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

Beyond Survival



MYANMAR

This publication is an abbreviated version of a more in-depth report on Myanmar to be published at the end of March 2023.



EXECUTIVE SUMMARY

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

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

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

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

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

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- 1 Crisis Group Asia, ‘Identity Crisis: Ethnicity and Conflict in Myanmar’ (28 August 2020) <https://www.crisisgroup.org/asia/south-east-asia/myanmar/312-identity-crisis-ethnicity-and-conflict-myanmar> accessed 17 October 2022.
 - 2 The Myanmar Armed Forces uses the name ‘Tatmadaw’, which literally translates into ‘Imperial or Royal Armed Forces’ with the suffix ‘daw’ or ‘taw’ denoting ‘royal’ or ‘sacred’. Myanmar people usually refer to it as ‘Sit-Tat’, meaning ‘Sit (Armed or Military), Tat (Forces)’. Accordingly, in this report the word ‘Sit-Tat’ will be used interchangeably with Myanmar military, army, and armed forces instead of the loaded term ‘Tatmadaw’. See Ye Myo Hein, ‘One Year On: The Momentum of Myanmar’s Armed Rebellion’ (Wilson Center, May 2022), 3 https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/ASIA_220519_1YearOn-BRIEF_V1r2.pdf accessed 16 September 2022.
 - 3 ‘Timeline: Reforms in Myanmar’ (BBC, 8 July 2015) <https://www.bbc.com/news/world-asia-16546688> accessed 19 September 2022.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



RECOMMENDATIONS

The following recommendations are based on the findings of this report and are targeted to the relevant stakeholders identified through our research.

1. Recommendations to a future civilian-led, democratic federal government in Myanmar

Bearing in mind the call of countless protesters, activists, and members of civil society for a truly representative federal democratic system to be established in Myanmar, a future government will be responsible for providing full reparations to CRSV survivors. A future government in Myanmar should:

- Establish the necessary mechanisms to ensure that all survivors, of all ethnicities, and of all conflicts, past and ongoing, are able to voice their needs and priorities and meaningfully participate in reparation efforts.
- Ensure that all human rights violations including CRSV are investigated, perpetrators prosecuted and adequately punished, and that reparations are provided to victims and survivors.

In order to deliver a **direct administrative reparative assistance programme to CRSV survivors**, establish independent and sustainable inter-ministerial bodies⁴ which consider the following actions, among others, to respond to survivors' rights and needs:

- Respond to the urgent needs of CRSV survivors and set up an administrative reparations programme, through individual lump-sum payments or pensions.
- Establish a programme qualifying CRSV survivors for free and adequate medical and psychosocial care and other forms of reparations.

- Establish and facilitate a gender-sensitive repatriation process for the voluntary return in safety and dignity of CRSV survivors who have been displaced.⁵
- Establish a system to identify the children of CRSV survivors to provide them with citizenship documents and access to scholarships and vocational training.
- These processes should meet international standards (including accessibility, effectiveness, non-discrimination, gender equality, and inclusion). They should be preceded by and implemented with the consultation and participation of CRSV survivors.

For **memorialisation and acknowledgment**, consider leading and supporting efforts to document, memorialise, and publicly recognise the harms suffered by CRSV survivors and how these have been linked to entrenched patriarchal attitudes and cultures of victim-blaming. Such initiatives should be conducted in consultation and collaboration with survivors and civil society actors.

In terms of **guarantees of non-repetition**:

- Ratify the UN Convention against Torture, the Convention on the Elimination of All Forms of Racial Discrimination and the International Convention for the Protection of all Persons from Enforced Disappearance and sign the optional protocols to these instruments and to the international human rights instruments to which Myanmar is already a party.
- Train the judiciary, police and prosecuting authorities, judges and medico-legal experts and other legal professionals on the legal standards relating to the prevention, documentation, and legal response to GBV, including CRSV.
- Pass and implement legal reform as set out below.

⁴ Such as a Gender Equality Commission and/or Human Rights Commission.

⁵ See UN CEDAW Committee 'Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure' (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 50.

On **ending gender-based violence:**

- Pass a revised, CEDAW-compliant Prevention of Violence Against Women Law.⁶
- Conduct a legal reform of the provisions of the Penal Code on rape and other forms of sexual assault to bring them into compliance with internationally accepted definitions and standards.⁷ In particular, ensure that marital rape is criminalised⁸ and that the definition of rape is gender-neutral.⁹
- Repeal legislation that criminalises abortion, as called for by the CEDAW Committee.¹⁰
- Enact comprehensive legislation that protects women, including women of all ethnicities, from forced displacement.¹¹
- Conduct a legal reform of the provisions of the Penal Code to criminalise serious international crimes, including CRSV, and establish civilian jurisdiction over such crimes.¹²
- Take appropriate measures to ensure that all victims of SGBV have access to redress, including symbolic recognition and compensation for material and moral harm suffered, access to rehabilitation and support services, and access to justice.
- Promote gender equality and non-discrimination in public messaging and in school curricula.

- Strengthen the gender responsiveness and gender sensitivity of healthcare professionals, including by providing systematic training to them on gender issues and GBV, as well ensuring access to quality medical and psychosocial services for survivors.

On **non-discrimination:**

- Extend constitutional human rights protections to all persons, not only to “citizens”.¹³
- Ensure the restoration of citizenship to all those who have been refused citizenship or stripped of their citizenship on a discriminatory and/or political basis. Repeal the Citizenship Law to eliminate discriminatory provisions based on ethnicity and use objective criteria to determine citizenship, such as descent.¹⁴
- Ensure that domestic legislation includes a definition of discrimination against women, covering direct and indirect discrimination in the public and private spheres, including intersecting forms of discrimination, in line with article 1 of the CEDAW Convention.
- Guarantee the inclusion and participation of diverse categories of survivors –female and male CRSV survivors, LGBTIQ+ persons, and persons from ethnic or religious minorities – in any activity or project undertaken as part of reparation initiatives.

6 Ibid para 18.

7 Ibid para 16.

8 See HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 32.

9 See, e.g., International Criminal Court (ICC), ‘Elements of Crimes’ (2011) ISBN No. 92-9227-232-2, art 7(1)(g)-1 ‘Crimes Against Rape’ <https://www.refworld.org/docid/4ff5cd7d2.html> accessed 23 June 2022.

10 UN CEDAW Committee ‘Concluding observations on the combined fourth and fifth periodic reports of Myanmar’ (25 July 2016) UN Doc CEDAW/C/MMR/CO/4-5, para 39(b); UN CEDAW Committee ‘General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (14 July 2017) UN Doc CEDAW/C/GC/35, para 31(a). See also UN Committee on Economic, Social and Cultural Rights ‘General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) UN Doc E/C.12/GC/22, para 57.

11 UN CEDAW Committee ‘Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure’ (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 20.

12 Ibid para 22.

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

14 UN CEDAW Committee ‘Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure’ (18 March 2019) UN Doc CEDAW/C/MMR/CO/EP/1, para 24.

On justice seeking:

- Repeal any laws granting government officials, including military and security officers, immunity for human rights abuses and establish civilian jurisdiction over human rights violations and violations of international humanitarian law.¹⁵
- Disseminate survivor-centric and trauma-informed information on the mechanisms and procedures for seeking remedies for violations of the rights of CRSV survivors, particularly in rural areas.
- Strengthen the gender responsiveness and gender sensitivity of the justice system, including by increasing the number of women in the judiciary and providing systematic training to judges, prosecutors, police officers, and other law enforcement officials on gender issues.
- Enable access to legal aid to CRSV victims and survivors.
- Access to the Rome Statute of the ICC¹⁶ and fully cooperate with investigations carried out by the ICC, the IIMM, with national jurisdictions exercising universal jurisdiction, and with international human rights mechanisms.
- Fully involve women and girls at all stages of the post-conflict reconstruction process, including in decision-making.¹⁷

On the protection of LGBTIQ+ persons:

- Introduce an anti-discrimination law, to explicitly prohibit discrimination of all kinds, including on the basis of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) in all areas of public and private life.
- Legalise same-sex relationships and marriage.

- Introduce the specific offence of “*hate crimes*” into the Penal Code, including appropriate punishments for the perpetrators of hate crimes against LGBTIQ+ individuals and other minorities.
- Introduce a Gender Recognition Law, to guarantee every person the right to have their self-defined gender identity recognised on all official documents issued by the State through a simple administrative procedure based on self-determination.

2. Recommendations to ethnic armed organisations

Bearing in mind that the administrative and judicial systems in place in EAO-controlled areas vary greatly, EAOs should consider the implementation of measures to prevent the commission of CRSV and to provide reparations for CRSV survivors. EAOs should consider taking measures to:

- Not commit acts of sexual violence; publicly commit to addressing acts of sexual violence if they have not done so already.¹⁸
- Hold perpetrators of CRSV to account, as urged by women’s rights organisations and the IIFFMM.¹⁹
- Review administrative and judicial procedures in place for cases of GBV – including CRSV – and ensure their compliance with international standards, including accessibility, effectiveness, non-discrimination, gender equality and inclusion.
- Ensure that administrative and judicial procedures in place for cases of CRSV centre survivors, ensuring that their voices are heard and listened to throughout the procedures.

¹⁵ Ibid para 14.

¹⁶ Ibid para 34.

¹⁷ Ibid para 63.

¹⁸ HRC ‘Detailed findings of the Independent International Fact-Finding Mission on Myanmar’ (16 September 2019) UN Doc A/HRC/42/CRP.5, paras 562-564.

¹⁹ HRC ‘Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts’ (12 September 2019) UN Doc A/HRC/42/CRP.4, para 12.

- Ensure that administrative and judicial procedures do not further traumatise or revictimise survivors, by for example ensuring confidentiality, ethical and safe evidence collection and storage, witness protection, gender sensitivity, and survivor consultation.
- Ensure that compensation awarded to survivors is proportionate to the harm suffered, is provided after consulting survivors themselves and responds to their needs for redress.
- Prohibit amnesties for perpetrators of CRSV in fighting forces.²²
- Ensure that efforts towards peace-building and transitional justice are survivor-centric and GBV-sensitive. In particular, ensure that any efforts to design transitional justice processes are undertaken with the active participation of survivors and with feminist leadership.²³
- Collaborate with civil society actors to promote efforts to memorialise and acknowledge recent and historic cases of CRSV in Myanmar.

3. Recommendations to new and emerging political entities in Myanmar

As discussed above and noted in the Briefing Paper on ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ published anonymously in June 2021, several new political entities have emerged in Myanmar since the February 2021 coup, including the CRPH, NUG, NUCC, CDM, GSC, and the GSCN.²⁰ Such entities, alongside EAOs and ethnic political parties, should make commitments to:

- Advance the development of reparations policies and frameworks, including through the NUG and NUCC’s coordination committees, in line with the “Recommendations to a future civilian-led, democratic federal government in Myanmar” made above.
- Ensure that the NUG and NUCC’s Joint Coordination Committee – Gender Policy, as well as the Transitional Justice Joint Coordination Committee, are fully supported to focus on prevention and a survivor-centred response to CRSV and the provision of reparations, facilitating the meaningful participation of CRSV survivors in strategy design and delivery.²¹

- Ensure “a minimum of [at least] 30 per cent women’s representation in all levels and layers, in addition to dedicated women’s rights representatives”.²⁴
- Follow the example of the NUG with respect to its recent appointments of women with explicitly feminist track records.²⁵
- Establish “dedicated roles or seats for women’s rights representatives in governance mechanisms, and/or a commission or committee that systematically reviews all NUG and CRPH policies and commitments to ensure they are gender inclusive”.²⁶

4. Recommendations to actors in the humanitarian and development sectors

Given the ongoing humanitarian and economic crises in Myanmar, actors in the humanitarian and development sectors will continue to play an important role in providing emergency and longer-term assistance and support to many people in Myanmar, including survivors of CRSV. Such actors should consider taking measures to:

- Prioritise CRSV survivors and mainstream their

20 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021), 13.

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

22 Ibid 16.

23 Interview 16, CSO representative (undisclosed location, 10 May 2022).

24 Anonymous, ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ (June 2021), 16.

25 Ibid.

26 Ibid 15.

needs in their work; ensure that CRSV survivors are identified as priority recipients of assistance and priority participants in livelihood programmes, etc., while being cautious to avoid singling out CRSV survivors in a way that could cause additional stigma.

- Consult CRSV survivors and centre survivors' particular needs and priorities in designing programmes.
- Map and consult local actors in order to understand, utilise, and strengthen local response ecosystems and to coordinate humanitarian protection and referrals to support services for survivors.²⁷
- Engage with inter-agency coordination mechanisms through the UN GBV Sub-Cluster where operational, and at a minimum ensure familiarity with available referral pathways; contribute to the strengthening of referral pathways through the provision of relevant services.²⁸
- Ensure knowledge of and adherence to international standards and best practices for GBV programming – and for working with CRSV survivors in particular – when providing services or funding service provision to survivors.²⁹
- Continue gender mainstreaming and ensuring that assistance is gender-sensitive; exchange relevant knowledge and best practices with CSOs delivering reparative assistance to help ensure the gender sensitivity of related activities.³⁰
- Ensure the security of sensitive data such as case files and survivors' identities;³¹ ensure adherence to international standards and best practices for the ethical and safe collection and sharing of data.³²

5. Recommendations to UN mechanisms and agencies

UN mechanisms and agencies must improve their coordination and joint strategy to effectively respond to widespread CRSV in Myanmar. To this end, the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict should clearly set out its strategy for preventing and responding to sexual violence in Myanmar. In addition, UN mechanisms and agencies should consider taking measures to:

- Ensure that CRSV documentation and reporting efforts are coherent, streamlined, and clear and accessible to CSOs, other relevant actors, and the general public in Myanmar, with referral pathways in place to facilitate survivors' access to support services, while also ensuring confidentiality and a 'do no harm' approach regarding survivors' protection, security, and possible retraumatisation.³³
- Ensure substantive and regular engagement with women's rights organisations to inform trends analysis and CRSV prevention and response.³⁴
- Improve accessibility of all UN reporting channels and support services by using popular communication channels such as Facebook and Signal, and by ensuring that all platforms are safe, as well as multilingual, representing as many of Myanmar's languages as possible.³⁵
- Ensure clear communication to the general public, to survivors, and to civil society actors about how and where to report cases of CRSV, how such reports will be used, and what could (and could not) be the realistic outcome of such reporting.³⁶

27 Ibid.

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

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

30 See AJAR, 'Case Study: Comparative Research on Gender and Reparations in South East Asia: Myanmar' (November 2022), 23 https://asia-ajar.org/wp-content/uploads/2022/12/Case-Study-Comparative-Research-on-Gender-Reparations-in-South-East-Asia-Myanmar_EN.pdf accessed 9 January 2022.

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

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

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

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

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

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

- Ensure that teams involved in projects in Myanmar – and particularly those teams working to document and report on CRSV – include dedicated specialist staff.³⁷
- Clarify and adjust monitoring and verification standards in place for certain kinds of CRSV documentation and reporting, in order to make them more flexible for certain narrow purposes. For example, find ways to rely on and make reference to data that may not be UN-verified (according to human rights standards) but that is verified to appropriate standards for the purpose of publicly recognising the scope of CRSV in Myanmar.³⁸
- Work with new and emerging pro-democratic political entities to safeguard the rights of CRSV survivors, including the right to a remedy, and refrain from providing any political recognition to the military junta.
- Ensure that funding directed to CSOs and NGOs is quality, long-term flexible funding.

6. Recommendations to the international community and donors

The international community should support Myanmar CSOs with funding and technical support, particularly in relation to the implementation of reparation measures to survivors, including CRSV survivors. During possible interim phases leading towards a democratic transition, and in the future if there is a democratic federal system in place in Myanmar, the international community should use their diplomatic and financial leverage to push for an administrative reparation programme, and the recognition of State responsibility and national accountability efforts.

The international community, including members of the Myanmar diaspora, should support CSO reparations initiatives, survivor solidarity networks, human rights documentation and accountability efforts, and transitional justice projects. They should also support legislative review and reform aimed at promoting

gender equality, preventing and adequately redressing CRSV, and guaranteeing non-repetition of the crimes committed by the Sit-Tat and other actors. Given the challenging political and security context in Myanmar, it is critical that donors adapt to the capacity of organisations working in Myanmar by offering flexible funding procedures and reporting mechanisms, as well as resources and technical support to ensure digital security and physical safety. When funding projects to be implemented in Myanmar (or in bordering countries), donors should account for the needs of local CSO staff members for security and for ongoing psychological support, and refrain from providing any political recognition to the military junta.

Specifically, international donors could support, among others, the following kinds of initiatives, which would fill some of the gaps left by duty bearers:

- The establishment and maintenance of safe houses and channels for referrals to support services for all survivors of GBV.
- Projects that respond to the urgent needs of survivors for healthcare services, cash assistance, and livelihood support, among others.
- Projects to provide psychological counselling and other psychosocial support to CRSV survivors and their families in accordance with international standards and best practices. Such projects must involve creative solutions to the challenges of lack of privacy, internet and telecommunications access, confidentiality issues, and language barriers, among others. Counselling could take place in one-on-one or in group sessions, with varying levels of specialisation depending on each survivor's particular needs.
- Programmes focused on improving community solidarity and family relations, and providing access to social workers, may address the violence survivors face in their families, such as domestic violence or marital rape. They may also help address the social stigma and exclusion that survivors often face.
- Initiatives to create and strengthen survivors' solidarity networks through which survivors could support each other.

³⁷ Interview 27, independent expert (online, 29 June 2022).

³⁸ Ibid; Interview 29, representative of UNFPA Myanmar (online, 7 July 2022).

- Programmes focused on women’s empowerment, promoting gender equality, and challenging patriarchal attitudes and cultures of victim-blaming.
- Further documentation efforts on CRSV, carried out in a gender-sensitive, trauma-informed and survivor-centric manner and led by GBV specialists.
- Further research and documentation efforts concerning the impact of GBV – including CRSV – on men and boys and members of the LGBTIQ+ community to identify and address their specific needs.
- Address detention risks, including sexual violence, through funding legal aid providers and entities specialising in support to victims of torture.⁴⁵
- Support the establishment of an independent commission to address GBV as one of the five independent commissions in the proposed governance structure outlined in the CRPH Federal Democracy Charter.⁴⁶
- Carefully distribute the ‘Safe GBV Reporting’ materials designed to support survivor-centred approaches to GBV response.⁴⁷

In addition, the international community should consider the detailed recommendations provided in the Briefing Paper on ‘Recommendations for Effective International Support to Gender Equality and Women’s Rights in Myanmar’ published anonymously in June 2021.³⁹ These include recommendations that the international community:

- Consistently identify and include GBV in human rights reporting and documentation.⁴⁰
- Set new standards for research on and documentation of GBV to ensure survivor-centred approaches.⁴¹
- Support safe journalistic coverage of CRSV, including through providing ‘light-touch’ training on ethical reporting.⁴²
- Support a systems approach to addressing GBV, in part by providing *“long-term, flexible, and core funding for women’s organisations that work on GBV prevention, coordination, and tackling the root causes of violence against women, including behavioural change to dismantle harmful social norms”*.⁴³
- Invest in safe houses (including long-term funding) and strengthen safe house procedures.⁴⁴
- With respect to programme, project, and funds management, the Briefing Paper recommends that international actors: conduct collaborative project or programme reviews; exercise additional flexibility in the use of funds and lighter documentation requirements; re-consider how audits are conducted; find creative solutions to payment difficulties; provide no-cost extensions; allow verbal reporting; seek new means of transferring funds; support organisations with diverse registration statuses; accept and expect shifts in programme content and language; streamline project design processes; and favour international organisations with established programming or prior experience.⁴⁸
- With respect to funding priorities, flows, and mechanisms: prioritise core, flexible funding for women’s rights organisations and initiatives; establish a gender funding target; strategically support secondary funding mechanisms; support private foundations and urgent action funds; avoid ‘steppingstone’ projects by organisations that have not historically worked on gender equality issues; and support both border-based organisations and those inside Myanmar.⁴⁹

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

40 Ibid 3.

41 Ibid.

42 Ibid 10.

43 Ibid 3.

44 Ibid.

45 Ibid 3-4.

46 Ibid 16.

47 Ibid 3.

48 Ibid 4-5.

49 Ibid 6-7.

7. Recommendations to States exercising universal jurisdiction

As discussed above, the investigation and prosecution of CRSV committed in Myanmar by States exercising universal jurisdiction is one possible avenue for CRSV survivors to seek redress. Such States should:

- Actively collaborate with the IIMM.
- Respect and promote survivors' rights in all investigations and judicial proceedings.
- Ensure that specialised units within criminal justice systems have adequate staff, resources, training and expertise to pursue investigations and prosecutions of sexual and gender-based crimes in a survivor-centric and gender-sensitive manner.
- "Adopt an inclusive definition of victim for the purposes of criminal proceedings and properly recognise all victims as such".⁵⁰
- Ensure that specialised units provide all victims identified during the course of investigations, regardless of whether they have made a formal complaint and regardless of where they reside, with information concerning victims' rights.⁵¹
- Strengthen the capacity of general victim support services to enable them to provide information to survivors of CRSV about their rights, refer survivors to specialist support services and, where permitted, assist survivors in accessing legal representation.⁵²

- Improve survivors' access to gender-sensitive specialist support services, provided free of charge, including medical rehabilitation and trauma counselling.⁵³
- Ensure that specialised units "undertake an in-depth individual assessment of every victim to assess their specific protection needs and determine which special protection measures may be able to address those needs during the investigation and any eventual criminal proceedings".⁵⁴
- "[R]emove any obstacles to victims of international crimes accessing services that support enforcement of compensation awards against offenders" or "identify ways to assist victims in enforcing compensation awards against offenders" where such services do not exist.⁵⁵

8. Recommendations to ASEAN

In light of the failure of ASEAN's Five Point Consensus on Myanmar to date, ASEAN should urgently develop a new strategy to stop the ongoing gross human rights violations committed by the illegal military junta, to hold the perpetrators to account, and to promote the transition to a civilian-led, democratic federal government in Myanmar.⁵⁶ ASEAN should consider taking the following steps proposed by the ASEAN Parliamentarians for Human Rights in an open letter to ASEAN and dialogue partners in April 2022:

- "Thoroughly re-consider the role and appointment mechanism of the Special Envoy to Myanmar, in view of the poor record of the previous and current holder of this admittedly difficult position".⁵⁷

50 FIDH, ECCHR and REDRESS, 'Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes' (September 2020), 111 https://redress.org/wp-content/uploads/2020/10/Breaking-Down-Barriers_EN_WEB.pdf accessed 22 September 2022.

51 Ibid.

52 Ibid 120.

53 Ibid.

54 Ibid 125.

55 Ibid 127.

56 ASEAN Parliamentarians for Human Rights, 'Open Letter on the Anniversary of the Five Point Consensus on Myanmar to ASEAN and Dialogue Partners' (24 April 2022) <https://aseanmp.org/2022/04/24/open-letter-on-the-anniversary-of-the-five-point-consensus-on-myanmar-to-asean-and-dialogue-partners/> accessed 13 July 2022.

57 Ibid.

- Impose consequences on the illegal military junta for their criminal actions, including: *“the suspension of Myanmar’s membership in ASEAN; travel bans for Min Aung Hlaing and the members of his State Administration Council (SAC) in the region; targeted sanctions against the leaders of the coup, those responsible for committing crimes against humanity and their economic interests”*.⁵⁸
- *“Immediately and publicly meet with the NUG”* and include representatives of EAOs in further dialogue *“to ensure that all voices are heard”*.⁵⁹
- *“Immediately begin to work with Myanmar’s local community-based and civil society organisations, as well as relevant international agencies, to effectively provide aid directly to the people in need”*,⁶⁰ including to provide gender-sensitive and survivor-centred support to CRSV survivors.

58 Ibid.

59 Ibid.

60 Ibid.



CONCLUSION AND CONCRETE STEPS FOR THE WAY FORWARD

This report has provided an overview of the complex contexts in which conflict-related sexual violence has been committed in Myanmar in recent decades and at the time of writing. The report has sought to shed light on the patriarchal attitudes that underpin the continuum of sexual violence in Myanmar, as well as on the entrenched culture of impunity fostered in particular by the Sit-Tat, which has been overwhelmingly responsible for acts of CRSV in the country. The Sit-Tat's acts of CRSV continue to be part of its broader efforts to extinguish cultural diversity and ethnic minority rights.

Widespread and consistent acts of sexual violence have been documented in Myanmar for at least three decades. The forms of CRSV documented in Myanmar include rapes, gang rapes, mass rapes, genital mutilation, sexual slavery, forced nudity, sexual humiliation, and forced abortion. Many patterns have been repeated across decades and against different ethnic groups, including the Sit-Tat's use of rape as a tactic of war. Since the Sit-Tat seized power in a coup d'état on 1 February 2021, the situation has only worsened, as the illegal military junta has been conducting an ongoing campaign of violence and repression, committing gross human rights violations throughout the country, including CRSV.

CRSV continues to have devastating impacts on victims, survivors, and their families and communities, including impacts on their safety, socio-economic status, and physical and mental health. The serious and often long-term psychological effects of CRSV that survivors experience are exacerbated by the rejection and feelings of shame they face due to social stigma and a pervasive culture of victim-blaming.

In the context of the instability and insecurity of the current political reality and humanitarian catastrophe in Myanmar, many survivors are currently living in precarious situations and struggling to survive. Survivors urgently need the widespread violence to end, and the security situation to improve. Survivors' current needs also include the need for safety and shelter, access to health services, access to psychological support/counselling, and

socio-economic support. Many survivors of CRSV in Myanmar either have a limited awareness about reparations and the right to a remedy, and/or they do not believe that reparations are possible given the current political reality in Myanmar and the absence of the rule of law.

CRSV survivors in Myanmar have very little to no access to reparations, particularly since the February 2021 coup. This report has analysed the relevant local, national, and international legal frameworks, highlighting the many gaps in terms of survivors' access to justice, and identifying possible avenues for interim and full reparations at present and in the future.

This report has discussed many threats to reparations for CRSV survivors, including the ongoing violence and repression of the military and the entrenched climate of impunity in Myanmar. While there are no realistic opportunities for reparations provided by the State in the near future, interim reparations or reparative assistance can be provided by CSOs, with international support. Many Myanmar CSOs have significant pre-existing expertise and a willingness to implement interim reparations projects. Such projects would present an opportunity for CRSV survivors to access interim reparations in the form of safety and protection support, medical care, psychological support, livelihood support, and legal assistance.

The ongoing peace- and democracy-building efforts of activists, CSOs, and new and emerging political entities also present an opportunity with respect to reparations. Such actors can work to centre calls for gender equality, non-discrimination, and the right to full reparations for CRSV survivors as they advocate for a new federal democratic system to be established in Myanmar in the future.

The illegal military junta should retract all claims to control the State and make way for the establishment of a new, civilian-led, democratic and democratically-elected federal system in Myanmar. In the meantime, as a listed party per the UN Security Council mandated CRSV agenda and the 'Joint Communiqué of the Republic of the Union of Myanmar and the United Nations on

Prevention and Response to Conflict-Related Sexual Violence' signed on 7 December 2018, the military should cease its commission of CRSV and immediately take the preventive measures outlined therein.

This Myanmar Study includes key recommendations to relevant actors on reparations which focus on meeting the most urgent needs of survivors and highlight the existing opportunities for relevant stakeholders to ensure CRSV survivors' right to reparation. Several key recommendations relate to improving strategies for ensuring accountability for

CRSV, for example by improving the coordination of documentation efforts. The international community is urged to support the critical work of Myanmar CSOs for CRSV survivors, adapting to the realities of Myanmar's current context. This context is particularly challenging, and the threats to CRSV survivors are serious and manifold. It is therefore all the more urgent and important that relevant stakeholders take immediate action to collaborate with each other and offer their support for interim reparations initiatives to meet survivors' pressing needs and support survivors in exercising their agency.



LIST OF ACRONYMS

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



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