

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

ATROCITY CRIMES RISK ASSESSMENT SERIES

MYANMAR

VOLUME 9 - NOVEMBER 2019



Acknowledgements

This 2019 updated report was prepared by **Ms Elise Park** whilst undertaking a volunteer senior internship at the Asia Pacific Centre for the Responsibility to Protect based at the School of Political Science and International Studies at The University of Queensland.

We acknowledge the 2017 version author, **Ms Ebba Jeppsson** (a volunteer senior APR2P intern) and the preliminary background research undertaken in 2016 by volunteer APR2P intern Mr Joshua Appleton-Miles.

These internships were supported by the Centre's staff: Professor Alex Bellamy, Dr Noel Morada, and Ms Arna Chancellor.

The Asia Pacific Risk Assessment series is produced as part of the activities of the Asia Pacific Centre for the Responsibility to Protect (AP R2P). Photo acknowledgement: Rohingya refugees make their way down a footpath during a heavy monsoon downpour in Kutupalong refugee settlement, Cox's Bazar district, Bangladesh. © UNHCR/David Azia. Map Acknowledgement: United Nations Cartographic Section.

Asia Pacific Centre for the Responsibility to Protect

School of Political Science and International Studies

The University of Queensland

St Lucia Brisbane QLD 4072

Australia

Email: r2pinfo@uq.edu.au

<http://www.r2pasiapacific.org/index.html>

LIST OF ABBREVIATIONS

AA	Arakan Army
AHA	ASEAN Humanitarian Assistance
ALA	Arakan Liberation Army
ARSA	Arakan Rohingya Salvation Army
ASEAN	Association of Southeast Asian Nations
EAO	Ethnic Armed Organization
HRC	Human Rights Council
ICC	International Criminal Court
ICoE	Independent Commission of Enquiry
IDP	Internally Displaced Person
KIA	Kachin Independence Army
KNU	Karen National Union
MNDAA	Kokang Army/ Myanmar National Democratic Alliance Army
MNHRC	Myanmar National Human Rights Commission
NCA	Nationwide Ceasefire Agreement
NVC	National Verification Card
R2P	Responsibility to Protect
SALW	Small Arms and Light Weapons
TNLA	Ta'ang National Liberation Army
UN	United Nations
UN FFM	UN Fact-Finding Mission
UPR	Universal Periodic Review
USDP	Union Solidarity and Development Party
UWSA	United Wa State Army

INTRODUCTION

In 2005, ‘...*United Nations Member States made a commitment to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity...*’¹ Indoctrinated as the ‘Responsibility to Protect’ (R2P), the principle emphasizes that States have the primary responsibility to protect populations from atrocity crimes, and from their incitement. Recognizing that atrocity crimes do not occur in isolation, United Nations Special Advisors on the Prevention of Genocide and on the Responsibility to Protect developed the ‘Framework of Analysis for Atrocity Crimes’ (hereinafter ‘the Framework’) in 2014. The Framework acts as an early warning mechanism for the risk of atrocity crimes, helping Member States and the international community to identify high-risk developments, pinpoint gaps in atrocity prevention capacities and promote action. Because serious human rights violations – including those that amount to atrocity crimes – are more likely to occur in contexts of domestic instability or crisis, the application of the framework and any corresponding measures taken to prevent the commission or incitement of such crimes are also likely to contribute to peace and stability. The Framework sets out a series of Risk Factors and corresponding Indicators that improve those capacities through assessment and monitoring.² The following atrocity crime risk assessment reflects the application of the Framework to the Republic of the Union of Myanmar (hereinafter ‘Myanmar’). It serves to identify those Risk Factors that are most pressing in Myanmar and provides recommendations thereafter for which to address them.

The report to follow assesses Myanmar’s current propensity to the commission or incitement atrocity crimes. It acts as an update of the previous assessment in the ‘Atrocity Crimes Risk Assessment Series Myanmar’, accounting for developments since 2017. It concludes that two years after the military’s ‘clearance operations’ against Rohingya Muslims in Rakhine State, Myanmar still harbours the conditions conducive to the commission or incitement of atrocity crimes. The analysis of the current political, social and economic climate reveals little has been done to address the underlying causes of division and conflict in the country. As such, they remain pervasive. For all eight (8) General Risk Factors, several respective indicators were assessed to be present. So too were indicators pertaining to the three Specific Risk Factors, which account for the risks of genocide, crimes against humanity and war crimes. The Rohingya population remains at risk of identity-based targeting, while civilians residing in conflict zones continue to face indiscriminate targeting. Of upmost concern are new waves of violence in Rakhine, Chin, Kachin and Shan states, which are reportedly characterised by patterns of violence that indicate a general policy of civilian targeting. The primary perpetrators of these crimes have consistently been members of the Myanmar military (Tatmadaw), who continue to evade accountability. Risk factors should be subject to continued monitoring.

MAP MYANMAR



FRAMEWORK OF ANALYSIS

The Framework of Analysis for Atrocity Crimes comprises fourteen (14) Risk Factors (see Table 1). Risk Factors are the conditions – behaviors, elements or circumstances – that ‘...create an environment conducive to the commission of atrocity crimes, or indicate the potential, probability or risk of their occurrence’.³ Of the fourteen risk factors, the first eight (8) are called ‘Common Risk Factors’. These are common to all atrocity crimes and refer to the conditions that increase their risk more generally. The Framework also identifies an additional six (6) ‘Specific Risk Factors’, which pertain to the specific conditions of genocide, war crimes and crimes against humanity*. There are two (2) specific risk factors identified for each atrocity crime. To account for the various manifestations of each risk, between six (6) and eighteen (18) indicators accompany each risk factor. Indicators are instrumental in determining the degree to which the corresponding Risk Factor is present, as well as the relative importance of that Risk Factor in the particular context being assessed. Overall, the more Risk Factors and Indicators present, the more acute the risk of the incitement or commission of atrocity crimes becomes.

In order to ascertain the risk of atrocity crimes in Myanmar, data will be systematically gathered for each indicator. This will allow for an assessment of the incidence of each Risk Factor in Myanmar at present. Before proceeding, it must be noted that only the risk factors and indicators pertinent to the current political and social climate in Myanmar will be included in this risk assessment. This is not indicative of the relative importance of those Risk Factors or Indicators to the Framework; rather, it reflects which conditions are of minimal concern in Myanmar at the time of writing. Risk Factors and Indicators are in no way ranked; they are evaluated in conjunction with the broader, political, historical and cultural context of Myanmar.⁴

Table 1. Framework of Analysis for Atrocity Crimes, Risk Factors⁵

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
Genocide		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
Crimes Against Humanity		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
War Crimes		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations
Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be accessed at the UN website at www.un.org .		

³*Note that under international law Ethnic Cleansing is not recognized as an international crime in its own right but includes acts that may amount to an atrocity crime. For this reason, ethnic cleansing is integrated into the Specific Risk Factors of the other atrocity crimes.

COMMON RISK FACTORS

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Risk Factor 1 identifies ‘situations that place a State under stress and generate an environment conducive to atrocity crimes.’ Eleven (11) indicators cover situations that highly increase the likelihood of atrocity crimes. These include armed conflict, humanitarian crisis, and political-, economic- and social-instability.

The assessment found Risk Factor 1 to be present in Myanmar at the time of writing. Myanmar continues to witness high incidences of armed conflict, protracted humanitarian crisis particularly in those regions affected by conflict and displays conditions indicative of political, economic and social instability.

Non-international Armed Conflict (Indicator 1.1)

In October 2015, the Government of Myanmar and eight (8) Ethnic Armed Organizations (EOs) signed a Nationwide Ceasefire Agreement (NCA) (2013-2015)⁶. The move presented an opportunity to end Myanmar’s longstanding civil war, ongoing since its independence in 1948⁷. Despite its acclaim, the deal failed to acquire the signatures of eight (8) of the sixteen (16) EOs allowed to sign and has ultimately been unsuccessful in securing its aims of ‘... *an enduring peace based on the principles of dignity and justice, through an inclusive political dialogue process involving all relevant stakeholders*.’⁸ Irrespective of the agreement, armed conflict has continued to grow between the Myanmar Military (Tatmadaw) and EOs, reflecting the cleavage between the national regime and Myanmar’s many ‘ethnic peripheral communities’ (Myanmar recognizes 135 ethnic groups, but refuses to recognize several others)⁹ – see *Risk Factor 1, Indicator 1.2*.

Analyses conducted by the Armed Conflict Location & Event Data Project (ACLED) found that the Government of Myanmar has engaged in the majority of incidents since 2015. Both the state and military have used violence in efforts to consolidate power in Myanmar’s peripheral regions. Armed conflict also continues between rival EOs. The Asia Foundation has found that of Myanmar’s fourteen (14) regions and states, at least eleven (11) experience either latent or subnational conflict. In most recent years, conflict has been concentrated in Kachin, Shan and Rakhine states¹⁰. Some of the most pertinent incidences to this risk assessment – and will be covered greater detail at later stages of the report – are discussed below.

Significant international attention has been directed towards conflict in Northern Rakhine state, particularly since the military’s ‘clearance operations’ which saw the emptying of townships home to nearly one million Rohingya – a Muslim minority group that practice a Sunni-inflected variation of Sunni Islam. The campaign came as a response to coordinated attacks conducted by the Arakan Rohingya Salvation Army (ARSA) on an army base and several police outposts in August 2017. The government responded by declaring the ARSA a terrorist organization and commenced a brutal crackdown that, under the guise of a ‘restoration of stability’, saw the commission of mass violence and atrocities against the protected Rohingya group. Extensive reports of rape, murder, arson and other human rights abuse have emerged from the region, which triggered the mass exodus of the endangered Rohingya community.¹¹ No groups have recorded attacks headed by the ARSA since 5 January 2018, yet the military continued to conduct indiscriminate attacks on Rohingya villages thereafter.¹²

This year, renewed violence has been reported in Rakhine state between the Arakan Army (AA) – a group that claims to represent ethnic Rakhine Buddhists– and the Tatmadaw, which appears to have been triggered by a series of attacks by the AA in Buthidaung township¹³. The AA launched an offensive on military posts and police in January, prompting the government to give the AA terrorist status and order the elimination of the group. Between January and May 31, the AA and Myanmar Military engaged in as many as 206 battles on the ground, leading to the deaths of 20 civilians, 100 AA insurgents and 31 border police.

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

According to the AA, 1114 military personnel have also been lost. The number of internally displaced persons (IDPs) has also risen, with estimates ranging from 33 000 and 42 000.¹⁴ While negotiations on a bilateral ceasefire agreement have begun, the Commander in Chief of the AA said in June that the agreement will fail if the military maintains its uncompromising attitude toward the coalition members of the Northern Alliance, of which the AA is part.¹⁵ Conflict in Rakhine – which is spilling over into Chin State – is thus likely to continue¹⁶.

Most recently, the Myanmar military has been engaged in conflict with three members of the Northern Alliance – the AA, the Myanmar National Democratic Alliance Army (MNDAA), the Ta'ang National Liberation Army (TNLA) – following an attack by the coalition on the Defense Services Academy and civilian structures in Western Shan State on August 15. Counterattacks by the military were without delay, and fighting has since spread across the region. The heaviest fighting is occurring near the Chinese border, outside of Kutkai township. Numerous civilians have been killed since the conflict commenced.¹⁷

The Peace Process – Ongoing Challenges (Indicator 1.2)

Indicator 1.2, which assesses the presence of a *'security crisis caused by, among other factors, defection from peace agreements, armed conflict in neighboring countries, threats of external interventions or acts of terrorism'*¹⁸, is found to be present at the time of writing. In the context of Myanmar, the peace process between EAOs and the Government of Myanmar is of central importance. Of note here is not a defection from current peace agreements per se, but rather the highly complex process of arriving – and ratifying – an internal peace agreement between the national regime and insurgent groups. The challenge is to promote effective, inclusive political dialogue between parties that is conducive to the development of a federal democracy that ends armed insurgencies. With twenty-one (21) EAOs at present, this is no easy feat; EAOs are driven by a myriad of ambitions, with goals varying from promoting ethnic minority rights, achieving autonomy, and sometimes economic incentives.¹⁹

State Counsellor Aung San Suu Kyi's National League of Democracy (NLD) party emphasized the peace process as a priority of their government²⁰, and have continued to push for the aforementioned NCA – which was originally cast as a prerequisite for participation in peace dialogue process, and was intended to set the stage for political dialogue that would ultimately see the establishment of a Union Peace Accord. The NLD has since held periodic peace conferences (the 21st-Century Panglong Conference or the Union Peace Conference) in an attempt to get remaining EAOs to sign the agreement. In February 2018, it gained two additional signatures. While deeply symbolic, the conflicts described in the previous section are illustrative of its continued failure to ascertain concrete and gainful progress and reflect that the NCA is neither nation-wide nor a ceasefire²¹. Efforts to bring remaining insurgent armies to the table are underway, many of which have previously refused to sign because the agreement currently fails to address security sector reform, self-determination and federalism.

At the time of writing, the representatives from the military and members of the Northern Alliance (AA, TNLA, MNDAA and KIA) are currently negotiating a unilateral ceasefire agreement. The deliverance of a joint statement agreement has already been postponed twice however, with the latest deadline expiring on 31 August 2019. A new extension gives the groups until 17 September 2019.²² While seemingly positive, recent fighting between the two groups is likely to complicate any process toward a Tatmadaw-Northern Alliance agreement. Of concern too is the military's willingness to engage meaningfully; the military spokesperson and Brigadier General, Zaw Min Tun, proclaimed in June that there had been no clashes with EAOs in 2019, advocating that the ceasefire had reduced conflict and supported the peace process²³. As the analysis of Indicator 1.1 illustrated, this is objectively untrue and exaggerates the realistic potential for peace. In January of this year, the Karen National Union (KNU) officially declared it would withdraw from the formal peace process, citing differences of opinion with the government as its reason²⁴.

The low level of trust is an important factor in Myanmar's fractured peace process, where deeply entrenched distrust is likely to act as a hindrance in future peace talks. At present, conditions for effective political dialogue on contentious topics have still not been met. The Yusof Ishak Institute high-

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

light that the Tatmadaw *‘insists that without a pledge of non-secession from the ethnic armed organizations, there would be no talks on increased autonomy and self-determination for the ethnic armed organizations’*²⁵. With secession the ambition of some ethnic groups, these conditions are unacceptable to many EAOs. Despite efforts to create dialogue, continued conflict between the military and rival EAOs has made achieving sustainable ceasefire arrangements yet more complicated. Recent hostilities in Rakhine, Kachin and Shan states, which have resulted in new waves of IDPs and casualties, has further eroded trust in the process²⁶. The limited capacity of the Government’s peace secretariat ((the National Reconciliation and Peace Centre (NRPC)²⁷, as well as deep-seated distrust and resentment of the state military apparatus*¹ (see *‘Political Instability’*) by EAOs, is expected to delay agreements.

Ultimately, Myanmar remains in a security crisis fueled by armed conflict driven by a myriad of ambition and ideology. The crisis has been exacerbated by the NLD’s continued failure to achieve a tangible, nation-wide agreement for peace, despite negotiations having commenced in 2011 following the dissolution of its military junta. Majority-minority ethnic relations will continue to be tense.

Protracted Humanitarian Crisis (Indicator 1.3)

Humanitarian crises (**Indicator 1.3**) are widespread and ongoing in Myanmar. Since the Myanmar Military commenced its campaign of ethnic cleansing and forceful removal – destroying 392 predominantly Rohingya villages between August 2017 and March 2018 – some 730 000 Rohingya have fled to Bangladesh. This brings the total number of Rohingya living in Bangladesh as refugees to over one million (following decades of persecution). Several hundred thousand Rohingya remain in Rakhine. Of these, at least 200 000 are in northern Rakhine where access by humanitarian organizations and aid is heavily controlled; an additional 120 000 reside in displacement camps in Rakhine state since 2012, which have been described as open-air prisons. The United Nations (UN) have described their conditions as ‘deplorable.’ Freedom of movement and the ability to pursue livelihood opportunities is still heavily constrained for Rohingya in Rakhine state. While restrictions have been in place for decades, they have intensified in recent years. Reports suggest that mobility is so limited that Rohingya, particularly those in rural areas, have been unable to leave their homes to access healthcare centers, markets, fields and rivers. Amnesty international has referred to restriction of movement and livelihood opportunities as institutionalized discrimination that amounts to apartheid.²⁸

As mentioned, new waves of violence in 2019 are increasing numbers of mostly non-Rohingya IDPs. Amnesty International has drawn parallels between the latest conflict in Rakhine to the pattern of atrocities witnessed in previous years – where extrajudicial executions, torture and other ill-treatments have been carried out by the military. Recent incidents between the AA and military contributed to insecurity in Rakhine, and Human Rights groups have warned of an impending food crisis following the destruction of farmland and farmers having been blocked from their harvests²⁹. Current conditions further undermine the stability of a region in which Rohingya seek to return. The feasibility of returns is called into question. The government has also utilized this violence as a justification tool for the continued restriction of humanitarian assistance into Northern Rakhine, even those areas not hit directly.³⁰

In addition to the humanitarian crisis created by violence and internal instability, Myanmar is also highly susceptible to natural disasters. It is ranked the second most sensitive country to the effects of climate change and is one of fifteen countries most exposed to severe flooding. Monsoon season displaces persons each year, where the problem is exacerbated by inadequate and poorly-managed drainage systems in cities, and dam- or river-erosion in rural areas.³¹ This year in Rakhine State, in areas of ongoing conflict, some 16 000 Rakhine refugees in 15 camps were forced to move following serious flooding.³²

In conjunction, these elements and conditions threaten the individual security – health, safety and well-being – of persons in Myanmar, both Rohingya and non-Rohingya, and reflect the continued presence of **Indicator 1.3**.

*1 See ‘political instability’ for more on the role of the military apparatus in the State architecture.

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Political Instability – the Long Road to Democracy (Indicator 1.4 and 1.5)

Situations that may place states under conditions more conducive to human rights violations and atrocity crimes includes political instability. In 2019, political instability in Myanmar is caused by factors pertaining to **Indicator 1.4** and **Indicator 1.5**. Respectively, these refer to '*political instability caused by abrupt or irregular regime change or transfer of power*' (1.4) and '*political instability caused by disputes over power of growing nationalist, armed or radical opposition movements*' (1.5). Myanmar continues to show indications of an irregular regime change some four years after the NLD took office. In addition to the political instability caused by the stalled democratization process, nationalist and armed opposition movements are ongoing.

Stalled Democratic Transition (1.4)

When civilian-elected NLD came into power in November 2015, it was the first national election since the introduction of a *nominally* civilian government in 2011 that had ended forty-eight (48) years of military rule in Myanmar. Myanmar's dictatorship was characterized by human rights abuses and ill-treatment of populations, system corruption and abrasive nationalism. But despite reform, the military has retained significant structural control over key areas of parliament as well as over the appointment of important executives to bureaucratic positions in civilian ministries – the outcome of strategic amendments to the Constitution in 2008, which guaranteed the military 25 per cent of parliamentary seats and, in effect, veto power over future constitutional changes and other decisions made by the legislative, executive and judicial branches of government (changes require 75 per cent of parliamentary votes). Under the current government, the military controls defense, border affairs and home affairs. The latter oversees the security and police apparatus, and until recently, the General Administration Department (GAD)³³. GAD, which is the key acting body for public administration in Myanmar, was transferred to the civilian controlled Ministry of the Union Government at the end of 2018, marking an important step in the democratization process³⁴.

Nevertheless, the military remains highly influential. The 2008 Constitution permits the military to act independently in the name of protecting state sovereignty and constitutional compliance³⁵. With the legal backing to act beyond the executive and cabinet, the military has effectively positioned itself to greatly undermine the ruling party's authority. These factors are indicative of an irregular transfer of power, which has seen Myanmar's democratic transition fragile and stalled as a result of continued political influence by the military – a political influence that has manifested in ongoing power struggles between the civilian-controlled NLD and non-civilian-controlled military.³⁶

Early this year, the parliament successfully voted to approve a proposal that would create an ad hoc committee to amend the constitution. If fruitful, amendments will erode the power of the military drastically; as a result, military legislatures and Members of Parliament have strongly objected³⁷. The Charter Amendment Committee published the first draft in mid-July, putting forward recommendations for more than 3 700 changes to provisions of the Constitution. In a parliamentary vote, the committee has approved to draft an amending bill to the Constitution.³⁸

Power Disputes with Armed Opposition Movements (1.5)

The irregular transfer of power described in the previous section, which has manifested in continued military influence in post-authoritarian Myanmar, is highly relevant to understanding the presence of **Indicator 1.5**, which describes political instability caused by power disputes by opposition movements. One major group of thinkers attempting to undermine the authority of the NLD are those demanding a hardline approach to the minority Muslim population in Myanmar. This movement, supported by the Tatmadaw, has been led by ultra-nationalist Monks and threatens the NLD's reform process by spearheading ant-Muslim sentiment in the country. This sentiment has become a pawn for political parties in the lead up to 2020 elections, threatening future prospects for reform and hopes for national cohesion – see '*Social Instability*'.³⁹

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Another point of growing political instability comes from poor relations between the central government and the many EAO leaders, many of which have their own established political wing. The 2008 Constitution had introduced self-administered areas for some ethnic nationalities*² as well as ‘special representation rights’ for small ethnic groups. Because of the pervasive discontent with the constitution though, not least the influential role of the military, such federal reforms have been subject to ongoing debate⁴⁰. In addition to this, the military has greatly opposed increased regional autonomy and have gone as far to demand a pledge of non-secession before it would consider discussing the matter. At present, there exist political asymmetries in the concessions provided to various EAOs by the central authorities via ceasefire agreements. Differences include the extent of control of territories and the relationship to the military. Many groups continue to organize themselves to fight for a decentralized system with increased opportunities for ethnic self-determination and regional management (of natural resources, for example),⁴¹ often provoking a hardline response from the military. At the time of writing, ceasefire agreements, which will deal with the decentralization of the state, are being negotiated⁴²(see *‘The Peace Process – Ongoing Challenges’*).

Economic Instability (1.7 and 1.9)

Despite political instability, Myanmar has experienced rapid economic growth and widespread poverty reduction since 2005. Today, the World Bank classifies Myanmar as a lower-middle income country (reaching a GDP per capita of 1571.9 USD in 2018) with a poverty rate of approximately 32 per cent. Following a volatile 2018, Myanmar is expected to make a strong recovery this year and consolidate macroeconomic stability; recently, trade restrictions have been eased, the financial sector opened to increase foreign competition and infrastructure projects have been decided on. The World Bank predicts economic growth to increase to 6.5 per cent in 2018/ 2019.⁴³ While not deemed to be in a state of national crisis, the economy does face threats from external forces, including a general downturn in the global economy. In addition, travel and targeted financial sanctions have been reintroduced in 2018 by various international actors following the military’s treatment of the Rohingya in 2017/2018. Sanctions are aimed at some Myanmar military personnel and its apparatus but may have a broader economic impact given the Tatmadaw’s entrenchment in the national economy. Sanctions have been imposed by, among others, Australia, the European Union and the United States⁴⁴. It is recommended these external factors are monitored.

Despite a general positive outlook, economic instability caused *‘by scarcity of resources or disputes over their use or exploitation’* (1.7) and *‘by acute poverty, mass unemployment or deep horizontal inequalities’* (1.9) are apparent in Myanmar.

Resource control has been a key driver of ongoing armed conflicts in Myanmar’s ethnic peripheral regions, reflecting the presence of **Indicator 1.7** and **1.9**. Despite having undergone broad economic liberalization, the country’s economy effectively remains under the control of the military. Particularly concerning here is Myanmar’s rich endowment of natural resources, which include gas, forest resources and high-value minerals, which have historically been controlled by the military. Many of which are located in territories partially or de facto controlled by armed ethnic groups. Military interests in maintaining control of resource extraction is high. A report by the UN Special Rapporteur on the situation of human rights in Myanmar points to two military-run conglomerates – the Union of Myanmar Economic Holdings Limited (UMEHL) and Myanmar Economic Corporation (MEC) – that are heavily involved in resource extraction and provide off-budget financing to the military⁴⁵. Quite significantly, the UN FFM on the Economic Interests of the Myanmar Military identified 120 businesses that it established on reasonable grounds were owned by either the UMEHL or the MEC, a further 27 businesses that were closely affiliate, and that each owns a large bank.⁴⁶ At the time of writing, most of the revenue extracted from the exploitation of these resources has been retained by the central authority, including those military-owned enterprises.

While the 2008 Constitution permits state and regional governments access to some tax on resource extraction, these privileges have been greatly limited to less valuable resources. Given the country’s large informal economic sector and unequal distribution of power, most states have limited capacity for rev-

*2 The recognized 135 ethnic groups are further categorized into eight ‘national races.’

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

enue generation. The result has been protracted regional economic inequality and rural poverty that have spurred an eagerness among ethnic groups to consolidate control of their regional resources. Calls for increased autonomy and regional management continue to fuel conflict between EAOs and the military. Jade mines particularly have been a source of conflict – these have been secured by several armed groups, including the KIA, Tatmadaw and Tatmadaw-affiliated militia⁴⁷. Resource conflicts in turn increase social unrest and have a negative impact on the stability of the national economy.⁴⁸

Of note too is the regional disparity in livelihood conditions that exists across the country, which reflect the presence of horizontal inequality. While the national poverty rate fell from 48.2 to 24.8 per cent between 2005 and 2017, Chin and Rakhine states are marked by chronic poverty with rates of 58 and 41.6 percent respectively. Yangon state, on the other hand, is comparatively well-to-do with a poverty rate of 13 per cent⁴⁹. Recently Myanmar's Department of Population, which forms part of the Ministry of Labour, Immigration and Population, introduced Myanmar's first multidimensional measure of welfare by creating the 'Multidimensional Disadvantage Index' comprised of fourteen non-monetary (14) indicators. It found that only 84 per cent of the population experience disadvantages in at least one indicator but, again, major regional disparities were noted; disadvantages in five (5) or more indicators were experienced by 60 per cent of persons living in Rakhine State, while just 10 per cent in Yangon qualify for this category⁵⁰. These factors reflect economic volatility at the individual, micro level that create conditions of economic instability in the absence of meaningful investment.

Social Instability (1.11)

Indicator 1.11 identifies '*social instability caused by exclusion or tensions based on identity issues, their perception or extremist forms*'. Identity issues are key to understanding protracted social unrest in Myanmar. It is crucial to understanding the country's ongoing armed conflicts, which in many ways reflect Myanmar's long struggle for national identity in a country rich in culture, religion and ethnicities. According to the best available estimates, Burman people comprise 68 per cent of the population, while the remaining 32 per cent is made up of Myanmar's minority ethnic groups. While the latter are in the minority, they occupy almost 60 per cent of the country's total land area⁵¹. Religiously, approximately 85 per cent are Buddhists while the remaining are primarily Christian and Muslim⁵². Alongside ethnic and religious diversity has emerged a complex identity dimension. The Asia Barometer Survey has found that the majority of the population self-identifies with their religion at 53 per cent, 32 per cent with their national community, and the remaining 15 per cent with their ethnicity. Buddhists and Bamar respondents were more likely self-define by religion than ethnic and religious minorities; and participants from ethnic and religious minorities were more likely to consider ethnicity their self-identity than majority groups. This reflects a cleavage between the feelings of belonging of the majority and minority populations in Myanmar and goes some way to explaining intra-ethnic relations in Myanmar. These remain tense, resulting in conditions that make social coexistence between majority and minority groups highly challenging, and exacerbate national fragmentation.⁵³

The self-identity of Myanmar's ruling elite, which coincides with its ethnic majority (Bamar), has long been used as a tool to justify discriminatory practices and the implementation of policies of exclusion. This is most acutely seen in the treatment of the Rohingya and other communities that continue to live without full citizenship rights (see '*Past and Present Violations*' below). Some interpretations of Buddhist teachings have been used to push for nationalist identity politics that indiscriminately targets Muslim minority groups. Strong links between the Bamar ethnic majority and religious Buddhism has formed the basis of new waves of Buddhist nationalism, which advocates the protection of the state and its religion. Emphasis on state and religion have marked an area of convergence between the Buddhist monastic order, the Sangha, and the military. The rise of far-right Buddhist nationalism is most strongly reflected in the 'Ma Ba Tha' that rose out of the '969 movement' in 2012, which had advocated the boycott of Muslim businesses. The organization was renamed in 2018, now 'The Buddha Dhamma Charity Foundation' (referred to as 'Ma Ba Tha' throughout this assessment, however), but continues to seek legal pathways for promoting Buddhism and institutionalizing their anti-Muslimism sentiment into state policy.⁵⁴

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

While attempts to promote national cohesion between religious- and ethnic-groups have occurred since independence, the outcome has been quite the contrary – the religious nationalism already described. The domination of Bamar-Buddhist identity has culminated in the assimilation of Buddhism with being ‘proper’ Bamar/ Myanmar. The ‘Myanmarization’ or Buddhistization’ of politics have undermined the political and cultural activities of other ethnicities, while solidifying the political power of the ethnic Bamar.⁵⁵ Perceived legitimate policies of forced ethnic and religious forced-assimilation into ‘*Buddha-bata Myanmar-lumyo*’ (‘to be a Myanmar is to be a Buddhist’) remains one of the root causes of social unrest and armed conflict to this day⁵⁶. Many minority groups continue to feel their ethnic identity, including their language and culture, has been ignored by the central government.⁵⁷

The rise and persistence of Buddhist nationalism, which has culminated in the exclusion of Muslim minorities, is reflective of social instability caused by tensions surrounding identity claims in their most extreme forms.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Risk Factor 2 identifies ‘past or current serious violations international human rights and humanitarian law, particularly if assuming an early pattern of conduct, and including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations.’ Eight (8) Indicators are employed to identify patterns of violations including those that amount to atrocity crimes, behaviors reflecting a reluctance to prevent violations, practices of impunity and the continuation of support for persons or groups accused of violations.

Following the assessment of Indicators pertaining to Risk Factor 2, Myanmar is found to be at risk. Seven of eight indicators are found to be present at the time of writing. Myanmar has a long history of serious violations of human rights and humanitarian law, some of which amounting to atrocity crimes. This, paired with practices of impunity, inaction and denial, have led to widespread mistrust in State institutions by internal organizations and the general public.

Past and Present Violations (Indicator 2.1 and 2.2)

Indicator 2.1 and **2.2** relate to past violations of human rights in various forms. Respectively, **Indicator 2.1** refers to ‘serious restrictions to or violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct and if targeting protected groups, populations or individuals’, and **Indicator 2.2** to ‘acts of genocide, crimes against humanity, war crimes or their incitement’. The assessed presence of each reflects Myanmar’s long history of international human rights and humanitarian law violations, some of which amount to mass atrocity crimes. The protracted armed conflict between various armed factions and the military since the country’s independence is an important piece in understanding the history, and continuation, of these violations.

A history of violations

In the 71 years since independence, Myanmar has been characterised by conditions conducive to the commission of human rights abuses, some of which amounting to atrocity crimes. Under military dictatorship and continued influence, which has exacerbated intra-ethnic and religious violence, an estimated 158 000 civilians have died*³.⁵⁸ The following accounts for a few key events or developments but is a far cry from an all-encompassing history of Myanmar’s past violations.

When the British left Myanmar (then Burma) in 1948, it lacked the institutional and legitimate capacity to form a central authority capable of governing such an ethnically, religiously, politically and culturally diverse country. The country immediately plunged into civil war. Underpinning between-group tensions were wide-ranging and conflicting opinion on how this new Burma should look and the means required to bring it there. The Tatmadaw emerged as one of many armed groups that made claim over the country’s resources, territory and legitimacy. Perceived as the only institution with the legitimate capacity to ‘tame’ the periphery and unite a fragmented country, it quickly rose to power. One of their key mechanisms for ‘taming’ and ‘uniting’ was the commission of atrocity crimes. During the period after independence, districts largely inhabited by those considered ‘non-Burman’ – including in Shan, Kachin, Sagan, Chin and Karen – faced severe repression and human rights abuses.⁵⁹

In 1982, Myanmar’s military dictatorship passed The Citizenship law, which grants full citizenship rights to members of the 135 recognised ethnic groups that supposedly lived within the country’s boundaries prior to the 1824 British invasion. Persons who cannot prove their ancestors were present before 1824 are excluded from full citizenship, eligible only to apply for lower tier categories of citizenship with fewer rights. These are the ‘naturalised’ and ‘associate’ categories. The law’s focus on ethnicity makes it highly discriminatory; to apply, section 44 of the act stipulates that persons must be over eighteen (18), able to speak well one of Myanmar’s national languages, and be of sound mind. For unrecognised groups, including the Rohingya and Persons of Indian Origin (PIO), citizenship rights are entirely denied, rendering these groups stateless.⁶⁰ Stateless groups are particularly susceptible to human rights violations, evidenced in the violations experienced since the 1982 Citizenship Law; these include severe restrictions of move-

*3 Civilian death estimates up until 2017. Figure likely to be larger after accounting for 2017/2018 clearance operations and this year’s conflicts.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

ment, forced labour, loss of land holdings and the denial of access to education. The rate and severity of violence has also increased, particularly against the Rohingya, causing many to flee to Bangladesh⁶¹. For those remaining, the government has urged Rohingya to accept a National Verification Card (NVC), which along with an associated immigration form would allow for freedom of movement. The card, however, has previously identified Rohingya as Bengali and blatantly rejected their ethnic and religious identity. While ethnicity and religious identity has reportedly been removed from the card entirely, the UN Special Rapporteur to Myanmar says she understands Rohingya are still required to apply for permission to leave their villages⁶². The NVC process is seen to further marginalise an already persecuted group. For many Rohingya, the terms are unacceptable.⁶³

Of particular note are the clearance operations carried out by the Myanmar military's in Rakhine State in 2017, described in *Risk Factor 1, Indicator 1.1 and 1.3*. Now recognised as a large-scale ethnic cleansing campaign under the guise of a counter-insurgency mission, the security forces launched extensive attacks on Rohingya villages. Human Rights Watch have documented mass killings, rapes, arson and horrific torture, finding that the violations committed amount to crimes against humanity under international law⁶⁴. Since the beginning of 2018, cover-up operations have been conducted in the townships from which Rohingya populations fled. The state authorities have reportedly cleared these villages and surrounding farmland to make way for infrastructure, mines, security bases and new homes. The government has claimed these projects are to cater for the repatriation of Rohingya refugees, though many rights groups believe they are intended for other populations.⁶⁵

In August 2018, a United Nations-mandated fact-finding mission (FFM) concluded that military abuses committed in Rakhine, Kachin and Shan states since 2011 *'undoubtedly amount to the gravest crimes under international law.'* It also called for military officials, among them the Commander-in-Chief Senior General Min Aung Hlaing, to be investigated and potentially prosecuted for war crimes, genocide, and crimes against humanity.⁶⁶ In late June of this year, the International Criminal Court (ICC) declared *'that Prosecutor Fatou Bensouda will request that the court's judges open an investigation into crimes relating to two waves of violence in Myanmar's Rakhine State'*⁶⁷. Myanmar is not a member of the ICC – limiting its jurisdiction on crimes committed solely in Myanmar – but the court does have authority over crimes where an element occurred in Bangladesh.

Thus, since 1948, numerous accounts of human rights abuses have been documented; reports point to periodic incidences of sexual violence, torture, land confiscation, extrajudicial killings, forced labour, child soldiering, as well as the accumulated displacement of over one million people⁶⁸. These crimes have not been adequately addressed by the government.

Suspicion of present violations

According to Human Rights Watch, *'Myanmar security forces continued to commit grave abuses against Rohingya Muslims throughout 2018, deepening the humanitarian and human rights catastrophe in Rakhine State.'*⁶⁹ Rohingya refugees, who fled in 2018, reported that security forces continue to demand that the Rohingya accept the NVC or leave Myanmar. This year, amid new waves of violence, new violations are suspected. The United Nations Special Rapporteur on the situation of human rights in Myanmar, Ms. Yanghee Lee, has in late June expressed concern that the military has been conducting clearance operations in Rakhine and Chin states where battles between the military and insurgent AA have concentrated this year – see *Risk Factor 7, Indicator 7.3*. The UN suspects human rights violations have been carried out under the guise of an internet blackout⁷⁰. Amnesty International has documented war crimes and other human rights abuses under the same operation against the AA. Their report shows patterns of arbitrary arrests, enforced disappearances, torture, forced labor, unlawful attacks killings and injuring civilians and looting⁷¹. Fighting between the military and Northern Alliance since August is also a point of concern for Amnesty International, who have documented the displacement of near 8000 persons in the weeks since fighting broke out and the time of writing.⁷²

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

In addition – despite recently the signed agreement of repatriation between Myanmar and the UN – no tangible progress has been made to return forcibly displaced persons now residing in refugee camps in Bangladesh. Persons living in detention camps continue to live in deplorable conditions, and those not detained continue to face heavy restrictions on mobility and access to opportunities that are granted under international humanitarian and human rights law.

Overall, past and present human rights and humanitarian law violations – some of which amounting to atrocity crimes – pertaining to **Indicators 2.1 and 2.2** are noted in Myanmar. As outlined in the framework, a country with a history of violence and human rights abuses is more prone to further atrocity crimes, which has proven to be true for Myanmar.

Practices of Impunity (2.3) and Inaction to Stop Ongoing Violations (2.3 & 2.4)

Further analysis of the abovementioned violations of international human rights and humanitarian law, including those amounting to atrocity crimes, also reveals the presence of both **Indicators 2.3 and 2.4**. These refer, respectively, to a ‘*policy or practice of impunity for or tolerance of*’, and ‘*the inaction, reluctance or refusal to use all possible means to stop planned, predictable or ongoing*’ serious violations of international human rights and humanitarian law, of atrocity crimes, or their incitement. There continues to be a strong culture of impunity, as well as inaction to use all possible means to prevent and stop, human rights violations in Myanmar. This includes, but is not limited to, the commission of atrocity crimes against Rohingya Muslims. There appears to exist an institutionalized culture of impunity in Myanmar, which make the prevention of human rights abuses and any form of accountability unlikely. To understand the systemic nature of inaction to prevent and impunity in Myanmar, one must look to the country’s complex political landscape.⁷³

First, it is important to note that Myanmar has a long record of impunity and inaction to stop violations. An analysis conducted in 2009 by the International Center for Transitional Justice found that impunity for violations pertaining to sexual violence, child soldiering and forced labor committed by military personnel was most notable when violations were committed in connection to armed conflict. It found that the then military junta, the State Peace and Development Council (SPDC), actively discouraged complaints related to military abuses by punishing those that spoke out, and that any mechanisms in place to respond to complaints and did not have the capacity to address the systemic nature of the abuses. It also found that any progress toward accountability was undermined by larger political and military priorities. The legacy of impunity left by Myanmar’s protracted military rule is evidenced in the 2008 Constitution (Article 44 in Chapter 14), which states:

‘All policy guidelines, laws, rules, regulations, notifications and declarations of the [SPDC] or actions, rights and responsibilities of the [SPDC] shall devolve on the Republic of the Union of Myanmar. No proceeding shall be instituted against the said Councils or any member thereof or any member of the Government, in respect to any act done in the execution of their respective duties’⁷⁴

This article reinforces the culture of impunity in Myanmar to this day; its vague language acts as a shield for government members who commit human rights violations on duty, effectively protecting them from criminal investigation.⁷⁵

Despite evidence of systemic violations since 2011⁷⁶ against Rohingya Muslims by the Myanmar Military, the NLD government has continued to deny human rights abuses and mass atrocities by the security forces. Since 2012, the authorities have established eight commissions to ‘investigate’ military actions against Rohingya communities, claiming to seek resolutions for the crisis. These investigations have lacked both independence and credibility, each failing to identify perpetrators and lead to accountability. Most were highly biased and rejected accusations made by the international community⁷⁷. The latest, the Independent Commission of Enquiry (ICoE) established in May 2018, appears no different.⁷⁸ The Presidential spokesperson, Zaw Htay, has said the ICoE was developed to respond to ‘false allegations’ by the international community. The commission, whose report is yet to be published, appears to have little interest in accountability. The Myanmar member, Col. Aung Tun Thet, has stated the country has a ‘clear conscious’, that ‘*there is no such thing in our country, in our society, as ethnic cleansing, and no genocide*’.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

The commission's chair, a Philippine diplomat, has assured that there will *'...be no blaming of anybody, no finger pointing...'*⁷⁹ In July 2019 Ms. Yanghee Lee said that in order to prevent violations in the future *'...the Government and military must reverse its stance of denial, and to recognize what the people of Myanmar have suffered at their hands...'*⁸⁰. At this stage, any tangible accountability and human rights and humanitarian law violations by the military seems unlikely.

For as long as the military is not under civilian control and the 2008 Constitution remains in place, the government's capacity to put an end to this culture of impunity is limited. So too is its ability to promote military compliance with international humanitarian law standards – see *Risk Factor 1, Indicator 1.4* for more on entrenched military influence.⁸¹ While small were taken to move away from total impunity in 2016⁸², this progress seems to have reversed thereafter. The military has accepted no accountability for its 2017 campaign of ethnic cleansing to date, and de-facto leader Suu Kyi has not spoken out against violations in Rakhine. Ms. Yanghee Lee has also condemned Suu Kyi's silence on military attacks on the ethnic Rakhines and other minorities this year, despite evidence of unlawful civilian killings⁸³. Suu Kyi's failure to condemn military abuses reflects a general culture of impunity and inaction to prevent or stop ongoing violations in Myanmar.

On 22nd of March 2019, Myanmar categorically rejected the draft resolution on 'Situation of Human Rights in Myanmar', citing among other reasons, that it was discriminatory, based on one-sided narratives and *'...ignores the threat of terrorism as the real cause of the present humanitarian situation...'*⁸⁴ – the rejection of the draft resolution is also relevant to *Risk Factor 8*, and is covered more thoroughly under *Indicator 8.3*. This is pertinent to the assessment of **Indicator 2.3** and **2.4** in that it suggests Myanmar's culture of impunity and inaction to stop violations is unwavering and will persist as long as the military maintains its power.

Denial of Violations (Indicator 2.6)

Inherent denial of recent and ongoing depravities is closely linked to the country's institutionalized culture of impunity, described in the previous section – *'Practices of Impunity and Inaction to stop Ongoing Violations'* – and pertains to **Indicator 2.6** that refers to the *'justification, biased accounts or denial of serious violation of international human rights and humanitarian law or atrocity crimes'*.

Denial of military abuses is systemic in Myanmar, as has been alluded to in the aforementioned section. Where military actions have been acknowledged to any extent, they have been justified as duties of self-defense and that they were in accordance with *'orders and directives of superior bodies'*⁸⁵. As such, it continues to deny nearly all allegations of violations against the Rohingya in 2017/2018⁸⁶. This year the military has also denied knowledge of the recent disabling of the internet and mobile data in Rakhine and Chin states. The international community suspects the internet blackout is a prelude or guise for the commission of further violations. Under the Telecommunication Law Article 77, the military have the power to control communication services, preventing persons from reporting on their experiences – *for more, see Risk Factor 7, Indicator 7.6.*⁸⁷

Absence of Reconciliation and Transitional Justice (2.7)

Indicator 2.7 refers to the *'politicization or absence of reconciliation or transitional justice processes following conflict'*.

The central aim of NLD government has been the promotion of peace and national reconciliation through dialogue. In October 2016, following the first 21st Century Panglong Conference, it announced the 'Seven Steps Roadmap' to union peace and reconciliation. It did this, however, without any prior discussion with leaders of ethnic organizations.⁸⁸ Achieving national cohesion requires trust-building between groups that can only manifest from dialogue and accountability⁸⁹. While the conferences have created an arena for dialogue and lead to several signatures on the NCA – see *Risk Factor 1, Indicator 1.1 & 1.2* for more on the NCA – they have not led to accountability for mass human rights violations committed during decades of military rule, or those thereafter. Neither have any transitional laws mechanisms been established to investigate human rights abuses during decades of military rule⁹⁰.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

For meaningful progress on the NLD government's aim for peace, past victims of human rights abuses require reconciliation and transitional justice rooted in redress and accountability. The government has a number of obstacles to overcome, including addressing institutionalized hate speech – which has been proliferated by senior government officials and public institutions linked to the military. Despite small steps toward union peace and reconciliation, in late 2018, Myanmar rejected a request by the ICC to investigate the mass deportation of Rohingya Muslims to Bangladesh. So too, the repatriation agreement for the return of Rohingya Muslims does not offer any guarantee of citizenship. Both events illustrate an absence of any goal for achieving transitional justice or any real commitment to an inclusive reconciliation process that respects the dignity and human rights of all relevant groups.⁹¹

Widespread Mistrust in State Institutions (2.8)

Myanmar's institutionalized culture of impunity and lack of reconciliation and transitional justice has impacted the population's confidence in state institutions. This has culminated in deep-seated mistrust in the government's willingness to protect its population and dispense justice, and thereby reflects the presence of **Indicator 2.8**, which refers to '*widespread mistrust in state institutions or among groups as a result of impunity*'.

Mistrust in state institutions is systemic in Myanmar. Decades of military abuse and civil war without accountability continue undermine the possibility of reaching an effective and inclusive federal democracy. Suu Kyi's government has shown complicity toward violence in Rakhine especially, despite reports of human rights and humanitarian law violations. The loyalties of bureaucrats in the NLD government, as well as the country's extended military power, have greatly implicated the trust of political institutions by civil service organizations and the public. To deliver a peaceful and democratic Myanmar, the NLD government must make concrete actions to end this culture of impunity. It will also need to promote trust-building policies and programs within development, peace and security fields.⁹² Majority-minority ethnic relations will continue to be tense in the absence of mutual trust and a system of governance accommodating to Myanmar's diversity.

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

Risk Factor 3 identifies ‘circumstances that negatively affect the capacity of a State to prevent or halt atrocity crimes.’ The presence of institutions and frameworks, that are based on good governance principles and the rule of law, bolsters the capacity of the state to prevent the commission of atrocity crimes. In the absence of these structures, the prevention and action mechanisms are significantly constrained. When the limitations of the state machinery are abused, populations are left vulnerable.⁹³

At the time of writing, eight of ten indicators are judged to be present. Together, these reflect severe limitations in Myanmar’s current national institutions, including its legal framework, security apparatus, judicial, human rights and law enforcement institutions. As they function now, these institutions lack the independence and adequate representation to safeguard the human rights of the population and hold human rights abusers accountable. Concerning too are high levels of corruption and poor governance in the country, as well as a blatant disregard of international humanitarian law standards.

Limited National Legal Framework (3.1)

Indicator 3.1 identifies a ‘national legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties.’ At present, Myanmar’s national legal framework does not offer sufficient protection of human rights. Before proceeding, it should be noted that at the time of writing Myanmar is not a signatory to twelve (12) of the central Conventions and Optional Protocols pertaining to human rights⁹⁴.

The Special Rapporteur, Mr. Yanghee Lee, has previously voiced several concerns over Myanmar’s national legal framework, highlighting that it does not offer sufficient protection of human rights. In January 2016, the Myanmar Union Attorney General’s Office published the 2015-2019 Judiciary Strategic Plan – the first of its kind in Myanmar. Its aim was to advance the rule of law in Myanmar, and its key focus areas pertained to the protection of human rights and the endorsement of prosecutorial ethics through the drafting and vetting of laws⁹⁵. During its first year of office, the NLD government made significant efforts to repeal or amend certain legislations incompatible with fundamental human rights law. These included amendments to the Ward or Village Tract Administration Law (2012), and repeals of the State Protection Act (1975) and the Emergency Provisions Act (1950). Despite this, thus far the strategic plan has failed to deliver its aims of protecting the legal rights of individuals. At the time of writing, the national legal framework is still largely inconsistent with international human rights standards.⁹⁶

Highly problematic is Myanmar’s 1982 Citizenship Law, both arbitrary and discriminatory, which systematically fails to meet the country’s obligations under international human rights law. The Citizenship Law – described in *Risk Factor 2, Indicators 2.1 and 2.1* – effectively introduces a citizenship hierarchy, prescribing first- and second-class citizenship based on ethnicity. The legal rights of second-class citizens (the ‘naturalized’ and ‘associate’) are substandard and may be subject to restrictions or revocation. For those not recognized as citizens at all, the effects are far more acute. Under this framework, some life-long residents of the country have been rendered stateless and lack a legal identity. This undermines the right to citizenship and equal rights, which is recognized in international law⁹⁷. In addition, a series of four laws known as the Race and Religion Protection Laws^{*4} introduced by former President Thein Sein (2011-2016) further reflects the failure of the state to deliver adequate protection of human rights to all groups. These laws, which are aimed at ‘preserving race and religion’, regulates religious conversions, outlaws polygamy and adultery, restricts the marriage of Buddhist women to non-Buddhist men, and implements population control mechanisms. These laws target Myanmar Muslims and women directly and add an additional level of difficulty to Rohingya women already restricted by the two-child policy in areas of Rakhine since 2013 (the legislation was issued following severe waves of violence on Rohingya Muslims instigated by Rakhine Buddhists in 2012) – see *Risk Factor 10, Indicator 10.4 for more*^{98, 99}.

^{*4} These are: The Population Control and Health Care Law, Buddhist Women’s Special Marriage Law, Monogamy Law, and Religious Conversion Law

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

A lack of access to a fair judicial process exacerbates the situation; Myanmar has a long history undermining the independence of lawyers and restricting access for victims of human rights violations¹⁰⁰. While the shortcomings of Myanmar's judicial system will be described in more detail in the following section, it should be noted that the national legal framework undergirds its incapacity to provide a fair judicial process for human rights victims. The International Commission for Jurists (ICJ) reports that some of Myanmar laws, including its Penal Code, have been employed by authorities to harass victims of human rights violations where they have publicly sought some form of justice.¹⁰¹ Military and police courts are in widespread use in Myanmar, and these follow their own laws and procedures. Their judicial use has contributed to a situation in which national laws pertaining to human rights violations go unapplied in the prosecution of military- and state- human rights offenders. In addition, laws that govern the police and military forces do not consider the provision of reparation or remedies, or compensation and restitution for victims. For the victims of human rights abuses then, they are entirely inadequate.

Additionally, the National Human Rights Commission Law (2014) which governs the Myanmar National Human Rights Commission (MNHRC) also undermines the capacity of the Commission to perform its mandate on promoting the protection of human rights. The law directs the MNHRC to *'refrain from inquiring into complaints that have come before the judiciary, either at the pre-trial or post-trial stage'*. Since many of the most significant human rights cases do appear before the court in some capacity – even when it occurs in the form of judicial harassment – the Commission is not legally empowered to investigate the case or consider recommendations for reparation¹⁰².

The inadequacy of Myanmar's national legal framework is due in part to the highly influential role of the military in the State as per the 2008 Constitution – see *Risk Factor 1, Indicator 1.4*. The Special Rapporteur has repeatedly stressed the importance of constitutional reform as a key obstacle to the deliverance of an effective legal framework for human rights protection.¹⁰³ Without reform, genuine and meaningful progress is unlikely.

In combination, these elements have created condition for the institutionalization of discrimination and impunity into Myanmar's legal framework and reflects a serious limitation of the country's legal system to deliver effective protection to its population. Instead, the legal framework itself both constitutes – and contributes – to violations of human rights in Myanmar, systematically failing to uphold its obligations under international human rights standards and laws.¹⁰⁴ As a result, **Indicator 3.1** is found to be conclusively present.

Limitations in National Institutions (3.2 & 3.3)

Indicator 3.2 concerns the function of state institutions, particularly judicial, law enforcement and human rights institutions. When state institutions lack adequate representation, training or resources, the State's capacity to prevent human rights violations or atrocity crimes is negatively affected.

Judiciary System

As alluded to in the previous section, Myanmar's judicial system fails to ensure mechanisms that will safeguard the cessation of human rights abuses. This is the result of a number of factors. First, accessibility to the courts and any effective remedy processes is highly restricted. Through the provision of discriminatory laws, most individuals are denied access. Second, the Myanmar judiciary lacks both accountability and independence. According to the International Commission of Jurists (ICJ), decades of military rule have weakened the judiciary system, and continued influence by the security apparatus and military over the judiciary continues made achieving the rule of law difficult. The ICJ also notes that corruption is prevalent among judges, and the judiciary rarely adjudicates in trials against military and police personnel¹⁰⁵. This is highly indicative of a poor representation in the judicial system. Media reports have also called out a lack of training in the judiciary, pointing to poorly qualified and unequipped judges¹⁰⁶.

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

In combination, these factors undermine the effective functioning of the judiciary. This is especially reflected in cases pertaining to human rights violations, individuals tend to abstain from the court process fearing that the move will be viewed as a ‘provocative action’ by the State and lawyers that pursue such cases tend to face harassment, including legal sanctions.¹⁰⁷ This is a manifestation of the military’s continued influence over the judiciary, and is indicative of the presence of **Indicator 3.3**, which identifies a lack of an independent and impartial judiciary. In addition to harassment techniques, blatant obstruction of the judicial process has occurred. The ICJ has highlighted that the ‘...security forces have blocked and remain capable of blocking independent and impartial investigations, allowing impunity for human rights violations.’¹⁰⁸

Law Enforcement

The Myanmar Police Force (MPF) is largely considered a strategic reserve to the armed forces and an integral part of the country’s Defense Services. Its lack of institutional autonomy is reflected in that many former military officers hold senior police posts. The presence of adequate representation in the MPF is thus called into question.¹⁰⁹ The underrepresentation of women and minority groups in the police force further undermines the international community’s confidence in Myanmar’s law enforcement mechanisms.

In a 2016 report from the United Nations Office on Drugs and Crimes (UNODC), several deficiencies within the MPF were highlighted. It called for major reform and highlighted the need for improved training and increased resources. Myanmar authorities have acknowledged deficiencies of the MPF and have committed to further reformation of the country’s law enforcement institutions.¹¹⁰ At the time of writing though, no major reforms have been reported.

Human Rights Institutions

The MNHRC was created in 2011 and reconstituted in 2014, which institutionalized its mandate. Its purpose is to protect the fundamental human rights of the people of Myanmar through monitoring and promoting human rights law compliance. It also has investigative functions, which include making enquiries, visiting crime scenes and investigating complaints. The MNHRC is obliged to submit recommendations to the applicable government body where an enquiry finds with conclusive evidence that a human rights violation has taken place. It is not however, permitted to pursue the enforcement of its recommendations.¹¹¹

Unfortunately, the MNHRC has not been effective in practice and is not viewed as a viable pathway to reconciliation by civil society. In addition to the legal barriers to effective investigations, the International Center for Transitional Justice (ICTJ) has listed a number of factors that contribute to civil society’s mistrust in the Commission. These include a lack of transparency, witness or victim protection, or a system through which to make confidential complaints¹¹². In addition, several of MNHRC’s commissioners are former military officials with little experience in the field of human rights. Its members have appeared unwilling to investigate or comment on human rights cases where allegations are against the military, regardless of whether there is credible evidence to support claims. A lack of adequate representation in the MNHRC is seen in the Commission’s ongoing failure to criticise State and military actions, investigate human rights abuses independently and impartially and reach out to civil society.¹¹³

Lack of Effective Civilian Control of Security Forces (3.4)

As highlighted in Risk Factor 1 (see ‘*Political Instability – the Long Road to Democracy*’), the Myanmar military is not under civilian control. It was able to ascertain significant political power by ushering through constitutional reforms in 2008, which remains in effect to this day. Lack of civilian oversight of the military has had spillover effects in judicial, human rights and law enforcement institutions (see above).

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

High Levels of Corruption and Poor Governance (3.5)

Indicator 3.5 is concerned with levels of corruption or poor governance within the country. Corruption in Myanmar is endemic, a symptom of poor governance. Both Transparency International's Corruption Perception Index (TICP Index) (2018) and the World Bank's Worldwide Governance Indicators (WGI) provide quantified insight into the public sector's culture of corruption, cronyism and inadequate accountability mechanisms. The TICP Index ranks Myanmar 132 out of 180 countries, a small improvement from its 2015 ranking of 147¹¹⁴. This is reflective of the steps taken by the NLD government to address high levels of corruption intrinsic at both the national and local level¹¹⁵. In June 2018, Myanmar enacted the fourth amendment to the Anti-Corruption Law, which expanded the power of the Anti-Corruption Commission as well as corruption criteria. The amendments should, in theory, allow for more effective prosecution of graft. In practice, government initiatives to curb corruption have not amounted to meaningful change; the Anti-Corruption Commission has not performed well in terms of pursuing investigations against high-ranking officials¹¹⁶. In the absence of broader societal change, and reformatations to the 2008 Constitution, corruption will remain a problem.¹¹⁷

In addition to systemic corruption, governance in Myanmar is implicated by a lack of government effectiveness, voice and accountability, and rule of law. The World Bank WGI ranks Myanmar in the lowest quartile of the world in all three categories since 2011. Table 2 presents these indicators in percentile rank among all countries. While improvement is noted since the end of Myanmar's military junta, governance remains inadequate.¹¹⁸

Table 2. World Bank WGI: Myanmar

	2011	2013	2015	2017
Government Effectiveness	3.79	4.27	10.1	13.46
Rule of Law	4.69	9.86	7.69	16.83
Voice and Accountability	3.29	7.98	14.29	23.65

Inadequate Internal Mechanisms of Oversight and Accountability (3.6)

Indicator 3.6 identifies as '*absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims*'. For the most part, conditions reflective of **Indicator 3.6** have been covered in the analysis of preceding Risk Factors. These pertain to inadequate *internal* mechanisms of oversight and accountability. Risk Factors 2 and 3, particularly indicators 2.3, 2.7 and 3.1, identified a culture of impunity in Myanmar, an absence of transitional justice and reconciliation processes, a weak national legal framework and a failure of the MNHRC to act as an independent investigative body – all of which undermine the effectiveness of, or potential to acquire, internal mechanisms of oversight and accountability. In addition, also highlighted in the analysis of *Indicator 2.3* on Myanmar's culture of impunity, the commissions established to investigate human rights abuses have lacked credibility and independence and have failed as a mechanism of accountability. For example, a military-led commission established to investigate the post-August 25 clearance operations in Rakhine state found that the security forces had not committed crimes that amounted to violations of human rights or humanitarian law. It also concluded that no innocent civilians had died. Both the High Commissioner for Human Rights and the Special Rapporteur on Myanmar have on numerous occasions reported patterns of gross violations of the Rohingya to the Human Rights Council (HRC); these suggest a systemic attack on the minority group and possibly amount to atrocity crimes.¹¹⁹

Without official systems to lodge complaints without fear of harassment or retribution and meaningful government programs for reconciliation and reparation, internal mechanisms of oversight and accountability will continue to be inadequate for promoting the protection of human rights.¹²⁰

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

Non-Compliance with International Humanitarian Law Standards (3.7 & 3.8)

Indicators 3.7 and **3.8** identify a ‘lack of awareness of and training on international human rights and humanitarian law to military forces, irregular forces and non-state groups’ and ‘lack of capacity to ensure that means and methods of warfare comply with international humanitarian law standards’, respectively.

As will be developed under the *Specific Risk Factors*, violations of international humanitarian and human rights law have been committed by all parties to the conflict. These, to reiterate, frequently go uninvestigated. In the UN FFM on Myanmar (2018), it was found that crimes against humanity and war crimes have been committed in Rakhine, Kachin and Shan states and that the military has consistently failed to uphold human rights and humanitarian law. The investigation into the situation of minority groups in Myanmar found that these crimes were systemic and widespread, and include murder, torture, rape, imprisonment, sexual slavery, imprisonment and enslavement, and that children were subjected to – and witnessed – serious human rights violations. The restriction of humanitarian aid and relevant international agencies further hinders the deliverance of necessary humanitarian assistance for persons impacted, or displaced by, warfare¹²¹. Though on a considerably smaller scale, EOAs have also been accused of committing human rights violations. For example, in the ongoing conflict between the military and AA, the AA have accused carrying out abductions and threats.¹²²

All of this reflects a clear lack of capacity – or willingness – by the state and military to ensure that methods of warfare comply with the appropriate international standards (**Indicator 3.8**). The state’s capacity to ensure military compliance of human rights and humanitarian law is greatly undermined by the military’s control of the security forces and general political influence under the 2008 Constitution. Related to the presence of **Indicator 3.8**, it is also illustrative of a lack of training on those standards to the military and EOAs (**Indicator 3.7**).

RISK FACTOR 4: MOTIVES OR INCENTIVES

Risk Factor 4 identifies *‘reasons, aims or drivers that justify the use of violence against protected groups or individuals, including by actors outside of State borders.’* Pinpointing motivations or incentives that may push certain individuals or groups to commit mass human rights violations is essential for preventing the development of conditions that are conducive to the commission of atrocity crimes. Drivers that justify the commission of human rights violations are wide-ranging. They may pertain to the attainment of political, economic and strategic interests or where threats to those interests – real or perceived – are posed; they may also relate to identity, politicization of past grievances or protracted social trauma.¹²³

Between the Myanmar military and the country’s array of EAOs, drivers that increase the likelihood of mass human rights violations or atrocity crimes are extensive. There are several interests and motives that justify – or have been used to justify – the use of violence; these include political, economic as well as social motivations. The latter are linked largely to religious and ethnic divisions, which have been constructed through ‘us’ and ‘them’ narratives in processes of othering. Othering processes are connected to the privileging of the Bamar-Buddhist identity and perceived threats posed to that identity. At the same time, the State’s continued failure to recognize some ethnicities and accommodate the requests for increased autonomy by ethnic organizations has prompted many to join or support an array EAOs.

Interests and Motives that may Justify the use of Violence

Indicators 4.1, 4.2, 4.3, and 4.4 relate to the various interests that may push certain groups or individuals to utilize violence in order to secure those interests, namely political (4.1), economic (4.2), strategic/military (4.3), and other interests, including creating an area homogeneous in its identity (4.4). Many of these interests drive Myanmar’s internal armed conflicts.

Political Motives (4.1)

Indicator 4.1 identifies *‘political motives, particularly those aimed at attainment or consolidation of power’* that may justify the use of violence. As covered in Risk Factor 1 – *‘Economic Stability’* and *‘Non-international Armed Conflict’* – political interests have been a key driver of Myanmar’s protracted armed conflict. These interests directly relate to the attainment or consolidation of power. Since 1948, EAOs have engaged in conflict with the military and rival groups, fighting for independence, autonomy and ethnic minority rights. At the same time, the military has sought to consolidate its power in those periphery regions with the use of violence. While the peace process has aimed to move Myanmar toward a federal democracy, a lack of all-inclusiveness in peace talks has made agreeing on what form of federalism to pursue challenging. As discussed in Risk Factor 1, *‘The Peace Process – Ongoing Challenges’*, the military have demanded a pledge of non-secession before considering increased autonomy; in that many armed groups are seeking independence, this disrupts the potential for meaningful dialogue on peace. Adding to the complexity, many armed groups fear that a federalist system, if achieved, would ultimately not change their situation. This year, armed conflict and extrajudicial violence fueled by political interests of the AA – who seek greater autonomy – and the military. Amnesty International has accused the military of committing war crimes during these operations¹²⁴. In addition to conditions perceived as unreasonable, an inherent lack of trust in the military apparatus means EAOs are unlikely to surrender their aims.¹²⁵

Ultimately, Myanmar displays factors pertaining to **Indicator 4.1** from many sides. Power struggles are not new to the country and are unlikely to waver while the 2008 Constitution remains in use. Thus, Myanmar can expect more violence motivated by political interests into the future.

Economic Motives (4.2 & 4.3)

There are incredibly strong economic incentives linked to the control of Myanmar’s vast endowment of natural resources that have, and may continue, to motivate the use of violence. As covered under Risk Factor 1, *‘Economic Instability’*, economic control of natural resources has been a major source of conflict between EAOs and the military. The military continues to seek control of resource extraction in areas de

RISK FACTOR 4: MOTIVES OR INCENTIVES

facto controlled by ethnic groups. Arguably, the persistent presence of armed factions of ethnic organizations in the borderlands can to some extent be attributed to the military's attempts to gain a monopoly on extraction and trade over these resources.

In the HRC's Fortieth session, the Special Rapporteur to Myanmar reported human rights abuses taking place near ruby, gold and coal mines in Shan State; amber, jade and gold mines in Kachin State; coal and tin mines in Tanintharyi Region and Kayah State. The same report recounted the deaths of three jade pickers at the hands of the Tatmadaw in November 2018.¹²⁶ These accounts highlight the impact of resource-fueled conflict on nearby communities and reflect an economic incentive by both the military and EAOs (**Indicator 4.2**) to commit violence.

Military aims to secure control of areas endowed with natural resources is also highly strategic and reflects the presence of **Indicator 4.3**. This is especially evident in the military's involvement in ruby and jade extraction in Shan and Kachin States, where military interests coincide with economic ones. In these States – as well as in Rakhine State – policies consistent with the 'Four Cuts' counterinsurgency policy (in place since 1960) have been deployed in attempt to gain control over resource-rich areas. The policy, utilized violently against the Rohingya community in 2017, is aimed at cutting off non-State armed groups from finance, livelihood, intelligence and civilian recruits¹²⁷. In addition to being highly lucrative, control over resource extraction industries will bolster the internal position of the military.

Other Incentives – An Intent to Destroy an Ethnic, Racial or Religious Group (4.4)

The plight of the Rohingya community has been well-documented through this risk assessment. It reflects the military's intent and willingness to destroy the group based on their ethnicity, race or religion. In 2017/2018, the military used violence that amounted to grave crimes under international human rights and humanitarian law in order to 'clear' Rakhine State of Rohingya Muslims. The Independent International UN FFM into the violations by the military in Rakhine, Kachin and Shan States found that the military's actions were conducted with genocidal intent¹²⁸. Similar trends have been noted this year against ethnic Rakhines, illustrating a general pattern of an intent to destroy minority groups perceived as a threat by the military.¹²⁹

Despite agreeing to the repatriation of Rohingya Muslims from Bangladesh, meaningful political backing is absent in Myanmar. As such, the country has still failed to create conditions that would allow for their safe and dignified return. Instead, the authorities continue to actively pursue policies that aggravate the crisis, causing people to continue fleeing in droves. Reports from Rohingya Muslims having recently arrived in Bangladesh tell of increased harassment, forced labor and arbitrary arrests. Those that remain in Myanmar still live without citizenship and highly restricted in their mobility and access to livelihoods. The increased insecurity is related to the crackdown by the military on the AA and ethnic Rakhine Buddhist which they claim to represent.¹³⁰ This reflects the military's motivation to destroy specific ethnic minorities, which continues to justify the commission of violence.

Processes of Othering: Salient Divisions along Religious and Ethnic Lines (4.5, 4.6 & 4.7)

The utilization of violence with the intent to destroy protected groups is closely connected to exclusionary processes of 'Othering', which have long fueled divisions in Myanmar. Othering describes the process of casting a group as a threat, different or as an alternative, which results in the construction of that group as an enemy or rival. Religious and ethnic differences – namely between Buddhist Bamar majority and Muslim minority groups – have propelled instances of hate speech, rioting and ethnic- and religious-intolerance in recent years and have become a driving force in Myanmar's internal conflict and violence. Ethnic-religious, nationalistic Othering was a tool mobilized by authorities to justify the military's 'clearance' strategy against the Rohingya in 2017.¹³¹ The UN Independent FFM on Myanmar reported that othering has resulted in a situation of institutionalized oppression – the cornerstone of which is a lack of legal status for 'other' groups (see *Risk Factor 2, Indicators 2.1 and 2.2*)¹³².

RISK FACTOR 4: MOTIVES OR INCENTIVES

Indicators 4.5, 4.6 and 4.7 are deeply tied to feelings of belonging to a specific group. As such, they contribute to the construction of identities in ‘us’ and ‘them’ terms, where ‘us’ (Buddhist Bamar) are privileged over the other, ‘them’. These divisionary practices are instrumental in justifying the use of violence against ‘Other’ groups. Othering in Myanmar is informed by *‘real or perceived threats posed by protected groups, populations or individuals, against interests or objectives of perpetrators, including perceptions of disloyalty to a cause’* (**Indicator 4.5**), *‘real or perceived membership of or support for armed opposition groups, by protected groups, populations or individuals’* (**Indicator 4.6**), and *‘ideologies based on the supremacy of a certain identity or an extremist version of identity’* (**Indicator 4.7**). To better understand the rise of **Indicators 4.5 and 4.6**, this section will first look ideologies based on the supremacy of the Burmese identity (**Indicator 4.7**), which goes a long way to explain threat perceptions of protected or minority groups.

The Supremacy of the Bamar Identity & Perceived Threats Against that Identity

The Bamar identity, which is largely defined in terms of Buddhism (see *Risk factor 1, Indicator 1.11*), has come to dominate Myanmar politics. Processes of ‘Myanmarization’ have fostered exclusion and Othering toward minority groups, which has had serious implications for persons that are neither Buddhist nor speak Burmese (‘properly’). Highly discriminatory policies reflect that Othering is not simply a consequence of Buddhist religious dominance but that it is actively pursued as a form of Bamar statecraft that privileges ‘true’ Myanmar and discriminates against minority groups¹³³. This statecraft is mostly clearly observed in the 1982 Citizenship Law, which targets the endangered Rohingya community among others, and the Protection of Race and Religion Laws which speaks to the increasing segregation and otherness of Myanmar Muslims¹³⁴. It is also seen in several other discriminatory instruments such as the Rakhine Action Plan (2014)¹³⁵.

But how did the construction of Buddhist-Bamar supremacy emerge? To answer this, contemporary Buddhist-Bamar nationalism must be historicized. It is an ideology rooted in primordial values and cultural homogeneity. To be Burmese, an ‘us’, one must first and foremost belong to an ethnic group or race that lived in Burma before British colonization (1823). Muslims and Hindus are presented, and perceived, as ‘immigrants’ invited by the British as cheap labor during the country’s colonial era. The colonial legacy of Buddhist-Bamar supremacy has many contemporary manifestations.¹³⁶ Resentment toward Muslim and Hindu groups have been widespread, leading to serious riots as early as 1938. With independence, nation-building processes came to be understood in terms of national identity-building. This manifested in the equating of ‘nation state’ with the notion of *‘one ethnicity, one language and one religion’*¹³⁷. The effect of attempts to build national unity through a singular identity was the dominance of Bamar-Buddhism. Consolidation processes, which saw the implementation of forced-assimilation policy by the military regime (see *Risk Factor 1, Indicator 1.11*), have been unsuccessful. Instead, the privileging of the Bamar-Buddhist as the ‘true’ Myanmar identity has weakened the political and cultural activities of ethnic and religious minorities and continues to do so.¹³⁸

In contemporary Myanmar, Buddhist-Bamar supremacy and nationalist ideology has developed into a fear of ‘foreign’ control of the country that helps sustain notions of superiority. The leading monk of the Ma Ba Tha, a close military-affiliate, has proclaimed that Muslims (which comprise less than five per cent of the population) will rule Myanmar and the world in the 21st century. This, which reflects the presence of **Indicator 4.5**, is the culmination of hate speech that has positioned Muslims – especially Rohingya Muslims – as ‘immoral guests’ that do not respect Buddhism or its moral precepts, framing them as existential threats to the foundation of Bamar-Buddhist identity. During the height of Rohingya crisis, for example, propaganda circulated about the presence of Rohingya agents and a Rohingya invasion. As highlighted by the UN FFM on the Economic Interests of the Myanmar Military, on 1 September 2017, just one week after the clearance operations began, Senior General Min Aung Hlaing justified the crackdown in terms of security, using *‘...a false narrative that treated all Rohingya as murderous invaders, stating that “absolutely, our country has no Rohingya race”’*¹³⁹. Rohingya-specific targeting is no new phenomena in Myanmar but has become endemic since 2012 with the easing of freedom of expression restrictions. This

RISK FACTOR 4: MOTIVES OR INCENTIVES

has provided anti-Muslim groups a bigger platform and access to the public, making it easier to spread hate. The institutionalization of Buddhist-Bamar privileging – which manifests in discriminatory instruments against minorities – is seen in the identification of Rohingya by the Myanmar Government and Rakhine administration as a threat to their demographic map¹⁴⁰.

In addition, quite alarmingly, the UN Special Rapporteur has received reports that the national elementary school curriculum includes lessons and textbooks that communicates racial superiority to children. For example, a fourth-grade lesson on ‘Wunthanu Spirit’ (nationalistic and patriotic spirit) says *‘we loathe those of mixed blood, for they prohibit the progression of a race’*. Racist teachings as well have the effect of sustaining ideas of racial supremacy and contribute to Myanmar’s social disharmony.¹⁴¹

Further, recent targeting of Muslim worship sites by Buddhist nationalists during Ramadan celebrations reflect that Muslim minority groups will continue to be perceived as a threat to the attainment of a unified Myanmar by Buddhist nationalists¹⁴². This type of fearmongering, based on perceived threats posed by a protected group, has been instrumental in sustaining ideologies pertaining to Buddhist-Bamar supremacy.

Membership of or Support for Armed Opposition Groups

Myanmar has a large number of EAOs, the vast majority of which are formed along ethnic lines. These groups are highly diverse in military strength, ethnic identity and their chosen engagement strategies towards state and military authorities. Many early-established EAOs were developed to fight for ethnic interests and self-determination and some have emerged out of the break-up of pre-existing EAOs. During the course of protracted warfare, many of these groups have also become involved in war economies, funded by the extraction and trade of natural resources¹⁴³. All armed groups are dependent on support of local populations, including for finances, intelligence, recruitment and food. This in no way reflect civilian support for the armed struggle of ethnic opposition groups or abuses committed by these groups; there have been cases where civilian populations have been *forced* to provide support to national armed forces or ethnic armed groups.¹⁴⁴ Ultimately, there is real membership and support for armed opposition groups in Myanmar, reflecting the presence of **Indicator 4.6**.

Politicization of past events (4.8)

Politicization of the repatriation process is expected to increase as the 2020 elections approach – where parties, including the former ruling party USDP, will attempt to capitalize on historical grievances between Bamar and non-Bamar ethnic minorities (see *Risk Factor 8, Indicator 8.8*).¹⁴⁵ While the situation of Rohingya population is likely to spur most political unrest and bring to the fore vocal Buddhist nationalists, the grievances of other ethnic minority groups affected by military operations in Northern Myanmar – especially since attacks from the AA – can also be expected. The civilian populations most affected by the AA-military conflicts are the Arakanese, Rakhine, Rohingya, Mro and Chin people in Chin and Rakhine states.¹⁴⁶

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

Risk Factor 5 identifies *‘conditions that indicate the ability of relevant actors to commit atrocity crimes.’* For atrocity crimes to be commissioned, sustained and long-term planning is most often required. Genocide, crimes against humanity and many war crimes do not occur spontaneously or in isolation. Thus, those aiming to commit atrocities require substantial resources and support. Importantly, where there is a capacity to commit there must also be an intention to use that capacity against a population, protected group or individual. As a result, Risk Factor 5 must be assessed against other Risk Factors.¹⁴⁷

In Myanmar, the capacity of the military (and other groups) to commit human rights violations and mass atrocities has been proven in the past. The application of the framework reveals that it continues to hold such a capacity. This is reflected in the material capabilities of the military, ethnic armed organizations and militia groups.

Material Capabilities (5.1)

Indicator 5.1 concerns the *‘availability of personnel and of arms and ammunition, or of the financial resources, public or private, for their procurement’*. There exists a definitive material capability by the military, militia and Myanmar’s EAOs to recruit personnel and procure arms and financial resources. Before proceeding, it is noted that the material capabilities of all groups and their continued engagement in conflict, reflects also their capacity to recruit. This is reflective of **Indicator 5.3**, which concerns the *‘capacity to encourage or recruit large numbers of supporters from populations or groups, and availability of the means to mobilize them’*.

Myanmar Military

Military expenditure was 2.93 per cent of Myanmar’s GDP in 2018, down from 4.08 in 2015. While a seemingly positive trend to observers, this equated to the direction of 15.2 per cent of the government’s total budget to the military in 2018. Though this is down from its peak of 19.64 per cent in 2012, it is still considerably high (even by Myanmar standards). In 2017, the global average for military expenditure by states as a share of the national budget was 6.27 per cent.¹⁴⁸ In addition, military-run conglomerates provide the security apparatus with extensive off-budget revenue that enables it to conduct operations outside civilian control with impunity – see *Risk Factor 1, Indicator 1.7*. A UN FFM (2019) mission found at least 140 ‘crony’ companies for which it urged foreign companies to sever ties with.¹⁴⁹

According to the International Institute for Strategic Studies, as of 2017 Myanmar’s military had an estimated 513 000 personnel¹⁵⁰. In 2018, Myanmar spent 192 million USD on arms imports for major conventional weapons, including missiles, artillery and vehicles¹⁵¹. This data does not include money spent on small and arms and lights weapons (SALW) however, because Myanmar manufactures the majority of these domestically – making reliable data on military access to SALW difficult to attain¹⁵².

For the 2019-2020 fiscal year the military requested a budget of 3.37 trillion kyats, marking a 120 billion increase from 2018-2019 actual budget of 3.24 trillion kyats. The Deputy Minister of Defence, Major General Myint New, has said the military is preparing long-term plans to build a more qualified, patriotic and strong military to foster the non-disintegration of national solidarity, non-disintegration of the Union and the perpetuation of national sovereignty.¹⁵³ This reflects a commitment to the general strengthening of military capacity to undertake future operations. Given that notions of sovereignty and national unity are closely linked to supreme identity ideologies – see *Risk Factor 4, Indicator 4.5 & 4.7* – this is concerning.

Ethnic Armed Organizations

In addition to the military, there are several EAOs with access to personnel, arms and ammunition. The Norwegian Institute of International Affairs has developed estimates of current military strength (in terms of number of troops) for twenty (20) EAOs. Troop estimates vary greatly; ranging from a low of 100 for the Arakan Liberation Army (ALA) and a high of 30 000 for the United Wa State Army (UWSA). Among the

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

larger armed organizations are the KNU (5000+), Shan State Army (SSA) (8000+), KIA (10 000 – 12 000) and the Ta'ng National Liberation Army (TNLA). The AA, currently engaged in ongoing battles with the Tatmadaw, has the military strength of some 3000 troops¹⁵⁴. In addition to natural resource extraction by major groups in control of economically important territories, EAOs are also financially supported by local populations, as highlighted by *Risk Factor 4, Indicator 4.6*¹⁵⁵. Data covering the extent of EAOs finances are severely limited, however.

Militia

In addition to the military and EAOs, there are numerous militia groups operating in Myanmar that, unlike EAOs, are authorized by the government to carry arms. This, it should be noted, reflects the presence of **Indicator 5.5**, which identifies '*links with other armed forces or with non-State armed groups*.' Militia range in size, though larger groups are reportedly equipped with several hundred soldiers. The majority of militia groups are either allied or supported by the military and are either directly incorporated into the military's command structure or under their supervision. Militia support the military by providing information on EAOs, potential threats as well as guiding military units through unfamiliar terrain. As a result, the highest concentrations of militia activity are in areas where the Tatmadaw are conducting military operations – in areas of predominantly non-Burman populations.¹⁵⁶

There are also several smaller-militia groups that support EAOs. EAO militias provide assistance to EAOs in protecting their ethnic communities from the military, government militia, or other EAOs. They also act as reservists, mobilized when needed for EAO operations. Though data is limited on the extent of militia support for EAOs, there is a general consensus that smaller EAOs lack the resources to finance and arm these groups. Thus, ethnic organizations with larger territorial and economic control are more likely to employ armed militia groups to aid their operations.¹⁵⁷

Capacity to Deploy Personnel & Distribute Arms and Ammunition (5.2)

There is definitive evidence of a capacity to deploy personnel and distribute arms and ammunition by both the military and EAOs, which **Indicator 5.2** identifies. This is reflected in Myanmar's unwavering armed conflict since independence, which have occurred country-over. Conflicts between the AA and Northern Alliance (excluding KIA) this year reveals a continued capacity to sustain a source of arms, ammunition and personnel to EAOs and the military in 2019.

Support from External Actors (5.8)

Indicator 5.8 concerns the presence of '*armed, financial, logistic, training or other support of external actors, including States, international or regional organizations, private companies, or others*.' Here, China is of particular note.

China, which shares a 1500-mile border with Myanmar, has vested economic, security and political interests in the internal dynamics of the Union and has become a key external player in the country's peace process and security. Since 2013, in response to ongoing armed conflict between EAOs and the Tatmadaw at the Myanmar-Chinese border, China appointed a special envoy to serve as a formal observer to Myanmar's peace negotiations. This envoy, now with new appointees, remains a central actor in the peace talks pertaining to the NCA.¹⁵⁸ According to the United States Institute of Peace (USIP), China has sought to assert its influence⁴ while simultaneously limiting the involvement of other nation states. It has reportedly attempted to pressure non-signatory EAOs based near the Chinese border to attend National dialogues.

China's push for increased peace dialogue is far from altruistic though. USIP reports that China neither benefits from outright war nor total peace. On one hand, Beijing requires a reduction of fighting to ensure an operational level of stability, mitigate refugee flows and allow its investments to proceed unobstructed. Economic interests in Rakhine State – where conflict has reared its head – are wide-ranging, including a major port in Kyaukphyu and plans for a special economic zone (SEZ), and a transportation network

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

known as the Belt and Road Initiative (BRI) – railway, roads and pipelines – to transfer supplies from via Myanmar from the Bay of Bengal to Yunnan Province¹⁵⁹. On the other hand, complete peace would undermine its capacity to leverage influence over Naypyidaw and over ethnic organizations, particularly those near the border, which share historical, cultural, political and economic connections with groups in China. Following the military's ethnic cleansing campaign against Rohingya Muslims, China defended the government, saying military actions were merely an effort to protect domestic stability. It has also protected Myanmar against UN-imposed sanctions and international action and has *'and has offered rhetorical and material support for its handling of the so-called terrorist attacks'*¹⁶⁰. In addition, some Chinese special interest groups and individuals have offered direct financial support to ethnic armed groups in Myanmar to fuel conflict in Shan and Kachin states. Among them are UWSA, KIA, and Kokang Army (MNDAA). Reports have also emerged that suggest Chinese citizens – including retired soldiers of the Peoples Liberation Army (PLA) – have sold their services as mercenaries to EAOs. This material support has contributed to these EAOs ability to continue taking arms, and ultimately helped sustain Myanmar's ongoing civil war.¹⁶¹

In 2018, Japan called for the international community to avoid criticizing the Myanmar government. The country has abstained from all United Nations Myanmar-related resolutions and has refused to use the term 'Rohingya', reflecting support for Myanmar's political rhetoric.¹⁶²

It is also worth noting that ACLED have identified that Saudi Arabia may have been supporting Rakhine Muslim insurgent group, the ARSA.¹⁶³

Finally, the independent international UN FFM on the Economic Interests of the Myanmar Military identified several companies that have provided the military with arms and related equipment – such as fighter planes, ballistic missile systems, armored personnel carriers and small arms – since 2016. Of fourteen identified companies, twelve are foreign State-owned enterprises (SOEs). In addition to China, SOEs were identified from the *'Democratic People's Republic of Korea, India, Russia, and Ukraine involved in major arms or arms-related deals with Myanmar. Israel also exported arms to Myanmar before an order of its Supreme Court prohibited further sales.'* The Philippines and Singapore were identified in the report as having private companies dealing directly or indirectly in the transfer of conventional weapons to the Tatmadaw, along with other companies from China, India, North Korea, Israel, Russia, and Ukraine.¹⁶⁴

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Risk Factor 6 refers to the *'absence of elements that, if present, could contribute to preventing or to lessening the impact of serious acts of violence against protected groups or individuals.'* As demonstrated by the framework, atrocity crimes emerge from conditions that arise from a culmination of elements. Identifying these elements is essential to the implementation of meaningful identification and prevention mechanisms. Risk Factor 6 looks to whether there exists an independent national media and whether an openness to receive support from civil society and international actors is present.¹⁶⁵

For Risk Factor 6, just three of eleven indicators are assessed to be pertinent. Those indicators present are still cause for concern, however. In recent years, meaningful civic spaces in Myanmar have shrunk. High levels of persecution for media and civil society actors contributes to self-censorship, and physical access restrictions limits their capacity to assess and report on developments in the country. These restrictions extend to international and regional actors and reflect a lack of cooperation by the State with human rights mechanisms.

Lack of a Free and Independent Civil Society and National Media (6.2)

Indicator 6.2 refers to a *'lack of a strong, organized and representative civil society and of a free, diverse and independent media.'* With the official end of military junta in 2011 also came the end of official suppression and strict censorship of civic space in 2012. New media laws were ushered through to ensure the press could play a key role in the Myanmar's move toward democracy. While far from free – self-censorship replaced the top-down approach – it marked an important step forward.¹⁶⁶ When the NLD government took office, early commitments made to democratic reform were anticipated to reflect in civic spaces. However, amidst the escalating human rights crisis, the space for a free and independent media and representative civil society has since shrunk.

Article 19 of the Universal Periodic Review (UPR) mid-term report, has found that despite increased international scrutiny, Myanmar has not taken remedial action on the situation and the government has by and large ignored recommendations from independent bodies, including the Independent International UN FFM on Myanmar and the UN Special Rapporteur on the situation of human rights in Myanmar – this is indicative of the presence of Indicator 6.7, see the following section. Instead, little progress has been made to repeal laws that are utilized to target government critics, and authorities have continued to criminalize condemnation of the state and state policies, especially when it pertains to the country's protracted armed conflicts and state-perpetrated human rights abuses.¹⁶⁷ Despite having made commitments in its previous UPR, *'the operating environment for the media and civil society remains fraught, with human rights defenders, protestors, journalists and media workers routinely threatened with arrest and prosecution simply for exercising their right to freedom of expression. Against this backdrop, self-censorship is widespread and government officials seek to control and manipulate the flow of information in the country.'*¹⁶⁸ The nature of persecution in Myanmar greatly limits the capacity of civil society and the media to act independently of the state, and self-censorship greatly hampers the possibility of a functioning civic space. Both the media and civil society continue to face heavy restrictions on access to high conflict areas, particularly Rakhine State, and thus **Indicator 6.2** is prevalent.¹⁶⁹

Limited Access to Populations by International Organizations (6.4 & 6.7)

Indicator 6.4 concerns the lack of presence of relevant international actors, including the UN and INGOs, in the country that have access to populations. In the Myanmar context, the presence of **Indicator 6.4** is closely connected to the presence of another indicator, **Indicator 6.7**. The latter identifies *'limited cooperation of the State with international and regional human rights mechanisms.'*

Since the end of Myanmar's military junta, major reforms have opened the country up to the world. As a result, an increasing number of international organizations have entered the country. Myanmar is also a member some key international organizations, including the Association of Southeast Asian Nations (ASEAN) since 1997 and has been a longtime member of the UN.¹⁷⁰ However, the persecution of Rohingya communities has highlighted the lack of meaningful presence of these organizations, in part due to

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

their own failures to respond adequately but also to the lack of cooperation by the State. This year, the UN published its independent review into its own conduct in Myanmar ‘... *in the years leading up to the mass exodus of the Rohingya following serious rights abuses...*’ and its response to the 2017 ethnic cleansing campaign.¹⁷¹ It found that while the government is primarily to blame, there were systemic failures by the UN System that prevented the implementation of an effective strategy.¹⁷² In addition, ASEAN has been criticized by human rights groups for their response to the crisis and accused of ‘*turning a blind eye*’ to atrocities.¹⁷³ This came in response to its failure to effectively persuade Myanmar and the Myanmar military to stop the commission of atrocities in Rakhine. The ASEAN Humanitarian Assistance (AHA) Centre, tasked with surveying affected communities in Rakhine and undertaking a needs assessment, was heavily criticized after its preliminary report was submitted in May this year. Human rights organizations said the report failed to address military-sanctioned atrocities and the concerns of Rohingya facing repatriation.¹⁷⁴

Important too in the assessment of **Indicator 6.4**, is the heavily restricted access of international and regional actors, including INGOs, to populations. Briefly touched on in Risk Factor 1 and elaborated further in *Risk Factor 14, Indicator 14.5*, the UN Special Rapporteur has expressed serious concern over the limited of access to populations placed on the UN and other humanitarian organizations. Limited access to populations is the culmination of the geographical remoteness of some areas, the presence of security concerns and difficulty attaining authorization from the state and ethnic organizations.¹⁷⁵ In some cases, access has been blocked entirely by state authorities, including to areas of Rakhine state during the height of the military’s clearance operations in 2017¹⁷⁶. In January of this year, the Rakhine State Government instructed the UN and humanitarian organizations⁵ to suspend activities in the townships implicated by conflict. This constitutes a violation of Myanmar’s international humanitarian obligations to permit humanitarian access. It also reduces the possibility of independent actors to observe and report on the situation in the region, further placing the government’s willingness to cooperate with human rights mechanisms in question.¹⁷⁷ Overall restrictions placed on international actors reflect a broader tendency of the Myanmar authorities to show little cooperation with human rights mechanisms, ignoring recommendations made by the international community (see *Risk Factor 6, Indicator 6.2*).

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

Risk Factor 7 identifies *‘events of measures, whether gradual or sudden, which provide an environment conducive to the commission of atrocity crimes, or which suggest a trajectory towards their perpetration’*. Atrocity crimes, to reiterate, do not occur in isolation. Their commission requires planning and some level of preparation. Preparation processes – which include gathering resources to commit mass violence – are identifiable through certain actions, events or changes that indicate actors may be taking steps toward a scenario of mass abuses or that these developments may favor or encourage the commission of such crimes. Recognizing enabling circumstances or preparatory actions is thus of great importance.

In the assessment of the presence of Risk Factor 7 in Myanmar, both enabling circumstances and preparatory actions have been observed. The military has been periodically mobilized against populations in recent years; most recent cause for concerns have been actions taken against Arakanese and ethnic Chins during operations against AA insurgents. Potentially representing both an enabling circumstance and a preparatory action, the implementation of an internet blackout under the Telecommunications Law across conflict zones are highly concerning. The conflict has forcibly displaced tens of thousands of persons in Rakhine and Chin States, worsening the country’s already dire displacement crisis. Persons residing in internal displacement camps continue to be deprived of basic human liberties. Rohingya Muslims live in dire conditions, and those not living in camps face heavy restrictions on mobility and access to livelihoods under what has been likened to a policy of segregation. Finally, the government’s continued use of inflammatory rhetoric creates an environment that fosters the spread of hate speech.

Recent Mobilization of the Security Apparatus (7.3)

Myanmar’s security apparatus has been periodically mobilized against populations, including protected groups, in recent years (*refer to Risk Factor 1, Indicator 1.1* for an account of the 2017/2018 security mobilization against the Rohingya community). This reflects the presence of **Indicator 7.3**, which identifies the *‘strengthening of the security apparatus, its reorganization or mobilization against protected groups, populations or individuals’*.

This year, as identified in *Risk Factor 1, Indicator 1.1*, the military launched counterinsurgency attacks against the AA – who are fighting for autonomy – following a series of AA-led attacks in Buthidaung township. To justify the operations, the military have labelled the AA as a terrorist group, and interestingly, an NLD spokesperson has said they are linked to the ARSA¹⁷⁸. Once again, civilians have borne the brunt of the violence. Myanmar military and police forces have reportedly been rounding up civilians considered sympathetic to the AA cause, firing indiscriminately upon villages, schools and monasteries (where some Arakanese seek refuge). Showing an ongoing mobilization of the security apparatus against civilians, in mid-June the military opened fire while travelling from Minbya Township to Mrauk-U Township, wounding at least three men and a child. It was the second attack on the Mrauk-U Township in just a few months; the first occurred in March, when the military launched a mortar on the village. The latest incident did not follow any armed engagement between the AA and military but occurred in response to landmine explosions that the military accused locals of planting.¹⁷⁹ Overall, and noting similar patterns to the 2017 clearance operations that targeted the Rohingya community, ethnic Chin and Arakanese populations have been targeted and forcibly displaced amid new sets of military clearance operations against AA insurgents.

Violence in Rakhine is expected to continue as members of the Northern Alliance (of which the AA is part) fail to negotiate a ceasefire agreement. Making matters worse, the government continues to avoid taking concrete steps to address conditions that undermine the possibility of the safe, dignified return of Rohingya refugees. In addition, as highlighted in *Risk Factor 5, Indicator 5.1*, the request for increased military funding in the 2019/2020 fiscal year in order to strengthen the capacity of the armed forces shows an intent to continue operations that – particularly in consideration of Myanmar’s history of human rights abuses – will greatly increase the risk of civilians targeting and atrocity crimes. This would represent a serious blow to Myanmar’s democratic transition.

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

The imposition of Bans on Access to Communication Channels (7.6 & 7.7)

Recent developments in Rakhine and Chin States reflect an increasing presence of **Indicator 7.6**, the *'imposition of strict control on the use of communication channels, or banning access to them'*, in Myanmar. As highlighted in *Risk Factor 2, Indicators 2.1, 2.2 and 2.6*, the government has sanctioned an internet blackout across townships where fighting between the AA and military are taking place. On June 20, the Ministry of Transport and Communications issues an order under the Telecommunications Law 2013 that bid all mobile network providers to 'temporarily' stop internet services in Minbya, Kyauktaw, Pon-nangyun, Rathedaung, Buthidaung, Maungdaw, Maruk-U, and Myebon townships in Rakhine State, and Paletwa township in Chin State¹⁸⁰. The Ministry justified the shutdown by citing disturbances to the peace and the use of internet services to coordinate illegal insurgency activities. The UN Special Rapporteur on the situation of human rights in Myanmar told that the military was committing clearance operations in these towns, and that the shutdown greatly reduced the capacity of civilians to communicate the situation in these townships.¹⁸¹ Rights organizations have said the banning of access to communication services in these towns is a guise for the commission of further human rights abuses with impunity¹⁸². With already heavy restriction on access to these areas by humanitarian organizations, the internet blackout has the effect of isolating civilians in conflict zones further.¹⁸³ At the time of writing, the ban has not been lifted. Civilians remain at a very high level of risk of human rights abuses and atrocities.

The imposition of bans on access to communication services represents both a preparatory action for the commission of human rights violations as well as an enabling one in that the blackout shields the military from any external observation. These conditions are exacerbated by the presence of **indicator 7.7**, the *'expulsion or refusal to allow the presence of NGOs, international organization, media or other relevant actors, or imposition of severe restrictions to their services and movements'*, in that severe restrictions to access by external actors – particularly humanitarian workers – further limits the possibility of stories of human rights abuses to be communicated outside of the geographical space in which they are committed. To avoid repetition, the restrictions faced by humanitarian organizations and their workers will be elaborated under *Risk Factors 13 and 14, Indicators 13.8 and 14.5*.

Increased Violations to Human Security (7.8)

Indicator 7.8 identifies *'increased violations to the right to life, physical integrity, liberty, or security of protected groups, populations or individuals, or recent adoption of measures of legislation that affect or deliberately discriminate against them'*. Myanmar has a long history of violations of life, integrity, liberty and security of its populations. The most recent of which have already documented under the preceding Risk Factors, including the abuses inflicted on Rohingya Muslims in 2017/2018 and ethnic Chins and Arakanese from late 2018.

Life-threatening Living Conditions and Forced Displacement (7.10)

Indicator 7.10 concerns the *'imposition of life-threatening living conditions or the deportation, seizure, collection, segregation, evacuation, or forced displacement or transfer of protected groups, populations or individuals to camps, rural areas, ghettos or other assigned locations.'* Factors pointing to the presence of **Indicator 7.10** include ongoing military operations leading to mass forced displacement, the situation of those residing in domestic camps, and imposition of life-threatening living conditions to Rohingya still residing in the country. To avoid repetition, the coverage of these conditions will be concise.

Forced Displacement

Forced displacement is common in Myanmar. Conflicts in Chin, Shan, Kachin, Kayah, and Rakhine states have been the major source of forced displacement in recent years.¹⁸⁴ The majority of forcibly displaced persons now reside in refugee camps in neighboring countries (Bangladesh and Thailand, primarily) or in internal displacement camps in Myanmar – *see following section*. Major displacement situations include:

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

- Ethnic cleansing campaign against Rohingya Muslims by the Tatmadaw, displacing 730 000 members of the protected group since 2017.
- Fighting between AA and military in Rakhine and Chin States since late 2018, displacing up to 42 000 Arakanese and ethnic Chins.
- Prolonged conflict in Kachin and Shan States; an estimated 106 400 persons are still categorized as displaced¹⁸⁵.
- Logging and mining ventures in Kachin, Kayin and Shan States have been the site of mass human rights violations, and continually lead to the forced displacement of local populations (exact numbers of IDPs are unknown)¹⁸⁶.
- There are also 162 000 IDPs in south-eastern Myanmar, the majority of which do not live in displacement camps. Instability, the presence of armed forces and land insecurity prevent their safe return¹⁸⁷.

Internal Displacement Camps (IDCs)

IDCs are prevalent across the country. Their conditions have been described as dire and undermine human liberty. Two examples are documented here, but this is far from an exhaustive account of conditions in IDCs. Since 2012, following mass violence against Rohingya and Kaman Muslims, 128 000 Rohingya and Kaman have been confined to camps. They have been deprived of freedom of movement, access to adequate healthcare, food, livelihoods and education, and have been prevented from returning home. Since 2011, approximately 100 000 persons from Shan and Kachin States having been living in camps – or camp-like conditions. Here, similar situations of limited access to food and healthcare are reported. Chronic malnutrition rates are significantly above the national average. In addition, ongoing conflict has made access to education disrupted; it has also led to the impositions of restrictions and blocks on humanitarian aid access.¹⁸⁸

Recently, the government announced its intention to close all IDCs. The report of the Special Rapporteur into the situation of human rights in Myanmar, expressed concern that camp closure strategies have thus far only illustrated an intent by the government to upgrade infrastructure in or around the camps. This neither addresses root causes of mass displacement nor the right of IDPs to return to their place of choice. In that the policy avoids addressing restrictions placed on Rohingya, the Special Rapporteur is gravely concerned that such a policy will lead to ‘apartheid conditions’ and the permanent segregation of Rohingya in Rakhine.¹⁸⁹

Life-threatening living conditions

The Independent International UN FFM on Myanmar found that while the government declared the ‘clearance operations’ had ended on the 5th of September 2017, military engagement continued. Concern has been directed to forcibly displaced Rohingya Muslims that chose not to flee from Myanmar (or were unable to). For those remaining, policies of segregation, and severe restrictions to mobility and livelihood access, have made living conditions life-threatening. Sporadic attacks – including sexual violence – have continued. These factors have pushed more Rohingya to flee since 2018 (at a rate of 1178 per month until the publication of the report in September).¹⁹⁰ Living conditions for non-Rohingya in conflict zones and IDCs are also dire. The FFM reported not being able to deliver humanitarian aid to persons residing in non-government-controlled areas. Some 20 000 IDPs residing in remote areas require education, shelter, food and water¹⁹¹.

Destruction and Plundering of Religious Objects (7.11)

Indicator 7.11 refers to the ‘destruction or plundering of essential goods or installations for protected groups, populations or individuals, or of property related to cultural and religious identity.’ The UN FFM (2018) found that violations against minority groups in Myanmar, particularly in its northern regions, were often committed with ‘persecutory’ intent. The report adds that this has led to ‘... the destruction or ransacking of churches and religious objects during military operations (and sometimes to the subsequent construction of Buddhist pagodas) ...’¹⁹²

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Inflammatory Rhetoric and Hate Speech (7.14)

Indicator 7.14 identifies *‘increased inflammatory rhetoric, propaganda campaigns or hate speech targeting protected groups, populations or individuals.’* Hate speech is pervasive in Myanmar, as illustrated throughout *Risk Factor 4, Indicators 4.5 and 4.7*. The UN FFM recounted disturbing prevalence of hate speech in its 2018 report, where dehumanising language against Muslims in general and Rohingya more specifically have been a key component of the Ma Ba Tha’s campaign to *‘protect race and religion’*. While the government authorities have condoned such hate narratives and have taken steps to use less inflammatory language, their general inflammatory rhetoric has created an environment that is conducive to the commission of hate speech (and legitimises violations of human rights and humanitarian law). Such rhetoric includes the refusal to acknowledge the existence of Rohingya in Myanmar, the denial of their identity and suffering, the insistence of their status as ‘illegal immigrants’, and continued reference to their ‘uncontrollable’ birth rates.¹⁹³

RISK FACTOR 8: TRIGGERING FACTORS

Risk Factor 8 identifies *‘events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate conditions or may spark their onset’*. This Risk Factors considers that not all atrocity crimes progress in the same manner. Sometimes, sudden or unpredictably events may exacerbate existing, or cause a sudden deterioration of, conditions to an extent that it prompts the commission of atrocity crimes. Effective early warning and prevention mechanisms must thus consider events or circumstances and their potential impact.¹⁹⁴

At the time of writing, five indicators pertaining to Risk Factor 8 were judged to be present. This year, renewed fighting in Northern Myanmar has seen the deployment of military forces and an escalation in hostilities. Other concerning indicators, which may act as triggering factors to the commission of atrocity crimes, include an apparent perception held by government officials that Myanmar’s sovereignty is under threat by the international community. Further, the upcoming 2020 elections may catalyze division – already fueled by hate propaganda – and have a destabilizing effect. As such, the situation should be closely monitored.

Deployment of Security Forces and Continued Armed Hostilities (8.1)

As articulated throughout the report, renewed violent conflict are underway in Rakhine, Chin and Shan States. Following a series of coordinated attacks by the AA, the military has engineered a campaign of violence against ARSA insurgents, as well as Arakanese and ethnic Chin populations. As identified in *Risk Factor 1, Indicator 1.1*, the military and AA have engaged in as many as 206 battles this year. Recent orders to block communications services in the township where conflict has concentrated may also reflect an escalation in the nature of the conflict. In addition to this bilateral fighting between the AA and military, renewed fighting between the members of the Northern Alliance (excluding the KIA) since mid-August – see also *Risk Factor 1, Indicator 1.1* – has seen rapid escalation in northern Shan. The use of shelling and helicopter attacks among recent hostilities¹⁹⁵. All of this is indicative of the presence of **Indicator 8.1**, which refers to the *‘sudden deployment of security forces or commencement of armed hostilities.’*

Perceived threats to State Sovereignty (8.3)

Indicator 8.3 refers to *‘measures taken by the international community perceived as threatening to a State’s sovereignty’*. Since the mass exodus of the Rohingya population in 2017, the international community has been highly engaged with the human rights situation in Myanmar. In the series of investigations that followed, it was found that the military-led campaign against the Rohingya undoubtedly amounted to the gravest of crimes under international law. Particularly, the UN FFM Mission on Myanmar into the violations by the military in Rakhine, Kachin and Shan States in 2018 urged that Myanmar’s senior military generals should be tried and prosecuted for genocide, crimes against humanity and war crimes¹⁹⁶. As such, in an effort to address the situation in Rakhine State and seek accountability for the atrocities endured, the international community has sought resolutions through the UN system and ICC. These moves have been perceived as hostile acts by Myanmar authorities.

At the fortieth regular session of the United National Human Rights Council on 22 March 2019, a draft resolution on the ‘Situation of Human Rights in Myanmar’ was proposed by the European Union. As articulated in *Risk Factor 2, Indicators 2.3 and 2.4*, Myanmar categorically rejected this resolution citing numerous reasons for its discontent – some of which reflect a perceived threat to Myanmar’s State sovereignty. The permanent representative of Myanmar, Ambassador Kyaw Moe Tun, called the resolution factually flawed and intrusive, proclaiming many paragraphs were *‘politically driven’* and *‘sovereignty-infringing’*. The delegate said that the concerning paragraphs were aimed at imposing *‘unprecedented discriminatory scrutiny on Myanmar’*, and that they represented an abuse of the UN mechanisms under the guise of human rights protection. He also declared that the draft resolution demonstrated a blatant *‘disregard for the dignity sovereignty and territorial integrity of a sovereign UN member state’*.¹⁹⁷

Myanmar’s severe discontent with the draft resolution and repeated reference to the international community’s infringement on its sovereignty, reflect its perception of a threat to that sovereignty.

RISK FACTOR 8: TRIGGERING FACTORS

Acts of Hate Propaganda (8.7)

Indicator 8.7 refers to *‘acts of incitement or hate propaganda targeting particular groups or individuals.’* Hate propaganda has long been utilized by government officials, primarily military personnel, and leading members of Buddhist nationalist movements to target Muslims in Myanmar, Rohingya in particular – see *Risk Factor 4, Indicator 4.5*. In her report on the situation of human rights in Myanmar, released in March this year, the UN Special Rapporteur described hate speech as institutionalized in Myanmar. Members of the government continue to utilize social media platforms to proliferate hate speech, despite Facebook removing accounts linked to the military for ‘inauthentic’ behavior last year.¹⁹⁸

Upcoming National Elections – Divisive Issues and Events that May have a Destabilizing Effect (8.8 and 8.12)

Indicator 8.8 refers to *‘census, elections, or pivotal activities related to those processes, or measures that destabilize them’*. Late next year Myanmar will hold general elections for over 1100 seats in its regional, state and union bodies. It is expected to be hard fought, particularly between the current ruling party, the National League for Democracy, and the former ruling party, the Union Solidarity and Development Party. Dozens of smaller parties and ethnic parties will be participating. To date, the country’s electoral history has favored larger parties at the expense of independent candidates and smaller parties. If the 2020 elections are similar in nature, its outcomes will sustain the status quo and undermine meaningful progress toward sustained peace.¹⁹⁹

Divisive campaigning is anticipated and may act as a catalyst for possible violent action. Given the high level of participation by parties, most issues will spur discord. In the lead up to election, two major events are expected to exacerbate existing social and political tensions – the possible repatriation of Rohingya from Bangladesh and the 21st century Panglong peace conference. Heightened politicization of the repatriation process is expected as the election approaches; Rohingya return is largely unpopular among ethnic Rakhines and heartland Barmans. With little political backing as is, many parties are expected to capitalize on the construction of the Rohingya ‘Other’ that facilitated the violence in the first place. In regard to the peace process, similar dynamics witnessed in the 2015 elections are expected to surface in 2020. In 2015, competing political parties attempted to convince EAOs to postpone decisions pertaining to ceasefire by promising more concessions. In interviews with key political and peace process stakeholders conducted by USIP, it was suggested that the upcoming election will negatively affect the resolve of major political players to grant concessions in the face of opposition that will heavily criticize such a step.²⁰⁰

Though the transfer of GAD from military to civilian control in 2018 effectively removes direct military influence over elections, it has sought new avenues to exert such influence. Recently, the Yangon military commander personally donated an amount equivalent to 19 600 USD to the Ma Ba Tha foundation. The move followed the Ma Ba Tha’s denunciation of the NLD government’s sedition lawsuit against leader of the group, U Wirathu – who has been in hiding since late June after the issuance of his arrest warrant²⁰¹. This latter event reflects too the presence of **Indicator 8.12**, which refers to *‘acts related to accountability processes, particularly when perceived as unfair’*. The group, which spearheads anti-Muslim rhetoric, has already urged voters to boycott the NLD in 2020 elections, saying the party is detrimental to the *‘country, race and religion’*. Following its announcement, Ma Ba Tha released a statement condemning the NLD government’s approval of the Child’s Rights Law, stating the law may lead to the granting of citizenship to *‘illegal immigrants’*.²⁰² The donation to the foundation by leading military commander reflects continued support for the organization’s racist-agenda, and arguably, is an action conducted with the intent of procuring divisive outcomes.

SPECIFIC RISK FACTORS

RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

Risk Factor 9 pertains to *‘past or present conduct that reveals serious prejudice against protected groups and creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes.’*²⁰³ Identity constructions can become subject to manipulation by elites, sometimes with the intention of securing personal or political gain, can fuel societal tensions. These divisions, which may lead to identity-based conflicts, can be rooted in real or perceived differences between religious, racial, ethnic and national groups. Risk Factor 9 focuses not on the existence of those difference, but rather whether those difference are utilized to form the bases of discrimination within a society that ultimately serves as the cause and justification for the commission of group violence. Identity-based discrimination can transform into patterns of abuse that may lead to genocide. As per the 1948 Convention on the Prevention and Punishment of Genocide and other relevant treaties, genocide refers to the crime committed against a group based on their real or perceived membership of that group.²⁰⁴

Highly concerning is the presence of all six indicators pertaining to Risk Factor 9 in Myanmar. The country has a long history of implementing policies and legislations that are highly discriminatory and segregational, and which target the Rohingya population. The ongoing use of inflammatory rhetoric and a refusal by the authorities to use the term ‘Rohingya’ is illustrative of the denial of their existence. Further, and closely linked to Myanmar’s pervasive culture of impunity, are the absence of domestic mechanisms that would otherwise be instrumental in responding to identity-based divisions.

Past and present Discriminatory and Segregational Policies and Legislation against Protected Groups (9.1)

Indicator 9.1 refers to *‘past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups.’* Several of Myanmar’s minority groups have been subjected to discriminatory, exclusionary and segregational practices, policies or legislations. These groups include the Shan, Kachin, Sagain Chin and Karen populations, who have been subject to severe repression and human rights violations.²⁰⁵ Rohingya Muslims constitute the protected group most affected by discriminatory policies and exclusionary practices, however. Through processes of identity-manipulation and othering, the Myanmar elites – including religious leaders, military officials and government executives – have framed Rohingya as illegal immigrants, outsiders and a threat to Bamar supremacy. In the report of the international independent UN FFM published last September, the military was recorded referring to groups not belonging to Myanmar’s 135 ‘recognized’ national races as crows living among peacocks.²⁰⁶ This phenomenon is described throughout the report – refer to *Risk Factor 1, 2 and 4, Indicators 1.11, 2.1, 2.2, 4.5, 4.7.*

Discriminatory legislations that have emerged from this rhetoric, including the 1982 Citizenship Law and the four Race and Religion Protection laws, that heavily target Rohingya Muslims. These legislations are covered thoroughly in preceding risk factors, namely under *Risk Factor 2 and 3, Indicator 2.1, 2.2 and 3.1*, and thus will not be repeated here. Rohingya, among other groups including the Kaman, are additionally subjected to segregational and restrictive policies and practices, as evidenced in their limited access to livelihoods and absence of freedom of mobility –see *Risk Factors 1 and 7, Indicators 1.3 and 7.10*. The presence of these legislations and policies – which are rooted in identity-based discrimination – reflect the ongoing presence of **Indicator 9.1** in Myanmar.

Denial of the Existence of Protected Groups (9.2)

The report of the independent international UN FFM on Myanmar highlighted the use of inflammatory rhetoric by the Myanmar authorities, which included the denial of the existence of Rohingya Muslims in Myanmar and the refusal to use the term ‘Rohingya’ all together.²⁰⁷ For more on this rhetoric, see *Risk*

RISK FACTOR 9:

INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

Factor 7, Indicator 7.14. This reflects the presence of **Indicator 9.2**, which refers to the ‘denial of the existence of protected groups or of recognition of elements of their identity.’

History of Atrocity Crimes Committed with Impunity (9.3)

Myanmar has a long history of atrocity crimes committed with impunity against protected groups, reflecting the presence of **Indicator 9.3**. This phenomenon is described to some extent in *Risk Factor 2, Indicator 2.4*, which looks to Myanmar’s institutionalised culture of impunity. To refer once against to the report of the independent international UN FFM, it was established that Myanmar was witness to consistent patterns of serious human rights violations in Kachin, Rakhine and Shan states since 2012, many of which amounted to atrocity crimes. These crimes have been committed principally by the military, where ongoing impunity for gross violations have facilitated an environment conducive to the recurrence of mass atrocities. The military has consistently failed to adhere to international human rights law and have repeatedly targeted civilians, including identity-based targeting. The mission found that the targeting of members of the protected Rohingya group included four of five prohibited acts:

- a) killing
- b) causing serious bodily or mental harm;
- c) inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part;
- d) imposing measures intending to prevent births²⁰⁸.

Upon reviewing the evidence and inferences pertaining to intent, the mission found sufficient information that ‘clearance operations’ were conducted by the military with genocidal intent. It concluded that senior military officials should face trial. It also suggested that, in consideration of the country’s persistent culture of impunity, accountability must be sought externally.²⁰⁹

The Absence of Domestic Mechanisms to Respond Meaningfully to Identity-based Tensions and Conflicts (9.4 & 9.6)

Indicator 9.4 identifies ‘past or present serious tensions of conflicts between protected groups or with the State, with regards to access to rights and resources, socioeconomic disparities, participation in decision making processes, security, expressions of group identity or to perception about the targeted group.’ As outlined under Risk Factor 1 and 4, issues related to access to rights and resources, participation in decision making processes, expressions of group identity and socioeconomic disparities are all underlying factors to historic and ongoing tensions and armed conflicts between Myanmar’s diverse minority groups and the State.

Unequal access to rights and restricted political participation has long created tension between the central government and Myanmar’s many minority groups; the latter feeling suppressed and alienated from decision-making processes and that their ethnic identity is being ignored. While the 2008 Constitution included provisions of the decentralization of power that would theoretically provide the seven ethnic minority states with certain legislative and executive powers, these have not come to fruition. In addition, protracted conflicts rooted in identity and hope for autonomy have neither yielded any positive changes for minority groups.²¹⁰ Likewise have tensions manifested out of military’s efforts to gain control of Myanmar’s rich endowment of natural resources, much of which are located in areas de facto controlled by ethnic organizations.²¹¹ Further, the issue of identity is also a core driver of tensions and armed conflicts, some of which are rooted in the social – and institutional – exclusion of minority groups, not least the protected Rohingya group. As outlined in *Risk Factors 1 and 4*, the divisions along religious and ethnic lines in Myanmar are salient. The vast majority of ethnic and religious minorities express that the government is highly discriminatory, and that there are deep inequalities in terms of how ethnic minorities are treated.²¹² These factors, among others, have weakened the political and cultural activities of minority groups, motivating many to take to arms.

RISK FACTOR 9:

INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

This phenomenon closely connects to **Indicator 9.6**, which refers to the *'lack of national mechanisms or initiatives to deal with identity-based tension or conflict.'* As described throughout *Risk Factor 3* Myanmar's internal mechanisms of oversight and accountability are inadequate. So too are its national institutions that might otherwise provide a platform for dealing with identity-based conflict in Myanmar, including its legal framework, judicial and human rights systems (*see Indicators 3.2, 3.6*). In combination, the absence of such mechanisms and institutions contribute to a culture of impunity that ultimately undermines efforts at peace and reconciliation. All this occurs within an environment where tensions are fuelled by the government use of inflammatory rhetoric.

RISK FACTOR 10: GENOCIDE

SIGNS OF AN INTENT TO DESTROY IN WHOLE OR IN PART A PROTECTED GROUP

Risk Factor 10 identifies *'facts or circumstances that suggest an intent by action or omission, to destroy a protected group based on its national, ethnical, racial or religious identity, or the perception of this identity.'* The intent to destroy a protected group is at the same time the fundamental component as it is the most difficult element of genocide to prove. Most often, the intent is identified after the fact. As a result, the crime of genocide sometimes occurs before any preventive action can be established. For this reason, early warning indicators are of the utmost importance. While rarely explicit, these indicators can be inferred from behavior or conduct that could reasonably support the intent or a plan to destroy a protected group. Indicators cover overt and covert methods of destruction that, in practice, produce the same outcome. Because genocide does not occur spontaneously, it is highly unlikely that such an atrocity crime will be committed in the absence of a State- or organization-sanctioned plan to commit genocide.²¹³

At the time of writing, Risk Factor 10 is judged to be prevalent in Myanmar. Seven of eight indicators were found to be present. There exist highly discriminatory policies that severely affect the reproductive rights of Rohingya women particularly and limit Rohingya birth rates. In addition, the nature of violence against the protected group in recent years has been highly targeted, discriminate and reflects an intention to incite fear, terror and humiliation. Widespread and systematic killings and destruction of structures by arson are also indicative of an intention to physically eliminate the group from Myanmar. In addition, the ongoing failure of the government to address conditions that would otherwise allow the safe return of Rohingya to Myanmar, including a refusal to grant Rohingya citizenship and the insistence of the use of identity verification cards, can be inferred as an attempt to alter Rohingya identity. Finally, the independent international Fact-Finding Mission on Sexual and Gender-based violence in Myanmar and the gendered impact of its ethnic conflicts reflects the use of sexual-violence as a weapon intended to cause serious harm against Rohingya. All of this, paired with comments made by Military Commander-in-Chief, reflect genocidal intent with a level of preplanning. As such, Risk Factor 10 – the second Risk Factor Specific to Genocide – is judged to be present.

Inferred Preplanning of 2017 Clearance Operations (10.1)

Indicator 10.1 identifies *'official documents, political manifests, media record or another documentation through which a direct intend, or incitement, to target a protected group of revealed, or can be inferred in a way that the implicit message could reasonably lead to acts of destruction against that group.'* The launching of the clearance operations that were consistent in nature and strategy across a wide geographical area, and which commenced within hours of the ARSA's attacks on military security posts, reflects a level of preplanning that is consistent with comments made by the Military's Commander-in-Chief Senior General Min Aung Hlaing's on Facebook just one week later. The UN FFM on the situation in Myanmar documented this, quoting the Commander-in-Chief's 2 September 2018 post: *"the Bengali problem was a long-standing one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem."* Here, 'solving' the 'Bengali problem' reflects a genocidal intent consistent with some level of planning.²¹⁴

Policies Seriously Affecting the Reproductive Rights of Women (10.4)

Indicator 10.4 points to the *'development of policies or measures that seriously affect the reproductive rights of women, or that contemplate the separation or forcible transfer of children belonging to protected groups.'* Myanmar's Race and Religion Protection Laws – discussed briefly in Risk Factor 3, Indicator 3.1 – represent a commitment by the authorities to stigmatise and limit Muslim cultural as well as reproductive rights. In relation to **Indicator 10.4**, the Population Control and Healthcare Bill, one of its four laws, is of particular concern. While aimed at *'improving living standards while alleviating poverty in the country; ensuring sufficient quality healthcare; and developing maternal and child health,'* it allows local

RISK FACTOR 10: GENOCIDE

authorities to lodge a request to the president for birth-spacing measures.²¹⁵ It permits such requests where surveys reveal that *‘resources are unbalanced because of a high number of migrants in the area, a high population growth rate and a high birth rate’*²¹⁶. The law’s targeting of Rohingya is reflected especially in their perceived status as ‘illegal migrants’ and that their high birth rates are a strategy to ‘Islamize’ Myanmar, correlating with the conditions of request.²¹⁷ As such, the law represents a policy that directly and seriously affects the reproductive rights of Muslim, especially Rohingya, women. At the same time, it is a blatant attempt to control – limit – Rohingya births.

Intention to Humiliate and Cause Fear to Rohingya, Eliminate & Change Their Identity (10.2, 10.3 & 10.5)

Indicator 10.5 concerns the resorting *‘... to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group, or that reveal an intention to change its identity.’* Here, two elements are of particular note in regard to the treatment of Rohingya Muslims since the instigation of the 2017 clearance operations. First, are the methods of violence used against the protected group, which reflect an intent to cause fear and humiliation, that have successfully and entirely fragmented the group; these methods of violence are widespread and systemic and are reflective of a targeted attempt at the physical elimination of the Rohingya group. As such, this section also identifies the presence of **Indicator 10.2** and **Indicator 10.3**; respectively *‘targeted physical elimination, rapid or gradual, of members of a protected group, including only selected parts of it, which could bring about the destruction of the group’* (10.2) and *‘widespread or systematic discriminatory or targeted practices or violence against the lives, freedom or physical and moral integrity of a protected group, even if not yet reach the level of elimination’* (10.3). The latter is closely connected and pivotal to the following point. Second, is the continued refusal by the Myanmar authorities to address such methods of violence while also abstaining from granting Rohingya full citizenship rights; this reveals an intention to forcibly alter their identity and bring about their destruction, and an insistence on the continued pursuance of highly discriminatory and targeted practices. These issues will be spoken to separately below:

Widespread Methods of Violence that induce Fear, Terror and Humiliation with the Intention of Physical Elimination

The patterns of violence recorded against the Rohingya protected group are highly dehumanizing and reveal an intent to cause fear, terror and humiliation. They have been widespread and systemic in Rakhine State particularly, and thus reveal an intention to physically eliminate the protected group. While these methods of violence have long been used to target Rohingya Muslims in Myanmar, this report will focus on incidences since 2017. The independent international UN FFM determined the nature of violence against Rohingya during the 2017 ‘clearance operations’ constituted a ‘human rights catastrophe’. Mass killings were committed in Chut Pyin, Min Gyi, Maung Nu and Gudar Pyin, as well as in villages in the Koe Tan Kauk tract. The report concluded that *‘in some cases, hundreds of people died. In both Min Gyi and Maung Nu, villagers were gathered together before the men and boys were separated and killed. In Min Gyi, women and girls were taken to nearby houses, gang raped, then killed or severely injured. Houses were locked and set on fire. Few survived.’*²¹⁸ Further revealing an intention to eliminate or destroy the group is the report’s documentation of Rohingya being targeted or indiscriminately shot at while fleeing. Others were stabbed by soldiers or ethnic Rakhine men; others still were burned to death in their own homes (10.2). Physical elimination has not only manifested through the targeted killing of Rohingya Muslims, but also through the incitation of terror that has caused over 700 000 to flee the country since 2017. In 2018, near 15 000 Rohingya fled the country amid continued persecution of the group, reflecting a sustained policy to fragment and eliminate an endangered group²¹⁹. This year, the OHCHR reported that military helicopters were flown over Buthidaung township, firing at Rohingya. The attacks caused a new wave of Rohingya displacement in Rakhine state²²⁰. In addition, a lack of meaningful progress in the repatriation process – Rohingya are refusing to return to Myanmar, citing hostile and unsafe conditions in Rakhine²²¹ – ensures that policy conducive to the physical elimination of Rohingya in Myanmar withstands.

RISK FACTOR 10: GENOCIDE

The mission also found that rape and other forms of sexual violence were committed at large-scale by the Myanmar military. Soldiers perpetrated gang rapes in at least 10 village tracts in Northern Rakhine during clearance operations. In a deliberate effort to maximize trauma and humiliation, rapes were often committed in public spaces in front of family and community members. In addition, the mission reported that *'women and girls were systematically abducted, detained and raped in military and police compounds, often amounting to sexual slavery.'*²²² So too, as per the findings of the UN FFM on the sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, was evidence of an attempt by rapists to 'brand' their victims by scarring their cheeks, thighs and other parts²²³. This particularly reflects the instance of **Indicator 10.5** where targeted sexual violence in particular has been used as a weapon to incite humiliation and terror.²²⁴

Overall, the clearance operations and the violence that followed can be characterized as widespread and systematic. This is particularly reflected the targeted and deliberate destruction Rohingya areas. Amnesty International and the UN FFM have utilized satellite imagery to corroborate accounts of arson, finding that the burning of structures and villages was highly discriminate. More than 70 per cent of the structures destroyed during the military campaign were in Maungdaw, where the majority of the Rohingya community resided. In the mixed-ethnicity village of Chut Pyin, ethnic Rakhine structures and Buddhist temples stood untouched while Rohingya structures were systematically destroyed. Before proceeding, it should be noted that this targeted destruction of Rohingya property – homes, mosques, marketplaces and schools – also speaks to the presence of **Indicator 10.8**, which identifies *'attacks against of destruction of homes, farms, businesses or other livelihoods of a protected group and/ or of their cultural or religious symbols and property.'*

Apparent Attempt to Alter Rohingya Identity

First and foremost, mass rapes and sexual slavery in the context of ethnic cleansing can be understood as a tool of policies intended to destroy, in whole or part, an ethnic group. As such, the sexually based violations described above reflect not just an attempt to cause humiliation, terror and fragmentation of the Rohingya group, but also an intent to eradicate Rohingya identity.²²⁵

Importantly also, as documented throughout the report, there has been no meaningful effort at addressing the underlying causes of the Rohingya exodus in 2017. Ongoing violence against the protected group and the failure of the government to condemn it reflects a tolerance of violence intended to cause fear and humiliation. Inferred from this tolerance, when viewed in light of Myanmar's refusal to amend the 1982 Citizenship Law and revoke the use of National Verification Cards, is an intention to eradicate or alter Rohingya identity. NVCs ignore the self-identity of Rohingya, instead stigmatizing the group as 'Bengali' immigrants. The insistence of the government to the issuance of NVCs or similar upon the return of the group under the highly controversial repatriation agreement, shows a commitment to the systematic removal of any evidence of Rohingya identity and citizenship (**10.5**). It also, critically, is reflective of a long history of widespread and systemic discriminatory and highly targeted practices against Rohingya Muslims and confirms the absence of any willingness to address discriminatory policies, legislations and violent practices into the future (**10.3**). Without addressing institutionalized discrimination, any repatriation process will not grant the Rohingya community the livelihood, freedom and physical and moral integrity they are owed under international human rights and humanitarian law. All of this illustrates the continuance of a genocidal process that could bring about the destruction of the group (**10.2**).²²⁶

Pervasive forms of Gender-Based Violence (10.6)

Indicator 10.6 identifies actions that reflect the resorting to *'...means of violence that are particularly harmful or prohibited under international law, including prohibited weapons, against a protected group.'* The international independent UN FFM on the sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts found that sexual- and gender-based violence against ethnic

RISK FACTOR 10: GENOCIDE

groups has become an ‘egregious and recurrent feature’ of civilian targeting by the military⁶. This reflects the use of particularly harmful forms of violence. While the practice is widespread and systemic in that it is used as a weapon of war in Myanmar’s peripheral regions, this section focuses on the deliberate use of sexual and gender-based violence against the Rohingya protected group for reasons pertaining to their membership of that group. The mission highlighted that pervasive forms of gender-based violence have been experienced by men and women alike, though their manifestations vary. Extreme waves of gender-based violence occurred alongside the clearance operations of 2012, 2016 and 2017, characterised by the systematic killing of men and sexual abuse of women leading to serious injury or death. The report of the mission also found credible reports of sexual violence committed against men and boys. These actions, based on gendered assumptions of men and women’s role in society (and thereby in conflict), have been employed with the intent to cause harm to the Rohingya group. The mission found that the highest levels of command ‘*appear to be able to control when their troops do or do not use sexual violence during attacks on civilians and civilian populations*’²²⁷ and – given its broader absence from recent operations against the AA – a conclusion that soldiers used sexual-based violence against Rohingya during its clearance operations suggested a specific intent to cause humiliation and degradation of the group.²²⁸

Rohingya women especially continue to be subjected to horrendous sexual and gender-based violence – a situation made worse by institutionalised discrimination against the group and which prevents rehabilitation and reparation. These discriminations, which are linked to factors including race, religion, status, ethnicity, sexual orientation and gender identity, reflect the intersectionality of their persecution. The mission also pointed to deeply entrenched gender inequality and its broader connection with the pervasiveness of sexual and gender-based violence in Myanmar. Impunity for gender-based violence is prevalent, an enable such violence to go on unabated. This is particularly concerning when considered in light of the potential repatriation of Rohingya; widespread and targeted sexual and gender-based violence will undermine the safe and dignified return of forcibly displaced Rohingya²²⁹.

Overall, these practices reflect the presence of **Indicator 10.6** in that they illustrate the utilisation of gender and sexual-based violence as a weapon intended to cause particular harm against a protected group.

6 Members of EAOs were also recorded as perpetrators of sexual and gender-based violence in Norther Rakhine, though to a significantly lesser extent

RISK FACTOR 11: CRIMES AGAINST HUMANITY

SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

Risk Factor 11 identifies *'signs of violent conduct including, but not limited to, attacks involving the use of force against any civilian population and that suggest massive, large-scale and frequent violence (widespread), or violence with patterns of periodicity, similitude and organization (systemic).'* Crimes against humanity involve both quantitative and qualitative elements; respectively, large-scale violence and a methodological type of violence. Because crimes against humanity do not include acts of violence that are isolated or accidental, predicting it can be difficult. Ultimately though, the type of violence that may qualify as a crime against humanity does require some level of planning; as a result, various indicators can be established to provide a broad early warning system.²³⁰

Three Indicators arise for Risk Factor 11. Myanmar displays signs of patterns of violence against its civilian populations in its Northern Regions – namely, Rakhine, Kachin and Shan States. The UN FFM on the situation in Myanmar found credible reports that civilian targeting was a key component to military operations. This phenomenon becomes particularly apparent through the military's 'Four Cuts' counterinsurgency policy, which was established in the 1960s, and provisions 'cutting off' armed groups using violent means. In addition, the military has been recorded using weapons, such as mortar shells, that are incapable of distinguishing between military and civilian targets.

Patterns of Violence against Myanmar Civilians (11.1)

In addition to the patterns of violence recorded against the protected Rohingya group in *Risk Factor 9 and Risk Factor 10*, there are also signs of patterns of violence against civilian populations across the country. This reflects the presence of **Indicator 11.1**, *'signs of patterns of violence against civilian populations, or against members or an identifiable group, their property, livelihoods and cultural or religious symbols.'* The UN FFM on the situation in Myanmar found attacks against civilians (and civilian objects) are a hallmark of military operations in Northern Myanmar, particularly Kachin and Shan states in addition to Rakhine State. Operations without any marked military objective are regularly conducted in civilian residential areas; these are done in the absence of due regard to civilian life. As a result, such attacks often result in injuries or deaths of many. Cases of unlawful killings, torture, ill-treatment, theft, deprivation of liberty, forced labor, rape and gang rape were recorded in the report of the mission. The mission found civilian targeting has been based on their belonging to an ethnic group whose EAO is engaged in fighting with the Tatmadaw or if they are considered to be of fighting age.²³¹

Similar trends have been recorded in relation to recent developments between the military and AA, showing further signs of a pattern of civilian targeting in Myanmar. The report of the Special Rapporteur on the situation of human rights in Myanmar, released in March of this year, expressed concern that the government and military are targeting civilians suspected of supporting the AA²³². Fighting between the military and Northern Alliance (excluding KIA) also corroborate this pattern, with civilian killing and the destruction of civilian property as well as a monastery in Kutkai township among recent developments²³³.

Signs of a Policy to Conduct Attacks against Civilian Populations (11.5)

Closely connected to the previous section, the UN FFM into the situation on Myanmar found that the deliberate targeting of civilians has been a central component of the military's policies and conducts for decades; such reflects the presence of **Indicator 11.5** in Myanmar, which refers to *'signs of a plan or policy to conduct attacks against civilian populations.'* This phenomenon is most aptly reflected in the military's 'Four Cuts' counterinsurgency policy – see *Risk Factor 4, Indicator 4.3* – which aims at isolating non-state armed groups from their sources of food, intelligence, finances and civilian recruits. The policy has been used to justify and enact 'scorched earth campaigns' (clearance operations), which are characterized by mass civilian-targeting and violence. These tactics are persistently highly disproportionate to the 'security threat' that warranted the implementation of the policy. Violations against civilians under such campaigns are frequent in Kachin, Shan and Rakhine States, where the military continues to show little regard for human life during its operations.²³⁴

RISK FACTOR 11: CRIMES AGAINST HUMANITY

SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

Use of Weapons that cannot distinguish between Civilian and Military Targets (11.8)

Indicator 11.8 concerns *'signs of development or increased use of means or methods of violence that are incapable of distinguishing between civilian and military targets.'* The international independent UN FFM on Myanmar found that military operations in northern Myanmar are also characterized by indiscriminate attacks; military soldiers have used mortar and artillery shells directly at civilians fleeing or seeking shelter from conflict.²³⁵ This year for example, as identified in *Risk Factor 7, Indicator 7.3*, the military launched mortar shells against civilians in Mrauk-U Township²³⁶. In addition to blatant targeting of civilians, the military frequently use mortar and artillery shells during conflict with EAOs. These, often landing in civilian areas, kill and injure civilians. In addition, the Myanmar military has been reported bombing areas of the jungle where AA members were suspected to be residing this year; on the contrary, all persons affected were civilian bamboo workers.²³⁷

Recent developments between the military and the Northern Alliance (minus the KIA), have witnessed the use of mortar shells; on August 31, five civilians were killed as a result of the use of shells²³⁸. The regularity of these incidents indicate that they are not sporadic but reflect the development of the use of methods that do not distinguish between civilian and military targets. It also reflects the military's disregard of any precautionary measures to minimize civilian harm.²³⁹

RISK FACTOR 12: CRIMES AGAINST HUMANITY

SIGNS OF A PLAN OR POLICY TO ATTACK ANY CIVILLIAN POPULATION

Risk Factor 12 identifies *‘facts or evidence suggestive of a State or organizational policy, even if not explicitly stipulated or formally adopted, to commit serious acts of violence directed against any civilian population.’* As well as being widespread and systemic, crimes against humanity are committed in furtherance of a policy, sanctioned by the State or an organization, to commit an attack. The plan or policy does not necessarily have to be explicitly stated but can be inferred from *‘the totality of circumstances.’* Early indications of such circumstances, which are reflected in the indicators of Risk Factor 12, can reveal planning or encouragement of violence acts – even when not declared overtly.²⁴⁰

Of grave concern in Myanmar are signs of state-facilitation of violence against civilian populations through not least the Military’s Four Cuts counterinsurgency policy. Widespread patterns of violence across the country – though concentrated in the north – coincide with civilian-targeting as a key component of military operations in Myanmar. There is credible evidence that these operations occur at the command of some of Myanmar’s highest military officials.

State-Facilitation of Violence against Civilian Populations (12.8)

Indicator 12.8 refers to *‘facilitating or inciting violence against the civilian population or protected groups, or tolerance or deliberate failure to take action, with the aim of encouraging violent acts.’* As highlighted under Risk Factor 11, Indicators 11.1 and 11.5, Myanmar military operations – through its Four Cuts counterinsurgency policy and general patterns of civilian-targeting in northern Myanmar – may reflect a state-facilitation of violence against civilian populations. The military, under the 2008 Constitution, essentially operate outside of the rule of law, the failure of the NLD government to condemn civilian targeting in Rakhine, Shan and Kachin states at the very least indicates a tolerance by executives and authorities not officially part of the security apparatus. Civilian casualties connected to intensifying hostilities between the military and the Northern Alliance most recently, indicate these patterns will continue into the future²⁴¹. The UN FMM on Myanmar found practices related to civilian targeting and civilian endangerment amounts to criminal conduct and violate the country’s obligations under international law.²⁴²

Widespread Violence against Civilian Populations or Protected groups (12.9 & 12.10)

Indicator 12.9 identifies *‘widespread of systematic violence against civilian populations or protected groups, including only parts of them, as well as on their livelihoods, property or cultural manifestations.’* The widespread and systematic targeting of Rohingya has been well documented throughout this risk assessment, with the violence summarized aptly in Risk Factor 10. Civilian targeting has not, however, been limited to members of the protected Rohingya group. Civilian targeting is considered widespread and systematic in that it is consistently documented in Northern Myanmar more broadly. This includes, but is not limited to, the utilization of sexual-based violence against civilians as a part of military operations (described in Risk Factor 10, Indicator 10.6). Reports emerging from fighting between the Arakan army and the Myanmar military confirm this; these have documented a widespread pattern of killing and injuring civilians²⁴³. In addition, the UN FFM on Myanmar inferred from the number of refugees and internally displaced persons outside of the aforementioned states that there are similar human rights violations against civilians being commissioned country-over.²⁴⁴

Widespread violence against civilians in Myanmar is for the most part carried out by the military at the command of its highest officials. For example, the units of the security apparatus most actively engaged in the commission of the 2017 clearance operations, reported directly to the Deputy Commander-in-Chief, General Soe Win²⁴⁵. This reflects also the presence of **Indicator 12.10** which pertains to the *‘involvement of State institutions or high-level political or military authorities in violence acts.’*

RISK FACTOR 13 WAR CRIMES

SERIOUS THREATS TO THOSE PROTECTED UNDER INTERNATIONAL HUMANITARIAN LAW

Risk Factor 13 identifies *‘conflict-related conduct that seriously threatens the life and physical integrity of those protected under international humanitarian law.’* Unlike the atrocity crimes of genocide and crimes against humanity, war crimes always take place in a conflict context. As a result, indicators pertinent to identifying the risk of war crimes emerge at a late stage, when options for preventive action are limited. To promote prevention then, the common risk factors are should be the first point of consideration. However, there will still be measures that can be taken to reduce the effects of hostilities even after armed conflict is under way. These measures are instrumental in preventing escalation that may lead to the commission of war crimes. Because the list of war crimes is long – and their definitions vary – the indicators pertaining to its risk attempt to account for as many war crimes related to the protection of human rights as possible.²⁴⁶

At the time of writing, three indicators are pertinent. Of grave concern is the nature and means of violence employed by the Myanmar military during their operations. These measures are disproportionate, indiscriminate and undermine the rights of those protected under humanitarian law during incidences of armed conflict. Highly problematic too is the continued blocking of humanitarian assistance necessary for the survival of conflict-affected civilians.

Adoption of Measures that undermine the rights of those protected under international law (13.6)

Indicator 13.6 identifies the *‘adoption of measures that severely curtail the rights of those protected under international humanitarian law, including those aligned or perceived as aligned with opposing parties but not taking active part in hostilities.’* In the context of armed conflict, those protected under international law includes – as per the 1949 Geneva Conventions and its additional protocols – the wounded and sick members of armed conflict, prisoners of war, civilians and persons taking no part in hostilities (including members of armed forces that have surrendered their arms)²⁴⁷. In the Myanmar context, both indiscriminate attacks on civilian populations as well as intentional civilian targeting of those suspected of supporting EAOs currently engaged in hostilities with the military are prevalent. These practices have been documented thoroughly under the risk factors pertaining to crimes against humanity and will not be repeated here. Some of the most recent incidences of civilian targeting can be seen under *Risk Factor 2, Indicator 2.1* and *2.2*, which pointed the civilian impact of fighting between the AA and Myanmar military since late last year.

Worth mentioning too is that the UN FFM on Myanmar has found, given that most of the crimes constituting crimes against humanity in Rakhine, Shan and Kachin States in recent years have occurred in the context of conflict, they also amount to war crimes. War crime elements across these regions include cruel treatment, civilian attacks, murder, civilian displacement, pillaging, rape and other acts of sexual violence, among others.²⁴⁸ These acts reflect the adoption of measures that, to the most severe extent, curtail the rights of those protected under international humanitarian law during times of armed conflict.

Blocking of Humanitarian Assistance necessary for Survival of Conflict-Affected Civilians (13.8)

The blocking of humanitarian assistance in Shan, Kachin and Rakhine States particularly – described in *Risk Factor 14, Indicator 14.5* – directly impedes in the provision of livelihoods and basic services that some conflict-affected persons depend on for survival. Of particular concern is the wellbeing of IDPs, whose numbers are increasing as a result of ongoing armed conflict. As of the beginning of this year, there are at least 244 thousand IDPs across the three periphery states, the majority of which are dependent on humanitarian assistance to meet basic needs.²⁴⁹ The blocking humanitarian access to these communities reflects the presence of **Indicator 13.8**, which identifies *‘evidence of conduct interfering with or impacting delivery or access to supplies, facilities, equipment, object or medical or humanitarian support indispensable to the survival of those protected under international humanitarian law’*.

RISK FACTOR 13 WAR CRIMES

SERIOUS THREATS TO THOSE PROTECTED UNDER INTERNATIONAL HUMANITARIAN LAW

Failure to Take Action to Avoid Launching Disproportionate or Indiscriminate use of Force (13.13)

Indicator 13.3 refers to the *'issuance of rules of engagement or legislation that allow the disproportionate or indiscriminate use of force or failure to take action to avoid launching such attacks or to conduct military operations in heavily populated areas or to non-military targets.'* Here, the developments between the AA and Myanmar military since late last year are of note and may be reflective of the nature of Myanmar's military operations more generally. The military's response to the AA's launch of coordinated attacks on police outposts in January can be inferred as rules of engagement that allow both indiscriminate and disproportionate use of force. This inference emerges out of two observations. First, statements made by military officials that link the AA with the ARSA as terrorist organizations, which have formed the basis of justifications 'to crush' the armed group and the subsequent use of disproportionate and indiscriminate violence against the group, including Arakanese civilians suspected of being AA sympathizers²⁵⁰. Second, is the use and nature of the violence itself; these, described in *Risk Factor 11, Indicator 11.5* and throughout *Risk Factor 12*, reflect an indoctrination of severe and disproportionate military responses that include the widespread and systemic targeting of civilians. In combination, these factors provide reasonable grounds for assuming the rules of engagement for Myanmar's military allow forms and means of violence that are in violation of humanitarian and human rights law, and that may constitute war crimes.

RISK FACTOR 14 WAR CRIMES

SERIOUS THREATS TO HUMANITARIAN OR PEACEKEEPING OPERATIONS

Risk Factor 14 identifies *‘conflict-related conduct that threatens the protection provided by international humanitarian law to humanitarian assistance or peacekeeping personnel not taking direct part in hostilities.’* As such, Risk Factor 14 analyses the extent to which those afforded specific protection under international humanitarian law – persons working humanitarian assistance or peacekeeping missions – are safeguarded from hostilities. A set of indicators present an opportunity to assess the likelihood of attacks against this groups which, if commissioned, may constitute war crimes.²⁵¹

Of the ten indicators of Risk Factor 14, just two are deemed present in Myanmar at the time of writing. These relate to ongoing restrictions to humanitarian access to persons in need of assistance.

Perceptions of interference by the broader International Community (14.1)

As highlighted in *Risk Factor 8, Indicator 8.3*, the Myanmar government has perceived the response of some members of the international community to allegations of human rights abuses as sovereignty-infringing. This reflects some elements of **Indicator 14.1**, which refers to *‘perceptions of partiality or political interference by humanitarian or peacekeeping operations, their members, the broader international community, international, regional or national organisations, individual countries, or other sponsoring or participating in the operations.’* For the most part, there is little indication that humanitarian engagement in Myanmar has been restricted because of reasons pertaining to perceived political interference.

Interference and Limitation of Humanitarian Operations (14.5)

In a report released by the UN Office for the Coordination of Humanitarian Affairs in June 2019, it was revealed that the UN has not been granted travel authorization to non-government-controlled areas of Kachin and Shan States since June 2016. As a result, 64 per cent of IDPs in Shan and Kachin states are still deprived of humanitarian assistance.²⁵² In Rakhine State, since January, the government has restricted humanitarian access to most organisations in areas affected by conflict – though organisations still have reasonable access to other townships, including those which hold some major IDP camps²⁵³. Nevertheless, restrictions to humanitarian operations and personnel are prevalent in Myanmar, reflecting the presence of **Indicator 14.5**, which refers to the *‘interference, limitation or prohibition of access of movement of humanitarian or peacekeeping operations or their personnel.’*

CONCLUSION AND RECOMMENDATIONS

The preceding analysis has evaluated the situation in Myanmar through the application of the Framework of Analysis for Atrocity Crimes. It found that indicators pertaining to all fourteen risk factors are present in Myanmar. As such, Myanmar remains at a very high level of risk of the commission or incitement of atrocity crimes. Concerning is the failure of Myanmar to address the underlying conditions that led to the clearance operations of 2017 (and those that preceded it), which the United Nations have regarded as a textbook example of ethnic cleansing. The report of the independent international fact-finding mission on Myanmar (published 12 September 2018), found that patterns of serious human rights violations since 2011 amount to the gravest crimes under international law. These, committed primarily by the Myanmar military, include crimes against humanity, war crimes as well as reasonable grounds for inferring a genocidal intent against the Rohingya population.

Overall, the Risk Factors reflect that conditions conducive to the commission of atrocity crimes remain pervasive in Myanmar. This notion is supported by, in addition to the abovementioned history, reports that indicate widespread human rights violations are currently occurring at the hands of the Military country-over. The analysis has revealed that the Risk Factors of most pertinent concern are – arguably – the General Risk Factors 1, 2, 3 and 4 and the Specific Risk Factors pertaining to the crime of genocide, Risk Factors 9 and 10. These are broadly linked to Myanmar's situation of ongoing armed conflict, its long history of human rights violations, weak state institutions, and the presence of incentives to engage in violence against protected groups and civilians. The latter point is connected in part to processes of othering, which have constructed the Rohingya protected group as a threat to Buddhist-Bamar identi-

CONCLUSION AND RECOMMENDATIONS

RECOMMENDATIONS FOR THE GOVERNMENT OF MYANMAR	
1	Adhere to legal obligations under humanitarian and human rights law by taking immediate action to end the commission of atrocity crimes by the military and preventing their recurrence
2	Acknowledge the primary responsibility to protect all populations, particularly the Rohingya and Arakanese populations currently being persecuted in Rakhine state.
3	Ensure the prompt, extensive and independent investigation of allegations of widespread violence, human rights abuses and accusations of atrocity crimes (including by the ICoE). Subsequently, it is imperative that steps are taken to ensure legal accountability for the commission of these crimes.
4	Take immediate steps to end violence against civilians in Rakhine, Shan, Chin and Kachin States
5	Take tangible steps to implement the recommendations of Kofi Annan's Advisory Committee on Rakhine State
6	Seek a peaceful political settlement of the ethnic armed conflict in Myanmar, pushing for meaningful political dialogue with armed groups. Priority should be given to deescalating the situation between the military and members of the Northern Alliance, particularly the Arakan Army.
7	Allow unimpeded access to civilians in need of humanitarian aid in Northern Myanmar.
8	Suspend communications blackouts in conflict-affected areas of Rakhine and Chin States and seek immediate amendments to the Telecommunications Law.
9	Instigate efforts to repeal and amend other repressive laws. This includes reviewing and amending local orders and policies that are discriminatory in both law and practice. Of upmost concern are the Citizenship Law, Population Control and Health Care Law, Buddhist Women's Special Marriage Law, Monogamy Law, and Religious Conversion Law
10	Acknowledge the repatriation of Rohingya refugees in Bangladesh cannot occur absent of measures to address the underlying causes of conflict, inter-ethnic tensions and identity-based targeting. These measures include: <ul style="list-style-type: none"> • Compose new laws countering hate speech, propaganda and incitement of violence against minorities • Support local conflict and prevention processes, including programmes that promote and creates spaces for interaction and open dialogue between ethnic and religious groups. • Have in place strategies for reconciliation and reparation, including compensation for lost land and livelihoods through a transitional justice process.
11	Seek accountability for perpetrators of atrocity crimes and human rights violations, including sexual and gender-based violence.
12	Appoint an R2P focal point to coordinate action of atrocities prevention in the country.
13	Seek to develop national institutions by ensuring they are representative, independent and credible. This will require increased resources and improved training.
14	Develop existing complain mechanisms for human rights violations.
15	Continue efforts to amend and redraft the 2008 Constitution, which sustains the military's high level of influence in domestic affairs.
FOR ASEAN	
1	Take immediate steps to coordinate efforts in shaping an effective regional response to the situation in Myanmar.
2	Utilize diplomatic means to influence the Myanmar government to protect all civilians, including by ensuring humanitarian access to conflicted-afflicted persons.
3	Consider the suspension of Myanmar's membership in the absence of concrete steps by the government to protect populations, including ensuring accountability for human rights violations across the country and ensuring the safe, dignified and voluntary repatriation of Rohingya refugees.
4	Take seriously the recommendations of the UN independent international Fact-Finding Mission. As such, push the ICoE to produce a report that is impartial, independent and transparent.

CONCLUSION AND RECOMMENDATIONS

	FOR CIVIL SOCIETY ACTORS
1	Civil society actors are in a unique position to play a positive role with close ties to ethnic groups, a deep understanding of local dynamics and with stakeholders. It is therefore crucial that they continue their important work in promoting as well as developing and implementing programmes and strategies for conflict-prevention, intercultural dialogue, inclusivity and reconciliation.
2	Continue to raise international awareness about the commission of atrocity crimes in Myanmar. This includes advocating for atrocity prevention mechanisms, humanitarian protection and accountability.
3	Engage with local and national authorities where possible, offering to share experiences and knowledge by providing advice and inputs on policy formation and drafting laws.
4	Promote inter-faith and communal dialogue, to prevent a rise in hate speech.
	RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY
1	Ensure that all policies and practices are guided solely by concerns for the protection of fundamental human rights for populations in – or expelled from – Myanmar.
2	Support efforts to investigate thoroughly, independently and credibly accusations of atrocity crimes. This includes collecting evidence and ensuring alleged perpetrators are tried and held accountable for violations of international human rights and humanitarian law.
3	Support the ICC's preliminary examination of atrocities committed against the Rohingya.
4	Utilize peaceful and diplomatic means to demand that the government of Myanmar and the military fulfill their obligations to prevent atrocity crimes, protect vulnerable groups, grant humanitarian access, cooperate with the UN and hold perpetrators accountable.
5	Employ targeted measures intended to hasten legal accountability; these include sanctions, withdrawal of co-operative agreements, and travel bans against individuals and institutions thought responsible for the commission of atrocity crimes.
6	Provide appropriate and sustained humanitarian assistance to Rohingya, Arakanese and other refugees from conflict-affected areas in Bangladesh and Thailand. As well as IDPs in Rakhine, Shan and Kachin States.
7	Use diplomatic means to prevent the premature repatriation of Rohingya and put pressure on Myanmar to secure conditions for Rohingya that would ensure their dignified and voluntary return.
8	development programmes to ensure they do not support the government's actions in Rakhine state.

APPENDIX

TIMELINE ROHINGYA CRISIS

25 August 2017. Members of the Abakan Rohingya Salvation Army (ARSA) launch an attack on thirty police posts and an army base in Northern Rakhine State. Twelve members of the Myanmar security forces, and eighty insurgents, are killed. The government responds by declaring the ARSA a terrorist organization and commences a brutal, targeted clearance operation against Rohingya communities. The mass exodus of nearly three-quarters of a million Rohingya Muslims commences and will last for three months. During this time, 362 villages are partially or completely destroyed by arson²⁵⁴.

September 2017. By 2 September 2017, 2 600 houses are destroyed in Rohingya-majority areas in northern Rakhine state. The rapid influx of Rohingya refugees into Bangladesh – primarily to settlements in Cox's Bazar – results in the UNHCR declaring the Rohingya crisis an emergency. On the 11 September 2017, the United Nations Human Rights High Commission refers to the military operations against Rohingya in Rakhine State as a *'textbook example of ethnic cleansing.'* On 13 September, members of the Security Council are briefed on the deteriorating situation in Rakhine; following the briefing, council members called for *'immediate steps to end the violence in Rakhine, de-escalate the situation, re-establish law and order, ensure the protection of civilians, restore normal socio-economic conditions and resolve the refugee problem.'*²⁵⁵ The first public meeting of the Security Council is held on 28 September 2017.

13 October 2017. The Myanmar Military announce the establishment of an investigative committee, led by Lieutenant General Aye Win, that would probe the actions of soldiers in Rakhine state following the ARSA attacks.²⁵⁶

13 November 2017. The investigative committee established by the Myanmar military issue a report. It fully exonerates the military of abuses, claiming to have interviewed 3,217 villagers and collecting 804 witness accounts. There is no indication that these interviews took place. The report concludes that the military complied with orders and rules of engagement, and categorically rejects allegations of human rights abuses and atrocities. Without any basis, it blames the ARSA for burning villages and forcing villagers to flee.²⁵⁷

21 December 2017. The U.S. imposes sanctions on thirteen top members of the Myanmar Military, calling them *'serious rights abusers and corrupt actors.'*²⁵⁸

23 February 2018. Human Rights Watch (HRW) announces the Myanmar Government has been bulldozing at least fifty-five depopulated Rohingya villages since late 2017, citing new satellite imagery. At least two were previously undamaged by fire.²⁵⁹

18 March 2018. Myanmar military says it has set up a military court to probe its conduct during the 2017 clearance operations. The court is established to respond to atrocity allegations made against the military by the UN and rights groups. The court is considered neither independent nor credible by the international community.²⁶⁰

9 April 2018. The International Criminal Court's (ICC) Office of the Prosecutor requests a ruling on jurisdiction over the deportation of Rohingya from Myanmar to Bangladesh. Myanmar is not a State party, while Bangladesh is.²⁶¹

11 April 2018. Seven Myanmar soldiers are sentenced to ten years of hard labor for their participation in the Inn Din massacre. The trial followed the discovery of mass grave of ten Rohingya Muslims (on 18 December 2017) and the identification of the perpetrators (on 10 January 2018).

31 May 2018. The Myanmar government announces its most recent investigative mechanisms on the military's conduct in Rakhine State, the Independent Commission of Enquiry (ICOE). It comes in response to an increasing possibility of international action. The commission is but a four-member committee intended to respond to *'false allegations made by UN Agencies and other international communities.'*²⁶²

July 2018. The ICOE is established. Its findings are yet to be published.²⁶³

TIMELINE ROHINGYA CRISIS

6 September 2018. The ICC rules it has jurisdiction over the alleged deportation of Rohingya from Myanmar to Bangladesh; the reason being that an element of the crime, the crossing of the boarder, took place on the territory of Bangladesh – a State party.²⁶⁴

17 September 2018. The Human Rights Council publishes the *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*. The report finds the Myanmar's military campaign against the Rohingya to have been conducted with genocidal intent; it recommends charging several named military officials with the 'gravest crimes under international law', including Senior General Min Aung Hlaing.²⁶⁵

18 September 2018. Chief Prosecutor of the ICC, Fatou Bensouda, announces she has begun a preliminary examination to establish whether there exists enough evidence to warrant a full investigation into the deportation of Rohingya from Myanmar to Bangladesh.²⁶⁶

15 November 2018. The first attempt to repatriate Rohingya refugees from Bangladesh to Myanmar fails; no Rohingya volunteer. It comes following the promotion of repatriation in the absence of any consultation with Rohingya themselves. Factors impeding in the creation of safe and signified conditions include the NVC processes, the IDP policy, the denunciation of any credible accountability mechanisms and worrisome reports that non-Rohingya populations have been moved onto Rohingya land.²⁶⁷

April 2019. Refugees international published a report relaying detailed accounts of human rights abuses and restrictions on movement for Rohingya in Myanmar.²⁶⁸

27 May 2019. The soldiers sentenced for the Inn Din murders are granted early release.²⁶⁹

7 June 2019. The 'ASEAN Preliminary Needs Assessment for Repatriation in Rakhine State' draft report, led by the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) and their Emergency Response and Assessment Team (ASEAN-ERAT), is leaked. The report is heavily criticized, with rights groups saying it ignores underlying causes of the crisis, institutionalized discrimination in Myanmar, fails to use the word 'Rohingya' and does not address the atrocities committed by the Myanmar security forces during their clearance operations.²⁷⁰ In sum, it echoes the rhetoric of the Myanmar government.

17 June 2019. The United Nations publishes its independent review into the how the UN System operated in Myanmar between 2010 and 2018. It found 'systematic and structural failures' prevented a unified strategy in the lead up the mass exodus of Rohingya Muslims. It draws a key lesson: a system-wide strategy must be reinforced by an environment conducive to the cooperation of different UN entities.²⁷¹

20-23 June 2019. The 34th ASEAN Summit is held. The declaration stresses the 'importance of an expressed our continued support for Myanmar's commitment to ensure safety and security for all communities in Rakhine State as effectively as possible and facilitate the voluntary return of displaced persons in a safe, secure and dignified manner'. It avoids all use of the word 'Rohingya'. ASEAN's response to the Rohingya situation continues to be heavily criticised.²⁷²

26 June 2019. Chief prosecutor of the ICC announces she will request that the court's judges open a full investigation into crimes pertaining to two waves of violence in Rakhine State. Authorization by the Pre-Trial Chamber is yet to occur.

July 2019. The Australia Strategic Policy Institute (ASPI) publishes a report finding that at least 58 Rohingya settlements were demolished in 2018. Additional demolitions were recorded in 2019. Further, the UNHCR says there have been 1051 new Rohingya arrivals to Bangladesh between January and July 2019.²⁷⁵ The reports reflect continued destruction and violence that run contrary to any effort to ensure safe and signified conditions for Rohingya resettlement. Meanwhile, monsoon seasons had brought flooding and landslides near Cox's Bazar. Refugees living in already deplorable conditions suffer: two people are killed; 6,000 refugees are displaced; and over 3,500 shelters are damaged.²⁷⁶

TIMELINE ROHINGYA CRISIS

5 August 2019. The UN Independent International Fact-Finding Mission on Myanmar publishes report on *The Economic Interests of the Myanmar Military*. The Mission recorded in detail military business ties that enhance its ability to carry out gross human rights violations and atrocities with impunity; it calls for targeted sanctions against companies run by the military and for the imposition of an arms embargo.²⁷⁷

20 August 2019. The UN agency for refugees and Bangladesh government launch a 'new repatriation bid' and start consultations with 3,450 Rohingya refugees to determine if any want to return to Myanmar. None of the refugees interviewed indicated a willingness to return home voluntarily, citing concerns for their safety. One woman of the 3,450 approved for repatriation remarked: '*None of those criminals has been brought to justice so how can we feel safe to return to our homes?*'²⁷⁸ The latest failed repatriation bid is reflective of the government's ongoing failure to address the underlying cause of the Rohingya crisis and facilitate conditions that would allow for their safe and dignified return to Myanmar.

22 August 2019. The UN Independent International Fact-Finding Mission on Myanmar releases new report on the *Sexual and Gender-Based Violence in Myanmar and the Gendered Impact of its Ethnic Conflict*. The report finds that the Myanmar military routinely and systematically utilize sexual- and gender-based violence, including rape, gang rape and other acts, as a weapon against ethnic minority civilians. The mission found that tactic to be so severe during the 2017 clearance operations that '*that it was a factor indicating the Myanmar military's genocidal intent to destroy the Rohingya population*'.²⁷⁹

END NOTES

- 1 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, p. 1
- 2 Ibid., p. iii
- 3 Ibid., p. 5
- 4 Ibid., p. 6-7
- 5 Ibid., p. 9
- 6 Slodkowski, A. (2015), 'Myanmar signs ceasefire with eight armed groups', Reuters, 15 October 2015, Available at: <https://www.reuters.com/article/us-myanmar-politics/myanmar-signs-ceasefire-with-eight-armed-groups-idUSKCN0S82MR20151015>
- 7 Bellamy, A. (2017). 'At the Crossroads: Myanmar', in 'East Asia's Other Miracle: Explaining the Decline of Mass Atrocities', Oxford University Press: Oxford
- 8 The Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations, (2015), Myanmar-EOAs. 15 October 2015.
- 9 Raleigh, C. (2018), 'Myanmar: Conflict Update', Armed Conflict Location & Event Data Project (ACLED), Available at: <https://www.acleddata.com/2018/04/05/myanmar-conflict-update/>, last accessed: 9 August 2019.
- 10 See for example: International Committee of the Red Cross (ICRC), (2019) 'Myanmar conflict', available at: <https://www.icrc.org/en/where-we-work/asia-pacific/myanmar/myanmar-conflict>, last accessed: 7 July 2019.
- 11 Albert, E., Chatzky, A., (2018), 'The Rohingya Crisis', Council on Foreign Relations, 5 December 2018, available at: <https://www.cfr.org/backgrounder/rohingya-crisis>, last accessed: 9 August 2019
- 12 Raleigh, C. (2018), 'Myanmar: Conflict Update', Armed Conflict Location & Event Data Project (ACLED), Available at: <https://www.acleddata.com/2018/04/05/myanmar-conflict-update/>, last accessed: 9 August 2019
- 13 Asia Pacific Centre for the Responsibility to Protect, (2019a), 'Myanmar Asian Pacific Regional Outlook April 2019', Issue 11, April 2019, pp. 2-3
- 14 Asia Pacific Centre for the Responsibility to Protect, (2019b), 'Asia Pacific Regional Outlook', Issue 12. June 2019, pp. 2-3; Radio Free Asia Myanmar Service, (2019), 'Women are increasingly drawn to the Arakan Army's fight against Myanmar's Central Government', Radio Free Asia, 18 April 2019, available at: <https://www.rfa.org/english/news/myanmar/women-are-increasingly-drawn-to-the-arakan-armys-fight-04182019170614.html?fbclid=IwAR3-sTsILy1B-TPihPB9nrhvYrhKCsbmmtzqz-qyYNTUpD0rIDbMJOCxyvl>, last accessed: 8 July 2019; Lwin, N. (2019), '20 Civilians Killed in clashes between Army, AA since January, Gov't says', The Irrawaddy, 31 May 2019, available at: <https://www.irrawaddy.com/news/burma/20-civilians-killed-clashes-army-aa-since-january-govt-says.html>, last accessed: 8 July 2019.
- 15 Pwint, N. L. H. (2019), 'Army's Tough Stance of 3 Northern Alliance Groups Thwarts Bilateral Deals: AA Chief', The Irrawaddy, 14 June 2019, available at: <https://www.irrawaddy.com/news/burma/armys-tough-stance-3-northern-alliance-groups-thwarts-bilateral-deals-aa-chief.html?fbclid=IwAR3J0v4Bxz6N23mc6zPY03E-t22oTefcRJE44Dn47bUhykL76cUe9jjdcde>, last accessed: 9 July 2019
- 16 See: Lwin (2019).
- 17 Human Rights Watch, (2019), 'Myanmar: Civilians Caught in Shan State Fighting', Human Rights Watch, 7 September 2019, available at: <https://www.hrw.org/news/2019/09/07/myanmar-civilians-caught-shan-state-fighting>, last accessed: 10 September; Aung, T. T., (2019), 'Myanmar Insurgents attack elite military college, other targets; 15 killed', Reuters, 15 August 2019, available at: <https://uk.reuters.com/article/uk-myanmar-insurgency/myanmar-insurgents-attack-elite-military-college-other-targets-15-killed-idUKKCN-1V50EN>, last accessed: 10 September 2019
- 18 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect
- 19 Strasser, F. (2016), 'Myanmar Peace Process: Slow progress, delicate steps', United States Institute for Peace, 10 November 2016, available at: <https://www.usip.org/publications/2016/11/myanmar-peace-process-slow-progress-delicate-steps>, last accessed: 9 July 2019.
- 20 Centre for Humanitarian Dialogue, (2019), 'Supporting Myanmar's Peace Process', available at: <https://www.hdcentre.org/activities/myanmar-peace-process/>, last accessed: 8 July 2019.
- 21 Wagley, R. (2015), 'A separate peace', Asia & The Pacific Policy Society, available at: <http://policyforum.net/a-separate-peace/>, last accessed: 8 July 2019; European Union External Action (EUEA), (2018), 'EU witnesses two more parties sign Myanmar's Nationwide Ceasefire Agreement', available at: https://eeas.europa.eu/headquarters/headquarters-homepage/39939/eu-witnesses-two-more-parties-sign-myanmar-s-nationwide-ceasefire-agreement_en?fbclid=IwAR0MwWwX1BfDekg91CKCP0W2btp5jv0CXbzF-DxzfulSHy8FCM8DTqa_i4A, last accessed: 8 July 2019.
- 22 Cho Latt, L., (2019), 'A small hope: Extension of the Tatmadaw's unilateral ceasefire', New Mandala, 6 September 2019, available at: <https://www.newmandala.org/a-small-hope-the-extension-of-the-tatmadaws-unilateral-ceasefire/>, last accessed: 11 September 2019; Development Group Media, (2019), 'Northern Alliance and government agree to keep on talking about ceasefire', Myanmar Peace Monitor, available at: <https://www.bnionline.net/en/news/northern-alliance-and-government-agree-keep-talking-about-ceasefire>, last accessed: 11 September 2019
- 23 Mon, Y. (2019), 'Military extends ceasefire, expect unilateral ceasefire within months', Frontier Myanmar, 1 July 2019, available at: <https://frontiermyanmar.net/en/military-extends-ceasefire-expects-bilateral-ceasefires-within-months>, last accessed: 11 July 2019.
- 24 See: Oh (2019)
- 25 Oh, S. (2019), 'The Karen National Union's (KNU) Withdrawal from Official Myanmar Peace Negotiations and the State of the Peace Process', Yusof Ishak Institute, available at: <https://www.iseas.edu.sg/medias/commentaries/item/8863-the-karen-national-unions-knu-withdrawal-from-official-myanmar-peace-negotiations-and-the-state-of-the-peace-process-by-suann-oh>, last accessed: 9 July 2019.

- 26 See: Centre for Humanitarian Dialogue (2019).
- 27 International Crisis Group, (2016), 'Myanmar's Peace Process: Getting to a Political Dialogue', Crisis Group Asia Briefing N°149, Yangon/Brussels, 19 October 2016, pp.3, 9, available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-s-peace-process-getting-political-dialogue>, last accessed: 9 July 2019.
- 28 Sullivan, D. P. (2019), 'Abuse of Exile. Myanmar's ongoing persecution of the Rohingya', Refugees International, Field Report, April, 2019, pp. 9-10, 13-14; Amnesty International, (2017), 'Myanmar: Rohingya trapped in dehumanizing apartheid regime', 21 November 2017, available at: <https://www.amnesty.org.au/myanmar-rohingya-trapped-dehumanising-apartheid-regime/>, last accessed: 10 July 2019; Human Rights Watch, (2019a), 'Myanmar: Events of 2018', available at: <https://www.hrw.org/world-report/2019/country-chapters/burma>, last accessed: 20 July 2019
- 29 Shelton, T. (2019), 'Myanmar's military 'unleashes campaign of violence' in Rakhine State, Amnesty International warns', ABC News, 29 May 2019, available at: <https://www.abc.net.au/news/2019-05-29/new-report-details-war-crimes-and-abuses-in-myanmars-rakhine/11157920>, last accessed: 1 August 2019
- 30 See: Sullivan (2019), pp. 4, 10; Amnesty International, (2019), 'Myanmar: Military commits war crimes in latest operation in Rakhine State', 29 May 2019, available at: <https://www.amnesty.org/en/latest/news/2019/05/myanmar-military-commits-war-crimes-latest-operation-rakhine-state/>, last accessed: 10 July 10, 2019.
- 31 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 58-59
- 32 The Myanmar Times, (2019), 'Week in Review: Internet outage continues in Rakhine, Chin states', The Myanmar Times, 26 July 2019, available at: <https://www.mmtimes.com/news/week-review-internet-outage-continues-rakhine-chin-states.html>, last accessed: 8 August 2019
- 33 Center for Strategic and International Studies, (2016), 'Armed forces and democratization in Myanmar: Why the U.S. Military should engage the Tatmadaw', available at: <https://www.csis.org/analysis/armed-forces-and-democratization-myanmar-why-us-military-should-engage-tatmadaw>, last accessed: 13 September 2016.
- 34 Lwin, N. (2019), 'GAD Chief Appointed Deputy Union Gov't Office Minister', The Irrawaddy, 3 January 2019, available at: <https://www.irrawaddy.com/news/gad-chief-appointed-deputy-union-govt-office-minister.html>, last accessed: 10 July 2019; Saw, K. P., Arnold, M. (2015), 'Administering the State in Myanmar: An overview of the General Administration Department', The Asia Foundation, Policy Dialogue Brief Series, No. 6
- 35 Gansean, N. (2017), 'Appraising Myanmar's Democratic Transition and Evolving Challenges', Japanese Journal of Political Science, 18(1);
- 36 See: Gansean (2017); Holliday, I. (2012). 'Burma Redux: Global Justice and the Quest for Political Reform in Myanmar'. Columbia University Press: New York, pp. 1; Clapp. P. (2019), 'Tackling Myanmar's Elusive National Identity', Asia Policy, 14(1), pp. 179; Fisher, J. (2015), 'Myanmar's 2015 landmark elections explained', BBC News, 3 December 2015, available at: <http://www.bbc.com/news/world-asia-33547036>, last accessed 10 July 2019; Genser, J. (2015), 'Democracy on a leash', U.S. News, 12 November 2015, available at: <https://www.usnews.com/opinion/blogs/world-report/2015/11/12/the-military-will-still-control-myanmar-after-aung-san-suu-kyis-victory?fbclid=IwAR2FUJMuK7x8nUHbM07ApyTpls-niESTkN2awLOVDw5Y3825JIHfqC1YI4A>, last accessed: 11 July 2019.
- 37 Latt, W. K. K., Tun, W. M., (2019a), 'Myanmar Lawmakers Vote to form Committee to Propose changes to constitution', Radio Free Asia, 29 January 2019, available at: <https://www.rfa.org/english/news/myanmar/myanmar-lawmakers-vote-to-form-committee-01292019154413.html>, last accessed: 10 July 2019; Latt, W. K. K., Tun, W. M., (2019b), 'New Committee Maps out plans to amend Myanmar's constitution', Radio Free Asia, available at: <https://www.rfa.org/english/news/myanmar/new-committee-maps-out-plans-02252019170851.html>, last accessed: 10 July 2019.
- 38 Carroll, J. Soe, A. N. (2019), 'Myanmar government ups the ante with military political role', Al Jazeera, 1 March 2019, available at: <https://www.aljazeera.com/news/2019/02/myanmar-government-ups-ante-military-political-role-190225065831778.html>, last accessed: 10 July 2019; Yamin Aung, S. (2019), 'Constitution Amendment Committee Returns Nearly 4,000 Recommendations', The Irrawaddy, 15 July 2019, available at: <https://www.irrawaddy.com/news/burma/constitution-amendment-committee-returns-nearly-4000-recommendations.html>, last accessed: 11 September 2019
- 39 See: Clapp (2019), pp. 179; Ware, A., Laoutides, C., (2018), 'Myanmar's 'Rohingya' Conflict', Hurst & Company: London
- 40 Breen, M. G., 'Chapter 13: Asymmetry of Equality? Ethnic Nationalities in a Bamar-Dominated State. A country study of constitutional asymmetry in Myanmar', in Popelier, P., Sahadžić, M., 'Constitutional Asymmetry in Multinational Federalism, Federalism and Internal Conflict Book Series.
- 41 See: Breen (2019)
- 42 See: Mon (2019).
- 43 World Bank Group, (2019a), 'Building Reform Momentum', Myanmar Economic Monitor, June 2019, pp. 10; World Bank Group (2019b), 'The World Bank in Myanmar', 8 April 2019, available at: https://www.worldbank.org/en/country/myanmar/overview?fbclid=IwAR0mmYi1tbRs_N9YQOKb1D3VQYTBvP_yK8l-15xcpJJ_17CWZCEKROEG8k, last accessed: 12 July 2019; Trading Economics, (2019), 'Myanmar GDP per Capita', available at: https://tradingeconomics.com/myanmar/gdp-per-capita?fbclid=IwAR0xxgfaqADSRy0aKIOFI9h-8X6QYSI8y_H7gRdOqPt7Gh06-ovkwGeuykU, last accessed: 12 July 2019.
- 44 European Council, (2019), 'Myanmar/ Burma: Council prolongs sanctions', Council of the European Union, 29 April 2019, available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/04/29/myanmar-burma-council-prolongs-sanctions/?fbclid=IwAR2TFvDuUJ34aKWjMQ52LtpUnJ5j96xDagmSawW4tuK8tKx2AZbGBgRPm0g>, last accessed: 12 July 2019; Department of Foreign Affairs and Trade, (2019), 'Sanctions Regimes: Myanmar', Australian Government, available at: https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar.aspx?fbclid=IwAR38bualDdqPoQUBIaITzoZjCD_K_eOh2TZKrn-2wmm2ETjabZfQm22k682o, last accessed: 12 July 2019; U.S. Department of the Treasury, (2018), 'Treasury Sanctions Commanders and Units of the Burmese Security Forces for Serious Human Rights Abuses', available at: <https://home.treasury.gov/news/press-releases/sm460?fbclid=IwAR1wH0rr9jH5a7Q9JrqfgkytpMT6AFRB6IkhL9d2nJooabh2zTdZi9Dc81U>, last accessed: 12 July 2019.

45 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 3

46 Human Rights Council, (2019), 'The Economic interests of the Myanmar Military. Independent International Fact-Finding Mission on Myanmar', A/HRC/42/CRP.3, Human Rights Council, Forty-second session, Article Item 4, 5 August 2019, pp. 18

47 Ibid., pp. 3

48 See: Breen (2019); Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. xii, xiv, 46, 52; Azeem, I. (2016), 'The Rohingyas: Inside Myanmar's Hidden Genocide', Hurst & Company: London, pp. 59

49 Asia News, (2019), 'One in four people in Myanmar live in extreme poverty, on less than USD 1 a day', 1 January 2019, available at: <http://www.asianews.it/news-en/One-in-four-people-in-Myanmar-live-in-extreme-poverty-on-less-than-USD-1-a-day-47428.html>, last accessed: 5 August 2019

50 See: World Bank Group (2019a), pp. 48-49; Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 46, 52; World Bank Group, Myanmar Department of Population, (2018), 'Multidimensional Welfare in Myanmar', December 2018, available at: <http://documents.worldbank.org/curated/en/593661543241844346/pdf/132481-v1-Replacement-PUBLIC.pdf>, last accessed: 5 August 2019

51 Dittmer, L. (2010), 'Chapter 1: 'Burma vs. Myanmar: What's in a name?', in Dittmer, L. (Eds), 'Burma or Myanmar? The Struggle for National Identity', World Scientific Publishing Co, pp. 2-3

52 See: Bellamy (2017), pp. 238-239

53 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 16.

54 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 31; Moe, M. (2018), 'Ma Ba Tha Changes Name, Still Officially Illegal', The Irrawaddy, 3 September 2018, available at: <https://www.irrawaddy.com/news/ma-ba-tha-changes-name-still-officially-illegal.html>, last accessed: 12 July 2018

55 Malhotra, K. (1991), 'Chapter V: Ethnic Conflict and Problems of Insurgency', In: Malhotra, K., 'Burma under military rule: the role of the Burma socialist programme party', Jawaharlal Nehru University, 16 January 2014, pp. 120-121, available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/15133/10/10_chapter%205.pdf, last accessed: 16 July 2019; Kipgen, N. 2016. Democratisation of Myanmar. New Delhi: Routledge, pp. 27-28; Sakhong, L. H., (2012), 'The Dynamics of Sixty Years of Ethnic Armed Conflict in Burma. Burma Centre for Ethnic Studies, Peace and Reconciliation, Analysis Paper No.1, January 2012, pp.2. [online] Available at [http://www.burmalibrary.org/docs13/BCES-AP-01-dynamics\(en\).pdf](http://www.burmalibrary.org/docs13/BCES-AP-01-dynamics(en).pdf), last accessed: 16 July 2019; See: Azeem (2016), pp.37.

56 Sakhong, L. H. (2012), 'The dynamics of sixty years of Ethnic Armed Conflict in Burma', Burma Centre for Ethnic Studies, Peace and Reconciliation, January 2012, Analysis Paper No.1, pp. 1-2, available at: [http://www.burmalibrary.org/docs13/BCES-AP-01-dynamics\(en\).pdf](http://www.burmalibrary.org/docs13/BCES-AP-01-dynamics(en).pdf), last accessed: 16 July 2019

57 Pritchard, A. (2016), 'Chapter 1: Introduction', in: Tantikanangkul, W., Pritchard, A., (eds.) 'Politics of Autonomy and Sustainability in Myanmar', Springer Singapore, Volume 1, pp. 9

58 Bellamy (2017), pp. 237; See: Azeem (2016), pp. 35

59 See: Bellamy (2017), pp. 243; Aung-Thwin, M. (2012), 'A history of Myanmar since ancient times: Traditions and transformation', London: Reaktion Books, p.228; See: Azeem (2016), pp.35-36

60 Human Rights Watch (2000), 'III. Discrimination in Arakan', in 'Human Rights Report on BURMA/BANGLADESH: Burmese refugees in Bangladesh – Still no durable Solution', Vol. 12., No 3, May 2000 available at: <https://www.hrw.org/reports/2000/burma/burm005-02.htm>, last accessed: 19 July 2019

61 See Azeem (2016), pp. 51-52

62 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 8

63 Ul Khaliq, R., Duz, Z. N., (2019), 'National Verification Card barrier to Rohingya return', 11 July 2019, Anadolu Agency, available at: <https://www.aa.com.tr/en/asia-pacific/-national-verification-card-barrier-to-rohingya-return-/1529080>, last accessed: 21 July 2019; Theinka, A., Thiri, T. (2019), 'Myanmar lifts travel restrictions on Rohingyas with 'verification cards'', Radio Free Asia, Translated by: Mar, K., available at: <https://www.rfa.org/english/news/myanmar/travel-04192018165606.html>, last accessed: 21 July 2019

64 For more information on the crimes and atrocities committed by the Myanmar military, see: Human Rights Watch (2019b), 'All of my body was pain' Sexual Violence against Rohingya women and girls in Burma', available at: <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma>, last accessed: 20 July 2019; Human Rights Watch, (2019c), 'Massacre by the river Burmese army crimes against humanity in Tula Toli', available at: <https://www.hrw.org/report/2017/12/19/massacre-river/burmese-army-crimes-against-humanity-tula-toli>, last accessed: 20 July 2019

65 Albert, E., Chatzky, A., (2018), 'The Rohingya Crisis', Council on Foreign Relations, 5 December 2018, available at: <https://www.cfr.org/background/rohingya-crisis>, last accessed: 9 August 2019; Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 11

66 See: Human Rights Watch (2019a)

67 Singh, P. (2019), 'ICC Prosecutor Seeking to Investigate Crimes Against Rohingya', Human Rights Watch, 26 June 2019, available at: <https://www.hrw.org/news/2019/06/26/icc-prosecutor-seeking-investigate-crimes-against-rohingya>, last accessed: 20 July 2019

68 International Coalition for the Responsibility to Protect, (2017), 'The Crisis in Burma', available at: <http://www.responsibilityto-protect.org/index.php/crises/crisis-in-burma>, last accessed 19 July 2019

69 See: Human Rights Watch (2019a)

70 VAOnews, (2019), 'UN: Internet Blackout in Western Myanmar may be hiding human rights abuses',

71 Amnesty International, (2019), 'Myanmar: 'no one can protect us': war crimes and abuses in Myanmar's Rakhine state', 29 May 2019, available at: <https://www.amnesty.org/en/documents/asa16/0417/2019/en/>, last accessed: 14 July 2019

72 Amnesty International, (2019), 'Myanmar: Civilians at risk in Northern Shan state fighting', Amnesty International Public Statement, 3 September 2019, available at: <https://www.amnesty.org/download/Documents/ASA1609752019ENGLISH.PDF>, last accessed: 11 September 2019

73 See: Azeem (2016), pp. 57; Fisher, J. (2015), 'Myanmar's 2015 landmark elections explained', BBC News, 3 December 2015, available at: <http://www.bbc.com/news/world-asia-33547036>, accessed 21 July 2019; International Center for Transitional Justice, (2009), 'Impunity Prolonged: Burma and its 2008 Constitution', New York, September 2009, available at: <https://www.ictj.org/publication/impunity-prolonged-burma-and-its-2008-constitution>, last accessed; 21 July 2019

74 International Center for Transitional Justice (ICTJ), (2009), 'Impunity Prolonged: Burma and its 2008 Constitution', ICTJ, September 2009, pp. 33, available at: <https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Impunity-Constitution-2009-English.pdf>, last accessed; 22 July 2019

75 ICTJ, (2009), pp. 27, 32-33

76 For more information on the ethnic cleansing campaign of 2011-2012, see: Human Rights Watch, (2013), 'All you can do is pray': Crimes against humanity and ethnic cleansing of Rohingya Muslims in Burma's Arakan State', Human Rights Watch, available at: <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>, last accessed: 10 September 2019

77 For more information on the outcomes of each commission, see: Human Rights Watch, (2018a), 'Myanmar's Investigative Commissions a History of Shielding Abusers', September 2018, available at: https://www.hrw.org/sites/default/files/supporting_resources/201809myanmar_commissions.pdf, last accessed: 21 July 2019

78 Independent Commission of Enquiry, (2019), 'Mandate', available at: <https://www.icoe-myanmar.org>, last accessed: 11 September 2019

79 Human Rights Watch, (2018b), 'Myanmar: Domestic Commissions on Rohingya Failures', available at: <https://www.hrw.org/news/2018/09/18/myanmar-domestic-commissions-rohingya-all-failures>, last accessed: 21 July 2019

80 Lee, Y. (2019), 'Myanmar: human rights violations affecting region and ASEAN must apply pressure, says UN expert', United Nations Human Rights Office of the High Commissioners, 18 July 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24835&LangID=E>, last accessed: 21 July 2019

81 Human Rights Watch (2017), 'Aung San Suu Kyi's visit to Brussels and human rights in Burma', 27 April 2017, available at: <https://www.hrw.org/news/2017/04/27/aung-san-suu-kyis-visit-brussels-and-human-rights-burma>, last accessed: 22 July 2019

82 Few instances were reported of recognition that security forces had committed serious crimes. Some low-ranking military officials were brought to civilian courts and tried and convicted for serious crimes. This included Lt.-General Mya Tun Oo, the deputy commander of the Army's North Eastern Command, who in August 2016 admitted that five local men had been killed by his soldiers. See: Thomson, A. (2016), 'Prospects for Justice in Myanmar. International Center for Transitional (ICTJ)', ICTJ Briefing, November 2016, pp.8, available at <https://www.ictj.org/publication/myanmar-justice-prospects-nld>, accessed 22 July 2019

83 See: Singh (2019); Al Jazeera, (2019), 'Not a word': Aung San Suu Kyi criticized over Rakhine silence', Al Jazeera interview with UN Special Rapporteur, Ms. Yanghee Lee, 26 June 2019, available at: <https://www.aljazeera.com/news/2019/06/word-aung-san-suu-kyi-criticised-rakhine-silence-190625145051775.html>, last accessed: 22 July 2019

84 Eleven Media Group (EMG), (2019), 'Myanmar rejects EU's Draft Resolution on the situation of human right in Myanmar at Human Rights Council', EMG, 24 March 2019, available at: <https://elevenmyanmar.com/news/myanmar-rejects-eus-draft-resolution-on-the-situation-of-human-rights-in-myanmar-at-human>, last accessed: 9 August 2019

85 For more on events the Government has admitted to, see: Lonem W. Soe Oo, K. Lewis, S., Slodkowski, (2018), 'How Myanmar forces burned, looted and killed in a remote village', 8 February 2018, available at: <https://www.reuters.com/investigates/special-report/myanmar-rakhine-events/>, last accessed: 31 July 2019; Human Rights Watch (2018a)

86 The New Humanitarian, (2019), 'The rohingya', The New Humanitarian, 25 March 2019, available at: <https://www.thenewhumanitarian.org/in-depth/myanmar-rohingya-refugee-crisis-humanitarian-aid-bangladesh>, last accessed: 22 July 2019

87 Anonymous Writer, (2019), 'Myanmar disables internet access in conflict areas of Rakhine and Chin', Advox, 24 June 2019, available at: <https://advox.globalvoices.org/2019/06/24/myanmar-disables-internet-access-in-conflict-areas-of-rakhine-and-chin-states/>, last accessed: 21 July 2019

88 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 50; See: International Crisis Group (2016)

89 UN News, (2018), 'Accountability a key pillar for reconciliation in Myanmar: UN Envoy', UN News, 20 October 2018, available at: <https://news.un.org/en/story/2018/10/1023732>, last accessed: 23 July 2019

90 International Commission of Jurists (ICJ), (2018), 'Achieving justice for gross human rights violations in Myanmar', ICJ Global redress and accountability initiative, January 2019, pp. 22, available at: <https://www.icj.org/wp-content/uploads/2018/01/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf>, last accessed: 25 July 2019

91 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 11; See: UN News (2018); Asia AJAR, (2018), 'Myanmar: Transitional Justice Timeline', 23 October 2018, available at: <https://asia-ajar.org/2018/10/myanmar-transitional-justice-timeline/>, last accessed: 23 July 2018

92 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 12, 35; Wharton, J. (2018), 'Aung San Suu Kyi stripped of honour over her 'failure to condemn rights abuses'', Metro, 13 November 2018, available at: https://metro.co.uk/2018/11/13/aung-san-suu-kyi-stripped-of-honour-over-her-failure-to-condemn-rights-abuses-8134148/?fbclid=IwAR3FHNeUOMk5Lux8dZMzQRAYhan4Fdze4PfYDITECB_2Ro9IPbclq4mb0Ug, last accessed: 22 July 22, 2019; See: Thomson (2016), pp.8

93 Ki-Moon, B. (2014), 'Framework of Analysis for Atrocity Crimes: A Tool for Prevention,' Office of the Prevention of Genocide and the Responsibility to Protect, pp. 12

94 OHCHR, (2019 b), 'Status of Ratification: Interactive Board', available at: <http://indicators.ohchr.org>, last accessed: 25 July 2019

95 My Justice Myanmar, (2016), 'UAGO Moving forward the rule of law strategic plan 2015-2019', available at: <https://www.myjustice-myanmar.org/uago-moving-forward-rule-law-strategic-plan-2015-2019>, last accessed: 25 July 2019

96 UN General Assembly, (2017), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/ HRC/34/67, Human Rights Council, Thirty-fourth session, 1 March 2017, p.2, 19

- 97 ICJ, (2019), 'Citizenship and Human Rights in Myanmar: Why Law Reform is urgent and possible', ICJ, June 2019, pp. 6, available at: <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf>, last accessed: 25 July 2019
- 98 Lewa, C., (2013), 'Two-child policy in Myanmar will increase bloodshed', CNN, 6 June 2013, available at: <https://edition.cnn.com/2013/06/06/opinion/myanmar-two-child-policy-opinion/index.html>, last accessed: 15 August 2019
- 99 White, C. (2015), 'Protection for whom? Violations of International Law in Myanmar's new 'Race and Religion Protection' Laws', Georgetown Institute for Women, Peace and Security, December 2019, available at: <https://giwps.georgetown.edu/wp-content/uploads/2017/10/Violations-of-International-Law-in-Myanmar-2.pdf>, last accessed: 15 August 2019, pp. 5-6; Green, P. MacManus, T, de la Cour Venning, A., (2015), *Countdown to Annihilation: Genocide in Myanmar*, London: International State Crime Initiative, pp. 72
- 100 For more information on lack of access to a fair judicial process, see: ICJ, (2013), 'Right to counsel: the independence of lawyers in Myanmar', ICJ, available at: <http://www.burmalibrary.org/docs16/ICJ-MYANMAR-Right-to-Counsel-en-red.pdf>, last accessed: 25 July 2019; ICJ, (2018), pp. 25-26
- 101 See: ICJ (2018), pp. 24-26
- 102 Ibid., pp. 26
- 103 UN General Assembly (2017), pp. 4
- 104 See: ICJ (2019), pp. 2, 6, 14
- 105 See: ICJ (2018), pp. 5, 19
- 106 Asia Views, (2017), 'A Damning Indictment of Myanmar's Legal system', 16 October 2017, available at: <https://asiaviews.net/damning-indictment-myanmars-legal-system/>, last accessed: 29 July 2019; Frontier Myanmar, (2017), 'A damning indictment of Myanmar's legal system', 12 October 2017, available at: <https://frontiermyanmar.net/en/a-damning-indictment-of-myanmars-legal-system>, last accessed: 29 July 2019; Gleeson, S. (2017), 'Yangon's courts 'unequipped' to administer justice, says report', Myanmar Frontier, available at: <https://frontiermyanmar.net/en/yangon-courts-unequipped-to-administer-justice-says-report>, last accessed: 29 July 2019
- 107 See: ICJ (2018), pp. 6-7, 24-26
- 108 Ibid. pp. 5
- 109 Selth, A. (2014) 'Police Reform and the 'Civilianisation' of Security in Myanmar'. In Crouch, M., Lindsey, T. (eds.), 'Law, Society and Transition in Myanmar' London: Hart Publishing, pp.275-276
- 110 Douglas, J. (2016), 'Myanmar's plan for police reform is an opportunity for the international community', Myanmar Times, 29 August 2016, available at: <http://www.mmmtimes.com/index.php/opinion/22194-myanmar-s-plan-for-police-reform-is-an-opportunity-for-the-international-community.html>, last accessed: 13 August 2019
- 111 See: ICJ (2018), pp. 26
- 112 Thomson, A. (2016), 'Prospects for Justice in Myanmar', International Center for Transitional (ICTJ), ICTJ Briefing, November 2016, pp.5, available at <https://www.ictj.org/publication/myanmar-justice-prospects-nld>, last accessed: 28 July 2019
- 113 See: ICJ (2018), pp. 27; Bünte, M., Dressel, B. (2016), 'Politics and Constitutions in Southeast Asia', Routledge: Taylor & Francis Group, LONDON and NEW YORK, pp. 175-176
- 114 Transparency International, (2019), 'Corruption Perception Index 2018', available at: https://www.transparency.org/files/content/pages/2018_CPI_Executive_Summary.pdf, last accessed: 29 July 2019
- 115 Freedom House, (2017), 'Freedom in the World 2017: Myanmar', available at: <https://freedomhouse.org/report/freedom-world/2017/Myanmar>; last accessed 12 May 2017
- 116 Freedom House, (2019), 'Freedom in the World 2019: Myanmar', available at: <https://freedomhouse.org/report/freedom-world/2019/myanmar>, last accessed 29 July 2019
- 117 For more on the Anti-Corruption Law, see; Wales, T., Oo, N. (2018), 'Myanmar Extends Anti-Corruption Law to Private Transactions', December 2018, Tilleke & Gibbins International Ltd., available at: https://www.tilleke.com/sites/default/files/IC_Nov%202018_Myanmar%20Extends%20Anti-Corruption%20Law%20to%20Private%20Transactions.pdf, last accessed: 29 July 2019; OxResearch Daily Brief Service, (2018), 'Myanmar: Curbing Corruption will be a struggle', 5 July 2018, Oxford, available at: <https://search-proquest-com.ep.fjernadgang.kb.dk/docview/2064258066/fulltext/5BCC9BD986CA4FD7PQ/1?accountid=13607>, last accessed: 29 July 2019
- 118 Kaufmann, D., Kraay, A. (2018), 'Worldwide Governance Indicators', World Bank Group, available at: <https://info.worldbank.org/governance/wgi/#home>, last accessed: 29 July 2019
- 119 OHCHR, (2018), 'Concept Note: Accountability Mechanism for Myanmar', available at: <https://www.ohchr.org/Documents/Countries/MM/ConceptNoteAccountabilityFramework.pdf>, last accessed: 31 July 2019
- 120 See: ICTJ (2009), p.28; Thomson (2016), pp. 1,3
- 121 UN General Assembly, (2018), 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar', A/HRC/39/L.22, Human Rights Council, Thirty-Ninth Session, 25 September 2018, pp. 3
- 122 See: Shelton, T. (2019)
- 123 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, pp. 13
- 124 See: Amnesty International (2019)
- 125 See: Oh (2019); Strasser, F. (2016), 'Myanmar Peace Process: Slow Progress, Delicate Steps', United States Institute of Peace, available at: <https://www.usip.org/publications/2016/11/myanmar-peace-process-slow-progress-delicate-steps>, last accessed: 4 August 2019
- 126 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 2-3

127 Human Rights Council, (2019), 'The Economic interests of the Myanmar Military. Independent International Fact-Finding Mission on Myanmar', A/HRC/42/CRP.3, Human Rights Council, Forty-second session, Article Item 4, 5 August 2019, pp. 29-30

128 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 16; Darusman, M., Gomez, R. (2018), 'Myanmar: Tatmadaw leaders must be investigated for genocide, crimes against humanity, and war crimes – UN report', OHCHR, 27 August 2018, available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23475>, last accessed: 5 August 2019

129 See: Amnesty International (2019)

130 For more on current conditions in Rakhine State, see Dan Sullivan speak on PBS News Hour: PBS NewsHour, (2019), 'Facing Myanmar's brutal persecution, Rohingya refugees still can't return home', 24 April 2019, available at: <https://www.youtube.com/watch?v=j4hBKj5nsLQ>, last accessed: 1 August 2019

131 Bengtsson, H. (2019), 'Religion, conflict and conflicting views on the religious 'Other' in Myanmar', Master Thesis, Department of Theology, Uppsala University, available at: <http://uu.diva-portal.org/smash/get/diva2:1327635/FULLTEXT01.pdf>, last accessed: 5 August 2019

132 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 6

133 Murphee, D. P. (2017), 'Imagining the Buddhist Ecumene in Myanmar: How Buddhist Paradigms Dictate Belonging in Contemporary Myanmar', University of Washington, Dissertation Publishing, pp. 5

134 Green, P. MacManus, T, de la Cour Venning, A., (2015), Countdown to Annihilation: Genocide in Myanmar', London: International State Crime Initiative, pp. 72

135 Khan, H. M. (2016), 'Threat Perceptions in the Myanmar-Bangladesh Borderlands', In: Cheesman, N., Farrelly, N. (eds.), 'Conflict in Myanmar: War, Politics, Religion', Yusof Ishak Institute, pp.339

136 Gravers, M. (2019), 'Myanmar nationalism: the Monks, the Military and the Muslims', Asia Dialogue, 8 March 2019, available at: <https://theasiadialogue.com/2019/03/08/myanmar-nationalism-the-monks-the-military-and-the-muslims/>, last accessed: 6 August 2019

137 Sakhong, L. H. (2012), 'The Dynamics of Sixty Years of Ethnic Armed Conflict in Burma', Burma Centre for Ethnic Studies, Peace and Reconciliation, Analysis Paper No.1, January 2012, p.2, available at: <http://www.burmalibrary.org/docs13/BCES-AP-01-dynamics%28en%29.pdf>, last accessed: 6 August 2019

138 See: Sakong (2012); Kipgen, N. (2016), 'Democratisation of Myanmar' New Delhi: Routledge, pp. 27-28; Azeem (2016), pp.37; See: Bellamy (2017), Lorch, J., Roepstorff, K. (2013), 'Myanmar's Peace Process: The Importance of Federal Reforms and an Inclusive National Dialogue', German Institute for International and Security Affairs, September 2013. pp.1, available at https://www.swp-berlin.org/fileadmin/contents/products/comments/2013C29_Irc_rps.pdf, last accessed: 6 August 2019; Welsh, B., Huang, K. (2016), 'Public Perceptions of a Divided Myanmar: Findings from the 2015 Myanmar Asian Barometer Survey' In Cheesman, N., Farrelly, N. (eds.) 'Conflict in Myanmar: War, Politics, Religion', Yusof Ishak Institute, pp. 262

139 Human Rights Council, (2019), 'The Economic interests of the Myanmar Military. Independent International Fact-Finding Mission on Myanmar', A/HRC/42/CRP.3, Human Rights Council, Forty-second session, Article Item 4, 5 August 2019, pp. 42

140 See: Khan (2016), pp. 339

141 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 11

142 Kuang Lin, H. (2019), 'Buddhist Nationalists Force Shut Down of Three Ramadan Worship Sites in Yangon', The Irrawaddy, 16 May 2019, available at: <https://www.irrawaddy.com/news/burma/buddhist-nationalists-force-shut-three-ramadan-worship-sites-yangon.html>, last accessed: 7 August 2019

143 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 24

144 Kramer, T. (2010), 'Ethnic Conflict in Burma: The Challenge of Unity in a Divided Country', In: Dittmer, L. (eds.), 'Burma or Myanmar? the Struggle for National Identity', Singapore; London: World Scientific, pp.58- 61; Lorch, J., Roepstorff, K. (2013), 'Myanmar's Peace Process: The Importance of Federal Reforms and an Inclusive National Dialogue', German Institute for International and Security Affairs, September 2013. p.1, available at https://www.swp-berlin.org/fileadmin/contents/products/comments/2013C29_Irc_rps.pdf, last accessed 6 August 2019

145 Callahan, M., Zaw Oo, M., (2019), 'Myanmar's 2020 elections and conflict dynamics', United States Institute of Peace, Peaceworks, No. 146, April 2019, pp. 7

146 Singh, K. (2019), 'UN condemns Rakhine attacks: An Internal Burmese Conflict Rises', The Organization for World Peace, available at: <https://theowp.org/un-condemns-rakhine-attacks-an-internal-burmese-conflict-rises/>, last accessed: 11 September 2019

147 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, pp. 14

148 Stockholm International Peace Research Institute (SIPRI), (2019a), 'Myanmar Expenditure (% of general government expenditure)', The World Bank, available at: https://data.worldbank.org/indicator/MS.MIL.XPND.ZS?end=2018&locations=MM&name_desc=false&start=1997&type=shaded&view=chart, last accessed: 7 August 2019

149 Paddock, R. C. (2019), 'Myanmar Military's Vast Business Revenue Enables Abuses, U.N. Says', The New York Times, 5 August 2019, available at: <https://www.nytimes.com/2019/08/05/world/asia/myanmar-military-business-united-nations.html>, last accessed: 6 August 2019

150 International Institute for Strategic Studies, (2019), 'Armed forces personnel, total', The Military Balance 2019, The World Bank, available at: https://data.worldbank.org/indicator/MS.MIL.TOTL.P1?end=2018&locations=MM&name_desc=false&start=1997&type=shaded&view=chart, last accessed: 7 August 2019

151 SIPRI (2019b), 'Arms imports (SIPRI trend indicator values)', Arms Transfers Programme, The World Bank, available at: https://data.worldbank.org/indicator/MS.MIL.MPRT.KD?end=2018&locations=MM&name_desc=false&start=1997&type=shaded&view=chart, last accessed: 7 August 2019

152 Programme of Action to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects (PoA), (n.d.), 'The Issue of Small Arms and Light Weapons (SALW) in the context of trans-national organized crimes: its implications for ASEAN', pp. 2, available at: <http://www.poa-iss.org/RegionalOrganizations/ASEAN/The%20Issue%20of%20SALW%20in%20the%20context%20of%20transnational%20organized%20crime.pdf>, last accessed: 7 August 2019

153 Lwin, N. (2019), 'Myanmar Military Proposes Larger Budget for 'Stronger' Armed Forces', The Irrawaddy, 22 July 2019, available at: <https://www.irrawaddy.com/news/burma/myanmar-military-proposes-larger-budget-for-stronger-armed-forces.html>, last accessed: 6 August 2019

154 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 25

155 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 3; Kramer, (2010), pp. 58-60

156 Buchanan, J. (2016), 'Militias in Myanmar', The Asia Foundation, July 2016, pp.1-3, available at: <https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf>, last accessed: 7 August 2019

157 Ibid. pp. 28-29

158 United States Institute of Peace (USIP), (2018), 'China's Role in Myanmar's Internal Conflicts', USIP Senior Study Group Final Report, September 2018, No.1, pp. 5, available at: <https://www.usip.org/sites/default/files/2018-09/ssg-report-chinas-role-in-myanmars-internal-conflicts.pdf>, last accessed: 30 July 2019

159 United States Institute of Peace (USIP), (2018), 'China's Role in Myanmar's Internal Conflicts', USIP Senior Study Group Final Report, September 2018, No.1, pp. 7, available at: <https://www.usip.org/sites/default/files/2018-09/ssg-report-chinas-role-in-myanmars-internal-conflicts.pdf>, last accessed: 30 July 2019; Richards, E., (2018), 'Why does China keep supporting Burma in the Rohingya crisis?', Asian Correspondent, available at: <https://asiancorrespondent.com/2018/12/why-does-china-keep-supporting-burma-in-the-rohingya-crisis/>, last accessed: 20 July 2019

160 United States Institute of Peace (USIP), (2018), 'China's Role in Myanmar's Internal Conflicts', USIP Senior Study Group Final Report, September 2018, No.1, pp. 6, available at: <https://www.usip.org/sites/default/files/2018-09/ssg-report-chinas-role-in-myanmars-internal-conflicts.pdf>, last accessed: 30 July 2019

161 Ibid., pp. 7-8

162 See: Human Rights Watch (2019); Kasai, T. (2019), 'Japan's cold-blooded approach to the Rohingya crisis', The Japan Times, 27 June 2019, available at: <https://www.japantimes.co.jp/opinion/2019/06/27/commentary/japan-commentary/japans-cold-blooded-approach-rohingya-crisis/#.XUJhQy2B3rQ>, last accessed: 1 August 2019

163 Raleigh, C. (2018), 'Myanmar: Conflict Update', Armed Conflict Location & Event Data Project (ACLED), Available at: <https://www.acledata.com/2018/04/05/myanmar-conflict-update/>, last accessed: 9 August 2019

164 See "The economic interests of the Myanmar military," Independent International Fact Finding Mission on Myanmar, Human Rights Council, Forty-second session, 9-27 September 2019, A/HRC/42/CRP.3, 5 August 2019.

165 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, pp. 15

166 Roughneen, S. (2014), 'Myanmar's (not quite) free media', Asian Review, 04 April 2014, available at: <https://Nikkei.com/Politics/Myanmar-s-not-quite-free-media>, last accessed: 24 July 2019

167 Office of the High Commissioner for Human Rights (OHCHR), (2019), 'Myanmar: Worsening Climate for Free Expression despite UN Commitments', Universal Periodic Review (UPR), Article 19, May 2019, pp. 1

168 Ibid.; See: OHCHR (2019a) for more detailed information of incidents pertaining the persecution of journalists and civil society workers.

169 See: OHCHR (2019a), pp. 6; UN General Assembly, (2016), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/ HRC/31/71, Human Rights Council Thirty-first session, 18 March 2016, pp. 6

170 Morada, N. (2017), 'The Rohingya Crisis: High on Outrage, Short on Action', IPI Global observatory, 13 October 2017, available at: <https://theglobalobservatory.org/2017/10/rohingya-crisis-high-on-outrage-short-on-action/>, last accessed: 24 July 2019; INGO Forum Myanmar, (2017), 'A Snapshot of INGOs in Myanmar and the INGO Forum Myanmar', January 2017, available at: https://themimu.info/sites/themimu.info/files/documents/Ref_Doc_INGO_Forum_Snapshot_Jan2017.pdf?fbclid=IwAR1w0-th9lVpcFO7jdwb_sqvTZ-OpoU2fGTTwWxqepP05uCSepcXJow2So, last accessed: 24 July 2019; International Model United Nations Association (IMUNA), 'Myanmar', available at: <https://imuna.org/resources/country-profiles/myanmar>, last accessed: 24 July 2019

171 UN News, (2019), 'UN Chief accepts independent report on Myanmar, highlighting 'systemic' failure surrounding Rohingya crisis', 17 June 2019, available at: <https://news.un.org/en/story/2019/06/1040681>, last accessed: 24 July 24, 2019

172 Ibid.

173 Al Jazeera, (2019), 'ASEAN must not turn a blind eye to Rohingya crisis: Rights Groups', 19 June 2019, available at: https://www.aljazeera.com/news/2019/06/asean-turn-blind-eye-rohingya-crisis-rights-groups-190619091135258.html?fbclid=IwAR3Sg-3Z0s9KL-5cihmakp2CIZV7u_rgFjPNOZcJn1VNxRgdnaG_aPvNUZiQ, last accessed: 24 July 2019

174 Wai Kit, L. (2019), 'AHA Centre Defends leaked report on Rohingya refugees', Channel News Asia, 10 June 2019, available at: <https://www.channelnewsasia.com/news/asia/aaha-centre-defends-leaked-report-on-rohingya-refugees-11613142>, last accessed: 8 August 2019

175 UN General Assembly, (2016), 'Report of the Special Rapporteur on the situation of human rights in Myanmar' A/ HRC/31/71, Human Rights Council, Thirty-first session, 18 March 2016, p.2, 1

176 Holmes, O. (2017), 'Myanmar blocks all UN aid to civilians at heart of Rohingya crisis', The Guardian, 5 September 2017, available at: <https://www.theguardian.com/world/2017/sep/04/myanmar-blocks-all-UN-aid-to-civilians-at-heart-of-rohingya-crisis>, last accessed: 24 July 2019

177 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 6-7; UN Human Rights Council, (2017), 'Human Rights Council decides to dispatch a fact-finding mission to Myanmar to establish facts on violations, especially in Rakhine State' 24 March 2017, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21443&LangID=En>, last

accessed: 24 July 2019

178 Weng, L. (2019), 'Urgent Political Action Needed to Solve Rakhine's Problems', The Irrawaddy, 13 March 2019, available at: <https://www.irrawaddy.com/opinion/editorial/urgent-political-action-needed-solve-rakhines-problems.html>, last accessed: 8 August 2019

179 Myint, M. (2019), 'Civilians Injured, Schools Shelled in Army Response to Mrauk-U Ambush', The Irrawaddy, 14 June 2019, available at: <https://www.irrawaddy.com/news/burma/civilians-injured-school-shelled-army-response-mrauk-u-ambush.html>, last accessed: 8 August 2019

180 Human Rights Watch, (2019), 'Myanmar: Internet Shutdown Risks Lives', Human Rights Watch, 28 June, 2019, available at: <https://www.hrw.org/news/2019/06/28/myanmar-internet-shutdown-risks-lives>, last accessed: 8 August 2019

181 Lee, Y. (2019), 'Myanmar: UN expert 'fears for civilians' after Internet Shutdown', OHCHR, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24733&LangID=E>, last accessed: 8 August 2019

182 The Myanmar Times, (2019), 'Week in Review: Internet outage continues in Rakhine, Chin states', The Myanmar Times, 26 July 2019, available at: <https://www.mmtimes.com/news/week-review-internet-outage-continues-rakhine-chin-states.html>, last accessed: 8 August 2019;

183 Griffiths, J. (2019), 'Myanmar shuts down internet in conflict areas as UN expert warns of potential abuses during blackout', CNN, 25 June 2019, available at: <https://edition.cnn.com/2019/06/25/asia/myanmar-internet-shutdown-intl-hnk/index.html>, last accessed: 8 August 2019

184 Stokke, K., Vakulchuk, R., Øverland, I. (2018), 'Myanmar: A Political Economy Analysis', Norwegian Institute of International Affairs, pp. 58

185 European Commission, (2019), 'Myanmar/ Burma. Facts and Figures, European Civil Protection and Humanitarian Aid Operations, 6 June 2019

186 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 2

187 Ibid., pp. 8

188 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 7, 13

189 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp.

190 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 10-11

191 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 8

192 Ibid., pp. 13

193 Ibid., pp. 11

194 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, pp. 17

195 Human Rights Watch, (2019), 'Myanmar: Civilians Caught in Shan State Fighting', Human Rights Watch, 7 September 2019, available at: <https://www.hrw.org/news/2019/09/07/myanmar-civilians-caught-shan-state-fighting>, last accessed: 8 September 2019

196 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 1

197 Eleven Media Group, (2019), 'Myanmar rejects EU's Draft Resolution on the situation of human rights in Myanmar at Human Rights Council', Eleven Media Group, 24 March 2019, available at: <https://elevenmyanmar.com/news/myanmar-rejects-eus-draft-resolution-on-the-situation-of-human-rights-in-myanmar-at-human>, last accessed: 9 August 2019

198 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of human rights in Myanmar', A/HRC/40/68, Human Rights Council, Fortieth Session, Agenda Item 4, 5 March 2019, pp. 11; Facebook, (2018), 'Removing Myanmar Military Official from Facebook', Facebook Newsroom, 28 August 2018, available at: <https://newsroom.fb.com/news/2018/08/removing-myanmar-officials/>, last accessed: 9 August 2019

199 Callahan, M., Zaw Oo, M., (2019), 'Myanmar's 2020 elections and conflict dynamics', United States Institute of Peace, Peaceworks, No. 146, April 2019, pp. 2-3

200 Ibid., pp. 6-7

201 Naing Zaw, H. (2019), 'Ma Ba Tha is a Necessity: Military', The Irrawaddy, 19 June 2019, available at: <https://www.irrawaddy.com/news/burma/ma-ba-tha-necessity-military.html>, last accessed: 12 August 2019

201 Phyo Tha, K. (2019), 'Buddhist nationalists urge voters to shun NLD at ballot box', The Irrawaddy, 18 June 2019, available at: <https://www.irrawaddy.com/news/burma/buddhist-nationalists-urge-voters-shun-nld-ballot-box.html>, last accessed: 12 August 2019

203 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, p. 18

204 Ibid., pp. 1

205 Azeem, I. (2016), 'The Rohingyas: Inside Myanmar's Hidden Genocide' London: C. Hurst and Co., p.35

206 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 5

207 Ibid., pp. 14

208 Ibid., pp. 16

209 Ibid., pp. 1, 16, 18

210 Pritchard, A. (2016), 'Chapter 1: Introduction' In: Tantikanangkul, W., Pritchard, A., (eds.), 'Politics of Autonomy and Sustainability in Myanmar', Springer Singapore, Volume 1, p.9

211 Azeem, I. (2016), 'The Rohingyas: Inside Myanmar's Hidden Genocide', London: C. Hurst and Co., p.59

212 Welsh, B. and Huang, K. (2016), 'Public Perceptions of a Divided Myanmar. Findings from the 2015 Myanmar Asian Barometer Survey'. In: Cheesman, N., and Farrelly, N. (eds.), 'Conflict in Myanmar: War, Politics, Religion', Yusof Ishak Institute, pp.267-269

213 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, p. 19

214 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 9

215 Amnesty International, (2017), 'Myanmar: "All the civilians suffer": Conflict, displacement, and abuse in northern Myanmar', 14 June 2017, pp.22-23. [online] Available at <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>, accessed 20 August 2019

216 ; Green, P. MacManus, T, de la Cour Venning, A., (2015), Countdown to Annihilation: Genocide in Myanmar', London: International State Crime Initiative, pp. 72

217 Ibid., pp. 73

218 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 8

219 Human Rights Watch (2019), 'Myanmar. Events of 2018', Human Rights Watch, available at: <https://www.hrw.org/world-report/2019/country-chapters/burma>, last accessed: 24 August

220 UN News, (2019), 'Myanmar military target civilians in deadly helicopter attack, UN rights office issues war crimes warning', UN News, 5 April 2019, available at: <https://news.un.org/en/story/2019/04/1036151>, last accessed: 26 August 2019

221 Ellis-Petersen, H., Rahman, S. A., (2019), 'Rohingya refugees refuse to return to Myanmar without rights guarantee', The Guardian, 21 August 2019, available at: <https://www.theguardian.com/world/2019/aug/21/not-without-our-rights-rohingya-refugees-refuse-to-return-to-myanmar>, last accessed: 24 August 2019

222 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 9

223 Human Rights Council, (2019), 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts', A/HRC/42/CRP.4, Human Rights Council, Forty-Second session, Agenda Item 4, pp. 20

224 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 8-9

225 Outreach Programme on the Rwanda Genocide and The United Nations, (2014), 'Sexual Violence: A Tool of War', available at: <https://www.un.org/es/preventgenocide/rwanda/assets/pdf/Backgrounder%20Sexual%20Violence%202014.pdf>, last accessed: 26 August 2019

226 Brinham, N. (2018), "Genocide Cards': Rohingya refugees on why they risked their lives to refuse ID cards', Open Democracy, 21 October 2018, available at: <https://www.opendemocracy.net/en/genocide-cards-why-rohingya-refugees-are-resisting-id-cards/>, last accessed: 23 August 2019

227 Human Rights Council, (2019), 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts', A/HRC/42/CRP.4, Human Rights Council, Forty-Second session, Agenda Item 4, pp. 26

228 Human Rights Council, (2019), 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts', A/HRC/42/CRP.4, Human Rights Council, Forty-Second session, Agenda Item 4, pp. 3, 4, 15, 19-21, 26

229 Human Rights Council, (2019), 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts', A/HRC/42/CRP.4, Human Rights Council, Forty-Second session, Agenda Item 4, pp. 3, 4, 15, 19-21

230 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, p. 20

231 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 12

232 Human Rights Council, (2019), 'Report of the Special Rapporteur on the situation of Human Rights in Myanmar', A/HRC/20/68, Human Rights Council, Agenda Item 4, pp. 7

233 Human Rights Watch, (2019), 'Myanmar: Civilians Caught in Shan State Fighting', Human Rights Watch, 7 September 2019, available at: <https://www.hrw.org/news/2019/09/07/myanmar-civilians-caught-shan-state-fighting>, last accessed: 8 September 2019

234 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 15

235 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 12

236 Myint, M., (2019), 'Reporter's Notebook: On the Ground in Mrauk-U', The Irrawaddy, available at: <https://www.irrawaddy.com/news/burma/reporters-notebook-ground-mrauk-u.html>, last accessed: 21 August 2019

237 Singh, K. (2019), 'UN Condemns Rakhine Attacks: an Internal Burmese Conflict Rises', The Organization for World Peace, 17 April 2019, available at: <https://theowp.org/un-condemns-rakhine-attacks-an-internal-burmese-conflict-rises/>, last accessed: 11 September 2019

238 Human Rights Watch, (2019), 'Myanmar: Civilians Caught in Shan State Fighting', Human Rights Watch, 7 September 2019, available at: <https://www.hrw.org/news/2019/09/07/myanmar-civilians-caught-shan-state-fighting>, last accessed: 10 September 2019

239 Amnesty International, (2017), 'Myanmar: "All the civilians suffer": Conflict, displacement, and abuse in northern Myanmar', 14 June 2017, pp.22-23, available at <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>, last accessed 21 June 2017;

Non-governmental organisations' Joint Statement, (2017), 'Non-governmental organisations collectively call for immediate cessa-

tion of armed conflict and protection of civilians in Kachin and Northern Shan States, Myanmar', Yangon, 25 January 2017, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/Joint%20NGO%20Statement%20on%20Kachin%26Shan%2025012017.pdf>, last accessed: 12 August 2019

240 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, p. 21

241 Human Rights Watch, (2019), 'Myanmar: Civilians Caught in Shan State Fighting', Human Rights Watch, 7 September 2019, available at: <https://www.hrw.org/news/2019/09/07/myanmar-civilians-caught-shan-state-fighting>, last accessed: 10 September 2019

242 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 15

243 Amnesty International, (2019), 'Myanmar: 'No one can protect us': war crimes and abuses in Myanmar's Rakhine State', Amnesty International, 29 May 2019, available at: <https://www.amnesty.org/en/documents/asa16/0417/2019/en/>, last accessed: 11 September 2019

244 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 15

245 Ibid., pp. 11

246 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, p. 22-23

247 Ibid., pp. 1-2

248 Human Rights Council, (2018), 'Report of the Independent International Fact-Finding mission on Myanmar', A/HRC/39/64, Human Rights Council, Thirty-ninth session, Agenda item 4, pp. 17

249 Humanitarian Country Team in Myanmar, (2018), 'Myanmar: 2019 Humanitarian Needs Overview', 19 December 2019, available at: <https://reliefweb.int/report/myanmar/myanmar-2019-humanitarian-needs-overview>, last accessed: 8 September 2019

250 The Irrawaddy, (2019), 'Urgent Political Action needed to solve Rakhine's Problems', The Irrawaddy, 13 March 2019, available at: <https://www.irrawaddy.com/opinion/editorial/urgent-political-action-needed-solve-rakhines-problems.html>, last accessed: 11 September 2019

251 Ki-Moon, B. (2014), "Framework of Analysis for Atrocity Crimes: A Tool for Prevention," Office of the Prevention of Genocide and the Responsibility to Protect, p. 24

252 Office for the Coordination of Humanitarian Affairs (OCHA), (2019), 'Myanmar: Humanitarian access in Kachin and northern Shan', 6 June 2019, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/MMR_Kachin_northernShan_Humanitarian_Access_May_2019.pdf, last accessed: 8 September 8, 2019

253 OCHA, (2019), 'Myanmar: Humanitarian access in central Rakhine', 11 May 2019, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/MMR_central_Rakhine_Humanitarian_Access_Mar_2019.pdf, last accessed: 8 September 2019

254 Human Rights Watch, (2018), 'Burma: Scores of Rohingya Villages Bulldozed', 23 February 2018, available at: <https://www.hrw.org/news/2018/02/23/burma-scores-rohingya-villages-bulldozed>, last accessed: 12 October 2019; Aung Moon, S. Singh, K., Birsell, R., (2019), 'Two years on, a look at the Rohingya crisis', Reuters, 23 August 2019, available at: <https://www.reuters.com/article/us-myanmar-rohingya-timeline/two-years-on-a-look-at-the-rohingya-crisis-idUSKCN1VD044>, last accessed: 12 October 2019

255 Security Council Report, (2019), 'Chronology of Events: Myanmar', 10 September 2019, available at: <https://www.security-councilreport.org/chronology/myanmar.php>, last accessed: 12 October 2019

256 Human Rights Watch, (2018), 'Myanmar Investigative Commissions: A History of Shielding Abusers', September 2018, available at: https://www.hrw.org/sites/default/files/supporting_resources/201809myanmar_commissions.pdf, last accessed: 12 October 12, 2019

257 Ibid.

258 Aung Moon, S. Singh, K., Birsell, R., (2019), 'Two years on, a look at the Rohingya crisis', Reuters, 23 August 2019, available at: <https://www.reuters.com/article/us-myanmar-rohingya-timeline/two-years-on-a-look-at-the-rohingya-crisis-idUSKCN1VD044>, last accessed: 12 October 2019

259 Human Rights Watch, (2018), 'Burma: Scores of Rohingya Villages Bulldozed', 23 February 2018, available at: <https://www.hrw.org/news/2018/02/23/burma-scores-rohingya-villages-bulldozed>, last accessed: 12 October 2019

260 Schuettler, D., (2019), 'Myanmar military court to probe Rohingya atrocity allegations', Reuters, 18 March 2019, available at: <https://www.reuters.com/article/us-myanmar-rohingya-military/myanmar-military-court-to-probe-rohingya-atrocity-allegations-idUSKCN1QZ11K>, last accessed: 12 October 2019

261 Office of the Prosecutor, (2018), 'Application Under Regulation 46(3): Prosecutor's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', International Criminal Court, 9 April 2018

262 Human Rights Watch, (2018), 'Myanmar Investigative Commissions: A History of Shielding Abusers', September 2018, available at: https://www.hrw.org/sites/default/files/supporting_resources/201809myanmar_commissions.pdf, last accessed: 12 October 12, 2019

263 Independent Commission of Enquiry (ICOE), (2018), 'Official Documents and Reports', available at: <https://www.icoe-myanmar.org/documents>, last accessed: 12 October 2019

264 Pre-Trial Chamber 1, (2018), 'Request Under Regulation 46(3) of the Regulations of the Court. Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute'', International Criminal Court, no. ICC-RoC46(3)-01/18, 6 September 2018

265 Schuettler, D., (2019), 'Myanmar military court to probe Rohingya atrocity allegations', Reuters, 18 March 2019, available at: <https://www.reuters.com/article/us-myanmar-rohingya-military/myanmar-military-court-to-probe-rohingya-atrocity-allegations-idUSKCN1QZ11K>, last accessed: 12 October 2019; Human Rights Council, (2018), 'Report of the detailed findings of the Independent International fact-Finding Mission on Myanmar', A/HRC/39/CRP.2, Thirty-Ninth Session, Agenda Item 4

266 Wintour, P. (2018), 'Myanmar Rohingya crisis: ICC begins inquiry into atrocities', The Guardian, 19 September 2019, available at: <https://www.theguardian.com/world/2019/sep/19/myanmar-rohingya-icc-inquiry>, last accessed: 12 October 2019

279 OHCHR, (2019), 'UN Fact-Finding Mission on Myanmar Calls for Justice for Victims of Sexual and Gender-based Violence', 22 August 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24907&LangID=E>, last accessed: 12 October 2019; Human Rights Council, (2019), 'Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts', A/HRC/42/CRP.4, Human Rights Council, Forty-Second session, Agenda Item 4, 22 August 2019