



# Legal Aid Network

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## **A Legal Analysis Statement (1) on Conscription Law The Unlawful Enforcement of People’s Military Service Law by the the State Administration Council (SAC): An Expanded Commission of Crimes Against Humanity in Burma/Myanma**

1. The most obvious suffering from plunging morale amid offensives launched by the Ethnic Resistance Organizations (EROs) and People Defense Forces (PDFs) has resulted in mass surrenders of the Tatmadaw (SAC) soldiers – including six high ranking military officials. It has prompted the unlawful enforcement of People’s Military Service Law (2010), which is illegal, by the SAC.

2. Given the SAC’s above ‘systematic’ acts, the following appalling scenes are witnessed: 1. the conscripted civilians, having been transformed into soldiers, are to kill other civilians or die in the battles;<sup>i</sup> (2) ‘widespread’ forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law, and ‘enforced disappearance of persons’ have been taking place.<sup>ii</sup> (3) there is a close nexus between the armed conflict and the acts of the SAC and the stated acts have occurred within the frame of that armed conflict.<sup>iii</sup>

3. The above situations are the legal pre-requisites for the commission of crimes against humanity and the degree of culpability can be determined.<sup>iv</sup> ‘Article 5 of the ICTY Statute covering crimes against humanity refers to acts “directed against any civilian population.”<sup>v</sup> ‘The notion of crimes against humanity has evolved under international customary law and through the jurisdictions of international courts.’<sup>vi</sup> In spite of lacking an overall specific intent, the SAC’s stated acts constitute crimes against humanity as it has been committing with knowledge of the attack against the civilian population.<sup>vii</sup>

4. The above conducts of the SAC – forcefully taking position of a State, which is Burma/Myanmar – also constitutes a breach of an international obligation of the State under internationally wrongful act.<sup>viii</sup> The responsible State may not rely on the provisions of its internal law, in this case people’s military service law (2010), as justification for failure to comply with its obligations under this part.<sup>ix</sup> The SAC is responsible for serious breaches of obligations under peremptory norms of general international law.<sup>x</sup>

5. The International Law Commission highlighted the hierarchical superiority of peremptory norms of general international law (*jus cogens*) norm and they are hierarchically superior to other norms of international law in terms of both characteristic and its effect.<sup>xi</sup> The applicability of *jus cogens* norms does not depend on the consent of States, nor ANSAs, to be bound. They are universally applicable. States cannot derogate from them by creating their own special rules.<sup>xii</sup> The Commission's criteria for *jus cogens* norm is drawn from the definition contained in Article 53 of the 1969 Vienna Convention. Accordingly, any treaty provisions are void if they conflict with *jus cogens* norms, accepted and recognized by the international community of States as a whole.<sup>xiii</sup>

6. Regarding Burma, out of five points consensus agreed upon by ASEAN, the second point – which accentuates constructive dialogues of all stake holders, including the SAC – is void<sup>xiv</sup> as it stands against international obligation of the State under internationally wrongful act which is connected with peremptory norms of general international law (*jus cogens*). Similarly, a common position, which is reached by the National Unity Government (NUG) and the three EROs on January 31, 2024<sup>xv</sup> is also void. Both national and international communities, particularly States, are responsible to hold the SAC military perpetrators, who have been committing the gravest crimes of international concern, accountable.

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<sup>i</sup> Tom Andrews, special rapporteur on human rights situations in Myanmar: 'Military junta even greater threat to civilians as it imposes military draft, warns UN expert' (21 February 2024)  
<<https://www.ohchr.org/en/press-releases/2024/02/myanmar-military-junta-even-greater-threat-civilians-it-imposes-military>>

<sup>ii</sup> Rome Statute of the International Criminal Court, art 7, para 2 (d) and (i).

<sup>iii</sup> International Criminal Tribunal for Former Yugoslavia: Krstic – Judgment – Part III.  
<<https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e-3.htm>>

<sup>iv</sup> *ibid.*

<sup>v</sup> *ibid.*

<sup>vi</sup> The United Nation: Office on Genocide Prevention and Responsibility to Protect:  
<<https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>>

<sup>vii</sup> *ibid.*

<sup>viii</sup> Responsibility of States for Internationally Wrongful Acts (2001) Art 17.  
<[https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)>

<sup>ix</sup> *ibid.*, Art 32.

<sup>x</sup> *ibid.*, Arts 26 and 40.

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<sup>xi</sup> UN General Assembly, 'Draft report of the International Law Commission on the work of its seventy first session' (12 June 2019) UN Doc A/74/10, ch 5 Peremptory norms of general international law (jus cogens) Conclusion 8.

<sup>xii</sup> *ibid.*

<sup>xiii</sup> Vienna Convention on the Law of Treaties 1969, Art. 53 and 64.

<sup>xiv</sup> <https://asean.org/wp-content/uploads/Chairmans-Statement-on-ALM-Five-Point-Consensus-24-April-2021-FINAL-a-1.pdf>

<sup>xv</sup> <<https://www.facebook.com/share/TUr9mZeDU6VK9aP5/?mibextid=oFDknk>>