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**MARCH 2022**

# ADDRESSING CONFLICT-RELATED SEXUAL VIOLENCE THROUGH MULTILATERAL SANCTIONS

## Learning from Myanmar<sup>1</sup>

### **POLICY RECOMMENDATIONS**

#### **Myanmar recommendations**

The Tatmadaw lack popular support and enforce their feeble hold on power through brutal repression. To weaken the Tatmadaw, the international community and individual governments should seek to deny them three key resources: weaponry, economic funds, and legitimacy.

#### *For Member States*

1. Consult with civil society activists for guidance on implementing targeted sanctions. To ensure that sanctions are as effective as possible without adversely impacting civilian populations, policymakers must consider local complexities and attitudes. This approach includes both a review of existing mechanisms for gathering information and active and intentional outreach to local stakeholders before action is taken.
2. Increase humanitarian aid and ensure that it is distributed to civil society organizations in consultation with local actors, especially recognizing the key role of women peacebuilders in facilitating change.<sup>2</sup> This is particularly pertinent in light of reports that between 2018 and 2021, the UN Refugee Agency shared Rohingya refugees' data without their consent, which ultimately ended up with Myanmar's government.<sup>3</sup>
3. Continue coordinated implementation of targeted sanctions against military businesses and assets connected to Tatmadaw human rights violators, consistently including conflict-related sexual violence as a stand-alone criterion for designation. Working with partner states to increase effectiveness, states must continue to impose sanctions on repeat offenders of human rights in Myanmar. Conflict-related sexual violence should be included as an equal offense to other crimes against humanity to fully represent the scope of the atrocities committed by the Tatmadaw.
4. Utilize human rights-based sanctions regimes and avoid actions that recognize or imply that the Tatmadaw is the legitimate governing authority of Myanmar. The Canadian government, for example, almost ex-

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clusively uses the Special Economic Measures Act when issuing sanctions. Canada should continue to sanction the Tatmadaw, but instead use the Justice for Victims of Corrupt Foreign Officials Act—the specific human rights framework for non-state actors—to indicate that it does not recognize the Tatmadaw as a legitimate state actor.

5. Deny legitimacy to the military junta. By refusing to be photographed with leaders of the junta or to coordinate with them, individual states can limit the Tatmadaw’s influence and legitimacy both in and outside of Myanmar.
6. Recognize and support the National Unity Government (NUG) and its related entities, the Committee Representing Pyidaungsu Hluttaw and the National Unity Consultative Council, as the legitimate authority of Myanmar. By engaging with and recognizing the NUG, governments can empower pro-democracy forces and secure delivery of humanitarian resources.

7. Support The Gambia’s case at the ICJ that charges Myanmar with violating the Genocide Convention in their treatment of the Rohingya to support international justice and accountability for violations of human rights, including, but not limited to, sexual violence.<sup>4</sup>
8. Adopt responsible business reporting requirements for domestic companies to file publicly available due diligence reports when meeting a threshold of business, activity, or investment in Myanmar.<sup>5</sup> These policies can be modeled after the US *Burma Responsible Investment Reporting Requirements* that require US companies to report on their investments in Myanmar as they relate to human rights, labor rights, corruption, government payments, oil and gas investment, and contact with the military or other armed groups.<sup>6</sup> These requirements will foster transparency and accountability, increase awareness of how Member States’ commercial ties support the Tatmadaw, and enable advocacy groups to exert pressure.
9. Take decisive action and leadership at the United Nations and, if possible, the Security Council. The initiatives of individual states are necessary to urge action and accountability at the international level. Actors should therefore ensure that Myanmar is a consistent topic of discussion and remind others of their commitment to international human rights.

### *For the UN*

1. Allow an open debate and vote for targeted sanctions on Myanmar at the Security Council. The threat of a veto from China and Russia has limited discourse about human rights violations in Myanmar. An interviewee emphasized: “People have just been in despair because of the failure of the Security Council to take action, so it seems to me that [...] if the Security Council is not going to act, it should at least be held responsible to consider action in a very open and transparent way [...] let the chips fall where they may on a vote, and let those who are appointed veto in the full light of day, and then let them be held accountable for that.”<sup>7</sup>

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2. Continue to invest in research and monitoring on the crises in Myanmar to keep the international community educated and engaged. Resources including the reports of the IFFM and the Special Rapporteur are essential for Member States and coalitions that wish to legitimize their actions. This includes empowering the Special Rapporteur and the Special Representative of the Secretary-General on Sexual Violence in Conflict to continue their work on the ongoing atrocities in Myanmar.
3. Advance a global arms embargo. To maintain power, the Tatmadaw requires weapons and ammunition. To complement the existing arms embargoes of the EU, US, UK, and Canada, the US and UK should leverage their seats on the Security Council to advance a global arms embargo to undermine the Tatmadaw's access to weapons and ammunition and directly challenge members, namely Russia and China, who continue to arm the junta.<sup>8</sup>

## General sanctions recommendations *For Member States*

1. Continue to use the human rights and corruption-based sanction regimes to impose sanctions on individuals and entities that are repeatedly listed in the UN Secretary-General report on sexual violence in armed conflict. This includes the Global Magnitsky Act in the US, as well as human rights sanctions in Canada and the EU. The UN's collection of data and public naming and shaming can provide an important source for other actors, and coordinated action against repeat offenders can aid effectiveness.
2. Raise awareness of and expand the capacity of existing inboxes and phone lines for activists and citizens to share information that could lead to sanctions. Many questions and submissions to these inboxes are about delistings, while civil society actors and other informants do not systematically consult them. For this reason, a more active approach in communicating with relevant local actors is needed.
3. As part of the regular revision process, Member States with existing National Action Plans on the WPS agenda should include the imposition of targeted sanctions on individuals with leadership and command responsibility who are listed in the Secretary-General's report on sexual violence for consecutive years. By adding such language, sanctions would constitute a credible threat to repeat perpetrators of conflict-related sexual violence, could be used consistently, and would not need to be produced ad hoc.
4. Strengthen coordination among Member States to better integrate sanctions into a larger strategy for accountability for conflict-related sexual violence. A multilateral approach to sanctions will increase effectiveness and help to address impunity. Sanctions alone cannot stop conflict-related sexual violence, nor can they be used as a punitive measure to replace domestic and international legal accountability mechanisms. When utilized as a strategic tool as part of a larger and coordinated effort, however,



Protest in Myanmar against Military Coup 14 February, 2021. / Photo by: MgHla (aka) Htin Linn Aye

sanctions can help to coerce and constrain behavior as well as signal a global commitment to addressing conflict-related sexual violence.

*For the UN*

1. Systematically incorporate conflict-related sexual violence as a stand-alone criterion when adopting new sanctions regimes. When a UN report such as by an independent fact-finding mission or Special Rapporteur presents evidence of conflict-related sexual violence as part of a genocide, a crime against humanity, and/or war crimes, the UN should automatically impose sanctions.
2. Adopt a thematic sanction regime for conflict-related sexual violence that is triggered when the UN Sec-

retary-General report on sexual violence in armed conflict lists an individual or entity for consecutive years. Existing publications are underutilized for this purpose, and coordinated efforts within the UN will help to streamline action to target perpetrators of conflict-related sexual violence.

3. Strengthen monitoring and due process mechanisms across all sanctions regimes to ensure that the human rights of the accused are protected as well as to protect the legitimacy of UN sanctions. This includes an expansion of the Ombudsperson to all sanctions regimes, including those implemented in response to conflict-related sexual violence. The Office of the Ombudsperson should also be improved, beginning with increased institutional independence and a permanent mandate.<sup>9</sup>

# Endnotes

<sup>1</sup> This report refers to the country as “Myanmar” as many international organizations do, although the US still refers to the nation as “Burma.”

<sup>2</sup> Elisabeth Olivius, Jenny Hedström and Zin Mar Phyo. “Policy Brief— Women, Peace and Security in Myanmar after the 2021 military coup,” Statsvetenskapliga institutionen, 2022

<sup>3</sup> “UN Shared Rohingya Data Without Informed Consent,” Human Rights Watch, June 15, 2021, <https://www.hrw.org/news/2021/06/15/un-shared-rohingya-data-without-informed-consent>

<sup>4</sup> International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (The Hague: International Court of Justice, November 2019).

<sup>5</sup> Brad Brooks-Rubin. “China, Russia, and a Proxy War for Strategic Minerals” The Sentry, March 3, 2022. <https://thesentry.medium.com/china-russia-and-a-proxy-war-for-strategic-minerals-d9e3ec81a84>

<sup>6</sup> “Burma Responsible Investment Reporting Requirements.” U.S. Department of State. May 23, 2013. <https://2009-2017.state.gov/r/pa/prs/ps/2013/05/209869.htm>.

<sup>7</sup> Interview with UN official, February 2022.

<sup>8</sup> “Myanmar: UN expert urges Security Council resolution to stop weapons fueling spike in military attacks on civilians,” Office of the High Commissioner on Human Rights, February 22, 2022, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28142&LangID=E>

<sup>9</sup> Colum Lynch, “How a Dream Job Became a Bureaucratic Nightmare for a Top U.N. Lawyer,” Foreign Policy, July 27, 2021, <https://foreignpolicy.com/2021/07/27/un-terrorism-lawyer-resigning-ombudsperson-bureaucracy/>.