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## Human Rights Council

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Agenda item 4

**Human rights situations that require the Council's attention**

## **Situation of human rights in Myanmar\***

### **Report of the United Nations High Commissioner for Human Rights**

#### *Summary*

In its resolution 46/21, the Human Rights Council requested the United Nations High Commissioner for Human Rights to provide reports on the overall human rights situation in Myanmar, focusing in particular on accountability regarding alleged violations of international human rights and humanitarian law, as well as rule of law and security sector reform since 1 February 2021. The present report was prepared pursuant to that resolution.

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\* The present report was submitted after the deadline in order to reflect latest developments.



## I. Introduction and methodology

1. In its resolution 46/21, the Human Rights Council requested the United Nations High Commissioner for Human Rights to provide oral and written reports on the overall human rights situation in Myanmar, with a particular focus on accountability regarding alleged violations of international human rights and humanitarian law, as well as rule of law and security sector reform since 1 February 2021.
2. The present report covers human rights concerns that the Office of the United Nations High Commissioner for Human Rights (OHCHR) has documented in the period from the seizure of power by the Myanmar military (Tatmadaw) on 1 February 2021 until mid-July 2021. Developments during this period are presented chronologically to illustrate trends and patterns of human rights violations. Supplementary material elaborating aspects of the report is available via a conference room paper. Findings will be further elaborated in a comprehensive report to be presented at the forty-ninth session of the Human Rights Council, as also mandated by Council resolution 46/21.
3. OHCHR does not currently have a presence in or access to Myanmar, despite a commitment made by the Government in 2012 to allow OHCHR to open a country office and repeated calls by the Human Rights Council and the General Assembly. This lack of access has impeded independent in-country monitoring and reporting of the human rights situation, which has become further restricted since the military coup, owing to Internet restrictions (see sect. IV below), access and resource constraints, and threats of reprisals against human rights defenders.
4. Despite these challenges, OHCHR has relied on remote monitoring and credible open sources, supplemented where possible by interviews with individuals, to obtain first-hand information on specific events. Notwithstanding challenges and risks, OHCHR has conducted over 70 interviews with victims and witnesses to human rights violations and has held scores of meetings to collect information from a range of stakeholders. Information and sources have been assessed for credibility, with every effort undertaken to corroborate or verify information.

## II. Context

5. For decades, the Tatmadaw has committed gross human rights violations with impunity, including alleged international crimes against ethnic minorities that have been extensively documented for the Human Rights Council. Detailed recommendations have been made on accountability and security sector reform, but have not been implemented.<sup>1</sup> Following the February coup, the Tatmadaw has systematically unleashed a new level of violence and repression against the people of Myanmar across the country.<sup>2</sup>
6. On 1 February 2021, alleging electoral fraud in the November 2020 elections, Commander-in-Chief Min Aung Hlaing removed the civilian Government, detained the political leadership of Myanmar and declared a state of emergency, vesting all legislative, judicial and executive power in himself. Almost everyone in the country rejected the coup and launched a broad-based, sustained and peaceful civil disobedience and protest movement across the country. In the following months, a human rights crisis ensued, with the steady escalation of attacks against the civilian population as the Tatmadaw sought to suppress opposition and consolidate power. Military authorities abused the legal framework to stifle free expression, enable arbitrary deprivation of liberty, and strip away due process and fair trial rights as they detained thousands of people, in particular activists, journalists and human rights defenders. When nationwide peaceful protests began, military authorities initially used less-lethal weapons in an unnecessary and disproportionate manner and conducted

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<sup>1</sup> See A/HRC/43/18; see also the conference room paper containing detailed findings of the independent international fact-finding mission on Myanmar (A/HRC/39/CRP.2), available on the webpage of the mission ([www.ohchr.org/en/hrbodies/hrc/myanmarFFM/Pages/ReportoftheMyanmarFFM.aspx](http://www.ohchr.org/en/hrbodies/hrc/myanmarFFM/Pages/ReportoftheMyanmarFFM.aspx)).

<sup>2</sup> See also A/HRC/46/56.

neighbourhood raids, creating an atmosphere of terror. This evolved into systematic targeted killings and mass arrests, with torture and ill-treatment causing additional deaths in custody. Progressively, armed resistance emerged, as people formed self-defence groups or started to organize to attack the military. Simultaneously, armed conflict in the border areas of Myanmar has continued and resurged. In both contexts, the Tatmadaw has conducted targeted and indiscriminate attacks against civilians. Combined with a freefalling economy and worsening coronavirus disease (COVID-19) pandemic, the situation in Myanmar has become a human rights catastrophe.<sup>3</sup>

### III. Rule of law

7. Since 1 February, the Tatmadaw has attempted to legitimize its overthrow of the Government by establishing a so-called State Administration Council,<sup>4</sup> led by the military, and by unilaterally amending existing laws to facilitate military rule on an unyielding population. The State Administration Council annulled the 2020 election results<sup>5</sup> in late July 2021, announced its transformation into a “provisional government”<sup>6</sup> with the Commander-in-Chief as Prime Minister on 1 August, and further extended the initial year-long state of emergency until August 2023.<sup>7</sup>

#### A. Instrumentalization of law

8. Within two weeks of seizing power, the State Administration Council effected changes to the Penal Code, the Criminal Procedure Code, the Ward and Village Tract Administration Law and the Law Protecting the Privacy and Security of Citizens, effectively criminalizing both perceived intent and actual criticism of the authorities, and permitting warrantless searches, seizures, arrests, surveillance and interception of communications.

9. Following the issuance of orders under section 144 of the Criminal Procedure Code in 129 townships on 8 and 9 February,<sup>8</sup> the State Administration Council on 13 February suspended protections under the Law Protecting the Privacy and Security of Citizens<sup>9</sup> and amended the Ward and Village Tract Administration Law.<sup>10</sup> Suspension of the provisions of the Law Protecting the Privacy and Security of Citizens removed protections against detentions lasting more than 24 hours (sect. 7) and against warrantless searches, seizures, arrests, surveillance and interception of communications (sect. 8). Changes to the Ward and Village Tract Administration Law require overnight guests to be registered with the authorities (sect. 13 (g)), thereby limiting the protection available to journalists, activists, protest organizers and others who left their homes and habitual places of residence out of fear of arrest.

<sup>3</sup> See the chronology of events in the conference room paper containing supplementary information to the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Myanmar since 1 February 2021 (A/HRC/48/CRP.2), available on the webpage of the Human Rights Council ([www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Pages/ListReports.aspx)).

<sup>4</sup> OHCHR Myanmar Team, “Myanmar in crisis: human rights situation, February 2021”, 11 February 2021, para. 5.

<sup>5</sup> Union Election Communication Notification No. 2/2021.

<sup>6</sup> State Administration Council Order No. 152/2021.

<sup>7</sup> These actions led members of the Union parliament, elected in November 2020, to form the Committee Representing the Pyidaungsu Hluttaw and a National Unity Government to act in opposition to military rule (see sect. IX below). See A/HRC/48/CRP.2.

<sup>8</sup> Prohibiting “unlawful assembly, talks, using vehicles or in persons in marching around, protests, destroying and violent acts”, limiting public assemblies to less than five persons, and curfews between 8 p.m. and 4 a.m. See *Global New Light of Myanmar*, “Section 144 of Criminal Procedure Code imposed in Naypyidaw territory and townships in states/regions”, 10 February 2021.

<sup>9</sup> State Administration Council Law No. 4/2021.

<sup>10</sup> State Administration Council Law No. 3/2021.

10. Additional amendments made on 14 February 2021 to the Penal Code<sup>11</sup> and Criminal Procedure Code<sup>12</sup> expanded the definition of crimes of high treason and sedition (sects. 121 and 124A of the Penal Code), established new non-bailable offences of hindering security forces<sup>13</sup> and civil servants (sects. 124C and 124D of the Penal Code), and introduced new offences relating to public mischief that adversely impact freedom of expression and assembly (sects. 505 (a) and 505A of the Penal Code). Thereafter, broadened definitions of high treason, which include preparations to alter Myanmar by “unconstitutional means”, have formed the basis of charges against leading members of the Committee Representing Pyidaungsu Hluttaw and ministers of the National Unity Government (see sect. IX below). At least 992 individuals have been charged under section 505A, which permits warrantless arrests for criticizing the coup, supporting the Committee Representing Pyidaungsu Hluttaw and/or the civil disobedience movement. Given the overly broad language, anyone deemed to be associated with armed resistance groups could potentially be held liable for sabotaging or hindering security forces in preserving State stability (sect. 124C of the Penal Code). Anyone encouraging government employees to join the civil disobedience movement could be sanctioned under both sections 124D and 505 (a) for hindering officials from carrying out their duties. Legitimacy of their imposition aside, the overbroad and vague wording of the amendments raises serious concerns regarding their compatibility with the principle of legality under international human rights law.

## **B. Subversion of the judiciary and due process**

11. By mid-March, the State Administration Council had declared martial law across six townships in Yangon Region.<sup>14</sup> That was extended to one township in Chin State on 13 May.<sup>15</sup> With the introduction of military tribunals in those areas, regional commanders were authorized to try a range of criminal cases summarily and impose the harshest penalties for each crime, including death sentences, with no right of appeal, in violation of international fair trial standards. Cases against civilians have been tried summarily in military tribunals, with accused persons having no legal representation. As at 15 July, 65 individuals, including 2 children, had received death sentences. Thirty-nine were tried in absentia.

12. In areas without martial law, judicial proceedings have been conducted within prisons, ostensibly to deal with cases pertaining to section 505 of the Penal Code. In so-called prison courts, most detainees have no access to legal counsel, and the small minority who do face significant challenges consulting with their lawyers and presenting evidence and witnesses, raising grave concerns about due process and violations of other fair trial rights. As peaceful protests decrease in scale and incidents involving armed elements rise, these courts have begun trying a broader range of crimes related to armed resistance.

## **IV. Freedom of expression**

13. In seizing power, the Tatmadaw temporarily shut down telecommunications nationwide, including fixed and mobile telephone lines and the Internet. Since then, the State Administration Council has implemented periodic Internet blackouts and imposed increasingly draconian restrictions. These steps have been aimed at controlling and unduly restricting the right to freedom of expression and other human rights. It has additionally limited the flow of information about violations committed by security forces, complicating humanitarian needs assessments and documentation efforts.

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<sup>11</sup> State Administration Council Law No. 5/2021.

<sup>12</sup> State Administration Council Law No. 6/2021.

<sup>13</sup> “Security forces” refers to both military and police forces.

<sup>14</sup> Martial Law Order No. 3/2021.

<sup>15</sup> Martial Law Order No. 5/2021.

## A. Online restrictions

14. Between mid-February and late April, the State Administration Council stifled online civic space by introducing legal provisions criminalizing online activity and sharply curbing access to the Internet, through a combination of nightly shutdowns and progressive suspensions on various forms of data services.

15. Following widespread criticism of a proposed, and thereafter abandoned, cybersecurity bill, military authorities amended unilaterally the 2004 Electronic Transactions Law without any public notice or consultation on 15 February. Broadly worded provisions introduced several new offences criminalizing information-sharing about “social punishment” (sect. 38 (b));<sup>16</sup> journalism deemed critical of military authorities (sect. 38 (c)); the utilization of private networks or encryption services (sect. 38 (d)); and the sharing of information with the international community (sect. 38 (e)). In addition, while ostensibly providing the veneer of personal data protections (chap. 10), amendments confer extensive powers to authorities, allowing them to intercept personal data without any corresponding safeguards. These modifications are overly broad, raising serious concerns about their compatibility with the principle of legality. Furthermore, they fail to satisfy the requirements of necessity and proportionality. Such restrictions do not appear to pursue legitimate aims under human rights law and, as a whole, affect an individual’s right to freedom of opinion and expression, and to privacy.

16. As the scale of protests grew and military responses became more violent, the State Administration Council instituted nightly Internet shutdowns from 1 to 6 a.m., or to 9 a.m., depending on the day, which continued until late April 2021.

17. Following violent crackdowns in Hlaingthaya and Shwepyitha townships, and declarations of martial law across six townships in Yangon Region, military authorities blocked mobile Internet access nationwide on 15 March. Three days later, they suspended public Wi-Fi services. On 2 April, the State Administration Council directives also blocked fixed wireless Internet, leaving only fibre-optic Internet connections open, which cover less than 0.2 per cent of the population, primarily in major urban areas.

18. Nightly Internet shutdowns ceased in late April when the State Administration Council adopted a different method of control: blocking all access to the Internet, except for specific websites or applications, for mobile and fixed wireless Internet users. Those with fibre-optic connections maintained access except for blacklisted websites and applications. On 28 April, mobile Internet was restored for banking and other commercial applications, with fixed wireless service following eight days later. Given the amendments to the Electronic Transactions Law, and the above-mentioned suspension of the provisions of the Law Protecting the Privacy and Security of Citizens, significant risks of ongoing surveillance and interception of phone and Internet-based communications remain, even despite the limited current access.

## B. News media and journalists

19. Within seven weeks of the coup, five independent newspaper publications were closed.<sup>17</sup> By 5 May, the State Administration Council had revoked the licences of eight media outlets,<sup>18</sup> following the warning issued by the Council to media outlets not to refer to it as a “military government”.<sup>19</sup>

<sup>16</sup> This comprises a “name and shame” campaign targeting and publicly identifying families and relatives of high-ranking Tatmadaw officials.

<sup>17</sup> 7Day News, The Voice, Eleven, The Myanmar Times and The Standard Time (San Taw Chain).

<sup>18</sup> Democratic Voice of Burma, Khit Thit Media, Mizzima, Myanmar Now, 7Day News, 74 Media, Myitkyina Journal and Tachileik News Agency.

<sup>19</sup> “Warnings have been issued against the use of military government that staged a coup in news reports, and action will be taken against violators who continue to use such usage in their writings by revoking publishing licences” (*Global New Light of Myanmar*, “Country needs to put energy into reviving country’s ailing economy: Senior General”, 23 February 2021).

20. From 1 February 2021 to 15 July 2021, at least 98 journalists had been arrested at some point, including correspondents from Japan, Poland and the United States of America; another 33 had arrest warrants pending against them. Forty-six journalists remain in detention, 20 of whom have been criminally charged, mostly under section 505 of the Penal Code. Six have been convicted, with sentences ranging from one month to three years.

## V. Right of peaceful assembly

21. Following the coup, the people of Myanmar responded with outrage. Exercising their rights to freedom of expression and peaceful assembly, broad-based demonstrations began throughout cities across the country, starting with nightly campaigns of banging pots and pans from 2 February 2021. That show of peaceful dissent rapidly evolved into a civil disobedience movement, led initially by doctors and nurses who refused to report to work. Drawing support from trade unions and people from all walks of life, the civil disobedience movement grew in strength, culminating in a nationwide general strike on 21 February. Large numbers of civil servants, notably teachers and even government workers, joined in in Nay Pyi Taw. Dozens of peaceful demonstrations involving hundreds of thousands of people took place the first weekend after the coup. Protesters also engaged in musical and other artistic acts to peacefully express their dissent.<sup>20</sup>

22. Police initially relied on less-lethal weapons, including rubber bullets and water cannons, to discourage and disperse peaceful crowds as they grew in size and spread nationwide during the second week of February. On 9 February 2021, in Nay Pyi Taw, police used live ammunition to disperse peaceful protesters, resulting in the shooting of a young female protester who eventually died from a gunshot wound to the head.

23. In parallel, the severe restriction of online civic space by military authorities made it much harder for protesters to assemble. Demonstrations were organized online, and those leading or participating in those demonstrations put themselves at risk of having their mobile telephones searched in random checks by security forces and of arrest.

24. Angered by Tatmadaw efforts to shut down rallies, mass protests intensified. Security forces escalated violence, relying increasingly on lethal force, even employing military tactics and combat-grade weaponry, including semi-automatic rifles, snipers and live ammunition, to disperse peaceful assemblies. In March and early April, the use of lethal and less-lethal weapons led to a dramatic increase in the arbitrary killing and wounding of peaceful protesters, including many children. Particularly illustrative are incidents that occurred in Bago, Hlaingthaya and North Okkalapa Township, and a fourth incident, which occurred on Armed Forces Day.<sup>21</sup>

25. The repression of protests in North Okkalapa Township, in Yangon, on 3 March 2021 by military authorities marked a clear escalation in the use of lethal force. Witness testimony consistently indicated that the use of force was deliberate and intentionally aimed at peaceful protesters. Victims of the security forces often sustained wounds to their heads and torsos, indicating that they had been targeted for maximum harm. Security forces attacked medical equipment and facilities and health workers, including those assisting protesters. On 14 March 2021, large-scale protests erupted in another Yangon township, Hlaingthaya. During the day, several Chinese-linked factories also suffered significant damage from arson and vandalism. Security forces responded to the situation with lethal force, reportedly firing weapons into homes, seemingly at random, conducting raids and arresting those perceived to be anti-military. This continued into the night and during the following days. Over 100,000 residents fled the area over the following week.

26. On 27 March 2021, the State Administration Council-affiliated *Myanmar Alin* newspaper published a warning to young people to learn from earlier ugly deaths that they were in danger of getting shot in the head and back. This echoed verbatim ominous statements made on a military-affiliated television station the previous day.<sup>22</sup> Nonetheless,

<sup>20</sup> See A/HRC/48/CRP.2.

<sup>21</sup> Ibid.

<sup>22</sup> Myanmar Radio and Television broadcasts on 26 March 2021.

demonstrators organized further public protests throughout the country. By that point, opposition activists had adopted mitigation strategies to avoid violence at the hands of the security forces, including using short, “flash mob”-style protests and protesting when security forces were likely to be on breaks. While many demonstrators had no defences, some set up sandbags at protest sites or improvised protective equipment to shield themselves from ammunition. In a few cases, participants had rudimentary weapons, such as slingshots, catapults, firecrackers and, occasionally, Molotov cocktails.

27. Widespread attacks against protesters ensued on 27 March 2021 (Armed Forces Day) in 12 of the country’s 15 states, regions and union territory. In different parts of Myanmar, the military used firearms without warning against peaceful demonstrations. Security forces shot at people who were running away or helping the injured. Multiple credible sources reported a minimum of 130 deaths, the highest daily toll. Almost all deaths were apparently the result of gunshot wounds, many to the head or torso; at least 17 children were killed. One person recounted how the body of their relative, who had been killed by security forces, was later cremated without the family’s consent. Other individuals received calls and visits from the police who were seeking the remains of the deceased – in one case even threatening to exhume a child’s body. The warnings issued the day before the Armed Forces Day incident, the tactics used, the high death toll and the widespread coordination of crackdowns across the country appear indicative of a strategy or planned operation by military authorities that deliberately entailed the use of lethal force to dissuade further demonstrations and consolidate their control nationwide.

28. In Bago on 9 April, security forces surrounded wards where demonstrators had erected roadblocks to protect themselves. Following drone surveillance, they launched attacks, employing grenade launchers and artillery to destroy roadblocks without apparent care for the impact of explosive weapons within a residential area, putting the lives of both protesters and residents at risk. Reportedly, blasts and shrapnel killed at least 82 people. In one documented instance, soldiers fired upon an injured protester who was being taken away for medical attention. It was widely reported that security forces occupied a pagoda, using the premises as a repository for dead and injured persons. Requests by monks and local medics to treat the injured were denied.

29. Peaceful protests should be respected and ensured. Should it become necessary to disperse such assemblies, pursuant to a legitimate law enforcement purpose, all reasonable attempts should be made to have participants do so voluntarily. Force should be used only if absolutely necessary and to the minimum extent required. Any use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination. Firearms must not be used by law enforcement officials in the context of assemblies, unless under circumstances it is strictly necessary to do so to protect life or prevent serious injuries against imminent threats and only against individuals representing such threats. The actions of the Myanmar security forces are in clear contravention of these standards and therefore amount to violations of the rights to life and peaceful assembly. Many of the deaths reported, if found to be part of a widespread or systematic attack directed against a civilian population, may further amount to crimes against humanity.

## **VI. Prohibition against torture and ill-treatment, and the right to liberty and security of person**

30. Between 1 February and 15 July 2021, the State Administration Council detained at least 6,493 individuals: at least 655 in February; 2,023 in March; 1,025 in April; 826 in May; 430 in June; and 136 from 1 to 15 July. As at mid-July, only 2,924 of those arrested had been released.<sup>23</sup>

31. There is a discernible pattern to the ongoing arrests and detentions carried out by the State Administration Council. In the first hours of the coup, the Tatmadaw detained the country’s political leadership and hundreds of parliamentarians who had gathered for the opening of the new Parliament. Around the same time, members of the outgoing national and

<sup>23</sup> See A/HRC/48/CRP.2.

regional governments and other politicians were also targeted. Given the Commander-in-Chief's allegation of electoral fraud as a pretext for seizing power, scores of Union Election Commission officials were also arrested, as were dozens of civil society activists.

32. As young people mobilized to demonstrate peacefully against the takeover, mass arrests of students soared over the following month. From the middle of April to the end of May 2021, the State Administration Council published daily lists of individuals wanted for arrest pursuant to section 505A of the Penal Code. Those lists primarily comprised Myanmar celebrities, artists, doctors, educators, nurses and others who were critical of the coup, expressed support for the Committee Representing Pyidaungsu Hluttaw or participated in the civil disobedience movement, and they clearly targeted those with influence in galvanizing protests and strikes. Journalists were consistently targeted by the Council: over the first three months of the coup, around 30 media workers were either detained or named in lists of people wanted by the military authorities each month. Military authorities have also taken at least 93 family members into custody in lieu of wanted individuals, presumably to pressure those in hiding to surrender.

## **A. Arbitrary arrest and detention, torture and deaths in custody**

33. From the foregoing, it is apparent that individuals have been deprived of their liberty for exercising their rights to participate in public life and to freedom of opinion and expression. Although the Tatmadaw has attempted to cloak mass detentions relying on newly promulgated legal provisions, proceedings in both military tribunals and so-called prison courts have failed to meet due process or fair trial standards (see sect. III.B). Since the coup, a vast majority of the deprivations of liberty were carried out without respect for the rule of law and imposed in procedures that did not observe international human rights standards, therefore constituting arbitrary and unlawful detention.

34. In some cases, arrested individuals were sent first to police stations, before being transferred to military interrogation centres and/or prisons. Credible reports have been received in several cases alleging that security forces sexually assaulted detainees, both male and female, including one person from the lesbian, gay, bisexual or transgender community, while in custody at police stations.

35. Some detainees have been taken to military interrogation centres for varying durations before transfer to prisons. Credible reports indicate that security forces in these facilities consistently used interrogation techniques that might amount to torture. Descriptions of treatment generally involve being blindfolded, handcuffed, beaten, and deprived of water, food and sleep for two to three days during interrogation. One individual was made to kneel for almost the entire period and suffered cigarette burns on the knees; another was made to kneel and was asked to choose between a gun or knife, which was then pointed at their head during questioning. Military authorities have also broadcast on military-controlled television footage of detainees with visible injuries, allegedly suffered while in detention.

36. Detainees' relatives received no information about the fate or whereabouts of family members, in particular during the first weeks of the coup. It appeared that in most cases, there was not even any official acknowledgement by the State Administration Council of those detentions. Such detentions may constitute enforced disappearances.

37. At least 50 detention-related deaths have been reported. Some individuals suffered injuries during arrests or raids, or at checkpoints, after which they were reportedly denied access to medical treatment. Deaths in custody have occurred in various regions; at least six reportedly occurred in Pyay District, Bago Region, which represents the highest number in a single district. Four of those who died in custody were reportedly members of the National League for Democracy. Several families stated that they received telephone calls from police the day after the arrest of their relatives, instructing them to go to a military hospital where they were able to briefly see the body prior to cremation. In other cases, authorities reportedly conducted cremations prior to informing families of the deaths. Where family members were permitted to collect or see the bodies, many showed visible signs of injuries, including bruising, broken noses and ribs, head injuries, sewn-up incisions and burn marks. Families



received no information concerning any medical examinations conducted during detention or of any subsequent investigation into causes of death.

38. On 1 February 2021, military authorities began arresting and detaining elected officials, protesters and journalists, before broadening their net to include anyone suspected of opposing the State Administration Council. Given that those detained appear to have been participating in the legitimate exercise of their human rights, the arrests and detentions are to that extent arbitrary, violating the right to liberty and security of person. If committed as part of a widespread or systematic attack directed against the civilian population, these detentions may further amount to crimes against humanity. In addition, ill-treatment in detention causing physical pain or mental suffering to the victim, and in some cases leading to deaths in custody, are violations of the right to life and the prohibition of torture or other cruel or inhuman treatment. In that respect, they also potentially amount to international crimes.

## **B. Children**

39. Children have also been subject to arbitrary detention and processed through military interrogation centres. While some children were taken into custody at the same time as their parents, others were not. In these latter cases, parents do not discover their child's whereabouts until they are contacted by the police – typically, following the child's interrogation at military facilities – to present documents certifying the child's age. Such detention, which often lasts days, combined with the concealment of the whereabouts of the child, amounts to enforced disappearance. Children have also allegedly been subjected to torture and ill-treatment while in the State Administration Council's custody.

40. In Yangon Region, children charged with offences have been tried at the juvenile court, except for those from townships where martial law is imposed, and in South Okkalapa and Thingangyun townships, where cases have been tried in township courts with judges sitting as juvenile court judges. These proceedings have reportedly focused on securing convictions, with children pressured to confess. As part of a larger release of prisoners on 30 June, authorities required children charged under section 505 of the Penal Code to sign personal undertakings prior to their release, pledging not to reoffend. Some children remain in juvenile correction facilities.

41. In the light of the foregoing, the detentions and judicial proceedings against children in such cases are not compatible with international human rights law, including the Convention on the Rights of the Child, to which Myanmar is a party.

## **VII. Growing insecurity and expanding armed conflicts**

42. Myanmar has faced multiple armed conflicts for decades, and following the coup, armed violence exponentially increased around the country. Armed conflicts between the Tatmadaw and ethnic armed organizations, which existed prior to the coup in different states and regions of Myanmar, have continued, intensified and reignited. Separately, armed resistance has emerged, including in urban areas, comprising numerous new armed elements. Tatmadaw responses to these groups have led to serious violence in areas that had not previously seen conflict between the Tatmadaw and ethnic armed organizations. From April, increasing numbers of killings and explosions created insecurity in different parts of the country. There are several areas where ethnic armed organizations and new armed elements are fighting together. Civilians continue to be targeted by the Tatmadaw through its long-held "Four Cuts" strategy, which aims to restrict enemy access to funding, food, intelligence and recruits.<sup>24</sup> By implementing such a policy against the population across many areas of the country, Myanmar is violating a range of human rights and international humanitarian law in certain situations.

<sup>24</sup> See, e.g., A/HRC/39/64.

## A. Emerging armed resistance and other retaliatory action

43. Use of lethal force against peaceful protesters and night raids on communities by security forces have prompted some opponents of the coup to take up arms. Armed elements began to form in many areas of Myanmar, some of which grew out of community-based neighbourhood watch movements or local formations demanding detainee release or trying to protect demonstrators. Others banded together to launch attacks against security forces to secure control of their local areas. Some members of these groups and other individuals have undertaken forms of military training, in some cases provided by established armed groups.

44. After the Committee Representing Pyidaungsu Hluttaw declared that any responses to the State Administration Council's violence were legitimate self-defence, the National Unity Government announced its People's Defence Force in early May 2021, as a forerunner to the "Federal Democratic Armed Forces". Thereafter a number of newly formed armed elements throughout Myanmar publicly aligned themselves with the National Unity Government. On 26 May, the National Unity Government issued a code of conduct for its People's Defence Force, including provisions on key international norms (see sect. IX below). To date, however, the National Unity Government does not appear to have control over the multitude of groups, including those who have and have not declared their allegiance. These new armed elements differ in size; training; equipment; affiliation; levels of organization, including command structures; and capacity to conduct attacks. From mid-May 2021, pro-military armed elements called Pyu Saw Htee also formed across the country, some of which the Tatmadaw reportedly had trained.

45. Armed clashes between these groups and security forces have occurred in at least 12 states, regions and union territory,<sup>25</sup> with particularly intense fighting occurring in Sagaing Region, and in Chin and Kayah states. In several instances, the Tatmadaw launched punitive reprisals against local communities after skirmishes with defence groups, or during searches, leading to killings or injuries and forced displacement.

46. In Sagaing Region, armed elements have launched attacks in several locations since early April 2021, precipitating a steady deterioration in the situation. In early July, Tatmadaw units deployed heavy weapons and guns in Kani and Depayin townships, killing scores of individuals, some after arrest and some of whom were alleged to be members of armed elements. Fighting has displaced 5,000 civilians to religious sites or jungle areas and neighbouring India.

47. In Chin State, the Chinland Defence Force has attacked the Tatmadaw in several townships. In Mindat Township, after declaring martial law on 13 May 2021, Tatmadaw units assaulted the town using artillery and 15 people as human shields. At least five civilians were killed and more than 50 were injured. In addition, civilian buildings were damaged, and thousands of residents were displaced. Security forces trapped other civilians in the town, after reportedly cutting off their water and electricity. In early June, fighting in nearby villages forced some internally displaced persons into secondary displacement. Reportedly, the Tatmadaw also fired on internally displaced person camps marked with white flags, and restricted humanitarian access. Armed clashes in other townships have resulted in at least seven reported civilian deaths.

48. Members of local defence groups and ethnic armed organizations formed the Karenni Nationalities Defence Force. In late May 2021, they seized control of several police stations and Tatmadaw bases in Demoso and Loikaw townships of Kayah State and Pekon Township in southern Shan State. Tatmadaw units deployed heavy weapons and conducted air strikes in populated areas, resulting in over 55 reported civilian deaths. Remains found in school grounds and other locations after the fighting subsided in June 2021, included 22 bodies found with their hands bound, suggesting they had been summarily executed. Tatmadaw troops occupied, destroyed, burned and looted civilian objects, including schools and religious buildings. One such building was sheltering elderly people, resulting in eight reported deaths. Over 108,000 civilians fled to religious sites and the jungle, with little access

<sup>25</sup> See A/HRC/48/CRP.2 for the related map.

to food, medicine and shelter. Tatmadaw forces also restricted humanitarian access and allegedly burned rice intended for internally displaced persons.

49. Rising criminality, targeted killings and the use of explosive devices by unidentified actors have also exacerbated insecurity. Over 130 persons have allegedly been killed and others injured since May 2021, mostly resulting from shootings or stabbings. A majority of those targeted were said to have been current or former ward and village administrators, or suspected military informants. Thus far, anti-military elements have publicly claimed responsibility in approximately a dozen cases. In several cases, unidentified perpetrators, some reportedly linked to Pyu Saw Htee, have killed members of the National League for Democracy and other political figures using similar methods.

50. Since April 2021, there has been an increase in the number of explosions occurring close to structures that seem to be affiliated with the military, including administrative buildings, checkpoints and police stations, as well as education facilities, ahead of the reopening of schools by the State Administration Council. Improvised explosive and incendiary devices of varying degrees of sophistication have been identified as the causes, resulting in deaths or injuries in some cases.

51. In any situation amounting to a non-international armed conflict,<sup>26</sup> international humanitarian law applies, in addition to international human rights law. In particular, common article 3 to the Geneva Conventions and applicable rules of customary international humanitarian law apply to military forces and armed groups that are parties to the conflict. The above-mentioned incidents involve violations and abuses of the right to life, the right to liberty and security, the right to freedom from arbitrary arrest and detention, and the rights to food, housing, education and health, among others. Some incidents detailed above could be violations of international humanitarian law applicable in armed conflict and may amount to war crimes.

## **B. Armed conflict between Myanmar security forces and ethnic armed organizations**

52. Pre-existing armed conflicts between the Tatmadaw and ethnic armed organizations in different states and regions of Myanmar have continued or re-emerged since 1 February 2021. While Rakhine State saw significant violence throughout most of 2020, a fragile ceasefire that started in late 2020 between the Tatmadaw and the Arakan Army has continued to date. In other areas that have been less volatile in recent years, notably Kachin and Kayin states, hostilities have resurged. Regular, credible reports indicate that several parties to the armed conflict have not respected their obligations to protect civilians in accordance with international human rights law and international humanitarian law. In particular, the Tatmadaw has continued to conduct attacks in which it appears they are directly targeting civilians and civilian objects, or which were carried out indiscriminately, in flagrant disregard of civilian populations.<sup>27</sup> Landmines also continue to kill and injure civilians and affect livelihoods and humanitarian access.

53. As noted previously, wherever a non-international armed conflict exists, international humanitarian law applies in addition to international human rights law. As a result, all parties to the conflict are required to take constant care to spare civilians and civilian objects, including by taking all feasible precautions to avoid, and in any event to minimize, loss of civilian life and damage to civilian objects. Some violations of these obligations, including the deliberate targeting of civilians, the use of human shields, forced displacement and the

<sup>26</sup> According to the International Committee of the Red Cross, non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization (International Committee of the Red Cross, “Commentary of 2016 – article 3: conflicts not of an international character”, para. 423).

<sup>27</sup> See, e.g., A/HRC/39/CRP.2 and A/HRC/42/50.

attacking of civilian objects – unless required for the security of the civilians involved or justified by imperative military necessity – may amount to war crimes.

## 1. South-eastern Myanmar

54. Following several years of relative peace, after the Karen National Union signed a ceasefire agreement with the Tatmadaw in 2012, skirmishes broke out in south-eastern Myanmar in late 2020. By January 2021, 4,000 people had been newly displaced, in addition to around 131,000 people in protracted displacement and nearly 97,000 refugees along the Thailand-Myanmar border.<sup>28</sup> Sporadic armed clashes continued after the coup.

55. A significant escalation in hostilities occurred after 27 March 2021, when the Karen National Liberation Army captured a Tatmadaw base in Hpapun District, Kayin State. In apparent retaliation, the military carried out air strikes in Kayin State and Bago Region for the first time in over two decades, killing and injuring civilians, triggering displacements, and damaging or destroying schools, civilian property and livelihoods. Some of these air strikes were carried out in areas with no apparent military objectives.<sup>29</sup>

56. Hundreds of armed clashes were reported by mid-May<sup>30</sup> and the use of artillery by the Tatmadaw reportedly resulted in civilian injuries, destruction of property, damage to a health clinic, looting and displacement. There are credible reports of two extrajudicial executions by the Tatmadaw. In June, media affiliated with the State Administration Council alleged the Karen National Defence Organization of the Karen National Union had abducted 47 civilians and killed 25 of them; the others managed to escape.<sup>31</sup> The Karen National Defence Organization reportedly claimed they had released the civilians and that the remaining 25 individuals were soldiers, some of whom had been shot. On 16 June, the Karen National Union stated that it was investigating the incident.

57. As at 12 July 2021, around 47,600 people were newly displaced in Kayin State<sup>32</sup> in temporary shelters or caves. The livelihoods of persons who have not been internally displaced have also been affected owing to travel restrictions, insecurity, COVID-19 or obstruction by the Tatmadaw of humanitarian deliveries.

## 2. Northern Myanmar

58. While there had been relative peace in Kachin State since 2018, some approximately 95,000 people remain in situations of protracted displacement. Since the Kachin Independence Army attacked a Tatmadaw base in Hpakant Township on 11 March 2021, there has been fighting between the Tatmadaw and the Kachin Independence Army across up to 14 townships of Kachin State, northern Shan State and northern Sagaing Region.

59. Fighting intensified from late March when the Kachin Independence Army regained a strategic mountaintop base near Momauk Township. Tatmadaw forces regularly launched air strikes and artillery attacks from its bases near Myo Thit and Konlaw villages, mostly towards the Kachin Independence Army mountain bases. There were also indiscriminate attacks in populated areas causing civilian casualties, damage to civilian property, including religious sites, and displacement. No advance warnings of the attacks appeared to have been given. In an incident that occurred on 11 April 2021, after attacks by the Kachin Independence Army on military bases near Myo Thit, the Tatmadaw carried out air strikes and indiscriminate artillery barrages that killed three civilians and reportedly damaged many civilian objects. On 3 May 2021, the Tatmadaw and the Kachin Independence Army reportedly exchanged artillery fire near Konlaw, with shells hitting a monastery sheltering

<sup>28</sup> Office for the Coordination of Humanitarian Affairs, “Myanmar humanitarian update No. 3”, 27 January 2021; and “Humanitarian needs overview: Myanmar”, January 2021, p. 18.

<sup>29</sup> See A/HRC/48/CRP.2.

<sup>30</sup> Office for the Coordination of Humanitarian Affairs, “Myanmar: humanitarian snapshot”, 18 May 2021.

<sup>31</sup> *Global New Light of Myanmar*, “KNDO abducts innocent 47 workers, brutally kills 25 persons”, 14 June 2021.

<sup>32</sup> Office of the United Nations High Commissioner for Refugees, “Myanmar emergency overview map”, 12 July 2021.

civilians. A woman, man and monk were killed and four people seriously injured, including a child. The use of human shields and forced labour by the Tatmadaw has also been reported in Kachin State, as have incidents of forced recruitment by the Kachin Independence Army, including of children. As at 12 July 2021, at least 7,800 people were displaced across Kachin State,<sup>33</sup> with most sheltering in monasteries and churches.

60. Armed conflicts across different areas of Shan State between ethnic armed organizations, as well as with the Tatmadaw, have resulted in recurrent human rights violations over many years. In northern Shan State, around 10,000 internally displaced persons have been living in camps since 2011. Of the 17,700 displaced in 2021, around 3,350 people remain unable to return owing to property damage, insecurity and landmines.<sup>34</sup> Violations and abuses include the Tatmadaw's alleged use of human shields and forced labour; abductions by the Restoration Council of Shan State, the Shan State Army-North and the Ta'ang National Liberation Army; and forced recruitment and forced labour by the latter two groups. In one incident, the Restoration Council of Shan State abducted and possibly subjected Ta'ang men from Mansa village in Namtu Township to enforced disappearance, and they burned houses and buildings used for food and animal storage after villagers fled owing to clashes between the Restoration Council of Shan State and the Ta'ang National Liberation Army. Reportedly, the Restoration Council of Shan State had stationed troops in the village.

### 3. Western Myanmar

61. Although armed conflict between the Arakan Army and the Tatmadaw has been paused in Rakhine and Chin states since late 2020, landmines and other explosive devices have caused 12 civilian deaths and 30 injuries as at June 2021.<sup>35</sup> Furthermore, over 80,000 people remain displaced across northern and central Rakhine State. They are unable to return home owing to landmines, the ongoing presence of armed groups, and fear of resumed conflict, exacerbating concerns for loss of livelihoods and food sources for the coming year.

62. Meanwhile, approximately 600,000 Rohingya in Rakhine State remain in dire circumstances. Previously reported human rights violations and abuses were not addressed and appeared to continue, including in areas where the Arakan Army has expanded its administrative presence. Allegations include unlawful killings, arbitrary arrest and detention, and reportedly high levels of extortion. Since February 2021, the State Administration Council reinstated a policy prohibiting travel without documentation within Myanmar, leading to about 80 Rohingya, the majority of whom are children, being sentenced for up to two years' imprisonment, and over 60 individuals currently standing trial. Owing to entrenched and systemic discrimination, concerns about access to health care disproportionately affect the Rohingya, resulting in, inter alia, preventable deaths of children from acute watery diarrhoea. Over 130,000 persons, mostly Rohingya, remain detained in camps in central Rakhine State, where they have been since 2012. Ongoing attempts to close these camps under the national strategy, starting with Kyauk Ta Lone camp, failed to meet international standards and best practices, without meaningful consultations or efforts to address structural issues having taken place. Conditions conducive to the voluntary, safe, dignified and sustainable return of Rohingya refugees from Bangladesh are clearly not yet in place.

## VIII. Economic and social rights

63. Events following the coup have had an immeasurable impact on enjoyment of economic and social rights of the population. The economy has been crippled, largely because of mass worker strikes, including in the banking, transport and logistics sectors. Banking is almost at a standstill, severely limiting people's access to cash and rendering

<sup>33</sup> Ibid.

<sup>34</sup> Office for the Coordination of Humanitarian Affairs, "Myanmar humanitarian update No. 8", 24 June 2021. Figures for 2021 include two townships in southern Shan State.

<sup>35</sup> United Nations Children's Fund, "Landmines/ERW incidents information (2021)", factsheet, July 2021.

businesses unable to make or receive payments. Disruptions in the banking system have also reduced remittance inflows, which provided an important source of income for millions of households. Strikes by transport and logistics workers also disrupted essential imports and exports, triggering price increases for fuel and food, which has particularly hit poorer households, amplifying their vulnerability and food insecurity.<sup>36</sup> Internet restrictions have stifled the emerging digital economy, including mobile money, e-commerce and online delivery services. Additionally, supporters of the civil disobedience movement, and subsequently the National Unity Government, called for boycotts of goods and services linked to military-owned conglomerates, which reportedly led sales to plummet by 80 to 90 per cent for some brands.<sup>37</sup>

64. Business and investor confidence collapsed with the coup, devastating employment and livelihoods for many, particularly internal migrant workers. Several major international companies withdrew or suspended sourcing from Myanmar, and many factories closed. By April 2021, around 200,000 garment workers, predominantly women, had reportedly lost employment, as had 300,000 to 400,000 construction workers. Agricultural producers' livelihoods have also been strained as harvesting became difficult, owing to disruptions in transport and logistics; increased insecurity in conflict-affected areas; and increases of up to 52 per cent in the price of agricultural inputs, such as fertilizers and pesticides.<sup>38</sup>

65. Access to education, already severely disrupted by school closures related to COVID-19, became impossible for almost 12 million young people. In addition to mass sanctions and arrest warrants against teachers, educational facilities became the target of attacks, including arson and explosions of improvised explosive devices, depriving children of a safe learning environment. Between 1 February and 31 May 2021, there were 102 incidents of violence or obstruction of education by different actors reported, including 15 incidents of military use of education facilities.<sup>39</sup> While the State Administration Council forced schools to reopen on 1 June 2021, most students refused to attend, signalling the virtual collapse of the education system.

66. Similarly, the health system, already fragile owing to lack of infrastructure investment and insufficient workforce, collapsed following the coup. Most public hospitals closed as health workers went on strike and were subsequently arrested. Many people have been reportedly unable to access health care because they were afraid to visit, were refused treatment in military hospitals or could not afford private treatment. Furthermore, health facilities, personnel, transport and supplies were attacked by security forces, in grave violation of the right to health. The World Health Organization recorded 248 attacks between 1 February and 30 June 2021.<sup>40</sup> Multiple sources attributed the vast majority of incidents, including shootings targeting health workers and ambulances assisting injured protesters, to security forces.

67. The collapse of the health system has had devastating consequences for the COVID-19 response in Myanmar, which is ill-equipped to test, monitor, treat and prevent infections, and new cases have risen alarmingly since May 2021. There were mounting reports of deaths due to lack of medical oxygen, as many patients were denied access to treatment at hospitals and the State Administration Council reportedly restricted sales of oxygen to individuals.

68. In northern, western and south-eastern Myanmar, escalating hostilities between the Tatmadaw and ethnic armed organizations and growing insecurity triggered significant increases in internal displacement, as already discussed. Affected communities lacking access to food, health care, shelter, safe drinking water and sanitation facilities have been at risk of disease, and in dire need of humanitarian assistance. Despite this, humanitarian actors faced considerable obstacles in providing vital assistance owing to restrictions put in place

<sup>36</sup> World Food Programme, "Myanmar: analysis of the economic fallout and food insecurity in wake of the takeover", April 2021.

<sup>37</sup> See [www.re-course.org/wp-content/uploads/2021/06/ALTSEAN-IFI-Watch-Recourse-Junta-Economy-0621.pdf](http://www.re-course.org/wp-content/uploads/2021/06/ALTSEAN-IFI-Watch-Recourse-Junta-Economy-0621.pdf) (p. 3).

<sup>38</sup> International Food Policy Research Institute, "Monitoring the agri-food system in Myanmar", July 2021.

<sup>39</sup> Insecurity Insight, "Violence against or obstruction of education in Myanmar: February–May 2021".

<sup>40</sup> World Health Organization, Surveillance System for Attacks on Health Care.

by the military on movement and access in many areas, and disruptions in the banking sector and supply chains. Owing to displacement, some internally displaced persons have been unable to plant crops, with attendant risk to future food security.

69. Myanmar is increasingly at risk of collapse, as its economic, education, health and social protection systems have been shattered as a result of the coup. Double shocks of the COVID-19 pandemic and the coup are projected to almost double the poverty rate from 24.8 per cent in 2017 to 48.2 per cent by early 2022.<sup>41</sup> The impacts of the coup are estimated to put an additional 1.5 million to 3.4 million people at risk of food insecurity.<sup>42</sup>

## IX. National Unity Government

70. Facing the violence of the Tatmadaw, people from all communities in Myanmar have rejected the coup with near universality and demanded respect for their rights and for the 2020 election results. Following the coup, nearly 300 parliamentarians of the National League for Democracy who were elected in November 2020 established the Committee Representing Pyidaungsu Hluttaw. The group intended to act as the national Parliament and to provide political leadership as the legitimately elected representatives of the people of Myanmar. While there is significant support for the Committee and its legitimacy, civil society criticized the interim cabinet as insufficiently inclusive.

71. On 31 March, the Committee Representing Pyidaungsu Hluttaw published a federal democracy charter elaborating its objectives and political road map, listing as charter members elected parliamentarians, political parties, the civil disobedience movement, general strike committees, women, young people, other civil society organizations and ethnic armed organizations. In a significant departure from the 2008 Constitution, wherein rights are tied to citizenship, it stated that every person living in Myanmar was entitled to fundamental human rights, and that ethnic minorities had full rights as individuals and as ethnic groups.

72. On 16 April 2021, the Committee Representing Pyidaungsu Hluttaw announced the formation of the National Unity Government headed by President Win Myint and retaining Aung San Suu Kyi as State Counsellor, notwithstanding both still being in detention. Thereafter, the National Unity Government established ministries for federal union affairs; women, young people and children's affairs; and human rights.

73. On 26 May, the National Unity Government issued a code of conduct for its People's Defence Force, which included provisions on key international norms of non-discrimination and protection of civilians, including prohibition of attacks on civilian infrastructure such as schools, and barring the torture of detainees, the taking of civilian hostages, and sexual abuse against women and children. Other human rights aspects, however, were not addressed in the code of conduct, including such serious long-standing issues as forced recruitment, child recruitment and landmine usage.

74. Another notable policy statement of the National Unity Government, issued on 3 June, is set out in its position paper regarding the Rohingya. While it acknowledges past gross rights violations perpetrated against them, pledges to seek justice and accountability for perpetrated crimes and undertakes to abolish the process for issuing national verification cards, the policy is mostly a statement of principles for addressing the situation in Rakhine State rather than addressing long-standing State persecution of the Rohingya.

## X. Conclusions and recommendations

**75. The coup has evolved into a human rights catastrophe that shows no sign of abating. The present report has outlined numerous human rights violations and abuses,**

<sup>41</sup> United Nations Development Programme, "COVID-19, coup d'état and poverty: compounding negative shocks and their impact on human development in Myanmar", 30 April 2021, p. 14.

<sup>42</sup> World Food Programme, "Myanmar: analysis of the economic fallout and food insecurity in wake of the takeover".

as well as violations of international humanitarian law, some of which may amount to war crimes. Some violations may also amount to crimes against humanity if they are found to have been committed as part of a widespread and systematic attack against the civilian population. There is no sign that the military authorities will consider addressing these violations or implement previous recommendations to tackle impunity and security sector reform. For this reason, the international accountability efforts that have been supported by the Human Rights Council must be pursued and enhanced.

76. Member States must act urgently to prevent a further disintegration of the situation in Myanmar into a nationwide armed conflict or State collapse. At the same time, the international community should support and foster inclusive politics that have emerged during the crisis that transcend the country's historical cleavages concerning ethnic and religious differences.

77. The High Commissioner for Human Rights recommends that:

(a) The country's military cease immediately all violence and attacks against the population of Myanmar in all parts of the country, cease its efforts to impede humanitarian assistance, release all political detainees and respect the results of the 2020 elections;

(b) The country's military, armed organizations and groups fully respect human rights and comply with international humanitarian law, as applicable;

(c) The National Unity Government ensure its actions, policies and programmes are based on broad, inclusive consultation fully respecting international human rights law, especially its principles of accountability, equality and non-discrimination;

(d) The international community stand united against the coup and act in a coordinated manner to prevent sales of arms or provision of military assistance to Myanmar, ensure accountability for all international crimes and human rights violations, and work with all stakeholders towards national dialogue and respect for human rights and international humanitarian law;

(e) Members of the Association of Southeast Asian Nations expedite effective and meaningful implementation of the five-point consensus reached, including by deploying an observer team to Myanmar, potentially by empowering the intergovernmental commission on human rights of the Association of Southeast Asian Nations and/or by collaborating with the United Nations, including OHCHR.