

Intersections of Ecocide, Indigenous Struggle, & Pro-Democracy Conflict: Implications of Post-Coup Myanmar for Ecocide Discourses

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Abstract

The paper argues that Myanmar's current political conflict reflects an intersection of ecocide, indigenous struggle, and pro-democracy conflict. The paper observes that in the wake of the February 2021 Myanmar military coup, pro-democracy unrest encompassed a resumption of the military's historical conflicts against various indigenous minorities along with the military's escalation of natural resource extraction. The paper asserts that the military's actions against indigenous peoples and the environment are related, in that Myanmar's natural resources are predominately located within indigenous territories and the military has historically engaged extractive industries to consume those natural resources. As a result, the environment exists as a tension point between indigenous aspirations for self-determination and military operations for domination, making environmental destruction an integral component of Myanmar's current political crisis. The paper frames Myanmar as a demonstration of how ecocide, indigenous peoples, and pro-democracy struggles can be associated together, and draws implications for the manifestation of such an association in conflict zones elsewhere.

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In February 2021, the Myanmar military, or Tatmadaw, overthrew an elected civilian government, bringing the country back under military-controlled authoritarian state.² The coup spurred a popular uprising that spanned civil disobedience at all levels of government and mass street protests across the country.³ The military junta sought to suppress resistance, but its use of increasing levels of violence only served to intensify opposition.⁴ In the time since the coup, the tensions have escalated into armed conflict against the Tatmadaw from armed civil society groups, or People's Defense Forces, and various ethnic armed organizations (EAOs).⁵ The consequence is a domestic space of contestation, with the Tatmadaw challenged by an ensemble of deposed civilian leaders, popular opposition, and violent resistance groups and ethnic militias.⁶

Myanmar's environment has not been isolated from the country's political unrest. In particular, following the military coup, international observers accused the Tatmadaw of accelerating

² Russell Goldman, Myanmar's Coup Explained, February 1, 2021, *New York Times* (2021), available at: <https://www.nytimes.com/article/myanmar-news-protests-coup.html> [hereinafter cited as Goldman 2021]

³ Jen Kirby, Myanmar's Pro-Democracy Protest Movement Is Strengthening, *Vox* (2021), available at: <https://www.vox.com/22295138/myanmar-protests-strike-coup-military> [hereinafter cited as Kirby 2021]; United States Institute of Peace, *Myanmar in the Streets: A Nonviolent Movement Shows Staying Power*, March 31, 2021 (2021), available at: <https://www.usip.org/publications/2021/03/myanmar-streets-nonviolent-movement-shows-staying-power> [hereinafter cited as USIP 2021a]

⁴ Human Rights Watch, Myanmar: Post-Coup Legal Changes Erode Human Rights, March 2, 2021, available at: <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights> [hereinafter cited as HRW 2021]; Sebastian Strangio, Myanmar Junta Arms Itself with Repressive New Laws, *The Diplomat*, available at: <https://thediplomat.com/2021/02/myanmar-junta-arms-itself-with-repressive-new-laws/> [hereinafter cited as Strangio 2021]; Irrawaddy Staff, Under Martial Law, Myanmar Military Commanders Empowered to Issue Death Penalty, March 16, 2021, *Irrawaddy*, available at: <https://www.irrawaddy.com/news/burma/martial-law-myanmar-military-commanders-empowered-issue-death-penalty.html> [hereinafter cited as Irrawaddy 2021a]

⁵ *International Crisis Group*, Myanmar's Coup Shakes Up Its Ethnic Conflicts, January 12, 2022, *International Crisis Group* (2022), available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/319-myanmars-coup-shakes-its-ethnic-conflicts> [hereinafter cited as ICG 2022]; Irrawaddy, Ethnic Armed Groups United with Anti-Coup Protesters Against Myanmar Junta, April 30, 2021, *Irrawaddy* (2021), available at: <https://www.irrawaddy.com/news/burma/ethnic-armed-groups-unite-anti-coup-protesters-myanmar-junta.html> [hereinafter cited as Irrawaddy 2021b]; Rebecca Ratcliffe & Anonymous Reporter, Rise of Armed Civilian Groups in Myanmar Fuels Fears of Full-Scale Civil War, June 1, 2021, *The Guardian* (2021), available at: <https://www.theguardian.com/world/2021/jun/01/rise-of-armed-civilian-groups-in-myanmar-fuels-fears-of-civil-war> [hereinafter cited as Ratcliffe & Anonymous 2021]

⁶ *Myanmar Now*, NUG Establishes 'Chain of Command' in Fight Against Regime, October 28, 2021, *Myanmar Now* (2021), available at: <https://www.myanmar-now.org/en/news/nug-establishes-chain-of-command-in-fight-against-regime> [hereinafter cited as Myanmar Now 2021]; Burma News International Multimedia Group, *National Unity Government: Domestic Unity & EAOs Involvement Key to Success* (2021), available at: <https://www.bnionline.net/en/news/nation-unity-government-domestic-unity-and-eaos-involvement-key-success> [hereinafter cited as BNI 2021a]; United States Institute of Peace, *A New Myanmar Forum Aims to Unite Democratic Forces* (2021), available at: <https://www.usip.org/publications/2021/11/new-myanmar-forum-aims-unite-democratic-forces> [hereinafter cited as USIP 2021b]

natural resource extraction to finance its operations.⁷ Such activities aligned with the Tatmadaw's attacks against EAOs, since the majority of Myanmar's natural resources lie within the territories of the country's ethnic minorities, whose indigenous cultures hold claims to varying degrees of sovereignty over traditional lands.⁸

The present analysis uses the current crisis in Myanmar as a case study with implications for the conceptions of ecocide in international criminal law. Specifically, the following sections present Myanmar as informing current discourses on the intersectional aspects of ecocide, with the struggles in the country directing attention to an understanding of ecocide capable of accommodating complex spaces hosting multiple convergent issues. The analysis highlights the interconnections between Myanmar's environment, the struggles of its indigenous ethnic minorities, and the current pro-democracy conflict.

In advancing its arguments, the present analysis acknowledges the controversies of Myanmar's identity politics, which hosts contestation between diverse notions of identity that have extended over time from the British colonial era, its post-independence instability, and the current unrest.⁹ The discourse employs simultaneous terms of "ethnic groups," "nationalities,"

⁷ See for example Daniel Combs, *Guns, Gems, & Drugs: One Year After Myanmar's Coup, How the Generals Hold Power*, Grid, 28 January 2022 (2022), available at: <https://www.grid.news/story/global/2022/01/28/guns-gems-and-drugs-one-year-after-myanmars-coup-how-the-generals-hold-power/> [hereinafter cited as Combs 2022]; Forest Trends, *Myanmar's Timber Trade One Year Since the Coup: The Impact of International Sanctions*, Forest Trends (2022), available at: <https://www.forest-trends.org/wp-content/uploads/2022/03/Forest-Trends-Myanmars-Timber-Trade-One-Year-Since-the-Coup.pdf> [hereinafter cited as Forest Trends 2022]; World Wildlife Fund, *Upward Trend in Myanmar Online Wildlife Trade Endangers Biodiversity & Public Health*, World Wildlife Fund, 1 April 2022 (2022), available at: <https://asiapacific.panda.org/?372899/going-viral-report> [hereinafter cited as WWF 2022]; Environmental Investigation Agency (EIA), *Myanmar's Tainted Timber & the Military Coup*, Environmental Investigation Agency, 28 June 2021 (2021), available at: <https://techjournalism.medium.com/myanmars-military-coup-linked-to-illegal-deforestation-to-finance-oppressor-military-regime-2d803cefb16> [hereinafter cited as EIA 2021]; Techjournalist, *Blog Post: Myanmar's Military Coup Linked to Illegal Deforestation to Finance Oppressor Military Regime*, Techjournalist, April 24, 2021 (2021), available at: <https://techjournalism.medium.com/myanmars-military-coup-linked-to-illegal-deforestation-to-finance-oppressor-military-regime-2d803cefb16> [hereinafter cited as Techjournalist 2021].

⁸ Thiri Shwesin Aung, *The Current Situation of Myanmar's Environmental & Natural Resources Governance, 28 Current Politics & Economics of South, Southeastern, & Central Asia* 33 (2019) [hereinafter cited as Aung 2019]; Rainer Einzenberger, *Contested Frontiers: Indigenous Mobilization & Control Over Land & Natural Resources in Myanmar's Upland Areas*, 9 *Forschungswerkstatt* 163 (2016) [hereinafter cited as Einzenberger 2016]; Ashley South, *ETHNIC POLITICS IN BURMA* (Routledge 2008) [hereinafter cited as South 2008]; Martin Smith, *BURMA: INSURGENCY & THE POLITICS OF ETHNICITY* (Zed Books 1991).

⁹ South 2008; Mary Callahan, *MAKING ENEMIES: WAR & STATE-BUILDING IN BURMA* (2003) [hereinafter cited as Callahan 2003]; Smith 1991; Robert Taylor, *THE STATE IN BURMA* (1987) [hereinafter cited as Taylor 1987].

“minorities,” and “indigenous peoples.”¹⁰ The meanings of each label suffer from divergent interpretations that reflect Myanmar’s history of perpetual conflict between a military-controlled state and diverse ethnic minorities seeking self-determination.¹¹ For purposes of the present analysis, the following sections limit terminology to “ethnic minorities” and “indigenous peoples,” using them interchangeably to indicate populations in Myanmar holding marginal status, self-identification as distinctive peoples, and aspirations for self-determination.

Ecocide as intersectional

The term ecocide as a legal concept arose in the 1970s, both as part of domestic discourses regarding the scope of protection under the United States Constitution for the environment and as a facet of international discourses regarding the crimes covered by the Rome Statute.¹² A draft 1973 Ecocide Convention proposed ecocide as a crime committed with intent “to disrupt or destroy, in whole or in part, a human ecosystem” in association with a range of military activities.¹³ Various permutations of ecocide subsequently appeared in the domestic laws of various countries, even as the term remained outside of formal adoption in international law.¹⁴ In the 2000s, the global discourse over ecocide led to a number of different definitions. For example, Polly Higgins describes ecocide as “acts or omissions committed in times of peace or conflict” which 1) cause or contribute to “serious ecological, climate or cultural loss or damage to or destruction of ecosystem(s),” that 2) severely diminishes peaceful enjoyment by inhabitants, and 3) are “wide-spread, long-term, and severe.”¹⁵ Alternatively, Mark Allen Gray views ecocide as a “deliberate or negligent violation” of state and human rights that involve

¹⁰ Jonathan Liljeblad, *Indigenous Identity, Human Rights, & Environment: Myanmar Local Engagement with Global Rights Discourses* (Routledge 2022) [hereinafter cited as Liljeblad 2022].

¹¹ *Ibid.*

¹² James Harrison, Significant International Environmental Law Developments: 2020-2021, 22 *Journal of Environmental Law* 737-746 (2021); Pereira 2020; Anastacia Greene, The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative, 30 *Fordham Environmental Law Review* 3: 1-48 (2019) [hereinafter cited as Greene 2019]; Sailesh Meheta & Prisca Merz, Ecocide-A New Crime Against Peace, 17 *Environmental Law Review* 1: 3-7 (2015); Mark Allan Gray, The International Crime of Ecocide, 26 *California Western International Law Journal* 2: 215-272 (1996) [hereinafter cited as Gray 1996]; Ludwik Teclaff, Beyond Restoration – The Case of Ecocide, 34 *Natural Resources Journal* 4: 933-956 (1994); L. Craig Johnstone, Ecocide & the Geneva Protocol, 49 *Foreign Affairs* 4: 711-720 (1971).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Polly Higgins, Damien Short, & Nigel South, Protecting the Planet: A Proposal for a Law of Ecocide, *Crime, Law, & Social Change* 59(2013): 257 (2013) [hereinafter cited as Higgins et al 2013]; Polly Higgins, *Eradicating Ecocide: Laws & Governance to Stop the Destruction of the Planet* (Shepherd-Walwyn 2010): 3 [hereinafter cited as Higgins 2010]

“1) serious, and extensive or lasting, ecological damage, 2) international consequences, and 3) waste.”¹⁶ More recent is the statement by the allied legal practitioners and legal scholars of the Stop Ecocide Foundation, who assert a definition of ecocide as “...unlawful or wanton acts committed without knowledge that there is substantial likelihood of severe and either widespread or long-term damage to the environment caused by those acts”¹⁷

Amidst the discourse over ecocide have been efforts to add nuances in understanding. For example, critics note an underlying orientation in debates towards dualistic frameworks that position the environment and human populations as distinct entities, and assert the need for more relational considerations that address the dynamic status of interactions between environment and human cultures.¹⁸ Additional critics find that the discussions over ecocide tend to assess environmental damage relative to human suffering, and postulate that the term should exercise a more expansive reach covering all flora and fauna.¹⁹ Corollary to such perspectives are charges that ecocide can arise under the guise of conservation regimes involving state policies based on human-centered decision-making.²⁰ With respect to more legal issues, proponents of ecocide view its implementation into a legal crime as requiring specifications of criminological elements with accompanying standards of evidence.²¹ Moreover, they also call for clarity regarding legal remedies to redress potential plaintiffs claiming cases of ecocide.²²

Attendant with such efforts are arguments raising intersectional aspects of ecocide. Historically, within international law, the concept of ecocide tied the issue of environmental

¹⁶ Gray 1996.

¹⁷ Liana Minkova, The Fifth International Crime: Reflections on the Definition of “Ecocide,” *Journal of Genocide Research* (2021), available at: <https://www.tandfonline.com/doi/full/10.1080/14623528.2021.1964688> [hereinafter cited as Minkova 2021]; Stop Ecocide Foundation, *Legal Definition of Ecocide* (2021), available at: <https://www.stopecocide.earth/legal-definition> [hereinafter cited as Stop Ecocide Foundation 2021].

¹⁸ Lauren Eichler, Ecocide is Genocide: Decolonizing the Definition of Genocide, 14 *Genocide Studies & Prevention: An International Journal* 2: 104-121 (2020) [hereinafter cited as Eichler 2020]

¹⁹ Debbie Legge & Simon Brooman, Reflecting on 25 Years of Teaching Animal Law: Is It Time for an International Crime of Animal Ecocide? 41 *Liverpool Law Review* 2020: 201-218 (2020); Tim Lindgren, Ecocide, Genocide, & the Disregard of Alternative Life-Systems, 22 *International Journal of Human Rights* 4: 525-549 (2018).

²⁰ Ragnhild Sollund, Wildlife Management, Species Injustice, & Ecocide in the Anthropocene, 28 *Critical Criminology* 3: 351-370 (2020).

²¹ Bustami & Hecken 2021; Vaneet Sokhi, Unravelling the Criminology Behind Ordinary Acts Amounting to Ecocide, 3 *International Journal of Law, Management, & Humanities* 2020: 1524-1534 (2020); Greene 2019; Rob White & Ronald Kramer, Critical Criminology & the Struggle Against Climate Change Ecocide, 23 *Critical Criminology* 2015: 383-399 (2015).

²² Rachel Killean, From Ecocide to Eco-Sensitivity: ‘Greening’ Reparations at the International Criminal Court, 25 *International Journal of Human Rights* 2: 323-347 (2021).

welfare to the conduct of armed conflict.²³ In addition, it bridged discussions regarding the environment with international criminal law encompassing cases such as war crimes and genocide.²⁴ Further, since its inception the notion of ecocide has been applied in post-colonial discourses regarding the treatment of the environment under international development programs.²⁵ In addition to international law discourses, intersectional aspects of ecocide are being similarly raised in discussions regarding environmental consumption brought by capitalist enterprises.²⁶ Of particular note for the present analysis, ecocide is also being connected with indigenous rights claims, with the rationale that indigenous cultures are tied to surrounding environments and hence damage to the environment incurs harms to associated indigenous cultures, such that extreme cases of environmental destruction pose a threat of genocide upon indigenous identities.²⁷

The present analysis adds to the deliberations on the intersectional components of ecocide, drawing upon the current unrest in Myanmar to highlight further nuances regarding the association of ecocide with issues of indigeneity and political ideology. Specifically, the following section reviews the complexities of Myanmar's current struggles in the wake of its February 2021 military coup, organizing them as a conjunction of inter-related contests over natural resources, economics, indigenous sovereignty, gender, and political system. The analysis places ecocide in the intersection of such contestation, with the argument that the acceleration of environmental destruction by the military junta after the coup furthers its efforts

²³ Pauline Martini & Maud Sarlieve, Fighting Deforestation in Non-International Armed Conflicts: The Relevance of the Rome Statute for Rosewood Trafficking in Senegal, 11 *Transnational Environmental Law* 1: 95-117 (2022); Ammar Bustami & Marie-Christine Hecken, Perspectives for a New International Crime Against the Environment: International Criminal Responsibility for Environmental Degradation Under the Rome Statute, 11 *Goettingen Journal of International Law* 1: 145-189 (2021) [hereinafter cited as Bustami & Hecken 2021]; Ricardo Pereira, After the ICC Office of the Prosecutor's 2016 Policy Paper on Case Selection & Prioritisation: Towards an International Crime of Ecocide? 31 *Criminal Law Reform* 2020: 179-224 (2020) [hereinafter cited as Pereira 2020]; Eliana Custao, (2018) From Ecocide to Voluntary Remediation Projects: Legal Responses to Environmental Warfare in Vietnam & the Spectre of Colonialism, 19 *Melbourne Journal of International Law* 2: 494-520 (2018).

²⁴ Bryan Galligan, Re-Theorising the Genocide-Ecocide Nexus: Raphael Lemkin & Ecocide in the Amazon, 26 *International Journal of Human Rights* 6: 1004-1031 (2022); Minkova 2021; Eichler 2020; Pereira 2020.

²⁵ Martin Crook & Damien Short, Developmentalism & the Genocide-Ecocide Nexus, 23 *Journal of Genocide Research* 2: 162-188 (2021).

²⁶ Martin Crook, Damien Short, & Nigel South, Ecocide, Genocide, Capitalism, & Colonialism: Consequences for Indigenous Peoples & Global Ecosystems Environments, 22 *Theoretical Criminology* 3: 298-317 (2018).

²⁷ David Goyes, et al., Genocide & Ecocide in Four Colombian Indigenous Communities: The Erosion of a Way of Life & Memory, 61 *British Journal of Criminology* 2021: 965-984 (2021); Malayna Raftopoulos & Joanna Morley, Ecocide in the Amazon: The Contested Politics of Environmental Rights in Brazil, 24 *International Journal of Human Rights* 10: 1616-1641(2020) [hereinafter cited as Raftopoulos & Morley 2020]; Deniz Tekayak, Protecting Earth Rights & the Rights of Indigenous Peoples: Towards an International Crime of Ecocide, 14 *Fourth World Journal* 2: 5-13 (2016).

to suppress pro-democracy efforts of Myanmar's indigenous peoples. In effect, Myanmar's current crisis provides an empirical case that informs understanding of the intersectional qualities of ecocide.

Intersectionality in Myanmar's current crisis

Environmental surveys of Myanmar note its abundance of natural resources encompassing forests, biodiversity, fishing, minerals, petroleum, natural gas, and agriculturally fertile land.²⁸ The health of Myanmar's environment, however, is threatened by unsustainable trade in flora and fauna, increasing mining and petrochemical enterprises, and growing pollution and waste production.²⁹ The impact of damage is illustrated by the country's losses in forest cover, which declined from approximately 77% in 1950 to roughly 42% in 2020³⁰, and the losses in pelagic fish stocks, which descended by roughly 90% between 1980 and 2019.³¹

The health of Myanmar's environment is of particular concern for Myanmar's indigenous ethnic minorities, in that the geographic distribution of the country's natural resources largely coincides with the traditional territories of its minority peoples. Myanmar's diverse indigenous peoples largely reside in traditional rural areas lying along the country's borders, particularly in upland territories that under British colonial rule maintained forms of culturally distinct governance patterns with traditional rulers.³² Those territories, however, host the bulk of the country's environmental capital, such that while Myanmar's indigenous ethnic minorities

²⁸ Stephen McCarthy, Ten Years of Chaos in Myanmar: Foreign Investment & Economic Liberalization Under the SLORC-SPDC, 1988-1998, 73 *Pacific Affairs* 233 (2000); C. Sudhakar Reddy et al, Quantifying & Predicting Multi-Decadal Forest Cover Changes in Myanmar: A Biodiversity Hotspot Under Threat, 28 *Biodiversity & Conservation* 1129 (2019); Madhu Rao, et al, Biodiversity Conservation in a Changing Climate: A Review of Threats & Implications for Conservation Planning in Myanmar, 42 *AMBIO* 789 (2013) [hereinafter cited as Rhao et al 2013].

²⁹ World Bank, *Country Environmental Analysis Synthesis Report* (2019), available at: <https://www.worldbank.org/en/country/myanmar/publication/myanmar-country-environmental-analysis> [hereinafter cited as World Bank 2019]; David Raitzer, et al., Achieving Environmental Sustainability in Myanmar (2015), available at: <https://www.adb.org/sites/default/files/publication/177586/ewp-467.pdf> ; Environmental Investigation Agency, *Organised Chaos: The Illicit Overland Timber Trade Between Myanmar & China* (2015); available at: <https://eia-international.org/report/organised-chaos-the-illicit-overland-timber-trade-between-myanmar-and-china/> ; Rhao et al 2013.

³⁰ Naing Zaw Htun, Nobuya Mizoue, & Shigejiro Yoshida, Changes in Determinants of Deforestation & Forest Degradation in Popa Mountain Park, Central Myanmar, 51 *Environmental Management* 423-434 (2013); C. Sudhakar Reddy, S Vazeed Pasha, K. Satish, Anjaly Unnikrishnan, Sapana Chavan, C.S. Jha, P.G. Diwakar, & V.K. Dadhwal, Quantifying & Predicting Multi-Decadal Forest Cover Changes in Myanmar: A Biodiversity Hotspot Under Threat, 1129 *Biodiversity & Conservation* 1129-1149 (2019).

³¹ World Bank 2019.

³² South 2008; Smith 1991.

comprise roughly 40% of the total population, their lands host an estimated 60% of Myanmar's natural resources.³³ Holding to their indigenous cultures, ethnic minority communities practice traditional forms of land cultivation and subsistence living that make them dependent upon their local environments, placing them at higher levels of vulnerability to environmental degradation relative to the general population.³⁴

The status of indigenous minorities vis-à-vis the Myanmar state is uneasy. Specifically, since its independence in 1948, Myanmar has experienced perpetual conflicts between the military-controlled state and various EAOs.³⁵ The conflicts primarily center around sovereignty, with the Tatmadaw fighting to suppress the efforts of EAOs to advance their respective claims of self-determination and varying forms of quasi-state self-governance.³⁶ The geographic conformity of Myanmar's natural resources with ethnic minority territories renders Myanmar's environment as a space of contestation between the military and populations indigenous to those territories, manifesting as local suspicions of national land policies, community protests over government administration, and outright violence against the state in ethnic areas.³⁷ Both the military and EAOs use natural resources for income generation, employing extractive practices to consume environmental capital that allow them to amass wealth and finance weapons acquisitions.³⁸ The significance of natural resource revenues is manifest in their share

³³ Aung 2019; Einzenberger 2016; John Buchanan, Thomas Kramer, & Kevin Woods, *DEVELOPING DISPARITY: REGIONAL INVESTMENT IN BURMA'S BORDERLANDS* (2013) [hereinafter cited as Buchanan et al 2013].

³⁴ Aung 2019; MCRB 2018; Tom Kramer, *Ethnic Conflicts & Land Rights in Myanmar*, 82 *Social Research* 355 (2015) [hereinafter cited as Kramer 2015].

³⁵ Narayanan Ganesan, *Democratic Deficits: Structural & Agency Factors in Myanmar's Ethnic Peace Process During Regime Transition*, 9 *Asian Journal of Peacebuilding* 383 (2021) [hereinafter cited as Narayanan 2021]; Bertil Lintner, *Why Burma's Peace Efforts Have Failed to End Its International Wars*, United States Institute of Peace (2020), available at: <https://www.usip.org/publications/2020/10/why-burmas-peace-efforts-have-failed-end-its-internal-wars>; South 2008; Callahan 2003; Smith 1991; Taylor 1987.

³⁶ Stefan Bachtold, Joan Bastide, & Lara Lundsgaard-Hansen, *Assembling Drones, Activists, & Oil Palms: Implications of a Multi-Stakeholder Land Platform for State Formation in Myanmar*, 32 *European Journal of Development Research* 359 (2020); South 2008; Mary Callahan, *POLITICAL AUTHORITY IN BURMA'S ETHNIC MINORITY STATES: DEVOLUTION, OCCUPATION, & COEXISTENCE* (ISEAS 2007); Smith 1991.

³⁷ See for example Liljeblad 2022; Diana Suhardiman, Miles Kenney-Lazar, & Ruth Meinzen-Dick, *The Contested Terrain of Land Governance Reform in Myanmar*, 51 *Critical Asian Studies* 368 (2019) [hereinafter cited as Suhardiman et al 2019]; Ashley South, "Hybrid Governance" & the Politics of Legitimacy in the Myanmar Peace Process, 48 *Journal of Contemporary Asia* 50 (2018); Graham Prescott et al., *Political Transition & Emergent Forest-Conservation Issues in Myanmar*, *Conservation Biology* (2017), available at: <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/cobi.13021>; Kramer 2015.

³⁸ Lizzette Marrero, *Feeding the Beast: The Role of Myanmar's Illicit Economies in Continued State Instability*, *International Affairs Review* (2021), available at: <https://www.iar-gwu.org/print-archive/3jbhl8ch71kydhndufw0nnmqngroq>; Jason Miklian & Ralf Barkemeyer, *Business, Peacebuilding, Violent Conflict, & Sustainable Development in Myanmar: Presenting Evidence from a New Survey Dataset*,

of Myanmar's foreign export income, with major examples being minerals mining, which compose an estimated 50% of government revenues; oil and natural gas industries, which constitute approximately 40%; and timber, which contributes more than 2%.³⁹ In addition to such legitimate income streams are illegitimate ones, in that extractive practices are also linked to transnational criminal networks which connect the trade in timber, wildlife, and gemstones with trafficking in weapons, narcotics, and humans in supply chains reaching across Asia.⁴⁰

Compounding the aforementioned complexities is the gendered nature of Myanmar's politics. Gender discrimination is endemic to Myanmar's diverse cultures, with women objectified by ethno-nationalist movements to further political tensions and concurrently marginalized in terms of political representation, access to justice, cultural roles, and physical mobility.⁴¹ Such

Journal of Asia Business Studies (2021), available at:

<https://www.emerald.com/insight/content/doi/10.1108/JABS-11-2020-0428/full/html> ; International Crisis Group, *Fire & Ice: Conflict & Drugs in Myanmar's Shan State, January 8, 2019* (2019), available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/299-fire-and-ice-conflict-and-drugs-myanmars-shan-state> ; United Nations Office of Drugs & Crime (UNODC), *Transnational Organized Crime in Southeast Asia: Evolution, Growth, & Impact* (2019), available at: https://www.unodc.org/documents/southeastasiaandpacific/Publications/2019/SEA_TOCTA_2019_web.pdf ; Felbab-Brown 2017; Gillian Cornish & Vlado Vivoda, Myanmar's Extractive Industries: An Institutional & Regulatory Assessment, 3 *Extractive Industries & Society* 1075 (2016).

³⁹ Einzenberger 2016; Andrew Bauer, Lorenzo Delesgues, & Paul Shortell, *Sharing the Wealth: A Roadmap for Distributing Myanmar's Natural Resource Revenues* (2016), available at:

<https://resourcegovernance.org/analysis-tools/publications/sharing-wealth-roadmap-distributing-myanmars-natural-resource-revenues> ; Global Witness, *Jade: Myanmar's "Big State Secret"* (2015), available at: <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/myanmarjade/> ; Kevin Woods, *Commercial Agriculture Expansion in Myanmar: Links to Deforestation, Conversion Timber, & Land Conflicts* (2015), available at: <https://www.forest-trends.org/publications/commercial-agriculture-expansion-in-myanmar-links-to-deforestation-conversion-timber-and-land-conflicts/> ; John Buchanan, Thomas Kramer, & Kevin Woods, *Developing Disparity: Regional Investment in Burma's Borderlands*. (2013), available at: <https://www.tni.org/files/download/tni-2013-burmasborderlands-def-klein-def.pdf>

⁴⁰ William Moreto & Daan Van Uhm, Nested Complex Crime: Assessing the Convergence of Wildlife Trafficking, Organized Crime, & Loose Criminal Networks, XX *British Journal of Criminology* 1 (2021), available at: https://www.researchgate.net/profile/William-Moreto/publication/350637483_Nested_Complex_Crime_Assessing_the_Convergence_of_Wildlife_Trafficking_Organized_Crime_and_Loose_Criminal_Networks/links/606b2688458515614d3a20c4/Nested-Complex-Crime-Assessing-the-Convergence-of-Wildlife-Trafficking-Organized-Crime-and-Loose-Criminal-Networks.pdf ; UNODC, *World Wildlife Crime Report* (2020), available at:

https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf ; Vanda Felbab-Brown, *Myanmar Maneuvers: How to Break Political-Criminal Alliances in Contexts of Transition*, United Nations University (2017), available at: <http://collections.unu.edu/view/UNU:6423> [hereinafter cited as Felbab-Brown 2017]; Vanda Felbab-Brown, *Enabling War & Peace: Drugs, Logs, Gems, & Wildlife in Thailand & Burma*, Brookings (2015), available at: <https://www.brookings.edu/wp-content/uploads/2016/07/Policy-paper-7-webv5-1.pdf>

⁴¹ Human Rights Council, *Sexual & Gender-Based Violence in Myanmar & the Gendered Impact of its Ethnic Conflicts* (2019), available at: <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/sexualviolence> [hereinafter cited as HRC 2019]; Sara Davies & Jacqui True, The Politics of Counting & Reporting Conflict-Related Sexual & Gender-Based Violence: The Case of Myanmar, 19 *International Feminist Journal of Politics* 1: 4-21 (2017) [hereinafter cited as Davies & True 2017]; Agatha Ma & Kyoko Kusakabe, *Gender Analysis of Fear & Mobility in the Context of Ethnic Conflict in Kayah State, Myanmar*, 36 *Singapore Journal of Tropical Geography* 3: 342-356 (2015); .

status extends to the environment, with gender-based disparities in attitudes towards the environment accompanied by the subordination of gender issues in discourses over environmental policy, access and control of natural resources, and land use.⁴² The inequalities correlate to gendered conflict, in which gender-based violence is a tactic of both EAOs and the Tatmadaw in targeting specific populations in furthering armed conflict and genocide.⁴³ The disparities are significant for Myanmar, since they connect the prospects for peace-building with issues of gender and environment.⁴⁴

Hence, Myanmar's environment has an intersectional relationship with a slate of issues encompassing economic interests, sovereignty claims, cultural survival, and gender. In the context of the struggle between the military regime and ethnic minorities, the relationship is a zero-sum competition, in that the seizure of natural resources by one means the denial of those resources to the other.⁴⁵ Historically, the balance of such competition was skewed towards the Tatmadaw, with the military-controlled state exercising policies of dispossession that seized land from minority peoples to facilitate extractive industries.⁴⁶ The consequences placed disproportionate harm upon minority communities, as their relationships to surrounding environments meant that losses in land involved 1) the interruption of ecosystem services involving food, water, housing and trade, 2) an attendant reduction in livelihoods and subsistence, and 3) a weakening of cultural identity tied to practices associated with traditional lands.⁴⁷

⁴² Clara Mi Young Park, Gender & Generation in Rural Politics in Myanmar: A Missed Space for (Re)Negotiation? 48 *The Journal of Peasant Studies* 3: 560-585 (2021); International Alert, *Rooting Out Inequalities: Women's Participation in Forest Management in Conflict-Affected Areas of Karen State in Myanmar* (2020), available at: <https://www.international-alert.org/publications/rooting-out-inequalities-womens-participation-forest-management-karen-state-myanmar/>; Hilary Faxon, Roisin Furlong, & May Sabe Phyu, Reinvigorating Resilience: Violence Against Women, Land Rights, & the Women's Peace Movement in Myanmar, 23 *Gender & Development* 3: 463-479 (2015); Teri Allendorf & Keera Allendorf, (2013) Gender & Attitudes Toward Protected Areas in Myanmar, 26 *Society & Natural Resources* 8: 926-976 (2013).

⁴³ Afroza Anwary, Sexual Violence Against Women as a Weapon of Rohingya Genocide in Myanmar, 26 *The International Journal of Human Rights* 3: 400-419 (2022); Jenny Hedström & Elisabeth Olivius, The Politics of Sexual Violence in the Kachin Conflict in Myanmar, 23 *International Feminist Journal of Politics* 3: 374-395 (2021); HRC 2019; Davies & True 2017.

⁴⁴ Henri Myrntinen & Diana Lopez Castaneda, Perils of Peace-Building: Gender-Blindness, Climate Change, & Ceasefire Capitalism in Colombia & Myanmar, in Sarah Smith & Keina Yoshida (eds.), *Feminist Conversations on Peace* (Bristol University Press 2022), available at: <https://bristoluniversitypressdigital.com/display/book/9781529222074/ch009.xml>

⁴⁵ Saturnino Borrás, Jr., Jennifer Franco, & Zau Nam, Climate Change & Land: Insights from Myanmar, 129 *World Development* 1(2020) [hereinafter cited as Borrás et al 2020]; Suhardiman et al 2019; Einzenberger 2016; Kramer 2015; Myo Ko Ko, *Current Situation of Indigenous Peoples & Natural Resources in Myanmar [blog entry, July 21, 2014]* (2014), available at: <https://iep.berkeley.edu/node/9715> [hereinafter cited as Ko Ko 2014]; Buchanan et al 2013.

⁴⁶ Suhardiman et al 2019; Einzenberger 2016; Kramer 2015; Ko Ko 2014; Buchanan et al 2013.

⁴⁷ Liljeblad 2022; Borrás et al 2020; Kramer 2015.

Since the February 2021 military coup, the position of the environment has become further associated with the country's broader political unrest. Specifically, following the coup, international actors accused the military-controlled state of escalating its activities across a range of natural resource enterprises, with an acceleration in deforestation⁴⁸, mining⁴⁹, drug trafficking⁵⁰, and wildlife trade.⁵¹ The expansion in extractive enterprises included areas previously placed under conservation, with protected areas being closed to the public and opened for logging.⁵² Such activities occurred in conjunction with the resumption of armed conflict between the Tatmadaw and EAOs, as multiple EAOs allied themselves with nationwide pro-democracy protests that arose in the wake of the coup.⁵³ As much as the military junta's motivations involved financial needs for revenue to sustain its control⁵⁴, it also tied directly to its operations against pro-democracy forces, in that anti-military populations—both

⁴⁸ Forest Trends 2022; EIA 2021; Ben Heubl, *Myanmar's Military Coup Linked to Deforestation*, Engineering & Technology, 23 April 2021 (2021), available at: <https://eandt.theiet.org/content/articles/2021/04/myanmar-s-military-coup-linked-to-illegal-deforestation/>; Jack Hill & Miles Kenney-Lazar, *Dispossession, Deforestation, & Deceit in Myanmar*, New Mandala, November 3, 2021 (2021), available at: <https://www.newmandala.org/dispossession-deforestation-and-deceit-in-myanmar/>; Techjournalist 2021; Esther Wah, *Following Coup, Myanmar's Indigenous Vow to Protect Forests 'Until the End of the World'* (Commentary), Mongabay, 27 September 2021 (2021), available at: <https://news.mongabay.com/2021/09/following-coup-myanmars-indigenous-vow-to-protect-forests-until-the-end-of-the-world-commentary/>.

⁴⁹ Combs 2022; Emily Fishbein, Jaw Tu Hkawng, Nu Nu Lusan, & Jauman Naw, *In the Wake of Coup, Gold Mining Boom Is Ravaging Myanmar*, YaleEnvironment360, 3 May 2022 (2022), available at: <https://e360.yale.edu/features/as-conflict-persists-gold-mining-boom-is-ravaging-myanmar>.

⁵⁰ Gavin Butler, *Myanmar's Coup Has Opened the Floodgates of the Southeast Asian Drug Trade*, Vice, December 20, 2021 (2021), available at: <https://www.vice.com/en/article/m7vgm3/myanmar-coup-golden-triangle-drug-trade-asia>; Combs 2022.

⁵¹ Emily Fishbein, Jaw Tu Hkawng, Nu Nu Lusan, & Jauman Naw, *Kachin's Illegal Wildlife Trade Booms in Post-Coup Free-for-All*, Frontier Myanmar, 11 August 2022 (2022b), available at: <https://www.frontiermyanmar.net/en/kachins-illegal-wildlife-trade-booms-in-post-coup-free-for-all/>; WWF 2022.

⁵² Global Conservation, *Alaungdaw Kathapa National Park Closed Due to Myanmar Coup*, Global Conservation, 4 June 2021 (2021), available at: <https://globalconservation.org/news/AKNP-Closed-Myanmar-Coup/> [hereinafter cited as Global Conservation 2021]; Irrawaddy, *Myanmar Junta's Coup Gives Greenlight to Timber Traffickers*, Irrawaddy, August 17, 2021 (2021c), available at: <https://www.irrawaddy.com/news/burma/myanmar-juntas-coup-gives-greenlight-to-timber-traffickers.html> [hereinafter cited as Irrawaddy 2021c].

⁵³ ICG 2022; Irrawaddy 2021b; Indigenous Conserved Conservation Areas Consortium, *Alert: Military Junta Bombs Salween Peace Park in Indigenous Karen Territory After Coup d'Etat in Burma/Myanmar*, ICCA Consortium, April 5, 2021 (2021), available at: <https://www.iccaconsortium.org/index.php/2021/04/05/alert-myanmar-junta-bombs-indigenous-salween-peace-park/> [hereinafter cited as ICCA Consortium 2021a]; Indigenous Conserved Conservation Areas Consortium, *The Fight for the Forest: Indigenous Peoples in Burma Speak Out on Threats Following the February Military Coup*, ICCA Consortium, 12 November 12, 2021, available: <https://www.iccaconsortium.org/index.php/2021/11/12/the-fight-for-the-forest-indigenous-peoples-in-burma-speak-out-on-threats-following-the-february-military-coup/> [hereinafter cited as ICCA Consortium 2021b].

⁵⁴ Forest Trends 2022; EIA 2021; Global Conservation 2021; Irrawaddy 2021c; Techjournalist 2021.

among ethnic minorities and the dominant Bamar ethnic majority—frequently seek refuge in the country's remote rural frontiers.⁵⁵

Thus, Myanmar's current unrest associates the environment with multiple intersectionality, in that it now goes beyond military-indigenous minority struggles over economics, sovereignty, cultural survival, and gender to also include wider political contestation between an authoritarian military and a popular pro-democracy uprising. As much as the environment is apolitical, it is a space of struggle, with ethnic minority and pro-democracy forces working against a military junta seeking to control and exploit natural resources to further its power.

Implications for the concept of ecocide

The status of the environment in Myanmar poses implications for the discourse on ecocide in that the current circumstances within Myanmar do not conform consistently across the diverse conceptions of ecocide. In particular, Myanmar's situation struggles with the expectations for "unlawful or wanton acts" held by the Stop Ecocide Foundation⁵⁶, since 1) the Myanmar military's use of the environment is done through the military's control of the state and the legal system, such that the military can claim its actions as being lawful, and 2) the Myanmar military may not view its consumption of the environment as rising to the "excessive" levels of damage ascribed to the notion of "wanton."⁵⁷ Similarly, the case of Myanmar does not fit Mark Allan Gray's description of ecocide, since the environmental harms occurring within Myanmar do not extend outside the country's borders and so do not meet his criterion of "international consequences."⁵⁸ There is alignment, however, with definition held by Polly Higgins, with the situation in Myanmar falling within her elements for ecocide, in the sense that the Tatmadaw's accelerated consumption of natural resources involve acts that 1) are causing serious damage to ecosystems in ethnic minority territories, which 2) are preventing peaceful enjoyment of ethnic minority communities inhabiting those ecosystems, and 3) posing impacts that are "wide-spread, long-term, and severe" in that they threaten the continued existence of entire ecosystems.⁵⁹

⁵⁵ Esther Wah, *Losing the Freedom to Protect: The Shattered Dreams of Environment Defenders*, Frontier Myanmar, May 23, 2022 (2022), available at: <https://www.frontiermyanmar.net/en/losing-the-freedom-to-protect-the-shattered-dreams-of-environment-defenders/>; ICCA Consortium 2021a.

⁵⁶ Stop Ecocide Foundation 2021: Art. 1.

⁵⁷ Stop Ecocide Foundation 2021: Art. 2, Para. 2.

⁵⁸ Gray 1996: 216.

⁵⁹ Higgins et al 2013: 257; Higgins 2010: 6

The above inconsistencies call for further study regarding the definition of ecocide. The need for consensus is important for both legal implementation at both international and domestic levels. For international law, clarity on the meaning of ecocide would serve to prescribe the scope of potential prosecutions, particularly in institutions such as the International Criminal Court that are working to associate the environment with other legal issues. For domestic law, consistency in conceptions of genocide would allow different jurisdictions to fashion complementary approaches to address common impacts from transnational environmental harms. As a result, it would be helpful if future research could advance discussions about what elements—and hence what kinds of cases—should be included in a legal conception of ecocide.

Finally, beyond conceptual issues, the multiple intersectionality in Myanmar's environment vis-à-vis economic interests, sovereignty claims, cultural identity, gender, and politics directs ecocide discourses towards consideration of increased complexity. In particular, the circumstances in Myanmar indicate that intersectionality can extend beyond an association of ecocide with a single additional issue to encompass a convergence of multiple concurrent issues. As a result, discussions over ecocide should favor definitions that facilitate its application to heterogeneous issue spaces, either as 1) a form of crime accommodating a diversity issues impacting the environment or 2) a category of crime that readily links with other types of crime addressing different issues.

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