

From:



A/HRC/42/CRP.4

Distr.: General
22 August 2019

Original: English

Human Rights Council

Forty second session

9-27 September 2019

Agenda item4

Human Rights situations that require the Council's attention

Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts

Contents

	<i>Page</i>
I. Executive summary	3
II: Introduction	4
III. Mandate, methodology and legal framework	5
A. Mandate	5
B. Methodology	5
C. Legal Framework	6
IV. Gender inequality and gender-based violence nexus in Myanmar	13
V. Sexual and gender-based violence as a hallmark of the Tatmadaw	18
A. Sexual and gender-based violence against the Rohingya	19
(i.) The 2017 “clearance operations”	19
(ii.) The 2016 “area clearance operations”	21
(iii.) The 2012 violence	22
(iv.) Conclusions and legal findings	23
B. Sexual and gender-based violence against ethnic Rakhine	25
C. Sexual and gender-based violence in Kachin and Shan States	27
(i.) Context	27
(ii.) Rape and other forms of sexual violence during Tatmadaw ground operations	28
(iii.) Rape and other forms of sexual violence in heavily militarized areas	30
(iv.) The situation of girls in heavily militarized areas	31
(v.) Rape and other forms of sexual violence during forced labour by the Tatmadaw	32
(vi.) Sexual slavery	33
(vii.) Conclusions and legal findings	35
VI. Sexual and gender-based violence against men and boys	36
A. Context	36
B. Sexual and gender-based violence against Rohingya men and boys	37
C. Sexual and gender-based violence against ethnic men in Kachin and Shan States	41
VII. Sexual and gender-based violence against Rohingya transgender persons	43
VIII. Witnessing of sexual violence against Rohingya	44
IX. Sexual and gender-based violence by non-state armed groups	45
X. Consequences of sexual and gender-based violence and gendered impact of the ethnic conflicts...	49
A. The Rohingya community	49
B. Ethnic communities in northern Myanmar	51
XI. Impunity and accountability	52
A. Context	52
B. Flawed process when complaints are taken up	57
XII. Conclusions and recommendations	58

I. Executive summary

1. In its report to the Human Rights Council in September 2018¹ (hereinafter “the 2018 Report”), the Independent International Fact-Finding Mission on Myanmar (hereinafter “The Mission”) concluded that “rape and other sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011”.
2. The Mission found that sexual and gender-based violence was a hallmark of the Tatmadaw’s operations in northern Myanmar and in Rakhine. These violations, for most part perpetrated against ethnic women and girls, were used with the intent to intimidate, terrorise and punish the civilian population and as a tactic of war. The Tatmadaw was overwhelmingly the main perpetrator.
3. Two years after the “clearance operations” against the Rohingya population in Rakhine, and one year since the publication of the Mission’s findings, accountability for these egregious acts remains elusive. The Mission felt compelled to issue this thematic report, further exposing these grave violations that the Mission considers amount to war crimes, crimes against humanity and acts of genocide.
4. In examining the situation of sexual and gender-based violence in Myanmar, the Mission also reviewed the situation of gender inequality in Myanmar more broadly. It found a direct nexus between the lack of gender equality more generally within the country and within ethnic communities, and the prevalence of sexual and gender-based violence. Impunity for gender-based violence in Myanmar is exacerbated by underlying gender inequality. Ethnic women and girls are doubly victimised: as women and girls and as members of ethnic minority communities.
5. In its 2018 report, the Mission found that men and boys have also been victims of sexual and gender-based violence by security forces. On 23 April 2019, in its resolution 2467, the Security Council recognized that sexual and gender-based violence also targets men and boys in armed conflict and post-conflict settings, as well as in the context of detention settings, and in the context of those associated with armed groups. Violent conflict impacts men, women, boys, girls and those with diverse gender identities differently. While there is an increasing awareness of the importance of gender in efforts to build sustainable peace, much of the focus has been on women and girls. The experiences of men and boys have not been understood well. Against this background, the Mission conducted further investigations into the situation of sexual and gender-based violence against men and boys in the context of Myanmar’s ethnic conflicts and found that they have been subjected to sexual and gender-based violence, especially in the context of detention settings. The physical and psychological consequences are severe and far-reaching, exacerbated by the stigma attached to male rape.
6. The Mission also gathered information about the situation of people from the transgender community, in particular transgender Rohingya. It found that transgender women have suffered sexual and gender-based violence, including rape by the Tatmadaw and Border Guard Police.
7. Rohingya women, men and boys have also been traumatised through the forced witnessing of sexual and gender-based violence inflicted on their relatives and community members, with severe long-term mental effects.
8. The Mission found that sexual and gender-based violence is also perpetrated by ethnic armed organizations (EAOs) in northern Myanmar, although to a significantly lesser extent than that perpetrated by the Tatmadaw. The Mission gathered information about rape and sexual violence, including sexual harassment of women and girls by EAOs. Accountability for these crimes is also inadequate in most cases, as EAOs rely on their

¹ A/HRC/39/64 and A/HRC/39/CRP.2.

traditional justice systems, ill-suited to provide justice to survivors of sexual and gender-based violence.

9. Conflicts impact different genders differently. Myanmar is no exception to this rule. The Mission found the gendered impact of Myanmar's conflicts to be multi-faceted, while invariably taking a heavy toll on women and girls. In northern Myanmar, women and girls have borne the brunt of violations, including sexual and gender-based violence, as well as a wide spectrum of violations of their basic economic and social rights against the backdrop of existing gender inequality. In Rakhine, Rohingya women have been subjected to grave sexual and gender-based violence, including gang rape, rape and mutilation. Their situation is exacerbated by gender inequality and wide-spread discrimination against Rohingya, affecting rehabilitation and redress.

10. The Mission found that the obstacles to accountability for sexual and gender-based violence in Myanmar are many. To date, no senior Tatmadaw officer has been held accountable for the widespread sexual and gender-based violence committed against the Rohingya during the 2016 and 2017 "clearance operations". Some of the obstacles are legal. The Government has also yet to show the necessary political will and courage to effectively address the systemic nature of sexual and gender-based violence committed by its security forces.

11. The Mission concludes this report with a set of recommendations building on its 2018 report specifically aimed at accountability, rehabilitation and redress for victims of sexual and gender-based violence.

12. No perpetrator of rape, gang rape and other sexual and gender-based violence should go unpunished. No victim of these crimes should be deprived of justice. Accountability is as urgent a priority today as ever. This report is a call to action to the Government of Myanmar, to all parties to the conflicts and to the international community to hold perpetrators of rape and other forms of sexual violence to account.

II. Introduction

"Rape is used in my country as a weapon against those who only want to live in peace, who only want to assert their basic human rights. It is used as a weapon by armed forces to intimidate the ethnic nationalities and to divide our country"

State Counsellor Daw Aung San Suu Kyi, 2011²

13. In its report to the Human Rights Council in September 2018³ (hereinafter "the 2018 Report"), the Independent International Fact-Finding Mission on Myanmar (hereinafter "The Mission") concluded that "rape and other sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011."⁴

14. The Mission 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.

15. Despite the gravity and brutality of the sexual violence, two years after the "clearance operations" that began on 25 August 2017, and one year since the publication of the Mission's 2018 report, no high-ranking Tatmadaw commander has been held

² Daw Aung San Suu Kyi, video statement delivered at the Nobel Women's Initiative "Women forging a new security: Ending sexual violence in conflict conference".

³ A/HRC/39/CRP.2.

⁴ A/HRC/39/CRP.2, para. 1372.

accountable. Myanmar's top two military officials remain in their positions of power despite the Mission's call for them to be investigated and, if appropriate, prosecuted for war crimes, crimes against humanity and genocide.⁵

16. For these reasons, the Mission decided to prepare a 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. In doing so, the Mission has deepened and updated its findings in this area, including by expanding its investigations into the situation of ethnic men, boys and transgender people as well as examining further the consequences of sexual and gender-based violence on Myanmar's ethnic communities. The Mission collected new information about alleged perpetrators, not included in the original list of six named individuals in its previous report.⁶ The Mission has added these alleged perpetrators to a confidential list of perpetrators that will be shared with the Independent Investigative Mechanism on Myanmar and the High Commissioner for Human Rights.

III. Mandate, methodology and legal framework

A. Mandate

17. The Mission derives its mandate from Human Rights Council resolution 34/22 and its extension pursuant to Council resolution 39/2. The Mission has fulfilled its mandate by establishing "facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual violence, extrajudicial, summary or arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims". Under its extended mandate, the Mission has undertaken additional investigations into sexual and gender-based violence and the gendered impact of Myanmar's ethnic conflicts, including as part of its efforts to consolidate information for purposes of handing it over to the Independent Investigative Mechanism for Myanmar.⁷

18. The Mission is also aware of reports of widespread sexual and gender-based violence committed against women from other ethnic minorities in Myanmar in the past, for example in Karen State,⁸ but, because of resource and time limitations, it has been forced to limit the scope of this report to Rakhine State and northern Myanmar since 2011.

B. Methodology

19. In accordance with standard practice in investigations mandated by the Human Rights Council, the Mission has made its findings on the basis of the "reasonable grounds to conclude" standard of proof, unless otherwise specified. The Mission had already collected a vast quantity of primary and secondary information on sexual and gender-based violence during its first phase of investigations leading up to the presentation of its 2018 report. In preparing this report, the Mission relied on both previously collected information and information collected from new investigations. It interviewed victims and witnesses

⁵ A/HRC/39/CRP.2, para. 1553-1555.

⁶ A/HRC/39/CRP.2, para. 1555.

⁷ HRC resolution 39/2.

⁸ Human Rights Watch, *"They Came and Destroyed Our Village Again" The Plight of Internally Displaced Persons in Karen State* (June 2005). The Karen Women's Organization (KWO) documented 125 cases of sexual violence committed by military troops in Karen State from 1988 until 2004, half committed by high-ranking military officers, see Karen Women's Organization, *State of Terror The ongoing rape, murder, torture and forced labour suffered by women living under the Burmese Military Regime in Karen State* (February 2007).

from Rakhine, Shan and Kachin States. It also interviewed members of non-State armed groups.

20. In cases of sexual and gender-based violence, where a second independent source of information was often unavailable, the Mission considered the case or incident corroborated when it obtained one first-hand account which it assessed as credible and as consistent with what was known about the incident or the established patterns of similar incidents in the area, and in line with the interviewer's own observations. This methodology, as well the entire methodology of this report, is consistent with the Mission's previous working methods, outlined in additional detail in its 2018 report.⁹

21. To collect information, the Mission travelled to refugee camps in Bangladesh, and to Thailand and Malaysia. The Mission also held consultations and meetings with other stakeholders, including intergovernmental organizations, non-governmental organizations, humanitarian actors, think-tanks and academic institutions. The Mission further received written submissions and relied on credible open source information. Due to the Government of Myanmar's unwillingness to permit the Mission to conduct visits on its territory or respond to its requests for information, the Mission was unable to interview civilian government officials or members of its military forces.

22. The Mission was particularly mindful of the "do no harm principle", taking measures to ensure that it did not re-interview victims or survivors previously met by the Mission and other stakeholders. The Mission thus considered information from other reliable stakeholders to complement its own. In the same vein, the Mission strictly avoided interviewing children unless it could do so under conditions that it deemed safe and appropriate. Mindful of the specific needs of survivors of sexual and gender-based violence, the Mission referred them, as appropriate, to specialized services throughout its investigation.¹⁰

23. The Mission notes that sexual and gender-based violence is often underreported in Myanmar for reasons explained further in this report. The findings contained in this report likely underrepresent the severity of conflict and crisis-related sexual and gender-based violence.

24. The Mission expresses its deep gratitude to all persons who agreed to be interviewed and for the invaluable support it received from a number of non-governmental organizations. The Mission reminds the Myanmar authorities and others of the obligation to ensure the safety and security of those who cooperated with the Mission.¹¹

C. Legal framework

25. Sexual and gender-based violence is violence directed towards, or disproportionately affecting, someone because of their gender or sex.¹² In addition to women, men and children, this report includes information about sexual and gender-based violence against transgender people, which the Office of the High Commissioner for Human Rights has defined as an "umbrella term for people with a wide range of gender identities and expressions who do not identify with the sex they were assigned at birth."¹³

International human rights law

26. International human rights law prohibits sexual and gender-based violence in all its forms. Sexual and gender-based violence should be broadly defined to include acts or

⁹ A/HRC/39/CRP.2, para. 8-32.

¹⁰ S/RES/2467 (2019), para. 8.

¹¹ See HRC resolution 12/2 on "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights".

¹² OHCHR, Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice, 2018, page. 7, https://www.ohchr.org/Documents/Publications/IntegratingGenderPerspective_EN.pdf

¹³ OHCHR, Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice, 2018, page. 8, https://www.ohchr.org/Documents/Publications/IntegratingGenderPerspective_EN.pdf

omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.¹⁴ Sexual and gender-based violence is affected and often exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors. Sexual and gender-based violence is also affected by political, economic and social crises, civil unrest, humanitarian emergencies, natural disasters and the destruction or degradation of natural resources.¹⁵

27. Sexual violence is conduct of a sexual nature that is perpetrated without a person's genuine consent¹⁶ often by force or coercion. Rape, which consists of sexual penetration without consent, is one form of sexual violence. Acts falling within the category of sexual violence other than rape include: attempted rape; trafficking for the purpose of sexual exploitation; sexual slavery; forced pregnancy; violent acts against the sexual integrity of a person; and other acts of a sexual nature that cause offence or humiliation (for example, forced public nudity, demanding sex in return for favours, sexual harassment).¹⁷ Sexual violence may also occur in the context of forced labour and violate the human right to liberty and security of the person and other rules of customary international law.¹⁸ Rape and other forms of sexual and gender-based violence may amount to torture or cruel, inhuman or degrading treatment or punishment in certain circumstances.¹⁹

28. The Convention on the Elimination of Discrimination against Women (CEDAW), to which Myanmar is a party, prohibits sexual and gender-based violence against women and girls as a form of discrimination.²⁰ Myanmar's obligations under the CEDAW do not cease in periods of armed conflict.²¹ Under this prohibition, Myanmar must not engage in sexual and gender-based violence, must prevent acts or omissions of sexual and gender-based violence by their own organs and agents, and must investigate, prosecute and apply appropriate legal or disciplinary sanctions and provide reparations as required.²² Myanmar must also take all appropriate measures to prevent and investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors that result in sexual and

¹⁴ United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), para. 14.

¹⁵ United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), para. 14.

¹⁶ "Genuine consent" should not be interpreted narrowly. For example, a lack of violence does not imply that consent was granted. Article 36(2) of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) explains that "consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances." Under international criminal law, it is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. See, e.g., ICC Elements of Crimes, Art 8 (2) (e) (vi)-1 (War crime of rape).

¹⁷ See e.g. ICC Elements of Crimes, art. 7(1)(g).

¹⁸ For a discussion on customary international law, see A/HRC/39/CRP.2, paras. 41-43.

¹⁹ United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), para. 16.

²⁰ United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations" (CEDAW/C/GC/30), para. 34; "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), para. 21.

²¹ United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW/C/GC/28), paras. 11.

²² United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), para. 23.

gender-based violence.²³ A human rights violation arises when authorities know or should know of the risk of violence, but failed to prevent it, or when they fail to investigate, prosecute and punish violence, and to provide reparation to victims of such acts.²⁴ Relatedly, international human rights law provides a right to truth for victims and the public that is integral to effective investigations, accountability and justice. The right to truth is discussed in greater detail in this report's section on accountability.

29. Myanmar is also a party to the Convention on the Rights of the Child, which *inter alia* protects a child's right to life,²⁵ requires States to protect children from sexual abuse,²⁶ prohibits torture or other cruel, inhuman or degrading treatment or punishment,²⁷ prohibits the unlawful or arbitrary deprivation of liberty,²⁸ and requires that any child deprived of liberty be treated with humanity and respect for the inherent dignity of the human person.²⁹ Under the Convention, a child is defined as a person below the age of eighteen.³⁰ Under the Convention, governments must do everything they can to protect and care for children affected by armed conflict.³¹

30. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which was binding on Myanmar as of January 2018, places obligations on States to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,³² an adequate standard of living³³ and to the opportunity to gain a living by work which he freely chooses or accepts.³⁴ Sexual and gender-based violence, survivors' access to health care, and the use of women for forced labour impact these rights. While these rights are to be progressively realised, Myanmar must take immediate action, irrespective of the resources they have to, *inter alia*, eliminate discrimination,³⁵ comply with the components of rights that are not subject to progressive realization because they do not require significant resources and refrain from retrogressive measures that would deteriorate the enjoyment of the Covenant's rights unless there are strong justifications for doing so.³⁶ Violations of many Covenant rights can intersect with other rights, in particular in instances where violations of the right to life may amount to right to health violations,³⁷ or where

²³ United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), para. 24(b).

²⁴ United Nations Committee on the Elimination of Discrimination against Women, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), para. 24(b).

²⁵ CRC, art. 6.

²⁶ CRC, arts. 19 and 34.

²⁷ CRC, art. 37(a).

²⁸ CRC, art. 37(b).

²⁹ CRC, art. 37(c).

³⁰ CRC, art. 1.

³¹ CRC, art. 38.

³² ICESCR, art. 12. See, also, CRC, art. 24.

³³ ICESCR, art. 11.

³⁴ ICESCR, art. 6.

³⁵ With respect to the prohibition against discrimination on the basis of sexual orientation and gender identity, see CESCR, General Comment No. 20 (E/C.12/GC/20), paras. 27 and 32. See, also, CESCR General Comment No. 22 (E/C.12/GC/22), para. 23 ("State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health.")

³⁶ OHCHR, Frequently Asked Questions on Economic, Social and Cultural Rights: Fact Sheet No. 33, 2008, <https://www.ohchr.org/Documents/Issues/ESCR/FAQ%20on%20ESCR-en.pdf>, p. 15-17.

³⁷ ICCPR, art. 6. See, for example, UN Human Rights Committee, General comment No. 36 (2018) on article 6 on the right to life, CCPR/C/GC/36, 30 October 2018, paras. 8 and 54. ("Torture and ill-treatment, which may seriously affect the physical and mental health of the mistreated individual could also generate the risk of deprivation of life".) See also, generally, Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12), E/C.12/GC/22, 2 May 2016; see also General Comment No. 14: the Right to Health, para. 8: The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be

dangerous work conditions³⁸ violate the right to health. Myanmar signed the Covenant on 16 July 2015, at which point it accrued an obligation to “refrain from acts which would defeat the object and purpose” of the Covenant, unless it has made its intention clear not to become a party to the treaty.³⁹

31. Despite its obligations as a State Party to numerous international human rights treaties, Myanmar has only partially incorporated the content of these instruments into domestic law. The Constitution of Myanmar does not contain a provision concerning the applicability of international treaties in domestic law, including CEDAW.⁴⁰ The CEDAW Committee has raised concerns about the absence of an effective constitutional guarantee of substantive equality and it has noted that the definition of discrimination is not in accordance with the definition of discrimination contained in article 1 of the Convention.⁴¹

32. A limited number of legal protections from sexual and gender-based violence exist in Myanmar domestic law. For example, the Constitution prohibits trafficking and enslavement.⁴² The Penal Code, enacted in 1861, prohibits rape and other forms of sexual assault, though the definition of rape is legally vague and does not meet international standards.⁴³ For example, Myanmar has not criminalised male rape or rape in marriage.⁴⁴

33. Penal Code provisions criminalising “kidnapping, abduction, slavery and forced labour” are piecemeal.⁴⁵ For example, the prohibition of the importation of women for the purposes of sexual exploitation is only applicable if the woman is under the age of 21.⁴⁶

34. The Government is taking steps towards addressing some legal protection gaps regarding sexual and gender-based violence against women, in introducing a draft Prevention and Protection of Violence against Women Law (PoVAW). This law has been in development since 2013⁴⁷ and is currently before Parliament for consideration. However, it is unclear to what extent its draft provisions will address the legal deficiencies in Myanmar’s domestic law. There is no information about the scope of the criminal offences covered and the protection and support provided to victims and witnesses of sexual violence, including conflict-related sexual violence; and whether it allows for security forces to be investigated and prosecuted for conflict-related sexual violence and, if so, under which jurisdiction.⁴⁸

35. On 24 July 2019, a new Child Rights Law was enacted, which prohibits all forms of violence against children. Importantly, it recognises that children affected by armed conflict need special protection by criminalising grave violations against children and providing

free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.

³⁸ ICESCR, art. 7.

³⁹ Vienna Convention on the Law of Treaties, Article 18. Myanmar acceded to the Vienna Convention on the Law of Treaties on 16 September 1998.

https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en.

⁴⁰ Concluding observations of the Committee on the Elimination of Discrimination against Women, 7 November 2008, CEDAW/C/MMR/CO/3, para.8

⁴¹ Concluding observations of the Committee on the Elimination of Discrimination against Women, 7 November 2008, CEDAW/C/MMR/CO/3, para. 9

⁴² Constitution of Myanmar, s. 358.

⁴³ Penal Code of Myanmar, s. 375 and 376; United Nations Committee on the Elimination of Discrimination against Women, Concluding observations on Myanmar, CEDAW/C/MMR/EP/CO/1, 8 March 2019, paras. 15-16.

⁴⁴ Penal Code of Myanmar, s. 375 refers to the crime of rape being intercourse between a man and a woman, without the consent of the woman and exception to rape is sexual intercourse by a man with his own wife.

⁴⁵ Penal Code of Myanmar, s. 359-377.

⁴⁶ Penal Code of Myanmar, s. 366B.

⁴⁷ The Irrawaddy, “New Law to Protect Women, Girls Against Violence “(17 October 2017). ; Women League of Burma (WLB), *Procedural and substantive suggestions to the proposed Prevention and Protection of Violence against Women Law* (February 2019).

⁴⁸ CEDAW/C/MMR/EP/CO/1, para. 17.

stronger legal protection for children in the context of armed conflict. The law further stipulates that a child is anyone under the age of 18 and recognises the fundamental and unconditional right of a child to be registered at birth.⁴⁹

International humanitarian law and international criminal law

36. International humanitarian law also prohibits discrimination based on sex and gender⁵⁰ as well as sexual and gender-based violence, including rape, when they take place in the context of armed conflict.⁵¹ Sexual and gender-based violence may also amount to other prohibited acts under international humanitarian law, such as attacks directed at civilians,⁵² arbitrary detention,⁵³ forced labour,⁵⁴ sexual slavery,⁵⁵ and torture, cruel, inhuman or degrading treatment.⁵⁶ The rules of international humanitarian law apply equally to State armed forces and non-State armed groups that are parties to a non-international armed conflict.⁵⁷ In the context of Myanmar, the parties to non-international armed conflicts include Myanmar's armed forces, particularly the Tatmadaw, and several armed groups, including ethnic armed organizations (EAOs).

37. International humanitarian law also regulates how parties to armed conflict, including EAOs, prosecute suspects of conflict-related sexual and gender-based violence. This includes affording detainees due process and fair trial rights before regularly constituted courts under Common Article 3 of the four Geneva Conventions applicable to situations of non-international armed conflict.⁵⁸

38. Although courts and trials administered by non-State armed groups may not be regarded as lawful or legitimate by the State on whose territory they are administered, such courts and trials must comply with the applicable rules of international humanitarian law.⁵⁹ While the Mission recognizes the challenges that due process obligations can pose to non-State armed groups that do not have access to the full resources of a government and its justice system, the Mission also notes that the due process rules of international humanitarian law are non-derogable and many of the obligations do not require significant resources.

39. Additionally, while many provisions of international humanitarian law do not cover a party's treatment toward its own members, this is not the case for Common Article 3, which provides broad protections to "Persons taking no active part in the hostilities,

⁴⁹ "Child Rights Act (Pyidaungsu Hluttaw Law No. 22 of 2019). See:

<https://www.unicef.org/myanmar/press-releases/enactment-new-child-rights-law-government-myanmar-landmark-step-unicef>. At the time of writing, the Law had not yet been translated into English.

⁵⁰ See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rule 88 (non-discrimination).

⁵¹ See Common art. 3 of the Geneva Conventions (prohibiting "violence to life and person" including cruel treatment and torture and "outrages upon personal dignity"), and ICRC/Customary IHL, rule 93 (rape and other forms of sexual violence).

⁵² See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rule 1 (principles of distinction between civilians and combatants).

⁵³ See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rule 99 (deprivation of liberty).

⁵⁴ See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rules 95 (forced labour),

⁵⁵ See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rule 94 (slavery and slave trade).

⁵⁶ See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rule 90 (torture or cruel, inhumane or degrading treatment).

⁵⁷ Common Article 3

⁵⁸ Common Article 3(1)(d).

⁵⁹ See, Jean-Marie Henckaerts, eds., *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded in Armies in the Field*, International Committee of the Red Cross, 15 December 2016, *Commentary to Article 3*, paras. 689-691.

including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause”.⁶⁰ The ICRC’s updated commentary explains that this includes applying the article’s due process protections to “members of armed forces who are tried for alleged crimes – such as war crimes or ordinary crimes in the context of the armed conflict – by their own Party”.⁶¹ EAOs in Myanmar must therefore comply with Common Article 3 when trying its own members in the context of an armed conflict. Failure to do so is a war crime.⁶²

40. Myanmar is a State party to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. Under the Genocide Convention, Myanmar must not commit genocide⁶³ and must prevent and punish genocide.⁶⁴ It must also enact the necessary legislation to give effect to the convention and, in particular, provide effective penalties for persons guilty of genocide.⁶⁵ Article II of the Convention establishes that genocide is committed when a person or persons carry out a prohibited act or acts with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. Prohibited acts are (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.⁶⁶ The International Criminal Tribunal on Rwanda (ICTR) elaborated on the role that sexual violence can play in genocide. Rape and other acts of sexual violence have been recognized as “causing serious bodily or mental harm”.⁶⁷ The Elements of Crimes to the Rome Statute also lists rape and sexual violence as measures that are prohibited as genocidal acts of “causing serious bodily or mental harm”.⁶⁸ Moreover, the ICTR held that sexual mutilation, separation of the sexes and prohibition of marriages, and deliberately impregnating a woman by a man of another group “with the intent to have her give birth to a child who will consequently not belong to its mother’s group” can all constitute acts of genocide as a means of intending to prevent births within a group.⁶⁹ The Tribunal also explained that “measures intended to prevent births within the group may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group

⁶⁰ Common Article 3(1).

⁶¹ Jean-Marie Henckaerts, eds., *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded in Armies in the Field*, International Committee of the Red Cross, 15 December 2016, paragraph 547. The Commentary also explains that this interpretation is “supported by the fundamental character of common Article 3 which has been recognized as a ‘minimum yardstick’ in all armed conflicts and as a reflection of ‘elementary considerations of humanity’”. Jean-Marie Henckaerts, eds., *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded in Armies in the Field*, International Committee of the Red Cross, 15 December 2016, paragraph 547. International Criminal Court case law supports this interpretation. See, ICC, *Prosecutor v. Bosco Ntaganda*, Pre-Trial Chamber, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06, 9 June 2014, para 77.

⁶² See ICC Statute, arts. 8 (2)(c)(iv).

⁶³ ICJ, *Case Concerning Application of the Convention on the Prevention and Punishment of Genocide, Bosnia Herzegovina v. Yugoslavia (Serbia and Montenegro)*, Judgment, 27 February 2007, para. 166 (“...the obligation to prevent genocide necessarily implies the prohibition of the commission of genocide.”)

⁶⁴ Genocide Convention, art. I.

⁶⁵ Genocide Convention, art. V.

⁶⁶ Genocide Convention, art. II.

⁶⁷ Akayesu, ICTR-96-4-T, para. [731-734]; *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Trial Judgment and Sentence, para. [933], Jan. 27, 2000.

⁶⁸ Rome Statute, Elements of Crime, the footnote to Article 6(b)(1) notes that serious bodily or mental harm to one or more persons may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

⁶⁹ ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 2 September 1998, para. 507.

can be led, through threats or trauma, not to procreate.”⁷⁰ It is thus accepted that sexual violence can fall within the prohibited acts, and definitional scope of genocide.

41. Depending on the circumstances, sexual and gender-based violence may constitute crimes under international law, including war crimes,⁷¹ crimes against humanity,⁷² and genocide.⁷³ As a war crime, rape is defined as a perpetrator invading the body of a person by conduct “resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body”.⁷⁴ The Elements of Crime to the Rome Statute of the International Criminal Court explains that the war crime of rape occurs when, inter alia, the invasion was “committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent”.⁷⁵ The war crime of sexual violence is defined as a perpetrator committing “an act of a sexual nature against one or more persons or caus[ing] such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent”.⁷⁶

42. To constitute war crimes, acts of sexual and gender-based violence must also have a nexus to an armed conflict and constitute one or more acts from an enumerated list of war crimes under international criminal law, such as rape, sexual violence, torture, cruel treatment, or outrages upon personal dignity.⁷⁷ The International Criminal Tribunal for the former Yugoslavia (ICTY) has determined that the nexus between the conflict and the crime does not have to be causal but the conflict “must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, [the accused’s] decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established...that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.”⁷⁸ Acts of sexual violence with a nexus to an armed conflict are therefore not the private or personal acts of fighters or commanders, but war crimes.

43. Sexual slavery, which this report documents, is a particularly serious form of enslavement that is also prohibited under international criminal law. As well as exercising any or all of the powers attaching to the right of ownership over the person(s), the perpetrator must also cause the person to engage in one or more acts of a sexual nature.⁷⁹ A commercial transaction is not required, as the notion of servitude relates primarily to “the impossibility of the victim’s changing his or her condition”.⁸⁰ Sexual slavery also encompasses situations where women and girls are forced into “marriage”, domestic servitude or other forced labour involving compulsory sexual activity, including rape, by their captors.⁸¹

⁷⁰ ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 2 September 1998, para. 508.

⁷¹ See ICC Statute, e.g., arts. 8(2)(b)(xxii) and 8(2)(e)(vi).

⁷² See ICC Statute, e.g., arts. 7(1)(g) and (h).

⁷³ See ICC Elements of Crimes, art. (6)(b) para. 1.

⁷⁴ ICC Elements of Crimes, Art 8 (2) (e) (vi)-1 (War crime of rape).

⁷⁵ ICC Elements of Crimes, Art 8 (2) (e) (vi)-1 (War crime of rape).

⁷⁶ ICC Elements of Crimes, Article 8 (2) (e) (vi)-6 (War crime of sexual violence)

⁷⁷ See, generally, Rome Statute, art. 8(2)(c)-(e).

⁷⁸ ICTY, *Kunarac Appeals Chamber Opinion* para. 58, See, also, ICTY, *Limaj et al.* (IT-03-66), para. 91.

⁷⁹ ICC Elements of Crimes, art. 8(2)(e) (vi)-2, para. 2 (war crime). See, also, art. 7(1)(g)-2, para. 2 (crime against humanity).

⁸⁰ ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 976.

⁸¹ ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-717, Decision on the confirmation of charges, 30 September 2008, para. 431.

44. To constitute crimes against humanity the acts of sexual violence must be done pursuant to or in furtherance of a State or organizational attack on a civilian population and take the form of one or more acts from an enumerated list of underlying acts that constitute crimes against humanity, such as torture, rape, sexual violence or persecution.⁸²

45. In addition to what is covered above, to constitute an act of genocide, sexual violence must be carried out with the intent of destroying in whole or in part a national, ethnic, racial or religious groups as such and must also take the form of one or more acts from an enumerated list of prohibited acts of genocide, such as causing serious bodily harm to members of a group.⁸³

46. States have a specific duty to investigate and, if there is sufficient evidence, prosecute gross violations of international human rights law and serious violations of international humanitarian law, in particular those that amount to crimes under international law.⁸⁴ This duty extends to sexual and gender-based violence. Investigations into allegations must always be independent, impartial, prompt, thorough, effective, credible and transparent.⁸⁵ In addition, accountability encompasses measures to realize the right to know the truth, the right to reparation and guarantees of non-recurrence.⁸⁶ Reparation can be in the form of restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition.⁸⁷

47. Additionally, witnesses of acts of torture or ill-treatment, including sexual and gender based violence, may themselves be victims of severe mental pain or suffering that amounts to ill-treatment or torture.⁸⁸ The International Criminal Tribunal for the former Yugoslavia (ICTY) has held that “the mental suffering caused to an individual who is forced to watch severe mistreatment inflicted on a relative could rise to the level of gravity required under the crime of torture”.⁸⁹ The tribunal separately held that being forced to watch sexual attacks on a woman, in particular, a woman whom the witness knew as a friend, caused severe mental suffering.⁹⁰

IV. Gender equality and sexual and gender-based violence nexus in Myanmar

“The son is the master, the husband is god.” – Myanmar proverb

48. The widespread use of sexual violence in Myanmar’s human rights crises and conflicts needs to be framed in relation to the wider socio-economic and political restrictions imposed on women and girls, in particular women and girls from Myanmar’s

⁸² See, generally, Rome Statute, art. 7.

⁸³ See, generally, Rome Statute, art. 6. See, also, para 40 above.

⁸⁴ Additionally, where provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Basic Guideline and Principle 4 and 5.

⁸⁵ E.g., Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, paragraph 28.

⁸⁶ Updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), 2005, principle 1.

⁸⁷ See paras. 235-237 in Impunity and Accountability.

⁸⁸ Association for the Prevention of Torture and Center for Justice and International Law, *Torture in International Law: A guide to jurisprudence* (2008), available at: https://www.ap.torture.ch/content/files_res/jurisprudenceguide.pdf, p. 173.

⁸⁹ ICTY, *Prosecutor v. Kvočka and Others*, Trial Chamber Judgment (IT-98-30/1), 2 November 2001, para. 149. The Trial Chamber also noted in paragraph 143 that the “presence of onlookers, particularly family members, also inflicts severe mental harm amounting to torture on the person being raped”.

⁹⁰ ICTY, *Prosecutor v. Furundžija*, Trial Chamber Judgement (IT-95-17/1), 10 December 1998, para. 267.

ethnic minorities. Sexual violence is an outcome of a larger problem of gender inequality and the lack of rule of law. This is not unique to Myanmar. Worldwide, there is a direct correlation between gender inequality and gender violence. Women are more likely to experience violence in countries with high gender inequality.⁹¹ But the extent of gender inequality in Myanmar makes it especially prone to sexual and gender-based violence. Myanmar ranks 148 of 189 countries in the United Nations' Gender Inequality Index.⁹²

49. Notwithstanding the prominence of Daw Aung San Suu Kyi, the State Counsellor, the place of women in Myanmar society is generally considered limited. Apart from the State Counsellor, men are the predominant national level decision-makers, including within the Tatmadaw and as the public face of the Government.⁹³ Military rule between 1962 and 2011 all but banished women from positions of authority, and the military itself had no women in leadership roles.⁹⁴ While some improvements have been made since 2014 to include women within the Tatmadaw, to date only 12 out of 166 Tatmadaw parliamentary seats are occupied by women.⁹⁵

50. In a recent meeting of the Security Council's Informal Experts Group on Women, Peace and Security, the Secretary-General's Special Envoy on Myanmar, Ms. Schraner-Burgener noted that, the overwhelming majority of her interlocutors at the central, regional and local levels in Myanmar are men, partly due to the predominance of military and religious actors in positions of leadership and their disproportionate role in public life and decision-making about peace and security issues in particular.⁹⁶

51. While there is close to parity with respect to literacy rates between men and women and within formal education,⁹⁷ the number of women who participate in the formal work force is just over half the number of men, and those who do, earn less than men.⁹⁸ This reflects the traditional gender roles that have been assigned to men and women in Myanmar. An example of this is the 2008 Myanmar Constitution that makes repeated references to women as mothers, reinforcing gender stereotypes.⁹⁹

52. Impunity for sexual and gender-based violence in Myanmar is exacerbated by underlying gender inequality. In 2008, the CEDAW Committee expressed concern that domestic and sexual violence in Myanmar was widespread and socially legitimised, while being accompanied by a culture of silence and impunity. The CEDAW Committee further noted that such cases are often underreported,¹⁰⁰ entrenching impunity and the

⁹¹ See for e.g., L. Heise, A. Kotsadam, "Cross-national and multilevel correlates of partner violence: an analysis of data from population-based surveys", *Lancet Glob Health*, vol 3, June 2015.

⁹² UNDP Gender Inequality Index (2018).

⁹³ S/2019/591, p.3; Women occupied 4.6% of directly elected seats in all levels of Parliament in 2012—an increase from 1.9% in the First Legislative Assembly of 1974. This has now increased to 12.9% of directly elected seats in all levels of Parliament; Gender Equality and Women's Rights in Myanmar, UNDP, ADB, UNFPA, UN Women (2016).

⁹⁴ Background note for the Security Council's Informal Experts Group on Women, Peace and Security, Myanmar, 4 June 2019.

⁹⁵ In total, there are 64 women holding seats in both houses of Parliament, of a total of 664 seats.

⁹⁶ S/2019/591.

⁹⁷ For the age group of persons 15 years and older, female literacy in 2015 was estimated at 86.9% and male literacy at 92.0%: However, there are continuing concerns about retention rates, performance levels of certain categories of children especially in secondary school, and the quality and gender sensitivity of education. Impressive national data on female education mask economic, regional, and urban–rural disparities; Myanmar Gender Situation Analysis (2016) Asian Development Bank, UNDP, UNFPA, UN Women. In education, women are required to achieve higher test scores than men to be admitted into professional schools such as medicine and engineering; Goldman School of Public Policy, University of California, Berkeley, The Global Justice Center, *Vulnerable Women, Vulnerable Land, Gender Dimensions of Land Grabbing in Myanmar* (May 2017).

⁹⁸ According to the 2014 census data, the labour force participation rate for persons aged 15 years and older is 63.4% (81.7% for men and 47.1% for women); for persons aged 15–64 years, it is 67% (85.2% for men and 50.5% for women); Gender Equality and Women's Rights in Myanmar, UNDP, ADB, UNFPA, UN Women (2016).

⁹⁹ CEDAW/C/MMR/CO/3, para. 10.

¹⁰⁰ CEDAW/C/MMR/CO/3, para. 22.

normalization of sexual and gender-based violence even further. The net result is a climate of impunity that enables sexual and gender-based violence to continue unabated.

53. Women and girls of ethnic minorities are doubly-victimised in relation to sexual and gender-based violence as women and girls and as members of ethnic minority communities.

Rohingya women and girls

54. Rohingya women and girls have suffered multifaceted gender discrimination through the years, leading to violations that infringe on their basic human rights on a regular basis. According to CEDAW, discrimination of women and girls is inextricably linked to other factors that affect them, such as race, ethnicity, religion, health, status, age, class, caste, sexual orientation and gender identity. This distinction will have a bearing on how discrimination or marginalization affects women belonging to these groups, often differently from men.¹⁰¹

55. Understanding the intersectionality of these factors will assist in informing how Rohingya women and girls are affected in unique ways, in particular during times of conflict, and why they need to be afforded strong protection from gender discrimination through empowerment in decision-making processes, reforms of discriminatory laws and practices, and access to basic health services.¹⁰²

56. The participation of Rohingya women in formal and informal decision-making processes is limited within their communities. Due to their status, they are often relegated to tasks and duties that fit within socially defined norms and practices, such as child-bearing,¹⁰³ attending to household chores, and some to farming.¹⁰⁴ The literacy level for most Rohingya women is low compared to those of other ethnic minorities in Myanmar, rendering them more prone to gender discrimination and loss of social, political and economic opportunities.¹⁰⁵

57. Rohingya women suffer systemic gender discrimination as a result of Government policies and practices. Their economic, social and cultural rights have been restricted through the imposition of discriminatory laws and policies by the Government. Access to education is limited, with reports of Rohingya children in Central Rakhine being prevented from attending the formal education system because of the combination of movement restrictions and the lack of schools.¹⁰⁶

58. Rohingya women do not have equal access to register births. The Government controls the number and spacing of children they can have.¹⁰⁷ Access to basic health care for Rohingya women and girls in Myanmar is inadequate especially with regard to reproductive health due to the combination of few public health facilities and services, movement restrictions,¹⁰⁸ mistrust of the service providers, and exclusion or limited access

¹⁰¹ CEDAW/C/GC/28, para.18; Gender Equality and Women's Rights in Myanmar, UNDP, ADB, UNFPA, UN Women (2016).

¹⁰² Wai Wai Nu "Layers of Marginalisation: Life for Rohingya Women Testimony from Myanmar." The Equal Rights Review, Vol. 16 (2016), pp. 223-227.

¹⁰³ CEDAW/C/MMR/CO/37, p. 3; *See also*, Yen Saning; "Interview 'Within the Political Structure, Women Are Treated as Decorative'" (The Irrawaddy, 27 January 2014).
Salai Isaac Khen talks about the importance of women's voices in the peace process and gender equality as Burma undergoes economic and political reform.

¹⁰⁴ NI-018, Gender Equality and Women's Right's in Myanmar Gender Situation Analysis (2016) Asian Development Bank, UNDP, UNFPA, UN Women. Also, AGIPP. Alliance for Gender Inclusion in the Peace Process

¹⁰⁵ Human Rights Watch, "Bangladesh is not My Country." The plight of Rohingya Refugees from Myanmar (5 August 2018). Rohingya Denied Access to Education in Myanmar and Bangladesh. UNICEF estimates 80% of Rohingya are illiterate: "Rohingya Refugee children need help to deal with their trauma (Reliefweb, 26 September 2017).

¹⁰⁶ A/HRC/39/CRP.2 p.134

¹⁰⁷ The Population Control Health Care law (2015).

¹⁰⁸ A/HRC/39/CPR.2. Paras. 541-555.

to sexual and reproductive health care.¹⁰⁹ The Mission received reports of women who were raped during the “clearance operations” having to flee to Bangladesh without receiving medical assistance.¹¹⁰

59. The Mission spoke to Rohingya women and girls in the camps in Bangladesh who said receiving medical attention in the camps was a novelty. For most, it was the first time they had access to health facilities.¹¹¹ Many Rohingya women also expressed a high level of distrust in the medical care in Rakhine, when they could access it. A refugee recalled, “In our country, people usually don’t go to the hospital because of the high rate of killings of new born babies.”¹¹² Another Rohingya woman from Maungdaw told the Mission that “people were always scared to go to the hospital because they are run by non-Rohingya.”¹¹³ Even when people needed to go to the hospital, they stayed home and bought medicine at the pharmacy instead.¹¹⁴ One woman told the Mission she only went for treatment at a clinic in Maungdaw because it was run by a Rohingya doctor.¹¹⁵ It is reported that most hospitals are staffed by non-Rohingya, increasing the level of distrust.¹¹⁶

60. Unsafe abortions are a significant cause of maternal mortality among Rohingya women. Unsafe abortions are reported to be the cause of 15 per cent of all maternal deaths in Rakhine State, compared to the national average of 10 per cent of maternal deaths.¹¹⁷ Abortion is prohibited under Myanmar’s domestic law, even in cases of rape, except to save the life of the woman.¹¹⁸

Women and girls in northern Myanmar

61. Similar to Rohingya women and girls in Rakhine, ethnic women and girls in Kachin and Shan States¹¹⁹ face many types of gender discrimination, intersecting with other factors such as ethnicity, religion, displacement, poverty, education and health. These factors disproportionately exacerbate their vulnerability during conflict.

62. Decades of protracted armed conflict in Kachin and Shan States, resulting in prolonged displacement, new displacement and repeated displacement, renewed outbreaks of violence and increasingly restricted humanitarian access, have compounded marginalization and vulnerabilities across ethnic communities, especially for women and girls.¹²⁰ Around 40 per cent of the displaced people in Kachin are located in areas beyond

¹⁰⁹ DI-038, DI-002, DI-013, CI-089, DI-013, CI-082. See also, Doctors without borders “Rohingya refugees: Still searching for safety” (July 31, 2018). UNFPA, Population Council. “Marriage and sexual and reproductive health of Rohingya adolescents and youth in Bangladesh; a qualitative study.” (October 2018), p. 8, 9.

¹¹⁰ EI-074, EI-081, EI-083, EI-090.

¹¹¹ DI-006, DI-053, NI-014, NI-021, NM-001. The Mission heard from stakeholders that there is improvement on health issues after awareness campaigns launched camps to improve the health of refugees. Trained Rohingya refugees raise awareness on basic health issues such as hygiene for babies and mothers, prenatal care, they refer serious cases to medical staff.

¹¹² DI-053.

¹¹³ DI-054.

¹¹⁴ DI-054.

¹¹⁵ DI-009.

¹¹⁶ DI-001, DI-004, CI-073, DI-006, DI-004, DI-009, DI-053, DI-054.

¹¹⁷ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) p.5. January 2019.

¹¹⁸ The Penal Code of Myanmar, articles 312-316.

¹¹⁹ The peoples of Shan State include the Shan, Pa-O, Intha, Lahu, Lisu, Taungyo, Danu, Ta’ang, Ahka and Jinghpaw (Kachin), Shan-Chinese (Han), Shan-Ni and Kokang. The peoples of Kachin State include the Jinghpaw, Shan, Ruwang, Lisu, Zaiwa, Lawngwaw, Lachyit, Rakhine and Bamar. Many of the ethnic minority groups have substantial numbers of Christians among their members. Some groups are predominantly Christian.

¹²⁰ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

government control where international actors have had no access since June 2016.¹²¹ Women and children make up 76 per cent and 78 per cent of the displaced populations in camps in Kachin and Shan States, respectively.¹²²

63. In Kachin, the ratio of girls to boys attending primary level education is 0.95 of the gender parity index.¹²³ Overall half of both boys and girls do not complete primary level education in Kachin State.¹²⁴ Reportedly, there is a higher drop-out rate for boys at primary level education as boys are often encouraged to seek work as family breadwinners, due to their gender roles within families.¹²⁵ In Shan, the ratio of girls to boys is 1.04. However the overall school attendance is low compared to the national average.¹²⁶ Despite near gender parity in school attendance in Shan State, it has the lowest female literacy rate among young women nationwide at 59.4 per cent compared to 89.5 per cent for men.¹²⁷ In Kachin and Shan States, education is often limited in non-government controlled areas, forcing children to travel to government controlled areas and sleeping in mixed dormitories, exposing girls to risks. There is also a shortage of female teachers in non-government controlled areas limiting opportunities for gender inclusive education in these areas.¹²⁸

64. Ethnic women and girls in Kachin and Shan States, face challenges in accessing healthcare. Government healthcare is perceived as unreliable¹²⁹ since services are offered in Myanmar language often not understood by ethnic women and children in northern Myanmar.¹³⁰ In addition, health facilities in IDP camps are limited and further places constraints on women and girls in accessing health care and services. Moreover, women and girls face additional barriers in accessing reproductive and sexual health, as male community leaders actively discourage women from using contraceptives.¹³¹ In addition, contraceptives are often unavailable in non-government controlled areas.¹³²

65. The lack of economic opportunities manifests itself in Kachin and Shan along gendered lines, with women in Kachin overall having a low labour force participation rate at only 45.9 per cent in comparison to 85.7 per cent for men.¹³³ Kachin and Shan are two of the four poorest States in Myanmar.¹³⁴ The feminization of poverty is further compounded by the high prevalence of female-headed households, coupled with the discriminatory social customs denying their right to access, inherit or own land in many of these ethnic communities.¹³⁵ Prevailing insecurity and poverty have exposed women and girls to

¹²¹ A/HRC/39/CRP.2, para. 295-305; Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

¹²² Ibid.

¹²³ Ministry of Education (2014).

¹²⁴ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

¹²⁵ Ibid.

¹²⁶ Myanmar Gender Situation Analysis (2016) Asian Development Bank, UNDP, UNFPA, UN Women.

¹²⁷ Ibid.

¹²⁸ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

¹²⁹ Ibid.

¹³⁰ A/HRC/39/CRP.2, para. 112.

¹³¹ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

¹³² PM-011.

¹³³ Myanmar Gender Situation Analysis (2016) Asian Development Bank, UNDP, UNFPA, UN Women.

¹³⁴ Ibid.

¹³⁵ Men and women have equal rights to inherit and own land under Myanmar Law. However, the cultural norm is that they have distinct but complementary roles in society, which ultimately impact land ownership. Namati, Gendered Aspects of Land Rights in Myanmar II: Evidence from Paralegal Case Work (June 2019).; Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019; Woods, Kevin. "A Political Anatomy of Land Grabs." Transnational Institute, March 2014; Faxon, Hilary. "The Praxis of Access: Gender in Myanmar's Land Use Policy." Conference Paper No. 17, Chiang Mai University, May 2015, pp.7-8.

trafficking for forced marriage and childbearing into China.¹³⁶ Women are vulnerable to trafficking by means of fraud or deception, particularly from people claiming to arrange a traditional marriage with Kachin women on the Chinese side of the border, or to arrange for their employment.¹³⁷

66. Women's leadership and representation in decision-making roles also remains at low levels in Kachin and Shan States. In Kachin, women hold only two state-level ministerial positions.¹³⁸ Women in IDP camps also have limited access to decision-making structures and camp management committees.¹³⁹ In non-government controlled areas, women are underrepresented in leadership roles and so they are de facto excluded from representing EAOs' political wings in the peace process. Their absence can be explained by the prerequisite of possessing combat experience, to which they do not have access due to gender discriminatory EAO policies.¹⁴⁰ Despite these exclusionary factors, northern Myanmar benefits from an active civil society, especially from women-led organizations.

67. The unequal representation of women from ethnic minority groups in the peace process is an additional contributing factor to gender discrimination and marginalization.¹⁴¹ Women's participation in the formal peace process has been very limited and has not reached the minimum 30 per cent of representatives proposed in the negotiations for the Nationwide Ceasefire Agreement of 2015 (NCA) and included in the Framework for Political Dialogue of 2016. Neither the Joint Monitoring Committee set up for the NCA, nor other coordination mechanisms established for the peace process have included women in any significant way.¹⁴²

V. Sexual and gender-based violence as a hallmark of the Tatmadaw

68. In its 2018 report, the Mission found that sexual violence was a hallmark of the Tatmadaw's military operations. The scale, brutality and systematic nature of these violations, especially as perpetrated against the Rohingya population and ethnic groups in northern Myanmar, indicated that rape and other forms of sexual violence were part of a deliberate strategy to intimidate, terrorise and punish a civilian population, and were used as a tactic of war.¹⁴³ Sexual violence has also been a recurring feature of military operations

¹³⁶ Johns Hopkins Bloomberg School of Public Health's Center for Humanitarian Health and Kachin Women's Association of Thailand, Estimating trafficking of Myanmar women for forced marriage and childbearing in China (December 2018); Kachin Women's Association of Thailand, Pushed to the Brink: Conflict and Human Trafficking on the Kachin-Burma Border (June 2013); Human Rights Watch, *"Give Us a Baby and We'll Let You Go" Trafficking of Kachin "Brides" from Myanmar to China* (21 March 2019).

¹³⁷ Women head of households seek work in China where wages are higher and then are sold as brides to Chinese men and subjected to sexual slavery to have children; Human Rights Watch, *"Give Us a Baby and We'll Let You Go" Trafficking of Kachin "Brides" from Myanmar to China* (21 March 2019); Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

¹³⁸ Only 0,25% of ward/village tract administrators being women nationwide; Oxfam and Trocaire *Life on Hold* (2017).

¹³⁹ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

¹⁴⁰ PM-010, PM-011, *see also* Chapter VII. Sexual and gender-based violence by non-state armed groups.

¹⁴¹ Per last Panglong Conference Count, women constituted 17 per cent of participants in the peace process; K-070. *See also* Human Rights Watch, *A Gentlemen's Agreement, Women's Participation in Burma's Peace Negotiations and Political Transition* (2016).

¹⁴² S/2019/591; Background note for the Security Council's Informal Experts Group on Women, Peace and Security, Myanmar, 4 June 2019.

¹⁴³ A/HRC/39/CRP.2, para. 1371-1374, also see the use of rape and other forms of sexual violence by the military. *See also*: <http://www.statecounsellor.gov.mm/en/node/545>

in Kachin and Shan States between 2011 and 2018, consistent with similar allegations for at least 30 years.¹⁴⁴

A. Sexual and gender-based violence against the Rohingya

69. The Mission's 2018 report documented three waves of extreme violence against the Rohingya population in Rakhine State, namely in 2012, 2016 and 2017. Each wave of violence was accompanied by systematic and widespread sexual and gender-based violence against Rohingya women and girls.¹⁴⁵ During the 2012 violence and the 2016 and 2017 "clearance operations", the sexual violence was committed by the Tatmadaw, Border Guard Police and other security forces as well as members of ethnic Rakhine communities.

70. The findings in this section are based on close to 300 interviews with survivors, families of survivors, witnesses and sexual and gender-based violence experts. The prevailing context of culturally-based stigmatisation and ostracism of sexual violence survivors suggest significant underreporting.

(i.) The 2017 "clearance operations"

71. The most brutal of the three waves of extreme sexual and gender-based violence was 2017, which the Mission extensively documented. But the brutality of 2017 was also predictable given the other waves of violence targeting Rohingya that it preceded. On 25 August 2017, the Arakan Rohingya Salvation Army (ARSA) carried out coordinated attacks on a military base and up to 30 security force outposts across Rakhine State.¹⁴⁶ Security forces responded within hours in a grossly disproportionate manner.¹⁴⁷ The Government announced their completion on 5 September 2017 but in fact the violence lasted for more than two months.¹⁴⁸

72. Security forces, particularly the Tatmadaw, targeted Rohingya in Buthidaung, Rathedaung and Maungdaw townships with a series of "clearance operations". They sought assistance from members of neighbouring ethnic Rakhine communities to surround Rohingya villages, separate men from women, and kill, gang rape and commit other acts of sexual violence. Entire Rohingya villages were burnt down in the process. Verified and corroborated narratives of survivors and witnesses of the "clearance operations" are unanimous in their descriptions of the nature and extent of the violence that the security forces unleashed. The virtually identical patterns, methods and tactics used throughout the three regions lead to only one conclusion: the violence, including the sexual and gender-based dimensions, was part of a deliberate, well-planned strategy to intimidate, terrorise and punish a civilian population and force them to flee. The Mission concluded on reasonable grounds that the acts constituted crimes against humanity, war crimes, and underlying acts of genocide accompanied by inferences of genocidal intent.¹⁴⁹ Additionally, the Mission determined that rape and other forms of sexual violence was at such a level of normalisation in the "clearance operations" that such violence was only possible in a climate of long-standing tolerance and impunity, where military personnel had no reasonable fear of punishment or disciplinary action.¹⁵⁰ Rape and sexual violence had been used in a methodical and systematic manner during this period.

73. The Mission amassed a vast amount of information about incidents of mass gang rapes, rapes, sexually humiliating acts, sexual slavery and sexual mutilations from the beginning of the "clearance operations" on 25 August.¹⁵¹ Rohingya women and girls were the main victims, although there were instances involving men and boys. Young women

¹⁴⁴ A/HRC/39/CRP.2.Paragraphs 1372-1374, 1571, 103.

¹⁴⁵ A/HRC/39/CRP.2.Paragraphs 438-443; 920-941; 1091-1095.

¹⁴⁶ A/HRC/39/CRP.2.Paragraph 750.

¹⁴⁷ A/HRC/39/CRP.2.Paragraph 751.

¹⁴⁸ A/HRC/39/CRP.2 Paragraph 751.

¹⁴⁹ A/HRC/39/CRP.2 Paragraphs 1511, 1516, 1441.

¹⁵⁰ A/HRC/39/CRP.2, paragraph 1374.

¹⁵¹ CI-046, EI-081, QI-071, LI-075, QI-071, QI-114, K-150, K-151, EI-102.

and girls were particularly targeted for sexual violence and were disproportionately affected. In addition to the Tatmadaw, rape and other forms of sexual violence were carried out by members of the Border Guard Police, the Myanmar Police Force and members of ethnic Rakhine communities, although to a lesser extent.¹⁵²

74. Between 25 August and mid-September 2017,¹⁵³ mass gang rapes, involving multiple perpetrators and multiple victims in the same incident, constituted a notable pattern in at least ten village tracts.¹⁵⁴ Mass gang rapes were commonly perpetrated in open public spaces, within forested areas near the village¹⁵⁵ in large houses within the village¹⁵⁶ and during detention in military and police compounds.¹⁵⁷ They were often perpetrated in front of the victims' children and other family members and neighbours.¹⁵⁸ Women and girls were commonly raped by multiple perpetrators.¹⁵⁹ Often, mass gang rape took place after the separation of women and girls from men and boys.¹⁶⁰ At times, the rapes and sexual violence took place in houses where Tatmadaw soldiers were waiting,¹⁶¹ including men in camouflage and with helmets.¹⁶²

75. Physical injuries preceded most of the rapes, with women beaten with guns, sticks, wire and fists and kicked in the stomach or the head.¹⁶³ Some women were violated while strung naked to trees by their hands or by hair in forested areas.¹⁶⁴ Perpetrators commonly scarred survivors through biting on their cheeks, thighs and other body parts in what appeared to be attempts of "branding".¹⁶⁵ Many victims were killed after being raped.¹⁶⁶ Some girls were "raped to death"¹⁶⁷ because of the unusual amount of blood in the genital area. In some instances, the genital area or the breasts were mutilated.¹⁶⁸

76. The Mission collected information on six villages and village tracts where women and girls suffered particularly high numbers of rape and other forms of sexual violence. These were Chut Pyin,¹⁶⁹ Koe Tan Kauk,¹⁷⁰ and Chein Khar Li (Ku Lar)¹⁷¹ in Rathedaung Township, Min Gyi (Tu Lar Tu Li),¹⁷² in Maungdaw Township, Maung Nu,¹⁷³ and Gu Dar Pyin,¹⁷⁴ in Buthidaung Township and areas in Southern Maungdaw.

77. The Mission documented two brutal attacks in Chut Pyin¹⁷⁵ in Northern Rathedaung and Maung Nu in Buthidaung Township on 27 August 2017. In both villages women and

¹⁵² EI-075, EI-083, EI-084, EI-088, EI-093, EI-098.

¹⁵³ In Maungdaw: Kha Maung Seik (Fwaira Bazar), Min Gyi (Tu Lar Tu Li) (Tula Toli), Kyein Chaung (Boli Bazar), Kyauk Pan Du (Shitar Fawrikka); in Buthidaung: Ba Da Kar (Ba Da Kar / Fati Yaar), Nga Yant Chaung (a) Taung Bazar (Nga Yant Chaung), Chin Tha Mar (Hang Sar Para), Gu Dar Pyin (Gudam Para), Maung Gyi Taung (Shab Bazar / Sa Oh Brang) and in Rathedaung: Chut Pyin (Shuap Praung).

¹⁵⁴ EI-001, EI-030, EI-038, EI-039, EI-065, EI-067, EI-073, EI-075, EI-080, EI-081, EI-089, EI-094, EI-097, EI-098, LI-105, K-128

¹⁵⁵ EI-021, EI-027, EI-030, EI-064, YI-030

¹⁵⁶ CI-042, CI-046, EI-021, EI-080, EI-081, QI-052, QI-060, QI-071, WI-038, K-128.

¹⁵⁷ EI-023, EI-028, EI-064, EI-066, EI-086, EI-094, EI-097, K-151, K-127.

¹⁵⁸ EI-027, EI-029, EI-057, EI-071, EI-083.

¹⁵⁹ EI-007, EI-014, EI-057, EI-096, EI-102.

¹⁶⁰ CI-034, CI-042, CI-046, EI-021, EI-080, EI-081, EI-097, QI-052, QI-60, QI-072, WI-038, K-151.

¹⁶¹ CI-042, CI-046, EI-080, EI-081, EI-097, QI-052, QI-060, QI-072, WI-038, K-151.

¹⁶² EI-057, EI-065, EI-080, EI-081.

¹⁶³ EI-007, EI-029, EI-057, EI-083.

¹⁶⁴ EI-096, EI-098, LI-105.

¹⁶⁵ EI-011, EI-014, EI-022, EI-076, EI-094, XI-001.

¹⁶⁶ EI-014, EI-064, EI-065, EI-067, EI-075, EI-076, EI-080, EI-081, EI-088, EI-094, EI-098.

¹⁶⁷ EI-064, EI-067, EI-092, LI-081, LI-105, WI-006, WI-027.

¹⁶⁸ EI-064, EI-067, EI-092, LI-081, LI-105, WI-006, WI-027, XI-001.

¹⁶⁹ Known as Shuap Praung in Rohingya.

¹⁷⁰ Known as Dun Shay Para in Rohingya.

¹⁷¹ Known as Shil Kha Li in Rohingya.

¹⁷² Known as Tula Toli in Rohingya.

¹⁷³ Known as Monu Para in Rohingya.

¹⁷⁴ Known as Gudam Para in Rohingya.

¹⁷⁵ CI-177, LI-009, QI-052, WI-005, WI-006, WI-027, K-151, K-155.1.

girls were raped and gang raped during the attacks. In Maung Nu, as soldiers arrived at the village,¹⁷⁶ they separated the women and children into different groups and locked them inside smaller houses within the compound.¹⁷⁷ Women and girls were subsequently gang raped, killed and mutilated.¹⁷⁸ In one case, documented by the Mission, a knife was used to mutilate the vagina of a woman, who died as a result of the injuries.¹⁷⁹

78. Around 28 August 2017, the Tatmadaw and security forces attacked Gu Dar Pyin, the main Rohingya settlement known as Gudam Para, in Southern Buthidaung Township, killing people and subjecting women and girls to sexual and gender-based violence, including rape, gang rape and abductions.¹⁸⁰

79. Women and girls were also abducted and gang raped at the military compound next to Gu Dar Pyin village on the day of the “clearance operations” in that village.¹⁸¹ Women and girls of reproductive age were targeted, principally between the ages of 13 and 25 years old.

80. In Min Gyi (Tu Lar Tu Li), known also as Tula Toli in Rohingya, in Maungdaw Township, Tatmadaw soldiers brutally raped women in groups of up to seven victims at a time, on 30 August 2017.¹⁸² The Tatmadaw killed the women’s children and set houses on fire, burning many of the victims to death.¹⁸³

81. A 25-year-old Rohingya woman was gang raped in Chin Tha Mar, Buthidaung Township, in early September 2017. She recounted:

*“The military came around 6 pm and started firing at people. People died from the shooting. They came by motorcycle. After the shooting I ran to the hills with other villagers and my husband. When the military caught us they beat my husband and three men took me, they tore my clothes as one held and pushed me to the ground. They used their penis to rape me. They took many other women, around ten or twenty, who were also raped.”*¹⁸⁴

82. Rape and sexual violence was also reported in Chein Khar Li (Ku Lar) and Koe Tan Kauk villages in Rathedaung Township, on 28 August 2017. In Koe Tan Kauk, a young girl was found bleeding and naked, raped by the military. She subsequently died.¹⁸⁵ In Chein Khar Li (Ku Lar), Tatmadaw soldiers raped and slit the throat of a woman and killed her three children, all under the age of five.¹⁸⁶

83. Other villages were also affected. A 30-year-old Rohingya woman from Kha Maung Seik village tract in Maungdaw Township was gang raped in late August by the Tatmadaw. She recounted:

*“Around 20 military came at around sunset and surrounded my house. Many female neighbours had managed to flee but my children were hungry so I had returned to my house to cook. After sunset the military entered the house while the children were sleeping. They slapped me twice, put a cloth over my mouth so I couldn’t speak and I was tied down. I was blindfolded so I could not see properly. Two men held my hands and someone else held my legs apart. I was conscious so knew that two people were sitting on my legs.”*¹⁸⁷

¹⁷⁶ CI-026, CI-110, CI-196, LI-079, LI-084, QI-042, WI-017.

¹⁷⁷ LI-079, QI-042, YI-032, YI-033.

¹⁷⁸ EI-019, EI-027, LI-081, LI-094.

¹⁷⁹ LI-081.

¹⁸⁰ EI-078, EI-079, EI-080, K-151.

¹⁸¹ EI-078, EI-079, EI-080, K-151.

¹⁸² CI-042, CI-046, EI-080, EI-081, QI-60, QI-071, WI-038, K-150, K-151.

¹⁸³ CI-042, CI-046, EI-080, EI-81, QI-060, QI-071, WI-038, K-150, K-151.

¹⁸⁴ EI-027.

¹⁸⁵ XI-001.

¹⁸⁶ CI-181, CI-182, LI-052.

¹⁸⁷ EI-089.

(ii.) The 2016 “are clearance operations”

84. A second episode of extreme sexual and gender-based violence was triggered on 9 October 2016, when ARSA attacked three Border Guard Police posts in northern Rakhine State, killing nine police officers. The Mission found that the 2016 “area clearance operations” were a precursor to the 2017 violence, when the violations were committed on a larger scale. The 2016 “clearance operations” were illustrative of the foreseeable and planned catastrophe that was later to come.¹⁸⁸

85. Security forces, led by the Tatmadaw, responded with “clearance operations” across an “area clearance zone” between Taungpyoletwea and Maungdaw, in central Maungdaw Township.¹⁸⁹ The “clearance operations” extended into December 2016.¹⁹⁰

86. Tatmadaw mass gang rapes¹⁹¹ were a significant part of the pattern of violence from October to December 2016. The Mission verified information about cases of sexual and gender-based violence, including rape and gang rapes, perpetrated in Yae Khat Chaung Gwa Son, Kyein Chaung and Kyet Yoe Pyin village tracts in Maungdaw Township. Tatmadaw and other security forces also raped and gang raped women and girls in Buthidaung Township,¹⁹² despite the “clearance operations” being focused on an area some distance from Buthidaung Township. This further indicates that the acts were clearly committed outside of the military’s stated objective of counter-insurgency, whose objective was to overcome ARSA terrorists.¹⁹³

87. The Mission spoke to victims of the extreme sexual violence, who described their ordeals. For example, on 1 December 2016, in Kyet Yoe Pyin, Maungdaw Township, a victim was gang raped by four men, two were armed with guns. She said the rape was painful: “I thought that I was going to die”. She bled for 15 days afterwards.¹⁹⁴

“I would rather be killed by a tiger or a bear in the jungle.”¹⁹⁵

88. On 5 December 2016, in Maungdaw Township, a four months pregnant woman was gang raped by soldiers from what the survivor described as the Tatmadaw Special Forces Unit. She told the Mission she would rather be killed by animals than be raped. Describing the rape, she stated that she became numb after the third rape and started losing consciousness. In her interview with the Mission, the survivor was able to confirm that one of her rapists wore a Northern Command badge.¹⁹⁶

89. In another case, a 25-year-old woman reported being gang raped in Dar Paing Sa Yar, in Buthidaung Township after the village chairperson failed to provide girls to the military as demanded:

“When the military entered the village all the men ran towards the jungle and the women stayed in groups. Women from 10-20 houses gathered in one house. In every village women made groups like that to stay together. The military initially pretended they needed potatoes. I thought I could rest and hide, but then they rushed into the house. 4 to 5 military were guarding the house when one of them raped me. One after the other, they took turns in raping me. I begged for my life. After the second rape, I fainted. I do not know how many men raped me.”¹⁹⁷

¹⁸⁸ CI-106, EI-055, EI-091, EI-093, EI-094, EI-095, LI-105, K-127, K-128.

¹⁸⁹ A/HRC/39/CRP.2, Para. 1069.

¹⁹⁰ A/HRC/39/CRP.2, Para. 1070.

¹⁹¹ CI-106, EI-055, EI-091, EI-093, EI-094, EI-095, LI-105, K-127, K-128.

¹⁹² EI-094, EI-095, EI-107.

¹⁹³ A/HRC/39/CRP.2, Paras.s 1102-1107, 1433, Global New Light of Myanmar “Tatmadaw ends clearance operations in Northern Rakhine” (18 February 2017).

¹⁹⁴ EI-054.

¹⁹⁵ EI-094.

¹⁹⁶ EI-055.

¹⁹⁷ EI-094.

(iii.) The 2012 violence

90. Similar to the 2016 “clearance operations” being a precursor for the sexual violence that marked the 2017 operations against Rohingya, the 2012 violence foreshadowed what was to come in 2016. On 28 May 2012, Ma Thida Htwe, a 27 year-old Buddhist woman was killed in the Kyauk Ni Maw village tract, Ramree Township, in the south of Rakhine State. On 5 June 2012, the newspaper Global New Light of Myanmar reported the case as murder and rape. It published the names of the three suspects and described them as “Bengali/Islam”. The three accused were subsequently prosecuted and sentenced to death. In the following days and weeks, the rape allegation, more than the murder, was used to incite violence and hatred against the Rohingya.¹⁹⁸

91. The Mission found that the ensuing violence was in large part triggered by a growing level of hate speech against the Rohingya community in Rakhine. Three waves of violence occurred: from 8 June to August 2012, in October 2012 and again in 2013. The perpetrators of the violence were mainly members of ethnic Rakhine communities who acted with either the direct participation or the acquiescence of the security forces.¹⁹⁹

92. In addition to killings, arson attacks and arbitrary arrests of Rohingya on a massive scale, sexual and gender-based violence was also committed against women and girls.²⁰⁰ The Mission received credible reports that up to 20 girls were abducted in June 2012 from the Narzi quarter in Sittwe and subjected to sexual slavery by soldiers.²⁰¹

93. The Mission corroborated a case of a rape and subsequent killing of a 16 year-old girl by security forces on 8 June 2012, in Ka Nyin Tan (a) Myo Ma Ka Nyin Tan, Maungdaw Township. A witness saw security forces surrounding the house of the girl. Four people entered the house, brought her outside the house, took off her clothes and raped her. They pulled her legs and arms and then they killed her by gunshot. They had aluminium and wooden sticks, long knives and short pistols.²⁰²

94. Following the 2012 violence, Rohingya in Rakhine State started being identified as “violent extremists” and “terrorists” and practising “violent Islam”, fuelling fear and deep resentment.²⁰³ The statements of government officials, politicians, religious authorities and military commanders, as well as of direct perpetrators, prior, during and after the violence, revealed an exclusionary vision, with perpetrators using expressions such as “go away”, “you don’t belong here”, “you are Bengali”, “we will kill you all”.²⁰⁴ The Government failed to condemn any of the sexual violence or the hate speech demonizing the Rohingya.

(iv.) Conclusions and legal findings

95. In its 2018 report, the Mission concluded on reasonable grounds that sexual and gender-based violence against Rohingya constituted, among other violations and crimes under international law, torture, war crimes, underlying acts of crimes against humanity and underlying acts of genocide.²⁰⁵ In that report, the Mission also assessed this sexual and gender-based violence as part of three of five factors that inferred the Tatmadaw’s genocidal intent to destroy the Rohingya people as such.²⁰⁶ The first factor was the utterances of Myanmar officials and others. One member of the Tatmadaw said to a gang

¹⁹⁸ A/HRC/39/CRP.2.Para. 625.

¹⁹⁹ A/HRC/39/CRP.2.Para. 645.

²⁰⁰ A/HRC/39/CRP.2.Para.s 662-668.

²⁰¹ K-076.19

²⁰² DI-038.

²⁰³ BI-001, BI-006, CI-147, EI-017, LI-006; LI-041, LI-048, LI-059, LI-077, LI-099, LI-114, QI-038, QI-040, QI-041, QI-059, QI-064, QI-111, WI-010, YI-005, YI-030.

²⁰⁴ LI-006; LI-041, LI-048, LI-059, LI-099, QI-038, QI-041, QI-059, QI-064, QI-111, YI-030, WI-010, A/HRC/39/CRP.2.Para.s, 1327-1331.

²⁰⁵ A/HRC/39/CRP.2, para. 438-441

²⁰⁶ The five indicators were rhetoric of hatred and contempt for the Rohingya, the utterances of governmental officials and others prior, during, and after the violence, the existence of discriminatory plans and policies, evidence of an organized plan of destruction, and the extreme brutality of the violence. A/HRC/39/CRP.2, para. 14219-1433.

rape survivor, “We are going to kill you this way, by raping. We are going to kill Rohingya. We will rape you.”²⁰⁷ Another woman from Kha Maung Seik, Maungdaw Township, reported a soldier saying, “We will rape you and kill you” and using insulting terms such as “Kalar”.²⁰⁸ The second factor was the Tatmadaw’s organized plan of destruction that included the targeting of women and girls of reproductive age for rape, gang rape and other forms of sexual violence.²⁰⁹ The third factor was the Tatmadaw’s extreme brutality, including attacks on pregnant mothers and on babies.²¹⁰

96. After further investigation and consolidation of its materials on sexual and gender-based violence for this report, the Mission now concludes on reasonable grounds that the sexual violence perpetrated against women and girls that began on 25 August 2017 was a sixth factor that indicated the Tatmadaw’s genocidal intent to destroy the Rohingya people, including by means of killing female members of the Rohingya community, causing Rohingya women and girls serious bodily or mental harm, deliberately inflicting on the Rohingya women and girls conditions of life calculated to bring about the destruction of the Rohingya in whole or in part, and imposing measures that prevented births within the group. This conclusion is based on the Mission’s analysis of the widespread and systematic killing of women and girls, the systematic selection of women and girls of reproductive ages for rape,²¹¹ attacks on pregnant women and on babies,²¹² the mutilation and other injuries to their reproductive organs,²¹³ the physical branding of their bodies by bite marks on their cheeks, neck, breast and thigh,²¹⁴ and so severely injuring victims that they may be unable to have sexual intercourse with their husbands or to conceive and leaving them concerned that they would no longer be able to have children.

97. A woman from Laung Don, Maungdaw Township, underwent a hysterectomy in Bangladesh due to injuries sustained because of gang rape.²¹⁵ Injuries were exacerbated by lack of access to healthcare *en route* to Bangladesh and on arrival. The Mission received information of women and girls who died *en route* due to the severity of injuries and lack of medical care.²¹⁶

98. Additionally, the Mission concludes on reasonable grounds that the Myanmar Government’s failure to cease, prevent and take action against sexual and gender-based violence targeting the Rohingya since at least 2012 marks a dismal failure on its part to respect and protect human rights under international law, including its treaty obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, 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. The Mission also concludes on reasonable grounds that sexual and gender-based violence that the security forces perpetrated in the 2016 and 2017 “clearance operations”—after the government signed the International Covenant on Economic, Social and Cultural Rights but before it became a State party—constituted assaults on the living conditions and health, including sexual and reproductive health, of women and girls that defeated the Covenant’s object and purpose and, therefore, the Government violated its obligation under the Vienna Convention on the Law of Treaties. These violations are an injustice for the victims of sexual and gender-based violence, but they are also a significant contributor to a climate of tolerance for sexual violence that has fuelled further sexual violence.

99. The two waves of gross violations of human rights in 2012 and 2016 along with the perpetuation of anti-Rohingya laws and policies laid the groundwork for the Tatmadaw to

²⁰⁷ A/HRC/39/CRP.2, para. 932.

²⁰⁸ A/HRC/39/CRP.2, para. 932.

²⁰⁹ A/HRC/39/CRP.2, para. 1428-1431.

²¹⁰ A/HRC/39/CRP.2, para. 1432-1433.

²¹¹ A/HRC/39/CRP.2, para. 933.

²¹² A/HRC/39/CRP.2, para. 933.

²¹³ A/HRC/39/CRP.2, para. 934.

²¹⁴ A/HRC/39/CRP.2, para. 926.

²¹⁵ A/HRC/39/CRP.2, para. 934.

²¹⁶ A/HRC/39/CRP.2, para. 934.

act with total impunity in perpetrating sexual and gender-based violence during the “clearance operations” that began on 25 August 2017. Had there been the political will, the legislative reforms and the judicial action necessary to hold security forces, in particular Tatmadaw soldiers, commanders and top generals, as well as ethnic Rakhine villagers, accountable after the 2012 and 2016 violence, there is a strong likelihood that the catastrophe of 2017 could have been averted or at least reduced. Two years later, no military commander has been held accountable for these and other crimes under international law. The Government notoriously denies responsibility. There have been no significant legislative reforms to strip the military of its impunity and end the structural and institutional discrimination against the Rohingya.²¹⁷ The Mission therefore not only concludes that the Government failed in its obligation to hold perpetrators for sexual violence accountable, but it also concludes 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.²¹⁸

B. Sexual and gender-based violence against ethnic Rakhine

100. The Rakhine people have long felt politically disenfranchised, economically marginalised and discriminated against due to their ethnicity.²¹⁹ In its 2018 report, the Mission found that ethnic Rakhine women and girls were subjected to rape and other forms of sexual violence by Tatmadaw forces, especially high ranking officers, between 2011 and up until the “clearance operations” against the Rohingya that began on 25 August 2017.²²⁰ Incidents of sexual and gender-based violence have primarily taken place in the context of forced labour²²¹ or in heavily militarized areas.²²² Women taken for forced labour by the Tatmadaw were assigned feminized chores, such as cooking, cleaning or manual labour, and subjected to rape, gang rape or sexual assault.²²³

101. For example, a survivor from Kyauktaw Township told the Mission that she was beaten by soldiers and raped on several occasions by a Tatmadaw captain in 2016. The same source also reported that 20 to 30 women from her village were raped in similar circumstances.²²⁴ When she refused to return to the military camp, the interviewee’s husband was threatened by the Tatmadaw. She then fled Myanmar, fearing that soldiers would return and rape her again. She described the last occasion she was raped.

*“At the end of the day [working at the military camp] the “chief” told me to wait, together with about ten other women. He chose about four or five women, and we were taken away one by one. I initially refused to go, but two or three soldiers beat me. In the room I was raped by one soldier, while two others stood outside the closed door. He had three stars on his uniform.”*²²⁵

102. Rape and other forms of sexual violence against ethnic Rakhine also coincided with instances of land grabbing and extortion by the Tatmadaw in heavily militarized area.²²⁶ For example, a Rakhine woman reported that, when she was 17 years old, she had been

²¹⁷ See Section on Accountability.

²¹⁸ Article V requires that parties to the Genocide Convention “undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.” Article III makes punishable (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; and (e) Complicity in genocide.

²¹⁹ A/HRC/42/50, para. 41

²²⁰ DI-014, DI-036, DI-041, DI-044, QI-072, QI-073, QI-075 ; A/HRC/39/CRP.2, para. 438-443.

²²¹ DI-044, QI-072, QI-075.

²²² DI-014, DI-036, DI-041, QI-073.

²²³ DI-044, QI-072, QI-075.

²²⁴ QI-072.

²²⁵ QI-072.

²²⁶ DI-036, QI-073.

raped at gunpoint by a captain from the Tatmadaw South Western Command in Minbya Township. This happened after her family was unable to provide the Tatmadaw with part of their harvest of rice, framed as a “tax”. The captain said she should marry him in exchange. When she refused, she was raped.²²⁷

103. Rakhine women and girls who have been raped by Tatmadaw soldiers told the Mission they face rejection by their families or communities and have expressed fear of being subjected to further sexual violence.²²⁸

104. The situation in Rakhine State, however, has changed dramatically since the Mission’s 2018 report. On 4 January 2019, the Arakan Army (AA)²²⁹ launched coordinated attacks on four border police outposts in northern Buthidaung Township, Rakhine State, killing 13 police officers. While clashes between the AA and the Tatmadaw have been occurring since 2015, the conflict intensified in October 2018. January 2019 marked another significant escalation. The conflict now affects nine townships of Rakhine State, as well as Paletwa Township, Chin State.²³⁰

105. The Mission received secondary accounts from villagers who said they had heard that women were abducted by Tatmadaw soldiers and raped.²³¹ However, the Mission has not found evidence of the Tatmadaw engaging in widespread mass sexual violence against civilians as a part of its military strategy to combat the AA. This is in striking contrast to the widespread and systematic sexual violence perpetrated against Rohingya, during the 2017 “clearance operations”, by some of the same military units present in Rakhine State in the context of the current conflict with the AA, such as LIDs 33 and 99.²³² The highest levels of command appear to be able to control when their troops do or do not use sexual violence during attacks on civilians and civilian populations. The senior commanders seem able to turn mass sexual violence on and off at will. The Mission considers that this new trend lends further support to its conclusion that soldiers used sexual violence against the Rohingya as an intentionally degrading strategy in their “clearance operations”.²³³

106. Nevertheless, there is a complex gender dimension to the AA conflict. Men and boys of all ethnicities are particularly subject to being taken for forced labour by the Tatmadaw, and often subject to ill-treatment or torture, with ethnic Rakhine men more vulnerable to arbitrary arrest and detention. An increasingly notable practice of the Tatmadaw in 2019, is the rounding up and interrogation of ethnic Rakhine male villagers, including minors, accused of belonging to the AA. The villagers are often subjected to violent interrogations, at times amounting to torture or other cruel, inhuman or degrading treatment or punishment.²³⁴

107. The Mission received credible accounts of Tatmadaw soldiers sexually humiliating men in the course of these interrogations, forcing them to undress in front of other villagers.²³⁵ More specifically, on 18 March 2019, approximately 150 soldiers entered a village near Mrauk U town and rounded-up young men hiding in the monastery with other villagers. Men were separated out, stripped naked and forced to do jumping exercises and were beaten, while being asked about the AA.²³⁶

²²⁷ DI-036.

²²⁸ DI-036, DI-044, QI-072.

²²⁹ The AA has a political agenda of Rakhine self-determination through a “confederacy”. They have been excluded from the National Ceasefire Agreement as well as the Tatmadaw’s unilateral ceasefire extended it until 31 August 2019. A/HRC/42/50, para. 41. The AA, the MNDAA, the KIA and the TNLA collaborate as the Northern Alliance; A/HRC/39/CRP.2, para. 108.

²³⁰ A/HRC/42/50, para. 39.

²³¹ CI-274, CI-276, LI-167.

²³² Troops deployed included the at least five Light Infantry Division (LIDs), and elements of three others, including 11, 22, 33, 44, 55, 66, 77 as well as part of 99 into Rakhine State, as well as the 77th LID 77 stationed in the region; A/HRC/42/50, para. 41.

²³³ A/HRC/42/50, para. 51.

²³⁴ A/HRC/42/50, para. 40.

²³⁵ LI-166, CI-274.

²³⁶ LI-166.

C. Sexual and gender-based violence in Kachin and Shan State

(i.) Context

108. Since June 2011, the protracted conflicts in Kachin and Shan States escalated, characterized both by intense fighting between the Tatmadaw and the EAOs²³⁷ and by EAOs fighting each other.²³⁸ Attempts to sign an inclusive peace agreement with all EAOs operating in Kachin and Shan States have failed.²³⁹ Despite a unilateral ceasefire declared by the Tatmadaw from December 2018 to 31 August 2019,²⁴⁰ the Mission found that hostilities continue with adverse effects on the civilian populations,²⁴¹ including continued sexual and gender-based violence.

109. The populations of Kachin and Shan States comprise various ethnic and religious groups.²⁴² Many of these groups have struggled for decades for greater autonomy and against what they perceive to be a central government that has favoured Bamar-Buddhists politically and economically.²⁴³ These grievances have been aggravated by the Tatmadaw's counterinsurgency tactics that directly target and adversely affect the civilian population. In certain regions in northern Myanmar, the Tatmadaw intentionally and frequently targets civilian populations that share the same ethnicity as members of EAOs. The Tatmadaw seems to consider all members of an ethnic minority to be members and supporters of an EAO of the same ethnicity.

110. Villages were cleared and land was burned throughout Kachin and Shan States since 2011.²⁴⁴ Thousands of civilians have been displaced. Over 106,500 people have been living in 169 camps in Kachin and Shan since 2011, 36 per cent of them in contested areas and areas controlled by EAOs to which United Nations agencies are denied access.²⁴⁵ The conflicts in Kachin and Shan States are also fuelled by the exploitation of natural resources, land use and major infrastructure projects, and narcotics trading.²⁴⁶ International human rights and humanitarian law violations against ethnic and religious groups in northern Myanmar are committed in a context of severe discrimination on ethnic and gender grounds, often with persecutory intent. This manifests itself in the use of ethnic and sexist

²³⁷ The EAOs are: Kachin Independence Army (KIA), the Myanmar National Democratic Alliance Army (MNDAA), the Ta'ang National Liberation Army (TNLA), Shan State Army-South (SSA-S - Armed wing of the Restoration Council of Shan State (RCSS).), and Shan State Army-North (SSA-N - Armed wing of the Shan State Progress Party (SSPP)).

²³⁸ Notably the SSA-S and the TNLA, and the SSA-S and SSA-N sporadically

²³⁹ Despite attempts to sign peace agreements with some of the EAOs since 1961, several groups have been ostracized from the peace process, and hostilities have continued even with some parties to the National Ceasefire Agreement (NCA). The NCA was signed on 12 October 2015 with eight EAOs. Groups that have not signed include the KIA, the MNDAA, the TNLA and the Arakan Army (AA). Among the groups currently involved in hostilities in Kachin and Shan States, only the SSA-S signed the NCA but clashes continue between it and the Tatmadaw, parallel to the peace process. The SSA-N has not yet signed the NCA; A/HRC/39/CRP.2, para. 107; A/HRC/42/50, para. 57-58.

²⁴⁰ Including the KIA, MNDAA and TNLA, see Myanmar Times, Tatmadaw extends ceasefire a second time, to August 31, 2 July 2019; 2393, 2394, 2395, 2396, 2397, 2398; Myanmar Times, "Tatmadaw extends ceasefire a second time, to August 31" (2 July 2019).

²⁴¹ A/HRC/42/50, para. 57-66.

²⁴² The peoples of Shan State include the Shan, Pa-O, Intha, Lahu, Lisu, Taungyo, Danu, Ta'ang, Ahka and Jinghpaw (Kachin), Shan-Chinese (Han), Shan-Ni and Kokang. The peoples of Kachin State include the Jinghpaw, Shan, Ruwang, Lisu, Zaiwa, Lawngwaw, Lachyit, Rakhine and Bamar. Many of the ethnic minority groups have substantial numbers of Christians among their members. Some groups are predominantly Christian.

²⁴³ A/HRC/39/CRP.2, para. 109.

²⁴⁴ A/HRC/39/CRP.2, para. 109.

²⁴⁵ A/HRC/42/50, para. 61.

²⁴⁶ A/HRC/39/CRP.2, para. 110; A/HRC/42/CRP.3.

slurs during the commission of these violations²⁴⁷ and in their treatment as inferior or even “sub-human”.²⁴⁸

111. One Kachin survivor recounted that she was called a “Kachin bitch” and “children of the fucker”.²⁴⁹ Another survivor said her perpetrators compared Kachin people to dogs.²⁵⁰ A witness to the gang rape of two teenage girls by 20 soldiers in a forest heard the soldiers call the girls “witches” and tell them, “we will torture you Kachin bitches until you are extinct”.²⁵¹ A witness to sexual assault, rape and killing of Shan women during forced labour reported the soldiers told them, “all Shan ladies are only for us and not for the Shan people. We do not want your children to be Shan.”²⁵² One Ta’ang female survivor also reported the soldiers insulted her during rape, which she understood despite her limited knowledge of the Myanmar language.²⁵³

112. The Mission found that the Tatmadaw used rape and other forms of sexual violence to target women and girls during its military ground operations,²⁵⁴ during forced labour²⁵⁵ or as a result of heavy militarization²⁵⁶ with a particular intent to punish or dehumanise them for their gender, ethnic and religious identity. Women and girls have been subjected to abduction, rape, including gang rape and attempted rape, rape-murder, forced nudity, sexual assault and other forms of sexual violence. There are also credible reports of sexual slavery.²⁵⁷ In many cases, sexual violence was accompanied by degrading behaviour, including insults and spitting.²⁵⁸ When women escaped, Tatmadaw soldiers would frequently search for them, threaten and physically abuse their family members, and destroy or steal their property.²⁵⁹

113. The findings in this section are based on over 65 interviews with survivors, families of survivors, witnesses, and sexual and gender-based violence experts. The prevailing context of insecurity in northern Myanmar, the culturally based stigmatisation and ostracism of sexual violence survivors, and the continuing presence of the military and armed groups, despite the current ceasefire, suggest significant underreporting of human rights violations.²⁶⁰

(ii.) Rape and other forms of sexual violence during Tatmadaw ground operations

114. In its 2018 report the Mission concluded on reasonable grounds that sexual violence has been perpetrated against women and girls in Shan and Kachin since 2011 during Tatmadaw-led “clearance operations” as a tactic of war.²⁶¹

115. Since June 2011, when the 17-year ceasefire between the Kachin Independence Army (KIA) and the Tatmadaw broke down, Tatmadaw has conducted military operations

²⁴⁷ A/HRC/39/CRP.2, para. 112; DI-063, DI-064, DI-066, PI-003, PI-007, PI-004, PI-026, PI-069, QI-090, QI-096.

²⁴⁸ A/HRC/39/CRP.2, para. 112, 217-218; DI-061, PI-087, QI-094, PI-031.

²⁴⁹ PI-004.

²⁵⁰ PI-023.

²⁵¹ PI-069.

²⁵² PI-155.

²⁵³ PI-166.

²⁵⁴ GI-006, PI-063, PI-069, PI-117, PI-146.; *see also* Shan Human Rights Foundation (SHRF), *Summary of HR violations committed by Burma Army troops during military offensive in Tang Yan, Shan State, from 14-15 April 2013* (April 2013).

²⁵⁵ A/HRC/39/CRP.2, para 253-273; PI-004, PI-023, PI-029, PI-067, PI-068, PI-083, PI-089, PI-099, PI-124; PI-125, QI-084, PI-143, PI-146, PI-155, PI-175.

²⁵⁶ PI-003, PI-007, PI-096, QI-078, QI-082, V-330.

²⁵⁷ PI-067, PI-068, PI-160.

²⁵⁸ PI-003, PI-004, PI-146.

²⁵⁹ PI-003, PI-005, PI-007, PI-067, PI-068, QI-084.

²⁶⁰ A/HRC/31/71, para. 48.

²⁶¹ A/HRC/39/CRP.2, para. 1374.

in northern Shan and Kachin States.²⁶² These operations were frequently accompanied by sexual and gender-based violence against women and girls.

116. In July 2011, in Kutkai Township, Shan State, the Tatmadaw was fighting the Ta'ang National Liberation Army (TNLA).²⁶³ According to one survivor, Tatmadaw soldiers approached a mixed Kokang and Ta'ang village searching for TNLA members. An ethnic Kokang woman told the Mission that Tatmadaw soldiers abducted her and her mother from her farm and raped her in a hut next to a military base in the forest. Two Tatmadaw soldiers stood guard while another higher ranking soldier ripped off her clothes and raped her. During the abduction and rape, the survivor was accused of supporting TNLA soldiers. The Tatmadaw soldiers asked "*Why did you pass a message to the TNLA?*"²⁶⁴

117. One female survivor described a ground raid in early 2012 in Lashio Township, Shan State, near where the KIA and Tatmadaw were fighting. Tatmadaw soldiers rounded up men in the centre of a Kachin village to question them on the location of KIA members and searched houses. A group of soldiers entered her house, killed her parents and set their home on fire. A higher ranking soldier took her outside the house where he raped her vaginally and anally. She said: "He inserted a banana leaf in my mouth to make me stop screaming. I heard, "If you don't keep quiet, I will shoot you with my gun".²⁶⁵

118. More recently, from June 2017 to April 2018 in Tanai Township, Kachin, the Tatmadaw and the KIA were engaged in a series of clashes. The Mission's 2018 reported the Tatmadaw conducting indiscriminate attacks, including by airstrikes, and committing extrajudicial killings, torture and rape of civilians, among other violations.²⁶⁶ Clashes began in June 2017 but fighting intensified in November 2017, reaching a peak in January 2018. The Tatmadaw attacked several mining operations in KIO/KIA areas of control with an apparent purpose of taking control of economic and natural resources.²⁶⁷ During various Tanai offensives, Tatmadaw soldiers subjected women to rape, gang rape, attempted rape, forced nudity and sexual humiliation.²⁶⁸

119. The presence of the Northern Command in the area, its participation in the Tanai operations, and other indicators, draw the Mission to infer that high ranking officials and other Northern Command soldiers should be investigated for this sexual violence.²⁶⁹ One witness saw 20 soldiers gang raping two naked Kachin girls aged approximately 15 to 16 years old in the jungle near a mining area in Tanai Township in December 2017. The witness ran from the scene in fear and later learned that villagers had found the dead bodies of the two girls.²⁷⁰

120. In late January 2018, one Kachin woman reported being abducted by five soldiers near Nam Byu village in the mining area in Tanai Township, and being forced to walk for two hours into the forest to meet a more senior officer. When she refused to take off her clothes, three soldiers forcibly undressed her while two soldiers stood guard. The senior officer raped her while insulting her, telling the other officers, "I will take her first and then you can have her" and telling the victim, "I will fuck you to death".²⁷¹

²⁶² A/HRC/39/CRP.2, para. 122.

²⁶³ PI-023, PI-066, QI-084.

²⁶⁴ PI-066.

²⁶⁵ PI-117.

²⁶⁶ A/HRC/39/CRP.2, para. 307-315.

²⁶⁷ PI-043, PI-049, PI-054; A/HRC/39/CRP.2, para. 307-315; Primarily gold and amber but also jade, copper and ruby mines. The Irrawaddy, "KIA Raids Tatmadaw Base, Claims to Detain More than a Dozen Troops" (9 April 2018); Myanmar Times, "Over 2000 Kachin villagers flee KIA-military battles" (23 April 2018).

²⁶⁸ PI-063, PI-069, PI-146, GI-006.

²⁶⁹ GI-006, GI-010, PI-069, QM-018, V-018; The Irrawaddy, "Regional Military Commanders Reshuffled" (24 April 2018).

²⁷⁰ PI-069.

²⁷¹ PI-069; Myanmar Times, "Tatmadaw wants KIA to dismantle camps in Tanai" (9 February 2018).

121. A Kachin woman told the Mission that in April 2018, during ground operations and house searches conducted by the Tatmadaw in Tanai Township, Tatmadaw soldiers forced her to undress in front of her family. The victim understood the forced nudity as being a rape threat perpetrated to obtain information from her family on KIA movements.²⁷² She also reported that, after the battle with the KIA and house searches, the Tatmadaw conducted patrols around the perimeter of the village and raped at least four women and girls that were trying to flee the area.²⁷³

(iii.) Rape and other forms of sexual violence in heavily militarized areas

122. The Mission received consistent credible accounts of Tatmadaw soldiers, either individually or in groups, raping women and girls and committing other forms of sexual violence in heavily militarized areas since 2011.²⁷⁴ The Tatmadaw's military presence in Shan and Kachin is marked by its military bases, camps and check-points in and around villages, and Tatmadaw patrols in and around villages, often characterized by sporadic incursions into civilian areas. Mining areas, areas where large infrastructure projects are carried out, and areas neighbouring EAO-controlled territory are particularly militarized. Women who were raped in or near their homes, or following abductions to other locations, identified the Tatmadaw as the perpetrators because the perpetrators were wearing Tatmadaw insignia or military uniforms or because of the presence of military bases near their villages.²⁷⁵ The Mission assessed these claims against a pattern of similar cases of the Tatmadaw using sexual and gender-based violence in Kachin and Shan State.²⁷⁶

123. Rape and other forms of sexual violence perpetrated against women and girls in such militarized contexts are not directly related to military objectives. They are not widely condemned or punished by the Tatmadaw hierarchy, which are also contributing factors to their widespread nature. The following are illustrative of sexual violence perpetrated in highly militarized areas in northern Myanmar.

124. The Mission verified the rape and torture of an ethnic Ta'ang woman by two Tatmadaw soldiers on 10 May 2019 in Namhsan Township, Shan State.²⁷⁷ Sources available to the Mission and media reports suggest that Tatmadaw soldiers from LIBs 258, 252 and 522, commanded by LID 101, were stationed in or around the village at the time of the rape.²⁷⁸ The incident took place in an area bordering TNLA-controlled territory where the Tatmadaw has been fighting since 2011²⁷⁹ and where clashes took place after the December 2018 unilateral ceasefire.²⁸⁰ The soldiers abducted the woman while she was farming alone on a tea plantation. They dragged her down the valley while asking her in the Myanmar language, which she barely understood, how many TNLA fighters were in the area.²⁸¹ The two men ripped off some of her clothes and took turns raping her.²⁸² According to another source, the Tatmadaw said it would "take responsibility" if the gang rape resulted in a pregnancy.²⁸³ The woman lodged an official complaint before the Namsan police shortly after the incident, after which the police collected the survivor's clothing as

²⁷² GI-006.

²⁷³ GI-006.

²⁷⁴ PI-005, PI-037, PI-046, PI-057, PI-110, PI-117, PI-136, PI-141, PI-142, PI-144, PI-166, PI-169, PI-170, ; see also Shan Human Rights Foundation (SHRF), *Update by the Shan Human Rights Foundation* (April 2016); SHRF, *Update by the Shan Human Rights Foundation* (November 2015); Ta'ang Women's Organization, *Trained to torture: Systematic war crimes by the Burmese Army in Ta'ang areas of Northern Shan State* (March 2011-March 2016); Kachin Women's Association Thailand, *State of Terror in Kachin Hills* (February 2013).

²⁷⁵ PI-003, PI-004, PI-005, PI-007, PI-067, PI-068, PI-069, PI-089, PI-134, PI-136, PI-142, PI-144, PI-166, QI-082.

²⁷⁶ A/HRC/39/CRP.2, para. 188-219.

²⁷⁷ PI-166, V-354, V-355, 2615.

²⁷⁸ PI-166, V-354, V-355, 2615.

²⁷⁹ PI-101.

²⁸⁰ A/HRC/42/50, paras. 57-58.

²⁸¹ PI-166.

²⁸² PI-166, 2615.

²⁸³ 2615.

evidence. The police provided no additional follow-up information to the survivor more than a month after the complaint was lodged. The woman left her village out of fear of reprisals from the Tatmadaw and due to the stigma attached to being a known rape survivor.²⁸⁴

125. Heavily militarized mining areas also expose women to risks. The mission verified the rape of a seventy-year-old Shan woman in Monghpyak village in Tachilek Township, Shan State, on 2 April 2018.²⁸⁵ Hundreds of Tatmadaw soldiers were deployed in the same area as a proposed mineral exploration project operated by a Singapore company with Australian management, Access Asia Mining, which raised concerns for civil society that human rights violations may take place in that area.²⁸⁶ The area has a population of about 6,000 civilians. Such a large military-civilian ratio produces constant fear among local residents, particularly women.²⁸⁷ Sources available to the Mission and the area of operations of specific Tatmadaw military units, as well as media reports, suggest that the soldier was serving in LIB 329 or LIB 330, commanded by Military Operations Command 18 (MOC-18).²⁸⁸ The soldier abducted the woman while she was collecting vegetables in the forest close to her home. He stabbed her ear lobes with a knife while stealing her earrings, squeezed her neck, beat her on the face and raped her vaginally, causing her to lose consciousness. The military paid for her hospital fees and medicine but the survivor was not given an opportunity to provide a statement and, as of March 2019, she was unaware of any disciplinary proceeding initiated against her rapist. Reports suggest that police have only filed a case of slashing and robbery, not rape, and that the perpetrator would be brought before a court martial.²⁸⁹

126. The Mission received credible reports of a Kachin woman killed in Kuktai Township, Shan State, on 3 July 2019. Photos assessed by the Mission suggest that the woman may have been raped before being killed. She was murdered at her shop.²⁹⁰ Sources available to the Mission and the area of operations of specific Tatmadaw military units, as well as media reports, suggest that the murder and possible rape were perpetrated by soldiers belonging to a military unit with the number 261, which has been stationed in the village since 2016.²⁹¹

(iv.) The situation of girls in heavily militarized areas

127. Girls face heightened risks of sexual violence in heavily militarized areas in Kachin and Shan States. The two cases provided below are in addition to the cases noted above and the more extensive facts included in the Mission's 2018 report regarding girls being subjected to sexual and gender-based violence in northern Myanmar since 2011.²⁹² The Mission concludes on reasonable grounds that girls, in addition to women, are acutely vulnerable to sexual and gender-based violence in militarized and conflict-prone areas of northern Myanmar.

128. The Mission verified the rape of a 14-year-old Kachin girl in a village in Kuktai Township, Shan State, on 16 May 2014. Two Tatmadaw soldiers from LIB 567 stationed in the village abducted the child. One of the soldiers raped the girl next to the nursery school located in the centre of her village. When the child had not returned home, her mother searched the village calling for her daughter. The child finally returned home and told her

²⁸⁴ 2615.

²⁸⁵ GI-002, GI-014, PI-136, V-356, V-357, V-358.

²⁸⁶ Access Asia Mining responded to these concerns, available at <https://www.business-humanrights.org/sites/default/files/documents/Access%20Asia%20Mining%20Response%2015%20May%202018.pdf>. See also, Shareholder Update (2 March 2018) available at http://accessasiamining.com/pdf/shareholders/AAM_Shareholder%20Update%202020318.pdf.

²⁸⁷ V-356.

²⁸⁸ PI-136, V-356, V-357, V-358.

²⁸⁹ V-356, V-357, V-358.

²⁹⁰ V-359, 2137, 2138.

²⁹¹ V-359, 2137, 2138. The Missions received varying accounts as to whether this number refers to an LIB or an IB.

²⁹² PI-037, PI-063, PI-141, PI-144.

mother, “I heard you call me mother. I tried to answer back but the soldier covered my mouth. The soldier took me to the bush next to the nursery and raped me.” The following day, her parents, the village administrator and the pastor accompanied the survivor to the LIB 567 base and reported the incident to the Tatmadaw general. A court martial sentenced the perpetrator to one year of imprisonment. The survivor initiated a legal procedure to have the case transferred to a civilian court to extend the charges and increase the sentencing. However, as of June 2019 the civil procedure was stalled.²⁹³

129. A 17 year-old Kachin girl was raped in Bhamo Township, Kachin State, on 9 December 2018. She was coming home from the shop when she was apprehended from behind by at least two men and knocked unconscious. When she woke up on the road, she was partly naked and felt acute pain in her genital area. The survivor could not identify the rapists as she immediately lost consciousness. The Mission has reasonable grounds to conclude they were Tatmadaw soldiers. At the time there was a heightened presence of soldiers in the village, which lies in the frontline area near the KIA headquarters in Laiza. In addition, the road where the girl was raped was regularly used by soldiers.²⁹⁴ The survivor lodged a complaint with the police in her district, but nothing has happened since the incident due to what the police told the survivor was a lack of evidence.²⁹⁵

130. Survivors of child rape and their family members to whom the Mission spoke suffered from fear, trauma, marginalization and ostracism from their community and authorities.²⁹⁶

(v.) Rape and other forms of sexual violence during forced labour by the Tatmadaw

131. The Mission found a pattern of individual Tatmadaw soldiers or groups of them abducting women and girls, often for forced labour,²⁹⁷ and then subjecting them to rape-murder, gang rape, rape, attempted rape and other forms of sexual assault and humiliation²⁹⁸ in forests²⁹⁹ or in military bases.³⁰⁰ Parents, relatives and neighbours reported that they saw or knew women and girls forcibly taken by the Tatmadaw.³⁰¹ In some cases, these people saw or learned from others that the women and girls had been raped³⁰² and in some instances killed.³⁰³

132. In many instances, the Tatmadaw arrived in villages and detained men, women and children in conditions of forced labour.³⁰⁴ Women and girls taken for forced labour by Tatmadaw soldiers were at a high risk of being subjected to sexual and gender-based violence because they are often required to work separately from the men and are assigned “feminized” chores in military camps, segregating them from the rest of the group and increasing their vulnerability to abuse.³⁰⁵ Sexual and gender-based violence have also been committed within the context of the exploitation of natural resources or development projects by the Tatmadaw.³⁰⁶

133. A Kachin female survivor from Kutkai Township, Shan State, reported that Tatmadaw soldiers abducted her from her house in 2011. She said that they destroyed her shop before forcing her to carry heavy items to a military base. She and another woman

²⁹³ PI-144, 2400.

²⁹⁴ PI-141, 2400.

²⁹⁵ PI-141, 2400.

²⁹⁶ PI-141, PI-145, 2400.

²⁹⁷ A/HRC/39/CRP.2, paras. 253-273; PI-124; PI-125, PI-175.

²⁹⁸ QI-084, PI-143, PI-175.

²⁹⁹ PI-003, PI-004, PI-007, PI-029, PI-067, PI-069, PI-083, PI-089, PI-096, PI-099, PI-146, PI-155.

³⁰⁰ PI-023, PI-025, PI-029, PI-143, PI-160.

³⁰¹ PI-096, QI-078.

³⁰² PI-068, QI-072, QI-082, QI-086, QI-089.

³⁰³ PI-069, PI-155, QI-079, V-330.

³⁰⁴ A/HRC/39/CRP.2, para 258; PI-175.

³⁰⁵ PI-029, PI-143, PI-155.

³⁰⁶ PI-069, PI-146, A/HRC/42/CRP.3, para. 101.

were sexually assaulted and verbally abused, but were able to escape that night after the soldiers said the women would have to have sex with them.³⁰⁷

134. Also in 2011, an ethnic Shan man who the Tatmadaw placed into forced labour in Kunhing Township, Shan State, witnessed three Tatmadaw soldiers force a husband to work as a porter while they took his wife to the forest and raped her.³⁰⁸

135. On 16 June 2016, Tatmadaw soldiers arrived in a Lisu home in Myitkyina Township, Kachin State, and shouted, “there are jobs women need to do”. They took a woman to their military base for forced labour, along with three other Lisu women. For approximately two weeks, the women were sexually assaulted and harassed by the soldiers while performing chores such as cleaning and cooking. She told the Mission the soldiers would “touch me on my breast, thighs, buttocks and when they were drunk they would put their hands inside my shirt”. The survivor also told the Mission the soldiers attempted to rape her and the other women on the base but an older Ruwang woman intervened. She said they were beaten each time they resisted rape.³⁰⁹

136. The Tatmadaw have used mining areas as staging grounds for abductions, forced labour, sexual violence and murder. The nature of these violations suggests that civilians, in particular women, living and working in mining areas are at a particularly heightened risk of experiencing sexual violence by the Tatmadaw.³¹⁰ For example, in November 2016, the Tatmadaw detained a woman for forced labour, and later abducted her and her infant son into the forest to rape her in the Namyang amber mining area in Kachin State.³¹¹ She told the Mission:

“They did something very bad to me. They harassed me. They slapped me. They threw my son back to me after they were finished.” After she was raped by one Tatmadaw soldier, the other said it was his turn. She said, *“I think he did not finish me off because my son was crying, there are also other tents in the mining area... maybe because of the noise he did not rape me too.”*³¹²

137. A Shan man told the Mission that in February 2018 in Mongkaung Township, Shan State, the Tatmadaw and the Shan State Army-South (SSA-S) were fighting near his village when the Tatmadaw forced him to porter heavy material for a period of 15 days. He reported that ethnic Shan women were also taken for portering and had to walk separately in front of the men. Tatmadaw soldiers were insulting them and sexually assaulting the women. Five Tatmadaw soldiers took two women into the forest to gang rape them. The witness later found their bodies in the jungle, naked with blood on their chests and in between their legs. A rope was around their necks. After this incident, another Shan woman forced to porter with the same group confided in the witness that she had been gang raped by ten Tatmadaw soldiers at the river where she went to bathe.³¹³

(vi.) Sexual slavery

138. The Mission received three credible accounts from survivors³¹⁴ and other accounts from secondary sources³¹⁵ relating to sexual slavery in northern Myanmar, in areas where the Tatmadaw was actively fighting the KIA. The sexual slavery occurred when Tatmadaw soldiers abducted and deprived women of their liberty as forced labourers on military bases. The women were confined in fear and threatened with retaliation if they escaped. In one case, in retaliation for her escape after several months of captivity, the Tatmadaw destroyed

³⁰⁷ PI-023.

³⁰⁸ PI-083.

³⁰⁹ PI-143.

³¹⁰ A/HRC/42/CRP.3, para. 101.

³¹¹ PI-146.

³¹² PI-146, A/HRC/42/CRP.3, para. 92.

³¹³ PI-155.

³¹⁴ PI-067, PI-068, PI-160.

³¹⁵ PI-025, PI-029.

the woman's house and beat her mother. The mother was subsequently made to perform forced labour for the Tatmadaw.³¹⁶

139. A teacher in Bhamo Township in Kachin State said that she was abducted in 2012 on her way to school and taken to a military base for forced labour. One night a soldier took her to the tent of a senior Tatmadaw officer. When she fought this officer's attempt to rape her, he burned her arms with cigarettes, hit her with the butt of his rifle, cut her neck and arms with a knife, and punched her so hard that she lost consciousness. She regained consciousness while he was raping her. She was again knocked unconscious by the perpetrator. The senior officer kept the woman in his tent for five to seven days and repeatedly raped her vaginally, anally and orally. She said:

*"The General told me that, if I did not let myself be raped, he would get the other soldiers to rape me as well. He raped me every night for about 5 to 7 days."*³¹⁷

140. After being raped, she was not allowed to bathe and had to sleep with other female captives on the ground with no blanket. She observed other girls kept in similar conditions by soldiers at the base. She told the Mission that three or four girls were repeatedly raped while she was there.³¹⁸

141. Similarly, in 2012 a Lisu survivor reported that 12 Tatmadaw soldiers came to her house in Myitkyina Township, Kachin State, and threatened to take her mother away if the daughter did not go with them. She spent six to seven months in forced labour in a military camp near her village. On one occasion, she was raped by a senior officer with another soldier watching. On another night, soldiers told her to drink juice that caused her to lose consciousness. She woke up without underwear next to a sleeping soldier, with pain in her back, anus, vagina and thighs. A week later, she was taken to the same senior officer but escaped before he raped her again.³¹⁹

142. A Kachin teacher reported that Tatmadaw soldiers abducted her at lunch time on 11 February 2014 from the school where she taught in a church compound in Bhamo Township, Kachin State. The soldiers took her to an old house and forced her to cook and clean for them. They confined her in a locked dark room where two other women were also held captive. The women were not allowed to speak to each other and obliged to sleep directly on the floor. While she was asleep, a soldier came to the room and sexually assaulted her, touching her breast and thighs. He was lying on top of her and attempted to rape her but she fought him until she was hit with a sharp object on the head. She fainted and woke up a few hours later in an empty room. She managed to escape on the morning of 12 February 2014.³²⁰ The Mission reasonably concludes that this case amounts to either sexual slavery or attempted sexual slavery.

143. These and other consistent accounts indicate that sexual slavery is not a rare occurrence, even though information is limited.³²¹ Similar to other sexual and gender-based violence, sexual slavery is likely to be under-reported due to survivors' fear of stigmatization and ostracism arising from disclosing such information. Additionally, the close monitoring and restricted movement of sexual slavery victims and the physical injuries caused by the frequency and severity of abuse lowers the rate of successful escapes and thus the availability of information. Further, victims confined to officers' private

³¹⁶ PI-068.

³¹⁷ PI-067.

³¹⁸ PI-067.

³¹⁹ PI-068.

³²⁰ PI-160.

³²¹ Sexual slavery is also a prohibited act to parties of the National Ceasefire Agreement of 2015, at Section 9 m), inferring its prevalence. A/HRC/32/18, para. 60; S/2018/250, paras. 57-58; Kachin Women's Association Thailand, *The Burmese Army Must Immediately Release Four Women Held as Sex Slaves Near Kachin-China Border* (4 November 2011); Testimony by S Hkawng Naw of the Kachin Women's Association Thailand to the US Congress, 28 February 2013 available at https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/S%20Hkawng%20Naw%20testimony%20TLHRC_0.pdf; Human Rights Watch, *"Untold Miseries" Wartime Abuses and Forced Displacement in Burma's Kachin State* (20 March 2012).

quarters are less likely to be seen by others or identified as sexual slaves. The survivor's observation of other sex slaves at the military base in the account above, along with accounts of senior officers being aware of sexual enslavement, suggests that sexual slavery may be tolerated generally and is not simply isolated incidents.³²²

(vii.) Conclusions and legal findings

144. Based on the Mission's investigations since the release of its 2018 report and the consolidation of all its materials on the Tatmadaw's use of sexual and gender-based violence since 2011 in Kachin and Shan States, the Mission reaffirms its conclusion that rape and other forms of sexual and gender-based violence in the Tatmadaw's ground operations, in heavily militarized areas and in forced labour constitute gross violations of international human rights law, including prohibitions against the arbitrary deprivation of life, torture and other inhuman, cruel or degrading treatment or punishment, arbitrary and unlawful detention, forced labour and sexual slavery. These included violations of Myanmar's treaty obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, for its use of sexual violence as a prohibited form of discrimination, 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, and under the International Covenant on Economic, Social and Cultural Rights, for sexual and gender-based violence after January 2018 that constituted sexual slavery and was an assault on their living conditions and health, including sexual and reproductive health. Sexual violence since Myanmar signed the International Covenant on Economic, Social and Cultural Rights in July 2015 also constituted acts that defeated the Covenant's object and purpose of respecting the right to adequate living conditions, health, and work. The Mission therefore concludes that the Government violated its obligation under the Vienna Convention on the Law of Treaties.

145. All of these acts also amounted to violations of international humanitarian law due to the fact that they took place in connection with an armed conflict. Additionally, many of the acts of sexual and gender-based violence amounted to rape, sexual violence, torture, cruel treatment, outrages upon personal dignity and sexual slavery and therefore must be investigated as war crimes.

146. This report also reaffirms that, collectively, these acts of sexual and gender-based violence were part of the widespread and systematic attack on a civilian population that constituted crimes against humanity.

147. In particular, this sexual and gender-based violence was part of a pattern of persecutory intent and derogatory behaviour characterised by explicit discrimination that targeted women and girls, manifested in insults, spitting and physical abuse.³²³

148. Extreme physical violence, the openness in which it is conducted, and the confidence and general impunity the soldiers enjoy³²⁴ that accompany the Tatmadaw's use of sexual and gender-based violations reflect a widespread culture of tolerance towards humiliation and the deliberate infliction of severe physical and mental pain or suffering on civilians. For example, the Mission verified two cases of rape and attempted rape of 70 year-old ethnic women in Kachin and Shan States in or around their homes.³²⁵ Typically, when victims of sexual violence are elderly women, the sexual assault is likely to be particularly brutal and largely motivated by anger and a need for power or control over a community.³²⁶

³²² A/HRC/39/CRP.2, para. 213.

³²³ PI-003, PI-004, PI-146.

³²⁴ See Chapter IX: Impunity and accountability

³²⁵ GI-002, GI-014, PI-136, PI-142.

³²⁶ See for e.g. Lori E. Weeks, Judy Lynn Richards, Thomy Nilsson, Albert Kozma & Olive Bryanton, "A Gendered Analysis of the Abuse of Older Adults: Evidence from Professionals", *Journal of Elder Abuse & Neglect*, (2005).. See also Susan J. Crichton, John B. Bond Jr., Carol D. H. Harvey &

VI. Sexual and gender-based violence against men and boys

A. Context

149. In its 2018 report, the Mission called for further investigations into sexual violence against men and boys after it found that there were credible reports of a prevalence of sexual violence against men and boys during the Rohingya “clearance operations” and in detention settings.³²⁷ The sexual violence that men and boys were subjected to included rape,³²⁸ genital mutilation³²⁹ and sexual torture, sometimes leading to death.³³⁰

150. On 23 April 2019, in its resolution 2467, the Security Council recognized that sexual and gender-based violence also targets men and boys in armed conflict and post-conflict settings, as well as in the context of detention and other contexts associated with armed groups.³³¹ Violent conflict impacts men, women, boys, girls and those with diverse gender identities differently. While there is an increasing awareness of the importance of gender in efforts to build sustainable peace, much of the conversation has focused on women, and the experience of men and boys has not been understood well.³³² Against this background, the Mission conducted further investigations into the situation of sexual and gender-based violence against men and boys in the context of Myanmar’s ethnic conflicts.

151. Sexual and gender-based violence has distinct dimensions in relation to transgender persons. A recent study on gender in Myanmar found that “currently, public awareness and understanding of diverse sexual orientations and gender identities (SOGI) are limited across Myanmar, with some increasing understanding in state capitals but very little in rural areas. Socio-cultural prejudices based on perceptions of diverse SOGI as punishment to be suffered for past sins or bad karma from a previous life. This drives high levels of social discrimination and pressure to conform to expectations and to heteronormative marriages.”³³³

152. Societal attitudes drive high levels of social discrimination and pressure to conform to expectations. In schools, teachers apply pressure on gender non-conforming boys, pointing out their mannerisms, forcing them to change their clothes, or to change their behaviour, leading many to drop out before completing high school. This affects their subsequent work opportunities and earning potential.³³⁴

153. The Constitution of Myanmar guarantees equality before the law and freedom from discrimination on the grounds of gender.³³⁵ However, there is no express legislation protecting transgender persons under Myanmar law. To the contrary, Article 377 of the Penal Code, which forbids “carnal intercourse against the order of nature”, is often used to persecute people from the LGBT community, according to activists.³³⁶ In 2013, Aung San

Janice Ristock “Elder Abuse: Feminist and Ageist Perspectives”, *Journal of Elder Abuse & Neglect*, (1999).

³²⁷ A/HRC/39/CRP.2. paras. 188, 675-676, 920, 1276. For the period following the June 2012 violence, there are also credible and consistent reports of men and boys being subjected to sexual violence, including rape, sexualised torture and humiliation, either by authorities or in their presence. CI-136, DI-037, QI-107, QI-108.

³²⁸ K-130, V-134.

³²⁹ EI-092, EI-096, LI-022.

³³⁰ EI-092, EI-096.

³³¹ S/RES/2467, (2019), para. 28, 29, 32 and 33.

³³² International Alert “Gender in Myanmar-a men’s issue?” (28 November 2018).

³³³ Jana Naujoks and Myat Thandar Ko “Behind the masks: Masculinities, gender, peace and security in Myanmar” (November 2018) p.21.

³³⁴ Jana Naujoks and Myat Thandar Ko “Behind the masks: Masculinities, gender, peace and security in Myanmar,” p.21. See also, [International Alert “Gender in Myanmar-a men’s issue?” \(28 November 2018\)](#)

³³⁵ Constitution of Myanmar, s. 21 and 348.

³³⁶ James Nickerson, “Myanmar’s abused, intimidated LGBT people long for acceptance in new era” (Reuters, 16 November, 2016).

Suu Kyi, as leader of the political opposition and before becoming State Counsellor, called for the decriminalization of homosexuality.³³⁷ Four years later, oppressive laws are yet to be changed, even though the State Counsellor's National League for Democracy controls the Parliament.³³⁸

B. Sexual and gender-based violence against Rohingya men and boys

154. The Mission's 2018 report documented several cases of sexual and gender-based violence against Rohingya men and boys. The Mission found there to be credible and consistent reports of rape and gang rape,³³⁹ genital mutilation,³⁴⁰ forced nudity and other forms of sexual violence,³⁴¹ sometimes leading to death,³⁴² and called for further investigation of sexual violence against men and boys.³⁴³

155. The cases of sexual and gender-based violence against Rohingya men and boys documented in the Mission's 2018 report occurred after the June 2012 violence and during the "clearance operations" that began on 25 August 2017. The majority of those cases took place in government detention facilities, in particular Buthidaung prison.

156. Interrogators used sexual and gender-based violence to pressure men to confess to having been involved in the attacks on police posts, accused of alignment to ARSA, or after violence such as that of Maungdaw in 2012. The demonization and emasculation of men was a tool used effectively against the Rohingya. Humiliated and abused, some made statements to put an end to the sexual violence such as the burning of pubic hair, genital mutilation, and other degrading treatment.³⁴⁴

157. These violations are attributable to the Tatmadaw, NaSaKa border forces,³⁴⁵ Border Guard Police, prison authorities and members of ethnic Rakhine communities.³⁴⁶

158. Sexual violence against men and boys is under reported, exacerbated by the patriarchal, lack of awareness and religious nature of the Rohingya community. Gender norms within the community make it difficult for men and boys to engage on the subject of sexual violence, especially as they are expected to be strong and have to live up to cultural

³³⁷ Aung San Suu Kyi: "Stigma against HIV and anti-gay laws are costing lives in Burma" (20 November 2013). Also, Myanmar LGBT Rights Network Joins Daw Aung San Suu Kyi in calling for the decriminalization of homosexuality in Myanmar (22 November 2013).

³³⁸ Myanmar has not amended provisions of the Penal Code or the Police Act that are often used to oppress and discriminate against LGBT persons. Existing legal framework expressly discriminates against LGBT persons breaching their right to self-identify for example: The Penal Code of Myanmar, s.377 prohibits sodomy, whether heterosexual or homosexual and the Emergency Provisions Act of Myanmar, s. 5 (J), prohibits anything that might affect the morality of an individual, society or the public in a negative way. Transgender people in Myanmar are subject to rape, mistreatment or extortion by police and are often targeted using the "shadow law" in Section 35(c) of the Police Act.

³³⁹ CI-136, DI-037, FI-047, FI-053, NI-008, QI-108

³⁴⁰ EI-092, EI-096.

³⁴¹ CI-106, CI-136, DI-037, NI-008, QI-108

³⁴² EI-092, EI-096.

³⁴³ A/HRC/39/CRP.2. Paras. 188, 675, 676, 920, 1276. For the period following the June 2012 violence, there are also credible and consistent reports of men and boys being subjected to sexual violence, including rape, sexualised torture and humiliation, either by authorities or in their presence. CI-136, DI-037, QI-107, QI-108.

³⁴⁴ A/HRC/39/CRP.2.Para. 188, CI-292, CI-190

³⁴⁵ In northern Rakhine State, restrictions on freedom of movement are enforced through security checkpoints. These checkpoints were previously operated by the NaSaKa the former, Border Areas and Immigration Inspection Control Headquarters. It was disbanded by presidential order dated 12 July 2013, signed by President Thein Sein. Since 2013, the check points are mainly operated by the Border Guard Police, the Myanmar Police Force, and the Tatmadaw. K-076, CI-062, CI-063, CI-064, CI-079, DI-13, DI-026, DI-061.

³⁴⁶ NI-006, NI-008, FI-004, FI-003, FI-047, QI-108, LI-122, NI-001, NI-003.

assumptions of invulnerability to such violence.³⁴⁷ Victims and survivors who have reported sexual violence are still faced with challenges in accessing appropriate care. The Mission notes that services for the reporting, protection, and care of men and boys victims of sexual violence is still inadequate in Myanmar and in the refugee camps in Bangladesh.³⁴⁸ It is also concerned that, since the publication of its 2018 report, the limited legal protection afforded by Myanmar's domestic law has not improved,³⁴⁹ leaving victims without any redress, such as reparations, health care, psychosocial care and legal aid for the sexual violence suffered.³⁵⁰ These are important matters that must be addressed to assist survivors in the healing process and re-integration back into society.

Rape and sexual violence against men and boys in detention settings

159. Following the violence in June 2012, Rohingya men and boys, some as young as twelve, were picked up from the streets and detained at Buthidaung prison, where many were subjected to sexual violence. The Mission heard reports of non-Rohingya prisoners taking boys from the cells at night and raping them anally and orally.³⁵¹ One former detainee explained, that the ethnic Rakhine “*preferred the beautiful young men, with fair skin*”.³⁵²

160. Sexual violence was a method and tactic used to elicit confessions from the Rohingya accused of being aligned with ARSA.³⁵³

*“They made me kneel in a squatting position as they beat me with sticks from behind, hitting my penis and shoving sticks up my anus.”*³⁵⁴

161. Sexual violence was also used to humiliate and shame³⁵⁵ detainees and to provide the perpetrators with sexual gratification.³⁵⁶ The sexual violence was perpetrated predominantly in the first few months of a person's detention by prison officials or by ethnic Rakhine in the presence of prison officials.³⁵⁷

162. The Mission received reports that some male detainees were killed or “disappeared” by prison officials after suffering multiple rapes in Buthidaung prison.³⁵⁸ A detainee at Buthidaung, who witnessed sexual violence, and was a victim himself of multiple rapes since the age of 14. He informed the Mission that he was gang raped multiple times a day by prison officials and ethnic Rakhine. Despite this, he considered himself lucky after seeing prisoners from his ward strangled by their rapists. While in detention he was also

³⁴⁷ Jana Naujoks, Myat Thandar Ko “Pulling the strings: Masculinities, gender and social conflict in Myanmar”. (November 2018), p.23; see also, S/RES /2467, (2019) para. 32. Member States have been urged to protect victims who are men and boys through the strengthening of policies that offer appropriate responses to male survivors and challenge cultural assumptions about male invulnerability to such violence.

³⁴⁸ Women's Refugee Commission: “It's happening to our men as well”: Sexual Violence Against Rohingya Men and Boys pp.12, 15, 31-43. (November 2018)

³⁴⁹ A/HRC/39/CRP.2 para. 193.

³⁵⁰ S/RES /2467, (2019) para. 28. “Stresses that acts of sexual and gender-based violence in conflict can be part of the strategic objectives and ideology of, and used as a tactic by certain parties to armed conflict, including non-state armed groups, designated as terrorist groups and therefore affirms that victims of sexual violence, committed by certain parties to armed conflict, including non-state armed groups designated as terrorist groups, should have access to national relief and reparations programmes, as well as health care, psychosocial care, safe shelter, livelihood support and legal aid and that services should include provisions for women with children born as a result of sexual violence in conflict, as well as men and boys who may have been victims of sexual violence in conflict including in detention settings; contribute to lifting the sociocultural stigma attached to this category of crime and facilitate rehabilitation and reintegration efforts.”

³⁵¹ CI-136, QI-108, DI-037, QI-107.

³⁵² CI-136.

³⁵³ A/HRC/39/CRP.2. Para. 1364.

³⁵⁴ NI-008.

³⁵⁵ CI-130, CI-136, DI-037, QI-105, QI-106, QI-108; K-076.3, K-076.4, K-076.5, NI-016.

³⁵⁶ FI-047, FI-053, QI-108

³⁵⁷ K-076.3

³⁵⁸ FI-047, FI-052, FI-053

forced to participate in raping women together with prison officials. During his release from prison, officials warned him not to speak about the sexual violence and killings he saw in the prison or he would suffer reprisal as well as his family.³⁵⁹

163. Forced nudity was another form of sexual humiliation used against Rohingya men and boys in detention.³⁶⁰ The practice was pervasive and as part of a pattern of degrading treatment at Buthidaung prison. The Mission received credible reports of officials ordering detainees to strip naked in front of one another and shower in groups, including in front of family members, which is considered a shameful and demeaning act.³⁶¹ At times, detainees were forced to remain naked until they dried. Prison officials kept their clothes.³⁶² Rohingya detainees in Buthidaung prison were punished by “fuinza”, “a teaching of behaviour” based on a set of methods that teach detainees to behave in specific ways through the use of physical violence and other forms of coercion. A former detainee said that method number eight of the nine different methods was forced nudity, with detainees ordered to lie down on the floor while naked before each other.³⁶³ Non-Rohingya detainees hit elderly Rohingya detainees hard on their penises when they did not walk fast. In one instance, a detainee was subjected to humiliation of a sexual nature when ethnic Rakhine urinated into his mouth after he asked for water because he was thirsty.³⁶⁴ In another instance a detainee at Buthidaung prison was urinated upon as he was beaten on his penis and anus with a stick by ethnic Rakhine.³⁶⁵

164. Apart from rape and other forms of sexual violence at Buthidaung prison, the Mission received reports of security forces perpetrating similar acts on Rohingya men and boys detained in prisons in Maungdaw Township,³⁶⁶ Kyauk Pyu Township,³⁶⁷ and in NaSaka cells and military camps or bases.³⁶⁸ Victims suffered various forms of rape and sexual and gender-based violence during arrest or while in detention. The common types of abuses included, but were not limited to, forced nudity, burning of genitals and dripping hot wax on penises.³⁶⁹ Verified reports from survivors and witnesses of sexual violence indicate that the beating of genitals and penetration of their bodies with objects such as bamboo sticks, branches from trees, metal objects and batons were rampant during rapes and other sexual violence. Additionally, verbal insults or beatings were perpetrated as they were tied up or hand-cuffed.³⁷⁰

165. In 2012, at May Rulla camp in Southern Maungdaw, perpetrators raped the victims anally and penile including oral sex. Various objects were utilised including sticks, batons and other blunt instruments.³⁷¹ The objects were inserted in the anus of victims and used to beat them. A victim described how he was forced to undress and assume a squatting position by police and non-Rohingya who struck his penis and anus with a stick, beating him repeatedly from front to back.³⁷²

166. The Mission received credible information about a pattern of abuse of minors that took place in Buthidaung prison.³⁷³ Detainees who spoke to the Mission reported that

³⁵⁹ FI-047.

³⁶⁰ CI-130, CI-136, DI-037, QI-105, QI-106, QI-108, KI-076.3, KI-076.4, KI-076.5

³⁶¹ K-076.3, K-076.4, QI-108, QI-106

³⁶² K-076.3, K-076.4, K-076.5.

³⁶³ CI-136.

³⁶⁴ QI-108.

³⁶⁵ NI-008.

³⁶⁶ DI-037, QI-108.

³⁶⁷ FI-047.

³⁶⁸ NI-006, NI-008.

³⁶⁹ EI-092, EI-096, LI-022, CI-136.

³⁷⁰ NI-008, DI-037, CI-136.

³⁷¹ NI-008, NI-006.

³⁷² NI-008.

³⁷³ DI-037, FI-047, QI-108, CI-136, QI-107, CI-136, LI-22, FI-052, FI-053.

frequently officials took boys to small room to rape them.³⁷⁴ One witness saw prison guards rape boys on numerous occasions.³⁷⁵

167. Sexual violence against boys also reportedly took place during the clearance operations.³⁷⁶ Some of the children who fled the 2017 violence fled with persons from their villages or with unknown persons, because their parents were killed or they had lost contact with them, often increasing the risk of sexual violence against them.³⁷⁷

Conclusions and legal findings

168. The Mission concludes on reasonable grounds that rape and other forms of sexual torture of Rohingya men were routine in Buthidaung prison.³⁷⁸ The Mission also concludes that the sexual violence against men and boys at this and other locations was intentionally inflicted to cause severe mental and physical pain or suffering and was perpetrated by or at the instigation of or with the consent or acquiescence of Myanmar government officials, thereby constituting cruel, inhuman or degrading treatment or punishment. The Mission also found that in many cases the sexual violence constituted torture because it was done for the purpose of obtaining information or a confession, or as punishment, or for reasons based on discrimination against Rohingya. The Mission also concludes that the Government failed in its obligation under international human rights law to prevent ethnic non-Rohingya prisoners from perpetrating sexual violence against Rohingya males. Similar to its conclusions above, the Mission also concludes on reasonable grounds that the sexual violence against boys violated the Convention on the Rights of the Child and the sexual violence against men and boys violated the Government's obligation not to defeat the object and purpose of the International Covenant on Economic, Social and Cultural Rights under the Vienna Convention on the Law of Treaties.³⁷⁹

169. The Mission also concludes on reasonable grounds that the sexual violence against Rohingya men and boys was part of the widespread and systematic attack against the Rohingya civilian population that the Mission documented in its 2018 report. As such, the sexual violence constituted crimes against humanity, including rape, torture, and other inhuman acts entailing great suffering or serious injury to body or to mental or physical health.

170. The Mission draws particular attention to Buthidaung prison in Rakhine State, where many of these and other crimes against the Rohingya were committed.³⁸⁰ The Mission has collected information concerning the identities of potential individual perpetrators, namely authorities present at Buthidaung prison, and has added their names to the confidential list of suspected perpetrators. The prison officials who perpetrated acts of violence against Rohingya detainees must be investigated for the severe pain or suffering they caused either through their direct actions or through their consent or acquiescence to others who inflicted such grave mistreatment.

171. The Mission notes the sociological impact that sexual violence can have on the communities from which survivors come, including the impact that sexual violence against males can have on those communities when men are publicly emasculated. A recent study by the NGO International Alert referred to the "thwarted masculinities" phenomenon that has been known to occur in conflict and forced displacement settings. It is affecting most of the men in the refugee camps who are survivors and victims of conflict-related sexual violence. They face social and health issues that affect their well-being and that of their

³⁷⁴ QI-108, LI-22 ; FI-052, FI-053

³⁷⁵ QI-108.

³⁷⁶ K-130, V-134.

³⁷⁷ CI-148, EI-078, LI-097, LI-119, LI-122, WI-033. See also, Radio Free Asia, Huge influx of children complicates Rohingya crisis in Bangladesh, (25 September 2017) Mohammed Abu Aseker "Orphaned Rohingya children forced to grow up too fast" (22 December 2017). Mandakini Gahlot, "More than half of Rohingya refugees in Bangladesh are kids. Many are fleeing to Myanmar alone." (Global Post, 28 September 2017).

³⁷⁸ FI-230, DI-037, QI-105, CI-136, DI-037, QI-107, QI-108.

³⁷⁹ See para. 30

³⁸⁰ CI-136, QI-108, NI-008, FI-047, FI-052, FI-053

immediate family and of their community. The stigma and taboo affect their ability to be a productive part of society. Most suffer back pain, skin infections, constant headaches and lack of sexual desire. Studies have revealed that, typically, male victims suffer incontinence of the bowels and urine, sexually transmitted diseases, HIV, mental health issues, unexplained anger and anxiety, depression and suicidal tendencies, infertility and immense shame for those with mutilated genitals, conflicting sexual desires, all amounting to post traumatic stress disorder.³⁸¹ Referral pathways and specialized care must be provided in the refugee camps and in Myanmar to mitigate the impact.

C. Sexual and gender-based violence against ethnic men in Kachin and Shan States

172. In its 2018 report, the Mission found credible and consistent accounts of a pattern of sexual violence against men in Kachin and Shan States perpetrated by security forces.³⁸² The pattern is evident from the number of cases the Mission documented, which included the use of sexual violence to target men suspected of being members or supporters of EAOs. The sexual violence and sexual humiliation in the context of detention were reportedly perpetrated by the police, the Tatmadaw and the Myanmar Intelligence Office (commonly referred to by its Myanmar acronym SaYaPa), the branch of the Myanmar armed forces tasked with intelligence gathering.³⁸³ The Mission found that the Tatmadaw has targeted men with rape, forced nudity, and other forms of sexual violence and debasing treatment,³⁸⁴ often for the purpose of obtaining information or confessions from detainees.³⁸⁵

173. The Mission received corroborating reports regarding two Kachin men whom the SaYaPa raped and subjected to other forms of sexual violence in June 2012 in Myitkyina Township, Kachin State. Prior to being subjected to sexual violence, the survivors were physically abused while being questioned about the membership of the KIA.³⁸⁶ Later, during the course of further questioning by the SaYaPa, both survivors were forced to undress and then to penetrate each other anally. The SaYaPa agents watched the men as they were forced to rape each other and laughed at them. They asked, “Are you enjoying yourselves?” The survivors were begging for the rapes to stop despite being forced to continue.³⁸⁷ One of the male survivors, a Christian, was made to imitate Jesus on a cross like the crucifixion.³⁸⁸

174. In another incident at about the same time, on 17 June 2012, a Kachin man who the SaYaPa arrested and detained at its office in Myitkyina Township, Kachin State, was subjected to sexual and other violence until he said he was a member of the KIA. He told the Mission he confessed out of fear that he would be killed otherwise. During the interrogation he was forced to rub his penis until the skin was torn, peeling and bleeding: “my penis was bleeding, I was really hurting. I don’t know how long this lasted; I was numb from the pain at some point.” He was subsequently accused and charged of associating with the KIA under the Unlawful Association Act section 17(1).³⁸⁹

³⁸¹ NI-001, NI-008, Jana Naujoks and Myat Thandor Ko, “Pulling the strings: Masculinities, gender and social conflict in Myanmar” (November 2018), p.24

³⁸² A/HRC/39/CRP.2, para. 164 *et s.*

³⁸³ GI-028, GI-034, PI-052, PI-056, PI-055, PI-139.

³⁸⁴ GI-028, GI-034, PI-052, PI-056, PI-055, PI-139.

³⁸⁵ GI-027, PI-052, PI-056.

³⁸⁶ PI-052, PI-056; A/HRC/67/383, paras. 15-16; United Nations Human Rights Council Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April-1 May 2014) No. 6/2014” (1 July 2014); The Irrawaddy “Burma’s New Political Prisoners in Kachin State” (17 July 2012).

³⁸⁷ PI-052, PI-056.

³⁸⁸ PI-056.

³⁸⁹ PI-055.

175. In January 2015, a Kachin man was arrested in Shan State and detained by district police on suspicion of being involved in a high profile crime.³⁹⁰ For a day and a night the police interrogated and sexually humiliated him. The police made him stand up on a chair naked while they took photos of his penis, laughing at him and telling him, “if you do not answer and say the truth, we will kill you”.³⁹¹ In July 2018, in Hpakant Township, Kachin State, the Mission received information that Tatmadaw soldiers subjected a Kachin man to forced nudity during his interrogation, alongside other treatment while in the custody of Tatmadaw soldiers, on suspicion of belonging to the KIA. The soldiers reportedly placed a grenade in his mouth and forced him to undress. He was reportedly tied naked to a tree in the forest during the rainy season for several weeks.³⁹² Similarly, it was also reported that in March 2019 in Kuktai Township, Shan State, Tatmadaw soldiers forced a Kachin man to remain undressed in front of other men for two hours alongside other treatment to force him to confess having ties to the KIA.³⁹³ In the Kachin patriarchal culture, forcing men to undress, even partially, is considered humiliating. Sources available to the Mission and the area of operations of specific Tatmadaw military units, as well as media reports, suggest that the soldiers involved in these latter two incidents were operating under LID 99.³⁹⁴

176. The Mission received information that in June 2011, when the conflict escalated in Kachin State between the Tatmadaw and the KIA, a Kachin man forcibly recruited into the Tatmadaw-supported Pyi Thu Sit was coerced to perform fellatio on a Tatmadaw commander on two occasions at the military base.³⁹⁵ Each time, the commander threatened the survivor, “if you tell anyone I will kill you”. Fearing retaliation, the survivor ran away and reported the events to the village elders. Subsequently, the elders reported the incident to the Tatmadaw hierarchy and were told that the perpetrator had been redeployed somewhere else.³⁹⁶

177. Based on the nature and number of cases that the Mission documented of sexual violence against men, the Mission has concluded that the use of sexual violence and forced nudity by the Tatmadaw, the police and SaYaPa in northern Myanmar³⁹⁷ is not isolated but a broader practice.³⁹⁸ While reports of sexual violence by male survivors are not as extensive as other issues that the Mission has documented, it is likely that incidents of sexual violence against men are under-reported due to fear of stigmatization, reprisal and ostracism by their communities.

178. The men who experienced sexual violence in detention or their relatives told the Mission that they continue to suffer enduring physical and psychological pain or suffering, for which support in northern Myanmar is limited.³⁹⁹

Conclusions and legal findings

179. The Mission concludes on reasonable grounds that rape and other forms of sexual torture of men in Kachin and Shan States were intentionally inflicted to cause severe mental and physical pain or suffering and were perpetrated by Myanmar government officials, thereby constituting cruel, inhuman or degrading treatment or punishment. The Mission also found that in many cases the sexual violence constituted torture because it was done for the purpose of obtaining information or a confession. Similar to its conclusions above, the Mission concludes on reasonable grounds that the sexual violence also violated the

³⁹⁰ PI-168, PI-169, PI-170.

³⁹¹ PI-139.

³⁹² GI-028, 1100.

³⁹³ AM-001, GI-034.

³⁹⁴ AM-001, GI-028, GI-034, 1100, Kachin News Group (Twitter post, 20 April 2019), <https://twitter.com/KachinNewsGroup/status/1119526652604665858/video/1>; Statement by the World Kachin Congress on the 8th anniversary of the resumption of the civil war (9 June 2019).

³⁹⁵ GI-027.

³⁹⁶ GI-027.

³⁹⁷ A/HRC/39/CRP.2, para. 164 *et s.*

³⁹⁸ PI-052, PI-055, PI-056.

³⁹⁹ PI-052, PI-056, PI-055.

International Covenant on Economic, Social and Cultural Rights.⁴⁰⁰ The Mission also concludes on reasonable grounds that the sexual violence against men in Kachin and Shan States was part of the widespread and systematic attack against the civilian population that the Mission documented in its 2018 report. As such, the sexual violence constituted crimes against humanity, including rape, torture, and other inhuman acts entailing great suffering or serious injury to body or to mental or physical health. The Mission notes, as it did with respect to sexual violence against Rohingya men and boys, the sociological impact that sexual violence can have on the communities from which survivors come, including the impact that sexual violence against males can have on those communities when men are publicly emasculated.⁴⁰¹

VII. Sexual and gender-based violence against Rohingya transgender persons

180. In the context of the violence against the Rohingya population, the Mission received consistent accounts from transgender women who authorities targeted with sexual violence because, some survivors said, of their gender and sexual orientation, in addition to their ethnicity as Rohingya. The Mission spoke to five transgender women, all of whom attested to discrimination and suffering endured as a result of not fitting within societal gender norms and the sex classification ascribed to them at birth.⁴⁰² Against this background, transgender people of Rohingya ethnicity are victimised twice: as Rohingya and as transgender people. The result is a tolerance of sexual and gender-based violence that has included rape and other forms of sexual violence.

181. Born male, the transgender people the Mission spoke to identified as female and wanted to live as female members of society, although Myanmar society generally does not accept this.⁴⁰³ One survivor stated that she was a woman in a man's body.⁴⁰⁴ Another said, *"I did not choose to be like this; I can't be myself because of fear; I always wanted to be a girl but because it is troublesome we have to be careful. Sometimes we are insulted and called names, motherfuckers, all sorts of abusive language."*⁴⁰⁵

182. The Mission documented several cases of rape, extortion and sexual violence against transgender people between 2016 and 2017, in police stations in Rakhine State. A survivor⁴⁰⁶ recounted her experience of police arrests in Taung Bazar, Buthidaung, where she was detained more than three times because of her gender. She stated:

*"They always tortured transgender women like myself. They threatened us and did bad things to us; they forced me to do bad things. They remove our clothes and did bad things if we refused. We were threatened and risked being killed."*⁴⁰⁷

183. In a separate incident in October 2016, she was arrested and taken by police to Thana police station in Buthidaung where she was beaten and one policeman was ready to do "bad things to her with his penis". Her parents had to pay 200,000 kyat (132 USD) to a police officer for her to be freed.⁴⁰⁸ In 2017, at Thana Shok police station in Maungdaw, an 18 year-old transgender girl was raped anally almost weekly by police officers. During one such rape, she was forced to undress and stimulate the penises of police officers until they

⁴⁰⁰ See para. 30

⁴⁰¹ "Masculinity refers to the socially created expectations on men to act and behave in certain ways because of their gender. These expectations vary depending on various other factors such as age, socioeconomic background, religion, ethnicity and location." In: "Behind the masks: Masculinities, gender, peace and security in Myanmar" Published November 2018 [<https://www.international-alert.org/publications/behind-the-masks-masculinities-gender-peace-security-myanmar>]

⁴⁰² NI-001, NI-002, NI-003, NI-004, NI-005.

⁴⁰³ NI-001, NI-002, NI-003, NI-005. A/HRC/35/36, p.17.

⁴⁰⁴ NI-003.

⁴⁰⁵ NI-001.

⁴⁰⁶ NI-005.

⁴⁰⁷ NI-005.

⁴⁰⁸ NI-005.

ejaculated. They would beat her if she refused. In August 2017, shortly before she fled the country, she “massaged to ejaculation the most important big officer” at Thana Shok police station. She was also raped at Tankaling camp no. 19.⁴⁰⁹

184. The Mission documented the rape of a transgender girl, from Pyar Pin Yin village under Ah Twin Hnget Thay village tract in Buthidaung Township, who was sexually abused and raped by the police when she was fifteen. She stated that “they removed my clothing and raped me, they forced me to do bad things.”⁴¹⁰

185. Tatmadaw soldiers, police and members of ethnic Rakhine communities also gang raped, raped and committed other forms of sexual violence against transgender Rohingya persons as they fled Myanmar during the clearance operations that began on 25 August 2017.⁴¹¹

186. After the “clearance operations” began, a transgender survivor was apprehended and gang raped by Tatmadaw soldiers wearing a green uniform at Tomburu Tala hills close to Bangladesh in Maungdaw Township. She was caught by three of these uniformed men as she tried to cross the hills. They ripped off her clothes, while they held her hands so she could not move. She told the Mission that she screamed as one soldier was on top of her “doing bad things” to her private parts. After they let her go, she was covered in blood but, when she met up with her family, she was too ashamed to tell her parents she had been gang raped by the military, instead stating she bumped into something as she fled.⁴¹²

187. Three days after the “clearance operations” began in 2017, in Ka Nyin Tan near Maung Ni in Maungdaw Township, a transgender person was gang raped multiple times by six men. Three wore black uniforms and white and red gloves while the other three were non-Rohingya in civilian clothes. They tied her hands, made her lie down and raped her repeatedly, forcefully inserting their penises inside her mouth and anus. The gang rape left her bleeding from her penis and anus and caused her to faint.⁴¹³

Conclusions and legal findings

188. For all the cases documented in this section of the report, the Mission concludes on reasonable grounds that the violence amounted to torture or other forms of cruel, inhuman or degrading treatment or punishment.⁴¹⁴ Similar to its conclusions above, the Mission also concludes on reasonable grounds that the sexual violence violated the Government’s obligation not to defeat the object and purpose of the International Covenant on Economic, Social and Cultural Rights under the Vienna Convention on the Law of Treaties.⁴¹⁵ The Mission also concludes that the sexual violence against transgender people, as members of the Rohingya civilian population in Rakhine State, amounted to the crimes against humanity of torture, rape, other inhumane acts and persecution as part of the widespread and systematic attack against the Rohingya civilian population as documented in the Mission’s 2018 report. Additionally, some cases of sexual violence were sufficiently connected with the armed conflict between the Tatmadaw and ARSA in relation to the “clearance operations” that began on 25 August 2017 to warrant an investigation as a war crime of rape, sexual violence, torture, cruel treatment, and outrages upon personal dignity.⁴¹⁶

VIII. Witnessing of sexual violence against Rohingya

189. The Mission received credible information that Rohingya have been traumatised by their witnessing of rape and other sexual violence committed against wives, daughters,

⁴⁰⁹ NI-001.

⁴¹⁰ NI-005.

⁴¹¹ NI-002, NI-003, NI-004, N-005.

⁴¹² NI-005.

⁴¹³ NI-003.

⁴¹⁴ NI-001, NI-002, NI-003, NI-004, NI-005.

⁴¹⁵ See para. 30

⁴¹⁶ NI-002, NI-003, NI-004, N-005.

sisters and other female or male Rohingya by Tatmadaw soldiers and other security forces.⁴¹⁷

190. The Mission's investigation relied on a significant amount of information that came from people who witnessed government security forces rape and commit other acts of sexual violence against their close relatives and friends. These first-hand accounts of sexual violence that the Mission received demonstrates how security forces, and the Tatmadaw in particular, brazenly committed these acts in the open for loved ones to see watch helplessly. The accounts are too numerous for the Mission to list. An illustrative case is that of a man who saw from a distance three to four men rape and kill his wife while she was holding their 6-month-old child during the 2017 "clearance operations".⁴¹⁸

191. The Mission also heard the account of a woman who was in a room where she saw a group of men involved in the "clearance operations" rape multiple women, some of whom the men killed.⁴¹⁹ A 55 year-old Rohingya man⁴²⁰ from the village of Maw Tu Lar, in Maungdaw Township, told the Mission that, during an attack in late August 2017, by the military and members of Hindu communities, his eldest daughter was raped in front of him. He "felt embarrassed to talk about it". She died after the rape.

192. Sexual violence was also committed in detention facilities in the presence of other prisoners.⁴²¹ A male prisoner who was held at Buthidaung prison for several years since 2012 said he witnessed the raping of girls and women. On some occasions, he said, he was "forced to remove the clothes of girls and women and then made to witness the rape," which included both oral sex and genital penetration.⁴²²

193. The sexual violence that Rohingya have been forced to see has left an indelible mark on the Rohingya social fabric.⁴²³ For example, the Mission heard from Rohingya men who blamed themselves for failing to protect women and girls from their community.

194. The Mission is unable to measure the full extent of the mental harm and psychological impact of subjecting people to watching sexual and gender-based violence. It received credible analysis of evidence of serious post-traumatic stress disorder and other mental health issues resulting from violence experienced or witnessed by many in the community. The situation is exacerbated in relation to children. Whereas some children demonstrate withdrawal symptoms and violent behaviour towards adults, others exhibit a general lack of trust or refuse to leave their shelters.⁴²⁴

Conclusions and legal findings

195. The Mission concludes on reasonable grounds that people who witnessed acts of rape and other forms of sexual violence may themselves have experienced severe or great mental pain or suffering that arose from what they witnessed.⁴²⁵ Given the intentionally public or open circumstances in which many of these acts of sexual violence occurred, the Mission also concludes on reasonable grounds that these acts amounted to torture or cruel, inhuman or degrading treatment for family members and other onlookers who the perpetrators must have known would experience severe mental pain or suffering from what they saw. The consequences of this on their mental health was also a violation of the Government's obligations to respect the right to health.⁴²⁶ When such acts are committed in the context of and associated with a non-international armed conflict, as many of them were in Myanmar, they constitute war crimes of torture or cruel treatment. Consistent with its 2018 report, the Mission also makes findings that the public or open nature of the sexual

⁴¹⁷ FI-047, LI-052, LI-111, QI-114, LI-094, CI-109, FI-049, LI-094, FI-037 YI-002.

⁴¹⁸ LI-052.

⁴¹⁹ EI-102

⁴²⁰ LI-111.

⁴²¹ FI-047; FI-017; QI-108; CI-136.

⁴²² FI-047.

⁴²³ NM-002, K-122, K-124 Confidential forensic report for the FFM, (9 June 2018).

⁴²⁴ NM-002, FI-047, Confidential forensic report for the FFM, (9 June 2018).

⁴²⁵ https://www.apr.ch/content/files_res/jurisprudenceguide.pdf, p. 173. See also para. 47 in this report.

⁴²⁶ For a more detailed discussion, see para. 30

violence inflicted great suffering that amount to the crime against humanity of inhumane acts as part of the widespread and systematic attack against the Rohingya civilian population as documented in the Mission's 2018 report.

196. Additionally, the Mission heard an allegation of the military using rape as a way to coerce a community into providing men to perform night duty. A man said that, in the second half of 2018, the military raped a female relative after her brother tried to avoid night duty by fleeing. The military did this, the man said, to threaten villagers that they would face similar consequences if they refused to serve night duty.⁴²⁷ Although this is not an example of a family member witnessing sexual violence, the Mission concludes on reasonable ground that, when rape is used in this way, it is clearly a war tactic and is both a form of torture against the female relative and her close family members.

IX. Sexual and gender-based violence by non-state armed groups

197. The Mission received limited information regarding sexual and gender-based violence by EAOs. The Government's refusal to grant the Mission access to the country and to respond to the Mission's requests for information limited the Mission's ability to gather first-hand information on sexual and gender-based violence by EAOs. Abuses perpetrated by EAOs remain generally under-reported by civil society organizations operating in northern Myanmar belonging to the same ethnic group as the EAOs.⁴²⁸ An additional explanation lies in the misconception and misunderstanding of sexual and gender-based violence in northern Myanmar. Sexual and gender-based violence is widely understood as relating solely to rape committed by Tatmadaw soldiers.⁴²⁹

198. Nonetheless, the Mission received credible information that members of EAOs have committed acts of sexual and gender-based violence, both rape and other sexual and gender-based violence. These reports included incidents of women and girls being sexually harassed, intimidated and assaulted, sometimes on a daily basis, by members of EAOs.⁴³⁰ While some EAOs have publically committed themselves to refrain from acts of sexual violence through "deeds of commitments", EAOs operating in northern Myanmar have not.⁴³¹ It is important that further investigations are conducted into these reports.

199. The normalization of gender discrimination and gender inequality in northern Myanmar contributes to the commission of sexual and gender-based violence in non-government controlled areas.⁴³² Because of this gender discrimination and gender inequality, the conflicts in northern Myanmar encompass complex gender dimensions particularly affecting women and girls. Based on their gender, ethnicity and age, men and boys of fighting age are particularly targeted by Tatmadaw as suspected EAO members. Since 2011, the Tatmadaw has arbitrarily arrested and detained, tortured or ill-treated, taken for forced labour, or killed men and boys.⁴³³ They are also particularly targeted for recruitment by EAOs.⁴³⁴ As a result, women and children are further marginalized and displaced in a situation of humanitarian crisis with limited access to humanitarian relief.⁴³⁵ More precisely, after decades of conflict, women in many instances have become heads of households, caring for children and farming land to survive. In many of these ethnic

⁴²⁷ FI-037.

⁴²⁸ PM-010.

⁴²⁹ PM-010, PM-011.

⁴³⁰ PM-010, PM-011.

⁴³¹ For example, the Karen National Union/Karen National Liberation Army, party to the 2015 NCA, signed a deed of commitment under Geneva Call for the prohibition of sexual violence in situations of armed conflict and towards the elimination of gender discrimination, available at http://theirwords.org/media/transfer/doc/knu_sexual-6bffd0548f5219cf14fa5acb9ad52479.pdf.

⁴³² PM-010, PM-011, PM-012.

⁴³³ A/HRC/39/CRP.2, pp. 30-79; A/HRC/42/50 para. 61.

⁴³⁴ A/HRC/39/CRP.2, para. 333-354.

⁴³⁵ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

communities, women face barriers inheriting or owning land,⁴³⁶ which further exacerbates their vulnerability.

200. Women bear the brunt of the conflict and humanitarian crisis.⁴³⁷ They care for the land and children left behind.⁴³⁸ They have become the protectors of their ethnic and religious communities. Sometimes they send food and money to their male relatives who are fighting. They have been exposed to insecurity and attacks, and targeted for sexual and gender-based violence by all parties to the conflict.

201. The militarized and politicized struggles for self-determination are gendered. EAO recruitment strategies are not 'gender-neutral'. They are affected by socially constructed and culturally specific gender norms. The Mission received consistent information indicating that TNLA, SSA-S, SSA-N⁴³⁹ and KIA recruit women and girls, sometimes forcibly.⁴⁴⁰ They are often required to perform roles seen as 'women's work', such as cooks, cleaners or nurses.⁴⁴¹ Women in the KIA have to leave the armed group earlier than men, as they must retire upon marriage and childbirth, which means that only young and childless women are targeted for recruitment.⁴⁴² The SSA-N recruits female soldiers but the Mission is unaware of the extent to which they are assigned combat functions.⁴⁴³ Combat experience has been a de facto prerequisite for high-ranking political positions in non-government controlled areas.⁴⁴⁴ The ability of most women to reach high-level positions in either the civilian or the military administration is therefore hampered by their lack of access to combat functions. That in turn hinders their political participation in the peace process.⁴⁴⁵ In addition, since women are confined to lower ranking positions within these armed groups, they are more exposed to higher risks of sexual and gender-based violence.

202. Mass weddings organised at short notice by EAOs also raise concerns. EAO fighters marry women and girls in villages at once to avoid costs and facilitate logistics.⁴⁴⁶ The brides are often children and, even where adults, it is unclear whether they provide informed consent.⁴⁴⁷ The Mission also received credible information suggesting that, when EAO members rape or sexually assault a female, they typically marry the survivor to restore harmony in the community.⁴⁴⁸

203. The Arakan Army (AA), which is active in Chin and Rakhine states, has both male and female soldiers. Female soldiers can participate in combat but in practice male soldiers do most of the fighting. Female AA members often hold other positions, including as nurses or seamstresses to make the soldiers' uniforms. Both women and men members do the cooking in the AA.⁴⁴⁹ The Mission did not receive information about sexual or gender-

⁴³⁶ Namati, *Gendered Aspects of Land Rights in Myanmar II: Evidence from Paralegal Case Work* (June 2019); Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019; Woods, Kevin. "A Political Anatomy of Land Grabs." *Transnational Institute*, March 2014; Faxon, Hilary. "The Praxis of Access: Gender in Myanmar's Land Use Policy." *Conference Paper No. 17, Chiang Mai University*, May 2015, pp.7-8.

⁴³⁷ Jenny Hedstrom, *The political economy of the Kachin revolutionary household*, The Pacific review (28 December 2016).

⁴³⁸ PM-011.

⁴³⁹ Shan State Army-North.

⁴⁴⁰ PI-123, PI-027, DI-070.

⁴⁴¹ PI-045, PI-093, PI-094, PI-101, PI-123, LI-187, PM-011, DI-070, PI-014, PM-011, Jenny Hedstrom, *Gender and Myanmar's Kachin Conflict*, New Mandala, (27 July 2015).

⁴⁴² Jenny Hedstrom, *The political economy of the Kachin revolutionary household*, The Pacific review (28 December 2016).

⁴⁴³ PM-010.

⁴⁴⁴ PM-011, Jenny Hedstrom, *Gender and Myanmar's Kachin Conflict*, New Mandala, (27 July 2015).

⁴⁴⁵ There are some exceptions, for example the Karen Nation Union (KNU) had a prominent woman in charge of peace negotiations; PI-032.

⁴⁴⁶ PM-010, PM-011.

⁴⁴⁷ PM-010, PM-011, Jenny Hedstrom, *The political economy of the Kachin revolutionary household*, The Pacific review (28 December 2016).

⁴⁴⁸ PM-010, PM-011.

⁴⁴⁹ LI-187.

based violence committed by AA members against ethnic Rakhine or Chin civilians. There is said to be an internal rule strictly prohibiting and punishing sexual and gender-based violence against civilians.⁴⁵⁰

Sexual and gender-based violence perpetrated by EAOs

204. One incident of EAO sexual violence involved the rape of a Ta'ang headmistress by several TNLA members at her home in Kyaukme Township, Shan State in October 2017. Following the victim's report to local authorities, the TNLA held traditional proceedings in the forest under their internal justice system to address the rape. The victim was invited, but chose not to attend. As a result of these proceedings, the TNLA negotiated for the perpetrators to pay compensation to the victim, and brought two armed men to kneel and apologize to her.⁴⁵¹ In the Mission's view the perpetrators were not adequately sanctioned and their apology was not perceived as deterrence against committing violence and other abuse against women.⁴⁵²

205. The Mission received unverified reports of KIA men being tried by the KIA's internal justice system for raping women in Kachin State.⁴⁵³ It also received unverified information regarding a case where a KIA commander summarily executed a KIA member for gang rape following a complaint by the survivor's parents. He was reportedly shot on the spot when the survivor identified him as the first man who had raped her. The other rapist was excused as the survivor "had already been raped when the second KIA member penetrated her", according to the KIA commander.⁴⁵⁴

206. EAOs face challenges when addressing sexual and gender-based violence. The Mission was informed that some EAO court systems contain written procedures, but may not have written laws, in which case they have applied Myanmar's laws or, on an exceptional basis, international laws. There are no laws or guidelines regarding sentencing in KIO courts.⁴⁵⁵ When survivors decide to present their grievances before traditional community leaders, who are generally men, cases are commonly resolved by imposing "bunglat hka" or "blood money" to compensate the female victim for the harm committed and to restore peace in the community.⁴⁵⁶

207. The Mission was also informed that there are no female judges in EAO-run courts in northern Myanmar.⁴⁵⁷ However, the Mission was told that, when a rape case is brought before the KIO court, the Kachin Women's Association (KWA) intervenes to defend the women's rights and interests, advocating for the application of CEDAW and other UN resolutions pertaining to women's protection.⁴⁵⁸

208. Some EAOs still use the death penalty.⁴⁵⁹ An expert told the Mission that the challenges associated with detention operations and justice systems left some EAOs carrying out summary executions to deliver justice.⁴⁶⁰

Conclusions and legal findings

209. The Mission received reliable but unconfirmed information regarding sexual and gender-based violence by EAOs in Kachin and Shan States. The Mission concludes on reasonable grounds, however, that sexual and gender-based violence by EAO soldiers has been less than that perpetrated by government security forces. Nor have EAO soldiers

⁴⁵⁰ LI-187.

⁴⁵¹ PI-110.

⁴⁵² PM-010.

⁴⁵³ K-145.

⁴⁵⁴ PM-010.

⁴⁵⁵ 2160.

⁴⁵⁶ PM-011, 2160.

⁴⁵⁷ PM-011, 2160.

⁴⁵⁸ PM-007, 2161.

⁴⁵⁹ BM-017, PI-101, 2160, 2161. For example, in March 2016, the United Wa State Army (UWSA) reportedly executed two persons after they were convicted of murder by the Wa Special Administrative Zone's court; K-143, V-305.

⁴⁶⁰ PM-010.

committed sexual and gender-based violence with the same intent of targeting the civilian population.⁴⁶¹ However, further investigation is required.

210. The Mission is concerned, on the basis of cases it has investigated, that EAO justice systems are inadequate in addressing allegations of sexual and gender-based violence. The Mission also notes that it is a war crime for EAOs in conflict situations to sentence their own members without affording them due process and fair trial rights in regularly constituted courts operating in accordance with international standards of justice and the rule of law.

X. Consequences of sexual and gender-based violence and the gendered impact of Myanmar's ethnic conflicts

A. The Rohingya community

211. The consequences and impacts of sexual and gender-based violence are wide and varied for the Rohingya community. Rohingya women, in particular, suffer enduring consequences as survivors of sexual and gender-based violence, including forced and early marriages of girls, unwanted pregnancies, pregnancy terminations and the care of children conceived through rape.

212. Sexual violence has caused severe and long-lasting physical and mental injuries. Women interviewed by the Mission reported experiencing pain in the vagina and lower abdomen area during sexual intercourse.⁴⁶² Men who experienced sexual torture in detention continue to suffer enduring physical and psychological injuries, including bleeding from the anus, loss of cognitive function, loss of emotional control, loss of erectile function and inability to work.⁴⁶³

213. The inadequacy of specific medical expertise in Rakhine related to rape exacerbates the effects of sexual violence. Improvements in access to specialized care and adequate referral pathways are needed to address the sexual and reproductive health needs of women. In 2017, the United Nations Special Rapporteur on the situation of human rights in Myanmar found that the limited capacity of providers in Rakhine, as well as restrictions on women's freedom of movement due to increased militarization, limited access to life-saving services for survivors of sexual and gender-based violence.⁴⁶⁴

214. The United Nations and other organizations noted an increase in the number of pregnant women and girls in the refugee camps in Bangladesh between May and June 2018.⁴⁶⁵ The exact number of children born out of rape is not known. It is presumed that most births occurred at home and were not registered. The lack of information may be attributable to the stigma associated with rape.⁴⁶⁶ Recognition of children born out of rape is hard for some mothers, who find these children a constant reminder of the rape they were subjected to. A survivor of rape described her child born out of rape as "not our child - a lost child".⁴⁶⁷ Other victims terminated their pregnancies using traditional abortifacients or through medical interventions, with a rise in requests after November 2017.⁴⁶⁸

⁴⁶¹ A/HRC/39/CRP.2, para. 370; PM-012.

⁴⁶² EI-089, EI-031, EI-097.

⁴⁶³ NI-008, NM-002.

⁴⁶⁴ A/HRC/34/67, para. 56. Access is particularly limited in conflict areas and those highly militarized areas in Rakhine State.

⁴⁶⁵ United Nations International Children's Emergency Fund "More than 60 Rohingya babies born in Bangladesh refugee camps every day" (17 May 2018).

⁴⁶⁶ K-129, K-124, Sunaina Kumar and Fiona Weber-Steinhaus, "A gift from God: the Rohingya refugees adopting orphaned babies." (The Guardian, 25 December 2018).

⁴⁶⁷ NI-013, K-124.

⁴⁶⁸ NM-001, NI-018, K-129, K-124.

215. The forced displacement of hundreds of thousands of Rohingya to Bangladesh, much of which was accompanied by sexual and gender-based violence, is having negative consequences on the rights of girls, with a greater number of early marriages.⁴⁶⁹

216. Parents in refugee camps in Bangladesh are marrying their daughters, below the legal age of 18. This is recognized as a harmful coping mechanism for girls who were raped, to preserve the honour of family. This, however, tends to increase the risks of gender-based violence against them.⁴⁷⁰ The Mission received credible reports that the mean age of registered child marriages has decreased from 15.8 years in 2017 to 14.1 years in 2019, with the youngest recorded age of nine years-old. During this same period it was reported that 30 per cent of all child marriage cases were of unaccompanied or separated children. An increase of 3.1 percent in child marriages was reported between 2018 and 2019.⁴⁷¹ Early marriages limit the development of girls and often result in early pregnancy and social isolation.⁴⁷² In some cases, families see child marriages as a form of protection and security from rape, although such forms of protection may make girls vulnerable to rape and other forms of sexual violence in the home.⁴⁷³

217. Survivors of sexual and gender-based violence are often affected by the killing or disappearance of their spouses.⁴⁷⁴ Many are now head of households, faced with uncertainty about their futures and vulnerable to further violations, including sexual violence.

218. Women and children are the majority in the refugee camps in Bangladesh.⁴⁷⁵ Although immediate risk to their lives has been reduced, they still suffer gender-based violence and the consequences of gender-based violence linked to the displacement and harmful practices. According to experts in the field, some men exhibit violence and controlling tendencies towards women.⁴⁷⁶ Gendered threats against females abound, with community leaders, spouses or parents calling on women to stop working. Some women think their husbands abandoned them because they worked.⁴⁷⁷

219. Since the Rohingya do not have the status of refugees in Bangladesh,⁴⁷⁸ women have limited recourse to formal justice when faced with violence in the camps. Gender violence tends to be suffered in silence, as most do not report it for fear of exacerbating the situation. The Mission spoke to humanitarian workers, service providers and agencies on the ground who confirmed the limitations that women experience in the camps due to customs and harmful cultural practices.⁴⁷⁹

220. The emergence of ‘shanti khana’, designated spaces for women and girls with focus group discussions on life skill trainings and empowerment of women, have had a positive impact in the lives of women in the camps.⁴⁸⁰ Nevertheless more advocacy is needed to

⁴⁶⁹ <https://reliefweb.int/sites/reliefweb.int/files/resources/tr-rohingya-refugee-response-gender-analysis-010818-en.pdf>, p.11. NM-003, NI-014, NI-018, NI-019, S/2019/280 (29 March 2019) para.70.

⁴⁷⁰ UNHCR Review, “Culture, context and mental health of Rohingya Refugees” (2018), p.19.

⁴⁷¹ NM-003. The information is indicative of child marriage cases in the refugee camps in Bangladesh, and does not necessarily represent such marriages within the camp wide population, to determine the prevalence of child marriages, as some cases are not reported. The reasons attributed to the rise in marriages include the lack of secondary education and adequate alternatives for girls, and the restrictions on cash and livelihood opportunities, which lead people to resort to negative coping mechanisms.

⁴⁷² CRC, art. 29.

⁴⁷³ NI-014, NI-018, NI-019. NM-003.

⁴⁷⁴ EI-107, EI-105, DI-077.

⁴⁷⁵ Inter-Sectoral Coordination Group : situation report (as of March 2019) reported that of 902, 225 refugees in camps in Bangladesh 52 % are women and 55 % children. rep

⁴⁷⁶ Confidential forensic expert report for the IIFFMM, 9 June 2018, NM-004. NI-014, NI-021.

⁴⁷⁷ NM-002

⁴⁷⁸ The host country, Bangladesh is not signatory to the Refugee Convention of 1951.

⁴⁷⁹ NI-021, NM-002, Protection agencies

⁴⁸⁰ NM-002, Asia Development bank, United Nations Population Fund, United Nations Entity for Gender Equality and the Empowerment of Women, United Nations Development Programme “Gender Equality and Women’s Rights in Myanmar.” A situation analysis (2016). See also United

reduce intimate partner violence and psychosocial and emotional abuse in the refugee community, in part blamed on the lack of opportunities and frustrations in the community.⁴⁸¹

B. Ethnic communities in northern Myanmar

221. The impact of sexual and gender-based violence reported to the Mission in Kachin and Shan States is severe, varied and long-lasting. The Mission recorded many women experiencing pain in the vagina and lower abdomen region during sexual intercourse after having been raped.⁴⁸² It found a case of rape that resulted in death caused by contracting HIV.⁴⁸³ Survivors the Mission spoke to, suffer enduring physical and psychological injuries for which services and assistance are needed. Men who experienced sexual torture in detention also continue to suffer enduring physical and psychological injuries, including bleeding from the anus, loss of cognitive function, loss of emotional control, loss of erectile function and inability to work.⁴⁸⁴

222. In several cases, women did not have access to medical attention after rape.⁴⁸⁵ In one case that the Mission verified, the survivor was treated in a military hospital. The military male-only medical personnel did not examine or treat her genital area.⁴⁸⁶ These cases demonstrate that a lack of specific medical expertise related to rape exacerbates the effects of sexual violence. Similarly, male survivors also said they had not sought medical assistance due to both the lack of availability and the stigma attached to reporting male rape in their communities and in Myanmar.⁴⁸⁷

223. Many women and girls who were subjected to sexual and gender-based violence have fled their native village or the country as a result of the ostracism by their communities and authorities.⁴⁸⁸

“Why didn’t he just kill me, I would rather die than be raped. I should not live with this kind of shame.”⁴⁸⁹

224. In male-dominated societies of northern Myanmar, women are often held responsible for sexual and gender-based violence inflicted on them.⁴⁹⁰ One survivor told the Mission that, after she was raped in 2016, she immediately fled Kachin State:

“I heard that when women are raped, the victim is always pointed out and everyone knows she was raped. It is very bad in my culture.”⁴⁹¹

225. In one case, the mother of a 14 year-old survivor raped by a Tatmadaw soldier in 2014 told the Mission that, after the rape, her daughter did not want to live in the village and fled to China. She said: “before the rape, my daughter was very active and helping the family. After the incident, she was different, she became introverted”.⁴⁹²

Nations Population Fund “One year on Rohingya women and girls seek safety and a chance to heal” (24 August 2018).

⁴⁸¹ NM-004, NI-018, United Nations Entity for Gender Equality and the Empowerment of Women, “Rohingya Crisis Response: Bolstering learning livelihoods and Community” (December 2018), p.4.

⁴⁸² PI-063, PI-068.

⁴⁸³ PI-007.

⁴⁸⁴ PI-052, PI-055, PI-056.

⁴⁸⁵ PI-066, PI-067, PI-068, PI-069, QI-098, PI-166.

⁴⁸⁶ PI-136.

⁴⁸⁷ PI-052, PI-055, PI-056.

⁴⁸⁸ PI-146, PI-144, PI-166.

⁴⁸⁹ PI-136.

⁴⁹⁰ Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.

⁴⁹¹ PI-146.

⁴⁹² PI-144.

226. In some cases reported to the Mission, the survivor, often accompanied by the male village administrator, lodged a complaint at the Tatmadaw base to which the perpetrators belonged. In most of those cases, the Tatmadaw failed to investigate or punish the perpetrator.⁴⁹³ However, because of the complaint, the entire community was made aware of the incident. In some cases, the survivors go to women's organizations that can provide needed services more appropriately.

227. The consequences of the conflict for women and girls are particularly severe, especially for those displaced and for those who lost a spouse or father in the violence.⁴⁹⁴ Many face dire economic situations having lost the main breadwinners in their families and are once again vulnerable to sexual and gender-based violence. A woman told the Mission that Tatmadaw soldiers killed her husband in Mogaung Township, Kachin State in 2017.

*"It has been very difficult since he died. When he was alive he managed everything for the family, and also the finances. He earned and provided, and we survived. Now it is difficult for me to take care of my children. My youngest child asks 'where is daddy', and 'can we call daddy or talk to daddy'. In those moments, I feel sad and do not know how to respond. I tell them that daddy is in heaven. But one of my children is very young, and asks if we can call daddy in heaven."*⁴⁹⁵

228. A woman whose husband was detained by the Tatmadaw in Kachin State in 2014, never to be seen again, explained:

*"I became the head of the household. My children lost their father, and I had to find income to maintain my children and my aging parents. I had to start selling vegetables and to travel from one village to another. That is where Tatmadaw soldiers raped me in February 2018. Ever since my husband was taken away by the Tatmadaw, we have been struggling for survival. I decided to leave my children in Kachin State with my elderly parents so I can work abroad and ensure they stay alive."*⁴⁹⁶

XI. Impunity and accountability

"While there have been alleged cases and accusations against members of the security forces, there has been no evidence and sufficient grounds to convict anyone. Actions cannot be based on narratives and rumours of unreliable sources."

Government of Myanmar submission to the Committee on the Elimination of Discrimination against Women under the exceptional reporting procedure,

7 February 2019

A. Context

*"We want justice. We had to leave behind everything when we were raped."*⁴⁹⁷

229. Human rights violations of the most egregious nature have been committed in Myanmar. The Government of Myanmar has a duty to investigate, prosecute and punish perpetrators of sexual and gender-based violence, in particular where they amount to crimes under international law.⁴⁹⁸ Investigations into allegations of violations and crimes must be

⁴⁹³ PI-144, PI-166, PI-173.

⁴⁹⁴ GI-036, PI-070, PI-073, PI-074.

⁴⁹⁵ GI-036.

⁴⁹⁶ PI-069.

⁴⁹⁷ EI-090.

⁴⁹⁸ E.g. A/HRC/27/56, para. 27. See also e.g. Genocide Convention, art. 1; U.N. Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13); J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rules 150, 158 (hereinafter "ICRC/Customary IHL"); Basic Principles and Guidelines on the Right to a Remedy and Reparation (principles 1-5); and the Principles to Combat Impunity. Under the Convention on the Elimination of Discrimination against Women, to which

prompt, thorough and effective, independent and impartial, and transparent.⁴⁹⁹ In its 2018 report, the Mission made recommendations to the Government of Myanmar, calling for such investigations and prosecutions.

230. The continued lack of accountability has extended the longstanding impunity of the Tatmadaw and other security forces. The Mission is satisfied that the lack of accountability and the consequent impunity has encouraged repeated grave human rights violations in Myanmar and that those violations will continue until and unless impunity is lifted and accountability enforced.

231. In its 2018 report, the Mission noted the inadequacy of Myanmar's legal framework as one of the contributing factors to the lack of accountability. The constitutional and legal framework of Myanmar protects the Tatmadaw, and other security forces, effectively blocking military accountability.⁵⁰⁰ The Mission takes particular note that Myanmar is a State party to the Genocide Convention of 1948, but has not enacted the necessary legislation to give effect to the Convention and, in particular, provide effective penalties for persons guilty of genocide or any of the other prohibited acts under the Convention, as required by Article V. Additionally, Myanmar's Penal Code is not in compliance with internationally accepted definitions of rape due to its restrictive definition of the crime of rape, requiring that there be penile penetration.⁵⁰¹

232. In Myanmar, there are limited accountability mechanisms in place for addressing sexual and gender-based violations. There is legislative impunity for sexual assault and other violations perpetrated by the Tatmadaw: soldiers are protected under article 381 of the Constitution, which suspends the right to justice in times of emergency. The Ministry of Defence is not subject to civilian control, meaning that the military operates with very little civilian oversight or accountability. Survivors of sexual and gender-based violence have no recourse to justice.

233. A lawyer who brought several cases against the Tatmadaw identified a number of issues related to the functioning of the military courts:

*"When cases are tried by a military court, the charges are often not what is expected because the military code is different. For example, in a case of sexual violence, there is no such charge, so a perpetrator was sentenced instead for intoxication during official duty and got a lighter sentence. Sometimes lawyers are allowed to go to military hearings but mostly we are not, we just get informed of the outcome, we never get a written copy, we are just told orally. We also never know whether or not the rulings are implemented."*⁵⁰²

234. An additional inadequacy is that the Constitution of Myanmar extends human rights protections to "citizens" only,⁵⁰³ further limiting protections to many of the victims of

Myanmar is a State party, the government has the obligation to prevent, investigate, prosecute and punish acts of sexual and gender-based violence.

⁴⁹⁹ Ibid. Also Principles to Combat Impunity, principle 19; Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (New York and Geneva, United Nations, 2017) (hereafter "Minnesota Protocol").

⁵⁰⁰ See for e.g. Constitution of Myanmar articles 445, 20(b), articles 293(b) and 319 establish permanent military tribunals. The 1959 Defence Services Act provides that military personnel on active service who commit serious crimes against a civilian (murder, culpable homicide, rape) shall be tried by military tribunals (article 72). The Act defines "active service" in such broad manner that military personnel would effectively always fall under military courts' jurisdiction; Article 343(b) of the Constitution further makes decisions of the Commander-in-Chief concerning military justice. The 1995 Myanmar Police Force Maintenance of Discipline Law also assists in shielding police officers from prosecution for crimes committed in the course of their service. The Law lists a range of "offences" for which police officers may be tried before a Police Court, such as threatening a witness (article 13(c)), unlawful detention (article 17(a)), beating or ill-treatment of prisoners (article 17(c)), or corruption (article 17(h)).

⁵⁰¹ See CEDAW/C/MMR/CO/4-5, para. 27(a).

⁵⁰² BM-007.

⁵⁰³ Constitution of Myanmar articles 21, 34.

sexual and gender-based violence who the Government regards as stateless. The Government's refusal to acknowledge the citizenship of Rohingya people leaves the human rights of those people unprotected under the Myanmar Constitution.

235. The right to truth is an integral part of effective investigations, accountability and justice.⁵⁰⁴ The right to the truth is recognized by the Human Rights Council⁵⁰⁵ and is an established principle of international human rights law.⁵⁰⁶ Under the right to truth, victims and the public have the right to know the truth about the perpetration of heinous crimes and the circumstances that led to their commission.⁵⁰⁷ Additionally, in the event of death or disappearance, victims' families have the right to know the truth about the circumstances in which violations took place and the victims' fate.⁵⁰⁸ Governments are obliged to establish mechanisms to facilitate the revelation of the truth about gross human rights violations.⁵⁰⁹ The U.N. Principles on Combating Impunity describe the full and effective exercise of the right to the truth as "a vital safeguard against the recurrence of violations".

236. Full accountability requires adequate, effective and prompt reparations for harm suffered.⁵¹⁰ Victims are entitled to full and effective reparations, entailing restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁵¹¹ Restitution aims to restore, to the extent possible, the victim to the situation existing before the violation. It may include restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property. Compensation should be provided for any economically assessable damage, such as physical or mental or economic harm, lost opportunities and material loss or damage. Rehabilitation includes medical and psychological care as well as legal and social services.⁵¹² Satisfaction may include effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; search for the whereabouts of the disappeared; search for, identification and burial of bodies; public apology and acknowledgment of the facts and acceptance of responsibility; commemorations and tributes to victims.⁵¹³ Reparations should be proportional to the gravity of the violation and the circumstances of each case.

237. A critical element of the right to an effective remedy is the provision of guarantees of non-recurrence.⁵¹⁴ Examples include ensuring effective civilian control of military and security forces; ensuring that all civilian and military proceedings abide by international standards of due process; strengthening the independence of the judiciary; protecting

⁵⁰⁴ On the right to the truth, see E/CN.4/2006/91, A/HRC/5/7, A/HRC/12/19 and A/HRC/15/33.

⁵⁰⁵ In 2005, the Commission on Human Rights adopted resolution 2005/66 on the right to truth, requesting OHCHR to prepare a study on the right to the truth (E/CN.4/2006/91). Human Rights Council resolutions 9/11, 12/12 and 21/7 also support the right to the truth. In 2014, the General Assembly adopted a resolution on the right to the truth (A/RES/68/165), recognizing "the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights".

⁵⁰⁶ International Convention for the Protection of All Persons from Enforced Disappearance, art. 24(2). See, also, E.g. Basic Principles and Guidelines on the Right to a Remedy, principle 24; Principles to Combat Impunity, principles 2-5; European Court of Human Rights, *El-Masri v. The former Yugoslavia Republic of Macedonia*, Grand Chamber Judgment, Application no. 39630/09, 13 December 2012.

⁵⁰⁷ Principles to Combat Impunity, principle 2.

⁵⁰⁸ Principles to Combat Impunity, principle 4. This right finds its roots in international humanitarian law, see ICRC/Customary IHL, and rule 117.

⁵⁰⁹ E.g. A/HRC/24/42, para. 20; D. Groome, "The Inalienable Right to the Truth", in *The United Nations Principles to Combat Impunity – A Commentary*, F. Haldemann, T. Unger, eds. (Oxford, Oxford University Press, 2018), pp. 59-70.

⁵¹⁰ Basic Principles and Guidelines on the Right to a Remedy, principles 11, 14-15; Principles to Combat Impunity, principle 4 and 31. See also ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012.

⁵¹¹ Basic Principles and Guidelines on the Right to a Remedy, principle 18.

⁵¹² Ibid., principle 21.

⁵¹³ Ibid., principle 22.

⁵¹⁴ A/HRC/30/42 details on concept of guarantees of non-recurrence.

journalists and human rights defenders; providing human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; promoting public servants' observance of codes of conduct and ethical norms, in particular international standards; promoting mechanisms for preventing and monitoring social conflicts and their resolution; reviewing and reforming laws contributing to or allowing human rights violations.⁵¹⁵

238. In June 2018, the Government of Myanmar established the Independent Commission of Enquiry (ICOE) to examine the events of 2017 in Rakhine State. The ICOE was to publish an interim report in April 2019 and its final report by 30 July 2019.⁵¹⁶ At the time of writing, neither report had been released. In July 2019, the Government extended the ICOE's mandate for an additional six months to continue its work. Under its mandate, the ICOE's recommendations can only be directed to enhancing peace and stability and ensuring law enforcement and the rule of law. The ICOE chairperson has emphasized that it is not an accountability mechanism for human rights violations and abuses and violations of international humanitarian law.

239. At the time of writing, the ICOE was on its first mission to Bangladesh.⁵¹⁷ The Rohingya refugees with whom the Mission spoke feared reprisals if they spoke to Myanmar Government officials about Tatmadaw brutality in Rakhine. It is not clear how sexual and gender-based violence is being addressed by the ICOE.⁵¹⁸ Because of the ICOE's lack of a clear mandate, its opaque methodology and its questionable operating procedures, as well as its dependence on the Myanmar Government, the Mission has concluded that ICOE investigations will not identify perpetrators, promote accountability and justice, and provide redress to victims.

240. The Myanmar National Human Rights Commission is also not yet an effective mechanism for pursuing accountability of the Tatmadaw, its most senior commanders and its soldiers for gross violations of international human rights law and serious violations of international humanitarian law. The National Human Rights Commission has no experience of investigating major human rights violations and has not demonstrated the necessary independence, determination and capacity to warrant confidence in its effectiveness at this stage.⁵¹⁹ The national ceasefire agreement of 2015 also does not include mechanisms to secure access to justice for survivors of sexual and gender-based violence.

241. In December 2018, the Government of Myanmar signed a joint communique with the Special Representative of the Secretary-General on Sexual Violence in Conflict on behalf of the United Nations.⁵²⁰ The Communique committed the Myanmar military to address six key priorities to prevent and ensure accountability for sexual violence in conflict. A National Committee to support implementation of the Joint Communique was announced by Presidential Decree in March 2019. The Joint Communique also commits the Myanmar military to issuing clear orders prohibiting sexual violence and to ensuring timely investigations of alleged abuses and accountability for violations.

⁵¹⁵ Basic Principles and Guidelines on the Right to a Remedy, principle 23.

⁵¹⁶ See www.icoe-myanmar.org/key-terms and www.moi.gov.mm/ppd/sites/default/files/Vol-71%2CNo-44.pdf.

⁵¹⁷ <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2019/08/19/rohingya-witness-protection-myanmar-s-icoe-dodges-bangladesh-enquires>.

⁵¹⁸ Summary of the meeting on Myanmar held by the Informal Expert Group on Women and Peace and Security on 4 June 2019, <https://undocs.org/en/S/2019/591>

⁵¹⁹ The Myanmar National Human Rights Commission is not fully compliant with the Paris Principles. It currently has B status. See: <https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%289%20May%202019%29.pdf>

⁵²⁰ https://www.un.org/sexualviolenceinconflict/wp-content/uploads/joint-communique/joint-communique-of-myanmar-un-on-prevention-response-to-crsv/Joint_Communique_of_Myanmar_UN_Prevention_Response_to_CRSV_2018.pdf

242. Myanmar has a National Strategic Plan for the Advancement of Women of Myanmar for 2013 to 2022.⁵²¹ It calls for appreciation of diversity and claims to address the aspirations of ethnic nationalities and ensure equitable development. The Plan champions the elimination of all forms of violence against women and girls and proposes responses to the needs of women and girls affected by violence through legislation and structural changes.⁵²² It calls for vulnerable women, in particular those who have suffered from violence, to be given access to services but ethnic women remain without protection and services.⁵²³

243. The Myanmar Government has failed to demonstrate the necessary political will to investigate, prosecute and hold perpetrators of sexual and gender-based violence accountable. The Government's persistent denials of the perpetration of sexual and gender-based violence are a major obstacle to accountability and justice.⁵²⁴ For example, on 17 February 2019 the Commander in Chief was reported saying:

*"Security forces were accused of rapes. In fact, those security forces are not naughty. We all are under discipline. So, it is very impossible to commit rape case. However, some rape cases may happen along the Myanmar saying: the alms of Buddhist monks are mixed with the waste of mice. One or two members may commit such acts. I did not use the word 'absolute'. For example, beating or rape may happen. However, show us the evidence to us. We will take action against them."*⁵²⁵

244. Additionally, the Mission has documented a number of instances where victims feared pursuing justice because of the lack of protection, given the perpetrators include law enforcement officers, such as the police.⁵²⁶ The fear is justifiable. In Kachin and Shan, women who either attempted to escape or fight, or whose rape was interrupted by other events, were threatened by their perpetrators,⁵²⁷ including with death.⁵²⁸ The Mission found a consistent pattern of perpetrators subsequently going to the survivor's home searching for her,⁵²⁹ including with a superior officer.⁵³⁰ If complaints are made, the Tatmadaw response appears to be reprisal and attempts to silence rather than undertaking a genuine investigation. In cases that have been investigated, the process has often been flawed.⁵³¹ For example, on 2 July 2014 in Puta-O, Kachin State, two Tatmadaw soldiers attempted to rape a Ruwang woman on the side of the road. The next day she reported the incident to the commander. She was threatened with arrest for reporting the case and fled the country fearing reprisals.⁵³²

245. In two cases, Tatmadaw soldiers visited the survivor's home, physically abusing the survivor's relatives and confiscating personal property, including identification cards.⁵³³ They told the relatives to return the survivor to the military camp as soon as she returned

⁵²¹ Gender Equality and Women's Rights in Myanmar, a situation analysis, Executive Summary, xvi (https://www.undp.org/content/dam/unct/myanmar/docs/unct_mm_UNWomen_Report_Gender%20Situation%20Analysis.pdf).

⁵²² National Strategic Plan for the Advancement of Women (2012-2022) Myanmar National Committee for Women's Affairs, p.31; https://myanmar.unfpa.org/sites/default/files/pub-pdf/NSPAW2013-2022_0.pdf

⁵²³ CI-264

⁵²⁴ V-254, V-255. The "fake rape" charge appeared as a banner on the Facebook page of the State Counsellor's Office (screenshot on file with the Mission). It is discussed in detail in chapter X, section B.2.a: Case study 1: the use of rape and other forms of sexual violence by the military. See also: <http://www.statecounsellor.gov.mm/en/node/545>.

⁵²⁵ See interview with Senior General Min Aung Hlaing, 17 February 2019: <http://cincds.gov.mm/node/1830>

⁵²⁶ CI-074, CI-077, CI-174, DI-038, DI-048, DI-050.

⁵²⁷ DI-065, PI-005.

⁵²⁸ PI-00.

⁵²⁹ PI-003, PI-005, PI-007, PI-067, PI-068, QI-084.

⁵³⁰ PI-005.

⁵³¹ PI-136, PI-141, PI-144, PI-168, PI-169, PI-170

⁵³² PI-173.

⁵³³ PI-007, PI-023.

home.⁵³⁴ In another case, Tatmadaw soldiers destroyed a survivor's parents' kitchen, beat her parents and took them away for forced labour for a week.⁵³⁵ In yet another case, a Ta'ang woman reported the sexual assault and attempted rape incident to the village administrator but she later learned that Tatmadaw soldiers had beaten him to prevent an official report being filed.⁵³⁶ In this climate of fear, many survivors decided to leave the country after sexual violence.⁵³⁷

246. Lawyers who have taken up sensitive cases of sexual and gender-based violence against the Tatmadaw in Kachin and Shan States have also faced threats, leaving some afraid to work on these cases.⁵³⁸ One lawyer told the Mission:

*"Every time I went to the place of the incident, I was harassed by police. My co-workers were threatened by the military. They said, 'If you take the case, you will have problems.'"*⁵³⁹

247. Civil society organizations working in Kachin and Shan States reported additional security concerns when releasing reports on sexual and gender-based violence that implicate the Tatmadaw.⁵⁴⁰ They fear constant surveillance and visits from the security forces.

248. An additional hindrance to justice is that many of the victims of sexual and gender-based violence do not have the education or the financial means to pursue justice. They often live in remote areas without proper access to legal representation.

B. Flawed process when complaints are taken up

249. Due to the lack of cooperation from the Government of Myanmar, the Mission did not have access to official information on prosecutions against members of the Tatmadaw for human rights violations. The Mission is aware that, in a small number of cases, lower ranking members of the Tatmadaw have been prosecuted for violations including sexual violence.⁵⁴¹ This includes one case of a soldier sentenced to 10 years in prison with hard labour for the rape of a child Kachin State.⁵⁴²

250. When investigations and prosecutions do occur, however, they appear to be limited to a small number of often high-profile cases and to be restricted to junior soldiers, not senior officers or commanders. The standard approach is to deny Tatmadaw responsibility, dismiss the complainant and, in many cases, threaten prosecution of those alleging Tatmadaw involvement in the incident. Only when these approaches fail to deflect attention, do authorities undertake some form of investigation, which is generally inadequate and lacking compliance with international investigative standards.⁵⁴³

251. The Mission was also told of a case of rape in 2018 in Shan State where, following a meeting between local authorities, a Tatmadaw commander and relatives of the victim, the soldier responsible was slapped 10 times and compensation of 200,000 Kyat (132 USD) provided to a male family member of the victim.⁵⁴⁴

252. In its 2018 report, the Mission verified the rape and killings of two volunteer teachers, Maran Lu Ra and Tangbau Hkawn Nan Tsin, in Shan State on 19 January 2015.⁵⁴⁵

⁵³⁴ PI-005, PI-007.

⁵³⁵ PI-063.

⁵³⁶ PI-057.

⁵³⁷ GI-006, PI-143, PI-145, PI-146.

⁵³⁸ PI-037, BM-008; International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Myanmar Baseline Study*, (Geneva, 2018).

⁵³⁹ BM-008.

⁵⁴⁰ BM-007; A/HRC/34/67.

⁵⁴¹ PI-037, PI-142, PI-144.

⁵⁴² PI-037.

⁵⁴³ A/HRC/39/CRP.2, p. 394 *et s.*

⁵⁴⁴ PI-110.

⁵⁴⁵ A/HRC/39/CRP.2, para. 204-206.

There were serious concerns about the investigation methods.⁵⁴⁶ The police detained and tortured or ill-treated two villagers accused of the rape and killing of the teachers,⁵⁴⁷ while ignoring evidence against troops of the LIB 503 who were stationed in the village at the time of the incident.⁵⁴⁸ The Tatmadaw threatened legal action against the families of the victims who initiated the investigation.

XII. Conclusion and recommendations

253. The widespread sexual and gender-based violence against members of Myanmar's ethnic minorities, especially women and girls, is the most extreme expression of gender related injustice inflicted on them.

254. Based on the Mission's investigations since the release of its 2018 report and the consolidation of all its materials on the Tatmadaw's use of sexual and gender-based violence, the Mission reaffirms its conclusion that rape and other forms of sexual and gender-based violence constitute gross violations of international human rights law in Rakhine, Kachin and Shan States. These violations include arbitrary deprivation of life, rape, torture and other inhuman, cruel or degrading treatment or punishment, arbitrary and unlawful detention, forced labour and sexual slavery. The Mission also concludes on reasonable grounds that the Myanmar Government's failure to cease, prevent and take action against sexual and gender-based violence represents a grave failure to ensure respect and protection for human rights under international law. This sexual violence was used against women, men, girls, boys and transgender persons.

255. Many of these acts also amounted to violations of international humanitarian law when they took place in connection with an armed conflict. This report also reaffirms the Mission's conclusion that acts of sexual and gender-based violence constituted crimes against humanity, war crimes and underlying acts of genocide accompanied by inferences of genocidal intent.⁵⁴⁹ Notably, the Mission's consolidation of its materials has led it to conclude on reasonable grounds that the sexual violence perpetrated against Rohingya women and girls in Rakhine state on and after 25 August 2017 was an indicator of the Tatmadaw's genocidal intent to destroy the Rohingya people in whole or in part. The Mission also concludes that the Government has failed, and continues to fail, in its obligation to hold perpetrators for sexual violence accountable, and that the Government bears continuing State responsibility under the Genocide Convention for its failure to investigate and punish acts of genocide.

256. The Mission is deeply concerned about sexual violence and gender-based violence by EAO fighters and the EAOs' lack of proper accountability processes for addressing this violence. This requires further investigation.

257. The Mission has found that the Government of Myanmar lacks the political will to address the pervasive impunity of the security forces for sexual and gender-based violence committed against ethnic minorities. This lack of decisive action is evidence of tacit approval and acceptance of such conduct. Instead of investigations, the policy of the Government now appears to be the destruction of evidence of the crimes committed,⁵⁵⁰ making future accountability more difficult.

258. Impunity for atrocity crimes and other gross violations of human rights and serious violations of international humanitarian law has legitimised domestically the Tatmadaw's brutal, oppressive and discriminatory conduct. It has enabled recurrence

⁵⁴⁶ PI-037.

⁵⁴⁷ PI-139, PI-140.

⁵⁴⁸ PI-168, PI-169, PI-170.

⁵⁴⁹ A/HRC/39/CRP.2 paras 1511, 1516, 1441.

⁵⁵⁰ LI-224, <https://www.aljazeera.com/news/southasia/2019/07/satellite-images-show-ongoing-destruction-rohingya-settlements-190724111501684.html>

of these violations, by emboldening perpetrators and silencing victims. It has undermined the legitimacy of the State and exacerbated ethnic and religious divisions. It has prevented Myanmar's development as a modern democratic State.

259. Accountability is the key to build the population's trust in the State and in its capacity to ensure a secure and equitable society in which all people can prosper. As stated in the preamble of the United Nations Principles to Combat Impunity, "there can be no just and lasting reconciliation unless the need for justice is effectively satisfied".⁵⁵¹

260. The Mission reiterates its recommendations from previous reports and makes the following additional recommendations.⁵⁵²

1. The Government of Myanmar should:

261. Promptly investigate and prosecute Tatmadaw and other security personnel, including senior officials in the Tatmadaw's chain of command, for sexual and gender-based violence, including as serious crimes under international law, such as crimes against humanity, war crimes and genocide.

262. Ensure that the Tatmadaw's Commander-in-Chief of the military issues military orders expressly prohibiting rape and all forms of sexual violence.

263. Ensure that reports of alleged sexual and gender-based violence by the Tatmadaw, and other security personnel, results in credible investigations, fair trials and appropriate sanctions, such as imprisonment and dismissal.

264. Undertake the necessary legislative reform to protect people of all genders, including children of all ethnic groups, including Rohingya, from sexual and gender-based violence, including by:

(a) amending the Constitution to remove provisions that grant government officials, including military and security personnel, immunity from prosecution for human rights violations and to establish civilian jurisdiction over human rights violations, including by military and security personnel;

(b) amending the Penal Code of 1861 to adopt a definition of violence against women, including rape and other forms of sexual and gender-based violence, in accordance with the Convention on the Elimination of Discrimination against Women and international standards;

(c) amending the Penal Code of 1861 to criminalise sexual and gender-based violence against men and criminalise male rape;

(d) ensuring civilian courts have jurisdiction over the military for sexual and gender-based violence against women, men and children;

(e) enacting promptly the Prevention and Protection of Violence against Women Law (PoVAW) and ensuring that it fully complies with international standards, covers conflict-related sexual violence, provides adequate protection and support to victims and witnesses of sexual violence, and establishes civilian jurisdiction over these crimes, including when perpetrated by military or other security personnel;

(f) effectively criminalize in domestic law serious crimes under international law, including genocide, crimes against humanity and war crimes, such as conflict-related sexual violence, with civilian jurisdiction over these crimes;

⁵⁵¹ Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1), hereafter "Principles to Combat Impunity".

⁵⁵² Many of the recommendations are reproduced from the Mission's 2018 report. They also include similar recommendations from Myanmar's recent review by CEDAW. See United Nations Committee on the Elimination of Discrimination against Women, Concluding observations on Myanmar, CEDAW/C/MMR/EP/CO/1, 8 March 2019.

(g) providing redress and reparations to victims and survivors of sexual and gender-based violence.

265. Provide all military and security personnel with mandatory in-depth training regarding sexual and gender-based violence.

266. Establish an effective, accessible gender sensitive and safe mechanism to report incidents of rape and other forms of sexual and gender-based violence to appropriate authorities and tribunals for investigation, prosecution, redress and reparations.

267. Create an enabling and gender sensitive climate for reporting to authorities on sexual and gender-based violence, including by providing the necessary legal aid for victims.

268. Act without delay to ensure that victims of serious human rights violations and abuses have adequate access to medical, psychosocial and other support and services in both government and non-government controlled areas; to this end the Government should provide unrestricted access for humanitarian relief agencies and:

(a) ensure that survivors of sexual violence have unrestricted access to free, confidential medical support, including psychological and psychosocial support, or mental healthcare as needed and integrate such support into broader long-term social care and support provided by the State to vulnerable persons;

(b) ensure effective access for all children in Myanmar, whatever their legal status, to all essential public services, including education and healthcare; have particular regard for those children who have lost their primary carers in conflict and those children who are born as a result of rape by Myanmar security forces; and, as a priority, provide psychological support and mental health assistance to children affected by conflict.

269. Carry out community education programmes aimed at empowering women and men who want to report violence, in a manner that does not jeopardize their safety, and carry out awareness raising in the communities to combat stigma and ostracism of survivors.

270. Ensure the availability of sexual and reproductive health services, as well as preventative and emergency healthcare, under the principles of inclusion and accessibility, to ethnic minority women and girls, including obstetric, prenatal and postnatal care, contraceptive information and services, emergency contraception, safe abortion and psychological health services, for victims and survivors of rape and other forms of sexual and gender-based violence, in a safe environment free of stigma and reprisals;.

271. Ensure the participation of women and girls from ethnic minority groups in the development and implementation of programmes related to sexual and reproductive health services; set up monitoring mechanisms to ensure access to and quality of those services; and eliminate discriminatory practices by health care personnel.

272. Fully involve ethnic women and girls at all stages of the post-conflict reconstruction process, including in decision-making.

2. All ethnic armed organizations in Myanmar should:

273. Order their members to comply fully with international human rights law and international humanitarian law, in particular by prohibiting rape and all forms of sexual violence.

274. Cooperate fully with any credible effort to hold perpetrators of serious violations and abuses of international human rights law and violations of international humanitarian law, as well as crimes under international law, accountable, including by non-State actors;

3. The Security Council should:

275. Adopt a resolution referring the situation of Myanmar to the International Criminal Court or mandating an ad hoc criminal tribunal.

276. Adopt a resolution or presidential statement on the situation in Myanmar and include language to urge the national authorities and ethnic armed organizations to ensure women's meaningful participation, including in decision-making roles, in national peace conferences, bilateral negotiations and the monitoring of the existing nation-wide ceasefire agreement.

277. Apply political and diplomatic influence, as well as financial resources, to provide a path for justice for the women and girls affected by the conflict.

278. Expand the services supporting Rohingya, in particular women and girls, in refugee camps, including access to formal education, skills development and livelihood opportunities.

4. The international community should:

279. Support civil society organizations throughout Myanmar, and in States hosting those affected by the conflicts in Myanmar, to report on human rights violations, especially those involving sexual and gender-based violence, provide services to survivors of gender-based violence, and support women's participation and representation in decision-making, including in the upcoming elections.

280. Establish a trust fund in line with Human Rights Council resolution 39/2 for survivors of sexual and gender-based violence and their families to support their medical and psychosocial care, including for transgenerational trauma.

281. Work with development and humanitarian agencies to lay the foundation for justice and accountability, including, but not limited to, reparations, through their work – building the confidence of survivors in the justice system and creating a safe platform for survivors and civil society to advocate for their justice demands.
