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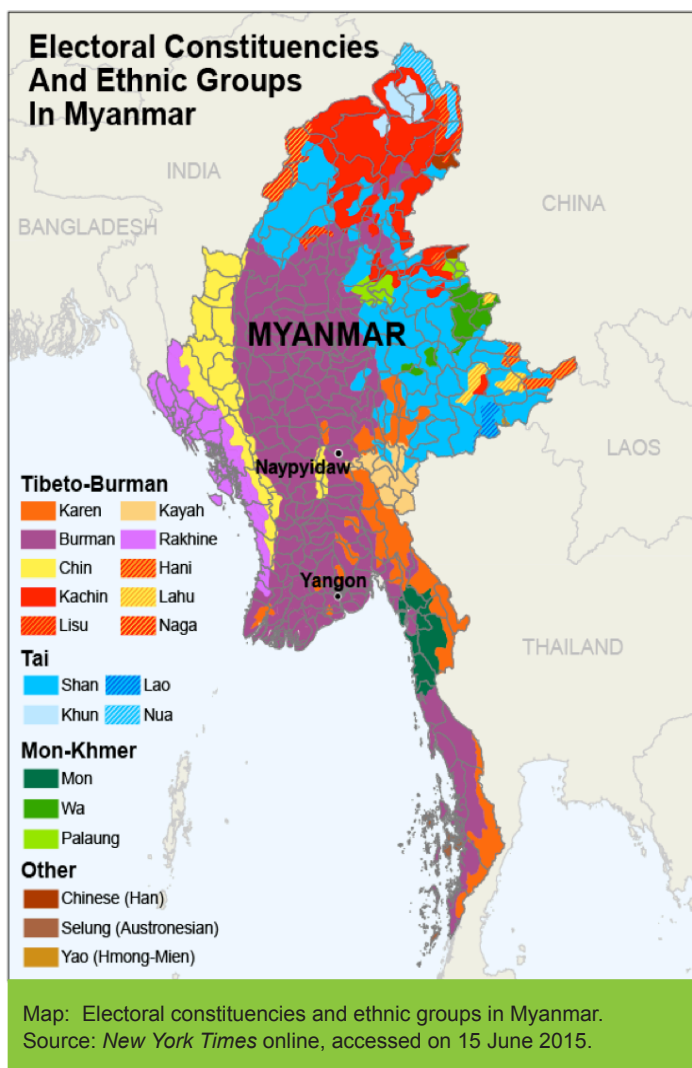
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SPOTLIGHT ON R2P

Preventing Election Violence in Myanmar: Challenges and Prospects



Myanmar will hold its first general elections on 8 November this year under a parliamentary government that took over from the military junta in 2010 and within the 2008 constitutional framework written by the military.

This year's elections are significant in a number of ways:

1. for the first time, the popular National League for Democracy (NLD) of Aung San Suu Kyi is expected to participate in this political exercise throughout the country since its landslide but aborted victory in the 1990 elections;
2. it will take place amidst growing international concerns about the plight of the Rohingyas in Rakhine state; and
3. it will be held while there is intensifying fighting and precarious peace negotiations are ongoing between the government and various armed rebel groups in the country.

It is against this backdrop that this article attempts to examine the risk factors, challenges and prospects of election violence in Myanmar using R2P as a lens.

In order to mitigate the risk factors in relation to the prevention pillar of R2P as spelled out in the UN Secretary General's R2P Report



Australian Government
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agents, accountable for their actions.

Elections in Burma/Myanmar since Independence

Burma has had very limited experience in civilian-led democratic rule since its independence in 1947. Elections were first held in 1951 under the 1947 Constitution, followed by another one in 1956. However, political instability and violence marked the country's efforts in post-independence democratic governance inasmuch as the central government remained weak amidst continuing armed rebellions in Burma. In 1958, General Ne Win staged a coup in an effort to restore peace and order in the country, and elections were held in 1960 that returned power to the civilian government. This did not last long, however, as the military seized power once again in 1962, abolished the 1947 constitution, and set up a revolutionary council headed by General Ne Win. From then on, all political parties were banned throughout Burma even as the military set up a one-party state in 1974 under the Burma Socialist Programme Party (BSPP) of General Ne Win. Though elections were held in the country in 1978, 1981, and 1985, these were Soviet-style exercises that simply affirmed the rule of the military under BSPP.¹

The economic crisis of 1987 that culminated in the 8 August 1988 nation-wide student protests in Burma created further political instability that led to the ouster of General Ne Win in an army coup in September of the same year. The military abolished the 1974 constitution, placed the country under martial law, even as the State Law and Order Restoration Council (SLORC) promised to hold general elections in the future. Subsequently, the SLORC changed the name of the country from Burma to Myanmar in 1989. On 27 May 1990, while the country was still under martial law, general elections

in 2013, ASEAN should encourage the Myanmar government to:

- Take seriously its Responsibility to Protect by ensuring that the conduct of the general elections is peaceful, free, fair, credible, and transparent;
- Allow ASEAN and other independent international election monitors to visit the country well ahead of the Myanmar elections to observe and report on election-related situations affecting Muslim populations and other ethnic

minority groups in the country;

- Ensure the protection of minority populations in the country and desist from adopting legislation contrary to this goal;
- Seriously consider amending the 1982 Citizenship Law to provide minority groups in the country equal access to citizenship;
- Work vigorously to prevent and contain hate speech and propaganda against minority groups in the country; and
- Hold perpetrators of violence, including government

were held with the participation of no less than 93 political parties, including Suu Kyi's NLD and the military's National Unity Party (NUP, which is the reformed BSPP). With more than 72 percent voter turnout, the NLD won close to 60 percent of votes cast that enabled it to take more than 80 percent of seats in parliament. The NUP won 21 percent of votes that translated only to 2 percent of seats in the legislature. The military refused to hand over power to the NLD and Suu Kyi remained under house arrest² despite her party's landslide victory in the elections.³

From the 1993, the military junta focused on drafting the country's constitution that was part of the "roadmap to democracy" in Myanmar, which became a precondition for its admission into the Association of Southeast Asian Nations (ASEAN) in 1997. In 2008, immediately after Cyclone Nargis hit the country, a national referendum was held on a new constitution that was primarily written by the junta. The military claimed that it was overwhelmingly (more than 90 percent) approved for adoption. The new constitution designed a bicameral national legislature and 14 regional assemblies that allocated 25 percent of seats to appointed military representatives. Elections were held in November 2010 that saw the military-backed Union Solidarity and Development Party (USDP) winning 80 percent of lower house seats, 77 percent of upper house seats, and 75 percent of state or regional assemblies. Although the 2010 elections were considered generally peaceful, opposition parties alleged widespread fraud. For example, they claimed that the manipulation of election results included over 6 million ballots cast in advanced voting that were not conducted in a transparent manner.⁴ The NLD did not participate in the 2010 elections as Suu Kyi was still under house arrest. However, in April 2012, a by-election was held to fill seats in the legislature that were vacated by members of parliament who were

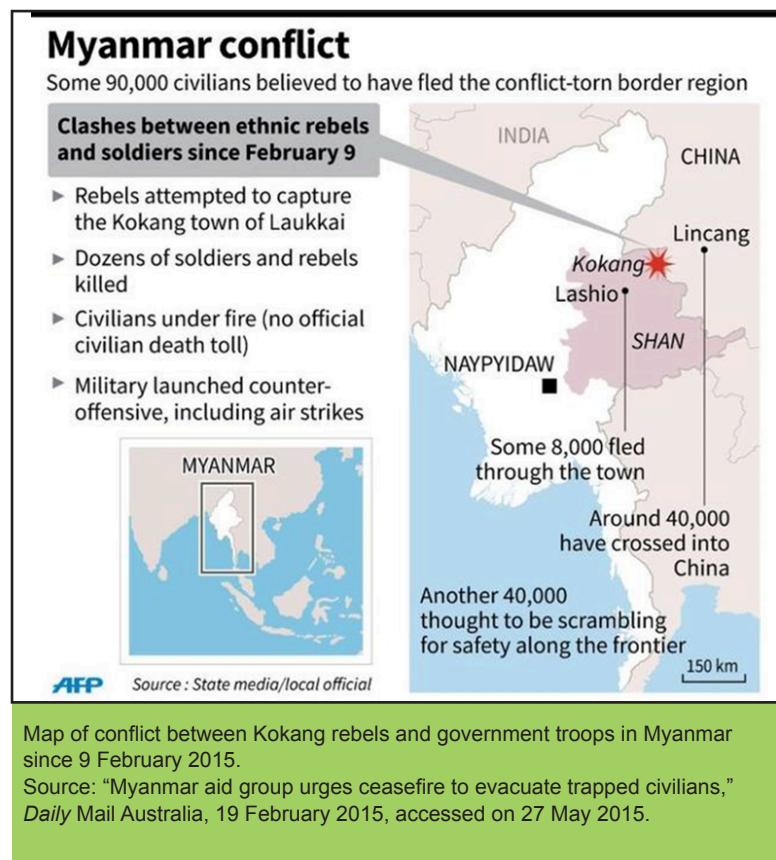
appointed in cabinet positions by President Thein Sein. With the abolition of laws that previously barred them from participating, Suu Kyi and her NLD party took part in the by-elections and won 43 of the 45 seats in parliament, making her party the largest opposition group in the national parliament.

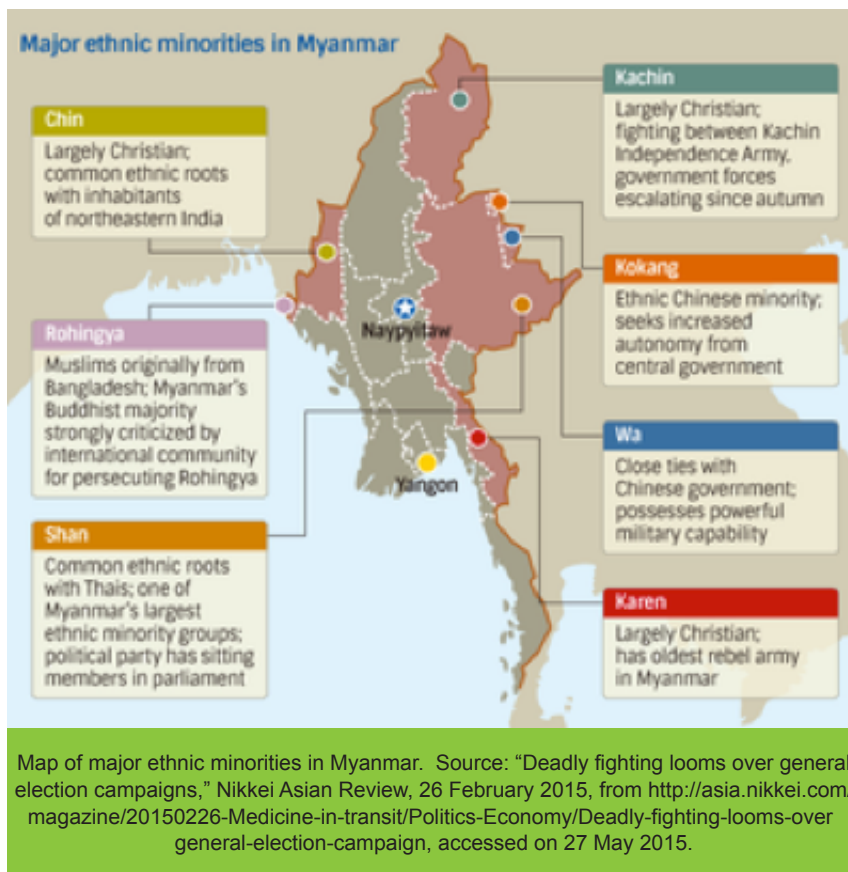
Legal Framework

There are 224 upper house seats and 440 lower house seats up for grabs in the November elections for Myanmar's Union Assembly or national parliament, which also serves as the electoral college that will choose the country's president. Members of the Union Assembly, who serve a term of five years, will nominate three candidates for president who need not come from the parliament. The winning candidate is proclaimed as president and forms his/her cabinet, while the two unsuccessful nominees automatically become vice presidents. The 2008 constitution effectively bars Suu Kyi from being nominated as president as it prohibits anyone who has a spouse or children with foreign citizenship from becoming president. The NLD, which has

been pushing for significant amendments to the constitution since 2014, and has failed in its efforts in lifting the constitutional ban on Suu Kyi running for the highest position given the high threshold that must be met—75 percent of votes of all members of parliament—for amendments to pass.⁵ On 25 June, the national parliament blocked the proposed amendments to the constitution, which ensured the military's continuing dominance in the legislature. In the event, a national referendum on constitutional amendments must take place before November and, if approved, they will only become effective after the term of the next parliament.

Overseeing the administration of elections in Myanmar is the Union Election Commission (UEC), which is composed of 16 members. Eight members of the commission are from the majority ethnic Burman Buddhists, while the rest are from the recognized national ethnic minority groups. Thus far, the UEC has focused on the following efforts to ensure peaceful and orderly conduct of elections in the country: 1) updating and digitizing voter registration; 2)





conducted consultations with civil society groups and international electoral support organizations; 3) amendment to electoral rules, such as making advance voting more transparent and for votes to be counted at the close of the election day; and 4) willingness to allow international observers.⁶ A code of conduct for election observers was released in March this year and accredited international observers include the Carter Centre in the United States and the European Union (EU). The Asian Network for Free Elections (ANFREL) is also likely to be accredited as election observer.⁷

Preventing Election Violence: Challenges and Prospects

There are credible risks of election violence in Myanmar. This will be affected by election administration, security, and the credibility of the results. Ensuring inclusiveness in election participation by voters is a major concern. Specifically, many voters do not have identity cards that would enable them to register and cast their votes. This is particularly the case for

half a million Muslims in Rakhine state and some 100,000 people of Chinese and Indian descent throughout Myanmar whose temporary registration certificates have been invalidated by the government. Some 100,000 Kachin people who have been internally displaced and are now living in camps in Kachin and northern Shan states might also be disenfranchised as they may not be able to register and vote. Moreover, the estimated 1.3 million Rohingyas in Myanmar who have been denied citizenship under a 1982 law are already disenfranchised as their white card privileges revoked in March this year to appease Buddhists in Rakhine.⁸ Earlier in February, the national parliament passed a constitutional amendment that allowed white card holders or temporary citizens the right to vote in a national referendum slated by end of the year, although there were protests against it from the Buddhist community in Rakhine.⁹ (It is significant to note that in the run-up to the 2010 elections, the military reportedly issued an unknown number of new white

cards to non-permanent citizens including the Rohingya Muslims that enabled them to participate in the previous elections.¹⁰) The central government recently issued green cards to some 400,000 Muslim Rohingyas in 13 townships in Rakhine after they surrendered their white cards. The new identity cards, which are valid for two years, would allow these Rohingyas to stay legally in Myanmar and apply for citizenship later on.¹¹

The elections in November will also take place in the context of continuing armed conflicts and fragile peace process in Myanmar. The major conflict-affected areas are in Kokang, northern Shan, and Kachin state where fighting between armed rebel groups and government forces have intensified this year notwithstanding attempts by the Myanmar authorities to forge a national ceasefire agreement with these rebel groups. Without a stable ceasefire agreement, access to these areas will be quite difficult and it will be hard to ensure the peaceful and orderly conduct of elections there. This could also disenfranchise a number of internally displaced ethnic minority groups. As well, tensions in these areas could be exacerbated in the run-up to and during the elections especially where there is an almost equal mix of ethnic constituencies, such as those in Shao-Pan and Shan-Kachin. It is also likely that election violence could occur in conflict areas where competing parties have links with armed groups, which reportedly use pressure and other forms intimidation including violence towards political parties and voters. As well, it is possible for armed rebels to use violence in conflict areas to disrupt the conduct of elections.¹² Thus, the sooner a national ceasefire agreement takes effect between the central government and armed rebels the more likely that security and confidence in the conduct of elections can be ensured.

The credibility of the results of



Buddhist monks holding banners protesting a law that grants voting rights to white card holders in Myanmar. Source: "Myanmar Authorities Step Up Collection of Temporary Cards," Radio Free Asia, 6 April 2015, from <http://www.rfa.org/english/news/myanmar/authorities-step-up-collection-of-white-cards-04062015152750.html>, accessed 27 May 2015.

the general elections is another important challenge to preventing election violence in Myanmar. Thus far, the UEC appears to be serious in its efforts to administer credible elections throughout the country based on certain rules that it has put in place related to party and voter registration as well as international observer accreditation. However, the election commission faces some capacity-related challenges, particularly in dealing with election irregularities, coordination with regional and local sub-commissions, and voter education on the democratic election process. Security coordination with local and regional police forces is another area of concern that could have an impact on the credibility of the elections. This includes ensuring peace and order in polling places, the safe transporting of ballot boxes, and protecting voters that go to election precincts especially in conflict affected areas.

Disenfranchisement of registered voters due to errors in voters' list could also undermine the credibility of the elections. The UEC over the last two years has been updating and digitizing the list of voters with support from international NGOs.¹⁵ However, media reports from

Myanmar indicate that there are serious complaints by registered voters in Yangon, for example, about inaccuracies in voters' list in several townships. The NLD in particular claimed that more than 80 percent of data in the voters' list made public in 14 Yangon townships were entered incorrectly (e.g. misspelled names or date of birth). Specifically, of the more than 87,000 complaints by voters, more than 48,000 requested their names to be added, 28,000 requested correction of wrong information, and about 11,000 registered objections to names that were considered unsuitable in the voters' lists.¹⁶ In response to these complaints, the election commission claimed that the voters' lists made public were preliminary and that errors normally happen in the process of data entry. Even so, some election officials were reportedly clueless about the discrepancies in the information about registered voters in the lists.¹⁷

The participation of the biggest opposition party, the NLD, in the elections would give legitimacy to the whole exercise given its popularity in major urban centres and even among minority ethnic groups in Myanmar. However, Suu Kyi has stated that boycotting the

elections remains an option for the NLD if a number of proposed amendments to the constitution that her party has been pushing for are not passed.¹⁸ This includes changes to provisions related to the veto power of the military in parliament, the ban on citizens with foreign spouses and children from running for president, and rules on declaring a state of emergency in the country.¹⁹ Although the US has been supportive of Suu Kyi's efforts to push for constitutional reforms in Myanmar as part of continuing democratic transition in the country and ensuring civilian control of institutions, it was careful not to link such changes to the credibility of the general elections in November.²⁰

In view of the foregoing, the post-election prospects for Myanmar remain unpredictable. Assuming that the NLD participates in the November elections and wins a majority of the seats in the national parliament, it remains uncertain whether the military would accept this scenario. It is also possible that conservative elements in the military and its party, the Union Solidarity and Development Party (USDP), would tolerate NLD's dominance in parliament as long as Suu Kyi remained barred from seeking the presidency. At best, she could be elected speaker of the parliament's lower house and her party could support a compromise candidate for president (e.g., the current speaker Shwe Man). Under a worst-case scenario, the military might refuse to recognize the results of elections if the NLD wins a majority of the votes and seats in parliament, which could then lead to widespread public protests (as happened in 1990). A violent crackdown by the military in this scenario would be quite likely.

In the event of a peaceful and orderly transfer of power following the elections, the new government in Myanmar would need to confront a number of challenges to the country's long-term stability. This includes: 1) sustaining democratic reform and transition; 2) promoting

economic development and modernization; 3) peace and conflict prevention; 4) protection of minorities, in particular the Muslim Rohingyas in Rakhine and other Muslim communities in the country (e.g., Mandalay and Meiktila); and 5) containing the influence of Buddhist extremist groups. As a member of ASEAN, the new government should also be more willing to cooperate with its neighbours in dealing with migrant refugees, trafficked persons from Rakhine, and other displaced persons fleeing the conflict area of Myanmar into China, Thailand, Malaysia, and Indonesia.

Responsibility to Protect and Myanmar Elections

Myanmar has supported the principle of Responsibility to Protect (R2P) following its adoption in 2005 in the UN General Assembly. It participated in the 2009 and 2014 interactive dialogues of the General Assembly on R2P where it recognized the importance of the principle and upheld the primary responsibility of states in preventing the four atrocity crimes—genocide, war crimes, ethnic cleansing and crimes against humanity.

In his 2013 report on “Responsibility to Protect: State Responsibility and Prevention,” the UN Secretary General pointed out that countries that are at risk of genocide and other forms of mass atrocities usually have “a history of discrimination or other human rights violations against members of a particular group or population, often on the basis of its ethnic, racial or religious background.”²¹ For example, political discrimination is manifested through “denial of such basic political rights as participation and representation, and freedom of expression, opinion, and association.”²² Social discrimination involves “measures such as denial of citizenship or right to profess a religion or belief, compulsory identification and limitation on basic rights such as marriage and education that target



A Rohingya (aka Bengali) shows his white card. Source: “Winners and Losers of the White Card’s Demise,” The Irrawaddy, 9 March 2015, from <http://www.irrawaddy.org/news-analysis/winners-and-losers-of-the-white-cards-demise.html>, accessed on 27 May 2015.

members of a community.”²³ The Secretary-General underscored that discrimination and its persistence brings discord between groups, creates divisions in society and serves as material cause and justification for group violence, and often carried out through violence and human rights violations.²⁴

Clearly, the above risk factors identified in the UN Secretary General’s Report are evident in Myanmar in light of the ongoing political and social discrimination against the Muslim Rohingyas and other minority groups. The denial of citizenship and the other political rights of the Rohingyas is systematic. In May this year, the parliament passed a “Population Control Healthcare Bill” that was signed into law by President Thein Sein, which aimed to promote, among others, birth spacing in certain areas of the country. The law, which is part of four package bills (that include “Religious Conversion Bill,” “Myanmar Buddhist Women’s Special Marriage Bill,” and “Monogamy Bill”) was pushed by extremist Buddhist organization Ma Ba Tha or “Protect Race and Religion,”²⁵ and is considered highly discriminatory against women from ethnic and religious minorities.²⁶ Anti-Muslim nationalist

monk U Wirathu has claimed that the population control healthcare law “was designed with the dual purpose of protecting women’s health and ‘stopping the Bengalis’ [aka Rohingyas]...who are trying to seize Rakhine state.”²⁷ Wirathu has been leading the anti-Muslim/Rohingya campaign in Myanmar since the outbreak of violence in Rakhine state in 2012 and has led the Buddhist 969 movement that called for boycott of Muslim traders and campaigned against the Rohingyas in the country through rumours and hate speech in the social media.

The pattern of prejudice and discrimination against Muslim minorities, specifically against the Rohingyas in Rakhine, is rooted in Myanmar’s history and stem from a number of social factors including a very deep sense of Buddhist nationalism. This includes: 1) resentment against Muslim businesses which thrived during military rule; 2) the widespread belief that Buddhism is in danger because of the global spread of radical Islam and alleged links of Muslim communities with terrorist groups outside Myanmar; 3) as early as 1938, anti-Indian and anti-Muslim feelings in the country were raised as part of the anti-colonial struggle against British rule



A Rohingya (aka Bengali) who received his green card, which replaced the white card. The green cards allow Rohingyas to move around the country and is good for two years. Source: "Ray of hope for Myanmar's Rohingya," The Straits Times, 23 October 2014, from <http://www.stasiareport.com/the-big-story/asia-report/thailand/story/ray-hope-myanmars-rohingya-20141023>, accessed on 18 June 2015.

led by right-wing politicians and monks which led to violent attacks that killed several Muslims;²⁸ 4) in 1939, the Buddhist Women's Special Marriage and Succession Act was enacted to discourage interfaith marriages; and 5) anti-Muslim riots also took place in 1961 following the adoption of Buddhism as official religion, which again occurred in uprisings against the military junta led by students and Buddhist monks in 1988, 1997, and 2003.²⁹ Following his first military coup in 1958 and in a sharp reversal of his predecessor's policy of accommodation towards the Muslim Rohingyas who were recognized as citizens of Burma after independence in 1948, General Ne Win adopted a more stringent policy towards them and other foreigners such as dispossessing some 100,000 Indians and Pakistani Muslim businessmen after nationalization of trade that forced them out of the country. After his second coup in 1962, General Ne Win also signed a law in 1982 that stripped the Rohingyas of citizenship. He also conducted anti-illegal immigrants campaigns in 1978 and 1991 that forced some 200,000 and 250,000 Rohingya people, respectively, to flee to Bangladesh.³⁰

The November elections in Myanmar will also take place in the context of heightened Buddhist nationalism following international uproar against the Myanmar government on the plight of trafficked Rohingyas and other refugees from Bangladesh, which came about as a result of the discovery of several mass graves in Thailand and Malaysia in May this year. Although Thailand called a special international meeting in Bangkok on 29 May aimed at coordinating an international response to the humanitarian crisis, it failed to exert pressure on the Myanmar government to do more in addressing the problem. At best, the meeting was only able to issue a statement that included a call on concerned states—but without naming Myanmar or using the word Rohingya—where the boat people originated to address the root causes of the crisis, such as "full protection of human rights and adequate access of people to basic rights and services such as housing, education, and healthcare."³¹ Elsewhere in the region, there were calls for ASEAN to relax its non-interference principle in order to put pressure on Myanmar

government to address the plight of the Rohingyas. A number of parliamentarians, government officials, and former heads of government, pointed to Myanmar's primary responsibility to protect the Rohingyas and for ASEAN to re-examine its non-interference policy in dealing with Myanmar.³² Former ASEAN Secretary General Surin Pitsuwan even called on Myanmar government to grant citizenship to the Rohingyas even as he said that strict adherence to the non-interference principle "reflects badly on ASEAN members."³³ Former Malaysian Prime Minister Mahathir Mohammad even went to the extent of calling for the expulsion of Myanmar from ASEAN as he alleged that it is committing genocide against the Rohingyas.³⁴ Meanwhile, Indonesian Deputy House Speaker Fahri Hamzah called for Myanmar's suspension from ASEAN and make it accountable for "ethnic cleansing" against the Rohingyas.³⁵

Despite these calls, the Myanmar government has remained adamant in refusing to change its policy of not recognizing the Rohingyas as citizens even as it continues to deny that it is responsible for their plight.³⁶ For her part, Suu Kyi, who has been criticized for being silent on the plight of the Rohingyas since the outbreak of violence in Rakhine in June 2012, stated that the government is now verifying the status of citizenship of the Rohingyas under the 1982 law and pointed out that this should be done quickly and transparently, and that the protection of rights of minorities should be done "very very carefully...quickly and effectively as possible."³⁷ Her party issued a statement on 1 June, which recommended the following steps to resolve the communal conflict in Rakhine and stem the emergence of more boat people ahead: 1) establish the rule of law; 2) ensure border security; 3) eradicate corruption amongst authorities in the border areas; 4) ensure full and rapid access for humanitarian assistance to people in need; 5) resettle those living in Internally Displaced Peoples (IDP)

camps as quickly as possible; 6) improve and develop the economic situation and welfare of the residents of the area; and 7) address the issue of citizenship fairly, transparently, and as quickly as possible.³⁸

Conclusion and Recommendations

In light of ongoing political conflicts, communal tensions, and multiple armed rebellions in the country, it is clear that the prevention of election violence is part of Myanmar government's primary responsibility to protect populations from risk factors that could lead to atrocity crimes. Indeed, this is essential for the people of Myanmar and the international community to accept the results of the general elections as credible and legitimate.

In his 2013 Report on R2P, the UN Secretary General underscored the importance of building national resilience as one of the policy options for atrocity prevention. This includes providing constitutional guarantees for the protection of fundamental human rights and the building of societies based on non-discrimination and respect for diversity.³⁹ In the context of Myanmar's forthcoming elections, a number of specific recommendations from the SG's Report are both relevant and necessary to prevent election violence, to wit:

- Adherence to international standards in the conduct of elections also contributes to strengthening national resilience inasmuch as free, fair, and peaceful democratic elections provide popular support for the government.
- When various sectors of the society are able to participate in "an inclusive and fair electoral processes, they are less likely to resort to violence to resolve their differences or make their voices heard."⁴⁰
- Peaceful electoral processes can help in managing

social tensions and promote inter-communal cooperation that contribute to prevention of conflicts that could lead to atrocity crimes. In this regard, it is necessary for electoral management bodies to ensure the integrity of elections and should be supported by resources to perform their functions impartially and effectively.

- Important that independent monitors from various sectors be allowed to ensure that elections are free, open, transparent, and credible.⁴¹

In view of the foregoing, ASEAN and the rest of the international community should encourage the Myanmar government to:⁴²

- Take seriously its Responsibility to Protect by ensuring that the conduct of the general elections is peaceful, free, fair, credible, and transparent;
- Allow ASEAN and other independent international election monitors to visit the country well ahead of the Myanmar elections to observe and report on election-related situations affecting Muslim populations and other ethnic minority groups in the country;
- Ensure the protection of minority populations in the country and desist from adopting legislation contrary to this goal;
- Seriously consider amending the 1982 Citizenship Law to provide minority groups in the country equal access to citizenship;
- Work vigorously to prevent and contain hate speech and propaganda against minority groups in the country; and
- Hold perpetrators of violence, including government agents, accountable for their actions.

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