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The Rohingya Crisis and the Risk of Atrocities in Myanmar:

*An ASEAN Challenge
and Call to Action*

A Report by



APHR

ASEAN PARLIAMENTARIANS
FOR HUMAN RIGHTS

About ASEAN Parliamentarians for Human Rights

ASEAN Parliamentarians for Human Rights (APHR) is a human rights intervention force of like-minded parliamentarians and influential persons, using their unique positions and innovative means to prevent discrimination, uphold political freedom, and promote all human rights. APHR supports the work of civil society and human rights defenders and encourages sustainable and alternative solutions that increase pressure on international, regional, and multilateral bodies and governments to ensure accountability to the people and uphold and enforce international human rights laws.

Methodology

This report is based on observations by a delegation of ASEAN Parliamentarians for Human Rights (APHR), which visited Mandalay, Myanmar, in April 2015. It is informed by interviews with civil society representatives and experts in Myanmar, as well as discussions with international experts on Myanmar, ASEAN, and the prevention of atrocities. The report also draws upon long-term independent research by established human rights organizations, including United to End Genocide (endgenocide.org) and Fortify Rights (fortifyrights.org).

The report examines the current situation of human rights in Myanmar and the region through the United Nations' Framework of Analysis for Atrocity Crimes (hereafter "the Framework") from the UN Office of the Special Adviser on the Prevention of Genocide.

The Framework was published in October 2014 to serve as "a working tool for the assessment of the risk of atrocity crimes in all parts of the world." It was also intended to function as "a tool either for early warning mechanisms, or for other mechanisms used for monitoring, assessment and forecasting." The Framework identifies 14 risk factors for atrocity crimes, including six specific risk factors for genocide, war crimes, and crimes against humanity, and several indicators for each risk factor.

The Framework provides a total of 143 indicators. This report focuses on the indicators most relevant to the situation in Myanmar, noted throughout the report by the relevant number from the Framework contained within parentheses. For example, the first indicator under the first risk factor would be noted as (1.1).

Executive Summary

The longstanding persecution of the Rohingya Muslim minority in Myanmar has led to the highest outflow of asylum seekers by sea since the U.S. war in Vietnam. Human rights violations against Rohingya have resulted in a regional human trafficking epidemic, and there have been further abuses against Rohingya upon their arrival in other Southeast Asian countries.

This protracted culture of abuse threatens Myanmar's political transition, puts strains on regional economies, and supports the rise of extremist ideologies that pose potential security threats throughout the region. Ongoing human rights abuses against Rohingya pose a threat to regional peace and security and must end.

Broader anti-Muslim rhetoric and violence has also flared up in locations across Myanmar in recent years. These incidents, as well as ongoing abuses against ethnic minority groups throughout the country, pose similar risks for Myanmar and the Association of Southeast Asian Nations (ASEAN).

In April 2015, ASEAN Parliamentarians for Human Rights (APHR), an organization of members of parliament from several ASEAN countries, conducted a fact-finding mission in Myanmar. APHR is deeply concerned about the current dynamics there and how they affect the region and the broader global community. APHR is equally concerned with the failure of ASEAN nations to adequately respond.

Critical national elections in Myanmar are slated for the end of 2015. APHR has found an alarmingly high risk of atrocities against Rohingya, other Muslims, and other ethnic minority groups in the lead up to the election. These risks constitute a regional concern, not only due to potential cross-border spillover effects, but also because ASEAN member states share a moral responsibility to take all possible measures to prevent the commission of atrocities within ASEAN.

Despite these troubling realities, the Rohingya issue remains conspicuously absent from the agenda of the ASEAN Summit. ASEAN and other global leaders ignore these dynamics at their own peril. The Rohingya crisis and broader animosity toward other Muslims and ethnic minorities in Myanmar are not just a Myanmar problem—they are an ASEAN problem.

Nearly every common risk factor for atrocity crimes identified in the United Nations' Framework of Analysis for Atrocity Crimes is present in Myanmar today. This report draws upon APHR's collective knowledge to analyze the situation in Myanmar within the context of this United Nations' Framework. Based on this analysis, it is clear that there is a high risk of ongoing atrocity crimes in Myanmar in 2015 and beyond.

The report represents a call to action. It demonstrates that the escalating human rights crisis in Myanmar and Southeast Asia more broadly is exacerbated by the failure of ASEAN to take effective action. ASEAN should:

- Recognize the escalating crisis in Rakhine State and the plight of Rohingya as a serious danger to both Myanmar and ASEAN by prioritizing the issue in Summit meetings.
- Conduct an independent investigation of conditions and risks of increased violence and displacement in Myanmar, as well as associated risks to ASEAN, including greater refugee flows to countries like Malaysia and Thailand.
- Expand the mandate of the ASEAN Intergovernmental Commission on Human Rights (AICHR) to include country visits, inquiries, complaints, and emergency protection mechanisms, and ensure adequate independence and staffing support for its members. Engage AICHR to conduct a follow-up investigation into the Rohingya crisis.
- Deploy ASEAN monitors well ahead of the Myanmar elections to observe and report on the Rohingya crisis and broader anti-Muslim and ethnic minority dynamics.
- Utilize existing mechanisms in ASEAN, such as the ASEAN Troika, AICHR, the office of the ASEAN Secretary General, and the role of the ASEAN Chair, to respond appropriately to humanitarian crises in member states in accordance with the principles of the ASEAN Charter and the ASEAN Declaration on Human Rights.
- Commit to protecting those fleeing the crisis in Rakhine State, including by granting prima facie refugee status to Rohingya and providing the UN refugee agency with unfettered access to asylum seekers.
- Ratify the 1951 Refugee Convention.
- Strengthen and expand the mandate of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to help combat threats to women's rights, including those presented by the "Protection of Race and Religion Bills" and other Myanmar government policies that restrict rights, particularly for ethnic and religious minority women.
- Call upon the Myanmar government to adhere to regional and international human rights and humanitarian standards, including rejecting the "Protection of Race and Religion Bills."
- Call upon the Myanmar government to address the root causes of the Rohingya crisis by amending the 1982 Citizenship Law to provide Rohingya with equal access to full citizenship, promoting reconciliation initiatives, denouncing hate speech and propaganda, and holding perpetrators of violence, including government officials, accountable.

The Rohingya Crisis

The persecution of the Rohingya Muslim minority at the hands of national and regional government authorities and local actors in western Myanmar's Rakhine State has forcibly displaced hundreds of thousands of people since the outbreak of widespread violence in 2012. Some 150,000 Rohingya Muslims remain in more than 80 internal displacement camps in Rakhine State with limited access to humanitarian aid, while more than 100,000 others have fled by sea to other countries, often at the hands of abusive human traffickers.

The government of Myanmar continues to impose severe restrictions on all Rohingya, including restrictions on freedom of movement, marriage, childbirth, and other aspects of everyday life. It is estimated that over 100,000 Rohingya refugees are now living in Malaysia, and several hundred thousand are in Bangladesh, Thailand, and other ASEAN countries combined. State security forces and non-state actors in Myanmar have already committed serious human rights violations against Rohingya with impunity, some of which have been qualified by human rights groups as crimes against humanity, and indicators of additional atrocity crimes, including genocide, are present.



The United Nations' Framework of Analysis for Atrocity Crimes identifies 14 Common Risk Factors for atrocity crimes, including genocide, and several indicators for each factor. Utilizing this framework, the remainder of this report will outline several of the most relevant risk factors and indicators that can be observed in Myanmar today.

Risk Factors 9 and 10: Intergroup tensions or patterns of discrimination against protected groups; Signs of an intent to destroy in whole or in part a protected group

Among the 14 risk factors laid out in the United Nations' Framework, two apply specifically to the risk of genocide, and both exist prominently in Rakhine State with regard to Rohingya.

A history of restrictive policies targeting Rohingya clearly fits the indicators of “serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups” (9.1) and “widespread or systematic discriminatory or targeted practices or violence... even if not yet reaching the level of elimination” (10.3).

Official government documents obtained by Fortify Rights reveal restrictions against Rohingya, which have given rise to severe violations of human rights, including restrictions on freedom of movement, marriage, and childbirth. Senior government officials have gone on record discussing the restrictions, which amount to the international crime of persecution. On July 31, 2012, Myanmar’s Minister of Home Affairs Lieutenant-General Ko Ko told parliament

that authorities were “tightening the regulations [against Rohingya] in order to handle travelling, birth, death, immigration, migration, marriage, construction of new religious buildings, repairing and land ownership and [the] right to construct building[s].”

In her latest report, UN Special Rapporteur on human rights in Myanmar, Yanghee Lee, observed that “discriminatory restrictions on freedom of movement for internally displaced Muslims remain in place, severely impacting access to health care, food, water and sanitation, as well as education and livelihoods.”

Perhaps most troubling is the Myanmar government’s official denial of Rohingya identity, a factor that clearly fits the indicators of the “denial of the existence of protected groups” (9.2) and “an intention to change its identity” (10.5). The right to self-identify is among the

most basic human rights, yet it is being denied to Rohingya in Myanmar. President Thein Sein has said that “there are no Rohingya among the races” of Myanmar. The Myanmar government claims that Rohingya are illegal migrants from Bangladesh and consistently uses the term “Bengali” to refer to them, despite the fact that many have lived in Myanmar for several generations.

Denied citizenship, Rohingya are considered stateless and lack the protections and rights afforded to citizens. The Myanmar government has actively encouraged Rohingya to register as “Bengali” or be removed to other countries. In the national census carried out in 2014, the Myanmar government refused to allow people to identify as Rohingya, forcing Rohingya to call themselves “Bengali” or not be registered. More recently, the Myanmar government has phased out and begun to collect temporary identification cards (also known as white cards), the only form of identification for many Rohingya, adding further uncertainty to their future and jeopardizing their ability to provide proof of citizenship.

Perhaps most troubling is the Myanmar government’s official denial of Rohingya identity, a factor that clearly fits the indicators of the “denial of the existence of protected groups.”

Myanmar government policies also fit the specific genocide risk factor indicated by “policies or measures that seriously affect the reproductive rights of women” (10.4). Rohingya women in Rakhine State have been held to a strict two-child policy, with enforcement guidelines that allow authorities to enter private homes unannounced and force Rohingya women to breastfeed infants in their presence “if there is suspicion of someone being substituted in the family registry.”

The “Protection of Race and Religion Bills,” a set of legislation currently being considered by Myanmar’s parliament, would add restrictions on interfaith marriage, religious conversion, polygamy, and childbirth that would disproportionately affect Rohingya and other Muslims in Myanmar, especially women. The Religious Conversion Bill would require individuals to gain permission to convert from local government officials after a screening and certification process. The Population Control Healthcare Bill would introduce region-specific restrictions on childbirth, including requiring that women wait a minimum of 36 months between pregnancies.

Over 100 civil society groups in Myanmar signed a letter in opposition to the bills, and prominent women’s groups have spoken out against them. Nevertheless, the bills have continued to advance with Ma Ba Tha, an influential group of ultranationalist Buddhist monks, using the legislation to further inflame anti-Muslim prejudice and fear.

There is also a “history of atrocity crimes committed with impunity” (9.3) against Rohingya and “serious tensions or conflicts between protected groups or with the State” (9.4). Government policies of persecution and exploitation have affected both Rohingya Muslims and Rakhine Buddhists in Rakhine State, the second poorest state in the country. The Myanmar government has marginalized both Rakhine and Rohingya and exploited their resources for decades. These grievances provide fertile ground for conflicts. For now, however, Rakhine frustrations are focused on the perceived threat of Rohingya, a fact that many experts see as evidence of a strategy by the central government to distract from grievances against the Burman majority.

Existing tensions between Rakhine Buddhists and Rohingya Muslims led to widespread violence in 2012 that resulted in more than 160 deaths and the displacement of tens of thousands. Despite the fact that the overwhelming majority of victims were Rohingya, many more Rohingya were arrested than Rakhine. The government has also enabled a climate of impunity for atrocities committed by failing to hold any police or military officials accountable for abuses against Rohingya and denying any wrongdoing.

In January 2014, the UN Office of the High Commissioner for Human Rights reported a massacre of 40 Rohingya in the northern Rakhine State village of Du Chee Yar Tan. Médecins Sans Frontières (MSF), or Doctors Without Borders, claimed to have treated several people for gunshot and stab wounds near the location of the reported massacre. The government flatly

denied the incident, blocked access for the United Nations to carry out further investigations, and allowed access to the region only in the presence of government officials. The government also evicted MSF from Rakhine State, effectively denying crucial access to health care for hundreds of thousands of Rohingya.

Another troubling indicator in this context is the “lack of national mechanisms or initiatives to deal with identity-based tensions or conflict” (9.6). Myanmar authorities have drafted a presently confidential “Rakhine Action Plan,” ostensibly intended to address tensions in Rakhine State. Leaked drafts suggest, however, that rather than ease tensions, the plan would forcibly relocate Rohingya to internment camps and continue a citizenship verification process that has already required Rohingya to identify themselves as “Bengali” or face deportation.

Anti-Muslim Violence

In addition to the estimated 1.3 million Rohingya Muslims living in Myanmar today, there are several million more non-Rohingya Muslims in the country. While the situation for Rohingya is distinct from that of other Muslims in Myanmar, who have not historically faced the same levels of persecution and statelessness, many of the dynamics that contribute to discrimination against Rohingya also affect the broader Muslim population. The violence in Rakhine State in 2012 helped stoke broader anti-Muslim sentiment, which led to violence in other parts of the country.

Using hate speech and dehumanizing language, a growing network of ultranationalist Buddhist monks propagates fears of an existential threat to Buddhism posed by Muslim invaders. The network stokes anti-Muslim sentiment through well-organized propaganda campaigns and boycotts of Muslim shops. These dynamics have contributed to outbreaks of violence across Myanmar, including the massacre of more than 40 people—mostly Muslim students—in the central Myanmar city of Meiktila in 2013 and riots in 2014, which resulted in the deaths of one Buddhist and one Muslim man in Mandalay, Myanmar’s second largest city.

Risk Factor 7: Enabling circumstances or preparatory action

Widespread use of anti-Muslim rhetoric in rallies, leaflets, and DVDs have incited outbreaks of violence and burning of Muslims shops and mosques from Mandalay and Meiktila in central Myanmar to Lashio in the north of the country. Common patterns leading to violence include the rapid dissemination of unsubstantiated rumors of Buddhist women being raped or burned, and incitement by outside groups. Evidence indicates that these outbreaks have been calculated and well organized—a worrying sign of preparatory action for further violence.

APHR met several civil society representatives in Mandalay in April 2015 who described organized elements of the 2013 violence and the government’s complicity in it, whether through direct action or the failure of police to take measures to stop rioters. Witnesses to the

violence said outside antagonists spread rumors of rape and murder and attempted to incite local Buddhist monks to join in the riots. One civil society representative, whose name is being withheld for security reasons, told APHR that “people come in from outside in trucks. They are brought to the city as mobs. Those who participate in the violence here are from remote areas; they are not from here.”

Similarly, following violence between Kaman Muslims and Rakhine Buddhists in Thandwe, Rakhine State in 2013, President Thein Sein said that “external motives instigated violence and conflicts. According to the evidence in hand, rioters who set fire to the villages are outsiders.”

APHR also observed strong indications of “increased inflammatory rhetoric, propaganda campaigns or hate speech” (7.14). Community leaders, both Buddhist and Muslim, described widespread use of hate speech promoted by a network of influential ultranationalist Buddhist monks, such as Ashin Wirathu who presides over 2,500 monks in Mandalay. The so-called 969 movement has organized boycotts of Muslim shops and encouraged anti-Muslim sentiment. A worker at a charity health clinic run by a monastery in Mandalay told APHR that leaders of the 969 movement “say things like Muslims are taking everything and this is why you are poor. They are trying to shift peoples’ anger towards the Muslims.”



Wirathu has used language to dehumanize Muslims, describing them as “mad dogs” and “African carp” who “breed quickly,” are “very violent,” and “eat their own kind.” Wirathu has also turned his vitriol against independent international observers, such as the UN Special Rapporteur on human rights in Myanmar Yanghee Lee, calling her a “bitch” and a “whore” after her latest visit to the country in January 2015.

The inflammatory rhetoric and propaganda campaigns have also led to two other key indicators of atrocity crimes: the “destruction or plundering ... of property related to cultural

and religious identity” (7.11) and the “marking of people or their property based on affiliation to a group” (7.12). In cities like Thandwe, Mandalay, and Meiktila “969” stickers and Buddhist flags have been used to delineate Buddhist shops from Muslim ones as part of an intended boycott of Muslim businesses. In the Mandalay riots and Meiktila massacre, as well as in violent episodes in Lashio and Rakhine State, Muslim-owned shops, schools, and mosques have been singled out for destruction.

These enabling circumstances have been furthered by the government’s failure to respond appropriately. When Wirathu’s campaign of hate speech was exposed globally in Time

Magazine, President Thein Sein’s response was not to denounce Wirathu’s actions, but to defend him as a “son of Lord Buddha.” Thein Sein has since made some general remarks denouncing hate speech, but specific cases continue to take place without comment from the President or other government officials. These include the recent public statements against the UN Special Rapporteur. As another prominent member of Mandalay’s civil society told APhR, hate speech is spread “through journals and magazines ... but the government never takes action.”

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The lack of accountability for crimes committed against Muslims has contributed to persistent hate speech. Political support for discriminatory legislation that is inconsistent with international and regional standards has likewise allowed an enabling environment for atrocities.

Risk Factor 11: Signs of a widespread or systematic attack against any civilian population

The dynamics behind outbreaks of anti-Muslim violence in Myanmar, including the use of rumors and outside instigators, demonstrate “signs of patterns of violence against civilian populations” (11.1), a specific indicator of the threat of crimes against humanity. In Thandwe and Mandalay, violence was sparked by rumors that Muslim men raped Buddhist women. In Mandalay, the unfounded rumors were quickly posted on Wirathu’s Facebook page, fitting another specific indicator of potential crimes against humanity: the “use of media or other means to provoke or incite to violent acts” (11.4).

Rumors have been followed by the rapid mobilization of outside groups to incite local actors to join them in attacks on Muslims. Security forces have stood by as attacks took place. In Lashio, journalists reported fire brigades standing aside as Muslim properties burned. In 2013, then-UN Special Rapporteur on human rights in Myanmar Tomás Ojea Quintana reported on “police inaction during early stages of violence” in Lashio and Meiktila. In Mandalay, several civil society representatives described witnessing police stand by as a relatively small number

of rioters attacked Muslim areas. A March 2015 report by Justice Trust, based on six months of research by local and international lawyers, similarly found “a common underlying pattern” to violence in Mandalay and “clear visible evidence of a deliberate strategy to foment anti-Muslim violence.”

The full extent to which anti-Muslim violence was deliberately orchestrated in recent years is unknown. At the very least, the Myanmar government has failed to take meaningful action to denounce hate speech and prevent violence. Furthermore, by harassing and intimidating civil society groups, authorities have obstructed their efforts to prevent violence as well. One Buddhist activist member of a peace network in Mandalay told APhR that “people who want to talk against the government are silenced, but those who push for hate speech are allowed to say what they want.” Another Muslim civil society leader believes that “the government knows who is behind... violent or criminal behavior, but they haven’t tried to take action against the right people—the leaders who drive this kind of conflict.” One Buddhist monk in Mandalay discussed the difficulty of speaking out against extremist monks such as Wirathu. “If the government pulled its support from this movement, this message, then it’s possible it could subside, as there is also the message of peace out there, and it could be balanced out,” he said.

APHR spoke with many civil society representatives who believe that senior monks and government officials are behind the timing of violence for political purposes and that these individuals have the ability to turn the violence on and off. Whether or not this is true, recent dynamics have clearly made many among Myanmar’s civil society fear “signs of a plan or policy to conduct attacks against civilian populations” (11.5). This indicator is also clearly present in Myanmar’s other ethnic minority areas.

Risk of Ethnic Minority Violence

Myanmar has a long history of tensions between the central government and ethnic minorities, including the Kachin, Karen, Rakhine, Shan, and Wa, which has manifested in armed conflict that has raged for decades. Fourteen ethnic armed groups have signed individual ceasefires with the central government since 2011, and efforts have been made toward achieving a nationwide ceasefire agreement.

Nevertheless, fighting has continued in Kachin and northern Shan States, including a recent flare-up in the Kokang region along the border with China. Reports of abuses by the Myanmar Army, including forced labor, torture, and rape have been pervasive, and the military has also bombed civilian areas in Kachin State in January 2013 and in the Kokang region of northern Shan State in February and March 2015.

Some 100,000 people remain displaced in Kachin and northern Shan States, and the recent violence in Kokang has displaced 78,000 people, according to the UN World Food Program. An estimated 120,000 refugees from ethnic minority areas in Myanmar are living in camps

in Thailand—part of a total estimated 500,000 refugees from Myanmar in other ASEAN countries.

The history and current dynamics in ethnic minority areas of Myanmar fit several risk factors for atrocity crimes, including two specific to the risk of war crimes.

Risk Factor 2: Record of serious violations of international human rights and humanitarian law

Decades of fighting between the Myanmar Army and various ethnic armed groups have resulted in “serious restrictions to or violations of international human rights and humanitarian law” (2.1). These include extrajudicial killings, torture, forced labor, rape, and arbitrary detention, as documented by numerous independent reports.

A November 2014 report by Fortify Rights documented more than 60 instances of torture committed by the Myanmar Army, Myanmar Police Force, and Military Intelligence in combat zones, places of detention, and villages in Kachin and northern Shan States. Fortify Rights made the case that these abuses constitute war crimes and crimes against humanity. In its report, Fortify Rights also documented numerous attacks by the Myanmar army on civilians and non-military targets in recent years including the razing of civilian homes, attacks on makeshift camps of displaced persons, and extrajudicial killings.

Myanmar Army soldiers have committed torture and rape with impunity, indicating a “policy or practice of impunity for or tolerance of serious violations of international human rights and humanitarian law, of atrocity crimes, or of their incitement” (2.3) and “inaction, reluctance or refusal to use all possible means to stop planned, predictable or ongoing serious violations” (2.4). A January 2014 report by the Women’s League of Burma described systematic sexual violence at the hands of the Myanmar Army in ethnic minority areas. The report documents over 100 cases of sexual violence since 2010, including 47 gang rapes perpetrated by the military.

Recorded abuses by non-state actors must also be noted and condemned, but should not serve as justification for abuses on the side of the army. The history of human rights violations and continued abuses in Myanmar’s ethnic minority areas over many decades has created “widespread mistrust in State institutions or among different groups as a result of impunity” (2.8), another key indicator of potential atrocity crimes.

The common risk factor of a record of serious human rights and humanitarian violations also applies to Rohingya in Rakhine State as indicated earlier in this report.

Risk Factors 13 and 14: Serious threats to those protected under international humanitarian law; Serious threats to humanitarian or peacekeeping operations

More than 170,000 people have been forcibly displaced by violence in Kachin and northern Shan States. The Myanmar government has obstructed access to many of those displaced, particularly some 40,000 people displaced within rebel controlled areas.

These actions provide “evidence of conduct interfering with or impeding delivery or access to ... medical or humanitarian support indispensable to the survival of those protected under international humanitarian law” (13.8). There is further evidence of the “interference, limitation or prohibition of access or movement of humanitarian or peacekeeping operations or their personnel” (14.5).

The recent attacks on civilians in the Kokang region of northern Shan State and the previously mentioned documentation by Fortify Rights of continued abuses in Kachin State provide further evidence of another key indicator: an “increase in the ... disproportionate or indiscriminate use of force, or failure to take action to avoid launching such attacks or to conduct military operations in heavily populated areas or to non-military targets” (13.13, 13.14).

Additional Indicators of Atrocity Crimes in Myanmar

Beyond the Rohingya crisis, anti-Muslim violence, and violence against other ethnic minorities, there are several other risk factors for atrocity crimes present in Myanmar today. These factors involve the broader political context and recent backsliding on reform. In particular, the transition from decades of direct authoritarian military rule to what might be described as pseudo-democracy has left weaknesses in state structures and incentives and triggers for violence.



Risk Factor 3: Weakness of State Structures

Myanmar is far from a weak state, but there is ample weakness in crucial state structures—perhaps most importantly, the “lack of effective civilian control of security forces” (3.3). Though Myanmar transitioned to a civilian administration in 2011, the military maintains effective control over the government. The constitution reserves 25 percent of parliamentary seats for military-appointed Members of Parliament and requires more than 75 percent of parliament to approve constitutional amendments, effectively giving the military veto power over any charter changes. A clause in the charter—written with the most popular civilian

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leader, Aung San Suu Kyi, specifically in mind—bans anyone with foreign-born children from running for president. Promises of a referendum on constitutional amendments have been delayed and problematic clauses are unlikely to be addressed before elections planned for November 2015. In the meantime, security forces maintain a dangerous level of control, including over the most important sectors of Myanmar’s economy.

Another structural weakness is the lack of credible accountability mechanisms. While more than 1,000 political prisoners have been released in recent years, dozens remain detained, and new arrests continue to take place. Abuses in Rakhine State and other ethnic minority areas remain unaddressed, leaving an “absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims” (3.6).

Risk Factor 4: Motives or incentives

The recent reforms and upcoming 2015 elections have created a host of political, economic, and military motives for potential violence. Aung San Suu Kyi’s National League for Democracy (NLD) is challenging current and former military leaders who presently hold the reins of power. Hardliners who fear being left out of the new system may be tempted to stoke conflict and violence to display the continued need for a strong military. The current dynamics demonstrate that there are “political motives, particularly those aimed at the attainment or consolidation of power” (4.1).

Myanmar is also racked by a host of “economic interests, including those based on ... control over the distribution of resources” (4.2). Ethnic areas like Kachin State are rich in resources, including jade, minerals, timber, and hydropower potential. The construction of transnational oil and gas pipelines running from the shores of Rakhine State through Myanmar to China has sparked protests voicing environmental, labor, and land rights concerns. Land grabbing

remains a major source of tension throughout many areas in Myanmar and a likely source of future violence and atrocity crimes, demonstrating the existence of “strategic or military interests, including those based on protection or seizure of territory and resources” (4.3).

The broader dynamics behind anti-Rohingya and wider anti-Muslim sentiment described in this report likewise fit indicators of motive or incentive risk factors as described in the Framework. These include interests “aimed at rendering an area homogeneous in its identity” (4.4), “real or perceived threats posed by protected groups” (4.5) and “ideologies based on the supremacy of a certain identity or on extremist version of identity” (4.7).

These risk factors also extend to ethnic minority areas, where there is clear “politicization of past grievances, tensions or impunity” (4.8) and “social trauma caused by past incidents of violence not adequately addressed and that produced feelings of loss, displacement, injustice and a possible desire for revenge” (4.9).

Risk Factor 6: Absence of mitigating factors

Myanmar suffers from the absence of several factors with the potential to mitigate the risk of atrocity crimes as identified in the Framework. This includes both internal factors relating to the Myanmar government and civil society and external factors relating to regional and international actors.

Domestically, Myanmar lacks a “free, diverse and independent national media” (6.2). Though the country witnessed significant gains in media freedom after 2011, more recently the trend appears to be reversing. A reporter covering renewed fighting in Mon State was detained in October 2014 and died in military custody. Journalists covering recent student protests have been harassed, beaten, and detained by police.

The Myanmar government has also prevented the introduction of mitigating factors offered by the international community. A “lack of or limited presence of the United Nations, INGOs or other international or regional actors in the country and with access to populations” (6.4) has been a growing problem in Rakhine State.

The Myanmar government has limited access to populations in need and effectively removed witnesses from areas at a high risk of violence and abuse. Similarly, the Myanmar government has displayed “limited cooperation ... with international and regional human rights mechanisms” (6.7). While the government has allowed visits by the UN Special Rapporteur on Human Rights in Myanmar, it has also actively lobbied against the Rapporteur’s mandate and, at times, limited the Rapporteur’s access to certain areas of the country. President Thein Sein has failed to allow the UN Office of the High Commissioner for Human Rights to open a country office with a full mandate in Myanmar, despite a commitment to do so in 2012.

But the absence of mitigating factors cannot be attributed to the Myanmar government alone. The international community and ASEAN, in particular, have important mitigating roles to play. Among the specific indicators of this risk factor is a “lack of interest, reluctance or failure of United Nations Member States or international or regional organizations to support a State to exercise its responsibility to protect populations from atrocity crimes, or to take action when the State manifestly fails that responsibility” (6.9) and a “lack of support by neighbouring States to protect populations at risk and in need of refuge, including by closure of borders, forced repatriation or aid restrictions” (6.10).

With over 150,000 Rohingya displaced and hundreds of thousands more who have fled to surrounding countries, there has been a clear failure to protect the population. ASEAN countries have failed to provide refugee status to fleeing Rohingya, and authorities in countries including Myanmar, Malaysia, and Thailand have been found to be complicit in human trafficking.

The Rohingya crisis is one that affects not only Myanmar, but all of ASEAN as well. Yet it remains conspicuously absent from the agenda of the ASEAN Summit. ASEAN and the United Nations can and should do more.

Risk Factor 8: Triggering Factors

Factors with the potential to trigger atrocity crimes are troublingly evident in Myanmar. The specific risk indicator of a “census, elections, [and] pivotal activities related to those processes, or measures that destabilize them” (8.8) exists in Myanmar. The results of Myanmar’s controversial 2014 census, which failed to count segments of society, including Rohingya and other ethnic minorities living in conflict zones, are set to be released in the coming weeks. The expiration and collection of temporary identity cards has left uncertainty about who will be allowed to vote. These cards were held not only by Rohingya, but also by many people in ethnic minority areas and individuals of Indian and Chinese descent.

Protests are likely to continue with unpredictable reactions from the government. Ma Ba Tha will likely continue to push the “Protection of Race and Religion Bills,” and its more extreme followers will continue to threaten anyone who criticizes blatant violations of international human rights standards. The persistent anti-Muslim sentiment, if not countered by government officials, is likely to break out in familiar patterns of “acts of incitement or hate propaganda targeting particular groups or individuals” (8.7).

A Call to Action

The crises in Myanmar, including the persecution of Rohingya, anti-Muslim violence, and systematic abuses against other ethnic minorities, are not only a problem for Myanmar, they are a problem for all of ASEAN. The risk factors and specific indicators enumerated in this report, including those for war crimes, crimes against humanity, and genocide, demonstrate a high risk of atrocity crimes in Myanmar in the year ahead. Such crimes threaten to undermine the human rights standards and common dignity of ASEAN citizens. They also threaten to spill over borders and affect the economic and physical security of neighboring countries.

APHR will remain focused on the escalating crisis and determined to draw the attention and action of ASEAN's leaders. This report is more than a detailed listing of warning signs. It also represents a call to action to prevent the further escalation and perpetration of atrocity crimes that will affect Myanmar and the entire region.

We call upon ASEAN's leaders to take the following actions:

- Recognize the escalating crisis in Rakhine State and the plight of Rohingya as a serious danger to both Myanmar and ASEAN by prioritizing the issue in Summit meetings.
- Conduct an independent investigation of conditions and risks of increased violence and displacement in Myanmar, as well as associated risks to ASEAN, including greater refugee flows to countries like Malaysia and Thailand.
- Expand the mandate of the ASEAN Intergovernmental Commission on Human Rights (AICHR) to include country visits, inquiries, complaints, and emergency protection mechanisms, and ensure adequate independence and staffing support for its members. Engage AICHR to conduct a follow-up investigation into the Rohingya crisis.
- Deploy ASEAN monitors well ahead of the Myanmar elections to observe and report on the Rohingya crisis and broader anti-Muslim and ethnic minority dynamics.
- Utilize existing mechanisms in ASEAN, such as the ASEAN Troika, AICHR, the office of the ASEAN Secretary General, and the role of the ASEAN Chair, to respond appropriately to humanitarian crises in member states in accordance with the principles of the ASEAN Charter and the ASEAN Declaration on Human Rights.
- Commit to protecting those fleeing the crisis in Rakhine State, including by granting prima facie refugee status to Rohingya and providing the UN refugee agency with unfettered access to asylum seekers.

- Ratify the 1951 Refugee Convention.
- Strengthen and expand the mandate of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to help combat threats to women's rights, including those presented by the "Protection of Race and Religion Bills" and other Myanmar government policies that restrict rights, particularly for ethnic and religious minority women.
- Call upon the Myanmar government to adhere to regional and international human rights and humanitarian standards, including by rejecting the "Protection of Race and Religion Bills."
- Call upon the Myanmar government to address the root causes of the Rohingya crisis by amending the 1982 Citizenship Law to provide Rohingya with equal access to full citizenship, promoting reconciliation initiatives, denouncing hate speech and propaganda, and holding perpetrators of violence, including government officials, accountable.

ⁱ *Framework of Analysis for Atrocity Crimes: A Tool for Prevention*, United Nations Office of the Special Adviser on the Prevention of Genocide, 3 October 2014. http://www.un.org/en/preventgenocide/adviser/pdf/framework%20of%20analysis%20for%20atrocity%20crimes_en.pdf (accessed 16 April 2015).

ⁱⁱ *Marching to Genocide in Burma*, United to End Genocide, March 2014. <http://endgenocide.org/marching-genocide-burma-2/> (accessed 16 April 2015). *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, Fortify Rights, February 2014, <http://www.fortifyrights.org/publication-20140225.html> (accessed 16 April 2015). “*All You Can Do is Pray*”: *Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State*, Human Rights Watch, 22 April 2013. <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray-0> (accessed 16 April 2015).

ⁱⁱⁱ *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, Fortify Rights, February 2014, <http://www.fortifyrights.org/publication-20140225.html> (accessed 16 April 2015).

^{iv} *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, United Nations Human Rights Council, Twenty-eighth Session, A/HRC/28/72, 23 March 2015.

^v *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, Fortify Rights, February 2014, <http://www.fortifyrights.org/publication-20140225.html> (accessed 16 April 2015).

^{vi} “Are Invisible Forces orchestrating Myanmar’s anti-Muslim Violence?” Francis Wade, Al-Jazeera, 9 October 2013. <http://www.aljazeera.com/indepth/opinion/2013/10/are-invisible-forces-orchestrating-myanmar-anti-muslim-violence-201310864149233413.html> (accessed 16 April 2015).

^{vii} Statement by Tomas Ojea Quintana, Special Rapporteur on the Situation of Human Rights in Myanmar, 68th Session of the General Assembly Third Committee, 24 October 2013, New York: <https://papersmart.unmeetings.org/media2/703350/statement-by-tomas-ojea-quintana-item-69c.pdf> (accessed 16 April 2015)

^{viii} *Hidden Hands Behind Communal Violence in Myanmar: Case Study of the Mandalay Riots*, Justice Trust, March 2015, <http://www.justicetrust.net/wordpress/> (accessed 16 April 2015).

^{ix} *WFP Myanmar Situation Report on Kokang Response: April 2015*, World Food Programme, April 2015. <https://www.wfp.org/content/wfp-myanmar-situation-report-kokang-response-april-2015> (accessed 16 April 2015). *Humanitarian Bulletin: Myanmar*, UNOCHA, Issue 3, 1-31 March 2015, <http://reliefweb.int/report/myanmar/myanmar-humanitarian-bulletin-issue-3-1-31-march-2015> (accessed 16 April 2015).

^{xi} *UN High Commissioner for Refugees UNHCR 2015 Country Operations Profile*, <http://www.unhcr.org/pages/49e4877d6.html> (accessed 16 April 2015).

^{xii} *Myanmar: End Military Attacks on Kachin and Shan Civilians*, Fortify Rights, November 2014: <http://www.fortifyrights.org/publication-20141106.html> (accessed 16 April 2015).

Ibid.

^{xiii} *Same Impunity, Same Pattern: Report of Systematic Sexual Violence in Burma’s Ethnic Areas*, Women’s League of Burma, January 2014, <http://womenofburma.org/same-impunity-same-pattern-report-of-systematic-sexual-violence-in-burmas-ethnic-areas/> (accessed 16 April 2015).



About ASEAN Parliamentarians for Human Rights

ASEAN Parliamentarians for Human Rights (APHR) is a human rights intervention force of like-minded parliamentarians and influential persons, using their unique positions and innovative means to prevent discrimination, uphold political freedom, and promote all human rights. APHR supports the work of civil society and human rights defenders and encourages sustainable and alternative solutions that increase pressure on international, regional, and multilateral bodies and governments to ensure accountability to the people and uphold and enforce international human rights laws.