 displaced as conflict in Sagaing’s Kani Township heats up”, *Myanmar Now* (online), Available at: www.myanmar-now.org/en/news/over-15000-displaced-as-conflict-in-sagaings-kani-township-heats-up

troops raided villages in Sagaing looking for People's Defense Force (PDF) personnel. Evidence from AAPP interviews, data documentation, as well as open-source videos and photograph collections, is presented below:

58. On July 1, 2021, around 200 military soldiers entered Kani, in Sagaing Region, split in two groups and marched on foot. There was a clash between junta troops and PDF in Shikhoehtet. The military indiscriminately shot at houses and shops with heavy weaponry. Local witnesses to the event, interviewed by AAPP, provided evidence of bullet marks in their houses. **Kyaw Naing Win** [alias] reported that "They shot countless times. ... They shot everything and everyone they met in the village", a witness explained. During the clash, four people were arrested in Shitkhoehtet Forest, at the Taung Pauk village tract: **San Min Naing** (21 years old), **Win Shwe** (aka U Thet Shay) (56 years old), **Zeyar Tun** (23 years old) and **Tun Shwe** (34 years old). They were later found dead with bruises, stab wounds and burns all over their bodies, hands tied on the back, and skull fractures.
59. On July 7, 2021, junta troops found some families hiding in the forest; around 30 people who fled from Yin village after a military raid. They started shooting from uphill and asked them to walk towards them. As explained by one of the survivors, a soldier mentioned, "We came here because of your mess up". They tied them and beat them with branches. They let the women go and told them to go back to the hill in three days. Three days later, they found the dead bodies of those arrested, bruised, and tortured, scattered in the valley. Some of the victims did not have clothes on, and their genitals were cut. They found more than 15 bodies; **Khin Myat Su** [alias] shared her pain in an interview with AAPP, in which she stated: "They killed all the men in my family.... My nephew was not even 18 yet".
60. On July 26 and 27, 2021, an armed clash took place between the armed wing of the junta and a local PDF near Htoo village, Kani Township. Following this, military troops continued the journey and on July 28, arrested and killed 11 farmers who were eating in a farming tent in Kyet Chaung. The local farmers were fleeing from the previous days clashes as part of a bigger group. Dead bodies were later found with wounds consistent with torture and, after, "the army put the motorbikes of the villagers on top of the murdered bodies and set fire to them", as described by **Kyi Kyi** [alias], the wife of one of the victims. On August 1, 2021, another victim was shot while trying to enter a school in Kani. He was also fleeing the clash near Htoo village, hiding in the forest, a family member explained.
61. It is clear that multiple people were indeed killed by the military junta. The LID 44 is said to be responsible for the arrests of the male victims, prior to their death, according to witness interviews. During the massacres committed by the junta in Kani township, 'shootings' were heard prior to finding the dead bodies of the victims. In all these cases in Kani, victims are described as having been tortured to death, or at least prior to death, including brutal beatings with gun stocks and victims having been tied up during brutal treatment.

62. Secondly, the killings must have been committed on a mass scale. The similar treatment of the victims in the massacres in Kani, and the LID 44 being the perpetrator for all, provides adequate connection to aggregate these acts as the same murder operation, and thus the same act of extermination.
63. Thirdly, the intention to kill on a mass scale, or intention to kill as part of a mass killing, can also be qualified here. The victims being tied up and detained prior to death, and the nature of their brutal treatment, both go towards showing an intention to cause grievous bodily harm, as they are positive acts intended to bring about immense harm to the victim. Furthermore, with the close physical nature of the perpetrators to their multiple victims during their brutal treatment, the way in which the victims were killed – either as a result of excessive beatings and torture, being shot in the head, or a mixture of both – and the way in which multiple victims were treated in the same way goes towards demonstrating a direct and positive intention to murder on a mass scale.⁵⁹
64. Fourthly, the crime must be against a civilian population. The victims were not themselves members of the PDF, they were forest workers and farmers escaping military attacks in the region, according to AAPP documented interviews, satisfying the definition of ‘civilian population’.
65. Finally, the perpetrators must have committed this ‘as part of a widespread or systematic attack’, with knowledge that it is part of such an attack. The widespread and systematic attack is framed as one that is being committed to suppress political dissidence in Burma and uphold junta authority since February 2021. There is evidence that these acts were executed by the LID 44, and therefore a subsection of the military junta, with the intention of the LID 44 in committing these acts as part of the overarching widespread and systematic attack: as explained by the witnesses of the massacre committed on July 7, 2021, nearby Yin village, the soldiers mentioned, **“We came here because of your mess up”**. This shows an intention taken before going to the village to punish their civilians, as Kani Township, in Sagaing Region, was a prominent area of opposition to the coup with active PDF resistance, where fighting intensified after junta soldiers were killed in June 2021.⁶⁰ The military’s response was to target and destroy town areas in surrounding villages. Evidence retrieved from AAPP interviews that can satisfy this is the targeting of the PDF, or their supporters, when committing these acts, as per the interviews of witnesses of the July 1 massacre at Shitkhoethtet Forest and the July 26-27 massacre at the Taung Pauk village tract. Demonstrating that the LID 44 were targeting the pro-democracy supporters located in Kani Township and surrounding areas, rather than just attacking civilians within the villages separately from the overall attack.

⁵⁹ International Criminal Tribunal for the Former Yugoslavia (2015), cited above.

⁶⁰ The Irrawaddy (June 23, 2021), ကနီနှင့် ယင်းမာပင်ဒေသတွင် တိုက်ပွဲများ ပိုပြင်းထန်လာ၊ စစ်သား ၂၀ ကျော် သေဆုံး, *The Irrawaddy* (online), Available at: <https://burma.irrawaddy.com/news/2021/06/23/243311.html> See also : Myanmar Now (June 23, 2021), ယင်းမာပင်တိုက်ပွဲတွင် စစ်တပ်ဘက်မှ ၂၀ ခန့် သေဆုံး, *Myanmar Now* (online), Available at: <https://www.myanmar-now.org/mm/news/7206>

66. Moreover, **Khin Myat Su** [alias], one of the witnesses of the July 7 massacre, close to Yin village, stated, “we heard that they were reporting [the situation, their acts] to someone”. Hence, knowledge of the acts committed in the region was provided to higher ranks of the LID 44. One of the interviewees from the July 1 massacre in Kani Township, **Kyaw Naing Win** [alias], also stated, “they killed my father to frighten other civilians”.

December 24, 2021 – Mo So Village, Christmas Eve Massacre

67. On December 24, 2021, near Moso Village, Hpruso Township, in Karenni State, following an hour-long clash between the armed wing of the junta and the Karenni National Defence Force (KNDF), dozens of civilians were found burned to ash. AAPP has verified the death of 35 victims from this massacre, but the total killed could be as high as 49.⁶¹ Due to the level of destruction of the bodies, not all the victims could be properly identified through the autopsy performed by medical doctors. Two humanitarian workers from Save the Children were also among the deceased.⁶² The doctors performing the autopsy on the bodies confirmed that several of the victims had their hands tied behind their backs, were gagged, or had perforations to their chests and lungs.
68. First, the killing of multiple people can clearly be satisfied in this case. According to the Karenni Nationalities Defence Force (KNDF), the arson attack was carried out by the LID 66 based in Inma, Thegon Township, Bago Region,⁶³ and at least 42 persons were murdered and burned, as confirmed by doctors. The wife of one of the victims recalled, “some children called us, as they heard gun shots and some of the cars being stopped”.⁶⁴ In the morning of December 24, four soldiers from the Karenni Border Guard Force (BGF), approached the site, were captured and executed, around 54 meters from where the trucks were burned. Two local villagers also went to investigate and were also executed, 64 meters from the trucks, as found later by family members.
69. Secondly, the killings must have been committed on a mass scale. The deaths occurred within the one day, the violence was directed at civilians in different vehicles circulating on that road. The victims were not targeted in their individual capacity, but as an act of terror and collective punishment to political dissent in this region. This massacre is part of the overall attack on civilians in Karenni State, intensified by the military junta in December 2021, bombing civilian-populated areas, and using heavy artillery, arson, and airstrikes against civilian targets. These violations were committed as retaliation in

⁶¹ The Irrawaddy (2022), “ ဖရူဆိုတွင် အစုလိုက်အပြုံလိုက် မီးရှို့အသတ်ခံရမှု ၄၉ ဦးခန့်ထိ ရှိလာနိုင် [Around 49 individuals would have been burnt in Hpruso Massacre]”, *The Irrawaddy* (online), Available at: [burma.irrawaddy.com/news/2022/01/04/248635.html](https://www.burma.irrawaddy.com/news/2022/01/04/248635.html)

⁶² Save the Children (2021), “Save the Children staff identified among the dead after burnt bodies found in Myanmar”, *Save the Children* (online), Available at: www.savethechildren.net/news/save-children-staff-identified-among-dead-after-burnt-bodies-found-myanmar

⁶³ The Irrawaddy (2022), “ ဖရူဆိုတွင် အစုလိုက်အပြုံလိုက် မီးရှို့အသတ်ခံရမှု ၄၉ ဦးခန့်ထိ ရှိလာနိုင် [Around 49 individuals would have been burnt in Hpruso Massacre]”, *The Irrawaddy* (online), Available at: [burma.irrawaddy.com/news/2022/01/04/248635.html](https://www.burma.irrawaddy.com/news/2022/01/04/248635.html)

⁶⁴ Myanmar Now (2021), “မိမိဆိုကျေးရွာတွင် စစ်ကောင်စီရဲ့ မီးရှို့အသတ်ခံရတဲ့ မိသားစုဝင်တွေက ဘာပြောလဲ [Interview with family members of victims burned to death by the military council in Moso village]”, *Myanmar Now* (online), Available at: www.youtube.com/watch?v=jZRY85wL4DE

the armed conflict taking place in the region between the Burma military, and Ethnic Resistance Organizations (EROs) with PDFs.

70. Thirdly, an intention to kill on a mass scale can also be satisfied in this case. The vehicles were stopped at a military checkpoint. Many of the victims were tied up, and hence detained prior to death, and shot in the head and chest. The fact that many were set on fire, along the vehicles, also goes towards showing an intention to murder the victims on a mass scale. Moreover, the vehicles were positioned intentionally next to one another, side by side.
71. Fourthly, the crime must be against a civilian population. The junta released a statement arguing that they fired shots at seven “suspect vehicles [that] did not stop and opened fire at security forces.”⁶⁵ Refusing to address the burning evidence and misrepresent the identity and number of victims.⁶⁶ Triangulated data retrieved from witnesses of the accident, nonetheless, confirm that six trucks, two civilian cars, two tractors and six motorcycles were burned by the soldiers, along with a total of 38 passengers. The wife of one of the victims explained that her husband was driving a tractor “only carrying a knife as he planned to gather bamboo”.⁶⁷ **Khu Lee Reh**, 27 years old, and **Khu Lu Peh**, 28 years old, identified among the victims, were civilian who got trapped on the road.⁶⁸ **Kyaw Lwin Htoo** was also one of the victims, travelling along with seven workers who were transporting tanks of gasoline and diesel, in three of the trucks, as described by a family member.⁶⁹ Four other civilians were identified as local villagers going to the farm. These civilians, hence, could not have tried to shoot at the soldiers. This also applies to the identified children and the two humanitarian workers, who were returning to their office after working on a humanitarian response in a nearby community.⁷⁰ Only four victims were soldiers, members of a BGF. They arrived at the location by foot and had reportedly attempted to negotiate the release of civilians being held by the military. All victims were arrested and immobilized prior to being murdered.⁷¹
72. Finally, the perpetrators must have committed this ‘as part of a widespread or systematic attack’, with knowledge that it is part of such an attack. The crime committed occurred at a military check point, custodied by soldiers from the LID 66. These soldiers, hence, acted following orders from superiors to

⁶⁵ Myanmar News Agency (January 18, 2022), “Records on 11th press conference held by Information Team of the State Administration Council on 14 January”, *The Global New Light of Myanmar* (online), Available at <https://www.gnlm.com.mm/records-on-11th-press-conference-held-by-information-team-of-the-state-administration-council-on-14-january/>

⁶⁶ BBC Burmese (2021), စစ်ကောင်စီပြောခွင့်ရ မိုလ်ချုပ်ဇော်မင်းထွန်းနဲ့ နဲ့ ဘီဘီစီ သီးသန့်အင်တာဗျူး, BBC (online), Available at: <https://www.bbc.com/burmese/59326532>

⁶⁷ *Ibid.*

⁶⁸ Fortify Rights (2022), *Ongoing War Crimes in Karenni (Kayah) State: May 2021 to January 2022*, United States: Fortify Rights.

⁶⁹ Myanmar Now (2021), “မိုဆိုကျေးရွာတွင် စစ်ကောင်စီရဲ့ မီးရှို့အသတ်ခံရတဲ့ မိသားစုဝင်တွေက ဘာပြောလဲ [Interview with family members of victims burned to death by the military council in Moso village]”, *Myanmar Now* (online), Available at: www.youtube.com/watch?v=iZRy85wL4DE

⁷⁰ Save the Children (2021), “Save the Children staff identified among the dead after burnt bodies found in Myanmar”, *Save the Children* (online), Available at: www.savethechildren.net/news/save-children-staff-identified-among-dead-after-burnt-bodies-found-myanmar

⁷¹ Ministry of Human Rights (2022), “Statement on the Christmas Eve Massacre in Karenni State”, *National Unity Government* (online), Available at: progressivevoicemyanmar.org/2022/01/05/statement-on-the-christmas-eve-massacre-in-karenni-state/

set the check point and arrest and kill civilians passing by. The statements delivered by military leaders also show previous knowledge, as Major General Zaw Min Tun assured that the soldiers followed the rules while carrying out the military operation.⁷² Some of the civilians' bodies were dressed in Karenni Army (KA) uniforms, after being murdered, in an effort to cover up the massacre and present the incident as an armed clash. As mentioned above, none of the victims were KA soldiers. This is a *modus operandi* historically used by junta soldiers to conceal crimes committed against civilian population and discloses some level of preparation prior to committing the massacre.

Article 7(1)(d) Deportation or Forcible Transfer of Populations

73. Deportation and forcible transfer of a population are two separate crimes: deportation is displacement to another State; forcible transfer is displacement within the same State.⁷³ However, their elements are the same:

- a. the 'forced displacement of the persons concerned';⁷⁴
- b. 'by expulsion or other coercive acts';
- c. 'from the area in which they are lawfully present';
- d. 'without grounds permitted under international law';
- e. 'the perpetrator must have known of the factual circumstances that meant the victims were lawfully present in that area';⁷⁵ and
- f. the conduct must have been deliberate and the 'perpetrator must have: (1) meant to cause the consequence; or (b) been aware that it would occur in the ordinary course of events'.

74. The act does not require physical force but can also involve the threat of force or coercion, duress or psychological oppression.⁷⁶ Civilians, including refugees and stateless persons are lawfully allowed to be present in an area if domestic or international law states so.⁷⁷ Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.

75. Mass displacement has occurred across the country. This chapter will focus on evidence of this crime in Mindat (Chin State)⁷⁸, Hlaingtharya (Yangon Region) and Karenni State. In Mindat Township, as a

⁷² Myanmar News Agency (January 18, 2022), "Records on 11th press conference held by Information Team of the State Administration Council on 14 January", *The Global New Light of Myanmar* (online), Available at <https://www.gnlm.com.mm/records-on-11th-press-conference-held-by-information-team-of-the-state-administration-council-on-14-january/>

⁷³ Decision Pursuant to Article 15 of the Rome Statute. See: International Criminal Court (2019), *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Pre-Trial Chamber III, Case No ICC-01/19, p. 53

⁷⁴ Rome Statute, art 7(2)(d).

⁷⁵ International Criminal Court (2011), *Elements of Crimes*, cited above, p. 6.

⁷⁶ IIMM (2021) "Message from the Head of the Mechanism", *Independent Investigative Mechanism for Myanmar* (online), Available at: iimm.un.org/wp-content/uploads/2021/10/2021-10-29-IIMM-Bulletin-October-2021-English-language.pdf

⁷⁷ *Ibid.*

⁷⁸ Chin State has been targeted because it is a stronghold of the People's Defence Force (PDF), an armed, pro-NUG group. As explained before, their members are legally still civilians. See: Report of the Special Rapporteur, cited above, paragraph 33.

retaliation to anti-junta resistance, the junta ‘launched an air and ground offensive, firing shells, mortars and rocket-propelled grenades into Mindat’, beginning on April 24, 2021.⁷⁹ As a result, 50,000 civilians in Chin State fled, many hiding in nearby forests and mountains in search of safety and protection.⁸⁰ Humanitarian groups are also facing challenges in accessing IDPs from this area, due to insecurity and intentional road blockages by the military junta.⁸¹

76. The imposition of martial law in numerous regions suggests the long-term enforcement of these various human rights abuses that resulted in the mass displacement and deportation of civilians. The imposition of martial law in six townships in Yangon, five townships in Mandalay, and later one township in Chin State, marked the significant deterioration of the situation in the long term.⁸² Under martial law, a military tribunal can issue those in peaceful opposition to the military junta, indefinite jail sentences, hard labor and death penalties that cannot be appealed for those accused of committing one of 23 offenses.⁸³ In Hlaingtharya (Yangon Region) in mid-March, 2021, a massacre that killed at least 65 civilians, was followed by the imposition of martial law, in the district.⁸⁴ The act forced hundreds of thousands of migrant workers to return to their home villages, as the military junta threatened civilians in the area with significantly brutal arbitrary arrest and risk of death.⁸⁵ Moreover, there source of living was also restricted as about 60 percent of factories in Hlaingtharya and Shwepyithar have been shut down by martial law, hence forcing migrant workers to flee.

77. Karenni (or Kayah) State is another region suffering from heinous violence. According to United Nations High Commissioner for Refugees (UNHCR), 93,800 people from Karenni State have been displaced by the violence in the region since the attempted coup, and 51,500 more displaced in neighboring Shan State (South) as a result of the same attacks, as of March 14, 2022.⁸⁶ Mass-atrocity crimes committed by the military against civilians in Karenni State include murder, forcibly displacement, bombing of villages, use of human shields and massive destruction of non-military

⁷⁹ Report of the Special Rapporteur, cited above, paragraph 33.

⁸⁰ Video on file with author, num. #15 – 25. Also: Whong, E. (2021)

⁸¹ Radio Free Asia (2021), “မင်းတပ်မြို့တို့ စစ်ကောင်စီက ပိတ်ဆို့ပြီး စားနပ်ရိက္ခာ ဖြတ်တောက်ထား [The military council has cordoned Mindat and cut-off food supplies]”, *RFA* (online), Available at: www.rfa.org/burmese/news/mindat-residents-flee-05182021071844.html

⁸² OHCHR (2021), “Written updates of the Office of the United Nations High Commissioner for Human Rights on the Situation of human rights in Myanmar – September”, *Human Rights Council* (online), A/HRC/48/67

⁸³ Htun, P. (2021), “Beyond the Coup in Myanmar: “In Accordance with the Law” – How the Military Perverts Rule of Law to Oppress Civilians”, *Harvard Law* (online), Available at: <http://law.harvard.edu/myanmar/beyond-the-coup-in-myanmar-in-accordance-with-the-law/>

⁸⁴ AAPP (2021), “Daily Briefing in Relation to the Coup – Update March 15, 2021”, *Assistance Association for Political Prisoners* (online), Available at: aappb.org/?p=13689

⁸⁵ The Irrawaddy (2021), “စစ်တပ်အာဏာမြို့ အလုပ်လက်မဲ့ဘဝတွေ ဘယ်လောက်စတေးရဦးမလဲ [How much more unemployment will be needed to maintain the military power?], *The Irrawaddy* (online), Available at: burma.irrawaddy.com/article/2021/03/16/239506.html

⁸⁶ UNHCR (2022), “Myanmar Emergency Overview Map – as of 14 March 2022”, *UNHCR* (online), Available at: data2.unhcr.org/en/documents/download/91436

targets, including civilians homes and a church.⁸⁷ Moreover, the military continues to block life-saving humanitarian aid to displaced civilians and arbitrarily arrest aid workers and destroy food stocks.

78. The aforementioned evidence satisfied the elements within the act of deportation and forcible transfer. First, the junta leaders must have deported or forcibly transferred the victim without grounds permitted under international law.⁸⁸ An estimated 59,000 civilians have fled the post-coup political situation in Burma into neighboring countries, as of May 4, 2022.⁸⁹ There is also an estimated 694,000 new Internally Displaced Persons (IDPs) in Burma, since the attempted coup, as of May, 2022. The total number of IDPs in Burma is of May 31, 2022, over 1,000,000.⁹⁰ The number nearly tripled since the February 1 coup.⁹¹ This indicates the significant displacement of victims of human rights abuses.

79. Secondly, the displacement must have been a result of the perpetrator's coercive conduct or threat of force.⁹² A combination of different actions be attributed to the expulsion of peoples.⁹³ The conduct of the junta that is causing people to flee is a variety of human rights abuses, including extrajudicial killings, artillery attacks on villages, torture, enforced disappearance and sexual violence. The ICC Pre-Trial Chamber found that coercive conduct means that perpetrators must be posing an ongoing threat rather than just destroying victims' homes.⁹⁴ This is satisfied in Mindat, because the grenade and ground offensive would likely kill inhabitants if they do not flee. This indicates conduct of the junta that is coercing or forcing people to flee. In Karenni State, not only homes are destroyed, but landmines are placed around villages so that civilians are killed if they try to return,⁹⁵ hence posing an ongoing threat. In Hlaingtharya, the massacre that occurred on March 14, 2021, and the imposition of martial law enacted a significant and long-term threat to those who had been residing in the area, likely causing their arrest or death, had they not fled. This threat forced thousands to leave the township. Furthermore, the violence of this threat is evidenced in several video in the township, which captures junta soldiers

⁸⁷ Mizzima TV (2022), “ကရင်နီပြည်နယ်က စစ်ဘေးရှောင်တွေ ဘယ်လို ဖြတ်သန်းနေရလဲ? [How are the refugees in Karenni State passing through?]”, *Mizzima TV* (online), Available at: www.youtube.com/watch?v=EjBciO_qLOA ; Fortify Rights (2022), “Flash Report. Ongoing War Crimes in Karenni (Kayah) State, Myanmar: May 2021 to January 2022”, *Fortify Rights* (online), Available at: www.fortifyrights.org/mya-inv-rep-2022-02-15/

⁸⁸ International Criminal Court (2011), *Elements of Crimes*, cited above.

⁸⁹ UNHCR (2022), “Myanmar Emergency Update – May 4, 2022”, *United Nations* (online), Available at: <https://reliefweb.int/attachments/13b3cd4a-ff2e-39c8-a428-2b18eae5dee3/Myanmar%20Emergency%20Update%20-%204%20May.pdf>

⁹⁰ OCHA (2022) Myanmar Humanitarian Update No.18. United Nations Office for the Coordination of Humanitarian Affairs (Online) Accessed at: <https://reliefweb.int/attachments/dbdb592d-9f1f-4cef-ab8c-402e03e3df1c/OCHA%20Myanmar%20-%20Humanitarian%20Update%20No.18.pdf>

⁹¹ In January 2021, number of IDPs was 336,000. See: OCHA (2021), “Humanitarian Needs Overview – Myanmar, January 2021”, *United Nations* (online), Available at: reliefweb.int/report/myanmar/myanmar-2021-humanitarian-needs-overview-january-2021

⁹² International Criminal Court (2019), *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Pre-Trial Chamber III, Case No ICC-01/19, p. 61

⁹³ International Criminal Court (2012), *Prosecutor vs Muthaura* (Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, Case No ICC-01/09-02/11, p. 244

⁹⁴ International Criminal Court (2012), *Prosecutor vs William Samoeiruto, Henry Kiprono Kosgey and Joshua Arap Sang* (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, Case No ICC-01/09-01/11, pp. 248-251.

⁹⁵ Kantarawaddy Times (2022), “KnHRG Director Banyar: Military Is Committing Genocide In Karenni State”, *Kantarawaddy Times* (online), Available at: ktnews.org/khrg-director-banyar-military-is-committing-genocide-in-karenni-state/

on March 14, 2021, the day of the massacre, discussing when and whom to shoot, one soldier shouting in Burmese, ‘Just shoot them in the head’.⁹⁶ For these reasons, it is satisfied that the junta has coerced victims into leaving their residence.

80. Thirdly, the victims must have been ‘lawfully present in the area from which they were deported’.⁹⁷ The standard for the lawfulness is set by international law.⁹⁸ International law instruments demonstrate a consensus that civilians have a right to be on the territory of their nationality.⁹⁹ While nationals of Burma are included in those political refugees and IDPs, the requirement of ‘lawful presence’ does not require that the victim ‘have had legal residence in the area’, and such protection ‘extends to individuals who, for whatever reason, have come to live in a community, including internally displaced persons who have established temporary homes after being uprooted from their original communities’.¹⁰⁰ As most victims are likely civilians, or other displaced peoples, they have a lawful right to be on the territory. This element is therefore not contentious.

81. Fourthly, there must be no grounds under international law for their displacement.¹⁰¹ In *Muthaura* case, there were no ground under international law for expelling civilians of the country from their homes through violent actions.¹⁰² It is clear in the evidence supplied, that civilians were coerced through violent actions. It is therefore not contentious that the junta has no grounds under international law for coercing civilians in Burma, through military campaigns and other coercive acts, to flee their homes.

82. Fifthly, the junta leaders ‘must have been aware of the factual circumstances establishing the lawfulness of the victims’ presence on the territory’. International and domestic media coverage of the attacks satisfy the junta leaders’ knowledge of these operations, affecting civilians, IDPs and entire villages. Moreover, these heinous acts were perpetrated as part of the ‘four cuts’ military strategy, that has been used by the junta to counter guerrilla movements, by cuttings their food supply, funds, intelligence and recruits, knowingly affecting whole communities residing in the area.¹⁰³

83. Sixthly, the perpetrator’s conduct must be deliberate, and the ‘perpetrator must have: (1) meant to cause the consequence; or (2) have been aware that it would occur in the ordinary course of events’. The

⁹⁶ Videos on file with author, num. #26 – 29. See also: www.facebook.com/watch/?v=252555126538237

⁹⁷ International Criminal Court (2011), *Elements of Crimes*, cited above, p. 6.

⁹⁸ International Criminal Court (2019), *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Pre-Trial Chamber III, Case No ICC-01/19, p. 53

⁹⁹ Rome Statute, art 7(2)(d), p. 99; Billah, M. (2021), “Prosecuting Crimes against Humanity and Genocide at the International Crimes Tribunal Bangladesh: An Approach to International Criminal Law Standards”, *Laws*, vol. 10, no. 04, pp. 82- 83.

⁹⁹ See, for example: International Covenant on Civil and Political Rights, opened for signature 19 December 1996, 999 UNTS 171 (entered into force 23 March 1976) art 12(4); American Convention on Human Rights, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) art 22(5). Though Myanmar is not signatory to these treaties, they represent the ‘international law standard’ for establishing lawfulness.

¹⁰⁰ International Criminal Court (2019), *Prosecutor vs Ntaganda* (Judgement) (International Criminal Court, Trial Chamber VI, Case No. ICC-01/04-02/06, p. 1069

¹⁰¹ Rome Statute, art 7(2)(d).

¹⁰² International Criminal Court (2012), *Prosecutor vs Muthaura* (Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, Case No ICC-01/09-02/11, p. 20

¹⁰³ OHCHR (2021), “Written updates of the Office of the United Nations High Commissioner for Human Rights on the Situation of human rights in Myanmar”, *United Nations* (online), [A/HRC/48/67](https://www.unhcr.org/refugees/48/67)

deliberation of the conduct is uncontentious. The forcible transfer and deportation of civilians in ethnic areas is strategic by the junta, as being consistent with the implementation of its previous ‘four cuts’ military strategy. For example, the Mindat attack was systematic and there were many components to the attack including shelling, grenade attacks and stopping food and water entering the town.¹⁰⁴ Combined with the fact this came as a direct response to the political opposition occurring in Mindat, this evinces that the perpetrators were choosing to specifically target these people, therefore pointing to deliberation. In the case of ethnic areas, it is clear that the intention to cause consequence is satisfied.

84. Under this same element, it is also clear that they would have been aware that deportation and forcible transfer would occur. By implementing martial law in Hlaingtharya, following a massacre, the junta would likely be aware of the repercussions for civilians living in these regions, and that civilians would recognize that it is safer to move to areas where martial law is not present. This evidence increasingly satisfies the element, when the junta continued to implement martial law in numerous other regions, despite having knowledge of the mass displacement that martial law caused in Yangon districts. Moreover, in Mindat, the perpetrators would have known that blocking food and water from entering the township would be a threat to the lives of the inhabitants, and that the inhabitants would have to flee their hometown to find a place with access to food and water.¹⁰⁵ In fact, it is likely this was an intended consequence of the food and water blockages. The sixth element is therefore satisfied.

85. Seventhly, the ‘conduct must be committed as part of a widespread or systematic attack’.¹⁰⁶ In accordance with the *Katanga* judgment,¹⁰⁷ the element of ‘widespread’ is evident based on the enormous quantity of refugees and IDPs since the coup. As mentioned, the number of IDPs has nearly tripled since the coup. In addition, more than 236,000 people fled within Burma in the first six months of 2021. As the total in 2020 was 70,000,¹⁰⁸ it can be inferred that the significant increase is a result of the changing conditions after the coup. These statistics show that the attack is of a ‘large scale’, affecting all regions in the country. This occurs in the context of a broader, systematic campaign. Specifically, refugees are fleeing because of other human rights abuses that are part of the attack. For example, in Mindat, the displacement is occurring as a result of the violence that has been taking place in the town, specifically because of stray artillery shells that can hit even residential areas;¹⁰⁹ and because of other

¹⁰⁴ The Irrawaddy (2021), “Chin Teenager Killed as Myanmar Regime Bombards Resistance Town”, *Irrawaddy Times* (online), Available at: www.irrawaddy.com/news/burma/chinteenager-killed-as-myanmar-regime-bombards-resistance-town.html?_cf_chl_jschl_tk=__pmd_ACCeUwYz69e44mnN_IMAPjjMX.j1AOWwQIViPn_NHpc-1635921731-0-gqNtZGzNAnujcnBsZQbR

¹⁰⁵ *Ibid.*

¹⁰⁶ International Criminal Court (2011), *Elements of Crimes*, cited above, p. 06.

¹⁰⁷ International Criminal Court (2014), *Prosecutor vs Katanga*, cited above.

¹⁰⁸ OCHA (2020), “Myanmar Humanitarian, Update December 2020”, *United Nations* (online), Available at: reliefweb.int/report/myanmar/written-updates-office-united-nations-high-commissioner-human-rights-situation-human

¹⁰⁹ Myanmar Now (June 14, 2021), “Mindat becomes a ghost town under military rule”, *Myanmar Now* (online), Available at: <https://www.myanmar-now.org/en/news/home-of-myanmar-opposition-governments-defence-secretary-targeted-in-bomb-attack>

measures impacting their ability to live safely in the area, such as the cut of the water and electricity supply by Major Thet Naung Htoo.¹¹⁰

86. The example of Mindat is also an example of persecution, because the town was targeted because it is home to a group of political dissidents. This also applies to the situation in Karenni State. Therefore, the conduct was committed as part of the widespread and systematic attack.

87. Eighthly, the attack must be directed against a civilian population. The refugees and IDPs are mostly fleeing their homes because of fear of human rights abuses due to their political opposition to the military. In Hlaingtharya, opposition to the military coup was particularly strong, with many being the first in the country to protest, including industrial workers.¹¹¹ Many feared returning to the district since martial law was declared. This satisfies the *Muthaura* definition of 'civilian population' to include a 'group defined by its (perceived) political affiliation'.¹¹² Cases taken into consideration for this section are all attacks on civilian population, villagers houses and religious buildings. By bombing entire villages, the military junta systematically intends to punish civilians in these areas where political dissent is strongly present.

88. Ninthly, the junta leaders must have known (1) that the conduct was part of the widespread or systematic attack and that (2) the attack was directed against a civilian population. This element is a more difficult to prove, as there is little available information on the decision-making process behind the attacks that have caused deportation and forcible transfer. However, similar to the *Omar al-Bashir* case,¹¹³ the junta leaders would have known that their attack on Mindat, for example, was against a town in which ordinary civilians would live. In *Omar al-Bashir*, the Chamber considered this awareness to be reasonable grounds for believing the perpetrators have knowledge that they are contributing to an attack against a civilian population.¹¹⁴ The fact there is also extensive media and diplomatic attention to IDP and refugee camps in Burma and neighboring countries, also points to the junta's knowledge that their human rights abuses are causing civilians to flee their homes.¹¹⁵

89. Therefore, deportation and forcible transfer can be made out, as crimes against humanity perpetrated by the military junta in Burma.

¹¹⁰ Chin Human Rights Organization (March 16, 2022), "Collective Punishment: Implementation of "four cuts""p.7, (online), Available at: <https://www.iwgia.org/es/documents-and-publications/documents/595-iwgia-chro-collective-punishment-implementation-of-four-cuts-en-2022/file.html>

¹¹¹ Frontier Myanmar (April 1, 2021), "Leaving Hlaingtharya: factory workers flee city for uncertain future", *Frontier Myanmar* (online), Available at <https://www.frontiermyanmar.net/en/leaving-hlaing-tharyar-factory-workers-flee-city-for-uncertain-future/>

¹¹² International Criminal Court (2012), *Prosecutor vs Muthaura* (Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, Case No ICC-01/09-02/11, p. 18

¹¹³ International Criminal Court (2009), *Prosecutor vs Omar Hassan Ahmad Al Bashir* (Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir), Pre-Trial Chamber I, Case No ICC-02/05-01/09, p. 11

¹¹⁴ *Ibid.*

¹¹⁵ For example, UNHCR (February 7, 2022), "Myanmar Emergency Update", *ReliefWeb* (online), Available at <https://reliefweb.int/report/myanmar/myanmar-emergency-update-1-february-2022> ; Security council of the United Nations (February 2, 2022), "Security Council press statement on the situation in Myanmar" (SC/14785) (online), Available at: <https://www.un.org/press/en/2022/sc14785.doc.htm> ; U.S Mission Burma (March 28, 2022), "Joint Statement on Armed Forces Day" US Embassy in Burma (online), Available at: <https://mm.usembassy.gov/joint-statement-on-armed-forces-day/>

Article 7(1)(e) Imprisonment or Other Severe Deprivation of Physical Liberty

90. According to the Elements of Crimes, article 7(1)(e) of the Rome Statute will be made out by the International Criminal Court if:¹¹⁶

- a. ‘the perpetrator imprisoned one or more persons, or otherwise severely deprived one or more persons of physical liberty’;
- b. ‘the gravity of the conduct violated fundamental rules of international law’;
- c. ‘the perpetrator was aware of the factual circumstances that established the gravity of the conduct’;

Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.

91. AAPP defines a political prisoner as anyone arrested, detained, or imprisoned because of their perceived or known active role, perceived, or known supporting role, or in association with activities promoting freedom, justice, equality, human rights, including ethnic rights, in association with the pro-democracy movement.

92. This section will focus solely on civilians who are or were political prisoners since the attempted coup. As of May 31, 2022, 13,902 political prisoners have been arrested since the military coup, with 10,847 remaining under-detention.

93. The study of International Criminal Courts’ case law allows the discovery of two criteria determining the legality of a confinement. More specifically, in *Kordic & Cerkez*,¹¹⁷ a decision of the ICTY, those criteria are made very clear. Firstly, the basis for arrest must be lawful. Secondly, when the arrest is indeed lawful, the imprisonment itself can only be lawful if ‘the confined persons had access to the procedural safeguards regulating their confinement’. Hence the lawfulness of the arrest and the respect of due process are both *sine qua none* conditions of the legality of a confinement, if either condition is not fulfilled, said confinement could be qualified as a crime against humanity, if such severe deprivation of physical liberties happen in a systematic and widespread manner.

94. A mere two weeks after the attempted coup, the junta announced changes to the *Penal Code*, *Law Protecting the Privacy and Security of Citizens*, and the *Ward and Village Tract Administration Law*. The Penal Code Section 505 A was amended on February 14, 2021, with three subsections which criminalized speech that a) ‘cause[s] fear... b) spreads false news... or c) agitates directly or indirectly

¹¹⁶ International Criminal Court (2011), Elements of Crimes, cited above, p. 13.

¹¹⁷ International Criminal Tribunal for the former Yugoslavia (February 26, 2001) *Prosecutor v. Dario Kordic & Mario Cerkez* (IT-95-14/2-T), §279, Available at https://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf

a criminal offense against a government employee' with a penalty of up to three years imprisonment for its violation.¹¹⁸ The ICTY stated in Krnojelac¹¹⁹: 'If national law is relied upon as justification, the relevant provisions must not violate international law'. The amendment of Section 505 A is in violation of the most basic and inalienable human rights, protected under customary international law, as the text of the law's lack of precision is used to drastically repress freedom of speech. As such, any arrest conducted on its basis is unlawful by nature. Section 505 A has largely been used by the military as a "backup" conviction if they are unable to obtain a confession to another crime.¹²⁰ The amendment of Section 505 A is part of a larger pattern of revision of the national law that illustrates the will of the military junta to purposefully and consciously erode the rule of law to have the possibility to arrest any political opponent.

95. The journalist **Yago Linn** [alias] was arrested and imprisoned for many days without being told why or for how long. Like all the other political prisoners interviewed by AAPP, he was not allowed to leave the prison or detention center during his imprisonment. He was barely ever allowed to leave his cell. All political detainees were severely deprived of their physical liberty for the duration of their confinement.
96. According to AAPP's first-hand information, many are arrested without an arrest warrant, notably in private homes. Moreover, the reason for arrest is being systematically withheld from detainees, political detainees are not made aware of the charges brought against them. For instance, on March 7, 2021, **Wai Lu** [alias] was arrested and kept in custody after being specifically targeted by the junta for his previous affiliations with student groups. On May 2, 2021, **Htway Maung** [alias] was arrested at his home (with nine other activists), like **Nu Nu Than** [alias] on March 27, 2021. **Thaung Zar** [alias] was arrested while participating in guerrilla protest demonstrations in Hlaing Township, on May 2, 2021. They were both taken to interrogation and detention centers where they were kept for many days without being told why they had been arrested or when they would be released. On March 3, 2021, **Mya Htwe** [alias], **Tun Win** [alias], **Thuzar Lwin** [alias], **Tint Tint Kyu** [alias] and **Nyein Nyein Htun** [alias] were all arrested by members of the LID 77 - recognizable by the badges they wore - while attending peaceful protests in North Okkalapa and Hlaing Townships, Yangon. Each civilian was either beaten or witnessed others being beaten at the time of their arrest. These same interviewees described that they were forcibly placed into vans and transported to detention centers without being told why or where they were going. Most of them were taken to Insein Prison where they spent weeks in a cell without being able to leave the prison: **Mya Htwe** [alias] spent 14 days without knowing what she was accused

¹¹⁸ Min Aung Hlaing (2021), "State Administration Council Law No (5/2021) Law Amending the Penal Code", *The Global New Light of Myanmar* [military junta outlet](online), Available at: cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2021/02/15_Feb_21_gnlm_1.pdf

¹¹⁹ ICTY trial chamber (March 15, 2002), *Prosecutor v. Krnojelac* (IT-95-25-T), §113-114, Available at <https://www.icty.org/x/cases/karnojelac/acjug/en/krn-aj030917e.pdf>

¹²⁰ Free expression Myanmar (January 31, 2022), "505A Act of revenge", p.23 (online), Available at: <https://freeexpressionmyanmar.org/wp-content/uploads/2022/01/505a-act-of-revenge-1.pdf>

of or how long was she going to remain at prison; **Nyein Nyein Htun** [alias] spent 21 days; **Tun Win** [alias] and “about 80 people in total who were staying with me” spent more than a week; **Thuzar Lwin** [alias] spent 17 days without knowing charges; and **Tint Tint Kyu** [alias] spent 21 days. 17-year-old **April Phyu Phyu** [alias], also arrested on the 3 March, was released 9 days after. The ICTY reaffirmed the necessity of an arrest warrant and of an explanation for the arrest.¹²¹ Those are also elements taken into account in the qualification of a crime against humanity of imprisonment by the ICC in *Situation in Burundi*.¹²²

97. Arrest can be lawful if the individual who is arrested constitutes a danger for the safety of the state. In *Situation in Burundi*, the ICC deems legal arrests of individual that resorted to violence during protests, including through the use of grenades against the security forces. However, even in such cases of armed resistance in which the basis for arrest is legitimate, due process still needs to be respected in order for the imprisonment to be lawful, as made during explicit by the ICTY in *Kordic & Cerkez*.¹²³ The standard for this ‘due process’ is set in the Universal Declaration of Human Rights articles 9, 10 and 11 which: ‘prohibit arbitrary arrest and detention... entitle everyone to a fair and public hearing by an independent and impartial tribunal... and accord everyone charged with a penal offense the right to be presumed innocent until proved guilty according to law in a public trial with all the guarantees necessary for ... defense’.¹²⁴ To determine the respect of due process, many elements are taken into account by the pre-trial chamber of the ICC in *Situation in Burundi*,¹²⁵ such as the length of the pre-trial detention and whether ‘[arrested individuals] were denied any procedural rights, such as the right to counsel, the right to have the lawfulness of their detention promptly determined, the right to be informed of the charges against them and to appear before a judge, and the right to have access to family and to medical care.’

98. In the case of **Nay Naing** [alias] and **Nay Linn Htet** [alias] for instance, due process was not respected as they were not informed of the charges against them and their lawyer was not contacted, neither upon arrest nor to be told the date of their trial. They were convicted in spite of a complete lack of evidence against them, while any attempt from their lawyer to provide exculpatory evidence was objected to, whether it be documents, pictures or security footage. None of the interviewees were allowed a fair trial. Indeed, according to numerous interviewees, their lawyers were not allowed to present evidence to the judge nor to cross-examine the witnesses. During legal proceedings, police officers frequently

¹²¹ International Criminal Tribunal for the former Yugoslavia (February 26, 2001) *Prosecutor v. Dario Kordic & Mario Cerkez* (IT-95-14/2-T), §114, Available at https://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf

¹²² ICC (November 9, 2017) *Situation in the Republic of Burundi*, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute” (ICC-01/17-X), §68, Available at https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

¹²³ International Criminal Tribunal for the former Yugoslavia (February 26, 2001) *Prosecutor v. Dario Kordic & Mario Cerkez* (IT-95-14/2-T), §279, Available at https://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf

¹²⁴ United Nations (1948), *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810, art. 9, 10 and 11; Andrews, T. H. (2021), *Report of the Special Rapporteur*, cited above.

¹²⁵ ICC (November 9, 2017) *Situation in the Republic of Burundi*, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute” (ICC-01/17-X), §89, Available at https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

commit perjury, as in many cases the defendant was arrested by military troops, but police officers were the ones detailing the arrest. Moreover, many more were not able to get representation at all.¹²⁶

99. For those convicted in areas under martial law, the right to a lawyer does not exist. For others, the situation is still very complicated, as legal representatives of political detainees have been targeted by the junta, with 32 lawyer and associates arrested since the coup. **Nay Naing** [alias] and **Nay Linn Htet** [alias]'s lawyer was repeatedly threatened with arrest in intimidation. They were followed, hindered from entering the prison and taken pictures of by junta informants. **Thiha** [alias] reported having difficulties hiring a lawyer, and after he did, they were threatened and withdrew from the case, leaving him to represent himself. As both the 'Special Courts' and the Martial Courts are under the effective control of the junta, the ability to face a fair trial disappeared entirely since the military coup and political detainees are as a matter of course, convicted.

100. Moreover, political detainees and prisoners are systematically being denied visitation rights. They are cut off from their families, from the outside world. Access to families and medical care is almost inexistent.¹²⁷ Very few get to send letters in and out of the prison, even less get to see their family members at any point between their arrest and their release. **Nandar Hla** [alias] reported being very concerned about her children that she was not able to hear from since being arrested. Like **Yago Linn** [alias] who was not allowed to leave his cell, many other high profile political prisoners were isolated within the prison. Solitary confinement has been frequently used for prolonged periods.

101. Furthermore, political prisoners' access to medical care is extremely limited, if not completely inexistent. Indeed, in Myitkyina Prison, there was only one doctor and one nurse to care for 1200 prisoners.¹²⁸ According to information collected by AAPP, many prisoners who required treatment, either because of pre-existing conditions or following mistreatment during arrest or detention were denied such care. **Khin Kay Khine** was shot by the junta during her arrest and as a result had a bullet wound in her stomach and needed ultrasound scanning, which she did not get. Her condition deteriorated in the time she spent in Dawei Prison.¹²⁹ In the same prison, a woman who had a tumor in her neck did not receive the emergency surgery she needed. **Kyaw Htoo Aung** [alias] whose head was swollen and sore after being beaten did not receive treatment in detention, reported the suffering of a fellow un-treated detainee, **Thet Htoi** [alias], whose skull was fractured.

102. In order for the unlawful imprisonments to be qualified of crime against humanity, the conduct 'needs to have been committed as part of a widespread or systematic attack directed against a civilian population'. The widespread element is easy to prove at least 13,902 people have been detained in

¹²⁶ AAPP (March 23,2022), "Political Prisoners Experience in Interrogation, Judiciary, and Incarceration Since Burma's Illegitimate Military Coup", (online), Available at <https://aappb.org/?p=20734>

¹²⁷ AAPP (March 23,2022), "Political Prisoners Experience in Interrogation, Judiciary, and Incarceration Since Burma's Illegitimate Military Coup", (online), Available at <https://aappb.org/?p=20734>

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

numerous locations since the attempted coup. These attacks are also systematic, as military forces were always present at the scenes of peaceful protests, which is where the majority of the AAPP interviewees were arrested, showing they knew when and where these protests would be conducted ahead of time. **Mya Htwe** [alias] described the details of her arrest as part of a ‘violent crackdown’ on protestors, medical personnel and students alike. **Tun Win** [alias] also witnessed the systematic way in which the LID 77 cornered protestors, blocking them in and beating them with batons and gunstocks. She was put in a cell with 80 more people suffering her same fate. **Thaung Zar** [alias] witnessed detention and beating of around 200 civilians, **Chan Ko** [alias] of 400 more, and **Nyein Nyein Htun** [alias] reported a total of 275 people were arrested near North Okkalapa. Moreover, the amendments of national law, specifically or Section 505 A show an intention to undertake mass arbitrary detention. Among many others, **Mya Htwe** [alias], **Tun Win** [alias], **Thuzar Lwin** [alias], **Tint Tint Kyu** [alias], **Yago Linn** [alias] and **Htway Maung** [alias] were charged under Section 505 A of the Penal Code. **Wai Lu** [alias] was a former political prisoner who had served over four years in prison since 2007. This demonstrates the junta tactic to search for people, who had political affiliations and had previously been arrested, in order to re-arrest them.¹³⁰ All of this evidence points towards the systematic nature of the junta’s actions. This element is therefore made out.

103. Finally, the ‘perpetrator must have knowledge that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack directed against a civilian population’. Knowledge requires awareness that a circumstance exists, or a consequence will occur in the ordinary course of events. As the arrests of protestors had been broadcast on televisions all over the country for months since the coup, it is most likely that many of the perpetrators would have had knowledge of the attack when they also played a role in arresting civilians. Other personnel were searching for specific people, therefore demonstrating prior knowledge and intent for the arrest to be part of the widespread and systematic attack. **Wai Lu** [alias] stated that when officers entered his house they asked, ‘are you **Wai Lu** [alias]?’ The exact same situation occurred with **Mi Mi Nyunt** [alias]. The perpetrators would have known that the consequence of arresting the civilians would be the detention of these civilians as they then transported the detainees to detention centers or to Insein Prison. **Mya Htwe** [alias] explained that when she was taken to Insein Prison, her mobile phone was seized and used to take pictures of her by two soldiers who mocked her and chanted the protest chants. She also mentioned that the police had asked her before the arrest “you guys from the medical team. Right?”. This conduct demonstrates the officers’ knowledge that the arrests were connected to wider crackdowns on protestors and welfare workers by the junta; it also shows that they knew that they were targeting civilians. Finally, the fact that the junta had also changed the Penal Code to make it easier to detain civilians under Section 505 A

¹³⁰ Bo Kyi (2021), “Myanmar Junta’s Tactic of Re-Arresting Political Prisoners is Psychological Warfare”, *The Irrawaddy* (online), Available at: www.irrawaddy.com/news/burma/myanmar-juntas-tactic-of-re-arresting-political-prisoners-is-psychological-warfare.html

also points towards knowledge and intention to conduct this widespread and systematic attack. Overall, the knowledge element can also be made out for this crime.

104. The ICTR Trial Chamber III in *Ntagerura*¹³¹ adds another criterion of gravity and seriousness to the crime of confinement. Not only have the unlawful confinement been particularly restrictive and long, but this crime is also at the intersection of many other violations that can be qualified as crimes against humanity, such as torture, sexual abuse and enforced disappearance. The unlawful confinement of civilians thus increases their vulnerability to the human rights violations committed against them.

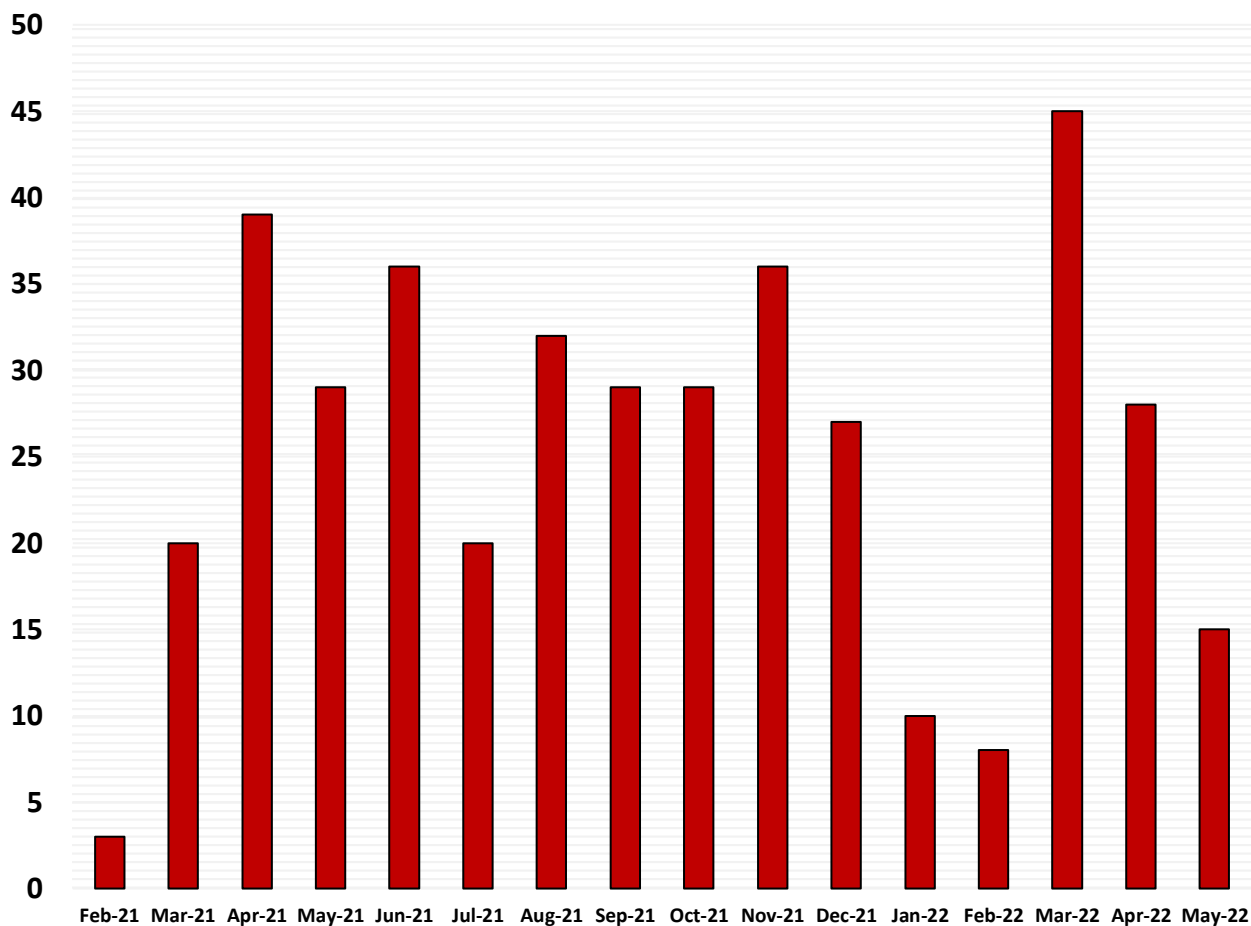
105. Moreover, prisons in Burma are notoriously violent environments. Through AAPP first-hand testimonies and open-source documentation, the majority of post-coup detainees either faced harsh treatment while imprisoned or witnessed others facing harsh treatment, including beatings and refused access to basic necessities. For example, **Htway Maung** [alias] was forced to drink toilet water as he had been denied food and water for four days. **Thaung Zar** [alias] was also made to perform humiliating acts such as carrying human feces while being threatened by prison staff with guns.

¹³¹ International Criminal Tribunal for Rwanda, Trial Chamber III (February 25, 2004), Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, (ICTR-99-46-T)



HOSTAGE DETENTIONS BY MONTH

Assistance Association for Political Prisoners (AAPP)
နိုင်ငံရေးအကျဉ်းသားများကူညီစောင့်ရှောက်ရေးအသင်း



	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22
Series1	3	20	39	29	36	20	32	29	29	36	27	10	8	45	28	15

N/A month – 1 hostage

106. The detention of children and subjecting them to torture is also contrary to international law. This includes **Htway Maung** [alias] who was 17 years old at the time of his arrest and subject to beatings by prison personnel. On February 17, 2022, **Shwe Yoon Eain**, the two-year-old daughter of a detainee, died in Thandwe Prison of poor health worsened by prison conditions, where she was being held with her mother.¹³² As of May 31, 2022, AAPP has documented at least 338 children detained -

¹³² Nan Oo Nway (2022), "Two-year-old daughter of female PDF suspect dies in Thandwe prison", *Myanmar Now* (online), Available at: www.myanmar-now.org/en/news/two-year-old-daughter-of-female-pdf-suspect-dies-in-thandwe-prison

for more than 24 hours – with 61 of them taken as hostage, breaching international human rights standards. Hence, the seriousness of the violation is indisputable and the crime against humanity of imprisonment is qualified in Burma.

Article 7(1)(f) Torture

107. For the purpose of paragraph 1 (article 7) of the Rome Statute, “Torture” means:
- a. ‘the intentional infliction of severe pain or suffering, whether physical or mental,
 - b. upon a person in the custody or under the control of the accused;
 - c. except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;’.
108. Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.
109. The military junta are conducting beatings and physical abuse of detainees at the time of arrest, in interrogation centers, and in prison. This is a policy historically used by the Burma military, mainly perpetrated in prisons, other detention centers, and ethnic nationality areas.¹³³ In the past, AAPP released evidence of all methods of torture used between 1988 and 2010, demonstrating the Burmese regime’s consistent use of such practices. Since the attempted coup, AAPP interviewees have likewise explained several torture methods used upon them. Some of these are listed below as evidence, classified according to place where violence is inflicted, whether at moment of arrest, at interrogation places, or in prison.

Violence at place of arrest:

110. According to the information gathered by AAPP, violence against political detainees begins at the point of arrest. There is a clear *modus operandi* of resorting to violence when conducting arrests exhibited by the junta soldiers and police forces. Many interviewees shared the abuse they personally suffered or witnessed. For instance, on March 6, 2021, **Paw Htay** [alias] was arrested at his mother’s house (and taken as hostage to Shwepyithar), when the military couldn’t find his father, member of the NLD. He recalls Lieutenant Colonel Myo Thet Maung leading the group. He was physically harmed in front of his mother at the place of arrest in Mingaladon Township: his testimony includes getting beaten on the head and ribs, while kneeling, and his thumbs squeezed with a zip. In June 2021, **Thiha**’s [alias] teenage son was also taken as hostage and beaten, “five or six times”, in order to get information on the whereabouts of **Thiha**’s [alias] wife, ex-member of the NLD. On April 5, 2021, **Zeyar Soe** [alias] was stopped on the street of North Okkalapa, in Yangon, and kicked and hit with the breech of a gun and a

¹³³ Network for Human Rights Documentation (2012), *Extreme Measures: Torture and Ill Treatment in Burma Since the 2010 Elections*, Thailand: Network for Human Rights Documentation; AAPP (2005), *The Darkness We See: Torture in Burma’s Interrogation Centers and Prisons*, Mae Sot: AAPP

baton: “They ordered me to lie prone and shouted they would beat me until my head was broken, because they thought that I was stubborn for talking back to them”, he explains. They only stopped when **Zeyar Soe** [alias] pretended to lose conscious. After, his ribs were broken and he had multiple injuries in his body, including on his head. Similarly, **Nyein Nyein Htun** [alias] describes witnessing three instances of pain being inflicted on people, on the day of his arrest in North Okkalapa. One was a 17-year-old protestor shot in the face with rubber bullets inside a shop, although the hands were raised in the air - “his lower jaw and teeth were exposed. He had to cover his mangled skin with his hands to keep his mouth shut. The second was a 16-year-old shot in both legs, exposing the bone; and a third man was shot in the back and steel bolas were thrown at his waist.

111. These are examples of high-intensity violence that caused the victim considerable pain in the moment, as well as ongoing pain from the bruises and scars left behind. This indicates that the element of 'severe physical pain' is present. The fact the violence is positive action by the perpetrators indicates that the perpetrators intended to harm; the abuse was intended as a way of punishment, and therefore satisfying the ‘*intentional infliction*’ clause. These cases, moreover, are analogous to *Prosecutor vs Dominic Ongwen*, where beatings with canes and sticks satisfied the first element of torture.¹³⁴

Violence at interrogation center:

112. However, the most violent instances of torture take place at interrogation centers. **Shein Htoo** [alias], who has arrested on April 7, 2021, in Myeik Township, mentions how he was forced to kneel and was beaten every time Captain Wai Phyo Aung came into the room, by him and three other subordinates. Physical violence and sleep deprivation were used against him as torture methods at this interrogation center in Tanintharyi Region, including slapping, punching, covering his head with a hood, kicking, and beating his hands with a pipe. He wasn’t allowed to use the toilet. He confirms that other people were interrogated with electric hoods and with guns pointing at them. He had internal injuries that were only treated once he got to the clinic in prison. **Thiha** [alias] was also arrested, in February 2021, by a military unit headed by Captain Wai Phyo Aung, and likewise was asked to sit in ‘prisoner position’¹³⁵, with his head covered, and was beaten, kicked, and burned along the arms with a lighter.
113. On March 3, 2021, **Zaw Kyi** [alias] was kept at Tamwe Police Station 40, in Yangon, and beaten by the military. “They kicked us with their boots. ... I was hit one time at my stomach and another time at the head.” Likewise, he witnessed another detainee getting hit on his helmet with a stick, and the helmet broke. **Zaw Kyi** [alias] suffered internal pain on his stomach, back and shoulders for a month. He still feels the pain in the back when he moves. Similarly, at the interrogation center, **Paw**

¹³⁴ International Criminal Court (2021), *Prosecutor vs Dominic Ongwen* (Trial Judgment Judgment), Trial Chamber IX, Case No ICC-02/04-01/15, p. 3028

¹³⁵ A ‘Poun-Zan’ position includes squatting with hands on the head.

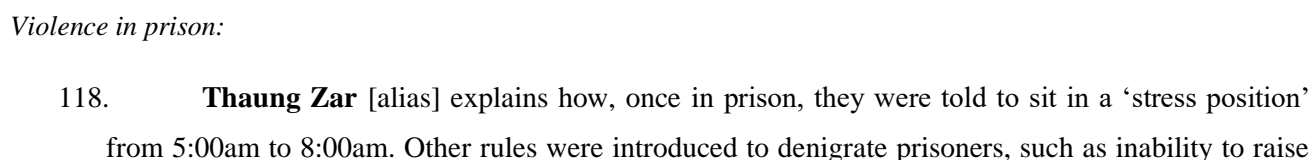
Htay [alias] had to kneel and was handcuffed behind his back, while being interrogated and beaten again, with thorns and bamboo, on his feet and back. After, he was unable to sleep or eat due to the pain.

114. **Thaung Zar** [alias], arrested in May 2021 in Yangon, was tortured at Shwepyithar interrogation center: he was beaten and slapped with several objects in the room. “They would come in and beat me whenever they were drunk at night. Even when my hands were swollen and bleeding profusely, they didn’t give me any treatment for my injuries.”, he explains. **Thaung Zar** [alias] also recalls having to use toilet water to brush his teeth and wash his face, no clothes or blankets were provided, and very little amount of food. Moreover, he mentions that an older detainee, named **Thet Htoi** [alias], was left untreated although he presented “head injuries, a skull fracture, severe bleeding, swollen hands, and bloodshot eyes”, as a result of torture.

115. On September 6, 2021, **Mi Mi Nyunt** [alias] was beaten and concurrently detained in Mandalay, and during the whole night at the interrogation center. She was told to kneel and was severely hit, with wires and ropes, on her back, butt, and legs. They twisted her long nails with pliers. They hit her ankles and thighs with the breech of their guns. She suffers from back pain until now. Afterwards, **Mi Mi Nyunt** [alias] was taken to a police station, where she was stabbed twice at the abdomen, twice on the shoulders, and once on the knee. She did not receive medical treatment.

116. In like manner, 17-year-old **Htway Maung** [alias] was repeatedly tortured while undertaking interrogation for four days. His head was hit several times and he had to get stitches, provided with a sewing awl used for shoes. “One of them was sewing me and the person next to him beat me up. The person in front of me asked me questions.”, **Htway Maung** [alias] explains. No food or water was given to him during the four days: “I lied to them by saying that I wanted to go to the toilet, so that I could drink toilet water because I was too thirsty.” Additionally, **Htway Maung** [alias] describes being “punched at least seven times for every once they asked me a question. I was beaten with a baton They grinded a bamboo stick on my knee for half an hour. They forced me to stand up in the sun.... They took me there [a forest-like place] and put me into the pit. Then, they were threatening to kill me by cutting me with an axe. They put soil into the pit, so my whole body was completely buried with soil—only my head was outside.” The military men torturing him only stopped when someone from inside asked them to, as there were questions left to ask about the protest **Htway Maung** [alias] led: “I was about to die. ... He took me out of the pit. ... Then, he took me into the room and interrogated me again.” Following this, it took the 17-year-old mentions three days to remove the stitches, and then he was taken to a youth detention center. There, he got more stitches to treat some open wounds on his face and temple.

117. With these cases, the first element of torture is satisfied: the military junta and their subordinates are intentionally inflicting severe pain and suffering, upon a civilian population in custody or under



¹³⁷ International Criminal Court (2021), *Prosecutor vs Dominic Ongwen* (Trial Judgment Judgment), Trial Chamber IX, Case No ICC-02/04-01/15, p. 2700

their head after 9pm or using the toilets at night, and very limited water to shower.¹³⁸ **Zaw Kyi** [alias] also mentions very bad hygiene conditions in prison. Similarly, **Paw Htay** [alias] was taken to Insein prison after three days of interrogation. There, he explains, drinking water was not purified, and showers were taken with water from the toilet. They were not given any clothing or toiletries. Labor in prison included gardening duties. **Shein Htoo** [alias] was also charged with two years' imprisonment with labor at Myeik prison. He had to remove hair from chicken and make fake eyelashes. He had no holidays or wage and recalls his eyes hurting and aching after a day of work. He also had difficulties with food, as his dietary needs were not taken into account. He was released seven months after, following the 18 October prison release broadcast.

119. On his way to Insein prison, **Zaw Kyi** [alias] recalls how two girls fainted due to suffocation, while they were being transported with an overcrowded paddy wagon with around 50 other people. **Nandar Hla** [alias], arrested in March, 2021, in Yangon also confirms overcrowded paddy wagons with civilians fainting.

120. **Thiha** [alias] explains how, even though he didn't receive physical torture in the second prison, "we faced psychological torture." He particularly stresses the denigrating and abusive treatment received from the *TanSi*, that is the prisoner appointed by prison authorities to 'guard' the other prisoners. In like manner, **Nandar Hla** [alias] mentions how it was uncomfortable for female prisoners to use the toilet or take a bath at Insein prison: "When we sat on the toilet, people from outside could see our face. (...) The prison gave us very thin longyi and boys were looking when we were taking a bath". **Mi Mi Nyunt** [alias] was mocked when military officers found a conversation with her doctor, on her phone, regarding gender-affirming surgery (or sex reassignment operation). After, they took her clothes off to examine her body, laughed, and exposed their genitals to her. Once **Mi Mi Nyunt** [alias] was taken to Obo prison, she was forced to wear 'male clothes'.

121. These adds more evidence to what has been previously argued. Mistreatment in prison can also constitute an act within a torture attack, as per ICC condemning inhumane conditions provided to detainees.¹³⁹ Moreover, taken into account the current COVID-19 pandemic, disregard of hygiene regulations can constitute another inhumane act intentionally, or by omission/disregard, causing great suffering and serious injury to physical health. Reviewed further beyond.

122. According to AAPP, the tactic of re-arrest is a form of psychological torture used by the military.¹⁴⁰ **Paw Htay** [alias] saw at least two people getting re-arrested moments after being released. **Mi Mi Nyunt's** [alias] explained: "As soon as I was released, my lawyer told me to move immediately

¹³⁸ **Thaung Zar** [alias]: "I could only get 4 or 5 cups of water to shower and rub my body with soap. When they said, "Stop and leave," we had to go outside. If I didn't go out of the bathroom after they said so, they kicked and swore at us."

¹³⁹ International Criminal Court (2021), *Prosecutor vs Ali Muhammad Ali Abd-Alrahman* (Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman), Pre-Trial Chamber II, Case No ICC-02/05-01/20, p. 100

¹⁴⁰ AAPP (2021), "AAPP Statement on Re-Arrested Political Prisoners Since Junta Announced Amnesty", *Assistance Association for Political Prisoners* (online), Available at: aappb.org/?p=18311

because they heard some people were rearrested after they were released from prison. The police station also called to my home and asked about me.” was released on the October 18, 2021, along with 84 people from the same prison, following the junta’s release broadcast. Two weeks later, 30 of the 84 released civilians were re-arrested. **Shein Htoo** [alias] had gone in-to hiding. Several interviewees mention that the military kept their belongings at police stations, and they are all aware that if they went to claim them, they would get re-arrested.

123. Therewith, the commission of violence both physical and mental is established upon arrest, in interrogation centers, in prison, until the release from custody of the detainee or in some cases, beyond that point.

124. In order to constitute a crime against humanity, these acts of violence ‘must be part of a widespread or systematic attack’. Extensive evidence, including media reports and AAPP documentation, indicate that torture is committed extensively across the country.¹⁴¹ **Thaung Zar** [alias] describes that the truck that took prisoners to the interrogation center was full on both sides: “all the seats were so full, so some people had to stand”, and that there were more than 200 people in the interrogation center: “they split us into two separate groups on each side and questioned us at the same time. They beat us all the time while questioning. All [200] of them were young people”. **Nyein Nyein Htun** [alias] says there were 90 people in the interrogation center when they were released. **Paw Htay** [alias] described that his younger brother and another youth leader were also tortured, the latter “severely”. **Zaw Kyi** [alias] was arrested with four other youth protesters, and they were beaten together. He recalls “around 300 people” at these same police station, all taken to Kyeik Ka San compound. **Nandar Hla** [alias] recalls around 400 people were arrested with them. Once at Insein prison, she mentions, “there were over 80 people [in our building]. They took the arrested youths to interrogate them. They sent them back at night. When I asked them, they said they were told to do three fingers sign and to sing the Thway Thitsar song¹⁴².” Although some interviewees cannot provide evidence that other prisoners suffered torture, there are reports that confirm a large majority of detainees in centers are tortured.¹⁴³ This evidence of a large quantity torture satisfies the definition of ‘widespread’.

125. This widespread attack is also systematic. For example, **Thaung Zar** [alias] describes the way that detainees are transported between police stations and specifically designed interrogation centers.

¹⁴¹ See, for example: Myanmar Now (2021), “လူမဆန်စွာနှိပ်စက်နေတဲ့ စစ်အာဏာရှင်ရဲ့ စစ်ကြောရေးစခန်းများ [Interrogation camps of the military dictator who inhumanely tortured them]”, *Myanmar Now* (online), Available at: www.youtube.com/watch?v=g_8IDMhTH20; Radio Free Asia (2021), “စစ်ကြောရေးမှာ နှိပ်စက်ခံခဲ့ရကြောင်း ထောင်ကလွတ်လာသူအချို့ပြော [Some released prisoners said they were tortured during interrogation]”, *RFA* (online), Available at: www.rfa.org/burmese/news/release-prisoners-say-they-were-tortured-during-interrogation-10192021072526.html

¹⁴² Or ‘Blood Oath’, one of the protests’ anthems of the Spring Revolution, written by Htoo Ein Thin, a former member of the 1988-era All Burma Students Democratic Front.

¹⁴³ Milko, V. and Gelineau, K. (October 28, 2021), “Myanmar military uses systematic torture across country”, *AP News* (online), Available at: <https://apnews.com/article/myanmar-torture-military-prisons-insein-abuse-390fe5b49337be82ce91639e93e0192f>

This demonstrates that there is a system for transporting victims and reveals that there are locations – such as Shwepyithar interrogation center – that are designated for interrogations.¹⁴⁴ These facts illustrate that the tortures are planned by the authorities, such that they amount to a systematic attack. In the *Al-Tuhamy Mohamed Khaled case*, “acting in accordance with a pattern by regularly identifying, tracing, locating, arresting and mistreating perceived opponents of the Gaddafi regime” amounted to widespread and systematic.¹⁴⁵ This is analogous to the situation in Burma, where the AAPP interviewees recall this system of the military junta. For example, the situation of arrest of **Htway Maung** [alias], **Mi Mi Nyunt** [alias] and **Shein Htoo** [alias] indicates that the military forces specifically came looking for them at their house to arrest them, thereby demonstrating the existence of a process of identification, tracing, and locating of victims.

126. In addition, there is evidence that tortures occur in conjunction with other crimes, which indicates that torture is part of the attack. Many testimonies are both victims of arbitrary detention and torture. Some, like offences against **Mi Mi Nyunt** [alias] amount to sexual violence. In addition, as of February 1, 2022, AAPP has recorded 63 civilians tortured to death in interrogation centers. Two interviewees also testified on this act.

127. On May 8, 2021, **Arkar Latt** [alias] was arrested at Shwebo, Sagaing Region. The next day, his wife was informed that he was dead and was asked to sign papers about his cremation. However, she refused and implored to get the body of her husband back. Military officials stated that **Arkar Latt** [alias] had died of a heart attack, but his wife assures that his health was good before the arrest. When, finally, she could retrieve his body back, she found his skull was broken and a bloody wound could be seen under his hair. His forehead and nose presented black and blue bruises. A big wound was found on his ribs, and all over his body, stitched up. Burns were found on his thighs and back.

128. According to the information his wife provided to AAPP, **Kyaw Wunna** [alias], also passed away from injuries consistent with brutal torture. **Kyaw Wunna** [alias] was accused of terrorism and use of explosives, and detained by Colonel Myo Swe and six other military personnel, in Bago. **Kyaw Wunna** [alias] did not abscond or fight back while being arrested on May 22, 2021, and followed the military calmly. Hence, his death occurred while in detention. “As far as I know, the cause of death of my husband was excessive bleeding”, she described, as told by close police officers at her township, “his head was hit terribly. ... We didn’t find any other wounds, apart from on his head”.

129. Both men were taken alive into custody by the military and were dead within a short time period, approximately 10 hours in both cases. Although visibly healthy before arrest, their state of underlying natural disease is unknown. Nonetheless, a death, even a natural death, during interrogation

¹⁴⁴ International Criminal Court (2013), *Prosecutor vs Al-Tuhamy Mohamed Khaled* (Warrant of Arrest for Al-Tuhamy Mohamed Khaled with under seal and ex parte Annex), Pre-Trial Chamber I, Case No ICC-01/11-01/13, p. 5

¹⁴⁵ *Ibid.*

and/or under military arrest is a homicide. As confirmed by Physicians for Human Rights forensic pathology expert, Dr. Karen Kelly, to AAPP, the injuries described would have been fatal.¹⁴⁶

130. This heinous *modus operandi* is common for military personnel. As **Kyaw Wunna**'s [alias] wife explained, her uncle called to inform that the husband had been detained, "and urged me to inform my husband's relatives, because they knew that some people who were arrested were killed in the interrogation". Similarly, other eyewitnesses informed her that **Kyaw Wunna** [alias] had been murdered and the military were trying to make his body disappear. Therefore, there is sufficient evidence that the violence was part of a 'widespread and systematic attack'. As the victims are identified and targeted based on their political affiliation, the stipulation of 'directed against a civilian population' is also satisfied.¹⁴⁷

131. At last, the systematic nature of the interrogations, including the practices AAPP interviewees describe being in place for transferring detainees, suggests that the perpetrators are planning to have people tortured, which inherently involves 'knowledge of the occurrence of torture'. Apart from the aforementioned system of transport between interrogation centers and prison, showing a network of prisons designed to facilitate 'interrogations', other evidence supports this argument, such as the construction of interrogation centers were built in the weeks before the coup, evincing planning and knowledge of high ranks.¹⁴⁸ Moreover, the segregation of male and female detainees, mentioned by **Htway Maung** [alias]: "girls were being taken somewhere else", also show a level of coordination that requires knowledge. This interviewee was also aware that civilians were tortured based on political beliefs, which indicates the planning behind the selection of people to be tortured. According to **Thaung Zar** [alias], **Thet Htoi** [alias] was tortured because he posted on social media. Planning the types of victims and the system of tortures requires some level of knowledge that the act is occurring. There is also significant international and domestic media coverage of the occurrence of torture in Burma. The junta therefore had access to reports of torture.

132. In addition, three interviewees were able to identify their high-rink military perpetrators: **Shein Htoo** [alias] and **Thiha** [alias] were tortured by Captain Wai Phyo Aung in Myeik Township; **Paw Htay** [alias] was tortured by Lieutenant Colonel Myo Thet Maung, who is Commander-in-Chief (first – G(General Staff Officer) Class 1 and a strategist, in Mingaladon Township; and **Kyaw Wunna** [alias], who was tortured to death, was arrested by Colonel Myo Swe, the division head of the 901 Artillery Operations Command, in Bago region. Hence, the stipulation that 'the perpetrator must have known' is also satisfied.

¹⁴⁶ Video and document on file with author.

¹⁴⁷ As argued in the Muthaura, Kenyatta and Ali Pre-Trial Chamber. See: International Criminal Court (2012), *Prosecutor vs Muthaura* (Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute), Pre-Trial Chamber II, p. 18

¹⁴⁸ Al Jazeera (2021), "Myanmar: State of Fear - 101 East exposes a secret interrogation centre and claims of torture", *Al Jazeera* (online), Available at: www.youtube.com/watch?v=QUh9mMQOP0Q

133. To conclude, the crime of torture is therefore present on the facts. Among many credible sources, the interviews held with the family members of **Zaw Kyi** [alias], **Shein Htoo** [alias], **Paw Htay** [alias], **Thaung Zar** [alias], **Thet Htoi** [alias], **Zeyar Soe** [alias], **Thiha** [alias], **Mi Mi Nyunt** [alias], **Htway Maung** [alias], **Arkar Latt's** [alias] and **Kyaw Wunna** [alias] indicate the occurrence of torture.

Article 7(1)(g) Acts of Rape and Sexual Violence

Crime of rape

134. According to the Elements of Crimes, the crime of rape occurs when:
- an act included ‘the invasion of the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body’;¹⁴⁹
 - ‘the invasion was committed by force, or by threat of force or coercion, or by taking advantage of a coercive environment, or where the victim was unable to give their consent’;¹⁵⁰

Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.

135. According to the aforementioned parameters, there are credible reports that indicate that this crime is occurring in Burma, particularly against arrested women during interrogations, but affecting all genders.
136. On May 13, 2021, when the junta declared martial law in Mindat, Chin State, the United Nations Special Rapporteur in Burma made a report of a woman being raped by junta personnel.¹⁵¹ The Women’s League of Burma released a statement in November 2021 to condemn the gang-rape of a postpartum woman, in Akllui Village¹⁵². According to the statement, “Guns were aimed at her and they threatened to kill her. She was raped repeatedly while she begged for mercy”, showing the very clear use of force and threat. According to a statement from All Burma Federation of Student Unions (ABSFU), men are also sexually assaulted and raped in interrogation centers. They reported more specifically “the atrocity such as forcibly injecting bamboo poles into the victim’s anuses”.¹⁵³ These

¹⁴⁹ International Criminal Court (2011), *Elements of Crimes*, The Hague: International Criminal Court, p. 08

¹⁵⁰ *Ibid.*

¹⁵¹ Andrews, T.H. (2021), *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN GAOR, UN DOC A/76/314, p. 09

¹⁵² Women’s league of Burma (November 19, 2021), “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”, *Online Burma/Myanmar Library*, (online), Available at: <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>

¹⁵³ All Burma Federation of Student Unions (2022), “Statement on the sexual abuses committed by the Junta troops led by Min Aung Hlaing upon the woman-comrade”, *ABFSU* (online), Available at: progressivevoicemyanmar.org/2022/02/19/statement-on-the-sexual-abuses-committed-by-the-junta-troops-led-by-min-aung-hlaing-upon-the-woman-comrades/

acts constitute acts of sexual penetration in the context of a very clear coercive environment within interrogation centers.

137. Crimes of rape tend to be extremely under-reported and neither AAPP's firsthand evidence nor open-source data suffices to prove the widespread and systematic nature of those acts. However, there are clear reports of rape cases since the [attempted] military coup. Moreover, historically, the military junta has used sexual violence, specifically rape, as a tool of intimidation during conflict, Human Rights Watch qualified it as a "hallmark of the culture of abuse and impunity in Burma's decades-long civil wars with its ethnic groups."¹⁵⁴ Hence it is very likely that further investigation would reveal such *modus operandi* and the crime of rape would be found to indeed be widespread and systematically committed by the military junta.

138. Furthermore, the crime against humanity of torture has been previously established as widespread and systematic in Burma and crimes of rape have been qualified as acts of torture both by the ICTR¹⁵⁵ and the ICTY¹⁵⁶; the aforementioned cases could be qualified as such as well since they fulfill the required elements of the crime of torture. The crime of rape is indeed an inherently violent crime, physically, mentally and socially, and the cases considered are committed by soldiers on civilians, hence the presence of a natural situation of control of the perpetrator on the victim. The second Special Rapporteur on torture of the United Nations also defended the qualification of rape as torture, specifically in the context of detention: "Since it was clear that rape or other forms of sexual assault against women held in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture."¹⁵⁷

Crime of Sexual Violence of comparable gravity

139. The crime of sexual violence requires that:

- a. the perpetrator committed 'an act of a sexual nature' by either threatening, forcing or coercing another person/people to engage in a sexual act',¹⁵⁸

¹⁵⁴ Human Rights Watch (July 25, 2018), "Sexual Violence by the Burmese Military Against Ethnic Minorities, Testimony of Skye Wheeler at the Tom Lantos Human Rights Commission" (online), Available at: <https://www.hrw.org/news/2018/07/25/sexual-violence-burmese-military-against-ethnic-minorities>

¹⁵⁵ International Criminal Tribunal for Rwanda (September 2, 1998), The Prosecutor v. Jean-Pauli Akayesu (ICTR-96-4-T), §597: "Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." (online) Available at: <https://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>

¹⁵⁶ International Criminal Tribunal for the former Yugoslavia (October 20, 1995) Review of the indictment, Prosecutor v. Dragan Nikolić, §33, (online) Available at: https://www.icty.org/x/cases/dragan_nikolic/tord/en/951020.pdf. See also ICTY (November 16, 1998), Judgement, Prosecutor v. Musić and Landžo, §495-496 (online), Available at: https://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf

¹⁵⁷ Nigel Rodin (February 21, 1992), "Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment", oral introduction to 1992 report to the Commission on Human Rights (E/CN.4/1995/34), §35, (online) Available at: https://tind-customer-undl.s3.amazonaws.com/45a2c7f4-9003-4f33-response-content-disposition=attachmen4_1992_SR.21-EN.pdf

¹⁵⁸ Rome Statute; International Criminal Court (2011), Elements of Crimes, p 16

- b. the conduct must be ‘of a gravity comparable to the other offences in article 7(1)(g), of the Rome Statute’;¹⁵⁹
- c. ‘the perpetrator was aware of the factual circumstances that established the gravity of the conduct’.¹⁶⁰

140. With regards to the first element, threatening, forcing, or coercing includes ‘inducing fear of violence, detention, duress, abuse of power and psychological oppression’.¹⁶¹ Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.

141. Two survivors and two witnesses reported to AAPP denigration treatment related to sexual and gender-based violence. According to United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), Sexual and Gender-Based Violence (SGBV) is ‘any harmful act of sexual, physical, psychological, mental, and emotional abuse that is perpetrated against a person's will and that is based on socially ascribed (i.e., gender) differences between males and females’.¹⁶² The gravity and nature of the crime, hence, lies on the basis of - socially ascribed - gender and sex premises.

142. As previously explained, **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.

143. **Nandar Hla** [alias], arrested on May 3, 2021, also described denigration treatment for female prisoners at Insein’s separate prison. She explained the uncomfortableness for female prisoners to use the toilet: “The walls are so low, and we could see each other. When we sat on the toilet, people from outside could see our face.” She recalls staring from the male’s buildings. Similarly, female prisoners had to take a bath in the open field with a concrete water tank: “The prison gave us very thin longyi and boys were looking when we were taking a bath. ... I felt uncomfortable and insecure. Some students didn’t take a bath because they felt insecure.” This discomfort and insecurity constitute a denigration of treatment of female prisoners at Insein prison, different from that of men, as explained by the

¹⁵⁹ *Ibid.*

¹⁶⁰ International Criminal Court (2011), *Elements of Crimes*, p. 16.

¹⁶¹ Rome Statute; International Criminal Court (2011), *Elements of Crimes*, p 16

¹⁶² OCHA (2019), “Sexual and gender-based violence: the time to act is now”, *United Nations* (online), Available at: www.unocha.org/story/sexual-and-gender-based-violence-time-act-now

testimony of **Zaw Kyi** [alias].¹⁶³ As **Nandar Hla** [alias] herself puts it, “as a woman, I felt our rights were violated because we were not comfortable taking a bath, using the toilet, and living in the prison. I felt depressed, afraid and insecure in the prison”. Although this heinous denigration treatment falls short under the exact parameters stipulated in the Rome Statute, they constitute acts of Sexual and Gender-Based Violence (SGBV) as described by UNOCHA.

144. At least two survivor witnesses of the July 7, 2021, massacre in Kani Township described to AAPP 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”. These constitutes 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’.¹⁶⁴

145. Research has indicated a nexus between sexual violence during conflict and conceptualizations of masculinity.¹⁶⁵ Improving transitional justice practices may positively transform gender norms in addition to addressing wartime crimes. Hence, AAPP strongly argues in this evidence report that all crimes of sexual nature perpetrated by the military in Burma must be taken into serious consideration, correcting previous mild sentences within international courts, such as that at the International Criminal Tribunal for the former Yugoslavia,¹⁶⁶ and truth and reconciliations commissions in Peru in the early 2000s.¹⁶⁷

146. There is furthermore other extensive evidence that this crime is occurring in Burma. The military junta has used sexual violence against detained women with victims complaining about ‘heavy beatings, sexual abuse during interrogations, misogynistic insults, and death threats’.¹⁶⁸ Likewise, on March 3, 2021, in Yangon a male journalist, **Han Thar Nyein**, was threatened with rape.¹⁶⁹ Human Rights Watch also investigated the case of a woman arrested on April 17, 2021, in Yangon after being falsely accused of being involved in bomb attacks against security forces.¹⁷⁰ She was brutally beaten on her genitals, causing sever vaginal bleeding, during interrogation at the police station and again at the interrogation center in Shwepyithar township. She was also molested and threatened at gun point during

¹⁶³ **Zaw Kyi** [alias] explained: “I could say rules were not as strict regarding bathroom regulations, if compared with the girls’ ward. (...) If we wanted to take a bath, we were able to.”

¹⁶⁴ Manivannan, A. (2014), “Seeking justice for male victims of sexual violence in armed conflict”, *International Law and Politics*, vol. 46, no. 02, p. 643

¹⁶⁵ Baaz, M.E. and Stern, M. (2009), “Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)”, vol. 53, *International Studies Quarterly*, pp. 495, 499

¹⁶⁶ Campbell, K. (2007), “The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia”, *The International Journal of Transitional Justice*, p. 411, 428.

¹⁶⁷ Cohen, D.K. et al. (2013), “Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward”, *United States Institute of Peace*, Special Report.

¹⁶⁸ OMCT (2021), “Myanmar: the junta abuses and tortures detained women”, *OMCT SOS-Torture Network* (online), Available at: www.omct.org/en/resources/statements/myanmar-the-junta-abuses-and-tortures-detained-women

¹⁶⁹ Human Rights Watch (2021), “Myanmar: Coup Leads to Crimes Against Humanity”, *HRW* (online), Available at: www.ecoi.net/en/document/2056889.html

¹⁷⁰ *Ibid.*

her interrogation in Sanchaung township, according to her cellmate.¹⁷¹ She claims to have been ‘touched by a police officer’ in a sexual way.¹⁷² It is clear, accordingly, that the guards and military are taking advantage of the coercive environment during interrogations to commit these acts of sexual violence against female prisoners, therefore satisfying the first element.

147. The second element is likewise largely uncontentious to prove as the beating of women’s genitals, the making of misogynistic insults and threats of rape as well as molesting female prisoners are all grave acts, which are sexual in nature, and cause both physical and mental trauma for victims. To these, we add the denigrating treatment of female prisoners in Insein prison, the emotional and sexual abuse of female detainees, including enforced nudity and indecent sexual exposure, and the maiming of genitals of male prisoners as evidence of ‘grave’ acts, which are sexual in nature, retrieved from AAPP testimonies, and that constitute crimes of sexual and gender-based violence.

148. The third element is also uncontentious as it would be easy for the perpetrators to see they had severely traumatized their victims. They committed these acts while the victims were imprisoned, and they knew they could not escape. Many of these acts also occurred during violent interrogations where the perpetrators would have known that the victims were intimidated and scared. The perpetrators intentionally took advantage of this coercive environment knowing that the victims were not able to defend themselves. As such, this element can also be made out.

149. Fourthly, the rate of sexual violence has risen since the [attempted] coup and evinces ‘the military’s use of rape as a weapon of war and sexual violence [as] a tool to demoralize. Their widespread and systematic nature indicates a structural pattern’.¹⁷³ This violence is then clearly linked to the organizational policies of the junta. The Burma military’s ‘decades-long practice of using sexual and gender-based violence as a weapon against Burma’s ethnic communities’ has always been condemned by the international community and ‘the practice was labelled by a United Nations Fact-Finding Mission as a deliberate strategy to intimidate, terrorize, and punish civilian populations’.¹⁷⁴ It is still being used in the same way in post-[attempted]coup Burma. On May 13, 2021, when the junta declared martial law in Mindat, the UN also highlighted reports of sexual assault perpetrated against women and girls.¹⁷⁵

150. Finally, the knowledge element is made out as the majority of crimes of sexual violence occur when civilians are arrested and detained, especially during their interrogations. The fact that they are

¹⁷¹ *Ibid.*

¹⁷² The Straits Times (2021), “Myanmar Teen Describes Junta’s Brutal Treatment of Detained Women”, The Straits Times (online), Available at: www.straitstimes.com/asia/se-asia/myanmar-teen-describes-juntas-brutal-treatment-of-detained-women

¹⁷³ Women’s League of Burma (2021), “Press Release: Women Leaders of Burma/Myanmar Disappointed with International Community”, APWLD (online), Available at: apwld.org/press-release-women-leaders-of-burma-myanmar-disappointed-with-international-community/

¹⁷⁴ Shubin, G. (2021), “Symposium on the Current Crisis in Myanmar: Untangling Myanmar’s Credentials Battle and the Implications for International Justice”, *Opinio Juris* (online), Available at: opiniojuris.org/2021/09/28/symposium-on-the-current-crisis-in-myanmar-untangling-myanmars-credentials-battle-and-the-implications-for-international-justice/

¹⁷⁵ Andrews, T.H. (2021), *Report of the Special Rapporteur*, cited above, p. 09

being interrogated about their involvement in anti-coup protests shows that the perpetrators know they have been arrested as part of the junta's widespread and systematic attack against the people of Burma. As a result, crimes of sexual violence can be made out.

Article 7(1)(h) Persecution Against any Identifiable Group or Collectively on Political, Racial, National, Ethnic, Cultural, Religious, Gender ... or Other Grounds ...

151. For the purpose of paragraph 1 (article 7) of the Rome Statute, "Persecution" means '*the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity*;' The elements of persecution are that:¹⁷⁶

- a. 'the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights';
- b. 'the perpetrator intentionally targeted the person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such';
- c. 'such targeting was based on political, racial, national, ethnic, cultural, religious, gendered, or other grounds that are universally recognized as impermissible under international law'; and
- d. 'the conduct was committed in connection with any act under article 7, paragraph 1'.

Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.

152. Considering the gathered evidence, at least the crimes of murder, extermination, arbitrary detention, and torture are committed with discriminatory intent, and thus can amount to crimes of persecution under article 7(1)(h).

153. First, the perpetrator must have 'severely deprived, contrary to international law, one or more persons of fundamental right'. So far, the ICC has limited this to acts that can also be charged as separate crimes against humanity, such as torture and murder.¹⁷⁷ The ICC has further confirmed that a 'severe deprivation' of a person's 'fundamental rights' may include breaching the 'right to life... personal liberty... the right not to be held in slavery or servitude... the right not to be subjected to torture or cruel treatment... inhuman or degrading treatment... or the right to private property'.¹⁷⁸ Furthermore, the act must also be in connection with one of the other acts listed under article 7(1) of the *Rome Statute*. All four of these crimes will be considered a severe deprivation of fundamental human rights as per the list above. These also satisfy the 'in connection with' element, as they themselves are crimes against humanity under article 7 (1)(h).¹⁷⁹

¹⁷⁶ International Criminal Court (2011), *Elements of Crimes*, cited above, p. 10.

¹⁷⁷ International Criminal Court (2014), *Prosecutor vs Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo, Pre-Trial Chamber 1, Case No ICC-02/11-01/11-656-Red, p. 204

¹⁷⁸ International Criminal Court (2021), *Prosecutor vs Dominic Ongwen*, cited above, p. 2733

¹⁷⁹ Rome Statute, art 7(1)(h).

154. Secondly, the perpetrator must have targeted such a person or persons because of their identity as ‘being part of a political, racial, national, ethnic, cultural, religious, or gendered collectivity or group’. The individuals or groups who were perceived to support the previous democratic government and democratic process, and direct opposition to the junta rule, are specifically targeted by the military in their widespread and systematic attack against the civilian population in Burma.
155. In the instances of murder, most of the murder victims had some connection to anti-junta, pro-democracy activities, particularly at the time of death. **Mon Khan** [alias] was suspected to be participating in protests when she was shot on February 28, 2021; **Aye San** [alias] had been handing out water to protesters on March 3, 2021; **Aung Pyae** [alias] was shot while protesting near the ‘frontline defense group’ of the protest on March 13, 2021; **Min Than** [alias] was protesting and running away from the military at his time of death on April 9, 2021; **Htike** [alias] was sending food supplies to unknown locations, presumably pro-democracy supporters, and that is why junta soldiers went to his house to look for him; and **Win Zaw** [alias] was suspected to have been shot on April 9, 2021, because of his white shirt identifying him as a student and, thus, most likely a pro-democracy supporter. This demonstrates that the military junta specifically targeted political protesters in their attack, and that they had premeditated intent to conduct murder, at least in one instance, against those who opposed the military.
156. With regards to acts of extermination, there are several acts that go towards demonstrating that extermination was performed with discriminatory intent against anti-junta, pro-democracy citizens. The exterminations, corroborated by interviews, of February 28, March 3, and April 9, 2021, were performed during pro-democracy protests, which directly opposed military rule in Burma. Many of the interviewees discuss their family members, who were victims, as leaving specifically for such protests as they themselves opposed the military rule, and many being killed during those protests – **Aye San** [alias], **Min Than** [alias], and **Win Zaw** [alias], as mentioned above, were killed as part of mass killings, as they were perceived to be pro-democracy supporters. The above-mentioned televised warning on April 9, 2021, also goes towards demonstrating their discriminatory intent in targeting pro-democracy supporters.
157. Interviewees who had been subject to arbitrary detention were also targeted because of their involvement in pro-democracy protests and political dissidence against the junta. **Mya Htwe** [alias], **Tun Win** [alias], **Thuzar Lwin** [alias], and **Tint Tint Kyu** [alias] were all arrested while attending pro-democracy protests. **Mya Htwe** [alias] was continually interrogated about her involvement in the protests, for instance, asking if she provided medical assistance to protesters, as “they particularly focus[ed] questioning on... the activity about the protest[s]”. **Tun Win** [alias] was only released after he signed a “guarantee that [he] would not participate in future protests of the military regime”, demonstrating that such arrests and detention are targeted towards pro-democracy political supporters,

and that release is conditional on guarantee that they will no longer associate with such a group. As explained, **Wai Lu** [alias] was re-arrested on March 7, 2021, after having previously served more than four years in prison, first in 2007. It is also clear, from this evidence, that the perpetrators intended to commit such crimes in a discriminatory way against pro-democracy political dissidents, as their primary form of interrogation is to seek information concerning anti-junta sentiment and protests and punish political protesters for their dissidence.

158. Finally, the victims of torture were also targeted because of their perceived support of the pro-democracy movement in Burma. **Thaung Zar** [alias], **Nyein Nyein Htun** [alias] and **Htway Maung** [alias] all describe how the torture they experienced happened concurrently to interrogation regarding their involvement in political dissidence in Burma. Many of the interviewees who described acts of torture were originally arrested when they participated in political protests, suggesting that their arrest and subsequent treatment in incarceration were largely linked to their contribution in anti-junta protests and political dissidence in Burma. **Nandar Hla** [alias] explained that youngsters from her cell were “told to do the three fingers salute and to sing Thway Thitsar” during torture, as a mockery of the revolution. **Nu Nu Than** [alias] was arrested at her house, taken to the streets and beaten. “They forced me to kneel and made me hold a poster, took photos of me and used coarse words.” During interrogation, she was asked about the demonstrations she participated on, and “which party I support and voted for”. **Paw Htay**’s [alias] father is a high-ranking NLD member. The military went to his house to arrest him but took his two sons as hostages: “they arrested us, because they said that we were responsible, as they did not find my father. They also found out that I support Committee Representing Pyidaungsu Hluttaw (CRPH)¹⁸⁰.” **Paw Htay**’s [alias] brother and the ward administrator were also arrested “because of what was found in their phones”. During interrogation, “they asked questions, concerning CRPH. They also especially asked about people who work with my father and those in the township working committee”. Hence, it is clear that their arrest and mistreatment were linked to their anti-junta actions and political ideology.

159. Thirdly, persecution ‘must have been part of a widespread and systematic attack directed against a civilian population, with knowledge that it is part of such’.¹⁸¹ The mental element requires that the perpetrator intended to ‘discriminate against the targeted persons’ and harmed the victim as they believed them to be part of a particular group, regardless of if they were actually part of that group or not.¹⁸² This intent ‘may be inferred from the general behavior of the perpetrator as well as the circumstances surrounding the commission of the crime’.¹⁸³ This is straightforward to satisfy. The

¹⁸⁰ The Committee Representing Pyidaungsu Hluttaw (CRPH) is a Burmese legislative body in exile, representing a group of National League for Democracy (NLD) lawmakers and members of parliament previous the attempted coup d'état.

¹⁸¹ International Criminal Court (2011), *Elements of Crimes*, cited above p. 10.

¹⁸² International Criminal Court (2021), *Prosecutor vs Dominic Ongwen*, cited above, p. 2736

¹⁸³ *Ibid*, p. 2739

targeting of political dissidents directly corresponds to the aim of the widespread or systematic attack against the population in Burma, which is to solidify the junta rule in the country.

160. Furthermore, the knowledge of the perpetrators that such persecution is part of the larger widespread or systematic attack is also straightforward to satisfy, as the victims of these crimes are those perceived by the junta to be political dissidents, and, in the ordinary course of events, only targeting those that belong to a specific political faction that the perpetrators are attempting to suppress through the larger attack would mean that such targeting was specifically a part of that widespread or systematic attack, and thus the perpetrators must have had knowledge of this.

161. Thus, persecution in relation to (at least) murder, extermination, arbitrary detention, and torture is committed by the military junta in Burma, under article 7(1)(h) of the *Rome Statute*.

Article 7(1)(i) Enforced Disappearance

162. The elements for enforced disappearance as a crime against humanity are that:¹⁸⁴

- a. The perpetrator ‘arrested, detained or abducted one or more persons’ or ‘refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons’;
- b. The detention includes a refusal to acknowledge the deprivation of freedom, or to give information on the fate of the person;
- c. The perpetrator was aware that the detention would be followed in the ordinary course of events by a refusal to acknowledge deprivation of freedom or to give information on the fate or whereabouts of such person or persons;
- d. The detention was carried out by, or with the authorization, support or acquiescence of, the State;
- e. The refusal to acknowledge that deprivation of freedom was carried out by, or with the authorization or support of, such State; and
- f. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

Moreover, this needs to happen in a widespread and systematic attack, directed against a civilian population, and committed with knowledge of the attack.

163. The military junta has refused to acknowledge the deprivation of liberty and/or concealed the fate or whereabouts of each of the 13,902 civilians at the point of detention, as of May 31, 2022. A prominent case is the testimony of **Mya Aye**, leader of the 88 Student Generation, who was arrested once again, after being a political prisoner for eight years between 1989-1996, and between 2007-2012,

¹⁸⁴ International Criminal Court (2011), *Elements of Crimes*, The Hague: International Criminal Court, p. 11.

for five more years. After his arrest on February 1, 2021, his exact location was unknown to family members, who were only able to find out two months after, on April 1, when he was charged with a two-year sentence at Insein Prison, under Section 505(c) of the Penal Code. His daughter spoke at the United States Senate Committee on Foreign Relations on 10 March 2021 stating: “We don’t know how many people have disappeared. We don’t know where they are being detained or their condition, and they don’t have any access to lawyers.”¹⁸⁵

164. Many of the pro-democracy supporters arrested on 1 February 2021 hold the same fate. According to AAPP triangulated data, out of the 151 parliamentarians, government officials, and activists detained on 1 February, 83 are still in unknown locations to AAPP, 29 of whom have been sentenced to prison, including Burma’s democratically elected President **Win Myint** and State Counsellor, **Aung San Suu Kyi**. Of the 13,902 people detained since the coup, 1,087 have been sentenced to prison, but AAPP only knows the prison 370 sentenced prisoners are incarcerated in, as of May 31, 2022. Two of the civilian testimonies retrieved from AAPP interviews also confirm this committed crime:

165. **Nu Nu Than** [alias] was arrested on March 27, 2021. She was beaten and taken first to South Okkalapa police station. She was physically tortured at the interrogation center, while being asked personal questions related to political affiliation or marital status. She explains: “I was released after being detained for four days. My family didn’t know where I was detained, even when they asked the authorities. When I was on the way home, I asked someone who was passing by, if I could phone my family. That is how my family knew that I was released.” As she explains, they put detainees on the Yangon Bus Service (YBS) and left them in front of the Yangon Train station. Hence, **Nu Nu Than** [alias] and her family were victims of enforced disappearance perpetrated by the military junta.

166. **Wunna Khaing** [alias] is another victim. He went missing on April 9, 2021, after being shot by soldiers. Family only found his pants and shoes, with bloodstains, left in the pool of blood. His family looked for him at both interrogation center and Insein prison: “I heard from other that my nephew had been imprisoned and registered in Insein Prison. When I arrived at the prison, I was told he was in the camp”. They were told to pay 300,000 kyats to make his life better. They hired a lawyer and found out that was actually not at Insein. An officer in front of prison told her to stop sending packages for him and confirmed that **Wunna Khaing** [alias] was not there. The family went later to Shwepyithar interrogation center. There, “the interrogation police said that **Wunna Khaing's** [alias] name was there and told us to come again two days later”. They went there twice, yet his whereabouts remained unknown at the time of interview.

¹⁸⁵ Burma Campaign UK (2021), “Wai Hnin Pwint Thon testimony to US Senate Committee”, *Burma Campaign UK* (online), Available: burmacampaign.org.uk/wai-hnin-pwint-thon-testimony-to-us-senate-committee/

167. Enforced disappearances are a historical policy of Burma's military. According to the United Nations *Special Rapporteur on the Situation of Human Rights in Myanmar*, the military engaged in enforced disappearances of Rohingya, in violation of the International Court of Justice's Provisional Measures Order.¹⁸⁶ Similarly, during the non-international armed conflict (as recognized by ICRC) that began in December 2018 in Rakhine and Chin state, and intensified until the November 2020 election, consistent patterns were found of enforced disappearances of Rakhine civilians.¹⁸⁷ Inhumane torture was documented for the overwhelming majority of cases of arbitrary detention, particularly when detainees were held in military barracks for days or weeks, before transferred to police custody and criminal cases initiated against them.¹⁸⁸ Since 2011, these crimes have also been committed by the military in Kachin and Shan States, including enforced disappearance, torture, murder, and sexual violence.¹⁸⁹
168. With the attempted coup, this is now being repeated and extended upon journalists, political figures, medical personnel, pro-democracy supporters, and by-standers, forcibly disappeared by the military. Forcibly disappeared persons in Burma are outside the protection of the law, and AAPP documentation has also demonstrated further human rights violations are perpetrated by the military junta, including torture, sexual violence, and extrajudicial killings.¹⁹⁰ AAPP triangulated data has recorded 518 civilians killed under custody of junta armed forces, including being burnt alive. As already seen, junta reports describe cause of death as from illness or other fabricated reasons, although the bodies have carried severe wounds consistent with torture.
169. Conclusively, AAPP recorded evidence found that the crime of enforced disappearance is being committed in Burma, perpetrated by the junta in a widespread and systematic manner. As seen, the military refuse 'to give information on the fate or whereabouts of such person'. Similarly, by covering the heads of detainees taken to interrogation centers, the soldiers are 'aware that the detention would be followed in the ordinary course of events by a refusal to acknowledge deprivation of freedom or to give information on the fate or whereabouts of such person or persons'. This practice of covering the heads of detainees is consistent throughout AAPP's retrieved evidence, including testimonies of **Mi Mi Nyunt** [alias], **Thiha** [alias], **Wai Lu** [alias], and **Htway Maung** [alias]. Likewise, the unknown exact location of detention centers, hidden to the public, the lack of information to family members and general public on accurate names of detainees, as well as the episodes of severe torture in remote places, such as

¹⁸⁶ OHCHR (2021), "Statement by Thomas H. Andrews, UN Special Rapporteur on the Situation of Human Rights in Myanmar", *OHCHR* (online), Available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26884

¹⁸⁷ UN General Assembly (2021), "Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, March 2021, Advance Unedited Version", *United Nations* (online), Annex, p. 27, paragraph 35, Available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf

¹⁸⁸ UN General Assembly (2021), cited above, Annex, p. 27, paragraph 37.

¹⁸⁹ UN Human Rights Council (2018), "Report of the independent international fact-finding mission on Myanmar, Advance Edited Version", *United Nations* (online), p. 16, paragraph 88, Available at: www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.docx

¹⁹⁰ See: AAPP's 2021 Coup Daily Briefings, at: aappb.org/?cat=109

testified by **Htway Maung** [alias], mentioned above, ‘the perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time’.

Article 7(1)(k) Other Inhumane Acts of a Similar Character Intentionally Causing Great Suffering, or Serious Injury to Body or to Mental or Physical Health

170. Article 7(1)(k) of the *Rome Statute* ‘is a residual provision, intended to demonstrate that the crimes against humanity are not exhaustive under art 7(1)’.¹⁹¹ The elements that must be satisfied to show that the accused committed another inhumane act is that:

- a. ‘the accused inflicted great suffering, or serious injury to bodily, mental or physical health by way of an inhumane act’;¹⁹² and
- b. ‘such an act was of a similar character – by way of gravity and nature – to that of any of the acts listed in article 7(1) of the *Rome Statute*’.¹⁹³

171. The ICC ‘has expressed the view that other inhumane acts are to be considered as serious violations of international customary law and the basic rights pertaining to human beings, drawn from the norms of international human rights law’.¹⁹⁴ Access to the highest attainable standard of health is a fundamental right of every human being, enshrined in article 25 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right of access to the highest attainable standard of health is being denied to most in Burma.

172. CESCR General Comment 14 stipulates that ‘the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health’,¹⁹⁵ and continues, ‘[the Committee interprets the right to health] as an inclusive right extending to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health’.¹⁹⁶ Finally, it clarifies, ‘health facilities, goods and services have to be accessible to everyone without discrimination’. As Burma is state party to the ICESCR, steps are required to be taken to implement the covenant ‘to the maximum of available resources’.

173. On July 16, 2021, the *UN Special Rapporteur to Myanmar* warned that, ‘The junta is weaponizing COVID-19 for its own political gain by suffocating the democracy movement and seeking

¹⁹¹ International Criminal Court (2021), *Prosecutor vs Dominic Ongwen*, p. 2745

¹⁹² International Criminal Court (2011), *Elements of Crimes*, cited above, p. 12

¹⁹³ *Ibid.*

¹⁹⁴ International Criminal Court (2014), *Prosecutor vs Katanga*, cited above, p. 448

¹⁹⁵ OHCHR (2000), *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), paragraph 9.

¹⁹⁶ *Ibid.*, paragraph 11.

to gain the legitimacy and control it craves... by deliberately fueling a humanitarian disaster and then co-opting the international response'.¹⁹⁷ In this evidence-based report, we argue that the military junta is perpetrating this crime against humanity by:

- a. Restricting access to medical supplies through domestic criminal sanctions;
- b. Intentionally harming civilians who are attempting to access medical supplies; and
- c. Targeting medical staff who help those connected to political protests.

174. As part of the junta's attempts to violate a civilian's access to adequate healthcare, the junta has been intentionally restricting medical supplies to the general civilian population. As well as the conducting of raids on medical facilities and destroying, damaging or confiscating health items and medical equipment, these restrictions have been implemented through domestic criminal sanctions, allowing the weaponization of COVID-19 to become systematic and ensuring a daily struggle for civilians to access these necessary supplies. Official orders show that the junta have implemented domestic laws restricting the import of COVID-19 medical equipment including masks, gloves, personal protective equipment (PPE), and oxygen cylinders and restricting the refilling of oxygen cylinders for private companies.¹⁹⁸ As Dr Min Han stated, 'basic medical care for Covid patients has been turned into an illegal act,'¹⁹⁹. State media accused the population of hoarding oxygen supplies by stating, "We have enough Oxygen. The anxiety of people rise and they buy it." The junta's accusation that civilians were hoarding oxygen supplies in panic came two days after the junta placed informal restrictions on the sale of oxygen.²⁰⁰

175. Furthermore, on July 20 the junta created township and ward-level "oxygen support committees" to issue recommendation letters to the public for buying oxygen and managing supplies. Unless customers have a recommendation letter from local authorities, they are not able to fill their oxygen cylinders. Junta troops used these sanctions to confiscate oxygen cylinders from those who are in critical condition. This restriction became official by Major General Zaw Min Tun, Deputy Minister of Information when he stated, the reason they put these restrictions in place is, firstly, because they discovered scams on the internet²⁰¹.

¹⁹⁷ Special Advisory Council for Myanmar (2021), "The People of Myanmar Need Urgent Assistance as the Junta Weaponises the COVID-19 Crisis", SAC-M (online), Available at: specialadvisorycouncil.org/2021/07/the-people-of-myanmar-need-urgent-assistance-as-the-junta-weaponises-the-covid-19-crisis/

¹⁹⁸ See: twitter.com/YMM_yayvay/status/1414116690653192203?s=20

¹⁹⁹ New York Times (2021), "As Covid Rages in Myanmar, Army Hoards Oxygen, Doctors Say", *The New York Times* (online), Available at: www.nytimes.com/2021/07/15/world/asia/myanmar-covid-oxygen.html

²⁰⁰ Frontier Myanmar (2021) "Junta tries –and fails– to use pandemic to tighten grip on power", *Frontier Myanmar* (online), Available at: www.frontiermyanmar.net/en/junta-tries-and-fails-to-use-pandemic-to-tighten-grip-on-power/. See:

twitter.com/Chanapai247/status/1419125523511447553?s=20; twitter.com/ChimyoL/status/1414572063218540549?s=20

²⁰¹ Radio Free Asia (2021), "ကိုဗစ်လူနာတွေအတွက် အောက်ဆီဂျင်အခက်အခဲ ကြီးမားနေဆဲ", *RFA* (online), Available at:

https://www.rfa.org/burmese/program_2/oxygen-shortage-in-myanmar-07192021045949.html

176. The junta has introduced restrictions on private oxygen plants across the country from both private sellers and charities. Private companies were accused of price-gouging.²⁰² These sellers and charity workers, fear to provide civilians with oxygen when they are threatened with arrest if they continue to sell. For example, a charity worker, **Naing Win**, who was importing oxygen from neighboring Thailand, was threatened with jail if he continued to provide oxygen to civilians.²⁰³
177. These restrictions have evidently shown life threatening effects for many civilians who require these facilities. Yet, doctors have testified that junta forces began funneling supplies for use in military hospitals, that cater to the junta and their families.²⁰⁴ This was recognized by the *Special Rapporteur* who stated that while the junta suggested that oxygen supplies were being kept for public hospitals, those that went there were told to buy their own private oxygen.²⁰⁵ Personal protective equipment in Chin, Kayin and Yangon are confiscated for exclusive use by the military, including 130 oxygen cylinders imported from Thailand by aid organizations in Kayin state and an oxygen production facility in Yangon between the months of February to July.²⁰⁶
178. Aside from domestic criminal sanctions, the junta have committed terrorist activities, in association with medical facilities, including the occupation, raiding and shooting of health facilities that has exacerbated the lack of medical supplies. The family of **Aye San** [alias] describes how the hospital that **Aye San**'s [alias] body was kept at was raided the night after the family retrieved it, and that they destroyed the temporary COVID-19 building, built to house COVID-19 patients. Another case in Mandalay shows a COVID-19 facility to be raided, and its medical equipment seized, due to alleged COVID-19 violations.²⁰⁷ According to the *World Health Organizations Surveillance System for Attacks on Healthcare*, from February 1 to September 30, 2021, there were 87 reported raids on hospitals and 56 military occupations of hospitals.²⁰⁸ 108 medical facilities have been attacked by the junta, since the military coup, as of January 14, 2022.
179. Secondly, the junta have intentionally harmed civilians who are attempting to access medical supplies. Many civilians have a lack of trust for junta-controlled health care and vaccination programs as a result of knowledge of these acts and would refuse medical treatment at these facilities as, including COVID-19 vaccines provided by the junta. Civilians must give their names in order to be vaccinated, which risks putting them in danger in the future. Those visiting these facilities have been attacked by

²⁰² New York Times (2021), cited above.

²⁰³ New York Times (2021), cited above.

²⁰⁴ ABC News (2021), "Doctors accuse Myanmar's military junta of hoarding oxygen as COVID-19 crisis deepens", *ABC News* (online), Available at: www.abc.net.au/news/2021-07-18/myanmar-doctors-military-junta-hoarding-oxygen-coronavirus/100297282

²⁰⁵ Andrews, T.H. (2021), *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN GAOR, [UN DOC A/76/314](#)

²⁰⁶ Insecurity Insight (2021), "Violence Against or Obstruction of Health Care in Myanmar February-July 2021", *Insecurity Insight* (online), Available at: reliefweb.int/sites/reliefweb.int/files/resources/Violence-Against-Health-Care-in-Myanmar-February-September-2021-October-update.pdf

²⁰⁷ *Ibid.*

²⁰⁸ World Health Organization (2021), "Surveillance System for Attacks on Healthcare", *WHO* (online), Available at: extranet.who.int/ssa/Index.aspx

junta personnel, as the junta use the facilities to coerce their political dissidents and arrest them. On August 4, 2021, for example, an elderly pro-democracy supporter was arrested at a COVID-19 vaccination center.²⁰⁹ He had previously received a call stating his eligibility for the vaccine, as a person at higher risk due to advanced age, and instructions to attend the medical facility. Once he arrived at the vaccination center, he was detained and charged with violation of Penal Code 505 A. This constitutes the use of the COVID-19 pandemic, and the delivery of proper healthcare, as a weapon held by the junta against civilians.

180. An ambulance carrying COVID-19 patients was denied entry into a hospital in Yangon and forcibly turned back at gunpoint by military forces occupying the hospital.²¹⁰ Moreover, on March 12, 2021, military soldiers forcibly evacuated all patients at Hakha Township Hospital and ordered all hospital staff affiliated with the CDM out of the building. Due to the brutal force used in this evacuation, at least one patient is reported to have died. These cases are consistent with a trend of reported incidents in which individuals seeking COVID-19 care were refused admission into hospitals. Junta personnel would have knowledge that medical treatment was necessary for these patients, yet intentionally denied access with the threat of being shot.

181. AAPP documentation shows that civilians have been arrested and killed when in search for oxygen cylinders. AAPP documented the death of **Phoe Sal**, who presented beatings consistent with torture on July 10, following his arrest, while he was searching for oxygen to help treat COVID-19 in Thongwa Township, Yangon Region. Moreover, when oxygen supplies were being hoarded by military personnel, many of those who were desperately queuing for oxygen were threatened with violence, despite these civilians right of access to necessary medical equipment. On July 13, 2021, junta troops opened fire to disperse crowds who were queuing for oxygen at a factory in Dagon Myothit (South) Township in Yangon, threatening to kill civilians.²¹¹

182. Thirdly, the junta has been targeting medical staff who help those connected to political protests. AAPP testimony, **Mya Htwe** [alias], claims: “mobile medical teams have been increasingly targeted by them. I saw that most of the detainees [on March 3, 2021, in North Okkalapa] were ambulance drivers and also people from the medical team, just like me.” Health workers, including doctors, nurses, emergency medics and medical volunteers are under attack, as they are arbitrarily arrested, tortured, and killed by the junta. Many of these workers were some of the first to go on strike as part of the CDM, also providing medical assistance during protests. According to the *World Health*

²⁰⁹ Insecurity Insight (2021), cited above.

²¹⁰ Physicians for Human Rights (2022), “Our Health Care Workers Are Working in Fear’ Targeted Violence against Health Care One Year after Myanmar’s Military Coup”, *Physicians for Human Rights* (online) Available at: [PHR_Report_Our-Health-Workers-Are-Working-in-Fear_One-year-anniversary-of-the-Myanmar-Coup_January-2022-Reduced.pdf](#)

²¹¹ New York Times (2021), cited above; The Irrawaddy (2021), “Myanmar’s Shortage of Oxygen is the Biggest Killer in the Country”, *The Irrawaddy* (online) Available at: [www.irrawaddy.com/photo-essay/myanmars-shortage-of-medical-oxygen-is-the-biggest-killer-in-the-country.html](#)

Organization's Surveillance System for Attacks on Health Care, Burma is now one of the deadliest places on earth for healthcare workers, and accounts for 40% of the global total number of attacks on these personnel.²¹² The targeting of medical personnel includes the arrest of Dr **Htar Htar Lin**, who is Director of the National Program on Immunization, joined the Civil Disobedience Movement and played a key role in implementing the vaccine program across the country.²¹³ She faces charges for incitement, high treason and the Unlawful Association Act.

183. In Yangon, junta soldiers posed as COVID-19 patients, in order to coerce and arrest three health workers who were doing home visits.²¹⁴ The doctors were working for the Covid-19 Prevention and People's Benefit Group in North Dagon Township and the office was raided following the arrests, where two more doctors doing telehealth visits, were also arrested. The junta also confiscated all their medical supplies from the office, including oxygen cylinders and personal protective equipment, worth 3.2 million Kyat.

184. These cases do not stand alone in the military's attacks on medical personnel. The intentional arbitrary detention and targeting of medical staff demonstrates the intention to exacerbate the debilitation of the healthcare system, rather than simply poor policy making by the junta. As of May 31, 2022, a total of 149 healthcare workers have been arrested. This number reflects the fact that these medical personnel are being arrested on masse, during protests and raids on medical offices and buildings. Moreover, as of May 31, 2022, 598 out of the 1,979 of those who have arrest warrants issued against them were medical personnel. This is significant and shows the intentional purpose of the junta to target healthcare workers. Arrests are increasingly spreading to other healthcare workers, beyond doctors and nurses, including those who provide basic health care services at local levels across the country.

185. Among those who have been murdered by the junta include medical personnel, with 11 having been killed, according to AAPP documentation, as of May 31. For example, on March 28, 2021, **Thinzar Hein**, who is a 20-year-old nursing student, was providing aid to injured protestors in Monywa, Sagaing Region, when she was shot and killed. Another case shows a medical officer being shot dead by junta troops. He was evading arrest because of his involvement in the Civil Disobedience Movement.

²¹² World Health Organization (2021), "Surveillance System for Attacks on Healthcare", cited above.

²¹³ The Irrawaddy (2021), "Myanmar Junta Charges Two Leading Medics With Corruption", *The Irrawaddy* (online), Available at: www.irrawaddy.com/news/burma/myanmar-junta-charges-two-leading-medics-with-corruption.html

²¹⁴ Insecurity Insight (2021), "Violence Against or Obstruction of Health Care in Myanmar February-July 2021", *Insecurity Insight* (online), cited above. See also: Myanmar Now (2021), "Junta lures, arrests community doctors by posing as Covid-19 patients", *Myanmar Now* (online), Available at: www.myanmar-now.org/en/news/junta-lures-arrests-community-doctors-by-posing-as-covid-19-patients

186. Aside from these three points, COVID-19 is being misappropriated by the junta. When political dissidents have died in prison, COVID-19 is often the cause of death given to families.²¹⁵ In many cases, detainees would have been healthy prior to detention and died within the first 72 hours of their arrest, suggesting that in reality they were tortured to death during interrogation. The junta also prevents autopsy procedures by public doctors on the basis of COVID-19 prevention, in order to veil the actual cause of death, that in reality is understood to be torture during interrogation.²¹⁶ AAPP has documented 16 cases where COVID-19 is given as the cause of death by the junta, when in reality, evidence does not show this to be the case. Likewise, from AAPP testimony **Paw Htay** [alias] was told COVID-19 risk of infection as an excuse for denying access to lawyers and family visits while in detention.
187. Furthermore, it is evident that the surge of COVID-19 in prisons comes from mismanagement. Official prison staff and junta personnel would have knowledge of the increase in cases, yet did not put the policies in place, that would reduce the spread of the disease. In an interview, former detainee **Danny Fenster** stated, “yeah, well its funny they had certain precautions that they were doing about COVID, but they would still just have people digging into the bucket for food with their hands.”²¹⁷ Many AAPP interviewees recall excessively crowded paddy wagons transporting detainees to interrogation centers and prison, such as **Zaw Kyi** [alias] and **Thaung Zar** [alias]. Both of them, like **Mi Mi Nyunt** [alias], also recall extremely unsanitary conditions while in prison, with no hygiene utensils provided.
188. To constitute a crime against humanity under the Rome Statute, all elements must be satisfied and reach a similarity in character, that is to say, ‘the nature and gravity of the act,’ to other acts under article 7(1). The intentional mismanagement of the COVID-19 pandemic and lack of access to healthcare that resulted caused the death of tens of thousands according to junta figures. The real death toll however could be closer to a hundred thousand, if not more²¹⁸. The imprisonment, injury and threat of injury and illness to many more is also an element worth considering, so is the act of targeting medical workers and civilians attempting to access medical supplies. As of May 31, 2022, according to the World Health Organization (WHO), there have been 299 attacks on medical personnel since the coup²¹⁹, whilst 11 medical personnel have been killed according to AAPP. This not only inflicts great suffering

²¹⁵ Myanmar Doctors for Human Rights Network (2021), “Short Situational Report of Healthcare in Myanmar: The Most Dangerous Place in the World for Healthcare Professionals (9 Month Review), *Myanmar Doctors for Human Rights Network* (online), Available at: drive.google.com/file/d/1YQeByyukaellWS5qmaIAc3VT1qWokJ1F/view

²¹⁶ *Ibid.*

²¹⁷ Deadline Detroit (2021), “Video: Freed Metro Detroit Journalist Danny Fenster On Prison, Hopelessness And His Joyful Homecoming”, *Deadline Detroit* (online), Available at: www.deadlinedetroit.com/articles/29313/video_freed_metro_detroit_journalist_danny_fenster_on_prison_hopelessness_and_his_joyful_flight_home?fbclid=IwAR1Re3Zr7ZG_9McD26zYU4j7EhicJCh0LTcQslDIP1AQroCW6uFrvIrP7WY

²¹⁸ Frontier Myanmar (2022), “COVID cover up: third wave death toll may be in hundreds of thousands”, *Frontier Myanmar* (online), Available at: <https://www.frontiermyanmar.net/en/covid-cover-up-third-wave-death-toll-may-be-in-hundreds-of-thousands/>

²¹⁹ WHO (2022) Surveillance System For Attacks On Health Care (SSA). World Health Organization (*Online*), Available at: <https://extranet.who.int/ssa/Index.aspx>

on those medical workers, but has resulted in the suffering, death, injury and threat of injury on an entire population, due to lack of trusted medical personnel being available to treat patients.

189. By weaponizing the COVID-19 pandemic, the junta are perpetrating numerous criminal acts, that encompass other crimes against humanity, within the act itself, including imprisonment, torture and murder. As part of their agenda to weaponize the COVID-19 pandemic, the junta has targeted medical staff resulting in the death and arrest of this group of civilians. These factors are encapsulated in the junta's exacerbation of the disease which resulted in the death of far more civilians than domestic criminal sanctions against medical supplies, attacks on civilians accessing medical supplies and attacks on medical staff. Moreover, these are enacted on a widespread scale, to the gravity of these other acts, as shown by the next element.

190. The perpetration of the weaponization of COVID-19 pandemic is widespread and systematic, seen through the three factors explained. Firstly, junta policy making shows the intentional targeting of Burma's healthcare system, that would result in the suffering of civilians in a widespread manner. Moreover, the restriction of medical supplies through domestic criminal sanctions satisfies the element that this crime is systematic. Through these criminal sanctions, it is improbable that the diversion of critical medical supplies away from those who need them, is a random occurrence. These criminal sanctions resulted in a regular pattern of events that culminated in the weaponization of the COVID-19 pandemic. The systematic diversion of medical supplies shows a prioritization of the lives of the military junta and its supporters over civilians, resulting in the consequent increase in the number of deaths from COVID-19 and a pursuing disaster in the country.

191. The nature and scale of attacks on medical personnel shows the purpose by the junta, to intentionally harm medical workers as part of an agenda to weaken the country's healthcare system and extend the suffering of civilians, in relation to the pandemic, as a result.

192. This crime is also being perpetrated 'against a civilian population', these domestic criminal sanctions clearly target a civilian population who are trying to access medical supplies. The transfer of these medical supplies to military facilities, shows that the junta are targeting the civilian population. Targeting those attempting to access medical supplies is also seen as a civilian population. In these cases, victims have been the target of their attack, due to their perceived opposition to the junta, many being arrested under Penal Code Section 505 A. Likewise, as members of the civilian population, the targeting of medical staff who help political protestors, satisfies this element. By providing critical care to the injured during protests, it is perceived that healthcare workers have a political affiliation against the junta. They have also increasingly become political dissidents of the junta, shown by the 598 arrest warrants that have been issued against medical staff, particularly in cases where these medical workers have joined the Civil Disobedience Movement. All evidence supplied shows that these medical personnel were unarmed at the time of attack. For example, when **Thinzar Hein** was killed while aiding

a protestor, it is evident that she did not have a weapon on her, at the time of the shooting, neither did **Mya Htwe** [alias].

193. Furthermore, widespread attacks on medical personnel are not only a crime against medical personnel, but also against the entire civilian population, who face limited medical services and trusted medical services, as a result of the persecution of healthcare workers and the limited scope to distribute effective medical services for COVID-19 patients.
194. There must be an intention to commit this act, or knowledge, ‘that it will occur in the ordinary course of events’. The intentional arbitrary detention and targeting of medical staff goes towards the intention to exacerbate the debilitation of the healthcare system, rather than simply poor policy making by the junta. It is very likely that the junta had knowledge of the occupation of these personnel, at the time of arrest or murder, due to the action that they are carrying out at the time. For example, **Thinzar Hein** was evidently providing aid to injured protestors at the time of the shooting in Monywa, Sagaing Region, and has been documented by AAPP as doing so. The number of arrest warrants 598 proves this intention, as the junta search out for those who are aiding their political dissidents.
195. Moreover, the failure to implement social distancing protocol in prisons could count towards the junta having knowledge of the widespread and systematic attack on detainees in prison. While this could count as poor policy making, the knowledge that COVID-19 was spreading through prisons and the intentional failure of the junta to impose resultant social distancing protocol could satisfy this element. AAPP recorded at least 9 civilians dying due to COVID-19 in detention, while junta pointed towards other causes of death to deflect from the overcrowded, no treatment type conditions in prison.
196. The junta are intentionally weakening the healthcare system in Burma and using the COVID-19 pandemic as a weapon, in a widespread and systematic attack against medical personnel and the rest of the civilian population, thus the crime against humanity under article 7(1)(k) of the *Rome Statute*.

VI. Recommendations

Accountability Through the International Criminal Court (ICC)

197. For perpetrators of crimes against humanity to be prosecuted in the International Criminal Court (ICC), the accused must be present for the trial.²²⁰ This means the accused cannot be tried in absentia. The accused is presumed innocent until proven guilty, and the burden of proof is on the Prosecutor to prove the guilt of the accused beyond reasonable doubt.²²¹
198. The 'ICC has jurisdiction over crimes against humanity'.²²² The 'ICC was designed to have jurisdiction over matters where the State is unwilling or unable,²²³ as its purpose is to be complementary to national jurisdictions. As governance and the monopoly of violence are being contested in Burma, the National Unity Government (NUG) has currently no means to ensure fair functioning of domestic courts to sentence and prosecute these leaders, holding them criminally responsible under the international jurisdiction is imperative. The government of Burma, officially the Republic of the Union of Myanmar, is therefore 'unable' and the situation falls within the category of those over which the ICC was designed to preside. The 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. For instance, information gathered by AAPP in Burma's Special Courts show a systematic refusal from judges to record the visual evidence of torture when detainees or their lawyers request it.²²⁴ They were not allowed to be examined by a medical professional, which illustrates the powerlessness of victims of crimes against humanity and the culture of impunity surrounding and protecting perpetrators of such violations within the army and police forces.
199. The ICC may exercise jurisdiction if the situation is referred to the Prosecutor by:
- a. the State party on which crimes are occurring;²²⁵
 - b. the Security Council acting under Chapter VII of the UN Charter;²²⁶ or
 - c. if the Prosecutor has initiated an investigation.²²⁷
200. However, per article 12(2) of the Rome Statute, the Court can only exercise (a) and (c) jurisdiction if the States on which the crimes occur have accepted the Court's jurisdiction, or the perpetrator is a national of a State that has accepted the jurisdiction of the Court.²²⁸ Burma is not a party

²²⁰ Rome Statute, art 63(1).

²²¹ Rome Statute, art 66.

²²² Rome Statute, art 5.

²²³ Rome Statute, art 17(1)(a).

²²⁴ AAPP (March 23,2022), "Political Prisoners Experience in Interrogation, Judiciary, and Incarceration Since Burma's Illegitimate Military Coup", (online), Available at <https://aappb.org/?p=20734>

²²⁵ Rome Statute, art 13.

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ Rome Statute, art 12(2).

to the Rome Statute, thereby posing issues for the exercise of jurisdiction by referral by the State Party or Prosecutor.

201. Nonetheless, on August 20, 2021, the NUG announced that it had lodged a declaration with the ICC accepting the court's jurisdiction, under Article 12(3) of the Rome Statute, with respect to all international crimes in Burma territory since 2002.²²⁹ This provides immediate jurisdiction to the Court to address specific atrocity crimes, including past crimes, as the declaration originated from the democratically elected government and as such, from the legitimate representative of the states. Additionally, accession to the Rome Statute would entitle Burma to all the rights of a State Party to the Statute and enable it to provide the ICC with jurisdiction over future atrocity crimes.

Military Leaders and Structure

202. Article 25 of the Rome Statute establishes the responsibility of the perpetrator or co-perpetrator of a crime, but also the active responsibility of any individual who “(a) Orders, solicits or induces”, “(b) aids, abets or otherwise assists” or “(c) contributes in any other way”²³⁰ to the commission or attempted commission of an international crime. Hence, under Article 25, the individuals that can be held accountable for crimes against humanity are not only those that physically commit the violence but anyone who is actively involved in its commission, whether directly or indirectly.
203. Moreover, in cases where the perpetrator is under the command or control of a military supervisor, said supervisor can be held accountable even in the absence of an active involvement in the commission of a crime on the basis of Article 28. As such, a military commander, whether *de facto* or *de jure*, can be responsible for omitting to prevent the commission of a crime by their subordinate. A military commander or another superior in a superior-subordinate relationship can be responsible of an international crime under Article 28 if they:
204. ‘knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit’ such crimes against humanity’,²³¹ and
205. ‘failed to take necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution’.²³²
206. Considering the extensive evidence presented by civil society and media to the diplomatic community and domestic audience, it is likely that military commanders know of the violence being conducted by their subordinates, and the widespread nature of such crimes. Therefore, considering that

²²⁹ NUG (August 20, 2021), The National Unity Government of the Republic of the Union of Myanmar accepts the jurisdiction of the International Criminal Court, *Progressive Voice Myanmar* (online), Available at: <https://progressivevoicemyanmar.org/2021/08/20/the-national-unity-government-of-the-republic-of-the-union-of-myanmar-accepts-the-jurisdiction-of-the-international-criminal-court/>

²³⁰ Rome Statute, article 25.

²³¹ Rome Statute, article 28.

²³² *Ibid.*

no military officers are being arrested for their treatment of civilians in Burma, the military commanders responsible for the different divisions are also criminally responsible for crimes against humanity.

207. Some information from the media demonstrates this conscious disregard of information. For instance, following the Bago City massacre on April 9, 2021, junta spokespeople rejected claims that 82 people had died as a result of junta's military, and claimed that only one had died in the disturbance. Considering the immense evidence of the events in Bago City, testimony from the victims of the family, and vast amount of media coverage and social media posts exhibiting the many deaths on April 9, these statements could be considered a 'conscious disregard' of information concerning the activities of the soldiers, and thus superiors who have 'effective control' over these activities would also be held accountable for these actions.²³³

208. This aligns with the conclusions in the 2018 report of the *Independent International Fact-Finding Mission on Myanmar*, which explained that "the Tatmadaw [military] command exercises effective control over its own soldiers, as well as over other armed actors deployed in military operations. The consistent tactical formula employed by the Tatmadaw exhibits a degree of coordination only possible when all troops are acting under the effective control of a single unified command."²³⁴ Junta military leaders remain the same, which supports the argument of a similar *modus operandi* and chain of command throughout the years.

209. The confessions from the two army soldiers transferred from Bangladesh to the ICC, on September 8, 2020, likewise confirm the stratified structure of the military.²³⁵ In their confessions made prior to their transfer to the Hague, the soldiers provided the names and ranks of 17 more soldiers involved in perpetrating atrocity crimes against Rohingya in 2016 and 2017. Among those, they named six senior commanders, including a lieutenant colonel, a colonel, and three captains.²³⁶ Both men separately claimed to be acting on orders from senior commanders to "exterminate all [Rohingya]," to "shoot all that you see and that you hear," and to "kill all" Rohingya in specific areas.²³⁷

210. The identities of the individuals in the military that are carrying out the violence are largely unknown. However, these people are responding to orders from junta leaders, who are ultimately responsible for the violence. Following the attempted coup, the Senior General Min Aung Hlaing

²³³ *Ibid.*

²³⁴ Human Rights Council (2018), "Report of the independent international fact-finding mission on Myanmar", *United Nations* (online), p. 17, paragraph 91, Available at: www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E

²³⁵ Fortify Rights (2020), "International Criminal Court: Prosecute and Offer Witness Protection to Myanmar Army Deserters.", *Fortify Rights* (online), Available at: www.fortifyrights.org/mya-inv-2020-09-08/. See also: Beech, et al. (2020), "'Kill All You See': In a First, Myanmar Soldiers Tell of Rohingya Slaughter," *New York Times* (online), Available at: www.nytimes.com/2020/09/08/world/asia/myanmar-rohingya-genocide.html; Ayed, N. (2020), "Once Foot Soldiers in Myanmar's Army, Now Potential Witnesses to Mass Atrocities," *CBC* (online), Available at: www.cbc.ca/news/world/myanmar-soldiers-custody-hague-1.5715272

²³⁶ Fortify Rights (2020), cited above.

²³⁷ *Ibid.*

formed an eleven-member junta, self-called State Administration Council (SAC), formed by eight members of the military and three civilians. Later, six more civilians were added. These leaders include:

- a. Junta leader Senior General **Min Aung Hlaing**, Commander-in-Chief of the Defense Services;
- b. Vice Senior General **Soe Win**, Vice Chairman of the SAC;
- c. General **Mya Tun Oo**, now Minister for Defence;
- d. Admiral **Tin Aung San**, now Minister for Transport and Communications;
- e. General **Maung Maung Kyaw**, Commander-in-Chief of the Air Force;
- f. Lieutenant General **Moe Myint Tun**, Chief of Staff of the Army, Chief of Bureau of Special Operations;
- g. Lieutenant General **Aung Lin Dwe**, Judge Advocate General, Secretary of the SAC;
- h. Lieutenant General **Ye Win Oo**, Chief of Military Security Affairs, Joint Secretary of the SAC;
- i. Lieutenant General **Soe Htut**, now the Home Affairs Minister, overseeing police, prisons, and intelligence;
- j. army-appointed Vice-President **Myint Swe**, now assigned acting President;
- k. Foreign Minister, **Wunna Maung Lwin**;
- l. the Planning, Financing, Industry minister, **Win Shein**;
- m. Lieutenant General **Tun Tun Naung**, appointee for border affairs;²³⁸

- i. These are the people that should, first and foremost, be held accountable for the campaign of violence and terror in Burma.

211. Many of the aforementioned members of the military-installed junta have already been implicated in serious human rights' abuses in the past. Commander-in-chief General **Ming Aung Hlaing** is directly implicated in crimes against humanity committed during the 'clearance operations' against the Rohingya people in 2017, as well as war crimes and crimes against humanity during military operations against the Kachin, Shan, and Rakhine ethnic nationalities.²³⁹ Lieutenant General **Tun Tun Naung** oversaw war crimes as the commander in Kachin State in 2013.²⁴⁰ Lieutenant General **Soe Htut** was previously on the European Union sanctions list for human rights abuses related to his role leading the southern command.²⁴¹ General **Mya Tun Oo** has held a third ranking role as the chief of general staff since August 2016, including during the 2017 ethnic cleansing campaign against the Rohingya.²⁴²

212. *Chin Human Rights Organization* was able to disclose the chain of command structure of the military hierarchical in southern Chin State under the Tactical Operations Command (TOC) based in

²³⁸ Htet Myaet Min Tun et al. (2021), "Min Aung Hlaing and His Generals: Data on the Military Members of Myanmar's State Administration Council Junta", *ISEAS Yusof Ishak Institute*, issue 2021, no. 97.

²³⁹ Human Rights Watch (2021), "Myanmar: Military Coup Kills Fragile Democracy", *Human Rights Watch* (online), Available at: www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy

²⁴⁰ Human Rights Watch (2021), above

²⁴¹ Human Rights Watch (2021), above

²⁴² Human Rights Watch (2021), above

Matupi. This TOC has under its command Light Infantry Battalion (LIB) 140, Infantry Battalion (IB) 304 and LIB 274, based in Mindat. After some demotions in May 2021, that followed the loss suffered by the military in this region, Colonel **Ye Kyaw** was appointed the new Tactical Operations Commander. Moreover, a new TOC was established in Mindat with LIB 274, which reports directly to the North Western Regional Military Command in Monywa, and the Office of the Commander-in-Chief in Nay Pyi Taw. Since October 2021, the junta has deployed 100 additional troops to each of all the existing battalions operating in Chin State under the Northwestern Regional Military Command, with the exception of Paletwa which falls separately under the Western Command in Rakhine State.²⁴³ Awareness of this hierarchical structure supports the idea of finding military higher ranks as prosecuted. These military leaders should be prosecuted for the crimes against humanity of murder and deportation in Mindat.

213. Likewise, other high-rank military officials have also been identified. AAPP interviewee Shein Htoo [alias], who was arbitrarily detained and tortured in Shwe Du village (Tanintharyi Region) in April 2021, was able to identify Captain **Wai Phyo Aung** as one of the perpetrators. Thiha [alias], also tortured in detention, likewise identified Captain **Wai Phyo Aung** as heading the military during arrest. AAPP interviewee Paw Htay [alias] was tortured by Lieutenant Colonel **Myo Thet Maung**, who is Commander-in-Chief (first) – G1 and a strategist, in Mingaladon Township. **Kyaw Wunna** [alias], victim of torture to death, was arrested by Colonel **Myo Swe**, the division head of the Artillery 901, in Bago region.
214. Finally, three Light Infantry Divisions have been recurrently identified by AAPP interviewees as carrying out the crimes, namely LID 44, LID 66 and LID 77.
215. Soldiers from the LID 44 committed the massacre in Kani Township, both the killings on July 1, 2021, at Shitkhoet Forest, as well as the on July 7, 2021, nearby Yin village. Causing the murder of **San Min Naing**, **Win Shwe** (aka Thet Shay), **Zeyar Tun**, and **Tun Shwe**, and more than 15 men from Yin village.
216. The LID 66 perpetrated the Christmas Eve massacre in Karenni State, according to the KNDF,²⁴⁴ which includes the murders of 42 civilians, including Khu Lee Reh, Khu Lu Peh and Kyaw Lwin Htoo. LID 66 is based in Inma, Thegon Township, Bago Region. The commander is Colonel **Kyaw Lin Tun** and the operations commander is Lt. Col. **Kyaw Swar Tun**.
217. Soldiers from the LID 77 were present during the mass arrests in North Okkalapa, on March 3, 2021, as witnessed by interviewee Nyein Nyein Htun [alias]. This includes, at least, the murder of Aye San [alias] and the arbitrary arrest of 61 civilians.

²⁴³ See more at www.chinhumanrights.org/chain-of-command-structure-of-toc-in-matupi-mindat/

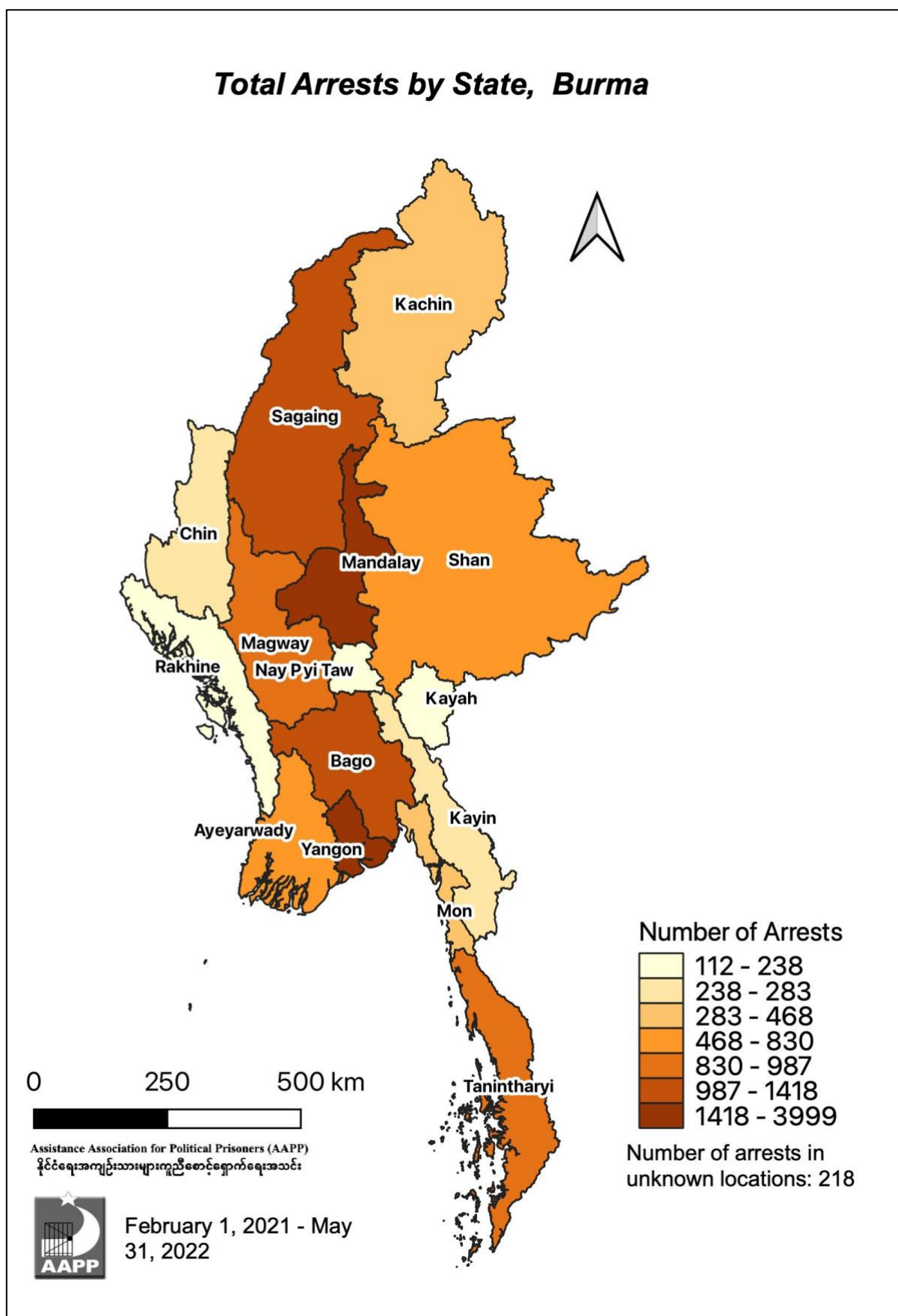
²⁴⁴ The Irrawaddy (2022), “ ဖရိုဆိုတွင် အစုလိုက်အပြုံလိုက် မီးရှို့သတ်ခံရမှု ၄၉ ဦးခန့်ထိ ရှိလာနိုင် [Around 49 individuals would have been burnt in Hpruso Massacre]”, *The Irrawaddy* (online), Available at: burma.irrawaddy.com/news/2022/01/04/248635.html

VII. Annex 1

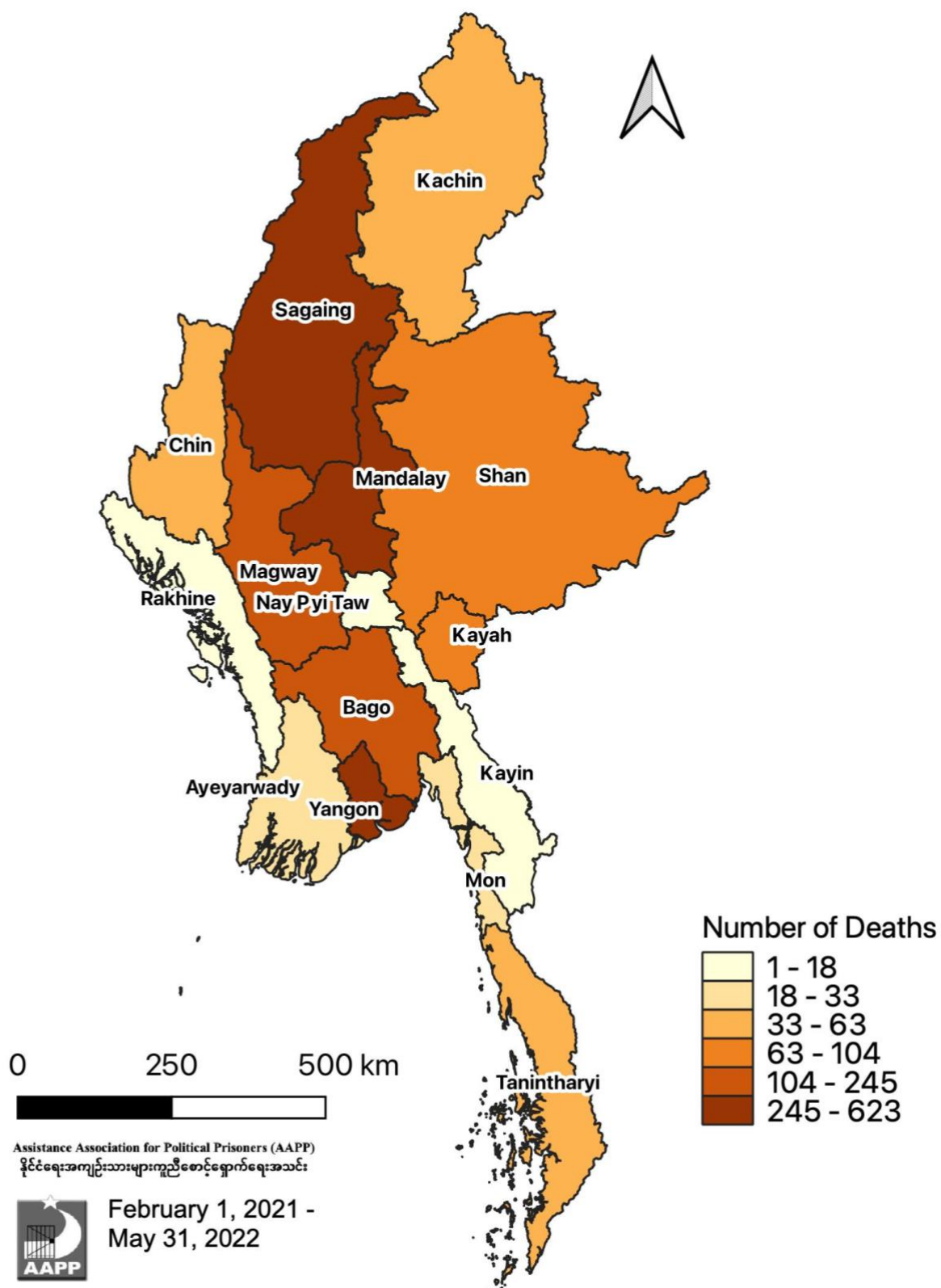
Name	Sex	Event Date	Location
April Phyu Phyu [alias]	F	March 3, 2021	Yangon
Arkar Latt [alias]	M	May 8, 2021	Shwebo Township
Aung Pyae [alias]	M	March 13, 2021	Mandalay
Aung San Suu Kyi	F	February 1, 2021	Naypyidaw
Aye San [alias]	M	March 3, 2021	North Okkalapa
Chan Ko [alias]	M	February 28, 2021	Yangon
Chit [alias]	F	March 13, 2021	Mandalay
Danny Fenster	M	May 24, 2021	Yangon
Han Thar Nyein	M	March 3, 2021	Yangon
Htar Htar Lin	F	June 10, 2021	Yangon
Htike [alias]	M	August 25, 2021	Monywa
Htway Maung [alias]	M	May 2, 2021	Yangon
Khin Kay Khine	F	October 31, 2021	Dawei
Khin Myat Su [alias]	F	July 1, 2021	Kani
Khu Lee Reh	M	December 24, 2021	Hpruso
Khu Lu Peh	M	December 24, 2021	Hpruso
Kyaw Htoo Aung [alias]	M	February 1, 2021	Thanlyin Township
Kyaw Lwin Htoo	M	December 24, 2021	Hpruso
Kyaw Naing Win [alias]	M	July 1, 2021	Hpruso
Kyaw Wunna [alias]	M	May 21, 2021	Bago
Kyi Kyi [alias]	F	July 1, 2021	Hpruso
Mi Mi Nyunt [alias]	F	September 6, 2021	Mandalay
Min Than [alias]	M	April 9, 2021	Bago
Moe Shwe [alias]	F	April 9, 2021	Bago
Mon Khan [alias]	F	February 28, 2021	Mandalay
Mya Aye	M	February 1, 2021	Mingalartaungnyunt Township
Mya Htwe [alias]	F	March 3, 2021	North Okkalapa
Mya Thwet Thwet Khaing	F	February 9, 2021	Naypyidaw
Naing Win	M	July, 2021	Mawlamyine
Nandar Hla [alias]	F	March 3, 2021	Yangon
Nay Linn Htet [alias]	M	April 2, 2021	Yangon
Nay Naing [alias]	M	April 2, 2021	Yangon

Nu Nu Than [alias]	F	March 27, 2021	Yangon
Nyein Nyein Htun [alias]	M	March 3, 2021	North Okkalapa
Paw Htay [alias]	M	March 6, 2021	Mingaladon Township
Phoe Sal	M	July 10, 2021	Thongwa Township
San Min Naing	M	July 1, 2021	Kani
Shein Htoo [alias]	M	April 7, 2021	Myeik
Shwe Yoon Eain	F	February 17, 2022	Thandwe Township
Su Su [alias]	F	March 15, 2021	Mandalay.
Thaung Zar [alias]	M	May 2, 2021	Hlaing Township
Thet Htoi [alias]	M	-	South Dagon
Thiha [alias]	M	25 February, 2021	Myeik
Thinzar Hein	F	March 28, 2021	Monywa
Thuzar Lwin [alias]	F	March 3, 2021	Tamwe Township
Tint Tint Kyu [alias]	F	March 3, 2021	North Okkalapa
Tun Shwe	M	July 1, 2021	Kani
Tun Win [alias]	F	March 3, 2021	Hlaing Township
Wai Lu [alias]	M	March 7, 2021	Yangon
Win Myint	M	February 1, 2021	Naypyidaw
Win Shwe (aka U Thet Shay)	M	July 1, 2021	Kani
Win Zaw [alias]	M	April 9, 2021	Bago
Wunna Khaing [alias]	M	April 9, 2021	Yangon
Yago Linn [alias]	M	April 19, 2021	Yangon
Zaw Kyi [alias]	M	March 3, 2021	Yangon
Zeyar Soe [alias]	M	April 5, 2021	North Okkalapa
Zeyar Tun	M	July 1, 2021	Kani

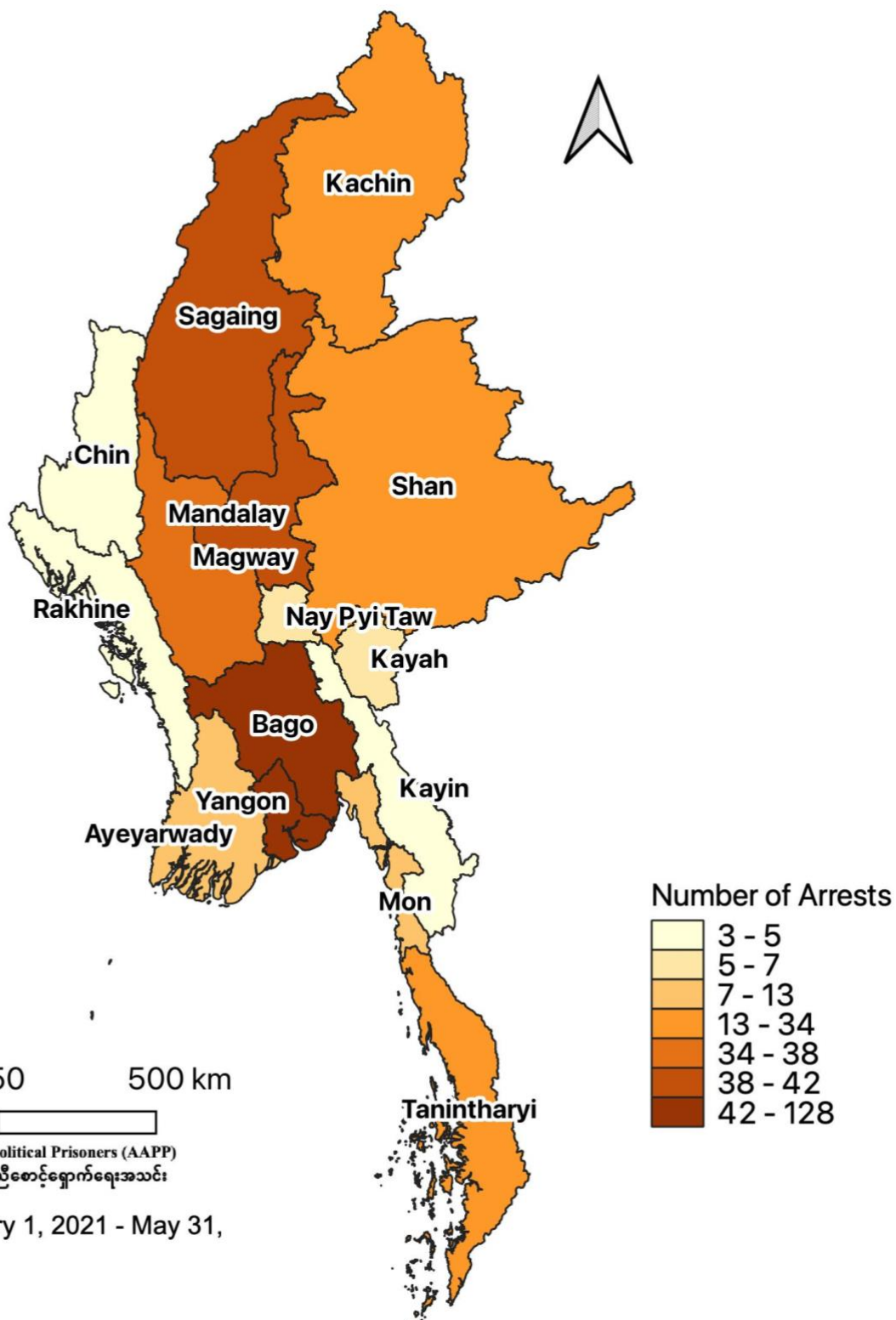
VIII. Annex 2



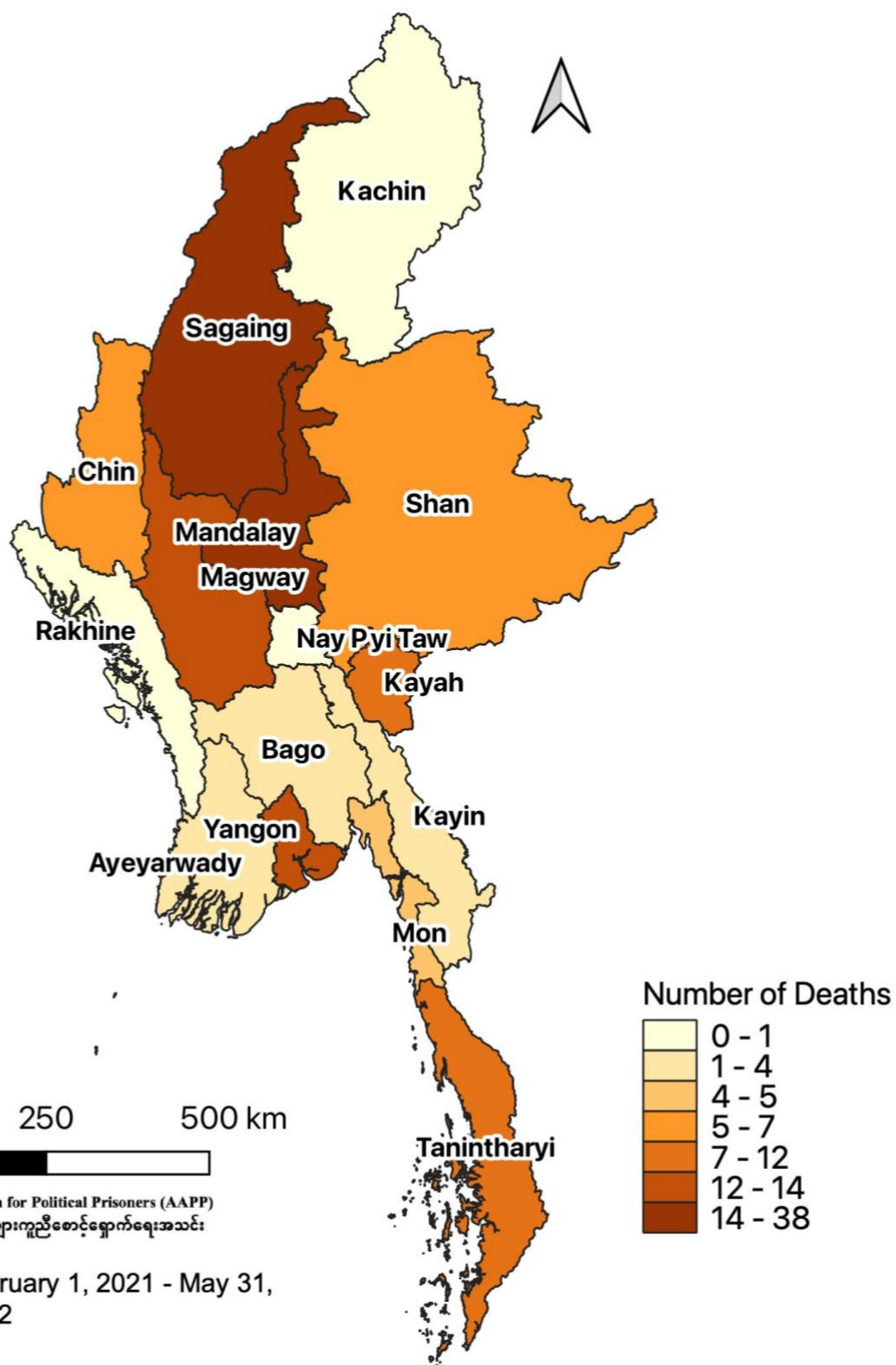
Total Killed by State, Burma



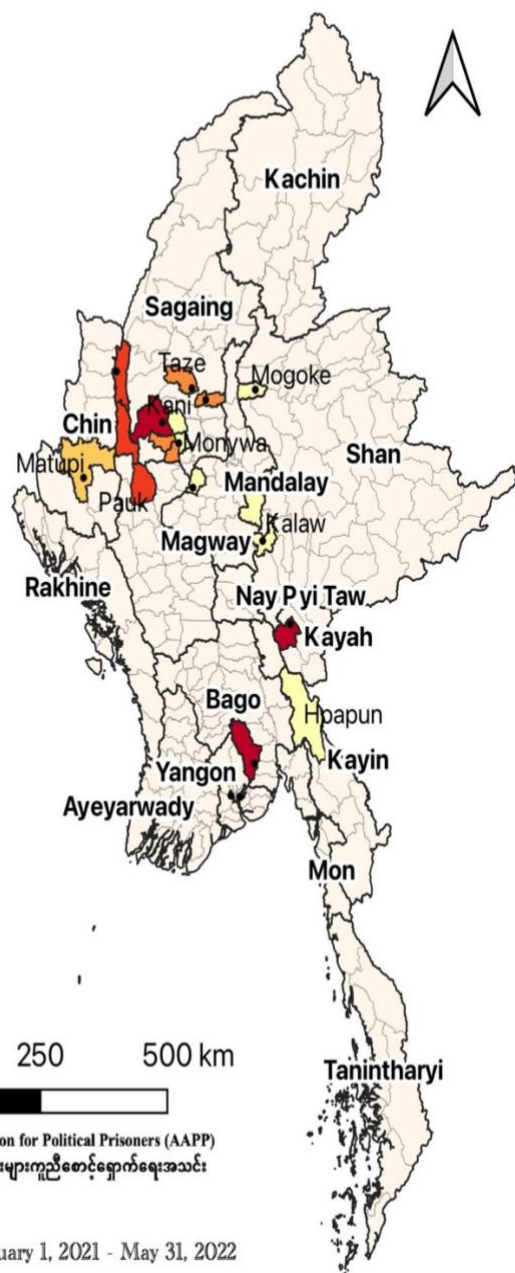
Children Arrested by State, Burma



Children Killed by State, Burma



Massacres in Townships, Burma



Massacres in Yangon Townships

Number of Deaths

