

Report composed and submitted by:

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1. Does the response relate to a particular armed conflict? If so, please indicate the type under international legal standards (Non-International Armed Conflict, International Armed Conflict), the parties involved, the duration in time, the overall characteristics of such conflict with special focus on the root causes and drivers (ethnic, religious, political, gender, territorial domination, control over illegal economies, among others). Please reserve one or two paragraphs to describe generally the sex- or gender-based dimensions of the conflict (for example, forced recruitment of girls and boys, specific rules imposed to civilian population regarding dressing and other norms of conduct informed by gender roles/stereotypes, situation of sexual violence).

The information herein pertains to the conflict happening in Myanmar since the military coup of 1 February 2021.

Myanmar's Armed Forces (MAF) illegitimately seized control of the country, justifying the move on unsubstantiated claims of election fraud following the National League for Democracy's (NLD) landslide victory in the November 2020 election. Civilian government leaders and members of parliament, including State Counsellor Aung San Suu Kyi, were detained, and peaceful nationwide civil demonstrations erupted throughout the country. The civilian resistance has been characterised by a decentralised yet powerful civil disobedience movement (CDM) as well as the establishment of the National Unity Government (NUG) by ousted members of parliament with its armed wing, the People's Defence Force (PDF). MAF's crackdown has been violent and uncompromising, and there is a robust case to be made that the military's actions are tantamount to Crimes Against Humanity and war crimes.

The unfolding conflicts throughout the country have ethnic, economic, religious and territorial ramifications, and varied dynamics and actors distinguish the multiple conflict sites. In ethnic minority areas, fighting is ongoing between MAF and numerous ethnic resistance organisations (EROs). In some cases, civilian PDF soldiers have joined forces with EROs to confront MAF. Meanwhile, in response to frequent raids and the military's appointment of local township and ward-level officials, civilians have been employing guerrilla-style tactics against soldiers, police and military-aligned civilians and officials.

While civilians at large are suffering enormously at the hands of the MAF, there are cultural and gendered dimensions to the turbulence that result in unique vulnerability for the country's diverse SOGIESC population. A summary of these are as follows:

- MAF panders towards a particularly conservative faction of Theravada Buddhism which claims to defend the "traditional" values of Myanmar culture, which are intrinsically patriarchal, heteronormative and cisnormative. Min Aung Hlaing has specifically criticised the NLD's introduction of more progressive sexual education modules in the national curriculum as being a threat to Buddhism and moral purity. In an environment where discussion of sexuality itself is regarded as taboo, hostility towards diverse SOGIESC populations is a given.
- Conflict dynamics can reinforce traditional understandings of gender, whereby traditional notions of masculinity are demanded of men who may be expected to contribute to fighting. This can attract hostility towards men who are seen to be too feminine and trans women (whose gender identity may not be respected by their community).

- The MAF's use of sexual violence as a weapon of war is well documented. Likewise, diverse SOGIESC experiences of sexual violence, torture, harassment and ridicule at the hands of soldiers, police and other authorities is also well-documented, both prior to and since the coup. Inflicting or threatening violence upon diverse SOGIESC individuals – including rape, torture, beatings and other forms of sexual abuse – is being widely reported by diverse SOGIESC civilians who have been arbitrarily detained. The vulnerability of diverse SOGIESC individuals to this violence is informed by homophobic and transphobic mentalities that place little worth on the safety and dignity of LGBTQIA+ people, and that promotes "victim-blaming" mentalities (i.e. LGBTQIA+ people are seen to bring the harm upon themselves).
- Factions of Myanmar's diverse SOGIESC community has been extremely public in protest movements across the country. This has resulted in the targeting of numerous LGBTQIA+ activists and advocacy organisations, whose human rights agendas stand in opposition to the military takeover.
- Entrenched discrimination results in significantly worse outcomes for diverse SOGIESC individuals in relation to livelihoods, education, health and overall well-being. At a time where the majority of the country's population is experiencing hardship, those who were already suffering before the coup can be expected to be set even further back.

Has the relevant State ratified, signed, or adhered to regional or international human rights/ humanitarian law / international criminal law treaties, declarations, programs or policies or any other international instruments aiming to address the causes and consequences of armed conflict? If so, please indicate which ones, the date of ratification/adherence, and the correspondent domestic act/instrument. Please also consider the following questions:

- a. Have any of these instruments been utilized or interpreted by domestic courts or other authorities with a gender-specific perspective? (i.e., to provide redress for victims of conflict-related sexual violence, individualize reparations for gender-based violence, criminal responsibility for serious breaches to IHL or grave violations of IHRL).
- b. Have SOGI-specific considerations been incorporated in such interpretative process? If so, please detail the domestic sources and provide a brief summary of the relevant rulings/standards adopted.
- c. Is there an ongoing National Action Plan (NAP) aiming to implement the recommendations of the Women, Peace and Security agenda (Res. 1325 and subsequent)? If so, are there any SOGI-related measures included in the NAP? If not, please outline the reasons as to why it has not been considered, as well as any information you deem fundamental provide a comprehensive picture of the SOGI situation in the relevant NAP.

In general, the gradual improvement of LGBTQIA+ access to policymaking through formal government and civil society platforms is a credit to the tireless work of advocates and progressive lawmakers. MAF's hijacking of the government, however, will see a status quo return in which civil society has limited to no access to policy and lawmaking spaces. This bodes particularly badly for LGBTQIA+ groups, who apart from asserting their rights to recognition and protection in new policies, were simultaneously fighting to dismantle discriminatory laws that impact upon same-sex attracted and gender non-conforming people.

In terms of international mechanisms, Myanmar is not a member of the ICC and has not ratified a majority of fundamental treaties that would compel the state to protect all citizens. The most relevant treaties that have been ratified are CEDAW (1997), CPPCG (1956) and UNCRC (1991). MAF's documented and systemic violence inflicted upon women, ethnic minorities and children demonstrate their flagrant disavowal of these treaties.

Myanmar also has no NAP aligned with Resolution 1325, having instead developed their own National Strategic Plan for the Advancement of Women (NSPAW) and a National Youth Policy, neither of which have been properly implemented. NSPAW makes no reference to SOGIESC diversity. Meanwhile, under the NLD government, the Youth Policy (2018) and Child Protection Law (2019) both make explicit references to the rights of LGBTQ young people and state there

should be no discrimination on the grounds of SOGI. *Colors Rainbow* was involved extensively in this advocacy with lawmakers through their co-ordination of the participation of young LGBTQIA+ individuals in national and subnational consultations. The NUG is committed to keeping LGBTQIA+ rights on their agenda and is in ongoing conversations with *Colors Rainbow* (see Question 4).

2. Has the country undergone a peacebuilding (including peace talks /negotiations) or any other process aiming to conclude the armed confrontations? If so, please provide the following information:
 - a. Have LGBTI and GD persons participated in those processes? Indicate the forms of participation (civil society, appointed officials) and elaborate on specific examples that inform the overall characteristics of that participation process. Indicate also if through the participation of other affected groups LGBTI and GD people have had indirect involvement in those processes.
 - b. Are/were SOGI-related issues part of the negotiations and/or agreements reached by the parties involved in conflict? Indicate the extent of both the debates and the measures adopted. Include any gender-specific measures or gender-blind measures that have been understood as benefiting or undermining of LGBTI and GD people's rights in the aftermath of conflict.
 - c. Describe the overall engagement of LGBTI and GD persons (organized or unorganized) with such processes. Provide any relevant sources documenting such engagement.
 - d. If no engagement or participation has been planned or taken place, please indicate the hindrances for such participation as well as its causes (cultural, social, political, legal). Provide any relevant source on this subject.

Myanmar has been in a protracted, expensive and unsuccessful process of attempting to resolve its complex civil wars by the use of peace talks. Ushered in by the Thein Sein government in October 2015 and taken over by the NLD following their victory in the November 2015 election, the fractured peacebuilding and reconciliation process underpinned by the contentious National Ceasefire Agreement has achieved little and is all but redundant in the current environment.

Women's rights groups have been slowly gaining access to these mechanisms in both official government capacities and in civil society forums – however these processes are slow and the inclusion often symbolic rather than substantial. The NCA made vague declarations to include a "reasonable number" of women in peace dialogues – a clear shortfall from meaningfully securing adequate levels of representation. With women having struggled to gain access to ceasefire dialogues, formal access for and participation of the LGBTQIA+ community has been next to zero.

3. Has any documentation process of gender-specific forms of conflict-related violence been undertaken by local, regional, or international actors regarding the conflict described in section 1? If so, please provide the following information:
 - a. Which type of relevant stakeholders have conducted such assessment? (i.e., Truth Commissions, public data officials, special judicial mechanisms, reparations programmes, international organizations, NGOs, others). Provide the specific sources and describe the general outcomes of such documentation process.
 - b. Has any of the information gathering and/or analysis processes included any SOGI-related data/reflections? If so, please indicate the specific sources with its respective authority and utilize one paragraph to summarize its core outcomes.
 - c. Have any official processes of statistical data gathering regarding conflict been in place? If so, indicate if those processes include any specific information on

SOGI, its extent, development, problems in the implementation and any other information you deem relevant to provide a comprehensive picture of those initiatives.

- d. Provide any information you consider valuable in understanding the SOGI-specific logics that underlie armed violence in the relevant conflict, as well as any source narrating or documenting the lived experience by LGBTI and GD people.
- e. If no substantial information has been collected or no documentation process has taken place, please indicate the obstacles impeding such actions and describe them (cultural, social, political, legal). Provide any relevant source on this subject.

Comprehensive data collection on the ground has been extremely challenging given security concerns and internet outages. Nevertheless, local NGOs within the *LGBT Rights Network* have been gathering qualitative accounts and recording basic statistics around LGBTQIA+ experiences. LGBTQIA+ organisations around the country have had their operational capacity decimated, with many community members struggling to meet their daily needs following the combination of Covid-19 and the coup. Meanwhile, given the prominence of many members of the LGBTQIA+ community within public demonstrations, many individuals and organisations are in hiding.

In the first year of the coup, *Colors Rainbow* and *&PROUD* recorded 14 fatalities of openly-identifying LGBTQIA+ people at the hands of authorities in relation to the coup. The victims were from Myitkyina, Myingyan, Monywa, Mawlamyine, Yangon, Kyaukpadaung, Mandalay and Shwebo – all were shot dead while participating in peaceful protests and defending protesters from military violence. In the same timeframe, another 4 LGBTQIA+ individuals (3 gay men, 1 trans woman) were seriously injured by riot police/armed forces whilst participating in protests in Myingyan and Bago. In total, 77 self-identifying LGBTQIA+ people had been arrested and/or charged under 505(a)¹ as of March 2022. The interpretation of this data must take into account the fact that not all SOGIESC diverse people are connected to networks or are openly self-identifying as LGBTQIA+; indeed, individuals are driven to conceal their identities where possible to avoid additional abuse by authorities.

Colors Rainbow and *&PROUD* have been conducting interviews to depict the everyday experiences of diverse SOGIESC people living within the coup. Excerpts from three testimonials below illustrate the unique violence being inflicted upon LGBTQIA+ people, and their specific concerns about the future of LGBTQIA+ people under military rule and in ongoing civil war.

Story 1 Shwe Zin, trans woman, Yangon.

Shwe Zin became actively involved in protests early on. Explaining her motivation, she said: "Only a peaceful and progressive nation can improve the lives of LGBT people... if life continues as it was in the past, LGBT people will continue to be humiliated and laughed at."

After recruiting and rallying large numbers of protests, her beauty shop was searched while she was sheltering several young LGBT protestors. She herself had wiped her phone, but some of the others had photos of Aung San Suu Kyi, prompting the soldiers to take the youth out to the street, where they stripped and beat them. Shwe Zin describes how some of them were beaten so hard they soiled themselves, upon which the soldiers forced them to hold their own faeces in their hands.

¹ Section 505. Whoever makes, publishes or circulates any statement, rumor or report,— (a) with intent to - cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force [* *]1 to mutiny or otherwise disregard or fail in his duty as such; or (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

She herself was arrested on 18 May 2021, after she was found to have been organising provisions for people hiding in the forests who had joined PDF. For 12 hours, she was stripped and endured severe torture of a sexually explicit nature.

"Since I didn't talk while they kicked and beat me, they forced me to raise my hands in the air and kneel on the ground, and then they repeatedly inserted alcohol bottles into my anus whilst I was blindfolded," Shwe Zin described. Throughout the 12 hours she endured a harrowing list of violent and humiliating actions, including: being burned on her breasts with cigarettes, having her genitals hit with batons, having paper clips put on her nipples, being beaten and interrogated at gunpoint, threatened with scissors, being asked sexually explicit questions, and being threatened to be drowned. Despite suffering "excruciating pain", Shwe Zin kept her mouth shut: "I made up my mind in advance that I would not say anything. I was prepared to die – no words would leave my lips."

After the ordeal Shwe Zin was released. She describes how unsettled she is about being an LGBTQIA+ person in Myanmar since the military takeover: "The current situation is like in the past when we used to walk on eggshells... I'm really sad for all the LGBT people who were tortured unjustly, and who gave their lives... I want to encourage LGBT people who value truth to believe they may live a free and happy life."

Story 2 Tharaphee, 45-year-old bisexual woman, Yangon

Tharaphee was furious about the coup and began to rally the community around her to peacefully fight for the revolution. She assisted groups of LGBT youth to participate in protests in the city, providing transport, food and water. She was arrested on June 15th where she spent one and a half months being intermittently tortured, interrogated and left in isolation.

When they first took her to an interrogation camp, the soldiers had printed her social media posts depicting the protests she had organised and told her they needed her to identify the young LGBT people in the photos so they could be arrested. She refused to give them any names, upon which their torture began. "They shocked me four times with an electronic baton... I passed out", she recalled, going on to explain her weeks long ordeal in prison – involving starvation, a serious Covid-19 infection and being allowed zero contact with anyone outside.

Explaining why she held her resolve, she said: "The human rights of all LGBT people, including mine, have been violated. We are being treated like criminals, I can't accept that. When they requested me to provide them a list of people, there were a lot of LGBT peoples' names they wanted. I couldn't give them, the names of those kids like me. I love them."

Story 3 Nay Nay , 23-year-old gay man, Yangon

Nay Nay, a salesclerk living in Yangon, became an active participant in peaceful protests against the coup. He and his friends were severely tortured and humiliated when soldiers came to the shop where they were taking shelter. Their phones were searched, and on finding photos of them participating in the protests, the soldiers blindfolded Nay Nay and his friends. The violence and ridicule that followed explicitly took into account the sexuality of Nay Nay and his friends.

"They asked us if we wanted to have sex with them, they appeared to have lost their senses from alcohol... They beat me more because I remained silent," Nay Nay remembered. He went on to describe how the soldiers stripped the young men and mimicked having sex with them, hitting them on the buttocks, forcing them to squat, and rubbing their own genitals against Nay Nay and his friends' heads.

"They did anything they wanted to us – they rode on our shoulders like we were toys.... They made us feel shame about our bodies," said Nay Nay. "They banged our heads with their guns so many times that I had a lot of wounds. My buttocks became so purple that I couldn't even sit and my calves were so swollen I couldn't work for days."

4. Has the State adopted any transitional justice-related measures, i.e., truth, justice, reparation, and non-recurrence? If so, please indicate if those measures include a gender-specific approach and if LGBTI people have been considered as specific stakeholders in such measures. More concretely, please indicate:
 - a. In the truth-seeking measures/experiences, such as Truth Commissions, have there been any form of acknowledgement of SOGI-specific conflict-related violence? If so, describe the extent of such acknowledgement and the characteristics of the SOGI-related conflict dynamics identified.
 - b. In the justice measures/experiences, such as special or ordinary criminal procedures, have there been any acknowledgement of SOGI-specific conflict-related violence? Have any convictions resulted? Please indicate the extent in which transitional judicial mechanisms have involved with SOGI-related issues.
 - c. In the reparations and non-recurrence measures/experiences, such as administrative reparations programs, has there been any prioritization or special consideration to facilitate access to LGBTI and GD victims and their relatives? Have SOGI factors been considered as an element to be considered when acknowledging the extent of the harm inflicted to the victims and awarding reparations? What types (individual/collective) and modalities (restitution, rehabilitation, satisfaction, compensation, non-recurrence) have been adopted to address the harms caused to LGBTI and GD persons in conflict? Please provide all relevant information on this subject.
 - d. If there has not been any reflection or acknowledgment of the situation of LGBTI and GD persons, please indicate the cultural, legal, and political obstacles to such recognition. Specify which discourses, cultural practices or even legislations impede the substantial engagement of LGBTI and GD persons with the transitional justice measures adopted.

The conflict in Myanmar is ongoing, with atrocities being inflicted on the civilian population on a daily basis. NUG has made explicit claims that it will work towards the protection of LGBTQIA+ populations and have an openly gay man serving as their Minister for Human Rights (Aung Myo Min). The exiled lawmakers have been explicit about transitional justice action plans, and LGBTQIA+ rights have been acknowledged in advocacy with the NUG's Ministry of Women, Youth and Children, and the NUG's Ministry of Defence has also made reference to the rights of LGBTQIA+ people within their code of conduct. The extent to which reparations for LGBTQIA+ victims in the conflict can be pursued, however, is indeterminable, given the ongoing nature of the conflict, the de facto status of MAF as the country's authority and the asymmetric power imbalance between MAF, civilians and EROs.

The legal situation prior to the coup actively discriminated against the LGBTQIA+ community – with Section 377 prohibiting sexual relations between people of the same gender and components of the Police Act being used to target trans gender or gender non-conforming individuals. While these laws are not commonly enacted against people, their very existence puts LGBTQIA+ lives at risk and makes them vulnerable to exploitation and threats at the hands of the authorities (CRB &P/CRB 2021; CRB 2013). Prior to the 2020 election and 2022 coup, high level advocacy was taking place with NLD lawmakers, with legal reform being a very real possibility in the next 5 years. The possibility of this under the de facto military authorities is non-existent.

Culturally, there are still significant levels of discrimination, stigma and prejudice levelled at Myanmar's diverse SOGIESC community. A 2020 study revealed that 1-in-2 people of a nationwide sample exceeding 1,500 people agreed that they accept and support LGBT people, while 1-in-3 actively do not. Meanwhile, 50% of people believed that LGBT people could not be accepted within Myanmar culture. A strong majority (74%) however, did agree that it should not be illegal to be LGBT in Myanmar (&P/CRB 2021). Any future transitional justice measure that address grievances experienced by the LGBTQIA+ community will need to

actively work to win the hearts and minds of the general population to extend equality, dignity and respect to all regardless of SOGIESC traits.

5. Has the State adopted any other relevant domestic policies or legislation addressing the causes and consequences of armed conflict that explicitly or implicitly benefitted or undermined LGBTI and GD people (for example, internal security legislation, mechanisms forbidding the enrollment of LGBTI or GD people in the military)? Please elaborate on any relevant domestic measures not mentioned above, with a particular emphasis on the acknowledgment of specific-SOGI conflict-related violence and its victims.
6. What reconciliation measures or practices have been adopted? State-sponsored, civil society and community-based experiences should all be mentioned. Have any of those measures/practices or experiences been initiated by LGBTI and GD persons/organizations? Please describe those processes and signal all relevant stakeholders and actors.
7. Describe any civil society alliances, coalitions or initiatives aiming to raise awareness on the causes and consequences of armed conflict in the lives of LGBTI and GD people, as well as specific forms of SOGI-related violence. Indicate how their collective action operations and strategies work to make visible lived experience of LGBTI and GD people during conflict. Outline any obstacles they face in such work and the ways in which they have or have not been addressed.

Colors Rainbow has been leading work in Myanmar relating to assisting LGBTQIA+ victims of the coup and in documenting human rights violations against LGBTQIA+ people. In terms of assistance they have distributed significant sums of cash as emergency livelihood and housing stipends through their vast network across the country and provide legal assistance to detained LGBTQIA+ people. They have also been working to document and make visible the experiences of LGBTQIA+ people during the coup, gathering data and testimonials through the *LGBT Rights Network* (a coalition which they lead) as well as other networks and contacts across the country. From their new base in Chiang Mai, where they shifted in late 2021 for the safety of key staff and to allow their operations to continue, they are working on establishing a formal programme specifically focused on documenting human rights violations against LGBTQIA+ people.

All of this emergency assistance, documentation or advocacy work comes with immense security risks and challenges such as communication and power outages. Similarly, loss of livelihoods hampers the involvement of many members of the community who are unable to afford mobile data. Indeed, there is an urgent need to address the livelihood loss being experienced by the LGBTQIA+ community, who were already severely disadvantaged before the coup. Meanwhile, activists around the country have been in hiding following their involvement in the protest movement and for supporting their communities.

8. Include any relevant information of international advocacy initiatives before regional and international organizations' mechanisms and organs, such as the UN Security Council. Describe any obstacles and challenges organizations face in these processes of engagement with international institutions. Furthermore, describe the role such institutions have played (or not) in acknowledging the SOGI-related conflict dynamics and forms of violence.

In January 2022, *Colors Rainbow* was consulted by UN Special Rapporteur on the situation of human rights in Myanmar about the plight of LGBTQIA+ communities since the February 2021 coup. Testimonies and information within this response were shared, but the result of the consultation is unknown. *Colors Rainbow* have also been involved in the second cycle of the Universal Periodic Review of Myanmar (2015), and were also to be consulted in the third

cycle in 2020. The review, however, was shifted to 2021 due to the Covid-19 pandemic, and has once again been delayed because of the coup.

Provide any additional information you consider relevant to enrich the understanding of the overall relationship between SOGI, peace and security that might have gone overlooked in the previous questions.

Studies referenced in this response

&PROUD; UNFPA (2021) “Mental Health and Psychosocial Needs Assessment of Myanmar’s LGBTQI Community: Wellbeing, everyday realities and service provision.” Available at: https://myanmar.unfpa.org/sites/default/files/pub-pdf/mental_health_psychosocial_needs_assessment_of_myanmars_lgbtqi_community.pdf

&PROUD; Colors Rainbow (2021) “Perspectives and Attitudes Towards LGBT People in Myanmar 2020”. Available upon request – contact michael@andproud.net

Colors Rainbow. (2013). “Facing 377: Discrimination and human rights abuses against Transgender, Gay and Bisexual Men in Myanmar”. Available at: <https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs22/AnnualReport-rainbow.pdf>