

Myanmar

UPR Submission to the UN Human Rights Council

July 2020

The **Global Justice Center** (GJC) is a US-based human rights organization with consultative status to the United Nations that works to achieve sustainable justice, peace, and security by building a global rule of law based on gender equality and universally enforced international human rights laws.

The **Global Centre for the Responsibility to Protect** (GCR2P) was established in February 2008 as a catalyst to promote and apply the norm of the “Responsibility to Protect” populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Through its programs and publications, the Global Centre for the Responsibility to Protect is a resource for governments, international institutions and civil society on prevention and early action to halt mass atrocity crimes.

Contact Information

Akila Radhakrishnan
President
11 Hanover Square, 6th Floor
New York, NY 10005
P 212.725.6530
F 212.725.6536
www.globaljusticecenter.net
akila@globaljusticecenter.net

Nadira Kourt
Program Manager
Global Centre for the Responsibility to Protect
365 Fifth Avenue, Suite 5203
New York, NY 10016
M +1 646 318 5470
Twitter: @aridan13
NKourt@globalr2p.org
www.globalr2p.org

I. Introduction

The Government of Myanmar (the “Government”) is obligated in its third cycle Universal Periodic Review (“UPR”) to provide detailed information on how it has implemented recommendations on human rights protections made during its second cycle UPR in 2015, as well on developments in human rights in Myanmar since 2015. With respect to progress regarding justice & accountability for mass atrocities, legal reform, including with respect to women’s rights, and ending discrimination, the Government has on the whole failed to make meaningful progress on recommendations from the previous UPR. In addition to the lack of progress on key issues that were the subject of concern during the last UPR, the human rights situation in Myanmar has largely regressed, not the least as a result of the genocidal targeting of the Rohingya in so-called “clearance operations” in 2016 and 2017.

The analysis below explains where the Government has not met its international obligations germane to the UPR and previously accepted UPR recommendations. It includes specific recommendations to the Government on meeting its international obligations to prevent and provide justice for mass atrocities in Myanmar, especially sexual and gender-based violence, and to eliminate discriminatory laws and policies.

II. Analysis

1. Justice & accountability for mass atrocities in Myanmar

Despite decades of extensive rights violations by Myanmar’s military (or *Tatmadan*), including systematic sexual violence against women from various ethnic groups, impunity remains the rule, not the exception in Myanmar. This is in large part due to the fact that despite the quasi-democratic transition in the country, domestic courts in Myanmar are not at present viable venues for accountability. As discussed below, structural barriers in Myanmar coupled with the Government’s categorical denials of wrongdoing and a lack of meaningful, independent action to hold perpetrators accountable make credible domestic avenues for accountability a near impossibility.

a. Impossibility of domestic accountability

During the last UPR cycle, Myanmar supported recommendations to ensure “police and military officers alleged to have committed acts of torture and ill-treatment are held accountable through the criminal justice system” and to “prosecute suspected perpetrators of violence against ethnic and religious minorities, in line with international standards and to ensure compliance with due process and respect for the rule of law.”¹ Myanmar also noted various recommendations by other states to address accountability of perpetrators of violence, specifically against the Rohingya population.²

Similar recommendations have also been made by international bodies and experts who have called upon Myanmar to eliminate provisions immunizing members of the military from prosecution.³ The Special Rapporteur on the situation of human rights in Myanmar has called on the country to make certain “the cases of members of the military who perpetrate serious crimes against civilians are systematically transferred to civilian courts.”⁴ Further, the CEDAW Committee has called for member states, including Myanmar, to “combat impunity” and “[e]nsure that support for reconciliation processes do not result in blanket amnesties for any human rights violations, especially sexual violence against women and girls.”⁵

Yet, since that time, there has been little progress towards accountability for mass atrocities perpetrated by the Myanmar military. Relevant to these recommendations are a number of domestic structural barriers in Myanmar that impede accountability for perpetrators and preclude justice for victims of human rights abuses.⁶ For one, Myanmar's Constitution exempts military personnel from legal process in civilian courts.⁷ These structural barriers are compounded by other inadequacies in Myanmar's justice system, including the lack of provisions domesticating international crimes, problematic and discriminatory laws, such as the Penal Code provisions on rape and sexual violence,⁸ and the 1982 Citizenship Act.

Due to increased international scrutiny with regard to justice and accountability in Myanmar in the wake of the 2016 and 2017 genocidal attacks on the Rohingya, including the creation of the United Nations International Fact-Finding Mission on Myanmar ("FFM") and Independent Investigative Mechanism for Myanmar ("IIMM"), the government has taken actions calculated to dismiss the need for processes at the international level, including limited domestic investigations and trials.

At the center of these recent efforts has been Myanmar's Independent Commission of Enquiry ("ICOE"), which submitted its final report to the Government on January 20, 2020, but only its executive summary and selected annexes have been released publicly. The ICOE is not the first, but the eighth ad-hoc commission and board set up by Myanmar since 2012 with regard to the situation in Rakhine State; however, the FFM has determined that none of these commissions, including the ICOE, meet the standards of an "impartial, independent, effective and thorough human rights investigation."⁹ Significantly, none of the commissions previously established by the Government have delivered justice to the victims.

The ICOE raises a number of critical concerns regarding independence and impartiality, methodology, and flaws in its narrative and findings.¹⁰ Furthermore, there is little information regarding how the ICOE conducted its work and concerns regarding the scope of the ICOE's interviews, which left out "Rohingya victims and witnesses in Cox's Bazar in Bangladesh, where over 700,000 Rohingya Muslims and other minorities fled to and sought refuge from Rakhine State."¹¹ Egregiously, the ICOE concluded that there were "no credible statements on allegations of gang rape committed by Myanmar's security forces,"¹² an allegation which flies in the face of findings from others, such as the FFM, which dedicated an entire thematic report on crimes of sexual and gender-based violence,¹³ and found that sexual violence was a "hallmark" of the Tatmadaw's operations.

The ICOE's work does not, contrary to the government's assertions, lay the groundwork for accountability. This is supported by the FFM's determination that there is "no possibility that its investigations will identify perpetrators, promote accountability and justice, and provide redress to victims."¹⁴

Recent domestic prosecutions, including those based on the ICOE's findings, do little to allay these concerns, and in fact go to show how structural barriers deny effective justice. In one instance, the Commander-in-Chief pardoned seven soldiers who were convicted for the Inn Din massacre after serving less than a year of their sentence.¹⁵ More recently, the military touted the conviction of three soldiers in a court-martial for crimes associated with the attack on Gu Dar Pyin village in Rakhine State.¹⁶ However, the *Tatmadaw* has provided no information on the names and ranks of the soldiers, the charges or the sentence handed down—all that is known is that the court-martial was based on

an investigation that found “weaknesses in following the instructions [sic].”¹⁷ The complete lack of transparency of this trial, coupled with the serious structural concerns over the military justice system, demonstrate perfectly why domestic accountability processes such as these court-martials, cannot adequately address and punish military actors implicated in serious international crimes, including genocide, war crimes and crimes against humanity.

Accordingly, neither the ICOE nor the domestic processes upon which it relies, such as military court martials, present a viable pathway for accountability for mass atrocities in Myanmar. Until Myanmar takes meaningful steps to dismantle the Constitutional and other legal protections that guarantee military impunity, international accountability remains the only option.

Recommendations:

- The Government must, through legislation or amendments to the Constitution, grant civilian courts jurisdiction over military perpetrators in all contexts and specify that military crimes of sexual and gender-based violence will be prosecuted in civilian courts, whether or not the crime took place during conflict.
- The Government must incorporate into domestic legislation the international crimes of genocide, crimes against humanity, and war crimes, including conflict-related sexual violence.
- The Government must repeal constitutional provisions that grant the military impunity for human rights violations, including sexual and gender-based violence, and those provisions that permit all military matters, including crimes committed against civilians, to be adjudicated only in courts-martial.
- The Government must ensure full transparency with respect to prosecutions of military perpetrators of human rights violations, including sexual and gender-based violence.
- Release the full ICOE report so that its findings and analysis can be meaningfully evaluated and understood.

b. Sexual and gender-based violence

In the last UPR cycle, Myanmar supported a recommendation to “combat violence against women” and support an “impartial and effective investigation of violence perpetrated against women.”¹⁸ However, since Myanmar’s last UPR review in 2015, systematic sexual violence against ethnic populations by the Myanmar military has continued, with near total impunity.

The Myanmar FFM published an extensive, thematic report that “brings together and analyses all the information it has gathered on the topic of sexual and gender-based violence and the gendered impact of Myanmar’s ethnic conflicts.”¹⁹ The FFM reported “verified cases of women, men and girls being subjected to abduction, rape, including gang rape, sexual torture, sexual slavery and other forms of sexual and gender-based violence in Kachin and Shan States. In Rakhine State, where sexual and gender-based violence was committed on a massive scale during the Tatmadaw’s “clearance operations” of 2016 and 2017, the Mission documented gang rapes, rapes and other forms of sexual violence. Hundreds of Rohingya women and girls were raped, with 80 per cent of the rapes corroborated by the Mission being gang rapes. The Tatmadaw was responsible for 82 per cent of these gang rapes.”²⁰ Further, it is likely that the number of reported cases only reflect a fraction of the actual total.

The Government's failure to take steps to investigate, address, and ensure accountability for sexual violence by the Myanmar military violates its obligations under international human rights law.²¹ More specifically, as the FFM found, the Government failed to meet its treaty obligations under CEDAW "for its use of sexual violence as a prohibited form of discrimination, and under the Convention on the Rights of the Child, for its use of sexual violence against girls that amounted to sexual abuse, arbitrary deprivation of life, torture or other ill-treatment."²² The Mission further concluded that the "Government bears State responsibility under the Genocide Convention for its failure to investigate and punish acts of genocide and for its failure to enact necessary legislation to give effect to the Convention as required by Article V."²³

Recommendations:

- Promptly investigate and prosecute members of Myanmar military for crimes of sexual and gender-based violence.
- Ensure victims of sexual and gender-based violence have access to sexual and reproductive health services, including safe abortion care.
- Allow humanitarian agencies access to conflict-affected areas, including to provide services to victims of sexual and gender-based violence.

c. Failure to cooperate with international experts and processes

In face of the total absence of Myanmar's government to engage in meaningful accountability processes, a series of complementary actions have been taken at the international level to ensure accountability for the international crimes and human rights violations that have occurred in Myanmar. These include the aforementioned creation of the FFM and IIMM, a case filed by The Gambia at the International Court of Justice ("ICJ") for violations of the Genocide Convention, the authorization of an investigation by the International Criminal Court, and a case filed under universal jurisdiction by Argentina. These all build on decades of documentation by experts such as the Special Rapporteur on the situation of human rights in Myanmar and currently present the only viable path forward to redress violations.

However, with the exception of the ICJ case (see below), Myanmar has on the whole refused to cooperate with these processes and mandates, and has largely denied access to the country, in particular Rakhine state, placing a significant roadblock in the ability of these bodies to fulfil their mandates, including investigate and document violations.

And, for example, one of the provisional measures ordered by the ICJ relates to the preservation and non-destruction of evidence; lack of access makes it impossible to monitor compliance. Myanmar's failure to cooperate with international mechanisms, coupled with the serious concerns over domestic accountability processes, highlights the importance of the international community's leadership in ensuring justice and accountability.

Recommendations:

- Cooperate fully and remove any access restrictions on international experts and accountability processes, including the IIMM, the Special Rapporteur, and the ICC.
- Provide UN agencies and staff, including the UN Special Rapporteur on the situation of human rights in Myanmar and the Office of the High Commissioner for Human Rights

(OHCHR), with unfettered and sustained access to Myanmar, including to Rakhine, Chin, Kachin and Shan states. Permit OHCHR to establish a country office in Myanmar.

- Issue open invitations to all special procedures mandated by the Human Rights Council.
- Support accountability for mass atrocity crimes and all relevant institutions of international justice, including the IIMM, the ICC and the ICJ.

d. Lack of compliance with the ICJ's provisional measures order

Unlike its complete disengagement from most international processes, Myanmar has chosen to engage with the case filed by The Gambia at the ICJ to date. However, neither its representations during the hearings, nor its subsequent actions, provide assurances that Myanmar intends to take meaningful action to end its genocidal treatment of the Rohingya. Of particular concern are Myanmar's superficial responses to the provisional measures ordered by the ICJ – to prevent genocidal acts, ensure military and police and other forces within its control do not commit genocidal acts, preserve all evidence of genocidal acts, and report on compliance with these measures – in January 2020.²⁴

Following the issuance of the provisional measures order by the ICJ, Myanmar's Ministry of Foreign Affairs said the order presented a "distorted picture of the situation" and noted that the ICOE found no evidence of genocide.²⁵ A spokesperson for the ruling National League for Democracy told the media that the government was "already doing most of the orders."²⁶ The front page of state-run newspaper the Global New Light of Myanmar read the day after the ruling: "Myanmar takes note of ICJ decision. There was no genocide in Rakhine."²⁷

On February 3, Myanmar's government re-imposed a mobile internet blackout in four townships in Rakhine State, home to the vast majority of the remaining Rohingya in Myanmar.²⁸ At present seven townships remain under an internet blackout in Rakhine State.²⁹ While the internet restrictions were imposed in the context of the Myanmar military's conflict with the Arakan Army, an armed group seeking greater autonomy for the ethnic Rakhine Buddhist population, it has serious implications for the Rohingya community and the ICJ case. The information blockade makes it difficult for the international community to monitor the situation in Rakhine State, where the Rohingya, Rakhine, and other ethnic communities are at an ongoing risk of atrocities, and to verify Myanmar's compliance with the ICJ ruling. In March Myanmar's authorities also blocked hundreds of websites, including outlets that cover the ongoing fighting in Rakhine State, further restricting reporting on the area where an estimated 600,000 Rohingya live.³⁰

Furthermore, in April the Office of the President of Myanmar issued three directives ostensibly aimed at complying with the provisional measures order. Released months after the ICJ's order and without any clear guidelines for implementation and monitoring, the timing of the issuance of the directives suggests that they were released in preparation to show superficial compliance ahead of the first report required by the provisional measures order. The first directive is addressed "to all Ministries and all Regions and States Governments" requesting them to "ensure that its personnel, officers, staff...and local people do not commit the acts mentioned in Articles II and III of the Genocide Convention."³¹ The second directive focuses on "preservation of evidence and property in areas of northern Rakhine State" and prohibits "all Ministries and the Rakhine State government" from destroying evidence of acts described in Article II of the Genocide Convention.³² The third

directive urges officials to “take all possible measures to denounce and prevent all forms of hate speech.”³³

Besides issuing the directives, the government of Myanmar has not taken any meaningful and practical steps to dismantle existing discriminatory structures, including the process of repealing or amending laws and policies that target the Rohingya (see below), bringing the military under civilian control, and ending military impunity for international crimes, including sexual violence. Further, while Myanmar submitted its first report to the court in May 2020 on compliance with the provisional measures,³⁴ the report is not public. Myanmar should be encouraged to release the report publicly in order to promote transparency and to allow the Rohingya, as well as the international community, to monitor compliance with the measures.

Recommendations:

- Make public all reports to the ICJ on compliance with provisional measures, including the report submitted on May 23, 2020.
- Take meaningful steps to ensure compliance with the measures, including declaring such reforms a government priority and begin the process of amending the 1982 Citizenship Law; take steps to ease movement restrictions for the Rohingya; and grant the Rohingya equal access to healthcare, education, employment, and legal representation, among the rights enjoyed by other communities in Myanmar.

2. National laws and international obligations

While Myanmar has taken some steps to reform laws and policies, these limited reforms have been largely related to foreign investment, and left untouched many outdated and deeply discriminatory laws and policies, whether against ethnic minorities or women. Worse yet, in some cases, Myanmar has passed laws and policies that further discrimination. There is an urgent need for Myanmar to accelerate the process of key reforms in line with its international human rights obligations.

a. Discriminatory laws and policies affecting the Rohingya

There are several laws that blatantly discriminate against the Rohingya, either on their face or in practice. These laws form part of a larger policy and strategy to strip the Rohingya of fundamental rights in order to control their behavior, population size, and to make life intolerable.³⁵ Myanmar’s “institutionalized regime of systematic oppression and domination of the Rohingya,” including the written laws, regulations, orders, and practices enforced by local officials—implicating both Myanmar’s security forces as well as its civilian government—has been described as apartheid.³⁶ The FFM found that “the Rohingya are in a situation of severe, systemic and institutionalised oppression from birth to death” and that “their extreme vulnerability is a consequence of State policies and practices implemented over decades, steadily marginalising the Rohingya and eroding their enjoyment of human rights.”³⁷ Many of these practices existed before the 2016 and 2017 operations, although some such as movement restrictions (and their consequences for healthcare access) have since been tightened.

Of particular note are the longstanding laws, policies and practices controlling citizenship, marriage, reproductive choice, as well as those restricting movement, and healthcare access. These laws and

policies seek to legitimize discrimination, on grounds of gender, religion, and ethnicity, feeding into popular narratives of stereotypes, fears, and racism that can prime the country for violence.³⁸

First and foremost of these policies is the 1982 Citizenship Law, which has been the subject of criticism by all Special Rapporteurs on Myanmar, the FFM, and the Rakhine Advisory Commission³⁹ and was the subject of numerous questions and recommendations during the previous UPR.⁴⁰ The Law precludes most Rohingya from qualifying for citizenship, and excludes them as one of Myanmar's "national races."⁴¹ The Special Rapporteur for the Situation of Human Rights in Myanmar, as well as others, has determined that "the Citizenship Law (1982) is not in line with international standards...particularly regarding discriminatory provisions for granting of citizenship on the basis of ethnicity or race."⁴² The Rohingya's lack of citizenship is one of the main obstacles to their safe existence in, or return to, Myanmar.⁴³ Without access to citizenship, the Rohingya are vulnerable to violations of their fundamental rights and unable to access social services or economic opportunities.⁴⁴ Furthermore, the Citizenship Law and its implementation, having effectively rendered the Rohingya stateless, serves as an enabling premise for further discrimination and deny them their right to a nationality.⁴⁵

However, despite the consistent calls for the amendment of this law, Myanmar has yet to even begin a process to review the Citizenship Law, instead, as the FFM found, they have "intensified its efforts to force Rohingya to enter into a citizenship verification process by accepting National Verification Cards (NVCs) that explicitly recognize cardholders as non-citizens who need to apply for citizenship. Moreover, without amendments to the Citizenship Law, the NVC process could at best give them the status of either associate or naturalised citizens, neither of which confers the same level of rights as enjoyed by full citizens, further entrenching long-standing discrimination against the Rohingya community."⁴⁶ Furthermore, the FFM found that the failure to accept the NVC cards, may have been a driver of the 2017 genocidal campaign against the Rohingya, and has been punitively utilized by Myanmar to deny access to life-saving goods and services, as a condition of freedom of movement and of prison release (amongst others), that "is it inconceivable that Rohingya should trust the NVC process."⁴⁷

The effective denial of citizenship is compounded by other laws and policies which discriminate against ethnic minorities in Myanmar, in particular the Rohingya. These include the four laws adopted in 2015 ostensibly created to "protect race and religion,"⁴⁸ but which instead seek to limit the Rohingya's freedom to marry and have families of the size and timing of their choosing. These laws discriminate against minorities and women, in violation of human rights obligations,⁴⁹ and were the subject of significant concern during the previous UPR.⁵⁰ Politicians have publicly stated that these laws are intended to control the Rohingya population,⁵¹ and their existence and enforcement exemplifies the deep-seeded discrimination against the Rohingya in Myanmar.⁵² For example, the Population Control Health-care Law provides for local officials to "organize" couples to practice 36-month birth spacing.⁵³ While neutral on its face, the law is motivated by a belief that Muslims have too many children and therefore contribute to "overpopulation" and constitute a "threat" to the national character and identity of Myanmar.⁵⁴

Recommendations:

- Enable freedom of movement across the country. Close all checkpoints outside conflict areas, including in areas with IDP camps; ensure that people passing through checkpoints, including the Rohingya, are not subject to harassment and extortion.

- Provide equal access to education for the Rohingya and other minority groups, including secondary and higher education.
- Repeal the “Protection of Race and Religion” laws.
- Amend the 1982 Citizenship Law to reflect basic principles of human rights.
- End disenfranchisement of the Rohingya – allow all Rohingya to vote and hold office.

b. Responsibility to protect

At the 2005 UN World Summit, all heads of state and government, including Myanmar, adopted the principle of the Responsibility to Protect (R2P) and agreed to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing. According to article 138 of the UN World Summit Outcome Document, this responsibility entails the prevention of such crimes, including their incitement. In accordance with that commitment, it is the primary responsibility of the government of Myanmar to protect all its diverse populations, regardless of ethnicity, religion or citizenship status. The Myanmar government agreed to accept that responsibility and act in accordance with it.

Recommendations:

- In accordance with obligations under the Genocide Convention and the principle of the Responsibility to Protect, take action to protect all populations within Myanmar, regardless of ethnicity, religion or citizenship status, from genocide and other atrocity crimes.
- In keeping with Pillar II of the Responsibility to Protect, request support from other states, as well as regional and international organizations, in building national capacity to comprehensively prevent or respond to mass atrocity crimes or providing assistance where risks exist that cannot be addressed by your state alone. For example, as appealed for by the Rohingya community, consider requesting international monitors to guarantee the safety of the Rohingya population in Rakhine State. Such a measure would help provide assurances to the Rohingya refugees in Bangladesh and facilitate their return.
- Ensure that all national security forces uphold human rights and fulfil their responsibility to protect all populations within the territory of your state, regardless of race, ethnicity, religion, sexual orientation or citizenship status.

c. Prevention of violence against women law

During the 2015 UPR, the Government accepted a number of recommendations with respect to addressing gender-based violence, and specifically marital rape, through legislation and a legal framework.⁵⁵ Additionally, the Government received and noted a recommendation to review its Penal Code, especially with respect to “punitive measures against women who have undergone illegal abortions.”⁵⁶ These recommendations are particularly urgent in light of the information above with regards to the pervasiveness of sexual and gender-based violence, including by the military, in Myanmar.

Myanmar has received consistent recommendations from the CEDAW Committee, United Nations Secretary-General, and Special Rapporteur on the situation of human rights in Myanmar to ensure the draft Prevention of Violence against Women Law (PoVAW Law) complies with international

standards. Some standards are firm commitments Myanmar is required to uphold, including under CEDAW, the Geneva Conventions, and customary international law.

As a State party to CEDAW, Myanmar is included in the call for member states to “harmonis[e] domestic law with the Convention.”⁵⁷ This involves repealing all laws that discriminate against women – including the exclusion of marital rape from the crime of rape. The CEDAW Committee has also repeatedly and specifically recommended that Myanmar “ensure that marital rape constitutes a criminal offense.”⁵⁸ Additionally, States parties to CEDAW, including Myanmar, must ensure that women’s access to health care services is free of discrimination.⁵⁹ The CEDAW Committee has recommended that States parties “[a]bolish discriminatory criminalization and review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against women...[and] “decriminalize forms of behaviour that can be performed only by women, such as abortion.”⁶⁰

The introduction of the PoVAW Law to Parliament earlier this year signified an important opportunity for Myanmar to bring its domestic laws in line with international obligations. However, the latest version of the law patently does not meet those standards and will not serve as an effective mechanism to deter and protect women from violence.

The PoVAW law fails to adequately identify, define, prohibit and punish crimes in order to prevent violence against all women.⁶¹ For one, the PoVAW law contains problematic and antiquated definitions of crimes. For example, the PoVAW incorporates by reference the antiquated Penal Code definition of rape, which should be amended to meet international standards, and marital and intimate partner rape should be prohibited and subsumed under the crime of rape. The law should incorporate modern, clear definitions of crimes in line with international standards and best practices.

Further, the requirement in the PoVAW Law of Medical Examination Board approval should be removed from the procedures to obtain sexual and reproductive health services. Such approval processes are considered under international human rights law to constitute barriers to accessing safe abortion services.

Gender-based discrimination is entrenched throughout existing laws in Myanmar, particularly under the 1861 Penal Code. Deficiencies in Myanmar’s outdated laws such as the Penal Code present substantial obstacles to addressing violence against women. For example, the Penal Code only prohibits and punishes marital rape if the woman is less than 15 years of age.⁶²

Another problematic provision of the Penal Code is the criminalization of abortion under Section 312.⁶³ Such criminalization of abortion without exceptions for women’s physical and mental health or pregnancies resulting from rape constitutes a discriminatory barrier to women’s access to medical care, violating the Government’s international obligations under CEDAW and, in the case of women who become pregnant as a result of conflict-related rape, the Geneva Conventions.⁶⁴

Recommendations:

- Enact new legislation, such as the PoVAW Law, guaranteeing comprehensive protection from all forms of violence against women, including emotional, economic, domestic and sexual violence, and marital rape.

- Amend its existing laws relating to violence against women, including provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act, to ensure such laws adhere to prevailing international standards and best practices, removing antiquated notions of sexual violence.
- Remove the requirement of Medical Board approval from the procedures for obtaining sexual and reproductive health services.
- Amend the Penal Code to repeal the marital rape exception.
- Repeal Section 312 of the Penal Code criminalizing abortion. At a minimum, any laws restricting abortion should expand the exceptions where abortion is permitted to cases of rape, life endangerment, incest, fetal abnormalities and health.

III. Conclusion

Over the past five years populations in Myanmar endured genocide, crimes against humanity and war crimes. The perpetrators of these crimes have not been held accountable, while the root causes of violence and discrimination have not been addressed by the Government. The Government of Myanmar must make meaningful progress by undertaking necessary reforms domestically and by urgently cooperating with relevant international bodies to facilitate credible accountability processes.

¹ Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, ¶¶ 143.81, 143.79, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015).

² Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, ¶¶ 145.48, 145.51, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015) [hereinafter “2015 UPR Report”].

³ Report of Secretary-General on conflict-related sexual violence, ¶ 53, U.N. Doc. S/2017/249 (Apr. 15, 2017) (referencing CEDAW Committee from 2016).

⁴ Report of the Special Rapporteur on the situation of human rights in Myanmar, ¶ 18, p. 23, A/HRC/34/67 (Mar. 14, 2017).

⁵ CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, ¶ 81(c), U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013).

⁶ Global Justice Center, Structural Barriers To Accountability For Human Rights Abuses In Burma (Oct. 2018), <https://www.globaljusticecenter.net/files/Structural-Barriers---Burma.pdf>.

⁷ Myanmar Constitution art. 343, 445. *See also* Women’s League of Myanmar, Same Impunity, Same Patterns (Jan. 2014), at 30-31.

⁸ Myanmar Penal Code, ¶ 375-376 (1861).

⁹ Human Rights Council, Report of the independent international fact-finding mission on Myanmar, ¶ 96, U.N. Doc. A/HRC/39/64, (Sept. 12, 2018) [hereinafter “FFM 2018 report”].

¹⁰ Global Justice Center, Myanmar’s Independent Commission of Enquiry: Structural Issues and Flawed Findings (Feb. 2020), https://www.globaljusticecenter.net/files/20200203_ICOEFact_sheet.pdf. *See also*, Office of the High Commissioner for Human Rights, Statement by Michelle Bachelet: Oral update on the human rights situation of Rohingya people, Jun. 30, 2020, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26018&LangID=E>.

¹¹ Global Justice Center, Myanmar’s Independent Commission of Enquiry: Structural Issues and Flawed Findings, p. 2 (Feb. 2020), https://www.globaljusticecenter.net/files/20200203_ICOEFact_sheet.pdf.

¹² International Commission of Enquiry, Executive Summary at 6, (Jan. 20, 2020), <https://www.president-office.gov.mm/en/sites/default/files/BM.pdf>.

¹³ Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, U.N. Doc. A/HRC/42/CRP.4 (Aug. 22, 2019).

¹⁴ Human Rights Council, Detailed findings of the Independent International Fact-Finding Mission on Myanmar, ¶ 231, U.N. Doc. A/HRC/42/CRP.5, (Sept. 16, 2019) [hereinafter “FFM 2019 detailed report”].

¹⁵ FFM 2019 detailed report, para. 232.

-
- ¹⁶ Myanmar finds troops guilty in Rohingya atrocities court-martial, Reuters (June 30, 2020), <https://www.aljazeera.com/news/2020/06/myanmar-finds-troops-guilty-rohingya-atrocities-court-martial-200630101738034.html>.
- ¹⁷ Tatmadaw True News Information Team, *Court-Martial underway in connection with finding of Court of Inquiry*, <http://cincls.gov.mm/node/4266>. See also Human Rights Watch, *Myanmar: Court Martial Latest Accountability Sham*, Jul. 3, 2020, <https://www.hrw.org/news/2020/07/03/myanmar-court-martial-latest-accountability-sham>.
- ¹⁸ Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, ¶¶ 143.55, 143.68, 143.71, 143.77, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015).
- ¹⁹ Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, ¶ 16, U.N. Doc. A/HRC/42/CRP.4 (Aug. 22, 2019).
- ²⁰ Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, ¶ 14, U.N. Doc. A/HRC/42/CRP.4 (Aug. 22, 2019).
- ²¹ CEDAW Committee, General recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, ¶¶ 74, 77, U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013).
- ²² Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, ¶ 98, U.N. Doc. A/HRC/42/CRP.4 (Aug. 22, 2019).
- ²³ Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, ¶ 99, U.N. Doc. A/HRC/42/CRP.4 (Aug. 22, 2019).
- ²⁴ International Court of Justice, Order, Application of the Convention on the Prevention and Punishment of the Crime of Genocide: The Gambia v. Myanmar, Jan. 23, 2020, <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.
- ²⁵ Myanmar Ministry of Foreign Affairs, *Press Statement on the decision by the ICJ on “provisional measures” in the case brought by The Gambia against Myanmar*, Global New Light of Myanmar, Jan. 23, 2020, <https://www.moi.gov.mm/npe/nlm/?q=content/24-jan-20>.
- ²⁶ Thu Thu Aung and Sam Aung Moon, *Myanmar government says it is already protecting Rohingya after World Court issues order*, The Global and Mail, Jan. 24, 2020, <https://www.theglobeandmail.com/world/article-myanmar-government-says-it-is-already-protecting-rohingya-after-world/>.
- ²⁷ Myanmar Ministry of Foreign Affairs, *Press Statement on the decision by the ICJ on “provisional measures” in the case brought by The Gambia against Myanmar*, Global New Light of Myanmar, Jan. 23, 2020, <https://www.moi.gov.mm/npe/nlm/?q=content/24-jan-20>.
- ²⁸ *Myanmar reimposes internet shutdown in Rakhine, Chin states*, Al Jazeera, Feb. 4, 2020, <https://www.aljazeera.com/news/2020/02/myanmar-reimposes-internet-shutdown-rakhine-chin-states-200204050805983.html>.
- ²⁹ *Myanmar: Indiscriminate airstrikes kill civilians as Rakhine conflict worsens*, Amnesty International, Jul. 8, 2020, <https://www.amnesty.org/en/latest/news/2020/07/myanmar-indiscriminate-airstrikes-kill-civilians-rakhine/>
- ³⁰ Detailed findings of the Independent International Fact-Finding Mission on Myanmar, Sep. 16, 2019, <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportHRC42thSession.aspx>
- ³¹ The Republic of the Union of Myanmar Office of the President, Directive No 1/2020: Compliance with the Convention on the Prevention and Punishment of the Crime of Genocide, Apr. 8, 2020, <https://www.globalnewlightofmyanmar.com/compliance-with-the-convention-on-the-prevention-and-punishment-of-the-crime-of-genocide/>.
- ³² The Republic of the Union of Myanmar Office of the President, Directive No 2/2020: Preservation of evidence and property in areas of northern Rakhine State, Apr. 8, 2020, <https://www.globalnewlightofmyanmar.com/preservation-of-evidence-and-property-in-areas-of-northern-rakhine-state/>.
- ³³ The Republic of the Union of Myanmar Office of the President, Directive No 3/2020: Prevention of incitement to hatred and violence (or) Prevention of proliferation of hate speech, Apr. 20, 2020, <https://www.president-office.gov.mm/en/?q=briefing-room/news/2020/04/21/id-10007>.
- ³⁴ @CIJ_ICJ, “NEWS: On 22 May 2020, Myanmar submitted the first report indicated in the #ICJ Order on provisional measures of 23 January 2020 in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (#TheGambia v. #Myanmar),” Twitter, May 25, 2020, 5:01 am, https://twitter.com/CIJ_ICJ/status/1264843908477050880.
- ³⁵ See, e.g., Fortify Rights, “They Gave Them Long Swords,” at 91-95; see generally, Fortify Rights, “Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar,” 2014.
- ³⁶ Amnesty Int’l, “Caged Without a Roof,” at 96.
- ³⁷ Human Rights Council, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, ¶ 458, U.N. Doc. A/HRC/39/CRP.2, (Sept. 17, 2018) [hereinafter “FFM 2018 detailed report”].

- ³⁸ U.S. Holocaust Mem'l Museum, "They Want Us All to Go Away," at 4, 6., *See also* United States v. Goering et al., Judgment, Int'l Mil. Trib., Oct. 1, 1946.
- ³⁹ FFM 2018 detailed report, para. 101,
- ⁴⁰ 2015 UPR report.
- ⁴¹ Burma Citizenship Law of 1982, Pyithu Hluttaw Law No. 4 of 1982, ch. II, § 3.
- ⁴² UN Doc. A/HRC/34/67, para. 12; see also Advisory Comm'n on Rakhine State, "Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Commission on Rakhine State," p. 29, Aug. 2017.
- ⁴³ Advisory Comm'n on Rakhine State, "Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine," p. 26. See also, section below on "Longstanding Discrimination."
- ⁴⁴ UN Doc. A/HRC/32/18, para. 26.
- ⁴⁵ See, e.g., UN Doc. A/HRC/31/71/Add.1, Mar. 9, 2016 ("Freedom of movement is available for every citizen but those who citizenship status is not clear, they need to apply for travel permission."); Simon Lewis et al., "Tip of the Spear: The Shock Troops that Expelled the Rohingya from Myanmar," Reuters, June 26, 2018 (quoting a military officer as telling Rohingya community leaders that they "behaved very badly in Kachin—and they're citizens. You're not citizens, so you can only imagine how we'll be.").
- ⁴⁶ FFM 2019 detailed report, para. 65
- ⁴⁷ FFM 2019 detailed report, para. 68, 78-79.
- ⁴⁸ For a brief description of the Religious Conversion Law (2015), Population Control Health-care Law (2015), Buddhist Women's Special Marriage Law (2015), and Monogamy Law (2015), see UN Doc. A/HRC/31/71, Annex; see also ALTSEAN Burma, "Rohingya Targeted by Ethnic Cleansing in Arakan/ Rakhine State," at 15.
- ⁴⁹ UN Doc. A/HRC/31/71, para. 33; UN Doc. A/HRC/32/18, para. 20.
- ⁵⁰ Myanmar 2015 UPR, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.
- ⁵¹ Fortify Rights, "Policies of Persecution," at 26-27, 34. Reports indicate that this policy was sporadically and inconsistently enforced. See, e.g., U.S. Dep't of State, "Country Reports for Human Rights Practices in 2017: Burma," at 33.
- ⁵² Amnesty Int'l, "Caged Without a Roof," at 13 ("Almost every institution of the state, at the township, district, state and even Myanmar-wide levels, is involved in the discrimination and segregation of the Rohingya community and Muslims generally in Rakhine State. The discriminatory and excluding regime described in this report is created by numerous laws, regulations, policies and practices. It is impossible for officials in Rakhine State and in Myanmar generally to maintain and enforce such a system without being fully aware of, and therefore fully responsible for, the atrocious consequences it has for the life of the Rohingya population.")
- ⁵³ UN Doc. A/HRC/31/71 (list of legislation provided in Annex).
- ⁵⁴ Krithika Varagur, "The Muslim Overpopulation Myth that Just Won't Die," Atlantic, Nov. 14, 2017; Hannah Beech, "Across Myanmar, Denial of Ethnic Cleansing and Loathing of Rohingya," N.Y. Times, Oct. 24, 2017; UN Secretary-General, "Report on the Situation of Human Rights in Myanmar," para. 20, UN Doc. A/71/308, Aug. 5, 2016 (noting only a "marginal increase" in proportions of Christians and Muslims in Myanmar compared with 1983); UN Doc. S/2018/250, para. 55. See also section above on "Marriage and Family Planning." These beliefs are compounded by the lack of accurate census data and consistent birth registration of Rohingya in Myanmar. Amnesty Int'l, "Caged Without a Roof," at 37.
- ⁵⁵ Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, ¶¶ 143.66, 143.67, 143.68, 143.69, 143.70, 143.71, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015).
- ⁵⁶ Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, ¶ 144.46, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015).
- ⁵⁷ CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 14 July 2017, ¶ 26(a).
- ⁵⁸ CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/MMR/CO/3, 7 Nov. 2008, ¶ 47. *See also* CEDAW Committee, Concluding observations on the combined fourth and fifth periodic reports of Myanmar, CEDAW/C/MMR/CO/4-5, 25 July 2016, ¶ 27.
- ⁵⁹ U.N. General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, art. 12, <http://www.refworld.org/docid/3ae6b3970.html>.
- ⁶⁰ CEDAW Committee, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 Aug. 2015, ¶ 51(f).
- ⁶¹ The analysis in this report is based on an unofficial translation of the Prevention of Violence Against Women Law as of January 2020.

⁶² Myanmar Penal Code, ¶ 375 (1861, amended 2016).

⁶³ Myanmar Penal Code Article 312 reads: “Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Explanation—A woman who causes herself to miscarry is within the meaning of this section.”

⁶⁴ See Radhakrishnan et al., *Protecting safe abortion in humanitarian settings: overcoming legal and policy barriers*, 25 *Reproductive Health Matters* 40-47 (2017), <https://doi.org/10.1080/09688080.2017.1400361>.