MYANMAR

BASELINE ASSESSMENT OF R2P IMPLEMENTATION

Asia-Pacific Centre for the Responsibility to Protect

r2pasiapacific.org

r2pinfo@uq.edu.au

The following Baseline Assessment Annex provides an overview of Myanmar's efforts in implementing R2P as of 2019. For a full description of the methodology used in this study, see Part II of 'Implementing the Responsibility to Protect in the Asia Pacific: An Assessment of Progress and Challenges', available here.

MYANMAR

Myanmar continues to endure armed conflict and experience atrocity crimes. The country's armed forces committed crimes against humanity against the Rohingya population in 2017 and may be committing atrocity crimes in its ongoing campaigns with other ethnic separatist groups, including the Kachin. As such, it is not surprising that Myanmar is one of the region's worst performers, coming ahead only of the DPRK.

The two indicators where Myanmar rates 'Fair' are in recognition of its participation in discussions on R2P, having participated in the Informal Interactive Dialogues on R2P in 2009, 2014, 2015 and 2017, and its cooperation in the Universal Periodic Review.

The country's principal problems are at home. Myanmar has manifestly failed to protect its populations from atrocity crimes. It has also failed to reduce risk or address past crimes. Underlying risks are significant and are exacerbated by government policies and practices.

In terms of human rights, Myanmar has ratified just five of the twelve key international covenants considered most relevant to R2P. Moreover, while it has ratified the Genocide Convention and the Geneva Conventions, no specific reference to acts such as genocide, ethnic cleansing, or war crimes could be located within relevant legislation. Civil society and freedom of the press are highly constrained. Journalists are imprisoned for reporting on atrocity crimes perpetrated by government forces. Not only does the law fail to provide adequate legal protection for women, minorities and other vulnerable groups, it actually serves to entrench discrimination. The government organizes an apartheid type system in Rakhine state.

Internationally, Myanmar performs very weakly across most sectors. It briefly explored peacekeeping contributions, and between August 2015 and December 2016, Myanmar provided a limited number of contingent troops and experts to peace-keeping operations in Liberia (UNMIL) and South Sudan (UNMISS), whilst some military offices participated in United Nations peacekeeping training (in conjunction with the Australian Defence Force) in 2016, but this had ended by the time of this study.

Myanmar faces significant challenges with respect to its national resilience to atrocity crimes, and performs very weakly with respect to human rights and the legislative protection of vulnerable populations.

MYANMAR

Assessment	Indicator
Fair	Participate in international peer review processes, including the Universal Periodic Review (UPR) of the UN Human Rights Council
	Participate in international, regional and national discussions on the further advancement of R2P
Weak	Sign, ratify and implement relevant instruments of international law
	Establish and maintain National Human Rights Institutions in accordance with the Paris Principles
	Cultivate and protect an active, diverse and robust civil society
	Prevent nationals committing atrocity crimes overseas
	Develop the capacities needed to support civilian protection, including through the training of military and civilian personnel for peacekeeping
Very Weak	Protection of populations from atrocity crimes
	Reduction of atrocity crime risks
	Dealing with past atrocities
	Appoint national R2P Focal Point
	Incorporate atrocity crime risks and dynamics into conflict analysis and/or development partnerships
	Establish domestic mechanisms to hold the government accountable for upholding its responsibility to protect
	Sign and ratify the Rome Statute of the International Criminal Court and cooperate fully with the Court
	Ensure domestic promotion and protection of human rights, focusing on the elimination of discrimination
	Cooperate fully with UN Human Rights mandate holders and those of relevant regional organisations
	Ensure equal access to justice
	Criminalise incitement to commit genocide, war crimes, ethnic cleansing and crimes against humanity
	Take measures to counter and prevent violent extremism
	Enact and implement laws protecting vulnerable groups, particularly in relation to sexual and gender-based violence
	Protect individuals and groups fleeing atrocity crimes and their risk, in accordance with International Refugee Law
	Conduct a national assessment of risk and resilience
	Ensure a legitimate, effective and civilian controlled security sector
	Ensure the education system reflects the ethnic, national and cultural diversity of society, and sets examples of inclusiveness
	Leverage existing mechanisms and institutions (including regional and sub-regional organisations) to encourage States to fulfil their responsibility to protect
	Encourage and assist States to fulfil their R2P in situations of emerging and ongoing crisis, such as good offices and preventive diplomacy
	Strengthen regional and international networks for atrocity crime prevention

	Strengthen the role and capacity of regional organisations
	Support the development and work of regional human rights and other preventive capacities
	Support atrocity prevention through development and assistance partnerships
	Support the early warning and capacity building efforts of the UN Office on Genocide Prevention and R2P
	Support the strengthening of the UN's capacity for atrocity prevention, including through the UN Human Rights system
	Support preventive actions on atrocity crimes
	Contribute to United Nations peacekeeping operations (especially those with a protection of civilians mandate)
	Support the Kigali Principles
	Support UN Security Council veto restraint on issues relating to atrocity prevention

Myanmar Score: 6.5

In 2017, Myanmar's armed forces unleashed a campaign of crimes against humanity and genocide against the country's Rohingya population. Unsurprisingly, Myanmar is amongst the weakest countries in the Asia Pacific in terms of R2P implementation. Whilst noting its support for the core objective of preventing mass atrocities, Myanmar has consistently emphasised non-intervention and the integrity of state sovereignty. The atrocities directed against the Rohingya Muslim minority are deeply troubling and clearly signal that national resilience to atrocity crimes is very low and in need of prompt attention.

Thematic Area	Indicator	Assessment	Notes
Basic Compliance	Protection of populations from atrocity crimes.	Very Weak	The current Rohingya crisis in Myanmar and the pervasive discrimination towards other ethnic and religious groups in the country, constitutes the commission of atrocity crimes. In particular, ethnic cleansing, crimes against humanity and genocide would apply to the Rohingya context, which is now the world's fastest growing refugee crisis.[1]
	Reduction of atrocity crime risks.	Very Weak	The impunity possessed by state security services and government officials, and Myanmar's reticence in resolving conflicts within its borders by other non-military means ensures the risk of further atrocity crimes remains high.
	Dealing with past atrocities.	Very Weak	The conflict between ethnic groups in Myanmar finds its origins at the country's independence in 1948 and throughout the following decades, which saw widespread government persecution against these minorities.[2] The lack of acknowledgement of these crimes has a flow-on effect and allows for the current state of the conflict and subsequent refugee crisis to emerge.
Policy Mechanisms	Appoint national R2P Focal Point.	Very Weak	Myanmar has no R2P focal point.[3]
	Incorporate atrocity crime risks and dynamics into conflict analysis and/or development partnerships.	Very Weak	Minimal information could be found regarding the incorporation of atrocity prevention into conflict analysis in Myanmar.
	Establish domestic mechanisms to hold the government accountable for upholding its responsibility to protect.	Very Weak	There are no domestic mechanisms in place for the government to be held accountable for upholding R2P.
International Human Rights Obligations	Sign, ratify and implement relevant instruments of international law.	Weak	Myanmar has ratified five of the twelve key international human rights laws (IHRL) most relevant to R2P.[4] These are: • ***Convention on the Prevention and Punishment of Genocide*** (Ratification/Accession: 1956) • ***Geneva Conventions*** (Ratification/Accession: 1992) • ***Convention on the Rights of the Child*** [CRC] (Ratification/Accession: 1990)

[1] United Nations Office for the Coordination of Humanitarian Affairs, n.d. *Rohingya Refugee Crisis*, https://www.unocha.org/rohingya-refugee-crisis.
[2] United States Holocaust Memorial Museum, n.d. *Atrocities Against Burma's Rohingya Population*, https://encyclopedia.ushmm.org/content/en/article/atrocities-against-burmas-rohingya-population.
[3] Global Centre for the Responsibility to Protect (GCR2P), 2016. *Members of the Global Network of R2P Focal Points*, http://www.globalr2p.org/media/files/regional-breakdown_global-network-of-r2p-focal-points.pdf.
[4] United Nations Human Rights Office of the High Commissioner (UNOHCHR), n.d. *View the ratification status by country or by treaty*, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx; United Nations Treaty Collection (UNTC), 2019. *1. Convention on the Prevention and Punishment of the Crime of Genocide*, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=_en; UNTC, 2019. *8. Arms Trade Treaty*, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&clang=_en; United Nations High Commissioner for Refugees (UNHCR), 2015. *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf; International Committee of the Red Cross (ICRC), n.d. *Treaties, States Parties and Commentaries: Myanmar*, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=MM; International Criminal Court, n.d. *The States Parties to the Rome Statute*, https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#M.

			• ***International Covenant on Economic, Social and Cultural Rights*** [ICESCR] (Ratification/Accession: 2017) • ***Convention on the Elimination of All Forms of Discrimination Against Women*** [CEDAW] (Ratification/Accession: 1997) Myanmar has declared reservations against parts of CEDAW and the ***Geneva Conventions*** which give foreign courts and tribunals jurisdiction over domestic courts.[5]
	Sign and ratify the Rome Statute of the International Criminal Court and cooperate fully with the Court.	Very Weak	Myanmar has neither signed nor ratified the ***Rome Statute of the International Criminal Court***.[6]
	Establish and maintain National Human Rights Institutions in accordance with the Paris Principles.	Weak	Myanmar has a National Human Rights Commission. However, it has not been accredited by the International Coordinating Committee for National Human Rights Institutions as being compliant with the Paris Principles.[7] It currently holds a 'B' rating according to GANHRI.[8]
	Ensure domestic promotion and protection of human rights, focusing on the elimination of discrimination.	Very Weak	Myanmar has been primarily governed through military rule and characterized by recurrent ethnic and religious tensions and violence, resulting in the death of thousands of civilians.[9] Numerous human rights organisations have documented human rights violations in ethnic minority areas affected by conflict; restrictions on freedoms of speech, and abuses against and restrictions on members of the Rohingya population.[10] Muslim minorities – particularly the ethnic Rohingya – have been subject to systematic rights violations, including denial of rights to freedom of movement and religion, and restricted access to healthcare and education.[11] Discrimination of the Rohingya is codified under the 1982 *Citizenship Law*, which denies the group citizenship.[12] The 'Protection of Race and Religion' bills were introduced in 2015, which imposed significant restrictions on the religious freedoms, reproductive rights, and marital rights of women and non-Buddhists, particularly the Rohingya. The *Population Control Healthcare Bill*, for example, discriminates against the reproductive

[5] UNOHCHR, 2014. *Status of Ratification Interactive Dashboard*, http://indicators.ohchr.org/.
[6] International Criminal Court, n.d. *The States Parties to the Rome Statute*, https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#M.
[7] Human Rights in ASEAN, 2013. *Myanmar*, https://humanrightsinasean.info/myanmar/rule-law-human- rights.html.
[8] Global Alliance of National Human Rights Institutions (GANHRI), 2018. *Chart of the Status of National Institutions*, p. 9, https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20Chart.pdf.
[9] Azeem, Ibrahim. 2016. *The Rohingyas: Inside Myanmar's Hidden Genocide.* London: C. Hurst and Co., p. 35; Bellamy, Alex. 2017. 'At the Crossroads: Myanmar'. In *East Asia's Other Miracle: Explaining the Decline of Mass Atrocities*. Oxford University Press, pp. 236-266.
[10] Amnesty International, 2017. *Annual Report: Myanmar 2016/2017*. https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/; Human Rights Watch (HRW), 2000. *Discrimination in Arakan*, https://www.hrw.org/reports/2000/burma/burm005-02.htm; U.S. Department of State, 2016. *Burma 2016 Human Rights Report*, https://www.state.gov/documents/organization/265536.pdf.
[11] Kingston, Lindsey N., 2015. 'Protecting the World's Most Persecuted: The Responsibility to Protect and Burma's Rohingya Minority'. *The International Journal of Human Rights*, vol. 19, no. 8, p. 1167.
[12] For more detailed information regarding the 1982 Citizenship Law and the denial of citizenship to Rohingyas see HRW, 2000. *Discrimination in Arakan*.

			rights of Rohingya.[13] Government restrictions also obstruct the capacity of the Rohingya to construct houses or religious buildings, and special permission from local authorities is required for the Rohingya population to marry.[14] The Myanmar government denied the Rohingya the capacity to self-identify on the 2014 consensus.[15] Additionally, the government invalidated the legal identity documents of the majority of Rohingya in 2015, which had previously provided temporary legal status. In 2013, the government instigated the "Rakhine State Action Plan" which, following the internal displacement of a considerable number of Rohingya in 2012, aimed to permanently relocate and segregate such persons.[16]
	Participate in international peer review processes, including the Universal Periodic Review (UPR) of the UN Human Rights Council.	Fair	Myanmar has participated in the UPR at both the 2011 and 2015 sessions. In response to the 197 recommendations proposed in 2011, Myanmar accepted 77 recommendations and rejected 95. In addition, 12 recommendations had no definitive response and a further 13 continued to be pending. The recommendations rejected included those proposing the ratification of key international human rights instruments, repealing Myanmar's laws regarding freedom of the press and assembly and discrimination against the ethnic Rohingya population. Also rejected were those recommendations allowing humanitarian organizations and the UN Special Rapporteur access to regions of crisis, releasing political prisoners, and other areas relating to human rights abuses and instituting processes of democratization.[17] The 2nd UPR conducted in 2015 showed Myanmar having a total of 489 recommendations for all sessions, with 213 of these being accepted. Many of the recommendations noted but not accepted related to issues such as the ratification of the core international human rights instruments, the abolition of the death penalty, and addressing the discriminatory practices against the Rohingya population.[18] Myanmar currently has two overdue reports.[19]
	Cooperate fully with UN Human Rights mandate holders and those of relevant regional organisations.	Very Weak	Myanmar has not extended a standing invitation to UN Special Procedures. Most of the reports from Special Rapporteurs on Myanmar have been completed (and date back to 2001). However,

[13] HRW, 2015. *Burma: Reject Discriminatory Population Bill*, https://www.hrw.org/news/2015/05/16/burma- reject-discriminatory-population-bill; U.S. Department of State, 2016. *Atrocities Prevention Report*, https://www.state.gov/j/drl/rls/254807.htm.

[14] Ibid.

[15] GCR2P, 2018. *Myanmar (Burma)*. http://www.globalr2p.org/regions/myanmar_burma.

[16] HRW, 2014. *Burma: Government Plan Would Segregate Rohingya*, https://www.hrw.org/news/2014/10/03/burma-government-plan-would-segregate-rohingya.

[17] UPR Info., 2011, *1st UPR: MYANMAR. Responses to Recommendation*, https://www.upr-info.org/sites/default/files/document/myanmar/session_10_-_january_2011/recommendationstomyanmar2011.pdf.

[18] UPR Info, 2015. *2nd UPR: MYANMAR. Responses to Recommendations & Voluntary Pledges: Myanmar*, https://www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/recommendations_and_pledges_myanmar_2015.pdf.

[19] UNOHCHR, n.d. *Late and Non-reporting States*, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx.

			reports requested on specific issues, such as discrimination against women, internally displaced persons and extrajudicial killings remain unfulfilled.[20]
	Ensure equal access to justice.	Very Weak	Despite the codification of judicial independence under the constitution,[21] numerous reports demonstrate that the separation between powers and an independent judiciary is weak in practice. The Special Rapporteur on the situation of human rights in Myanmar noted, in 2016, that there is significant control exercised by the executive over the judiciary, and evidence of widespread corruption. While the government has stated an aim to strengthen the judiciary through its adoption of a *Strategic Plan* (2015-2017), further reforms are needed to guarantee the independence of the judiciary.[22] Access to judicial institutions for women and girls remains limited, particularly with regards to violence committed in armed conflict. Sexual violence has frequently accompanied the civil conflict in Myanmar, being perpetrated by state security services and, in certain instances, by armed non-state groups.[23] There is lack of accountability on the part of the security services and there is no institutionalized complaint mechanism for victims to find readdress through legal means. In its concluding observations in 2016, the Committee on the Elimination of Discrimination against Women noted its concern for the limited access to legal aid and justice for women in Myanmar.[24] Myanmar's Rohingya community is denied access to the legal system.
	Criminalise incitement to commit genocide, war crimes, ethnic cleansing and crimes against humanity.	Very Weak	While Myanmar has ratified the ***Convention on the Prevention and Punishment of the Crime of Genocide*** and the ***Geneva Conventions***, no specific reference to acts such as genocide, ethnic cleansing or war crimes could be located within relevant legislation. Under President Thein Sein the government failed to effectively prevent or investigate the 2012 perpetration of mass atrocities against Myanmar's ethnic Rohingya population by Buddhist mobs, which included acts of systematic rape, forced displacement, murder, torture, and the burning of villages. Furthermore,

[20] UNOHCHR, n.d. *View Country visits of Special Procedures of the Human Rights Council since 1998*, https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=MMR.
[21] Chapters 4, 5, and 6 concern the separation of powers between the legislature, judiciary, and executive. Republic of the Union of Myanmar. Ministry of Information. *Constitution of the Republic of the Union of Myanmar (2008), Chapters 4-6.* Nay Pyi Taw, 2008.
[22] United Nations, Human Rights Council (HRC), Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, 18 March 2016, A/HRC/31/71, p. 4-5.
[23] Cf. HRW, 2016. *"The Farmer Becomes the Criminal" Human Rights and Land Confiscation in Karen State'*, https://www.hrw.org/report/2016/11/03/farmer-becomes-criminal/human-rights-and-land-confiscation-karen- state; U.S. Department of State, *Burma 2016 Human Rights Report*.
[24] United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Myanmar, 25 July 2016, CEDAW/C/MMR/CO4-5, p.5.

			state security forces, including the local police, the army, the Nasaka border control, and the Lon Thein riot police, have been implicated in the active perpetration of atrocity crimes and impeding investigations into such crimes. Such obstruction has notably included the disposal of bodies and the construction of mass graves. This violence resulted in the deaths of approximately 280 people in 2012 and the displacement of 140, 000 in the period thereafter.[25] Amnesty International noted in its 2011 submission to the Universal Periodic Review that Article 445 of the 2008 Constitution of the Republic of the Union of Myanmar could provide legal immunity to state officials that have perpetrated human rights violations. As Article 445 states, "…no proceeding shall be instituted against the said Councils [State Law and Order Restoration Council and the State Peace and Development Council] or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties."[26] The perpetration of atrocities against Myanmar's Muslim minority and the impunity of the security services has continued.[27] As of the 14th of September 2017, Amnesty International has found that 80 sites (including villages such as Chein Khar Li, Maundaw Township and Inn Din) have been set ablaze in an orchestrated campaign since the 25th of August. In this three-week period approximately 370,000 Rohingya people have fled their homes. These planned and systematic attacks by the Myanmar military have since been labelled by human rights organisations as potential acts of ethnic cleansing or genocide.[28] The government has committed to instituting an investigation but shows little sign of holding offenders to account.
	Take measures to counter and prevent violent extremism.	Very Weak	Myanmar has seen almost continual low intensity conflict within its borders since independence. A variety of ethnic and religious-based guerrilla groups have waged war against the state and the predominantly Buddhist population in a quest for self-determination and greater autonomy.[29] The government's response has been emphatic, launching operations to destroy the insurgents and anything that could support them. This uncompromising military approach coupled with a

[25] Kingston, Lindsey N., 2015. p. 1169; HRW, 2013. *"All You Can Do is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State",* https://www.hrw.org/report/2013/04/22/all- you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims.

[26] Amnesty International, 2011. *Myanmar: Amnesty International Submission to the UN Universal Periodic Review*, http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/AI_AmnestyInternational_eng.pdf.

[27] GCR2P, 2018. *Myanmar (Burma)*. http://www.globalr2p.org/regions/myanmar_burma.

[28] Amnesty International, 2017. *Myanmar: Scorched-earth campaign fuels ethnic cleansing of Rohingya from Rakhine State*, https://www.amnesty.org/en/latest/news/2017/09/myanmar-scorched-earth-campaign-fuels- ethnic-cleansing-of-rohingya-from-rakhine-state/.

[29] For more information, visit: Counter Extremism Project, 2019. *Myanmar (Burma): Extremism & Counter-Extremism*, https://www.counterextremism.com/countries/myanmar.

			lack of political and diplomatic will in confronting the source of the conflicts does little to alleviate the various insurgencies in the long term. It is entirely possible that Myanmar's approach could be fuelling further violent extremism against the state, rather than effectively preventing it.[30]
	Enact and implement laws protecting vulnerable groups, particularly in relation to sexual and gender-based violence.	Very Weak	The *Penal Code* of Myanmar provides a restrictive definition of what constitutes rape, limiting the crime to only those acts of penile penetration. Similarly, under Section 375, the crime of marital rape is only applicable to married women under 13 years of age.[31] Myanmar law fails to provide adequate legal protection for women in compliance with CEDAW. There is a lack of specific legislation against domestic violence and no constitutional prohibition regarding discrimination against women.[32] There is no comprehensive law guaranteeing protection against forced displacement, or programs focusing on women who are vulnerable to forced evictions, such as those in the Rohingya minority.[33] In 2016, the CEDAW committee expressed particular concern at the continuing sexual violence perpetrated by the military and armed groups.[34] The situation has worsened in 2017 with many reports of the military carrying out rapes and gang rapes of Rohingya women during the security crackdown in September.[35] In a recent joint statement from CEDAW and the CRC on 4 October 2017, the committees recalled their previous statements and reiterated the situation of Rohingya women and children in northern Rakhine state is exacerbated by the implementation of the discriminatory 1982 *Citizenship Law*. The law unduly deprives the Rohingya of nationality and effectively renders them stateless. The statement also notes that sexual violence committed against Rohingya people may amount to crimes against humanity and need to be investigated as such.[36]
	Protect individuals and groups fleeing atrocity crimes and their risk, in accordance with International Refugee Law.	Very Weak	Myanmar has neither signed nor ratified the ***1951 Refugee Convention*** or the ***1967 Protocol***. It has been a large source country for refugees for much of its independence.[37] Its treatment of Rohingya refugees and other displaced civilian populations,

[30] Prasad Routray, Bibhu, 2017. *Countering Violent Extremism in Myanmar*, p. 2, http://mantraya.org/wp-content/uploads/2017/08/Countering-Violent-Extremism-in-Myanmar-_-Mantraya.pdf.
[31] United Nations Women, 2016. *Gender Equality and Women's Rights in Myanmar: A Situation Analysis*, p. 142, http://www2.unwomen.org/-/media/field%20office%20eseasia/images/2016/09/myanmar-gender-situation-analysis_web-ready_15.pdf?vs=232.
[32] Ibid., p. 147.
[33] UN CEDAW, CEDAW/C/MMR/CO4-5, p. 4.
[34] Ibid., p. 7-8.
[35] HRW, 2017. *Crimes against Humanity by Burmese Security Forces Against the Rohingya Muslim Population in Northern Rakhine State since August 25, 2017*, https://www.hrw.org/news/2017/09/25/crimes-against-humanity-burmese-security-forces-against-rohingya-muslim-population.
[36] UNOHCHR, 2017. *Joint Statement of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) on the situation of Rohingya women and children in Myanmar*, http://www.ohchr.org/Documents/HRBodies/CEDAW/JointStatement_CEDAW_CRC_Myanmar.pdf.
[37] Refugee Council of Australia, 2017. *Key issues for refugees from Myanmar (Burma)*, https://www.refugeecouncil.org.au/myanmar-burma/.

			the result of decades-long conflict with insurgency groups, shows little regard for the plight of refugees.
Domestic Implementation	Conduct a national assessment of risk and resilience.	Very Weak	Myanmar has not undertaken a national assessment of risk and resilience using the framework for the prevention of genocide.
	Cultivate and protect an active, diverse and robust civil society.	Weak	Article 354 of the constitution states that all citizens have the right to "(a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; (c) to form associations and organizations; (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths".[38] However, Article 354 is ambiguous and contradictory in specifying that citizens can only exercise such rights "…if not contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality".[39] The level of freedom in Myanmar, in terms of political rights and civil liberties, was categorised by Freedom House in 2018 to be 'partly free', whilst press freedom was considered 'not free'.[40] Although the systematic state censorship of traditional media platforms was removed in the incipient states of Myanmar's reform process in 2012, various laws and practices continue to inhibit press freedom. This trend has continued despite the election of the National League for Democracy. This is particularly evident in the censorship regarding the violence in Rakhine state, which is tightly controlled by the military and the government. Journalists have been subject to violence and intimidation when reporting on the actions of security forces. There has been an increase in the prosecution of online users under Section 66(d) of the 2013 *Telecommunications Law* for purportedly insulting or defaming the military, the president, or State Councillor Aung San Suu Kyi.[41] There have also been incidents of activists being convicted under Section 505 of the *Penal Code* for purportedly defaming the military by accusing it of committing human rights violations.[42] Reporters Without Borders have designated Myanmar as ranked 137 out of 180 countries on the 2018 World Press Freedom Index.[43] Civil society is given next to no room to act or develop. In 2016, the Special Rapporteur on the situation of human rights in Myanmar noted their concern about the application of legal provisions (both historic and recently enacted) that lead to the

[38] Asian Legal Information Institute, n.d. *Constitution of the Republic of the Union of Myanmar (2008)*, p. 150, http://www.asianlii.org/mm/legis/laws/cotrotuom2008ev723/.
[39] Ibid.
[40] Freedom House, 2018. *Freedom in the World 2018: Myanmar Profile*, https://freedomhouse.org/report/freedom-world/2018/myanmar.
[41] Ibid.; HRW, 2017. *World Report 2017: Events of 2016*, p.151-153.
[42] HRW, 2017. *World Report 2017: Events of 2016*, p. 153.
[43] Reporters Without Borders, 2018. *Myanmar*, https://rsf.org/en/myanmar.

			arrest, prosecution and conviction of civil society actors, journalists and human rights defenders.[44] Such provisions include: • Section 18 of the 2011 *Peaceful Assembly and Peaceful Procession Law* (as amended in 2014); • Sections 143, 145, 146, 147, 500 and 505(b) of the *Penal Code*; • Section 17(1) of the *Unlawful Associations Act*; • the *Official Secrets Act*; and • Section 66(d) of the *Telecommunications Act*.
	Ensure a legitimate, effective and civilian controlled security sector.	Very Weak	Under the 2008 constitution, the military is ensured autonomy from civilian oversight and the retention of significant power over government and national security. This includes control of Defence, Home Affairs, and Border Affairs Ministries, as well as a constitutionally guaranteed 25 percent of parliamentary seats and the authorization to assume power in a state of emergency.[45]
	Ensure the education system reflects the ethnic, national and cultural diversity of society, and sets examples of inclusiveness.	Very Weak	Little information could be located regarding the implementation of human rights into the education system. It was noted in the government's 2015 submission to the UPR that Myanmar had been implementing a free, inclusive and universal primary education programme.[46] However, there remains significant restrictions that limit minorities, such as Rohingya, attending or completing school.[47] Moreover, there continues to be barriers inhibiting gender equality in education, such as discriminatory admissions criteria for women to enrol in traditionally male-dominated courses, discriminatory stereotypes, and budgetary issues.[48] With the transition into democracy over the past few years, the possibility of more mother-tongue based education is being discussed. While it is still at early stages, there has been progress predominantly in the Mon, Karen, and Kachin States.[49] Additionally, The *National Education Law* (2014) recognises that early childhood education is more effective when taught in the child's mother tongue and that there should be freedom of practice of ethnic languages.[50]
	Prevent nationals committing atrocity crimes overseas.	Weak	Myanmar is not a signatory to the ***Rome Statute***, as already mentioned.

[44] UN HRC, A/HRC/31/71, p. 5.
[45] HRW, 2017. *World Report 2017: Events of 2016*, p. 147, https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf; Republic of the Union of Myanmar. Ministry of Information. *Constitution of the Republic of the Union of Myanmar (2008), Chapter 4, Article 109 (b); Chapter 5, Article 232(b)(ii) 4-6*. Nay Pyi Taw, 2008.
[46] United Nations, Human Rights Council (HRC), Report of the Working Group on the Universal Periodic Review, 23 December 2015, A/HRC/31/13, p. 11.
[47] HRW, 2013. *"All You Can Do is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State".*
[48] UN CEDAW, CEDAW/C/MMR/CO4-5, p. 11.
[49] South, Ashley and Lall, Marie. 2016. *Schooling and Conflict: Ethnic Education and Mother Tongue-based Teaching in Myanmar*, http://www.burmalibrary.org/docs21/AF-2016-02-22-SchoolingConflict-en-red.pdf.
[50] International Labour Organisation (ILO), 2014. *Myanmar (3) > Education, vocational guidance and training*, http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100493&p_count=3&p_classification=09.

			Furthermore, while the *Penal Code* allows for citizens to be liable for crimes outside of Myanmar's borders, no specific references to atrocity crimes could be located within relevant legislation.
Bilateral and Multilateral Relations	Participate in international, regional, and national discussions on the further advancement of R2P.	Fair	Myanmar has participated in the Informal Interactive Dialogues on R2P at the UN General Assembly in 2009, 2014, 2015 and 2017. While noting its support for the core objective of preventing mass atrocities, Myanmar has emphasised non-intervention and the paramount integrity of state sovereignty.[51] Myanmar was amongst the 17 states who voting in favour of the Venezuelan amendment against R2P.[52]
	Leverage existing mechanisms and institutions (including regional and sub-regional organisations) to encourage States to fulfil their responsibility to protect.	Very Weak	**UN General Assembly Resolutions**[53] Myanmar has voted on the following resolutions that have referenced R2P as below. • 2013: The situation in the Syrian Arab Republic A/RES/67/262: **abstained**. • 2014: Situation of human rights in the Democratic People's Republic of Korea A/RES/69/188: **no** • 2014: Situation of human rights in the Syrian Arab Republic A/RES/69/189: **no** • 2015: Situation of human rights in the Democratic People's Republic of Korea A/RES/70/172: **no** • 2015: Situation of human rights in the Syrian Arab Republic A/RES/70/234: **abstained** • 2016: The situation in the Syrian Arab Republic A/RES/71/130: **abstained** • 2016: Situation of human rights in the Syrian Arab Republic A/RES/71/203: **abstained** • 2017: Situation of human rights in the Democratic People's Republic of Korea A/RES/72/188: **adopted without vote** • 2017: Situation of human rights in the Syrian Arab Republic A/RES/72/191: **no** At the 34th session of the Human Rights Council in March 2017, the Special Rapporteur on the situation of human rights in Myanmar "…called for a Commission of Inquiry to investigate the systematic, structural, and institutional discrimination in policy, law and practice, as well long-standing persecution, against the Rohingya and

[51] For a summary of these statements, follow the links on this page: GCR2P, 2016. S*ummary of UN General Assembly Debates and Interactive Dialogues on R2P*, http://www.globalr2p.org/resources/897.
[52] Cf. Serrano, Mónica, 2011. 'The Responsibility to Protect – True consensus, false controversy'. *Development Dialogue,* No. 55, March 2011, p. 110.
[53] GCR2P, 2017. *UN General Assembly Resolutions Referencing R2P*, http://www.globalr2p.org/resources/1133. (Voting records for UN General Assembly Resolutions can be found at: http://www.un.org/en/ga/documents/voting.asp).

			other minorities in Rakhine State."[54] Myanmar was strongly opposed to any such international inquiry proposed by the Special Rapporteur.[55]
	Encourage and assist States to fulfil their R2P in situations of emerging and ongoing crisis, such as good offices and preventive diplomacy.	Very Weak	Little evidence has been found to say Myanmar has invested in either its own, the UN's or regional organisations' diplomatic capabilities in crisis situations.
	Strengthen regional and international networks for atrocity crime prevention.	Very Weak	There is little evidence that Myanmar has actively worked to strengthen any networks for the benefit of atrocity crime prevention.
	Strengthen the role and capacity of regional organisations.	Very Weak	Myanmar has done little to strengthen capacities. Their membership of ASEAN has been plagued with antagonistic relations with the other member states as they raise objections about the state of human rights in the country. When Myanmar assumed the chair of ASEAN in 2014, their tenure was more about continuing the current momentum instead of promoting innovation.[56]
	Support the development and work of regional human rights and other preventive capacities.	Very Weak	Myanmar's recalcitrance on improving human rights or addressing the Rohingya issue in defiance of ASEAN and global criticism illustrates there is little political will to develop human rights capacities.
	Support atrocity prevention through development and assistance partnerships.	Very Weak	No evidence found.
United Nations, prevention, Peacekeeping, and assistance	Support the early warning and capacity building efforts of the UN Office on Genocide Prevention and R2P.	Very Weak	There is no specific reference to "early warning" mechanisms within Myanmar's statements at the interactive dialogues. Myanmar has participated in various events facilitated by or involving the Joint Office.
	Support the strengthening of the UN's capacity for atrocity prevention, including through the UN Human Rights system.	Very Weak	Apart from vague support for R2P at several international fora, Myanmar has made little concrete effort to increase capacity for atrocity prevention.
	Support preventive actions on atrocity crimes.	Very Weak	No evidence of support offered.
	Contribute to United Nations peacekeeping operations (especially those with a protection of civilians mandate).	Very Weak	In 2014, UN Special Advisor on Myanmar, Vijay Nambiar, extended an invitation for the Myanmar armed forces, or the Tatmadaw, to contribute to UN peacekeeping operations.[57] Between August 2015 and December 2016, Myanmar provided limited numbers of contingent troops and experts on mission to both the United Nations Mission in Liberia (UNMIL) and the United Nations Mission in the Republic of South Sudan (UNMISS).[58]
	Develop the capacities needed to support civilian protection,	Weak	In 2016, Officers of the Tatmadaw, in conjunction with the Australian Defence Force, participated in a

[54] UNOHCHR, 2017. *Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 34th Session of the Human Rights Council*, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21355&LangID=E.

[55] UNOHCHR, 2017. *Human Rights Council Holds Interactive Dialogue on the Human Rights Situation in Myanmar*, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21363&LangID=E.

[56] For more information, see: Thuzar, Moe, 2017. 'ASEAN and Myanmar – past, present and future'. *Myanmar Times*, 8 August. Available at: https://www.mmtimes.com/asean-focus/27162-asean-and-myanmar-past-present-and-future.html; Alden, Chris, 2010. *'A Pariah in our Midst': Regional Organisations and the Problematic of Western-designated pariah regimes – The Cases of SADC/Zimbabew and ASEAN/Myanmar*, p. 9-13, http://eprints.lse.ac.uk/28468/1/WP73.2.pdf.

[57] HRW, 2014. *Letter to the Secretary General Ban Ki-Moon Re: Burma's Military and UN Peacekeeping*, https://www.hrw.org/news/2014/03/13/letter-secretary-general-ban-ki-moon-re-burmas-military-and-un- peacekeeping.

[58] Martov, Seamus. 2016. 'Burma Army Troops Serving as UN Peacekeepers in Liberia and South Sudan'. *THE IRRAWADDY*. 1 October. Available at: https://reliefweb.int/report/liberia/burma-army-troops-serving-un-peacekeepers-liberia-and-south-sudan; United Nations Peacekeeping, 2018. *Troop and Police Contributors*, https://peacekeeping.un.org/en/troop-and- police-contributors.

	including through the training of military and civilian personnel for peacekeeping.		United Nations Peacekeeping Training Course in Myanmar.[59]
	Support the Kigali Principles.	Very Weak	Myanmar does not support the Kigali Principles on the Protection of Civilians.[60]
	Support UN Security Council veto restraint on issues relating to atrocity prevention.	Very Weak	Myanmar is not a signatory to the Code of Conduct on Security Council action in cases of mass atrocities.[61] Furthermore, it has not signed the French/Mexican initiative on veto restraint.[62]

[59] Republic of Myanmar, Ministry of Information, 2016. *Myanmar-Australia UN Peacekeeping Training Programme Opened*, http://www.moi.gov.mm/moi:eng/?q=news/9/08/2016/id-8058.
[60] Asia Pacific Centre for the Responsibility to Protect (APR2P), 2018. *The Kigali Principles on the Protection of Civilians*, https://r2pasiapacific.org/files/2942/2018_kigali_principles.pdf.
[61] GCR2P, 2017. *List of Signatories to the ACT Code of Conduct*, http://www.globalr2p.org/media/files/2017- 01-25-coc-list-of-supporters.pdf.
[62] GCR2P, 2016. *Support to the French Mexican initiative on veto restraint in case of mass atrocities*, http://www.globalr2p.org/media/files/veto-list.pdf.